

## INSIGHT

### Charities (Regulation and Administration) (Scotland) Act 2023

Since the enactment of the Charities and Trustee Investment (Scotland) Act 2005 and the Office of the Scottish Charity Regulator (OSCR) taking on its full regulatory powers in 2006, there has been little change to charity law and regulation in Scotland.

Of course, the sector itself has grown and evolved and in recognising this the Scottish Government has indicated a wider review of Scottish charity law will follow the enactment of the new Charities Act.

The Scottish government says the Act “aims to strengthen and update the current legislative framework, increase transparency and accountability and maintain public trust and confidence in the sector.”

So, what changes will we see?

#### Main changes proposed by the Bill

##### **Publish trustee names**

To promote more effective regulation of Scottish charities OSCR will keep an internal database with contact details for charity trustees, publish the names of all charity trustees in the Scottish Charity Register and create a publicly searchable record of removed charity trustees.

##### **Expanded criteria for trustee disqualification**

The Act seeks to expand the criteria for the automatic disqualification of charity trustees and extend the criteria to individuals who hold senior management positions in charities.

##### **Increase OSCR's powers**

OSCR will be able to investigate former charities and their charity trustees. OSCR will also be able to issue positive directions to charities by requesting them to undertake a specific action, something which they could not previously do when carrying out formal inquiries. The Act also allows OSCR to appoint interim trustees in specific circumstances.

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### Publish unredacted annual accounts for every charity

OSCR will publish accounts for all charities on the Scottish Charity Register. If a charity repeatedly fails to meet their annual filing obligations, OSCR will have a new power to remove such charities from the Scottish Charity Register.

### Create a record of charity mergers

Where a charity changes its structure by merging in favour of a newly established charity, amalgamating or transferring assets to a different legal form (eg incorporating), any legacies due to the “old charity” will not be lost but instead be captured by the new entity via this mechanism.

### Strengthen the connection to Scotland

Currently charities with no connection to Scotland, if they meet the Scottish charity test, must be registered by OSCR. The Act now requires charities to demonstrate their connection to Scotland, and this is aimed to apply to both current and new charities. This change gives OSCR a power to remove charities already on the register that cannot demonstrate this connection.

### Endowments

Generally statutory charities cannot alter their constitutions via OSCR’s reorganisation processes, leaving them with no option but to pursue a cy-près scheme via the Court of Session, or depending on their constitution, to petition the Privy Council, Scottish Government or Westminster Government. The Act simplifies existing provisions to allow OSCR to reorganise statutory charities with assets which comprise solely of endowments.

### Regulatory

When applying for OSCR’s prior consent, charities must wait 42 days to adopt the changes once consent has been granted. The Act removes this obligation – a small but helpful change. Currently two charities cannot have the same name – this causes problems for charities seeking to incorporate (eg a trust to a SCIO). The Act remedies this position but does not detract from the rules designed to protect charities names.

### Practical tips to get ready for the implementation of the Bill

#### Focus on your governance building blocks

- Is your charity’s constitution fit for purpose?

- Does your constitution promote effective and cohesive board decision making?
- Do your activities further your charitable purposes?
- Is your legal structure clear and understood by trustees, senior management and stakeholders?

### What does your trustees’ annual report say?

If your charity’s accounts are not currently published, make sure your trustees’ annual report is well drafted and highlights key successes and learning points for the year. Your accounts are a “shop window” and can help support fundraising, trustee recruitment, future partnerships, for example.

### Information is key

Stay informed. Sign up to OSCR’s regular updates and ask us should you wish to understand more about how these legislative changes may impact your charity.

*“There’s no getting away from the fact that much of this Bill is about technical and regulatory processes and improvements. But, for public trust and confidence in the third sector, it has the potential to be an excellent piece of work, and the catalyst for wider review of charity law.”*

Helen Kidd, Partner, Head of Charities and Third Sector

If you have any questions regarding the Bill or would like to discuss any other matters affecting your organisation, please get in touch with Helen Kidd.



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