

**Regulations Under Section 15 on
Charity References in Documents
Charities and Trustee Investment (Scotland) Act
2005**

**Consultation Report and Analysis of
Responses**

**Scottish Executive
July 2006**

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Executive Summary

This Consultation Report consists of two main parts. The first part provides a summary and analysis of the written responses received by the Scottish Executive to the public consultation on the proposals for the Regulations under Section 15 of the Charities and Trustee Investment (Scotland) Act 2005 on references to charitable status in documents. The second part contains a summary of the Executive's final plans based on the consultation exercise.

The Scottish Executive received 88 written responses to the consultation. 80 of these responses were on behalf of organisations and 8 were from individuals.

The majority of the responses agreed that all charities should be required to follow the regulations. It was felt that exempting any number or type of charities would only lead to public confusion and the aim of increased transparency would be defeated. Responses felt that the proposed requirements were not too onerous as charitable status is a privilege, not a right, and it therefore rightly carries certain obligations.

It was broadly agreed that current requirements in Company Law in relation to references in documents for charitable companies were satisfactory. However if the regulations require charities to include references to charitable status in any other documents or to include information not required by Company Law (section 349 of the Companies Act 1985 and section 112 of the Companies Act 1989), charitable companies should be subject to these additional requirements also.

Over 90% of responses agreed with the main categories of documents proposed in the consultation, however many suggested that cheques should not be included. Some of the responses requested that clear and detailed guidance should be provided along with the regulations.

There was near unanimous support for the charity name to be included on all main category documents and over 90% of the responses felt that the charity number was just as essential. Most responses agreed that if a charity's name did not include the word "charity", its charitable status should be clearly stated elsewhere on the document.

Over 90% of responses supported the approach of the normal charity name (the name of the charity as entered on the Scottish Charity Register) being included in all formal documents under the section 15 regulations if the charity uses an alternative name or acronym.

The majority of responses agreed with the approach in relation to documents in other languages as set out in the consultation paper. Some

responses felt that although the contents of the document can be in any language, the charity name and number should appear exactly as they appear on the Scottish Charity Register. A handful of responses thought that all documents should be wholly in English as it is Scotland's official language.

Over 80% agreed with the proposals in the consultation that DRCs (Designated Religious Charities) should be required to declare their status on documents, as this would make it more obvious that DRCs are exempt from certain sections of the Act. Other responses felt it was unfair for DRCs to be treated differently from other charities.

The majority of the responses agreed that 12 months would be a sufficient period for charities to make the relevant changes to their documents to comply with the new regulations. Responses also suggested unregistered charitable bodies should be given a 6 to 12 month period of grace from when they are first added to the Scottish Charity Register to give them time to change their stationery.

Part 2 of this report outlines the way forward following the consultation. It highlights the changes we intend to make to the proposals for references in documents as a result of the consultation exercise, and further development of the thinking in relation to the reference in documents.

The Scottish Executive
July 2006

Acknowledgements

1. The Scottish Executive would like to thank all those who took time to respond to the consultation on the proposals for regulations under Section 15 of the Charities and Trustee Investment (Scotland) Act 2005 in relation to references to charitable status in documents, and all those who were involved in the development of the Charities and Trustee Investment (Scotland) Act 2005.

Introduction

2. The consultation paper was published on 20 September 2005 with a deadline for responses by 13 December 2005. The consultation paper set out the Scottish Executive's proposals for regulations under section 15 of the Charities and Trustee Investment (Scotland) Act 2005 on references to charitable status in documents. The proposed regulations are intended to help maintain public confidence in the sector by providing a transparent regime without placing undue burdens on charities.

3. This Report consists of two main parts. The first part provides a summary and analysis of the written responses received by the Scottish Executive to the public consultation on the proposals for the regulations on references to charitable status in documents. The second part contains an outline of the next steps and the main changes the Executive plans to make to its proposals following the consultation.

