

TURCAN CONNELL



Princes Exchange
1 Earl Grey Street
Edinburgh EH3 9EE
T 0131 228 8111
F 0131 228 8118
E enquiries@turcanconnell.com
W www.turcanconnell.com

TURCAN CONNELL

Charities

Guide to the Charities and
Trustee Investment (Scotland) Act 2005
2nd Edition

Guide to the Charities and Trustee Investment (Scotland) Act 2005

the Charity Commissioners for England and Wales have informed OSCR that such property is being held in Scotland.

Reorganisation of Charities

OSCR has power under the Act to approve reorganisation schemes proposed by charities, subject to one of the reorganisation conditions being satisfied in relation to the charity. The reorganisation conditions are:

- That some or all of the purposes of the charity:
 - have been fulfilled,
 - have been adequately provided for by other means,
 - can no longer be given effect to,
 - have ceased to be charitable purposes, or
 - have ceased in any other way to provide a suitable and effective method of using its property;
- That the purposes of the charity provide a use for only part of the charity's property;
- That a provision within the constitution of the charity can no longer be given effect to or is otherwise no longer desirable.

To meet with OSCR's approval, OSCR must consider that the proposed reorganisation scheme will enable the application of the charity's resources to better effect for charitable purposes, consistently with the spirit of its constitution, and having regard to changes in social and economic conditions since the charity was constituted. Alternatively, OSCR may consider that the proposed reorganisation

scheme will enable the charity to be administered more effectively.

OSCR may also, of its own accord or on the application of a charity, apply to the Court of Session for approval of a reorganisation scheme. The charity trustees may enter appearance as a party in any proceedings before the Court of Session on such an application and OSCR must give 28 days notice to the charity of its intention to apply to the Court of Session in this way.

The power of the Court of Session to approve cy pres schemes in relation to charities is not affected by the Act and the Privy Council's powers in relation to charities constituted by Royal Charter or Royal Warrant are left intact.

Accounts

All Scottish Charities must keep proper books of account and prepare an annual statement of account and report on their activities. These must be filed with OSCR and be audited or independently examined. Accounting records must be retained for at least six years.

The Charity Accounts (Scotland) Regulations 2006 apply to accounts prepared for charities' accounting years beginning on or after 1 April 2006. The Regulations provide that charities with a gross income of £100,000 or more should produce fully accrued accounts. For charities with a gross income of less than £100,000, simplified accounts which would consist of a receipts and payments account,

statement of balances, notes and an annual report are required.

The Regulations also provide that the threshold for audit is a gross income of £500,000 unless an audit is required by the charity's constitution. Otherwise, a more informal independent examination is required. Since charitable companies do not presently require audit or examination where their gross income is below £250,000, and can simply have an accountant's report, there is a specific exemption to permit the Companies Act requirements to continue. The intention however is to bring charitable companies into line with other charities once the Company Law Reform Bill and Westminster Charities Bill have both reached the statute book.

Under the Regulations the period for submitting the annual report and accounts to OSCR is nine months after the end of the charity's financial year. The Regulations also apply the principles and methodology of the Charities SORP 2005 which contains detailed requirements for the Trustees' report, amongst other technical accounting conventions.

When a charity fails to prepare accounts, or provide copies if requested by a member of the public, OSCR may apply to the court for an order to prevent the charity, and any person engaged in its management or control, from carrying out further specified activities until the failure has been rectified.

OSCR may appoint a qualified person to prepare accounts if accounts are not filed timeously (i.e. in the manner prescribed by the Regulations). The costs of this exercise will be passed to those managing or controlling the charity.

Failure to comply with a request by a person appointed to produce accounts by OSCR for information or access to books and records, is an offence. If there is no reasonable excuse, a fine not exceeding level 3 (currently £1,000) can be levied.

