

OSCR: what is a charity?

What do the words 'charitable' and 'charitable purposes' mean in Scottish law? The Office of the Scottish Charity Regulator (OSCR) and HM Revenue & Customs (HMRC) have jointly published a set of definitions designed to clarify an issue which has caused uncertainty until now. As a result, it is hoped that new charities will have a better idea of how to frame their constitutions under the Charities and Trustee Investment (Scotland) Act 2005 and that it will be easier to apply for charity tax relief. However, a briefing note makes it clear that if Scottish organisations whose constitutions

state they are charities and mention charitable purposes want tax relief, they must define their charitable purposes in terms that satisfy both the 2005 Act and UK tax legislation – in particular the Income and Corporation Taxes Act 1988.

To be defined as a charity under the 2005 Act, an organisation must have only charitable purpose. In addition its constitution must ensure that all its property is to be used for charitable purposes, and that it cannot be used to promote political parties. It must provide a public benefit (whether in Scotland or elsewhere), and must not be subject to unduly restrictive conditions.

OSCR has suggested this may cause existing charities problems, as their constitutions may include the terms 'charitable' or 'charitable purposes', but they may also be using their property for non-charitable purposes. However, it has stated that if it comes across such cases during its rolling review, the charities concerned will be given a year to resolve the issue and change their constitutions.

The requirement that charities may not impose "unduly restrictive conditions" has been controversial in the educational sector. In a pilot study, Dundee University was found to be charitable under the Act, despite being a fee-paying institution. It is less clear whether public (fee-paying) schools will always qualify as charities under the law.

OSCR briefing note: www.oscr.org.uk/NewsItem.aspx?ID=cfe0172f-1d66-43b0-baaf-b1fb71149079.

'Meeting the Charity Test': www.oscr.org.uk/DocumentViewer.aspx?id=dbca1be4-9894-43f3-8070-4d6806c3c669.

OSCR has been running a consultation on its guidance for Meeting the Charity Test, and plans to publish the results during the summer:

<http://www.oscr.org.uk/ClosedConsultations.stm>

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audit exemption threshold finally increased for Scottish company charities

At long last s1175 of the Companies Act 2006 has come into force. This means that for accounting periods commencing on or after 1st April 2008, Scottish limited company charities with incoming resources of less than £500,000 (and gross assets of £2.8 million or less), no longer have to have their accounts audited but can opt for the less detailed scrutiny of an independent examination.

The effect of this is to align the audit requirements for all Scottish charities; the threshold for non-company charities was increased two years ago.

Charities wishing to take advantage of exemption from audit should check whether their Memorandum

& Articles of Association include a specific requirement for an audit and may need to pass a resolution at the next AGM amending this provision.

Specific requirements of funders should also be considered.

Company charities are required to prepare accounts in accordance with the statement of Recommended Practice – Accounting & Reporting by Charities regardless of their income and must therefore appoint an independent examiner who is a qualified accountant.

The Wylie & Bisset charities team are happy to provide no-obligation quotations for such work.

a gift for gift aid

Chancellor Alistair Darling announced in his first Budget that charities will still be able to claim 28p in every pound donated through the Gift Aid scheme until 2011. The news came as charities feared the falling rate in income tax would impact on the amount they were able to claim for every pound donated through Gift Aid, a tax relief on donations which charities can reclaim to boost the value of a donation. Some charities feared it would lead to a funding shortfall to the sum of £90 million.

Mr Darling also announced reform changes to the Gift Aid scheme which will see the lessening of auditing penalties imposed on charities for record-keeping mistakes. The measures were announced following a consultation by HM Revenue & Customs (HMRC) with charitable organisations about changes to the

Gift Aid system that would see charities claiming Gift Aid at a fixed annual rate. Although this proposal was not followed through by Mr Darling, many charitable organisations have welcomed the Chancellor's reform proposals.

The National Council of Voluntary Organisations (NCVO) said in its reaction to the Budget: "We welcome reforms to Gift Aid which will make it easier for many charities to maximise the income they receive from donations. In particular, we welcome measures to ease the existing onerous auditing process which can prevent charities from using Gift Aid altogether."

John Low, CEO of the Charities Aid Foundation (CAF), said: "Gift Aid is a generous tax relief. This announcement means that every pound given by a UK taxpayer will continue to be worth £1.28 for their charity."

Lindsay Boswell, Chief Executive of the Institute of Fundraising, said: "Supporting charities and voluntary and community sector organisations to maximise their fundraised income is at the heart of the Institute's work and we are very pleased that these important support resources will be able to continue through Government funding."

"We are delighted that many of the issues raised by the sector in the course of the HM Treasury-led review of Gift Aid have been recognised and action is now being taken. Ensuring that Gift Aid and other forms of tax-effective giving reach their full potential requires a partnership between the sector and Government."

According to Ed Miliband, Minister for the Cabinet Office, the measure introduced by the Chancellor place the third sector 'at the top of the Government's agenda'. After the Budget was announced, Mr Miliband said: "The Government has listened to the sector and in a difficult fiscal climate, has found an extra £300 million over three years to support charities. I know that this will be money that will make our society fairer and more just."

Some third sector experts fear that, although the Chancellor has acted in good faith, his actions will have been in vain if Gift Aid take-up does not increase - the extra cash will only be available to charities if more taxpayers are aware of the scheme and opt in to a charity's enquiry as to whether it can claim Gift Aid on a donation. In support of the Gift Aid announcements, the Government has launched a dedicated Gift Aid web information service and toolkit at www.direct.gov.uk/giftaid.

