



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 1

### CHARITIES

#### CHAPTER 6

##### CHARITY ACCOUNTS

*Duty to keep accounts etc.*

#### 44 Accounts

- (1) A charity must—
  - (a) keep proper accounting records,
  - (b) prepare for each financial year of the charity a statement of account, including a report on its activities in the financial year,
  - (c) have the statement of account independently examined or audited, and
  - (d) after such examination or audit, send a copy of the statement of account to OSCR,in accordance with regulations under subsection (4).
- (2) Accounting records kept in pursuance of subsection (1)(a) must be preserved by the charity for 6 years from the end of the financial year in which they are made.
- (3) Subsection (2) is without prejudice to any other enactment or rule of law.
- (4) The Scottish Ministers may by regulations make provision about the matters referred to in subsection (1) including—
  - (a) the meaning of “financial year”,
  - (b) the information to be contained in the accounting records and statement of account,

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- (c) the manner in which that information is to be presented,
  - (d) the keeping and preservation of the accounting records,
  - (e) the methods and principles according to which, and the time by which, the statement of account is to be prepared,
  - (f) the time by which the copy statement of account is to be sent to OSCR,
  - (g) examination or audit of the statement of account,
  - (h) such other matters in relation to the accounts of a charity as the Scottish Ministers think necessary or expedient.
- (5) Regulations under subsection (4) may make different provision in relation to different types of charity, including provision exempting charities of a particular type from some or all of the requirements of this section.

#### Commencement Information

- I1** S. 44 in force at 1.1.2006 for specified purposes by S.S.I. 2005/644, art. 2(1), **Sch. 1**
- I2** S. 44 in force at 1.4.2006 in so far as not already in force by S.S.I. 2006/189, art. 2(1), **Sch. Pt. 1**

## 45 Failure to provide statement of account

- (1) This section applies where a charity fails, within such period as is specified in regulations under section 44(4), to send a copy of a statement of account to OSCR in pursuance of subsection (1)(d) of that section.
- (2) OSCR may, after notifying the charity of its intention to do so, appoint a suitably qualified person (an “appointed person”) to prepare such a statement of account.
- (3) An appointed person is entitled—
- (a) on giving reasonable notice, to enter premises occupied by the charity at all reasonable times,
  - (b) to have access to, and take possession of, any document appearing to the appointed person to relate to the financial affairs of the charity, and
  - (c) to require any charity trustee, or agent or employee, of the charity to give the person such assistance, information or explanation as the appointed person may reasonably require.
- (4) The charity trustees of the charity are personally liable jointly and severally for—
- (a) any costs incurred by OSCR in relation to the appointment of the appointed person, and
  - (b) the expenses of the appointed person in performing that person's functions under this section.
- (5) The appointed person must—
- (a) send to OSCR the statement of account prepared in pursuance of subsection (2),
  - (b) submit to OSCR a report on the affairs and accounting records of the charity, and
  - (c) send a copy of the statement of account and report to each person appearing to the appointed person to be a charity trustee of the charity.

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- (6) A person who, without reasonable excuse, refuses or fails to comply with a requirement of an appointed person under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Commencement Information**

**I3** S. 45 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

*Duty to report matters to OSCR*

**46 Duty of auditors etc. to report matters to OSCR**

- (1) This section applies to—
- (a) any person appointed to carry out an independent examination or audit of a charity's statement of account (including, in the case of a charity which is a company, any person appointed as auditor under [F1 Chapter 2 of Part 16 of the Companies Act 2006 ]), and
  - <sup>F2</sup>(b) .....  
who is acting in the appointed capacity.
- (2) A person to whom this section applies who becomes aware of any matter—
- (a) which relates to the activities or affairs of—
    - (i) the charity, or
    - (ii) any institution or body corporate connected to that charity, and
  - (b) which the person has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by OSCR of its functions under section 28, 30 or 31,
- must immediately report on the matter to OSCR.
- (3) A person to whom this section applies who becomes aware of any matter—
- (a) which does not appear to the person to be one which the person is required to report under subsection (2), but
  - (b) which the person has reasonable cause to believe is likely to be relevant for the purposes of the exercise by OSCR of any of its functions,
- may report on the matter to OSCR.
- (4) A duty or power which arises under subsection (2) or (3) is not affected if the person in relation to whom it arises subsequently stops acting in the capacity mentioned in subsection (1).
- (5) An institution or body corporate is connected to a charity if—
- (a) it is an institution which is controlled (whether directly or through one or more nominees) by, or, as the case may be
  - (b) it is a body corporate in which a substantial interest is held by, the charity or any one or more of the charity trustees acting in that capacity.
- (6) Section 105 sets out when a person is to be treated as controlling an institution or as having a substantial interest in a body corporate.

