



Report on **The Charities and Trustee Investment (Scotland) Act 2005**

and **The Charities Accounts (Scotland) Regulations 2006**



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CHARTERED ACCOUNTANTS

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Useful contacts

The following organisations are useful points of contact for readers wishing to obtain information or clarification on issues covered in this report, either at the date of publication or in the future.

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The last few years has seen a large overhaul in the accounting for and regulation of charities in Scotland following a series of high profile scandals affecting public confidence in this sector.

The aim of this report is to set out the broad framework of The Charities and Trustee Investment (Scotland) Act 2005 and provide an overview of the accounting regulations brought in by The Charities Accounts (Scotland) Regulations 2006 emanating as a response to those scandals.

UK200 Charities Group of quality assured accountants and business advisors, want to help Trustees' discharge their responsibilities properly and for charities to understand the complexities of the Scottish legislation. We work closely with the Office of the Scottish Charity Regulator (OSCR) and the Charity Commission on the application of the Statement of Recommended Practice for Accounting and Reporting for Charities (the 2005 SORP) working through to the annual report and accounts. Not forgetting audits and independent examinations but also giving advice on VAT, Gift Aid procedures and investments.

Services Provided by UK200 Charities Group members

UK200Group is a global association of over 125 UK quality assured Chartered Accountant and Lawyer firms and 43 International Associate firms. Our Charities Group of specialist proactive accountants possess expert knowledge of the charity sector and help Trustees comply with the changing charity regulations. UK200 Charities Group provide training and professional networking for members. Charities Group products include client newsletters and a comprehensive charity risk matrix.

Business planning services

- Business planning
- Strategic reviews
- Systems reviews

Compliance services

- Audit
- Accountancy
- Independent examination
- Internal audit
- Registration

Cross Border Charities

- Advisory services
- Dual registration

Sector specialisms

- Arts and leisure
- Ecclesiastical charities
- Education
- Grant making charities
- Healthcare
- Housing associations
- Social welfare

Sourcing finance

- Budgets and cash flow projections
- Grant applications
- Lottery applications
- Raising finance

Support services

- Corporate governance issues
- Financial control reviews
- IT support
- Management accounting
- Payroll services
- Recruitment of personnel

Taxation advice

- Gift aid
- Payroll giving
- Property transactions
- Tax planning for development
- The implications of trading
- VAT planning

Charities need access to a bank providing flexible solutions that not only meet their needs but provides them with ethical financial solutions. Clydesdale Bank plc, a UK200Group Prime Partner, summarises their products which have been specifically designed for charities.

This UK200 Charities Group report is not intended as a definitive guide to all of the issues arising from these new Charity Laws as some issues, such as the public benefit test and its application in practice, merit separate detailed consideration in their own right.

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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 part of the Report summarises its main provisions and is based on the legislation in force in early June 2006. It is intended to be of a general nature only and no liability will be accepted by UK200Group or Turcan Connell for any action taken or omitted to be taken in reliance on it.

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

Office of the Scottish Charity Regulator

The 2005 Act established 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 if they are to obtain charitable status 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
- disbenefit 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 follows interpretations applied by HM Revenue & Customs in recognising 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 a 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;
- 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

Any body that does not appear on the Register may still refer to itself as a 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.

Changes

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

It is important to be aware that the law is in a period of transition as far as the public benefit test is concerned.

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:

- 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 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.

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 the 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 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 fund-raiser 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.

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.**

Trustees' Duties

1 General Duties

The 2005 Act imposes the following general duties on charity trustees:-

- (a) Trustees must act in the interests of the charity, and in particular
 - They must seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes.
 - They must act with the care and diligence that is reasonable to expect of a person who is managing the affairs of another person.
 - Where there is a potential conflict of interest between the charity and a person who appoints a charity trustee, the trustee must put the interests of the charity before those of the person appointing him. If the trustee is under some other duty which prevents him from doing this, he must disclose his conflict of interest to the charity and must not

take part in any discussions or decisions of the trustees in relation to the matter in question.

These duties largely reflect the legal position prior to the 2005 Act, although it is thought the standard of care and diligence has been raised.

(b) A trustee must ensure that the charity complies with the 2005 Act. This duty is a strict one and there is no exoneration for minor breaches.

Any breach of these duties will be treated as misconduct in the administration of the charity entitling OSCR to invoke its powers under Section 31 of the 2005 Act. These include power to suspend the trustees, to direct the charity to cease representing itself as a charity or as a Scottish charity, to restrict the transactions which may be entered into, or the nature or amount of payments which may be made in the administration of the charity without OSCR's consent, and to direct any third party holding property on behalf of the charity not to part with it without OSCR's consent.

