

## Charities & Trustee Investment (Scotland) Act 2005

### *A Health Checklist for Charitable Organisations*

Organisation: .....

<b>Legal Structure</b>	<b>Yes/No</b>
<ul style="list-style-type: none"> <li>• Is the organisation a charity and listed on the Scottish Charity Register? <i>(see Note 1)</i></li> <li>• Is the organisation a company and listed on Companies House database of companies? <i>(see Note 2)</i></li> <li>• Do the organisation's purposes fit wholly with one or more of the charitable purposes outlined in the Act? <i>(see Appendix 1)</i></li> <li>• Does the organisation evidence effectively the activities it carries out to achieve its purposes? <i>(see Note 3)</i></li> </ul>	
<ul style="list-style-type: none"> <li>• Does the organisation provide public benefit?</li> <li>• Is this evidenced in the annual report and on an on-going basis?</li> </ul>	
<ul style="list-style-type: none"> <li>• Within the Act there are 3 conditions which would exclude an organisation from being a charity. Is there any evidence that any of these are in force <i>(see Note 4)</i></li> </ul>	
<ul style="list-style-type: none"> <li>• How does the organisation describe its charitable status in its documentation? <i>(see Note 5)</i></li> </ul>	
<b>Charity Trustees</b>	
<ul style="list-style-type: none"> <li>• Is there a Trustee Declaration in place ensuring that all trustees comply with the Act's guidelines regarding who can and cannot be a trustee? <i>(see Note 6)</i></li> </ul>	
<ul style="list-style-type: none"> <li>• Does the organisation follow good practice in the selection and appointment of trustees and how is this evidenced eg in the annual report? (identifying skills gaps, considering balance etc)</li> </ul>	
<ul style="list-style-type: none"> <li>• Is there an on-going training and self-assessment programme for trustees, including an induction process for new trustees?</li> </ul>	
<ul style="list-style-type: none"> <li>• If no principal office exists, has one trustee been nominated as the contact person for the organisation? (OSCR should be notified of this)</li> </ul>	
<ul style="list-style-type: none"> <li>• Does any trustee receive remuneration and, if so, is this in line with the guidelines laid out in the Act? <i>(see Note 7)</i></li> </ul>	
<b>Charity Trustees' Annual Report</b>	
<ul style="list-style-type: none"> <li>• Does the trustees' annual report comply with the Charity SORP 2005 requirements, if relevant? <i>(see Note 8)</i></li> </ul>	
<ul style="list-style-type: none"> <li>• Is the report accompanied by appropriate accounts when distributed?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does the report cover the main areas stipulated by the Act? <ul style="list-style-type: none"> <li>- Reference material and admin details about charity, its trustees and its professional advisers.</li> <li>- Structure, governance and management information.</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>- Objectives and activities.</li> <li>- Achievements and performance.</li> <li>- Financial review.</li> <li>- Future plans.</li> <li>- Details of any funds held as a custodian trustee.</li> </ul>	
<ul style="list-style-type: none"> <li>• For organisations with a gross annual income of over £25,000, has a Monitoring Return been completed and returned to OSCR to accompany the annual report?</li> </ul>	
<b>Accounts &amp; Monitoring</b>	
<ul style="list-style-type: none"> <li>• Are accounts filed with OSCR within 9 months of the organisation's financial year end?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does the person examining the accounts have the required qualifications? <i>(see Note 9)</i></li> </ul>	
<ul style="list-style-type: none"> <li>• Has the independent examiner included a report in line with the guidelines set out in the Act? <i>(see Note 10)</i></li> </ul>	
<ul style="list-style-type: none"> <li>• Has the organisation prepared appropriate accounts in line with its annual income? <i>(see Note 11)</i></li> </ul>	

## Explanatory Notes

1. OSCR, as the registrar and regulator of Scottish charities, is responsible for keeping an accurate [Register](#) of Scottish Charities. The register is updated regularly and includes a comprehensive range of information about the activities and charitable purposes of Scotland's charities.
2. Companies House, as the registrar and regulator of Scottish Companies, offers a free of charge searchable Company Names and Address Index which enables you to search for information on more than 2 million companies. You can carry out a search on a company by using either its name or its unique company registration number. Search at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)
3. OSCR will assess whether an organisation provides, or intends to provide, public benefit on the basis of the organisation's (intended) activities. OSCR will therefore need to have a picture of the (intended) activities, which generally will not be available from the constitution (or other legal document). However, this kind of information is sometimes readily available in documents prepared by the charity for other purposes, such as a plan (business, organisational plan etc), in annual reports, funding applications etc. Depending on the size of the charity and the scale of its operation such documents will be more or less formal and expansive.

OSCR will ask, when they review existing charities, for a brief statement to be provided of the (intended) activity, and supplement this with any documents it already has available that describe its (intended) activities. Where such documents are not available, a fuller statement of the (intended) activities may be necessary if the initial statement did not give enough information for OSCR to base its assessment on.