Duty to Whistle Blow

The 2005 Act introduced a duty for auditors and independent examiners to report immediately to OSCR anything which they consider would lead OSCR to take regulatory action. This duty extends to reporting accountants of corporate charities. There is a non mandatory opportunity for those persons to report anything which they feel may become a regulatory issue. These duties are not annulled if the relevant person stops acting in an accounting capacity. Any secrecy obligations are lifted by the Act to enable such reporting to take place.

The duty to report concerns covers not only the charity but also 'connected' bodies e.g. a trading arm of a charity.

Dormant Accounts

OSCR is able in terms of the 2005 Act to redistribute money held in charity bank

accounts which have not been used for several years. Any such sums must be applied for similar charitable purposes, or to a charity nominated by OSCR if the original purposes cannot be ascertained.

Scottish Charitable Incorporated Organisations

The 2005 Act provides for charities to be constituted as a new type of body corporate known as a Scottish Charitable Incorporated Organisation (SCIO). SCIOs may only exist for charitable purposes and will have a constitution, a principal office and a body of members as well as of charity trustees. Although SCIOs are in appearance similar to companies, SCIOs will only be regulated by OSCR.

The 2005 Act makes general provisions in relation to the constitution and powers of SCIOs and their names and status. Powers of conversion, amalgamation and transfer are also included in the 2005 Act, so it will be possible for some existing charities to convert to a SCIO if desired, and it will be possible later for SCIOs to merge to form a larger charity.

The Scottish Ministers are empowered by the 2005 Act to make further regulations in relation to SCIOs including detailed provisions in relation to conversion and amalgamation, administration, winding up, insolvency or dissolution. It is expected that SCIOs will be available from 2007 onwards.

Designated Religious Charities

A short chapter in the 2005 Act gives OSCR power to designate a charity as a designated religious charity. This applies where the charity has as its principal purpose the advancement of religion and where its principal activity is the regular holding of public worship. A designated religious charity must have been established in Scotland for at least 10 years and have an adult membership resident in Scotland of at least 3,000 persons.

There must be a degree of internal organisation such that one or more authorities in Scotland exercise supervisory and disciplinary functions in relation to the component elements of the charity, including requirements as to the keeping of accounting records and the audit of accounts (for example, individual congregations may form component elements of a particular denomination, in which case the whole denomination may be recognised as a designated religious charity). The 2005 Act makes provision for the amalgamation of designated religious charities and for the withdrawal of the designation.

Decisions: Notices, Reviews and Appeals

A process is laid out which enables most of OSCR's decisions to be challenged. The process is intended to be simple and more

cheaply accessible to charities than the former process which relied on the courts. Any decisions taken by OSCR must be notified to the individual or charity concerned. In most instances, notices of decisions must set out the decision, the reasons for it and advice about when and how to seek a review. If requested, OSCR must carry out an internal review of any decision and it must publish procedures to set out how this will be conducted. OSCR's decisions do not take effect until the review period has expired.

The 2005 Act also contains a mechanism for the Scottish Ministers to appoint individuals to serve on a Scottish Charity Appeals Panel, to review OSCR's decisions following an internal review. The Panel may either confirm OSCR's action, ask it to review it, quash it or direct it to make another decision. The Panel cannot award expenses to any party.

Panel decisions can, ultimately, be appealed to the Court of Session who may either confirm any decision appealed to it or quash it and direct OSCR to take another course of action.

The make up of the Panel is to be determined by open advertising. The number of panels will depend on the case load but it is expected that each panel will consist of three persons, and the chair at least must have been a solicitor or advocate for a minimum of five years.

Fundraising for Benevolent Bodies

Control of Fundraising

The 2005 Act seeks to regulate, in a basic way, fundraising not just for charities on the Scottish Register, but all bodies established for benevolent and philanthropic purposes (e.g. bodies with charitable purposes, but which do not provide a sufficient level of public benefit and so are not on the Register).