OSCR is under a general duty to act proportionately in performing its regulatory function and so any action which OSCR may take must be proportionate to the misconduct concerned. OSCR cannot suspend a charity trustee under these powers if it considers the trustee has acted honestly and reasonably in relation to the misconduct and ought fairly to be excused.

Where there has been a breach of any of these duties the charity trustees must take whatever steps are reasonably practicable to ensure that the breach of duty is corrected and not repeated, and that any trustee who has been in serious or persistent breach of the duty is removed as a trustee. It is unusual for a

charitable trust deed to give trustees power to remove one of their number and in the absence of an express power, the trustees would have to petition the Court for the offending trustee to be removed. In the case of charities which are not trusts, the procedure for removal will depend on the charity's constitution (e.g. the removal of a director of a corporate trustee would be under the Companies Acts).

2 Duty to carry out the terms of the trust

The charity trustees must administer the charity in accordance with its terms. They must familiarise themselves with the terms of the trust deed or other constitutional document and must act in accordance with it in administering the charity.

3 Duty to control the trust property

The charity trustees must take steps to establish full details of the charity's property. In addition the trustees must keep the charity's property under their control. In the case of charitable trusts this means that trust

assets must be held in the name of the trustees or of a nominee permitted by the trust deed or by the 2005 Act. The 2005 Act permits trustees of charitable trusts to hold property through nominees when exercising their statutory power of investment under that Act. The power does not apply when exercising powers of investment expressly conferred in the trust deed or other governing document. The appointment of a nominee is subject to the following conditions:

- The trustees must reasonably believe that the appointment of the

nominee is appropriate in the circumstances of the trust and that the proposed nominee has the requisite skills, knowledge and expertise to act as a nominee.

- The appointment must be in writing and the trustees must retain power to give directions to the nominee and to revoke his appointment.
- The trustees must determine the other terms of the appointment and their suitability as to remuneration and other matters.
- The terms of the nominee's appointment may not permit the nominee to appoint a substitute, restrict the liability of the nominee or of any substitute, or permit the nominee or any substitute to act in circumstances which could give rise to a conflict of interest.

Trustees must keep the nominee arrangements under review and if appropriate, consider whether they need to exercise their powers to give directions to the nominee or revoke his appointment. The power to appoint a nominee is subject to any contrary provision in the trust deed or under any legislation.

4 Duty to keep accounts

Trustees have a general duty to keep records and accounts of the trust property all as detailed in The Charities Accounts (Scotland) Regulations 2006 section of this report on pages 13-15.

5 Duty to devote time to charity's affairs

The charity trustees must meet together as often as is necessary for the proper administration of the charity, and give such time to the charity's affairs as is required for its proper administration.

6 Duty to invest

Charity trustees have a general duty to

Any breach of these duties will be treated as misconduct in the administration of the charity entitling OSCR to invoke its powers under Section 31 of the 2005 Act.

Any action which OSCR may take must be proportionate to the misconduct concerned.

invest the charity's funds, so far as they are not required for carrying out the purposes of the charity. This is mainly relevant to grant making charities, and charities who are holding substantial funds for extended periods.

Trustees of charitable trusts will normally be given express powers of investment in the trust deed. If there are no express powers of investment, or if the powers conferred by the deed are limited, the trustees can rely on the statutory power of investment in the 2005 Act. If the trustees are using the statutory power of investment, they must have regard to the suitability to the charity of the proposed investment, and also to the need for diversification of investments of the charity. The charity 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 that in all the circumstances it is unnecessary or inappropriate to take advice.

Charity trustees of other types of charities, such as companies and unincorporated associations, will normally have full powers of investment.

Ethical Investment

Interest in ethical and socially responsible investment is moving into the mainstream. Investment management professionals are being asked more frequently to consider such investments.

Definitions vary as to exactly what these terms mean. Generally speaking, socially responsible investment (SRI) involves shareholders using their influence to lobby companies to improve their environmental or social policies to promote industry best practice.

Ethical investment, on the other hand, in addition to the act of lobbying, applies a number of positive and negative screening criteria to companies. Ethical funds are classified in shades of green, with the darkest green

applying the strictest screening criteria, which significantly reduces their universe of suitable companies for investment. Funds of a lighter shade of green usually have a broader remit, concentrating on the most socially responsible companies in a particular sector.

