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SOSCN Seminar

Reporting to OSCR and making
changes to a charity

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OSCR role

In The Charities and Trustee Investment (Scotland) Act 2005 (the Act) OSCR's general functions are to:

- Determine whether bodies are charities
- Keep a public Register of charities
- Encourage, facilitate and monitor compliance by charities with the provisions of the Act
- Identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct
- Give information or advice, or to make proposals, to Scottish Ministers on matters relating to OSCR's functions

The logo for the Office of the Scottish Charity Regulator (OSCR). It features the letters 'OSCR' in a dark blue, sans-serif font. The letter 'r' is stylized, with its vertical stem in dark blue and its top curve in a light green color.

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What makes a charity a charity?

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The Charity Test

What is the charity test?

Section 7(1) of the Act requires OSCR to apply a two-part test in determining a body's eligibility for new or continued registration:

- the body has only charitable purposes
- the body provides public benefit



The Charity Test

Special circumstances

An organisation cannot be a charity if:

- its constitution allows distribution or use of its property for any non-charitable purpose
- its constitution permits Scottish or Crown ministers to control or directs its activities
- it is a political party or one of its purposes is to advance a political party
- it has an objectionable name





What duties do charities have?

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Charity Trustee Duties

General duties

A charity trustee must:

- **Act in the interest of the charity:** trustees should put the interests of their charity before their own interests or those of any other person or organisation.
- **Operate in a manner consistent with the charity's purposes:** trustees should carry out their duties in accordance with their governing document.
- **Act with due care and diligence:** trustees should take such care of their charity's affairs as is reasonable to expect of someone who is managing the affairs of another person.
- **Ensure that the charity complies with the provisions of the 2005 Act and other relevant legislation.**



Responsibilities under the Charities and Trustee Investment (Scotland) Act 2005

Trustees also have specific duties

- Updating the charity's details
- Reporting to OSCR
- Financial record keeping and reporting
- Fundraising
- Providing information to the public

And

- Trustees have collective responsibility for the management and governance of the charity



Charities and the public

Providing information to the public

- **References in documents:** There are differences between the requirements for references in documents for SCIO and non-SCIO charities – see OSCR guidance for more information
- **Providing information:** Charity trustees must provide a copy of the charity's constitution and latest statement of account to anyone who requests it.
- **Fundraising:** Information about fundraising arrangements must be made available to donors and formal arrangements in place when using professional fundraisers.





Charity accounts

Core information on accounts
and returns to OSCR

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Charities Accounts (Scotland) Regulations 2006

A guide

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The 2006 Regulations

What do the Regulations contain?

- Preparation of accounts
 - External scrutiny
 - Financial year
- } Apply to all charities
- Consolidated accounts
 - Connected charities
- } Apply to some charities

Types of accounts

What types of accounts do the Regulations permit?

- Receipts and payments accounts (regulation 9)
A summary of all monies received and paid via the bank and in cash during its financial year, along with a statement of balances.
- Fully accrued accounts (regulation 8)
The costs or income of a particular activity are allocated when the liability is incurred or when there is entitlement and certainty about income, not when it is actually received or paid out.

Types of accounts

Which type of accounts should a charity prepare?

This will depend upon:

- The size of the charity (gross annual income)
- Its legal form
- Any provisions in the constitution
- Any enactment of Parliament
- Any decision by charity trustees or members
- Any condition of funding



Income threshold

What is the income threshold for receipts and payments accounts?

- gross income* not exceeding £100,000 in a financial year
 - * total income of the charity for that particular year excluding any income that is part of a permanent endowment fund

(this will be changed to £250,000 for accounting periods starting on or after 1 April 2011)



Receipts and payments accounts

What should a set of receipts and payments accounts consist of?

- Statement of receipts and payments
- Statement of balances as at the last day of the financial year
- Notes to the accounts
- Trustees' annual report (TAR)

Plus

- Appropriate external scrutiny report



Fully accrued accounts

When are fully accrued accounts required?

- Gross income of £100,000 or more (£250,000 from 1 April 2011)
- The charity is a company
- The constitution requires it
- Any enactment of Parliament requires it
- The trustees have decided to prepare accounts on that basis

Accounts must comply with the methods and principles of the *Accounting and Reporting by Charities: Statement of Recommended Practice* (the 2005 Charities SORP)



External scrutiny of accounts

What types of external scrutiny of accounts do the Regulations provide for?

All charities must have their accounts externally scrutinised. There are two types:

- Independent Examination (two levels)
- Audit





Flowchart exercise

Accounts and external scrutiny –
getting it right

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External scrutiny of accounts

What type of scrutiny must a charity have for its accounts?

The appropriate type of scrutiny will depend upon:

- the size of a charity (gross income and assets)
- its legal form
- the type of accounts prepared
- any requirement of the constitution
- any enactment of Parliament
- any decision of the trustees



External scrutiny of accounts

What type of scrutiny is required for receipts and payments accounts?