PART 1: SUMMARY AND ANALYSIS OF RESPONSES

4. The consultation paper outlined the main proposals for regulations under section 15 of the Charities and Trustee Investment (Scotland) Act 2005 on references to charitable status in documents and asked a number of questions on key issues. These included whether certain categories of charities could be exempted from following the new regulations, whether all charities should include their name and charity number and which documents should include this information.

Responses

5. Around 300 hard copies of the consultation paper were issued during the consultation exercise and the paper was viewed over 2,193 times on the Executive's website. 88 responses were received, of which 80 were from organisations and 8 from individuals. A list of those who responded and gave permission for their name to be published is included at Annex A. A breakdown of the organisations by type is given in the table below.

TYPE OF ORGANISATION	NUMBER OF RESPONSES
Charities and voluntary sector bodies	46
Business/Professional bodies	7
Local Authorities	7
Other public sector bodies	9
Higher and Further Education bodies	4
Schools	0
Religious bodies	7
Political parties	0
Individuals	8

6. The written responses that the Executive has been given permission to publish are available in the Scottish Executive Library and can be viewed on request by phoning the Scottish Executive Library Information Service on 0131 244 4552. They can also be viewed online at <http://www.scotland.gov.uk/Publications/2005/08/01104424/44256>

Findings

7. The majority of responses welcomed the consultation and broadly supported the approach taken by the Executive. Some responses highlighted the need for the regulations to be easily understood and widely advertised to ensure all charities are aware of them.

Threshold or Exemption

8. There were 79 responses (89% of the total responses) that commented on the possible exemption from the requirements for small charities outlined in the consultation paper.

9. The majority of the responses agreed that there should be no exemption and all charities should have to follow the regulations. It was felt that exempting any size, type or category of charity would only lead to public confusion and the aim of transparency would be defeated. By making it compulsory, all doubt and confusion as to whether or not an organisation has charitable status will be eliminated. Some responses felt that as charitable status is a privilege, not a right, it rightly carries certain obligations and that the requirements would not be too onerous in any case. Concern was expressed by some that if charities below a certain income threshold were exempted, a charity could accidentally breach the legal requirements if it increased its income threshold during the year.

10. Some responses thought that a £10,000 annual income threshold should be used, matching the current threshold in England. Section 5 of the Charities Act 1993 provides that charities with a gross annual income above £10,000 are required to include a reference to their charitable status in documentation. Other responses suggested thresholds such as £7,500, £5,000 or £2,000 to ensure more charities were subject to the requirements in the regulations.

11. Other responses expressed concern as to how to stop non-charities claiming they are charities. They did not accept the argument that requiring even small charities to be covered by the regulations would stop non-charities successfully posing as charities. However sections 13 and 14 of the Charities and Trustee Investment (Scotland) Act 2005 set out which bodies may refer to themselves as charities and sections 28(1)(c) and 31 give OSCR the power to investigate and take action against a body which is not entered on the register but is representing itself as a charity.

Charitable Companies Registered as Companies in Scotland

12. A total of 68 respondents commented on this section of the consultation and it was broadly agreed that current requirements in Company Law in relation to references in documents for charitable companies were satisfactory. However if the regulations under the Charity and Trustee Investment (Scotland) Act 2005 require charities to include references to charitable status in any other documents or to include information not required by Company Law (section 349 of the Companies Act 1985 and section 112 of the Companies Act 1989), charitable companies should also have to comply with these additional requirements.

Main Categories of Documents Proposed

13. Over 90% of the 74 replies that responded to this section agreed with the proposal in the consultation paper that the regulations should require the categories of documents listed to contain references to charitable status.

14. Other documents that were suggested by those that responded were: letter headed paper, e-mails, ID cards, compliment slips, posters, promotional/publicity leaflets and advertising such as TV, Radio and text messages, and 'trading' activity such as shop premises.