The fund universe has grown substantially over recent years with over 100 equity and corporate bond funds now investing on the basis of ethical or SRI criteria. Changes to the regulatory environment are now also forcing Trustees of both charities and pension funds to include ethical considerations in their investment policy.

There are strong arguments to suggest that companies with good ethics also follow good business practices.

7 Delegation of powers

Trustees of charitable trusts are permitted by the 2005 Act to appoint a discretionary investment manager to manage the charity's investments. This is subject to any restriction in the trust deed, or under other legislation. Apart from this they may not delegate any of their powers or duties as trustees, unless the trust deed permits them to do so. They may appoint agents to carry out certain tasks on their behalf, such as appointing accountants to prepare accounts and lawyers to prepare documents but may not delegate their primary role of overall responsibility for the administration of the trust.

8 Conflicts of interest

Charity trustees should not act in a way that brings them into conflict with the interests of the charity. The trustees must not derive any personal profit from the charity (although there are statutory provisions permitting remuneration of trustees in certain circumstances); nor must a trustee as an individual enter into any transaction with the charity.

9 Duty to take advice

The trustees should take advice from a properly qualified person in matters on which they are not themselves competent to decide.

10 Duty to observe the general law

Charity trustees are subject to the general law, and depending on the activities in which the charity are involved, they may be subject to employment law, health and safety legislation, law of delict, criminal law, human rights legislation and so on.

Remuneration of Trustees

The 2005 Act permits charity trustees to be remunerated for services provided to the charity in certain circumstances. This includes the provision of services of acting as a charity trustee and services provided under a contract of employment.

Remuneration may be paid

- To a trustee who provides services to a charity and
- To a service provider connected with a trustee where the charity trustee may benefit from the remuneration so paid.

The conditions to be met are as follows:

- The maximum amount of the remuneration must be set out in a written agreement between the service provider and the charity and must be reasonable in the circumstances.
- Before entering into the agreement the charity trustees must satisfy themselves that it is in the interests of the charity for the services to be provided by that provider for that maximum amount.
- There must be fewer than half of the charity trustees who are party to a written agreement for the provision of services to the charity which is still in force; or are entitled to receive remuneration from the charity funds

in some other way; or are connected with someone in either of these two categories.

- There must be nothing in the charity's governing document which prohibits the service provider from receiving remuneration.

These restrictions do not apply to a payment under any provision of the charity's governing document which was in force on 15th November 2004, or under any order made by the Court of Session, or under any legislation.

If a charity trustee, or a person connected to a charity trustee is remunerated in contravention of these rules, the charity may recover the amount of the remuneration and OSCR can insist on the charity taking proceedings for recovery.

Liability and Immunity of Trustees

Trustees of charitable trusts (as opposed to other types of charities) may only act in accordance with the powers conferred on them under the trust deed or the general law. If the trustees act outside of these powers and a loss results to the trust they may be personally liable.

Trustees may be liable to beneficiaries for committing breaches of trust; and also to third parties. Breaches of trust do not always result in a loss to the trust fund but if they do the trustees will normally be personally liable to make good the loss.

Trustees may also be liable to third parties. Trustees entering into contracts are personally liable unless they specifically contract for their liability to be as trustees. Provided entering into the contract is a proper exercise of their powers they are entitled to be indemnified out of the trust fund for any costs they may incur. However if they are acting beyond their powers they are in breach of trust and will normally be

personally liable for any resultant costs or loss. They may also be liable to third parties in other ways, such as in delict if a third party incurs loss or injury as a result of the negligence of the trustees or their employees; under Health and Safety legislation; under employment law; and so on. If the liability arises through the trustees acting in breach of trust they would normally be personally liable.

The trust deed may contain an immunity clause in favour of the trustees. An immunity clause defines the limit of the trustees' liability. For example it may say that the trustees are not to be liable for any loss unless they were acting negligently or fraudulently. Such an immunity clause cannot completely exempt the trustees from liability. As the law presently stands it is possible for exemption clauses to protect trustees against any degree of fault other than fraud or gross negligence. A trustee seeking to rely on an exemption clause will find that the Courts will interpret it very strictly. If the clause is ambiguous the trustee will not be given the benefit of the doubt.

Trustees' Indemnity Insurance

The Charity Commissioners in England permit trustees of charitable trusts to take out insurance policies to protect against claims for breach of trust and liability to third parties, and to pay the premiums from the trust fund, provided the trust deed contains an appropriate power. The power commonly included in trust deeds allowing trustees to be reimbursed their reasonable expenses in the administration of the trust would be sufficient to allow premiums from such policies to be paid from the trust.