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#### Textual Amendments

- F1** Words in s. 46(1)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), **Sch. 1 para. 241(2)(a)** (with arts. 6, 11, 12)
- F2** S. 46(1)(b) omitted (6.4.2008) by virtue of [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), **Sch. 1 para. 241(2)(b)** (with arts. 6, 11, 12)

#### Commencement Information

- I4** S. 46 in force at 1.4.2006 by [S.S.I. 2006/189](#), art. 2(1), **Sch. Pt. 1**

### *Dormant charity accounts*

#### 47 Dormant accounts of charities

- (1) Subsection (3) applies where—
- (a) a relevant financial institution (whether or not in response to a request from OSCR) informs OSCR that every account held by the institution in the name of or on behalf of a body appearing to the institution to be a relevant body is dormant,
  - (b) OSCR is satisfied that the body is a relevant body, and
  - (c) OSCR is unable, after making reasonable inquiries, to locate any person concerned in the management or control of the body.
- (2) A relevant body is one which is, has at any time been or, in the case of a body which has ceased to exist, was prior to such cessation—
- (a) a charity, or
  - (b) entitled by virtue of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) to describe itself as a “Scottish charity”.
- (3) OSCR must transfer the amount standing to the credit of the relevant body in the dormant accounts (less any amount which it is authorised by regulations under section 48(1) to retain) to—
- (a) such charity as OSCR may determine, having regard to the purposes of the relevant body and the purposes of the charity, or
  - (b) where OSCR is unable to ascertain the purposes of the relevant body, to such charity as OSCR considers appropriate.
- (4) For the purposes of subsection (3), OSCR may effect any transaction in relation to the dormant accounts (including a transaction closing any such account).
- (5) Where under subsection (3) OSCR transfers an amount to 2 or more charities, it may divide the amount among those charities as it thinks fit.
- (6) A charity to which an amount is transferred under this section may apply the amount for its purposes as it thinks fit.
- (7) The receipt by—
- (a) OSCR of an amount withdrawn or transferred from an account by virtue of this section is a complete discharge of the relevant financial institution, or

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- (b) a charity of an amount received from OSCR by virtue of this section is a complete discharge of OSCR,  
in respect of the amount.
- (8) OSCR's power under subsection (3) ceases—
  - (a) if the relevant financial institution by which the accounts are held informs OSCR that the accounts (or any of them) are no longer dormant, or
  - (b) if OSCR becomes aware of the identity of a person concerned in the management or control of the relevant body and informs the relevant financial institution of that fact.

#### Commencement Information

**I5** S. 47 in force at 1.4.2006 by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

### 48 Dormant accounts of charities: procedure and interpretation

- (1) The Scottish Ministers may, by regulations, make provision as to—
  - (a) the procedure to be followed by OSCR under section 47,
  - (b) the extent to which OSCR, in transferring an amount under subsection (3) of that section, may retain a sum in respect of its expenses in exercising its functions under that section.
- (2) An account is dormant for the purposes of section 47 if no transaction other than—
  - (a) a payment into the account, or
  - (b) a transaction effected by the relevant financial institution holding the account, has been effected in relation to the account within the period of 5 years immediately preceding the dormancy date.
- (3) An account is no longer dormant for the purposes of that section if a transaction other than—
  - (a) a payment into the account,
  - (b) a transaction effected by the relevant financial institution holding the account, or
  - (c) a transaction effected by OSCR in pursuance of subsection (3) of that section, is effected after the dormancy date.
- (4) The dormancy date is the date on which the institution informs OSCR as mentioned in section 47(1)(a).

#### Commencement Information

**I6** S. 48 in force at 1.1.2006 for specified purposes by S.S.I. 2005/644, art. 2(1), Sch. 1

**I7** S. 48 in force at 1.4.2006 in so far as not already in force by S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

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