OSCR will also ask whether there will be any condition on obtaining the benefit (such as whether the charity does (or intends to) charge for its services).

4. An organisation cannot be classed as a charity (even if its purposes are charitable and it provides public benefit) if:
  - Its constitution allows the distribution or use of its property for a purpose which is not charitable.
  - If its constitution expressly permits Ministers to control or direct its activities.
  - If it is a political party or if one of its purposes is to advance a political party.
5. Any charity on the Scottish Charity Register may describe itself by any **one** of these terms:
  - Charity.
  - Charitable body.
  - Registered charity.

- Charity registered in Scotland.

Additionally, charities established under the law of Scotland or those which are managed or controlled wholly or mainly in Scotland may also choose to describe themselves as a:

- Scottish Charity.
- Registered Scottish Charity.

**6.** Charities will be expected to introduce a “Trustee Declaration” which all trustees will have to complete and sign. This is predominantly so that Trustees can declare that they are not disqualified from acting as a Charity trustee. Section 69 of the Act states that anyone aged 16 or over can be a trustee unless they are disqualified for one of the following reasons:

- If they have been convicted of an offence involving dishonesty.
- If they have been convicted of an offence under the new Act (which is not spent by virtue of the Rehabilitation of Offenders Act).
- If they are an undischarged bankrupt.
- If they have been removed from serving as a charity trustee or from being in management/control of a charity under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or by the Charity Commission for England and Wales or by the English Courts.
- If they have been disqualified under the Company Directors Disqualification Act 1986.

The declaration will also include personal information such as name, address, date of birth. The Trustee will also have to declare that they are willing to act as a Trustee, are aware of the organisation’s purposes and are aware of their duties and responsibilities as charity trustees; there is also a declaration regarding eligibility to act as a trustee.

**7.** Remuneration of trustees is not permitted under the new Act unless:

- The organisation’s constitution included a clause prior to 15/11/04 which permitted remuneration.
- An order of the Court of Session allows it.
- Any enactment allows it.
- A written remuneration agreement is in place which sets a maximum level for remuneration. All trustees must be satisfied that such an agreement is in the interests of the charity and less than half of the total number of trustees are permitted to be paid in this way.

**8.** The Charities Recommended Statement of Practice (SORP) 2005 provides recommendations for the format and content of charity reports and accounts. It applies to charities that prepare accruals accounts to give “a true and fair view.” The SORP also gives guidelines for the preparation of the Trustees Annual Report. The SORP can be found at [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

**9.** A charity with a gross income in a financial year of less than £500,000, which is required to prepare a statement of account (and which is not required

to have its statement of account audited) must have its statement of account for that year examined by an independent examiner.

The independent examiner must be a member of one of the following bodies:

- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants in Scotland
- The Institute of Chartered Accountants in Ireland
- An Association of Chartered Certified Accountants
- An Association of Authorised Public Accountants
- An Association of Accounting Technicians
- An Association of International Accountants
- The Chartered Institute of Management Accountants
- The Institute of Chartered Secretaries and Administrators
- The Chartered Institute of Public Finance or Accountancy
- A full member of the Association of Charity Independent Examiners or,
- The Auditor General for Scotland.

If a charity is required to have its statement of account audited, the auditor must be eligible to act as an auditor in terms of Section 25 of the Companies Act 1989 (a) or by the Auditor General for Scotland.

**10.** The independent examiner inspecting the accounts is now required to include a report in line with the following template:

*I have examined the Trustees' report, the association's accounting records and the Income and Expenditure Account and Balance Sheet that are attached as part of this document. To the best of my knowledge and belief, and in accordance with the information and explanations given to me:*

- a. *The association is eligible under section 7(1) of the Charities Accounts (Scotland) Regulations 1992 to choose to have an independent examination, instead of an audit. I therefore do not express an opinion on the view given by the accounts.*
- b. *The Income and Expenditure Account and Balance Sheet have been properly prepared from the records of the association and are in agreement with them.*
- c. *The Income and Expenditure Account and Balance Sheet comply with the Charities Accounts (Scotland) Regulations 1992 and with the association's constitution.*

Signed.....