Although the position is less clear in Scotland, recent case law suggests that trustees may pay for indemnity

insurance using the trust funds, provided a suitable power is included in the trust and provided the insurance does not cover liabilities arising from breaches of trust committed by the trustees knowingly or recklessly. However, 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.

Disqualification

It is a criminal offence under the 2005 Act for anyone to act as a charity trustee while disqualified under that Act. A person who is convicted of this offence is liable for a prison sentence of up to two years, or a fine, or both. The following persons are disqualified from acting as charity trustees:

- Any person who has been convicted of an offence involving dishonesty or an offence under the 2005 Act.
- An undischarged bankrupt.
- Any person who has been removed from being concerned in the management or control of a charity under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or Section 34 of the 2005 Act.
- Any person who has been removed from the office of charity trustee by an Order made by the Charity Commissioners for England and Wales or the High Court of Justice in England on the grounds of misconduct in the administration of a charity.

- Any person who is subject to a disqualification order under the Company Directors Disqualification Act 1986 (or the Company Directors Disqualification (Northern Ireland) Order 2002).

A person who has been convicted of an offence involving dishonesty or an offence under the 2005 Act is not disqualified if the conviction is spent under the Rehabilitation of Offenders Act 1974. A person who is disqualified from acting as a charity trustee may apply to OSCR for the disqualification to be waived.

Services Provided by Turcan Connell

- Advising on the proper exercise of charity trustees' powers and duties
- Good governance for charities
- Charity Trustee Training packages
- Formation and reconstruction of charities
- Regulatory compliance and advice
- Charity specific land and property issues
- Charity taxation
- Investment management
- TC Charity Office
- Accounting, administration and grant making services
- Secretarial services for charitable companies
- Charity litigation
- Amalgamations, court variations and winding up of charities
- Employment law for charities
- Contract advice including funding agreements

Report produced by:

Alison Paul Partner with Turcan Connell Solicitors, Edinburgh, Scotland, and specialises in tax and estate planning and is involved in establishing and running a number of grant-making charitable trusts. Her expertise ranges across charity law, capital taxation, succession and asset protection.

Alison is accredited as a trust law specialist by the Law Society of Scotland, is an external examiner for the Law Society's Admissions Programme and runs Turcan Connell's trusts, charity and taxation seminar programme. She is a member of the STEP committee (Society of Trust and Estate Practitioners) and Turcan Connell's in-house charity unit. Alison is on the editorial board of the Scottish Chapter of Tolley's Charities Manual and has served as a charity trustee. ajp@turcanconnell.com

Gavin McEwan is a Senior Associate, Turcan Connell Solicitors, Edinburgh, Scotland, and works principally in the fields of charity law, succession, trusts and asset protection and is a member of Turcan Connell's Charity Unit.

Gavin's work in the area of charity law includes the establishment and reorganisation of charities, from major public trusts and foundations to private charitable bodies. He also advises a broad range of charities and national institutions on regulatory, contractual and governance issues.

He has been a guest speaker at a number of conferences on the subject of charity law reform in Scotland and is on the editorial board of the Scottish chapter of Tolley's Charities Manual and regularly contributes to the Scottish Private Client Law Review. He is also a non-executive director of several charities. gmce@turcanconnell.com

The Charities Accounts (Scotland) Regulations 2006 “the 2006 Regulations” were brought into force on 17th May 2006. The 2006 Regulations first apply to all charities with a financial year which begins on or after 1st April 2006. This part of the Report summarises the main provisions of the 2006 Regulations as they stand in early June 2006. It is intended to be of a general nature only and no liability will be accepted by the UK200Group or Dickson Middleton for any action taken or omitted to be taken in reliance on it.

Financial year

The first financial year for the 2006 Regulations applying to a charity is determined when it enters the Scottish Charity Register (“the Register”) that was established under The Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) and can be summarised as follows:

- For existing charities, the 2006 Regulations apply from the day immediately after its previous year end to its normal year end (accounting reference date) for:
 - those charities entered in the Register on 1st April 2006;
 - those companies incorporated on or before 1st April 2006 and entered in the Register after 1st April 2006;
 - those charities established under the laws of another country before 1st April 2006.
- For new charities after 1st April 2006, the 2006 Regulations apply from the date of entry into the Register, date of incorporation for companies or date established under foreign laws and end with their accounting reference date.

