

## **For Information**

Agenda Item: 11.1  
Date of Meeting: 21/05/25

**To:** The Management Committee  
**From:** The Director  
**Subject:** Forthcoming changes to Charity Law

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### **1. Introduction and Purpose**

- 1.1 Committee may recall that I presented a brief report at last August's meeting on changes to Charity Law, which included information provided by our solicitors, SHR and OSCR. Some of the changes had already come into effect from 1<sup>st</sup> April 2024 and more were planned for this year.
- 1.2 The purpose of this report is to advise Committee of the changes coming into effect over this Summer, for its information.

### **2. Background**

- 2.1 The Charities (Regulation and Administration) (Scotland) Act 2023 came into effect in April 2024 and introduced a number of changes to charity regulation. For ease I have attached the information from OSCR and our solicitor that was presented as part of my report for the August 2024 meeting.
- 2.2 As can be seen from the information from OSCR, a summary of future changes was provided, stating that the last of these would come into force in Summer 2025.

### **3. Upcoming Changes to Charity Law**

- 3.1 The following information is taken from OSCR's (Office of Scottish Charity Regulator) website:

From this summer, all charities need to be aware of three changes that will affect them. The changes relate to:

- Providing trustee details to OSCR and the publication of trustee names
- Publication of all charity accounts
- Automatic disqualification

## Providing trustee details and publication of trustee names

- 3.2 Charity trustees are the individuals responsible for the overall control and management of a charity. They may be referred to in your charity as directors or committee members, but legally, they are recognised as 'charity trustees'. Starting in summer 2025, OSCR will require charities to submit the following details for each charity trustee:
1. Name
  2. Home address
  3. Email address
  4. Telephone number
  5. Date of birth
  6. Date of appointment as a charity trustee
- 3.3 These details will be kept securely and used by OSCR to help us regulate charities more effectively and to contact trustees where we need to. The first and last name of each charity trustee will be published on the Scottish Charity Register from the end of 2025. This will enhance transparency and public trust, allowing donors, funders, and the public to see who is responsible for governing each charity. Individual trustees will be able to apply for their name not to be published. OSCR grants an exemption to a small number of individuals who are able to prove that publication of their name is likely to affect the safety or security of any person or premises. OSCR will provide more details of how the application process will work when data collection begins.
- 3.4 Committee is reminded that Committee Members' names (first and last name) are published on our own website and are provided as part of the annual return to the Financial Conduct Authority (FCA) which is a published document.

## Publication of all Charity Accounts

- 3.5 Each year, all charities registered in Scotland must submit their accounts to OSCR, which include:
1. Annual accounts
  2. A Trustees' Annual Report
  3. An external scrutiny report
- 3.6 The accounting, reporting and notification requirements charities have been following will remain unchanged. Please continue to submit your annual return to OSCR at your usual time.

- 3.7 From the end of 2025, the annual returns from every Scottish charity submitted will appear next to the charity's entry on the public Scottish Charity Register. Each annual return submitted after the Law is introduced will be visible for 5 years. These documents will be published in exactly the same format as they have been sent, and OSCR **will no longer delete any personal information from these documents prior to publication.**
- 3.8 This change benefits both charities and the public. By publishing annual reports and accounts, charities can demonstrate their financial stewardship, transparency, and effectiveness. Donors, funders, and the wider public will have easy access to those published accounts and any other documents submitted by charities.
- 3.9 OSCR has provided further advice in relation to this matter as follows:
- consider what information to include in your accounts before drafting them. Some personal data is required by the legislation, such as the names of charity trustees (unless an exemption has been granted by OSCR). However, you may want to consider if it is appropriate to include the names and images of other volunteers or beneficiaries.
  - make sure your accounts can easily be displayed online, with a PDF document being the most preferable option.
  - consider adding digital or typed signatures, rather than handwritten.
  - make sure that submitted information is accurate and on time.
- 3.10 Committee is reminded that as part of the annual return to FCA a copy of our financial statements (annual accounts) is attached which are published on its website as part of the return. All social landlords' accounts are also published on the Scottish Housing Regulator's website.

