

Seeking charitable status in Scotland
Guidance for England and Wales charities
on registration with
the Scottish Charity Regulator

www.oscr.org.uk

Guidance on Registration with the Office of the Scottish Charity Regulator (OSCR) for England and Wales charities

1. Introduction

The Charities and Trustee Investment (Scotland) Act 2005 (the CTI(S) Act 2005), is the main authority for charity law in Scotland.

The CTI(S) Act 2005 gives the Office of the Scottish Charity Regulator (OSCR) responsibility for issues relating to charitable status in Scotland. OSCR has further regulatory responsibilities which include maintaining the Scottish Charity Register, and a power and duty to remove from the Register charities which do not meet the new charity test.

This guidance addresses areas of interest to charities registered in England and Wales which, because they have activities in Scotland, may have obligations under the new Scottish legislation. The guidance sets out:

- the factors that govern whether a charity registered (or exempted or excepted from registration) in England and Wales needs to register in Scotland; and
- the actions it would need to take to register

Generally speaking the regulatory regime for charities in Scotland applies equally to **all** charities entered in the Scottish Charity Register. For further information on the key aspects of Scottish charity regulation, please refer to our guidance publication 'Cross-border charity regulation in Scotland'.

2. The Scottish Charity Register

A key principle of the CTI(S) Act 2005 is that all activities of charities in Scotland should be regulated by OSCR, regardless of where the charity was established or has its main office. This is intended to provide a level playing field for all charities operating in Scotland, ensuring fairness and consistency. The approach is also of significant benefit to the Scottish public in identifying all charities active in Scotland, allowing the public to make informed decisions about donations to charity and providing assurance that charities are acting appropriately.

The Scottish Charity Register underpins the regulatory regime for charities in Scotland. If a body is not listed in the Scottish Charity Register then it is not a charity in Scotland. There are no categories of charities exempt or excepted from registration in Scotland.

The CTI(S) Act 2005 includes all charitable operations in Scotland within the regulatory regime and therefore organisations registered or recognised as a charity in a jurisdiction other than Scotland may be required to register with OSCR if they meet certain criteria. In this the legislation recognises that it is appropriate to draw a distinction between a significant operation in Scotland and an organisation which has only an occasional connection. See below under '4. Does your organisation need to register in Scotland?'

Sections 13 and 14 of the CTI(S) Act 2005 set out what a body entered in the Scottish Charity Register may call itself, and under what circumstances a body registered or recognised as a charity in a jurisdiction other than Scotland does not need to register with OSCR. These sections are key to the registration of English and Welsh charities (and charities established under the law of other countries or territories other than Scotland) by OSCR.

3. Terminology

The CTI(S) Act 2005 and its subordinate legislation place strict controls on what an organisation operating in Scotland can call itself.

If the organisation is registered with OSCR: The Charities References in Documents (Scotland) Regulations 2007 (as amended) introduce new requirements for charities registered with OSCR regarding the information they must ensure is stated on certain documents issued on their behalf.

In order to comply with the Regulations, all charities entered on the Scottish Charity Register must clearly state the following information on all relevant documents:

- the charity's name as entered in the Register
- any other name by which the charity is commonly known
- the charity's Scottish Charity Number allocated to it at the time of registration, which begins SC0
- if the charity's name does not contain the word 'charity' or 'charitable', a statement of the fact that it is a charity using one of the terms referred to in s.13 of the CTI(S) Act 2005.

Charities which were already entered in the Scottish Charity Register when the Regulations came into force on 1 April 2007 are obliged to ensure that any of the specified documents issued or signed on behalf of the charity after 31 March 2008 comply with the requirements of the Regulations.

For new charities that are entered in the Register on or after 1 October 2007, the Regulations will come into effect 6 months after the date of their entry in the Register.

English and Welsh charities once entered in the Scottish Charity Register may refer to themselves as a 'charity'. Such reference could take a number of forms including a 'charitable body', a 'registered charity' or a 'charity registered in Scotland' (s.13(1)).