In future, the financial year of a charity will normally run from the day after its previous year end to, subject to a seven day window of flexibility either side, its accounting reference date.

For new charities entered into the

Register after 1st April 2006, its first accounting period must be at least six months but no more than eighteen months from the date of entry into the Register, date of incorporation for companies or date or established under foreign laws and end with their accounting reference date. For existing charities and in subsequent years for new charities, the accounting reference date may be varied by preparing accounts for a twelve to eighteen month period subject to there being less than three accounting periods of more than twelve months in any consecutive five year period on the Register. Where a charity is removed from the Register, its final accounting period runs to the date of removal from the Register.

Accounting records

As under the previous legislation, all Scottish charities must keep proper accounting records to show and explain its transactions, assets and liabilities. The charity trustees are responsible for ensuring those accounting records disclose with reasonable accuracy at any time its financial position.

Accounting records must be retained for at least six years to comply with the requirements of the 2005 Act and a wide variety of other regulations (e.g. retention of gift aid declarations for six years after the last gift aid claim was made for an individual), but can make use of technology to ease storage issues.

Accounts

A charity must send a copy of its accounts to OSCR not more than nine months after its accounting reference date or, where relevant, the date of its removal from the Register.

Where a charity and its subsidiary undertakings have a combined external income

of £500,000 or more, then the charity must prepare consolidated accounts in accordance with terms of the Statement Of Recommended Practice for Accounting and Reporting for Charities (Revised 2005) (“the 2005 SORP”). These consolidated accounts will have a consolidated annual report dealing with the activities of the charity and its consolidated subsidiary undertakings. A subsidiary charity in this instance will not be required to make separate annual report disclosure, but will only need to disclose that a consolidated annual report has been prepared and where that report can be obtained from.

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 also appoint a qualified person to prepare accounts if the charity’s accounts are not filed within deadlines. The costs of this exercise will be passed to the charity trustees, who will be jointly and severally liable under the 2005 Act for those costs.

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.

Connected charities

Connected charities may prepare accounts combined into a single document and send that to OSCR. This will avoid the need for each charity to

All Scottish charities must keep proper accounting records to show and explain its transactions, assets and liabilities.

send a separate set of accounts to OSCR. The combined accounts format and audit requirement will be determined by the regulations applicable to the charity with the highest gross income.

Fully accrued accounts

For a charity with gross income of £100,000 or more in a financial year, accounts based on the accruals concept will be required with the following key components:

- Statement of financial activities;
- Balance sheet;
- Cash flow statement, where appropriate;
- Notes to the accounts; and
- An annual report.

The balance sheet and annual report will be signed and dated as being approved by one trustee on behalf of all the charity trustees. The 2005 SORP best practice requirements will apply for the accounts disclosure for charities preparing fully accrued accounts.

Receipt and payments accounts

For a charity with gross income of less than £100,000 in a financial year, accounts may be prepared on the receipts and payments basis (i.e. cash basis) with the following key components:

- Receipts and payments account;
- Balance sheet;
- Notes to the accounts; and
- An annual report.

The balance sheet and annual report will be signed and dated as being approved by one trustee on behalf of all the charity trustees.

Should a decision of the charity trustees, the constitution of the charity or any other enactment require a fully accrued set of accounts to be prepared, then these accounts will follow the disclosure requirements of fully accrued accounts, discussed above.

Audit

For a charity with gross income of £500,000 or more in a financial year or gross assets of more than £2,800,000, there is a requirement under the 2006 Regulations for the accounts to be audited by a qualified auditor or the Auditor General for Scotland.

An audit requirement may also arise from a decision of the charity trustees, the constitution of the charity or any other enactment.

The auditor is required to set out in their report if the annual report by the trustees is not consistent with the accounts, if the charity has not kept proper accounting records or if they have not received all the information and explanations required to conduct the audit.

Audit exemption

For a charity with gross income of less than £500,000 in a financial year and no audit requirement, an independent examination is required to be undertaken by an independent examiner. There is a duty on the charity trustees to ensure this independent examiner is reasonably considered to have the requisite ability and practical experience to carry out a competent examination of the accounts.

If the charity prepares fully accrued accounts, then the independent examiner must be a member of a recognised professional accountancy body such as ICAS, a full member of the Association of Charity Independent Examiners or the Auditor General for Scotland.

In the case of a company, an accountant's report under Companies Act regulations will substitute for the independent examiners and auditors report. However, until the current revision of charity legislation in England

and Wales is passed into law, with the consequential Company Law amendment, the existing company thresholds for audit exemption will apply to Scottish registered charity companies.