#### Automatic Disqualification

- 3.11 Currently, the 2005 Act sets out criteria that automatically disqualify a person from being a charity trustee. The changes expand existing criteria in two ways:
- **Firstly**, it expands the range of criteria that result in automatic disqualification. Newly introduced criteria include convictions for terrorism, money laundering, bribery, and perverting the course of justice.
  - **Secondly**, the criteria now relate to people undertaking a senior management function for a charity. This includes any person undertaking work of a senior nature, which may or may not be reflected in their job title. It will also include volunteers who undertake a senior management function.

- 3.12 Individuals will be responsible for checking whether they meet any of the criteria that result in automatic disqualification.
- 3.13 OSCR has the power to waive automatic disqualification in only very specific circumstances.
- 3.14 Currently you are automatically disqualified from being a charity trustee if:
- you have a conviction for an offence involving dishonesty
  - are disqualified as a company director
  - have an undischarged bankruptcy or protected trust deed or
  - have been removed as a trustee by the Court.
- 3.15 The criteria now also includes:
- conviction of offences under bribery legislation
  - conviction under proceeds of crime legislation
  - conviction for perverting the course of justice
  - a conviction of terrorism or association with proscribed terrorist group
  - misconduct or negligence as a public official
  - disobedience with an order of court and
  - sexual offences subject to notification
- 3.16 OSCR has provided advice that charities should:
- Determine who within your charity is undertaking a senior management function.
  - Confirm with trustees and those undertaking a senior management function that they don't meet any of the criteria for automatic disqualification.
- 3.17 Committee is reminded Rules 36.4 and 42 set out who is not eligible to be a Committee Member and covers the matters that currently relate to automatic disqualification from being a charity trustee. We currently have an eligibility declaration (based on rules 36.4 and 42) which must be signed by anyone applying to join the Committee and is also signed annually by all existing Committee Members.

#### **4. Next Steps**

- 4.1 In preparation of the above changes coming into force, we will undertake the following:
- Devise a form for Committee Members/Trustees to complete to gather the details set out in para 3.2 which will subsequently be submitted to OSCR. Committee is reminded that the only details from those

submitted which will be published are the first and last names of Committee Members/Trustees;

- For the financial statements which will be presented to Committee for approval on 13<sup>th</sup> August, we will have the copies for signing but will also have a version with just the signatories' names typed which will be submitted to OSCR when required.
- Obtain further information from our solicitors about the additional disqualification criteria.

## 5. Risk

5.1 We have considered risk in relation to us now being a charitable registered housing association and have identified the key risks under the following risk categories and the measures we have taken to mitigate such risks.

Risk Category	Mitigating Measure
Legislative and Regulatory: <ul style="list-style-type: none"> <li>• Being unaware of any changes to charity law;</li> <li>• Failing to comply with charity regulation requirements</li> </ul>	Notification from SHR  Updates from solicitors (blogs)  Regular checks of OSCR website  Agreement between OSCR and SHR that SHR will be main regulator

## 6. Delivery of our Strategic Objectives

Area	Related Strategic Objective(s)
Charity Law Changes	7) Achieve the highest standards in all that we do

## 7. Application of our Core Values

Area	Related Core Value(s)
Charity Law Changes	<ul style="list-style-type: none"> <li>• Accountable and Compliant;</li> <li>• Efficient and Responsible;</li> <li>• Excellent and Committed</li> </ul>

## 8. Compliance and Assurance

- 8.1 Ensuring we are keeping up to date with changes to charity law and making the necessary preparations to ensure our compliance means we are complying with legal and regulatory requirements.

Compliance Source	Details
Charities (Regulation and Administration) (Scotland) Act 2023	<p><b>Changes coming into force in Mid 2025:</b></p> <ul style="list-style-type: none"><li>• Details of all trustees to be submitted to OSCR and publication of first and last names of trustees;</li><li>• Publication of all charity accounts;</li><li>• Expansion of automatic disqualification criteria</li></ul>
The Standards of Governance and Financial Management for RSLs	<p><b>Standard 1</b> - The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.</p> <p><b>Guidance 1.3</b> - The governing body ensures the RSL complies with its constitution and its legal obligations. Its constitution adheres to these Standards and the constitutional requirements set out below.</p>

### 8.2 Evidence Bank

Evidence	Assurance Exercise Location
<ul style="list-style-type: none"><li>• Report and attachments for 21/05/25 meeting;</li></ul>	<ul style="list-style-type: none"><li>• Regulatory Standard 1 – Guidance 1.3</li></ul>

- 8.2.1 Committee is reminded that our Assurance Exercises are available in the Committee Log-in Area of our website, which Committee can access at any time.