The terms 'Scottish charity' or 'registered Scottish charity' are reserved for bodies established under the law of Scotland or managed or controlled wholly or mainly in or from Scotland (s. 13(2)) and entered in the Scottish Charity Register.

If an organisation is not required to be registered with OSCR: English and Welsh charities that are not required to register with OSCR may in Scotland refer to themselves as a charity but only if in making that reference they also refer to being established under the law of England and Wales. For example, 'a charity registered with the Charity Commission for England and Wales'; or (in the case of charities exempted or excepted from registration with the Charity Commission) 'recognised by HM Revenue and Customs as a charity and established in England and Wales' (s.14).

Further details on the requirements of the Regulations and the type of documents which they affect can be found within our guidance publication, 'References to Charitable Status' (amended guidance).

4. Does your organisation need to register in Scotland?

4.1 The basis of the law

The starting point, under the CTI(S) Act 2005, is that all bodies wishing to represent themselves as charities need to register with OSCR. However, section 14 of the CTI(S) Act 2005 allows an exception to this for certain bodies recognised as charities elsewhere that are not established under Scots law, are not managed or controlled wholly or mainly in Scotland and do not have a significant presence in Scotland.

The effect of section 14 of the CTI(S) Act 2005 is to ensure that all charities with significant operations in Scotland register with OSCR.

4.2 Do you need to register?

To decide whether your organisation needs to register in Scotland you will need to ask yourself a number of questions, reflecting the provisions of section 14 of the CTI(S) Act 2005:

a. Does your organisation wish to represent itself as a charity in Scotland?

If not, then there is no need to register with OSCR.

If yes, go to question b.

By representation we mean any public reference to the organisation being a charity, made by the organisation itself or by a person acting on behalf of the organisation. The representation may be either written or verbal. It could be made to either an individual, a group of individuals or to an external organisation. A letter to another organisation (for example a funding application or a request for rates relief) in which the organisation makes reference to being a charity would be considered to be representing itself as a charity. An internal reference, for example in a letter sent only to the members of an organisation, lacks a public element and would not be treated as being a representation.

b. Is your organisation a charity in England and Wales?

That is to say is it entitled to refer to itself as a 'charity' under the law of England and Wales?

If not, the exception under section 14 cannot apply, and you must register with OSCR.

If yes, then go to question c.

c. Is your organisation established under the law of Scotland?

If so, then you must register with OSCR.

If not, then go to question d.

d. Is your organisation managed or controlled wholly or mainly within Scotland?

If so, then you must register with OSCR.

If not, then go question e.

What matters here is not so much whether the charity trustees – the people who exercise general management and control of the charity – live in Scotland, but whether their management or control takes place here. For example, what does matter in this context is where the office of the organisation is, where the administration of the organisation takes place, or where the charity trustees meet on a regular basis.

e. Does your organisation occupy any land or premises in Scotland?

If yes, then you must register with OSCR.

If not, then go to question f.

The key factor here is occupation. Owning land without occupying it (for example as an investment) does not create a requirement to register. If your organisation is liable for business rates or council tax in respect of a property in Scotland, then it will be considered to occupy this land or premises.

f. Does your organisation carry out activities in any office, shop or similar premises in Scotland?

If so then you must register with OSCR.

If not, then there is no need to register with OSCR.

This question breaks down into two parts – both of which need to apply for your organisation to be required to register.

Firstly – does your organisation carry out activities in Scotland?

Generally speaking ‘activities’ include a wide range of actions – from fundraising to the dispensing of benefit, including merely administrative activities. However, the significance of the organisation’s operations either from the point of view of the organisation or from the point of view of a member of the public, will be relevant in deciding whether or not an organisation needs to register with OSCR.