Benevolent bodies are given greater control over those who fundraise on their behalf. Thus professional fundraisers and commercial entities (fundraisers) involved in promoting contributions to a benevolent body must have an agreement with the benevolent organisation before fundraising. Regulations (not yet published at the time of going to print) will set out what is to go in that agreement.

Benevolent bodies (and OSCR on behalf of charities) can seek an interdict preventing fundraising if it has been carried out without an agreement or with an agreement which is not in the prescribed format. An interdict can also be obtained if it is believed that the fundraiser is not fit and proper to fundraise or if the benevolent body does not want to be associated with the venture or if there is doubt as to the methods used by the fundraiser. If there is a breach then the fundraiser will not be entitled to expenses unless properly provided for in the agreement. Moreover the agreement can only be enforced in a Court.

Guide to the Charities and Trustee Investment (Scotland) Act 2005

It will be possible for the regulations to include provisions so that the remuneration or amount of the donation that will go to the benevolent body must be stated (this might be extended to cover volunteers). They can also cover the form of contract and circumstances under which donations can be refunded.

The intention is to give self regulation a chance, with the failsafe being a regulation making power for the Scottish Executive.

Regulation of Collections

Organisers of public benevolent collections must apply to the relevant local authority to collect. Organisers are exempt if they are a designated national collector, if the collection is in a public meeting, takes place on the organiser's own land or is by way of an unattended box in a public place. All this is similar to the existing regime.

An organiser of a collection held without appropriate consent is guilty of an offence subject to a fine not exceeding level 3 (£1,000).

Local authorities have to make appropriate enquiries before giving permission (or not). Permission can be withdrawn even if already granted. There are provisions for appealing against local authority decisions and OSCR is also given powers to protect funds raised if there is a concern about their application.

Scottish Ministers may produce regulations for the collection of goods from the public. If taken up, it is likely that local authorities will perform this licensing function.

Duties of Charity Trustees

The 2005 Act applies to "charity trustees" who are defined as "the persons having the general control and management of the administration of a charity." This includes trustees of charitable trusts, directors of charitable companies and those in charge of charities which are unincorporated organisations. In addition to any requirements of the general law to which these trustees may already be subject (for example directors of charitable companies are subject to the Companies Acts), the 2005 Act imposes various new duties and liabilities.

The 2005 Act requires charity trustees to act in the interests of the charity, and this includes seeking to ensure that the charity acts consistently with its charitable purposes. There is a new statutory duty of care which is to act with the care and diligence that it is reasonable to expect of a person managing the affairs of another person. If there is a potential conflict of interest between the charity and any person who appoints the charity trustee, the trustee must put the interests of the charity first unless prevented from doing so by some other duty, in which case the trustee must disclose his conflict of interest and take no part in the discussions and decisions. Charity trustees must also ensure that the charity complies with the 2005 Act. Any breach of these duties is treated as misconduct in the administration of the charity, which entitles OSCR to invoke its powers set out earlier in this booklet.

Where there has been a breach of these duties, the charity trustees must take whatever steps are reasonably practicable to correct it and to ensure that it is not repeated; and to remove any trustee who has been in serious or persistent breach of these duties. In some circumstances persistent breach can lead to disqualification as a charity trustee and can also lead to criminal prosecution.

Remuneration

The Act permits charity trustees to be remunerated for services provided to the charity in certain circumstances. For remuneration to be permitted, the maximum amount must be set out in writing between the charity and the service provider and it must be reasonable in the circumstances. Any such agreement must be in the best interests of the charity. Fewer than half of the charity trustees at any one time can be remunerated and there are provisions for connected parties to be taken in to account when considering who is or is not being remunerated by the charity.

A press release issued by OSCR in the spring of 2006 makes clear that OSCR considers the purchase of trustee indemnity insurance to amount to remuneration, which on the face of it would rule out the possibility of any more than a minority of trustees being protected under such a policy. It is understood that the Scottish Executive will consider what impact this may have on the charitable sector and further regulation or guidance may be forthcoming.