An independent examination (IE), unless an audit is required by:

- the charity's constitution
- any enactment of Parliament
- a decision of the charity trustees



Who can be an independent examiner?

Receipts and Payments accounts

- a person who is reasonably believed by the charity trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts

Accruals accounts (where audit not required)

- a member of a professional accountancy body, or
- a full member of the Association of Charity Independent Examiners (ACIE), or
- the Auditor General for Scotland
- a person appointed by the Accounts Commission for Scotland



External scrutiny of accounts

Who is qualified to carry out an independent examination of receipts and payments

Examples given in OSCR guidance

- full or associate members of the Association of Charity Independent Examiners
- qualified accountants currently in employment
- retired accountants
- bank managers
- other people familiar with financial matters



External scrutiny of accounts

What does 'independent' mean?

The examiner should have no connection with the charity trustees that might inhibit their ability to carry out an impartial examination. Normally this would exclude:

- the trustees themselves
- anyone closely involved in the charity's administration
- a major donor to the charity
- a major beneficiary of the charity
- a spouse, partner or close relative of any of the above
- business partner or employee of the any of the above





OSCR Monitoring

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Monitoring by OSCR

What information does OSCR monitor?

- Annual Return and accounts from all charities
- Supplementary Monitoring Return from charities with gross income of £25,000 or more



Monitoring by OSCR

When is the information required?

- Annual Return and (if applicable) Supplementary Monitoring Return forms are issued the day after a charity's financial year end.
- Completed forms must be submitted **within nine months** of the charity's financial year end.
- Forms should be submitted at the same time as the accounts



Monitoring by OSCR

What information does the Annual Return collect?

- charity legal name and number
- other names by which it is known
- principal contact name and address
- constitutional form
- details of any parent charity
- accounting year end
- gross income in last accounting period



Monitoring by OSCR

What information does the Annual Return collect?

- applicable charitable purposes
- beneficiary groups
- type of activity
- geographical spread
- location of head office
- details of any connected trading companies



Monitoring by OSCR

How should the Annual Return be completed?

- form is pre-populated with current information held on the Register
- opportunity to update any changes
- signed and dated by one of the trustees.



Monitoring by OSCR

What is the Supplementary Monitoring Return?

- issued to all charities with gross income of more than £25,000
- a breakdown and analysis of financial information more detailed than what is available from the accounts
- ensures that comparable figures for all charities can be entered on the Register
- more detailed analysis for charities with gross income of more than £100,000
- issued with guidance notes



Monitoring by OSCR

What happens if accounts / returns are late?

| | |
|--------------------------|--|
| 4 weeks before deadline: | first reminder |
| 1 day after deadline: | on Register annual return history listed as OVERDUE |
| 2 weeks after deadline: | second reminder |
| 4 weeks after deadline: | third reminder |
| after further 4 weeks: | passed to Compliance Support as a non-submitting charity. Status changes from ACTIVE to PASSED TO COMPLIANCE |
| after 6 months: | Charity status listed as DEFAULTING Published on OSCR website |



http://www.oscr.org.uk/CharityIndexDetails.aspx?id=5C001323

File Edit View Favorites Tools Help

Charity Index Details

Scottish Charity **register**

Extract from the Scottish Charity Register maintained by OSCR

CHARITY DETAILS

1 Charity Number:
 1 Charity Name:
 1 Registered charity from:
 1 Address:
 1 Postcode:
 1 Office/Home address:

OPERATIONS

1 Charity Status: **Passed to Compliance**
 1 Defaulting:
 1 Constitutional Form: Other
 1 Accounting Period End: 31 March
 1 Gross Income: £36,357.00
 1 Geographical Spread: A specific local point, community or neighbourhood
 1 Main Operating Location: North Ayrshire
 1 Last Updated: 25/05/2010
 1 Purposes: Advancement of Education
 Advancement of Health
 The Saving of Lives
 Advancement of Environmental Protection or Improvement
 1 Beneficiaries: Benefits Children or Young
 1 Activities: Carries out Activities

1 Objects: The Scout Method provides an enjoyable and attractive scheme of progressive training, based on the Scout Promise and Law, which is guided by adult leadership. In practice the method is best seen when young people, in partnership with adults, are: enjoying what they are doing; learning by doing; participating in varied and progressive activities; making choices for themselves; taking responsibility for their own actions; working in groups; taking increasing responsibility for others; taking part in activities outdoors; sharing in prayer and worship; making and living out their Promise.