In deciding this we will consider the following questions:

- Are your activities in Scotland significant to your organisation relative to its activities elsewhere? If you carry out a sizeable or an important part of your overall activities in Scotland, then this is significant activity. For example if the benefit from your activities falls primarily in Scotland then this would be considered to be ‘significant’, even if your activities as a whole are not that extensive (for example because your organisation is small).
- Are your activities in Scotland of a frequent or ongoing nature? For instance if you held conferences on a one-off or irregular basis in Scotland (with no commitment to these being repeated in future) this would probably not be considered as carrying out significant activities here.
- Is the overall impact of the activities significant? It is possible that even a single regular annual event could have enough impact to mean that you need to register. A nationwide annual fundraising event held in Scotland could for example be considered significant because of the amount of money raised or because of its public profile.

Secondly, if you do carry out activities in Scotland, do you carry them out in an office, shop or similar premises?

‘Similar premises’ here is taken to mean a ‘place of business,’ that is, a place in which commercial activity and/or the activities of charities are carried out.

In deciding whether or not activities are carried out in such ‘similar premises’ we will consider the following points:

- What is the current primary purpose of the premises?
What matters here is what the current primary purpose of the premises is, which may not be the one for which it was originally intended. For example where a house has been converted to offices the primary purpose should be taken as being business not residential. A useful guide in this context may be how the local authority treats the premises for purposes of planning or rates.
- Premises with more than one purpose.
If the primary purpose of the premises in which the activities take place is not for business, then is there a particular part of the premises dedicated to business? It may for example be the case that a room in a residential house has been converted to serve indefinitely as an office or shop, and that is where the organisation operates from.
- Not owning or renting the premises
Your organisation does not have to own or be the tenant of the premises for it to carry out activities from the premises. Furthermore, the business which determines the primary purposes of the premises does not need to relate specifically to the business or activities of your organisation. For example, a self help group for a particular illness holding weekly sessions in a church hall would be considered to ‘carry out activities in similar premises’.
- What are ‘premises’?
‘Premises’ can be a building, a structure, a construction, a place, a property or a site. This could mean anything from a mobile kiosk to a tower block or even an open air market.

- Homeworking

If activities of your organisation in Scotland take place only in a place which cannot be regarded as a place of business, for example where an administrative function is carried out for the organisation by an employee in an undefined space within their private residence in Scotland on an occasional basis, then you will not need to register.

If, however, that home based employee also undertook work in a place of business (for example by regularly attending meetings, visiting other organisations in their offices) or organised public events in Scotland then that would constitute the carrying out of activities in a place of business and the organisation would consequently be required to register.

4.3 The structure of the charity

If an organisation's Scottish operation is a separate organisation which has already been recognised as a charity in Scotland, this Scottish organisation will have an SC number, should have received an Annual Return form from OSCR, and will be able to look up its entry on the Scottish Charity register. These organisations do not need to register anew.

If the UK or English parent or sister body has no presence in Scotland (where the Scottish counterpart operates), then this organisation does not need to register. If however the parent or sister body itself (also) has a significant presence in Scotland in its own right then it too would need to register.

An English or Welsh charity may have many branches in Scotland. If these branches are not autonomous, there will be no requirement for each of them to register individually. However the parent organisation will need to consider whether it needs to register (by going through the questions above), and in doing so will need to take into account the operations of all of its branches.

If the local Scottish branches of an English or Welsh charity are autonomous (have their own constitutions, charity trustees, prepare their own accounts which are not consolidated into the accounts of the UK body) then these will have to assess whether they need to register in their own right (by going through the questions above).

4.4 Fundraising

Fundraising activity in Scotland does not in itself mean registration in Scotland is necessary. To determine whether an organisation which carries out fundraising in Scotland needs to register with OSCR, the questions above will need to be gone through.

5. How does the registration process work?

If you have not been in contact with OSCR, and think that you need to be registered as a Scottish charity, please contact us as below, and we will send you an application pack.

Under the CTI(S) Act 2005, for an organisation to be entered in the Scottish Charity Register and therefore to have charitable status, it must pass the charity test. That is, not only must its purposes consist only of one or more of the 16 charitable purposes listed in the CTI(S) Act 2005, but it must also provide public benefit in Scotland or elsewhere. OSCR's guidance '[Meeting the Charity Test](#)' gives more details.