Trustee Investment

The 2005 Act made provision for the investment powers of trustees of trusts, including charitable trusts. In the absence of investment powers in a trust deed, or where trust investment powers are limited, the 2005 Act provides wide investment powers.

Trustees relying on the 2005 Act powers of investment, must consider the suitability of the proposed investment and the need for diversification. The trustees must also obtain and consider proper advice when exercising the statutory power of investment and when reviewing the trust investments, unless they reasonably conclude in all the circumstances that it is unnecessary or inappropriate to take advice.

The 2005 Act also permits trustees of charitable trusts to hold property through nominees when exercising their statutory investment powers, subject to certain conditions including ensuring that the nominee has the requisite skills, knowledge and expertise to act and that the trustees retain the power to give directions or to revoke the appointment. The 2005 Act provides that trustees have the power to permit management of their investments on a wholly discretionary basis.

A separate Turcan Connell booklet on trustees' duties reviews this subject in greater depth.

Guide to the Charities and Trustee Investment (Scotland) Act 2005

The Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") was granted Royal Assent on 14th July 2005.

The greater part of the 2005 Act was brought into force on 1st and 24th April 2006 and further commencement orders are expected between Autumn 2006 and 2007. The 2005 Act very substantially amended the former law and practice of charities in Scotland. This Guide to the Act (2nd edition) summarises its main provisions.

The Act established a new regulatory system for Scottish charities, brought the definition of "charitable purposes" up-to-date, introduced a new public benefit test, and made a number of other far reaching changes in the law of charities in Scotland. This Guide is based on the legislation in force in early June 2006.

This Guide is of a general nature only and no liability will be accepted for any action taken or omitted to be taken in reliance on it.



Office of the Scottish Charity Regulator

The 2005 Act establishes a new Regulator for the Scottish charity sector. The Office of the Scottish Charity Regulator (OSCR) is a body corporate, answerable to the Scottish Ministers to whom it reports on an annual basis. The Regulator is to have at least four members, appointed by the Scottish Ministers from people who appear to have knowledge and skills relevant to OSCR's functions. The Scottish Ministers are entitled to specify the period of office of each member of the Regulator.

The general functions of OSCR are:

- To determine whether bodies are charities
- To keep and maintain the public register of charities
- To encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act
- To identify and investigate apparent misconduct in the administration of charities
- To take remedial or protective action where misconduct is discovered
- To provide information or advice to the Scottish Ministers and to make proposals to the Scottish Ministers on matters that relate to the functions of OSCR.

In carrying out its duties, OSCR must encourage equal opportunities and have regard to the principles under which regulatory activities should be proportionate,

accountable, consistent, transparent and targeted only at cases in which action is needed.

The Scottish Charity Register

It is essential for bodies to be entered onto the Scottish Charity Register to be recognised as charities in Scotland. OSCR is responsible for keeping the Register and must establish a separate entry on the Register for each charity. Each charity's entry contains the charity's name, its principal office (or the name and address of one of the charity trustees), the purposes of the charity and whether or not any directions or notices have been given by OSCR in relation to the charity. OSCR has powers to remove directions or notices from a charity's entry where they have been complied with or where they no longer have effect.

From time to time, OSCR must review each entry in the Register and must amend inaccuracies and notify the charity of the amendments it makes.

Applications

Applications for entry on the Scottish Charity Register must be made to OSCR and must set out a number of statutory items of information as well as any other information which OSCR may require or request. A standard application form has been devised by OSCR to assist proposed charities in providing sufficient relevant information for these purposes. A charity will

only be entered on the Register if the applicant charity meets the charity test (see below).

Charities which, immediately prior to enforcement of the 2005 Act, were entitled to describe themselves as a Scottish charity in terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 have been entered by OSCR onto the Register and no further application is required for such pre-existing charities.