## 9. Summary

- 9.1 There are upcoming changes to charity law following the introduction of The Charities (Regulation and Administration) (Scotland) Act 2023 which came into effect on 1<sup>st</sup> April 2024. Section 3 sets out what these changes

are with Section 4 covering the steps we need to take to prepare for the changes coming in over the Summer.

- 9.2 Section 5 has considered risk in relation to charity law changes.
- 9.3 Section 6 shows how being aware of charity law changes and preparing for them, links to the delivery of our strategic objectives.
- 9.4 Section 7 shows how being aware of charity law changes and preparing for them, links to the application of our Core Values.
- 9.5 Section 8 sets out how we comply with Legal and Regulatory requirements.
- 9.6 The Committee is asked to note the information contained in this report and attached documents and that preparations are underway for ensuring our compliance when these changes come into effect.

## **Extract from OSCR's website.**

### **Charity law has changed**

The first of the changes to charity law contained in the Charities (Regulation and Administration) (Scotland) Act 2023 came into effect yesterday, 1 April 2024.

Removing charities that fail to submit accounts and to respond to OSCR

The 2023 Act gives OSCR the power to remove charities from the Scottish Charity Register that have failed to submit accounts on time and failed to engage with OSCR about putting this breach of trustee duties right.

Every year, charities must submit accounts to OSCR within 9 months of their financial year end, and if they fail to do this OSCR, members of the public and potential beneficiaries and donors cannot be assured that those charities are effectively using charity resources for charitable purposes.

This month we will be notifying over 100 charities of our intent to remove them from the Register, and you will be able to [find further details of the charities involved](#).

If you advise or work with any of these charities, please bring this notification to the attention of the charity trustees.

Where any of these charities re-engage with OSCR we will expect them to bring their reporting up to date in order to maintain their registration. Where we don't hear from these charities, we will proceed to remove them in line with the process set out in the 2023 Act.

Increased inquiry powers

We also have a number of new powers to help us work more effectively to protect charities and their assets. They include:

- **Power to direct charities to take particular actions:** This will allow us to compel changes and improvements that need to be made in a charity. Our current powers only allow us to instruct a charity not to do certain things. This positive power will allow us to respond flexibly and appropriately to the wide range of situations we encounter. We want to focus on achieving beneficial outcomes from the use of this power and will use it where appropriate. The power does not relieve charity trustees from their responsibilities and legal duties in running the charity – we will not for example use it to take sides in a dispute.
- **Power to appoint interim trustees:** Using this power, we will be able to help charities where the number of charity trustees in place is less than the number needed to appoint more trustees and the charity's governing document doesn't specify how to deal with that situation. Specific criteria must be met to allow us to do this. [More guidance is provided](#).

- Power to inquire into former charities and former charity trustees: This will extend the reach we have to make inquiries into organisations that are no longer charities and individuals who were previously charity trustees. This extension of our powers will enhance our ability to deal with situations and issues that may cause concern to the public.
- Changes to OSCR's powers to require charities and others to provide information: The timescales involved here will be clarified and the process streamlined, providing benefit to the progress of our inquiries.

#### A charity's connection to Scotland

From now, OSCR must refuse an application to be registered as a charity from organisations that have no or a negligible connection with Scotland. To decide on this, we will need to look at factors including whether the organisation has a principal office in Scotland, occupies premises or carries out activities here. Our experience so far indicates that this will not be an issue for the overwhelming majority of applicants. Most of these are SCIOs (Scottish Charitable Incorporated Organisations), which in any case have always required to have a principal office address in Scotland. However, the new measure will ensure that we can deal with issues where they arise with organisations applying under other legal forms.

The requirement to have a connection to Scotland will apply to existing charities on the Scottish Charity Register from 1 October 2024, but we are already in touch with the charities we are aware of that are likely to be affected to try to resolve the issues involved.

#### Other changes

In addition to the changes above, the 2023 Act has made minor changes to simplify interactions between charities and OSCR and provide more flexibility. In particular:

- Charities are no longer required to give OSCR 42 days' notice of changes which require our consent (like changes to charity name, purposes in the constitution or dissolution).
- OSCR can enter two charities on the Scottish Charity Register with the same name when there is a merger of charities – for instance, when an unincorporated charity is winding up and transferring its assets to a new SCIO, the new SCIO can be registered under the same name as the unincorporated one.

