

SCHEDULE

(introduced by section 19)

FURTHER MODIFICATION OF THE 2005 ACT

Annual reports by OSCR: action taken to promote awareness and understanding of the 2005 Act

- 1 (1) Section 2 (annual reports) of the 2005 Act is modified as follows.
 - (2) After subsection (1), insert—
 - “(1A) A general report must include information about what action OSCR has taken during that year to promote charities’ awareness and understanding of what they need to do to comply with the provisions of this Act.”.
 - (3) In subsection (3), for “It” substitute “Subject to subsection (1A), it”.

Duty to review Register

- 2 (1) Section 3 (Scottish Charity Register) of the 2005 Act is modified as follows.
 - (2) In subsection (6)—
 - (a) in the opening words, the word “must” is repealed,
 - (b) in paragraph (a)—
 - (i) at the beginning, insert “may, ”,
 - (ii) for “each”, substitute “any”,
 - (c) at the beginning of paragraph (b), insert “must, ”.

Removal of former bodies

- 3 (1) Section 3 (Scottish Charity Register) of the 2005 Act is modified as follows.
 - (2) In subsection (6)—
 - (a) after paragraph (a), the word “and” is repealed,
 - (b) after paragraph (b), insert “, and
 - (c) must, if an entry is in respect of a body which has ceased to exist, remove the entry.”.

Ability to allow duplicate charity names as part of merger

- 4 (1) The 2005 Act is modified as follows.
 - (2) In section 5 (determination of applications), after subsection (2), insert—
 - “(3) Despite subsection (2)(a), where—
 - (a) an applicant’s name falls within section 10 only because it is the same as, or too like, the name of a charity, and
 - (b) the application for entry in the Register is being made as part of a proposed charity merger (within the meaning of section 64A(2)) involving that charity,OSCR is entitled, but not required, to refuse to enter the applicant on the grounds of the applicant’s name.”.

Status: This is the original version (as it was originally enacted).

(3) In section 12 (power of OSCR to require charity to change name), after subsection (3), insert—

“(3A) But, for the purposes of subsection (3)(a), where—

- (a) a charity's name falls within section 10 only because it is the same as, or too like, the name of another charity, and
- (b) one of the charities was entered in the Register with that name by virtue of section 5(3),

OSCR may direct either one or both of the charities to change its name under subsection (3)(a) only if OSCR is satisfied that it is no longer appropriate for the names to be the same or so alike.”.

Change of name: delaying decision or granting or refusing consent

5 (1) The 2005 Act is modified as follows.

(2) In section 11 (change of name)—

(a) in subsection (3)—

(i) for “, directs the charity not to change its name,” substitute “—

- (a) refuses its consent, or
- (b) directs the charity not to change its name to that proposed new name for a period of not more than 6 months specified in the direction,”

(ii) the words “OSCR is to be taken as having given its consent.” become the closing words,

(b) after subsection (3), insert—

“(3A) A direction under subsection (3)(b)—

- (a) may be revoked at any time,
- (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.

(3B) Where OSCR gives such a direction it must, after making such inquiries as it thinks fit—

- (a) give its consent, whether or not subject to conditions, or
- (b) refuse its consent.”.

(c) in subsection (4)—

(i) the words “it considers that the proposed new name falls within section 10” become paragraph (a),

(ii) after paragraph (a) (as formed), insert “, or

- (b) it is unable, after making reasonable inquiries, to satisfy itself that the proposed new name does not fall within section 10.”.

(d) after subsection (4), insert—

“(5) OSCR may, at the request of a charity, grant consent to a different proposed new name than that specified by the charity in the notice given by it under subsection (2).”.

(3) In section 71 (decisions), for paragraph (c) substitute—

“(c) refuse to consent to a charity changing name under section 11,”.

Oversight in relation to working names

- 6 (1) The 2005 Act is modified as follows.
- (2) In section 3(3)(e)(i) (Scottish Charity Register), after “12(2)” insert “, (2A)”.
- (3) In section 10 (objectionable names)—
- (a) in subsection (1), paragraph (a), after “name” insert “or working name”,
- (b) after subsection (2), insert—
- “(3) Nothing in this section, or in any of sections 5(2)(a), 11(4), 12(3), 54(4)(a) or 57(3)(a), requires OSCR to undertake any investigation into the working name of a charity.”.
- (4) In section 12 (power of OSCR to require charity to change name)—
- (a) in subsection (1), for “of” to the end substitute “or working name of another charity is the same as or too like its name or working name, request OSCR to conduct a review.”,
- (b) after subsection (2), insert—
- “(2A) OSCR may, if satisfied following such a review that the working name of a charity (“charity A”) is the same as or too like the name or working name of another charity (“charity B”), as appropriate—
- (a) direct charity B to change its name,
- (b) direct either one or both of the charities to stop using its working name within such period as may be specified in the direction.”,
- (c) for subsection (3), substitute—
- “(3) At any other time—
- (a) where OSCR considers that a charity's name falls within section 10, it must direct the charity to change its name,
- (b) where OSCR considers that a charity's working name is objectionable, it may direct the charity to stop using that working name within such period as may be specified in the direction.”,
- (d) after subsection (3A) (inserted by [paragraph 4](#)), insert—
- “(3B) A direction under this section—
- (a) may be revoked at any time,
- (b) may be varied, but only by extending the period specified in it.”,
- (e) in subsection (4), after “this section” insert “to change name”,
- (f) in subsection (5), after “direction” insert “to change name”,
- (g) after subsection (5), insert—
- “(6) For the purposes of subsection (3)(b), a charity's working name is objectionable where it would, if it were the charity's name, fall within section 10(1).”.
- (5) The heading of section 12 becomes “Power of OSCR in relation to charity names and working names”.
- (6) In section 71 (decisions)—

Status: This is the original version (as it was originally enacted).