The independent examiner will set out in their report if the annual report by the trustees is not consistent with the accounts, if the charity has not kept proper accounting records, if any material expenditure or action has been undertaken by the charity which is outwith its purposes or if they have not received all the information and explanations required to conduct the examination.

Special case charities

A special case is made for further and higher education institutions and registered social landlord charities. This exemption allows those charities to prepare accounts under the requirements of their own specialist industry SORPs with the following key components:

- Income and expenditure account;
- Balance sheet; and
- Notes to the accounts.

The auditing and independent examination levels for these special case charities follow those of other charities under the 2006 Regulations.

Duty to Whistle Blow

A requirement is introduced under the 2005 Act 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 and also covers connected bodies (e.g. a trading subsidiary company). There is also a non mandatory power for those

persons to report anything which they feel may become a regulatory issue in the future.

These duties are not annulled if the auditor/independent examiner resigns their position.

Dormant accounts

Under the 2005 Act OSCR will be able, after making suitable enquiries, to redistribute money held in charity bank accounts which has 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.

The 2005 SORP

The aim of the 2005 SORP is to establish and improve the standard of reporting and accounting by charities to their intended users. The 2005 revision to the SORP built on its previous versions and moved the focus of charity reporting much more towards explaining:

- What charities aim to do;
- How they have gone about it; and
- What they have achieved.

This approach allows the charity to focus on matching financial information with the activities and outcomes in their annual reports.

Report produced by:

John Watkins is a Partner with Dickson Middleton, Chartered Accountants, Stirling and is currently Chairman of UK200Group's specialist Charities Group of quality assured accountants. John qualified as an ICAS prize winning Chartered Accountant in 1995. Financial services audit experience with a large multinational accountancy firm means he can advise charity organisations through the consideration and implementation of investment monitoring and risk management procedures.

John has experience of a broad range of charities spanning ecclesiastical, grant making, healthcare and social welfare. His expert knowledge of the complex UK taxation system, including specific exceptions available to charities, means he can proactively identify for his charity clients significant expense savings. The 2005 SORP has required him to assist his charity clients tackle the implementation issues of this accounting standard and tailor their reports to the charity's particular needs. He is also a member of Round Table.

Prior to the Charities & Trustee Investment (Scotland) Act 2005 a charity registered in England & Wales was under no obligation to apply to be recognised as a charity in Scotland. Under the provisions of the new Act, any charity from anywhere in the world external to Scotland owning or occupying land or premises in Scotland or carrying out activities in any office, shop or similar premises in Scotland will have to register as a charity with the Office of the Scottish Charity Regulator (OSCR). In contrast, there are currently no requirements for Scottish charities that operate in England & Wales to register with the Charity Commission. (This report refers to charities operating in England and Wales as English Charities and is intended to be of a general nature only. No liability will be accepted by UK200Group or Wylie & Bisset for any action taken or omitted to be taken in reliance on it.)

Northern Ireland has its own unique situation regarding charity regulation. Charities must register with HM Revenue and Customs and new legislation is currently under review for Northern Ireland.

On 1 April 2006 all existing Scottish charities, i.e. those charities that had registered in Scotland with the Inland Revenue, were automatically entered onto the Scottish Charity Register by OSCR. **Any English charity that had not previously registered in Scotland, would not, therefore, be automatically entered onto the Register and will be required to apply to OSCR for registration as a Scottish charity.** The Act does contain transitional provisions that allow such charities until April 2007 to complete their registration and OSCR have indicated that they will seek registration from cross-border charities between September and December 2006.

It is possible that an English charity will be required to register with OSCR though exempt from registering with the Charity Commission.

OSCR will hold a joint conference with the Charity Commission prior to September 2006 in order to issue further guidance.

As a result of the requirements of the Act some charities will now be subject to dual regulation; by OSCR in Scotland and the Charity Commission in England & Wales. Both regulators realised at an early stage that this could cause unnecessary administrative burdens for charities and have been working together to ensure the effects of dual regulation are minimised as far as possible.

Joint Guidance

In December 2005 OSCR and the Charity Commission issued joint guidance for cross-border charities which can be obtained from either organisations website. The guidance seeks to reassure charities who in future will be answerable to both regulators and clarify the regulations in areas where the regimes in the two jurisdictions appear to be contradictory.

