

OSCR Monitoring under Section 19 – reporting on work to date

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1. Introduction

1.1 Under Section 19 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act), a body removed from the Scottish Charity Register continues to be under a duty to apply:

- any property previously acquired
- any property representing income previously acquired
- any income from such property

in accordance with its purposes as entered on the Register immediately prior to removal. There is also a continuing duty to keep proper accounting records and to prepare and submit accounts to OSCR for the remaining charitable assets.

1.2 This report is prepared with the purpose of outlining the monitoring work undertaken by OSCR to date under Section 19 of the 2005 Act and to provide some context for this work in terms of the volume of casework and types of cases and issues being handled. This report is published alongside OSCR's guidance on Section 19 monitoring which explains the principles and processes used by OSCR in this area of work.

2. Section 19 monitoring – an overview of OSCR's work

2.1 OSCR applies the regulatory principles outlined below in monitoring the assets held by bodies on the date they were removed from the Scottish Charity Register:

- proportionality
- accountability
- consistency
- transparency
- targeted action (we take action only where necessary)
- independence
- fairness
- informed regulation.

2.2 Removal from the Register

The process for the removal of a charity from the Scottish Charity Register is undertaken by the Charity Services Team within OSCR and may occur as a result of the charity requesting removal under Section 18 of the 2005 Act or through OSCR removing the charity under Section 30. At the point of removal, information is sought from the charity regarding the assets held. Unless charitable assets are negligible, a referral is made to OSCR's Monitoring Team who make contact with the body. If a charity ceases to exist due to a merger or some other union with another charity, then no monitoring under Section 19 is necessary.

2.3 Initial contact

In making contact with the body removed from the Register, the Monitoring Team outline the requirements for continued reporting under Section 19 and request confirmation of charitable assets held at the date of removal from the Register. When this information is received, checks for validity are made by comparison with recent accounts and any other information available regarding the former charity.

2.4 Annual monitoring under Section 19

2.4.1 Where charitable assets are in existence, the body is notified that annual accounts regarding these assets are required to be prepared and submitted to OSCR within nine months of the chosen accounting reference date.

2.4.2 The process of submitting annual accounts will cease when the body no longer has any of the assets that were held when it was removed from the Register.

3. Our work to date

3.1 Since April 2006, there have been 297 cases where Section 19 monitoring was considered and undertaken where appropriate, with 127 of these cases now completed.

3.2 Table 1 provides an analysis of the section 19 monitoring cases that have been ‘closed’, indicating the length of time that such cases can take to complete:

Table 1: cases closed at 30 April 2010 and the time between initial contact being made with the removed body and 30 April 2010

Time between initial and closing letters to body removed from the Register	Number of cases closed
0-1 years	75
1-2 years	39
2-3 years	12
3-4 years	1
Total	127

3.3 The majority of cases are closed within 2 years with a small proportion of cases requiring monitoring over a longer period.

3.4 In addition to the above cases, there have also been 382 Section 19 Scottish Women’s Rural Institute (SWRI) monitoring cases, with 303 having now been closed. These cases came about as a result of a series of bulk removals commencing in May 2008 of a number of SWRI branches that were previously individually registered charities.

3.5 Approximately 580 charities have been removed from the Register as a result of requesting removal under Section 18 of the 2005 Act. This implies that 49% of these bodies had nil or negligible assets at the time of removal. This may be correct but there is the possibility that these bodies had transferred their assets to another body at the time of removal from the Register or had falsely declared their assets at the time of requesting removal. This does not include those SWRI charities removed in the bulk removal processes.

4. Current work and looking forward

4.1 At 30 April 2010, 170 Section 19 monitoring cases were being handled within the Monitoring Team:

- 56 cases where initial information is yet to be received or verified
- 114 cases where the asset values have been agreed and annual monitoring is taking place.

4.2 Further analysis of these open cases provides an indication of the age profile. When compared to the information at Table 1 above, it appears that a larger proportion of bodies removed from the Register now have an ongoing responsibility lasting longer than was previously seen with earlier cases. It should be noted that a proportion of the bodies in the 0-1 and 1-2 year brackets shown in Table 2 are those where OSCR is still gathering information regarding the assets held – these bodies were not therefore subject to ongoing monitoring at 30 April 2010 but may be in the future as information becomes available.

Table 2: cases ongoing at 30 April 2010 and the time between initial contact being made with the removed body and 30 April 2010

Time between initial letter to body removed from the Register and 30 April 2010	Number of cases
0-1 years	72
1-2 years	68
2-3 years	25
3-4 years	5
Total	170

4.3 In relation to those cases that are in the last 2 categories, these take a longer time to complete as a result of a number of factors such as:

- a large amount of charitable assets being held by the body at the time of removal from the Register
- where the body is continuing (albeit not as a charity), the level of annual expenditure is very small compared to the assets held and therefore it will take some time for the assets to be extinguished
- it is possible that the more straightforward cases were dealt with earlier and the ones currently being handled are more complex.

4.4 In the 12 months to 30 April 2010, the number of cases remained fairly steady. Several cases are under consideration where the former charity owns fixed assets e.g. buildings. The policy for monitoring bodies with this type of asset has been under development but following publication of this policy, these cases can be progressed.

4.5 There were 79 active SWRI Section 19 cases at the end of April 2010 (with 1 having fixed assets) with 77 subject to ongoing monitoring.

5. Asset values

In terms of the value of charitable assets that are subject to monitoring by OSCR under Section 19, at 30 April 2010, the position is as outlined in Tables 3 and 4 below.

Table 3: Charitable assets subject to ongoing monitoring by OSCR under Section 19

Charitable assets held	Number of bodies	Total charitable assets held
£1,000 or less	25	20,143
£1,001-£10,000	66	215,676
£10,001-£25,000	8	145,235
£25,001-£100,000	11	583,867
£100,000 or more	4	836,920
	114	1,801,841

Table 4: Charitable assets of SWRI bodies subject to ongoing monitoring by OSCR under Section 19

SWRI charitable assets held	Number of bodies	Total charitable assets held
£1,000 or less	41	29,994
£1,001-£10,000	35	69,515
£10,001-£25,000	1	22,939
£25,001-£100,000	0	0
£100,000 or more	0	0
	77	122,448

6. Looking to the future

The bodies that the Monitoring Team deals with in this area of work are often difficult to engage with given the various reasons that may lead to a body being removed from the Register, and also the potential change of contact from the time of Register removal to the time when OSCR seeks to engage with the removed body. To that end, we aim to have an appreciation of the practical issues that can arise and to act in a proportionate manner.

In light of the guidance now published on Section 19 monitoring, it is hoped that there will be greater understanding of the statutory requirements among former charities that will facilitate our work in this area. Likewise, we anticipate that our guidance will better assist charities in making an informed decision regarding removal from the Register and enable charities to fully understand the implications of such action before this is taken.

OSCR will continue to carry out its statutory function to monitor the use of charitable assets held by bodies removed from the Register in order to protect those assets held within the Scottish charity sector and to ensure that the public continue to have confidence in charitable giving.

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