[Name]

[Date]

**11.** The Act clearly details what kind of accounts should be prepared for charities according to their income as well as how these accounts should be examined or audited:

	<b>Annual Income</b>	<b>Accounts Required</b>	<b>Examined or Audited?</b>
<b>Unincorporated Charities</b>	Over £500k (of gross assets of more than £2.8m)	Fully accrued	Audited
	£100k - £500k	Fully accrued	Independent examination by qualified examiner
	Below £100k	Receipts and payments	Independent examination
<b>Charitable Companies</b>	Over £500k	Fully accrued	Audited
	£90k - £500k	Fully accrued	Independent examination by reporting accountant
	Below £90k	Fully accrued	Independent examination

## Appendices

### 1. What are the Charitable Purposes?

The first part of the charity test says that a charity must have one or more charitable purposes. Section 7(2) of the Act sets out the new charitable purposes which s.7(3) gives a more detailed explanation of what is meant by particular charitable purposes. Reading s.7(2) and s.7(3) together, the following are the charitable purposes in terms of the Scottish charity test:

#### **a. The prevention or relief of poverty**

Poverty will be interpreted broadly and a person does not have to be destitute to be considered poor. The prevention of poverty includes preventing those who are poor from becoming poorer as well as preventing those who are at risk of being poor from becoming poorer.

#### **b. The advancement of education**

This will cover both formal education, such as schools and universities, and less formal education which may take place in the community. It covers education, training and research and broader education in the development of individual capabilities, skills and understanding.

#### **c. The advancement of religion**

Religion encompasses faith and worship of one or many gods. See also (p) below.

#### **d. The advancement of health (including the prevention of relief or sickness, disease or human suffering)**

OSCR will consider health in the context of this purpose to encompass both physical and mental health. The advancement of health can be pursued by conventional methods as well as complementary.

#### **e. The saving of lives**

This includes a range of activity directed towards saving people whose lives are in danger and protecting life.

#### **f. The advancement of citizenship or community development (including rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities)**

This covers a very wide range of purposes, and is focussed more on the community rather than the individual.

#### **g. The advancement of the arts, heritage, culture or science**

This covers art at a national or professional level as well as at a local or amateur level, the provision of arts facilities and encouraging high standards in the arts. Heritage can be seen as part of a country's local or national history and traditions. Advancing heritage includes the preservation of historic land and buildings. The advancement of science includes scientific research and charities connected with learned societies and institutions.

**h. The advancement of public participation in sport (and “sport” means sport which involves physical skill and exertion)**

The Act specifies that sport, in the context of this purpose, must involve physical skill **and** exertion. This reflects the fact that the advancement of public participation in sport is included as a charitable purpose mainly because of the health benefits that it can provide. This may restrict the types of sport that can be considered for this charitable purpose.

The provision of facilities and activities related to many sports (whether or not involving physical skill and exertion) may also be considered to be charitable under other purposes such as (f) or (i)

**i. The provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended, and only in relation to recreational facilities or activities which are**

- (i) primarily intended for persons who have need of them by reason of their age, ill health, disability, financial hardship or other disadvantage, or**
- (ii) available to members of the public at large or to male or female members of the public at large.**

This purpose ensures continuity with the Recreational Charities Act 1958 which states that the provision of recreational facilities in the interest of social welfare is charitable and so ensures that purposes that were regarded (by HM Revenue and Customs) as charitable under the 1958 Act will continue to be charitable.

However, charities (and applicants for entry on the Register) that have such charitable purposes must, as part of the charity test, provide public benefit, in the same way that any other charities (or applicants) must.

**j. The advancement of human rights, conflict resolution or reconciliation**

This covers relieving the victims of human rights abuse, raising awareness of human rights, and securing the enforcement of human rights law. It covers the resolution of international conflicts and relieving the suffering, poverty and distress arising through conflict at a national or international scale by identifying the causes of the conflict and seeking to resolve such a conflict. It includes the promotion of restorative justice and mediation or reconciliation between persons, organisations, authorities or groups.

**k. The promotion of religious or racial harmony**

This covers purposes which actively aim to promote harmony and the lessening of conflict between people from different races, religions or belief systems.

**l. The promotion of equality and diversity**

This covers the elimination of discrimination and promotion of diversity in society.

**m. The advancement of environmental protection or improvement**

The advancement of environmental protection or improvement includes preservation and conservation of the natural environment and the promotion of sustainable development. It includes the conservation of a particular animal, bird, or wildlife in general; a specific plant species or habitat or area of land or water, including areas of natural beauty and scientific interest.

**n. The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage (including relief given by the provision of accommodation or care)**

This purpose will be relevant to organisations concerned with the care or upbringing of children or young people (for example children's homes) or organisations concerned with the relief of effects of old age or disability (for example by providing specialist advice or equipment, drop-in centres). It will also be relevant to housing associations and Registered Social Landlords.

**o. The advancement of animal welfare**

The advancement of animal welfare includes any purpose directed towards the prevention or suppression of cruelty to animals or the prevention or relief of suffering by animals.

**p. Any other purpose that may reasonably be regarded as analogous to any of the preceding purposes (and the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in (c) above).**

This purpose provides the necessary flexibility to allow charitable purposes to evolve as society changes. However, because it requires analogy with the purposes listed, parameters have been set around how and to what extent new purposes can evolve, which should give certainty and stability to charities, applicants and the public.