15. Cheques were the main document that responses did not think should be required to include a reference to charitable status, because of their size and the cost of issuing new cheques from the bank. Other responses were concerned about the cost involved in replacing existing stands, vehicles and contracts that were already in place between organisations.

16. It was requested by many of the responses that clear and detailed guidance should be provided along with the regulations. This should include where references should be placed on documents and on websites and what documents were included under the heading 'legal documents'.

17. The majority thought the requirements in section 5 of the Charities Act 1993 were suitable. Some responses thought that although the format was acceptable the content should be different and recommended a new list be created to include all relevant documents.

Charity Name and Reference Number

18. 82 responses commented on whether the charity name and number should be included on all documents. There was near unanimous support for the charity name to be included on all main category documents and over 90% of the responses felt that the charity number was just as essential.

19. There is the possibility that a charity's name may change, however the charity number will not. Therefore it would be easier for someone checking the register if documents included the charity number. Some responses felt it would be helpful if charities could keep their existing Scottish Charity (SC) number rather than OSCR issuing them with a new number and prefix.

20. Most responses agreed that if the charity name does not include the word "charity" it should be made clear elsewhere on the document. However several responses did not want charities to be required to

confirm their charitable status if the inclusion of the registered charity number is compulsory, and if the following form of words could be used: "registered Scottish charity, number SC xxxxxxx". This would make it clear to all that the organisation was a charity.

"Normal" Charity Name

21. A total of 79 respondents commented on whether the 'normal' charity name (the name which appears on the Scottish Charity Register) should be included in all formal documents, and over 90% of these responses supported this approach.

22. These responses also felt that the "normal" charity name should be included in all formal documents where the charity uses an alternative name or acronym. Although some suggested that charities should be able to use either the charity's "normal" name or an alternative name if agreed by OSCR.

23. Some responses have requested detailed guidance on what the 'normal' name is and where it should be on a document.

Documents in Other Language

24. 70 respondents commented on the correct approach to references to charitable status in documents in other languages. 85% supported the approach taken in the consultation. Some responses felt that although the contents of the document could be in any language, the charity name and number should also be in English. A small amount thought that all documents should be in English since it is Scotland's official language. Some responses were also concerned that OSCR would not be able to read the accounts or annual reports, which charities are required to submit to OSCR under the new Act due to them not being in English.

Designated Religious Charities

25. Over 80% of the 61 responses received on this issue, supported the consultation's proposal that DRCs should provide additional information on all formal documents. They agreed that the public should be aware of a charity's DRC status and the fact that the charity they were donating to was exempt from certain sections of the Act. There were several calls to simplify the wording that DRCs would have to include in their documents.

26. The remaining percentage disagreed with these proposals and felt it was unfair that the DRCs should be treated differently and that it was up to the public to check the register to find out for themselves.

12 Month Period of Grace

27. A total number of 76 people responded to the proposal in the consultation to allow a 12 month period of grace for charities to use up existing stationery and make relevant changes.

28. Over 90% of the responses agreed that 12 months would provide sufficient time for charities to make relevant changes. Some responses felt cheques or documents with a long shelf life should have an extension of 3-5 years. Several responses requested that the start date be made clear and that it should only begin when the charity had received its new reference number, if a new number will indeed be issued.

29. Some responses suggested different time frames such as 6 months, 18 months and 3-5 years. The main concern was in relation to small charities with volunteers who may find it hard to adapt to the new requirements.

30. Although the majority of responses agreed with the consultation's proposals for existing charities, some thought that unregistered charitable bodies should also be given a 6 to 12 month period of grace from when entered on the register. This would allow them to use up existing stationery and make the relevant changes. Many of the responses felt the 12 months should only start from when the Scottish charity number was allocated to the charity.

Regulatory Impact Assessment (RIA)

31. 63% of those who responded commented on the RIA. Most responses agreed that the RIA was an accurate assessment based on what is known. Although there will be costs involved in implementing the new regulations the longer term benefits will outweigh the short term costs. It was pointed out that specific guidance would minimise the cost to charities. A few responses asked if it would be made clear that failure to implement these new regulations would be viewed as misconduct and suggested that OSCR should have discretionary powers to aid charities.