We will also be able to take action where the working or 'known as' name of a charity or an applicant for registration is misleading, offensive or too similar to another charity's name, as we do now for charities' legal names.

The rules on a charity paying charity trustees or a person connected to them under a contract of employment or for services have been tightened up. In order for payment to be made by the charity less than half the total number of charity trustees should be paid

or be connected to a person who is being paid. You can read more about this in our [guidance and good practice for charity trustees](#).

OSCR's [guidance](#) has been updated to reflect the changes now in place.

#### The future

Some further measures will commence on 1 October 2024. Under the most important of these, OSCR will provide a publicly searchable record of individuals who have been permanently disqualified by the Courts from being a charity trustee so that charities can carry out due diligence on prospective new trustees.

The remaining parts of the 2023 Act are planned to come into force in summer 2025. This should give charities and OSCR the time needed to prepare for these changes, which include:

- publication of charity annual reports and accounts
- a schedule of charity trustees
- publication of trustee names
- a record of charity mergers; and
- updates to the disqualification criteria for charity trustees.



Are you a charity? Are you aware of the changes which are coming into force as of 1 April 2024?

As from 1 April 2024, various elements of the Charities (Regulation and Administration) (Scotland) Act 2023 will be coming into force and will include:

- **OSCRs increased inquiry powers;**
- **OSCR being able to remove charities that fail to submit accounts and fail to communicate with OSCR; and**
- **OSCR refusing a charitable application where there is no clear connection to Scotland.**

A brief summary of these changes are as follows:

**Increased inquiry powers** will give OSCR the power to:

- **Direct charities to take particular actions. Currently they only have the power to instruct a charity not to do something.**
- **Appoint interim trustees. This will allow OSCR to assist the charity in certain situations whereby they cannot function due to a lack of charity trustees.**
- **Inquire into former charities and former charity trustees.**

- **Require charities and others to provide information.**

### **Remove charities that fail to submit accounts and to respond to OSCR**

If a charity has failed to submit accounts on time (within 9 months of their financial year-end) and has not been in correspondence and/or communicated with OSCR; OSCR will be able to notify the charity that they intend to remove them from the charity register.

### **Refusal of charitable application when there is no clear connection to Scotland**

Does your organisation have its principal office in Scotland? Do you occupy premises in Scotland? OSCR now have the power to refuse an application to register a charity where there is no clear connection to Scotland. For all organisations who wish to apply for charitable status, you should be making steps now to ensure that you do not fall foul of these requirements.

In addition to the changes noted above, there will be changes which will have an impact on charities depending on the circumstances, including:

- 1. There will no longer be a requirement to give 42 days' notice of changes that require OSCR's consent, i.e. change to your charity's purposes, changing your charity's name and/or dissolution. Currently you require to have made an application at least 42 days before the change is planned with OSCR aiming to give you a decision within 28 days. It is unclear how removal of the 42 days' notice will work in practice however it seems to suggest that this will make the process more streamlined.**
- 2. OSCR will be able to take action where they feel that the trading name ("known as" name) is misleading, offensive or too similar to another charity's name. Currently OSCR only has power in relation to the charity's registered name.**
- 3. When there is a proposed merger of two charities, they can enter both charities on the charity register with the same name. This is a notable change as currently when merging two charities, i.e. where an unincorporated charity is winding up and transferring its assets to a new SCIO, the new charity has to be incorporated with a different name. Only once the unincorporated charity has been wound up, is it able to change the name of the new SCIO back to the original charity name. In the past, this has caused confusion for the charity going through this process and for their trustees, suppliers, and banks. This process should hopefully make things significantly smoother and simpler.**

At a later date, further additional amendments will be brought into force in relation to the new Act. These further amendments include creating a searchable record of those individuals who have been disqualified as charity trustees; updates to the disqualification criteria for charity trustees; a record of charity mergers; a schedule of charity trustees and most significantly a publication of charity trustee names. **We will publish a further blog on the subject of the Charities (Regulation and Administration) Scotland Act 2003 as and when the further amendments come into force.**