For example, in England certain charities are exempt from the requirement to register with the Charity Commission by virtue of their size and activities, others have been specifically excepted from the requirement to register. The Scottish Act contains no such exemptions or exceptions. It is possible that an English charity owning or occupying property in Scotland would be required to register with OSCR even though it were exempt from registering with the Charity Commission.

In determining whether or not to enter a charity on the Scottish register OSCR

must determine if they meet the charity test as set out in the new Act. Consultations between the Scottish Executive and the Home Office took place in an attempt to avoid anomalies in the final legislation in each jurisdiction and although there is a slight difference in the charity tests in each Act this is not expected to cause any problems in practice. Problems may arise as the position in Scotland develops as a result of decisions of the Scottish Charity Appeals Panel or the courts, which will refine the charity test applied by OSCR.

The guidance makes it clear that regardless of how the law in Scotland develops, cross-border charities will need to meet the charity test in both jurisdictions.

Accounting Regulations & Reporting Requirements

Following the introduction of The Charities Accounts (Scotland) Regulations 2006 it is mandatory for all charities with an income in excess of £100,000, in both jurisdictions to prepare accounts in accordance with the Statement of Recommended Practice – Accounting & Reporting by Charities (SORP) issued in March 2005.

OSCR have confirmed they will not insist on separate Scottish Accounts and will accept accounts that consolidate activities north and south of the border. However they will expect charities operating in Scotland to include narrative on their Scottish activities in the Trustees Annual Report. All charities registered with

All charities registered with OSCR will be required to submit annual accounts together with a basic Annual Return within nine months of their year end.

OSCR will be required to submit annual accounts together with a basic Annual Return within nine months of their year end. Charities with income in excess of £25,000 will also be required to complete an annual monitoring form. These requirements are additional to any existing reporting responsibilities in England.

Other considerations

Scottish branches of an English charity only need to register individually with OSCR if they are autonomous. Otherwise, it is likely that the main English charity will need to register since the operations of the branches will probably fall within the criteria mentioned above.

The Act contains provisions covering what an organisation operating in Scotland may call itself. Only charities which are established under Scottish law or are managed from Scotland are permitted to use the terms Scottish Charity or registered Scottish Charity. Regulations covering when and where a charity is required to publish its charitable status have yet to be finalised but are expected to bring Scotland into line with the existing requirements south of the border.

The new legislation in Scotland includes provisions covering circumstances under which a charity must obtain consent from OSCR in advance of a particular action. These include changing the charity's name or its charitable purposes but, as a whole, the regime is more limited than that already in force in England. At the time of writing there are no safeguards against dual regulation in this area; certain proposed actions will require a cross-border charity to obtain advance consent from both OSCR and the Charity Commission.

The strengthening of charity regulation in Scotland will undoubtedly increase the regulatory burden on cross-border charities. It is to be hoped that OSCR and the Charity Commission continue to work together to ensure that dual regulation does not become an unnecessary additional cost to these organisations.

Report produced by:

Jenny Simpson, manager of Wylie & Bisset's specialist charity team and is a member of the UK200Group Charities Committee and UK200 Charities Group of quality assured accountants. Jenny qualified as a chartered accountant in England and specialised in charity accounting under the rules in England & Wales before moving to Scotland in 2002. Jenny oversees the services provided to a wide range of charities from care homes and welfare charities to education institutions and economic development organisations, and has recently given a number of presentations on the new rules in Scotland. Jenny has been appointed to the Scottish Charity Appeals Panel.

At Clydesdale Bank we understand that the needs of individual charities vary. That's why our charity customers enjoy the personal attention of a dedicated relationship manager who works to ensure that charities have the most appropriate financial solutions to meet existing and future needs.

Through our experience of dealing with charities over a number of years, we have also developed three products that charity customers can benefit from. This means that whatever your financial requirements, we have a solution for you.

Our Comprehensive Range of Accounts

Every charity needs a simple, straightforward and reliable basis for managing its day-to-day banking. To offer the best flexibility possible, Clydesdale Bank has two different styles of current account specifically designed for charities.

Business Choice Charities Account is a flexible, fully functional and user friendly account for all registered charities who maintain credit balances. The account offers highly competitive interest rates combined with the efficient processing of payments and receipts with cheque book, paying in book and regular statements – making things as simple as possible for you to manage your funds.

Basic Charities Account is designed for charities who do not usually maintain credit balances. This account again offers full functionality of a current account however, no transactional charges are applied. This allows you to process payments and receipts efficiently without incurring any cost – helping you to maximise the monies you receive.

