

United Kingdom - Scotland

Governance and Compliance

Like the Charity Commission for England and Wales, the Office of the Scottish Charity Regulator (OSCR) is a non-ministerial government department set up to provide a one-door regulatory office which encompasses the functions of registration, monitoring, supervision, investigation, support and information for the Scottish charitable sector. OSCR effectively took over responsibility for charitable status within Scotland from HMRC and many charities registered in England and Wales now find themselves obliged to register with OSCR in order to comply with changes in Scottish legislation passed since the Office's establishment. However, there is no comparable requirement for Scottish charities which operate in England and Wales to register with the Charity Commission.

As in England and Wales, charitable companies in Scotland are subject to dual regulation under both charity and company law. A new vehicle for charitable activity, the Scottish charitable incorporated organisation (or SCIO) which would be regulated solely under charity law should be available from April 2011 under Chapter 7 of the Charities and Trustee Investment Act (Scotland) 2005 ("the Act").

One of the primary tenets of the Act was that OSCR should monitor all charitable activities in Scotland regardless of a charity's origins, to ensure consistency and fairness throughout the sector. This reflects the underlying purpose of OSCR: to increase and maintain public confidence in the accountability of the charitable sector as a whole, following an apparent crisis of confidence over the expenditures of a number of major Scottish charities in recent years. New charities wishing to obtain the relevant tax benefits as a charity will still need to be recognised as eligible by HMRC, subsequent to registration with OSCR.

The Public Services Reform Act 2010, which came into force in August 2010, places further obligations on charities operating in Scotland. These include a requirement to publicise charity information on websites and the need to apply to OSCR for consent to reorganise restricted funds or appoint additional trustees (in the absence of constitutional power). The Act has also clarified that charities are permitted to purchase indemnity insurance for their trustees.

Charitable purposes

It should be noted that an organisation which can carry out activities as a registered charity under English law is not automatically charitable under Scottish law. The two-stage 'charity test' for registration requires charities to have exclusively charitable purposes and to provide public benefit. Importantly, the 'public benefit' test in Scotland is one of activities rather than a test of objects; an organisation is qualified as charitable only if it can show that it is actually providing public benefit rather than simply being established with public benefit in mind.

There are sixteen descriptions of charitable purposes set out in the Act, as opposed to the thirteen descriptions in the English and Welsh legislation (the purposes that are charitable



under the Act are broken down into narrower categories than those in the Charities Act 2006). Many UK charities registered in England and Wales may have to amend their charitable objects to include a phrase defining 'charitable purpose' as meaning a purpose that is regarded as charitable in the law of England and Wales and that of Scotland. New and existing charities registered with the Charity Commission for England and Wales are still required to register in with OSCR if they own or rent premises, claim relief on non-domestic rates from a local authority, hold open meetings, or charge for events in Scotland. Charities seeking to engage in any substantive activity in Scotland will generally have to register with OSCR, regardless of their registered status elsewhere.

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Philanthropy Impact: www.philanthropy-impact.org

Philanthropy Impact (incorporates EAPG, Philanthropy UK and the Philanthropy Advisors Forum). It was launched on 3 December 2012.