ANNUAL RETURN SUBMISSION HISTORY

| Mailing Cycle | Financial Year | | Annual Return | |
|---------------|----------------|------------|---------------|------------|
| | 1 Year End | 1 Income | 1 Issued | 1 Checked |
| 2005 | 31-03-2004 | £8,552.00 | 29-04-2005 | 23-03-2006 |
| 2006 | 31-03-2006 | £29,221.00 | 01-06-2006 | 19-02-2007 |
| 2007 | 31-03-2007 | £40,963.00 | 03-04-2007 | 06-03-2008 |
| 2008 | 31-03-2008 | £36,357.00 | 01-04-2008 | 25-05-2010 |
| 2009 | 31-03-2009 | - | 26-05-2010 | Overdue |
| 2010 | 31-03-2010 | - | 26-05-2010 | Overdue |

Search again

Common non-compliance issues

- incorrect method of accounts preparation
- income, expenditure and surplus/deficit figures clearly stated (as entered on Annual Return)
- no trustees' annual report
- no independent examiner's or auditor's report
- statement of balances or balance sheet not signed
- no Scottish Charity number on the accounts

OSCR now fails accounts that do not comply with basic requirements





Making changes to a charity

Regulatory requirements

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What kind of changes can a charity make?

Ideas and examples please!

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Consents & notifications

Charity trustees must **seek prior consent from OSCR:**

- before changing the name of the charity
- before **winding-up the charity**
- before amending the objects or purposes of the charity
- before **amalgamating the charity with another body**
- before changing the charity's legal form.

Prior consent must be sought at least 42 days in advance of the proposed change taking effect.



Consents & notifications

Charity trustees must **notify OSCR**:

- when the Principal Contact changes
- when the contact details for the existing Principal Contact change
- when the accounting year end date has changed
- when changes unrelated to purposes are made to the constitution
- **when any change consented to by OSCR is implemented.**

OSCR must be notified no later than 3 months after the change has taken effect.





Why is OSCR interested in these changes?

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Protecting charitable property

- A charity's assets/property can only be expended for charitable purposes
 - OSCR has a duty to ensure that such assets **and** any income for these are used for the charitable purposes for which they were originally acquired



Consents and notifications bingo!

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Options for change

Where they have the power to do so, charity trustees can:

- Dissolve the charity
- Merge or amalgamate with another charity
- Change legal form

NB – A SCIO:

- cannot convert to another legal form
- cannot seek removal from the Register other than by dissolving itself
- can only amalgamate or transfer its undertakings with/to another SCIO



Dissolution and winding up

How do trustees apply for consent to wind up a charity?

- Written application form at least 42 days before the date the proposed action is to be commenced.
 - effective date of wind up or dissolution
 - statement of remaining assets and liabilities
 - details of the recipient body(ies) of any transferred assets
 - contact address where the dissolved charity's accounts will be kept
 - copy of constitution(s) or governing document(s)



Dissolution and winding up

When consent is granted

- the charity may commence the process of winding up after the expiry of the 42 day period
- OSCR requests that the change is made within 1 year
- once wound up, OSCR must be notified within three months

When consent is refused

- the charity may not wind itself up
- the charity may request a review of the decision within 21 days



Dissolution and winding up

Remember to notify OSCR!

Including:

- ✓ Statement of how remaining property has been distributed
- ✓ Minutes of meetings
- ✓ Closing bank statement
- ✓ Final set of compliant accounts
- ✓ Contact address



Amalgamation

What is meant by amalgamation?

- two (or more) bodies coming together to form a new entity
- present bodies will cease to exist
- therefore consent to amalgamate encompasses consent for the existing bodies to be wound up
- application for consent is required from all charities involved
- consent does not provide assurance the new body will meet the charity test

Amalgamation

How do trustees apply for consent to amalgamate?

written application form submitted at least 42 days prior to proposed date of amalgamation, must include:

- current name, charity number and principal contact details
- outline of the proposed action including the effective date of the amalgamation
- details of any other regulators from whom consent is also required
- statement of the assets and liabilities to be transferred
- statement from the recipient body accepting all assets and liabilities
- (proposed) governing document of recipient body



What can a charity do?

If a charity *does not have the power* to make changes in its constitution, it can apply to OSCR for a Reorganisation Scheme



Charity reorganisation

What are the 2007 Regulations?

- made under ss39-42 of the Charities and Trustee Investment (Scotland) Act 2005
- in force from 31 May 2007
- applies to charities lacking the power to reorganise or amend their constitutions
- provides a means by which OSCR may approve a reorganisation scheme for such charities



Charity reorganisation

What is a reorganisation scheme?

The Act sets out three purposes of a reorganisation scheme:

- variation of the constitution (whether or not in relation to its purposes)
- transfer of property to another charity (whether or not involving a change to the purposes of the other charity)
- amalgamation with another charity

The Public Services Reform (Scotland) Act 2010

- reorganisation of restricted funds





OSCR Guidance

Changing your charity's name

Amending your charity's purposes

Amalgamating your charity with another body

Winding up or dissolving your charity

Changing your charity's legal form

Charity reorganisation

Section 19 monitoring

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Thank you Questions?

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