The Charity Test

To meet the charity test, a body must have purposes which consist only of one or more of the charitable purposes defined in the Act. In addition, the body must provide public benefit in Scotland or elsewhere.

The charitable purposes are 16 in number and expand greatly on the four heads of charitable purpose which existed prior to the 2005 Act. The original intention had been to provide a definition which matched that under English charity legislation, but there are some small differences.

The 16 charitable purposes listed in the Act are as follows:

- The prevention or relief of poverty
- The advancement of education
- The advancement of religion
- The advancement of health
- The saving of lives

- The advancement of citizenship or community development
- The advancement of the arts, heritage, culture or science
- The advancement of public participation in sport
- 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
- The advancement of human rights, conflict resolution or reconciliation
- The promotion of religious or racial harmony
- The promotion of equality and diversity
- The advancement of environmental protection or improvement
- The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage
- The advancement of animal welfare
- Any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

Even if a body's purposes consist of only one or more of the defined charitable purposes and the body provides public benefit in Scotland or elsewhere, the body will not meet the charity test unless it can also satisfy a further threefold test:

- The constitution of the body must not permit distribution of its property for any non-charitable purposes;

- The body must not have in its constitution provisions which permit direction or control of its activities by the Scottish Ministers or by a Minister of the Crown; and
- The body must not be a political party or have as one of its purposes the advancement of a political party.

Public Benefit

Public benefit is not to be presumed in any of the defined charitable purposes and it must be demonstrated in each and every case that a body provides public benefit. In doing so, regard must be had as to how any:

- Benefit gained or likely to be gained by members of the body or any other persons (other than as members of the public), and
- Dis-benefit incurred or likely to be incurred by the public,

in consequence of the body exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence.

In addition, where a benefit is or is likely to be provided to a section of the public only, regard must be had to whether any condition on obtaining that benefit is unduly restrictive. Any condition on obtaining a benefit includes any charge or fee payable to obtain the benefit.

OSCR has issued initial guidance on meeting the charity test and demonstrating public benefit.

The guidance broadly reflects the position under current case law and follow interpretations applied by HM Revenue & Customs in

recognizing charities in Scotland under the pre-2005 Act regime. However, not all current case law will continue to be binding and it is important to be aware that the law is in a period of transition as far as the public benefit test is concerned. OSCR expects to test public benefit in each individual case by seeking from applicant charities a detailed business plan or other statement of proposed activities.

Charity Names

OSCR may refuse to enter an applicant on the Scottish Charity Register if the body has an objectionable name. A name may be objectionable for a number of reasons:

- It may be the same as, or too like, the name of pre-existing charity;
- It may be likely to mislead the public as to the true nature of the purposes of the body or of its activities;
- It may be likely to give the impression that the body is somehow connected to central or local government when it is not so connected; or
- It may be offensive.

The consent of OSCR is required for a change in the name of any charity and 42 days notice must be given to OSCR of any proposal to change a charity's name. OSCR may request a charity to review its name, and where there are two charities with names which are too alike, OSCR must direct either one or both of the charities to change its name. Failure to

comply with such a direction will result in removal from the Register by OSCR.

References to Charitable Status

Bodies which are entered in the Scottish Charity Register may refer to themselves as one of the following:

- Charity
- Charitable body
- Registered charity
- Charity registered in Scotland.

There are additional variations for bodies that are also managed or controlled wholly or mainly in or from Scotland.

Any body that does not appear on the Register may still refer to itself as a charity (making clear that it is a foreign charity) if it is established under the law of another country where it is entitled to refer to itself as a charity; it is managed or controlled wholly or mainly outside Scotland and it does not occupy any land or premises in Scotland or carry out activities in an office, shop or similar premises in Scotland. The converse is, for example, an English charity regulated by the Charity Commission, but occupying premises in Scotland, would also require to register with OSCR.