32. Some responses felt that cheques, websites and publications could be expensive to change and proposed that these be exempt from the requirements in the regulations.

Part 2: Next Steps

33. The majority of the Charities and Trustee Investment (Scotland) Act 2005 has been enacted, including section 15 which includes the references in documents regulation making power. Several sets of regulations and orders now need to be developed including the references in documents regulations. The References in Documents Regulations will be drafted by the Executive with the aim of laying in Parliament later in 2006.

34. A number of changes have been made to the proposals for the regulations; these have come about partly in response to the consultation and partly because the Executive's thinking has developed in response to new information in relation to the make up of the sector taken from conferences held by OSCR. This section of the report outlines our current thinking.

Thresholds and Exemptions

35. The majority of the responses thought that there should be no exemptions from these regulations for any charities. This will help avoid confusion as to whether an organisation is a charity or not and will prevent a charity which has a small income level discovering they are in breach of the regulations if their income level increases beyond a certain threshold during a financial year.

36. Some responses were concerned that the regulations would not be able to prevent non-charities saying they are charities. However section 28 gives OSCR the power to make inquiries if a body which is not entered in the Scottish Charity Register is representing itself as a charity and section 31 gives OSCR the power to direct that body to stop doing so.

37. A few responses queried if small private charitable trusts will have to follow the regulations or not. All organisations that are entered on the Scottish Charity Register will have to follow the regulations whether they are actively collecting money from the public or not.

Charitable Companies

38. Charitable companies will continue to have to meet the current requirements in section 349 of the Companies Act 1985 and section 112 of the Companies Act 1989 in relation to references in documents. However, if the section 15 regulations require charities to include references to charitable status in any other documents or to include information that is not required by Companies legislation, then charitable companies will also have to comply with these additional requirements.

Main Categories

39. The Executive intends to keep the compulsory documents included in the regulations to a minimum but will encourage charities to try and follow good practice on all documents where possible. Websites will be included in the regulations as a compulsory document to include a reference to charitable status. It is unlikely that the regulations will require cheques to include a reference to charitable status. It will be compulsory to include a reference to charitable status on certain documents and guidance will be issued to make this clear.

Charity Name and Number

40. We propose the charity name and number will be included in all selected documents. Even if a charity changes its name, the number will always remain the same, thus giving the public the ability to investigate previous charities' names as well as current ones. Some responses asked why a charity should be required to state that it is a charity even when the full name and charity number is available from the register. This is necessary for transparency so the public do not have to check the register every time they wish to give money. This will leave no room for misunderstanding that a charity has charitable status as it will be clearly stated on the relevant documents.

'Normal' Charity Name

41. The "normal" charity name (the name on the Scottish Charity Register) has to be included on all required documents. If this name is not the name the charity wishes to use then the "normal" name has to be included somewhere in the document. Clear guidance has been requested to make it clear where the name should be visible on documents, websites etc and this will be issued when the regulations come into force. It is recommended that charities may wish to use the new Act to adopt a single name under section 11 with consent from OSCR. OSCR will not keep 2 names for a charity on the register as this could result in a charity attempting to trade on both names rather than just one, which would leave the public confused and needing to look up the register each time they wished to donate.

Languages

42. Charities will be able to publish documents in whatever language they wish. However, unless the document is wholly in that language they have to include their charity name and number in English. Some responses were concerned that annual reports and accounts would be sent to OSCR in other languages. All documents that are mandatory to

be sent to OSCR must be sent in English and this includes annual reports and accounts.