In addition to our current accounts we are also conscious that charities often have surplus monies that they wish to invest. Whilst we have a number of

solutions for investments, since its' launch in December 2005, our Base Rate Tracker Plus account has been very popular.

Base Rate Tracker Plus Account is an account designed to maximise any significant surplus funds you hold. With a market-leading interest rate, this savings product will offer you excellent returns on the monies you hold.

For all our accounts we have made our account opening procedures as easy as possible. In addition, your dedicated Business Partner will be on hand to answer any questions you may have.

Business Choice Charities Account – earn competitive interest on your everyday banking

Benefits

- **Personal attention** – dedicated proactive relationship management from someone who understands your charity and what you are looking to achieve
- **Easy to use** - fully functional, day-to-day operative account
- **Flexibility** – day-to-day cash flow flexibility – offering instant access with no penalty
- **Competitive** - pays credit interest at a rate of 1% below base rate

Features

- Unlimited deposits & withdrawals – subject to available funds
- Choice of statements issued monthly, or more frequently on request – please speak to your Business Partner for associated charges
- Transparent fees & charging schedule
- Personal attention – dedicated Business Partner empowered to make fast decisions

Important Facts

Interest rate

- Available on request from your Business Partner

Interest type

- Credit interest applied to amounts in credit

How is interest calculated?

- Calculated daily and applied monthly

Minimum/Maximum balance

- Accounts must be maintained in credit – balances are unlimited

Withdrawals

- Unlimited - subject to available funds

What it costs

- Refer to the relevant business tariff guide for details on fees and charges – available from your Business Partner

Terms and conditions

- These accounts are specifically for registered charities and are not available to personal customers
- All terms and conditions are available on request

Where do I go from here?

- Talk to your local Business Partner
- Visit www.CBonline.co.uk

Basic Charities Account – no transactional fees on your everyday banking

Benefits

- **Personal attention** – dedicated pro-active relationship management from someone who understands your charity and what you are looking to achieve
- **Easy to use** - fully functional, day-to-day operative account
- **Flexibility** – day-to-day cash flow flexibility – offering instant access with no penalty

- **No Transactional Charges**** – allows you to efficiently manage your money with no fees applied

Features

- Unlimited deposits & withdrawals – subject to available funds
- Choice of statements issued monthly, or more frequently on request – please speak to your Business Partner for associated charges
- Fee-free transactional banking**
- Personal attention – dedicated Business Partner empowered to make fast decisions

Important Facts

Interest rate

- Available on request from your Business Partner

Interest type

- Credit interest applied to amounts in credit

How is interest calculated?

- Calculated daily and applied monthly

Minimum/Maximum balance

- Accounts must be maintained in credit – balances are unlimited

Withdrawals

- Unlimited - subject to available funds

What it costs

- Refer to the relevant business tariff guide for details on fees and charges – available from your Business Partner

Terms and conditions

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Where do I go from here?

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** Charges for ancillary services may be applied.

Base Rate Tracker Plus – get a market-leading rate and a better return on your funds

Benefits

- **Tiered Interest Rates** – our tiered interest rates mean the more you invest, the better the return
- **Flexibility** – the account has no long-term tie-in. You'll have flexible access to your funds, which can be withdrawn with only seven-days' notice
- **No Transactional Charges** – you don't pay extra for accessing your own money so your deposits are working harder for you
- **Market-Leading Rate** – if you have deposits in excess of £1m, Base Tracker Tracker Plus offers a market-leading rate – helping you with your planning and cashflow
- **CHAPs Withdrawals** – giving you fast and easy access to your money
- **Personal attention** – dedicated proactive relationship management from someone who understands your charity and what you are looking to achieve

Features

- Unlimited deposits & withdrawals – subject to available funds
- Choice of statements issued monthly, or more frequently on request – please speak to your Business Partner for associated charges
- Personal attention – dedicated Business Partner empowered to make fast decisions

Important Facts

Interest rate

- Available on request from your Business Partner

Interest type

- Credit interest applied to amounts in credit

How is interest calculated?

- Calculated daily and applied quarterly

Minimum/Maximum balance

- Minimum opening balance is £1m.
- Accounts must be maintained in credit – balances are unlimited

Withdrawals

- Unlimited - subject to available funds

What it costs

- Refer to the relevant business tariff guide for details on fees and charges – available from your Business Partner

Terms and conditions

- This account is not available to personal customers
- All terms and conditions are available on request

Where do I go from here?

- Talk to your local Business Partner
- Visit www.CBonline.co.uk

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