Changes

A number of changes that a charity may make to its administration or organisation require the

Guide to the Charities and Trustee Investment (Scotland) Act 2005

consent of OSCR. Those changes are:

- The amendment of a charity's constitution in so far as it relates to the purposes of the charity;
- The amalgamation of the charity with another body;
- The winding up or dissolution of a charity; and
- Applying to the Court in relation to any of these actions.

A charity must give OSCR 42 days notice of any proposed action for which consent is required and, in the case of an amendment to a charity's constitution in so far as it relates to its purposes, the charity must not proceed unless and until OSCR has given its consent. OSCR is also entitled to receive notice of a number of other changes including changes in the principal office of the charity, a change in any details set out in the charity's entry in the Register or the appointment of a Receiver.

Removal from Register

A charity may apply for removal from the Scottish Charity Register. Within 28 days of receipt of an application for removal, OSCR must remove the charity from the Register and give the charity notice of the date on which it is removed.

Despite removal from the Register, any body removed continues to be placed under duties in relation to the application of its property and income, in accordance with its existing purposes.

OSCR may apply to the Court of Session for the approval of a scheme for the transfer of property or income from a body removed from the Register to a specified charity, and the Court may approve any such scheme where it is satisfied that the scheme is necessary or desirable for the purpose of protecting the property or income to which the scheme relates, or where the relevant charitable purposes would be better achieved by transferring the property and income to a charity.

Co-operation and Information

OSCR is under a statutory duty to co-operate with other regulators. This is to ensure that where possible the burden of dual or multiple regulation is minimised.

Public Access to the Register

OSCR must make the Scottish Charity Register available for public inspection. OSCR's website contains the charity index and it is also available for public inspection at OSCR's office in Dundee. Information may be requested in braille, large print or other medium. OSCR may charge a fee, limited to the cost of supply, for providing information at somewhere other than its principal office.

Power to Obtain Documents and Information

OSCR can issue a notice to a charity requesting documents or information needed

for the Register. A charity can refuse to provide information if it could do so on the grounds of confidentiality in the Court of Session.

Entitlement to be Given Information by Charities

A charity must provide, to anyone who makes a reasonable request, a copy of its constitution or latest statement of accounts in whatever reasonable format is requested. A fee can be charged for complying with such a request, but it must not be greater than the cost of supplying the document or a maximum fee which might be set by the Scottish Ministers. The Scottish Ministers may make an order that exempts charities from this duty if appropriate.

Sharing Information

OSCR may disclose information to other public bodies or office holders and they in turn can disclose information to OSCR, provided it is for purposes connected with their respective functions. In some instances this exchange can be subject to secrecy obligations. The secrecy obligation is removed for exchanges between charity trustees, whistle blowing auditors/examiners and financial institutions holding monies for apparently dormant charitable bodies.

It is an offence, with a penalty set at level 5 (currently £5,000) or imprisonment up to six months on summary conviction, to provide false or misleading information to OSCR or to knowingly alter, conceal or destroy information deliberately.

Supervision of Charities

Inquiries

OSCR can make inquiries, either of its own accord or if somebody asks them to do so, about charities, bodies controlled by charities and those who hold themselves out as a charity, as well as persons who act on behalf of such entities. During the inquiry period OSCR can direct any body subject to an inquiry not to undertake activities for a period of not more than six months. Such a direction can be revoked at any time or varied, but it cannot be extended.

It is an offence to fail to comply with such a direction without reasonable excuse. The level of fine is level 4 (currently £2,500), or imprisonment not exceeding three months, or both. OSCR can require, by notice, any affected person to provide it with documents necessary for the inquiry, unless the charity (or appropriate individual or body) could refuse on the grounds of confidentiality in the Court of Session.

OSCR can send a notice requiring a person to produce documents, information or explanation for the purposes of the inquiry. That person has a minimum of 14 days to produce the requested information. Failure to comply with such a notice, without reasonable excuse, is an offence. The level of fine is set at level 4 (currently £2,500), or imprisonment not exceeding three months, or both.

