

References to Charitable Status in Documents: ACT NOW!

The Charities References in Documents (Scotland) Regulations 2007 came into full effect on 1st April 2008. From 1st April, all Scottish charities must ensure that certain documents set out in the Regulations contain certain key items of information.

All existing charities which are on the Scottish Charity Register must comply with the requirements of Regulations from 1st April onwards. New charities entered onto the Register on or after 1st October 2007 have six months from the date of their entry onto the Register to comply with the Regulations.

The key information which must be included on documents under the Regulations includes:

- The name of the charity as entered in the Scottish Charity Register.
- Any other name by which the charity is commonly known.
- The Scottish Charity Number allocated to the charity. This is a number which begins with "SCO".
- If the name of the charity does not contain the word "charity" or "charitable", then documents must also include a statement that the body is a charity. This can be done by using one of the terms charity, charitable body, registered charity or charity registered in Scotland. Where the charity is established under Scots Law or is

wholly or mainly managed or controlled from Scotland, then it will also be possible to use the terms "Scottish charity" or "registered Scottish charity".

The list of documents which require to contain these details is fairly comprehensive. It covers all business letters and emails which are issued by the charity but also all letters and emails which are sent by Solicitors or other professionals on behalf of a charity client. This will have a major impact both for charities and for their advisors.

All printed advertisements in newspapers or magazines, published notices, newsletters and booklets are also covered by the Regulations, as are documents which solicit money including sponsorship forms, collection envelopes, etc.

The Regulations also extend to bills, invoices and receipts, legal contracts or agreements, tickets for events which contain contractual information (for example, terms and conditions) and all legal conveyancing documents issued on behalf of a charity by a Solicitor or by another professional advisor.

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The Regulations apply to “bills of exchange” which is a legal term covering a number of different kinds of document. By law, cheques are a type of bill of exchange and one of the reasons for the delay in OSCR issuing its guidance on the Regulations was the degree of concern over the practical difficulties in making cheques compliant with the Regulations. However, the Scottish Government has now amended the Regulations in order to exclude cheques, resolving this particular difficulty.

The range of documents which is covered by the Regulations is extremely wide, and it is critical that all charities take immediate action to ensure that they comply with the Regulations.

A detailed and helpful guidance note has been published by OSCR which gives examples both of charities’ strict legal requirements and also of best practice. Samples of wording which can be adopted in order to comply with the Regulations are also provided in OSCR’s guidance.

It is important to note that charities which are established as limited companies may have additional requirements under company law, and those requirements will have to be complied with in the usual way as well as these additional requirements for charities.

Gift Aid benefits extended to 2011

Charities feared that the reduction in the basic rate of income tax announced by the Chancellor of the Exchequer in 2007 would have an adverse effect on Gift Aid reclaims. But the 2008 Budget has granted charities a reprieve.

Despite the reduction in the basic rate of income tax, charities will still benefit from tax reclaims at the 2007/08 rate for the next three fiscal years. This means that charities will continue to benefit from a reclaim of 28p for every £1 donated until 5 April 2011. It is thought that this extension will benefit charities by about £300 million over the next three years.

OSCR and HMRC statement on definition clauses

A joint statement issued in February by the Office of the Scottish Charity Regulator and HM Revenue & Customs has highlighted where charities do or do not require to take any action in order to amend their constitutions in light of the different definitions of charity in Scottish and English legislation.

The difficulty which arose comes about as a result of the slight divergence in the definition of charity in the Charities and Trustee Investment (Scotland) Act 2005 on the one hand and the

Turcan Connell
1 Earl Grey Street
Edinburgh
EH3 9EE

T 0131 228 8111
F 0131 228 8118

E charities@turcanconnell.com
W www.turcanconnell.com

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Taxes Acts (based on the English charity legislation) on the other. Where a Scottish charity used the word “charitable” in its constitution, this was generally taken to mean charitable for the purposes of Scots Law.

As the Scottish definition does not match that under the Taxes Acts, such a Scottish charity would technically fail to meet the requirements of the Revenue in order to obtain the tax benefits of charitable status. This difference has also caused issues for

(a) Scottish charities which have been set up before April 2006 and which have defined their purposes in terms of the Taxes Acts; and

(b) English charities requiring to register in Scotland.

Both types of charity have been required by OSCR to amend their definitions so as to comply with the Scottish legislation as well as with the Taxes Acts/English legislation.

In their joint statement, OSCR and HMRC recognise that the divergence between the two definitions is very small and their intention has been to produce a workable solution which has a minimal impact on Scottish charities. The joint statement also recognises that Scottish charity constitutions do not necessarily include any definition of the term “charitable”: indeed, some constitutions do not even use the word “charitable” or “charity” at all.

The key points set out in the joint statement are:

- **New Scottish charities** which intend to claim tax relief will require a constitution which meets the requirements of both OSCR and HMRC. If the term “charitable” or a similar term is to be used in the constitution, it will require to be defined in such a way as to meet both tests.
- Scottish charities which are **already on the Register with no definition clause** and which are already registered with HMRC will not require to change their constitutions in order to continue to qualify for tax relief.
- Scottish charities which have **already amended their constitution** adopting the model clauses published by OSCR in 2007 (which were widely considered not to meet the requirements of the Revenue) will not require to make any further changes for the time being in order to continue to benefit from tax relief.

Where the joint statement is silent is on the subject of charities which are **already on the Register** and which **do** have a definition clause in their constitution which does not meet the requirements

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both of Scots Law and English Law. However, a further Briefing Note issued by OSCR in February has indicated that they **will** issue directions to charities during the Rolling Review process in order to permit those charities time to amend their constitutions to bring them into line with the requirements of the Scottish legislation.

Since most charities will not be affected by the Rolling Review for some considerable length of time, it appears that no immediate action is required by charities where their constitution does not quite fit the requirements of both Scots Law and English Law. Nevertheless, it is

considered good practice for charities to review their constitution from time to time and, where the issue arises, charity trustees ought to be giving thought as to how the matter will be dealt with.

In the event that other changes are being made to a charity's constitution, it would certainly be good practice for charity trustees to review the charitable objects of the charity and any definition clause which may or may not exist, remembering that changes of this nature will require the consent of OSCR.

Charity Law Seminars

Our series of Charity Law Seminars will resume in the early summer, with two events on Wednesday 28 May 2008 from 5.30 till 7pm and on Tuesday 3 June 2008 from 8.30 till 10am. These are intended to provide trustees and senior charity managers with high level briefings on current charity issues, and will be a useful way of demonstrating appropriate trustee training.

There is no charge for these events but, as numbers are limited, if you would like to attend please contact Gavin McEwan on 228 8111 or by email to gavin.mcewan@turcanconnell.com.

Turcan Connell
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Edinburgh
EH3 9EE