To allow OSCR to assess whether an organisation passes the charity test, we require

- an application form, fully completed;
- a copy of the organisation's constitution; and
- a copy of the organisation's most recent accounts.

If your organisation's activities are too complex to be described on the application form, you should also send a copy of a document which details your activities, such as a business plan, annual report or funding application. We need this to help us assess whether your organisation provides public benefit in line with its purposes.

We also ask for a charity trustee declaration form, fully completed by all charity trustees. This assures us that the charity trustees understand their duties under the CTI(S) Act 2005, and that they do not fall into any of the categories of persons disqualified from being charity trustees under section 69 of that Act.

English and Welsh charities may also find it useful to refer to the Charity Commission's guidance on registering with OSCR (Operational Guidance 32) which contains examples of acceptable wording agreed between OSCR and the Charity Commission that English and Welsh charities may need to adopt in their governing document in order to meet the charity test. The guidance can be found at

www.charity-commission.gov.uk/supportingcharities/ogs/g032a001.asp

6. Consequences of non-registration

Where it appears to OSCR as a result of an inquiry under section 28 of the CTI(S) Act 2005 that a body recognised as a charity in another jurisdiction is:

- representing itself as a charity in Scotland (see 4.2 above)
- not covered by the exceptions set out in section 14 of the CTI(S) Act 2005 (see 4.2 above)

and the body has not registered with OSCR, then it may be treated as representing itself as a charity under section 31(2) of the CTI(S) Act 2005. Where the body, on being alerted to the issue, does not apply to be registered as a charity in Scotland, OSCR may direct it under section 31(5) of the CTI(S) Act 2005 to stop representing itself as a charity in Scotland. Such a direction would have effect for a maximum period of 6 months. The penalties for failure to comply with such a direction are set out in section 32(5) of the CTI(S) Act 2005.

7. After registration with OSCR

For guidance on the duties of England and Wales charities once registered with OSCR, please see our guidance publication 'Cross-border charity regulation in Scotland'.

8. Further information

The OSCR guidance documents referred to in this guidance notes can be accessed from our website: www.oscr.org.uk by following the 'Guidance' link. There you will be able to download a range of guidance materials, including those mentioned in this document.

Alternatively, you can request hard copies of the guidance documents by contacting us on the address below.

9. Contact details

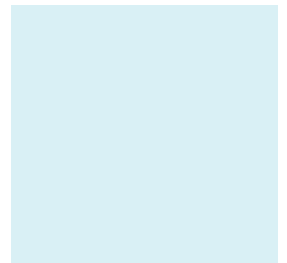
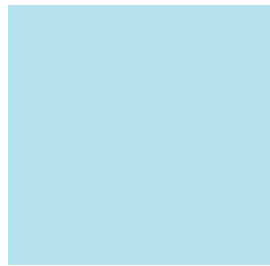
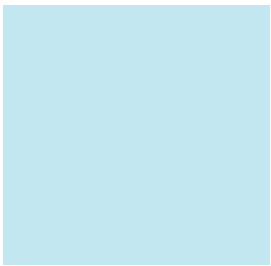
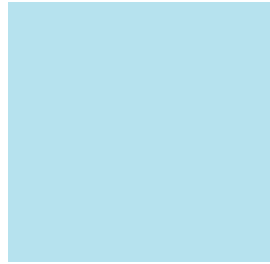
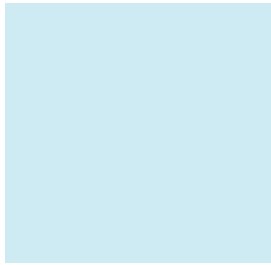
Office of the Scottish Charity Regulator
2nd Floor, Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

Tel: 01382 220446

Fax: 01382 220314

E-mail: info@oscr.org.uk

Website: www.oscr.org.uk



OSCR

Scottish Charity Regulator

2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

P. 01382 220446
E. info@oscr.org.uk
W. www.oscr.org.uk

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