Any information or explanation under this procedure cannot be disclosed except for the purposes of the inquiry. Reasonable expenses can be paid to the person providing the information.

Removal from the Charity Register

After inquiry, if OSCR believes a charity no longer meets the charity test, it must:-

- Direct the charity to take, within a specified period, such steps as OSCR considers necessary for the purposes of meeting the charity test (including a reorganisation scheme) or
- Remove the charity from the Register.

If a charity fails to comply, OSCR must remove the charity from the Register.

Misconduct/Need to Protect Assets

Following inquiries, if it appears:-

- There has been misconduct (including mismanagement) in the charity's administration, or
- It is necessary to act to protect a charity's property or to ensure it is used for charitable purposes

then OSCR may:

- Suspend any person involved in the management or control of the charity if they are privy to or have contributed to or facilitated or are responsible for the misconduct. Being unable or unfit to perform the functions can also lead to suspension.
- Restrict transactions or payments so they may only be made with OSCR's consent.

- Direct a financial institution, or person holding charity property, not to part with it without OSCR's consent.

If OSCR is satisfied a person has been claiming to act for or represent a charity it may:-

- Direct the person or body to stop representing itself as a charity or as acting on behalf of a charity
- Direct them to pay to the charity any assets collected (less any sums due to the offending person)
- Direct any financial institution to pay money collected for the charity or not to part with it without OSCR's consent
- Direct that any transaction or payment is subject to OSCR's prior consent.

The maximum period for which OSCR can make directions, as detailed above, is six months. It is an offence to fail to comply with a direction. The maximum penalty on summary conviction is level 5 (currently £5,000), or up to six months imprisonment, or both.

The power to suspend a person does not apply if OSCR considers the person has acted honestly and reasonably and ought fairly to be excused.

Suspension cannot last for more than six months, and it can be lifted or varied. A copy of any notice of suspension or a direction to stop a person holding themselves out as a charity must be given to the charity or body in question.

OSCR must prepare a report of the subject matter of the inquiry if as a result it:-

- Gives a direction or removes a charity from the Register.
- Suspends a person.
- Makes an order to safeguard/deal with a charity's assets.

The reports must be sent to the person affected and published in such manner as OSCR thinks fit.

OSCR cannot identify the name of any person except those in respect of whom the inquiry is made and it cannot publish any particulars that can identify any such person, unless naming is required to avoid impairing the effectiveness of the report.

Powers of the Court of Session

The Court of Session has a number of powers which it can exercise on the application of OSCR where the Court is satisfied that there has been misconduct in the administration of a charity or of a body controlled by a charity, or where it is necessary or desirable for the Court to act in order to protect the property of a charity or to secure its proper application.

The powers available to the Court of Session are:

- Power to interdict a charity from such action as the Court thinks fit or from representing itself as a charity;
- To appoint a Judicial Factor to manage the charity's affairs;
- To appoint a trustee or to suspend or

remove any person concerned in the management or control of the charity;

- To order any relevant financial institution not to part with property which the institution holds on behalf of the charity without the Court's consent;
- To make an order restricting transactions which charities may enter into; and
- To grant certain other orders and interdicts provided for in the Act.

The Court of Session retains its powers in relation to transfer schemes and in particular the Court has power to approve schemes which have been prepared by OSCR for the transfer of assets

from: a charity,
a body controlled by a charity,
a body which is not a charity but which has represented itself as a charity,
to: any recognised charity which appears on the Scottish Charity Register.

The Court may approve such schemes where it is satisfied that there has been misconduct in the administration of the charity or where it is necessary or desirable to act in order to protect the property of the charity or to secure its proper application, or where the purposes of the charity would be better achieved by transferring its assets to another charity.

The Court of Session may also prevent financial institutions or other persons in Scotland parting with moveable property held on behalf of English and Welsh charities, where