Designated Religious Charities

43. Following further consideration of the DRCs proposals, including discussion with OSCR on how this would operate in practice, it has been decided that requiring a DRC to include a declaration that it has designated religious status on its documentation, will not in itself be of much use unless you already know the implications of being a DRC (exemption from certain parts of the Act). It was also decided that it would be too burdensome to ask DRCs to add a full explanation of the exemptions they are entitled to on all their documents. DRCs will therefore not be subject to any additional requirements. The public will be able to find out that a charity is a DRC if it checks the Scottish Charity Register. However, we would encourage charities with DRC status to make this clear to the public as a matter of good practice.

12 Months Period of Grace

44. All charities on the OSCR register will have a 12 month period of grace to bring their documents etc into line with the new regulations. The majority of responses agreed with this timeframe and only a few suggested a longer or shorter period of grace. It is unlikely that cheques or stands will be required to include a reference to charitable status, which will therefore make it easier for charities. OSCR has confirmed that charities will keep the SC number they previously had under the HMRC regime, therefore many charities will not have to make any changes, or can start to make changes as soon as the regulations come in to force rather than having to wait to be issued with a new charity number. It will also be possible for charities to include the additional information by using a stamp or adding the information by hand or stickers.

List of Respondents

Annex A

An alphabetical list of those who responded to the consultation and gave permission for their names to be published.

Aberdeen City Council
Aberdeen Cyrenians
Aberdeenshire Council
Aberlour Child Care Trust
ACCORD Hospice
Alzheimer Scotland
Anderson Strathern
Arthritis Care in Scotland
Association of Charity Shops
Barnardo's Scotland
Bield Housing Association Limited
British Heart Foundation
Cancer Research UK
Christine R Barker (Dr)
Co Chomann Dualchas Thiriodh
(Tiree Heritage Society)
Dunfermline Sound
ECAS
Fairbridge in Scotland
Fishertom Church of Scotland
Forget-Me-Not Club
Friends of the Ochils
Glasgow Council for the Voluntary
Sector
Glasgow Orchestral Society
Hanover (Scotland) Housing
Association Limited
Highland Hospice
Hospital Broadcasting Association
Howwood Wildlife And Woodlands
I J Cowan
Institute of Chartered Accountants
in England and Wales, Members
in Scotland
Institute of Fundraising Scotland
J & H Mitchell W.S
James Wallace
Jean Fleetwood
Jordans (Scotland) Limited
Keep Scotland Beautiful
Learning Link Scotland
Lloyds TSB Foundation for
Scotland
Macmillan Cancer Relief
Management Development
Network Scotland
Marie Curie Cancer Care
Midlothian Council

Midlothian Voluntary Action
Orkney Islands Council
OSCR
Oxfam
Public Fundraising Regulatory
Association
Quaker Stewardship Committee,
Religious Society of Friends
(Quakers)
Quarriers
RCGP Scotland
REACH
Richmond Fellowship Scotland
R Leslie
Robert H Bowie
Rosneath Peninsula Amenity
Society
Royal College of Nursing Scotland
Royal College of Physicians of
Edinburgh
Royal National Lifeboat Institution
RSPB Scotland
Saheliya
Scottish Charity Finance Directors
Group (SCFDG)
Scottish Council of Independent
Schools
Scottish Council of Jewish
Communities
Scottish Rights of Way and
Access Society
Scottish Sports Association
SCVO
Sense Scotland
Social Care and Church & Society
South Lanarkshire Council
Stirling Council
The Brethren
The Glasgow Housing Association
Ltd
The Independent Services Agency
Ltd
The Law Society of Scotland
The Leonard Cheshire Foundation
The Manor Project Ltd
The Prince's Trust
The Royal Environmental Health
Institute of Scotland
The Royal Highland and
Agricultural Society of Scotland
The Scottish Association for
Mental Health (SAMH)
The Scottish Churches Committee
The University of Edinburgh

Thorntons Law LLP
Turcan Connell
Universities Scotland and
Association of Scottish Colleges
Voluntary Arts Scotland
Watch Tower Society of Britain
William Gemmill

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