- (a) in paragraph (d), after “12(2)” insert “, (2A)”,
- (b) in paragraph (e), after “12(2)” insert “or (2A)”.

(7) In section 106 (general interpretation), after the definition of “SCIO”, insert—
 ““working name”, in relation to a charity, means a name that is not the charity’s name but which is used to identify the charity and under which it carries out activities.”.

Giving notice to OSCR: removal of 42 day rule

- 7 (1) The 2005 Act is modified as follows.
- (2) In section 11 (change of name), in subsection (2), the words “, not less than 42 days before doing so,” are repealed.
 - (3) In section 16 (changes which require OSCR’s consent), in subsection (4)—
 - (a) the words “, not less than 42 days before the date on which the action is to be taken,” are repealed,
 - (b) the words “specifying that date” are repealed.

Consent to and notification of changes

- 8 (1) The 2005 Act is modified as follows.
- (2) In section 16 (changes which require OSCR’s consent), at the end of subsection (4), insert “(unless the action is one for which, by virtue of subsection (3), consent under subsection (1) is not required).”.
 - (3) In section 17 (notification of other changes), for subsection (2), substitute—
 “(2) Paragraphs (c) and (d) of subsection (1) are subject to section 16.”.
 - (4) The heading of section 17 becomes “Notification of changes”.

Removal from Register: protection of assets

- 9 (1) Section 19 (removal from register: protection of assets) of the 2005 Act is modified as follows.
- (2) For subsection (1) substitute—
 “(1) A body removed from the Register (under section 18 or otherwise) continues to be under a duty to apply its protected charitable assets—
 - (a) in accordance with its charitable purposes as set out in its entry in the Register immediately before its removal (its “most recent purposes”), and
 - (b) to provide public benefit in Scotland or elsewhere.
 - (1A) In this section, “protected charitable assets” means—
 - (a) any property acquired, or any property representing property acquired, before the body was removed from the Register,
 - (b) any property representing income which accrued before the body was removed from the Register, and
 - (c) the income from any such property.

Status: This is the original version (as it was originally enacted).

- (1B) The application of protected charitable assets in accordance with a body’s most recent purposes is not to be presumed to be for the public benefit.
- (1C) In determining whether a body is applying its protected charitable assets for public benefit, section 8(2) applies subject to the modifications in subsection (1D).
- (1D) The modifications are that—
- (a) in the opening words, the reference to determining whether a body provides or intends to provide public benefit is to be read as if it were a reference to determining whether a body is applying its protected charitable assets for public benefit,
 - (b) in the closing words of paragraph (a), the reference to the consequence of the body exercising its functions is to be read as if it were a reference to the consequence of the body applying its protected charitable assets.”.
- (3) In subsection (2), for “property and income referred to in subsection (1)” substitute “its protected charitable assets”.
- (4) In subsection (4), for “property or income” substitute “protected charitable assets”.
- (5) In subsection (5)—
- (a) in paragraph (a)—
 - (i) for “property or income”, in both places where it occurs, substitute “protected charitable assets”,
 - (ii) before “purposes” insert “charitable”,
 - (b) in paragraph (b), for “property and income” substitute “protected charitable assets”.
- (6) In subsection (7)—
- (a) for “property or income”, in the first place where it occurs, substitute “protected charitable assets”,
 - (b) for “that property or income” substitute “the protected charitable assets”.

Provision of documents: period for compliance

- 10 (1) Section 23 (entitlement to information about charities) of the 2005 Act is modified as follows.
- (2) In subsection (1), the words “in such form as the person may reasonably request” are repealed.
- (3) After subsection (1), insert—
- “(1A) Where a person is entitled to a copy document under subsection (1), the person is entitled to be given it—
- (a) within 28 days of the date on which the request is received by the charity, and
 - (b) in such form as the person may reasonably request.”.

Disclosure of information by and to designated religious charities

- 11 (1) The 2005 Act is modified as follows.
- (2) The heading of section 24 becomes “Disclosure of information by and to OSCR: public bodies or office-holders”.
- (3) After section 24, insert—

“24A Disclosure of information by and to OSCR: designated religious charities

- (1) OSCR may disclose any information to a designated religious charity—
- (a) for any purpose connected with the exercise of OSCR’s functions, or
 - (b) for the purpose of enabling or assisting the charity in relation to the exercise of any supervisory or disciplinary functions in respect of the component parts of the charity.
- (2) A designated religious charity may disclose any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions.”.
- (4) In section 25 (removal of restrictions on disclosure of certain information)—
- (a) in subsection (1), after paragraph (b) insert—
 - “(ba) OSCR from disclosing any information to a designated religious charity for—
 - (i) any purpose connected with the exercise of OSCR’s functions,
 - (ii) the purpose of enabling or assisting that charity in relation to the exercise of any supervisory or disciplinary functions in respect of the component parts of the charity,
 - (bb) a designated religious charity from disclosing any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions,”
 - (b) after subsection (2), insert—
 - “(3) Nothing in this section authorises the making of a disclosure that contravenes the data protection legislation (but in determining whether a disclosure would do so, the provision made in this Act enabling or requiring the disclosure of information as mentioned in paragraphs (a) to (e) of subsection (1) is to be taken into account).
 - (4) In this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018.”.

Retention of accounting records

- 12 (1) Section 44 (accounts) of the 2005 Act is modified as follows.
- (2) In subsection (2), for “in which they are made” substitute “to which they relate”.
- (3) After subsection (2), insert—

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“(2A) Where the charity ceases to be a charity before the end of the period mentioned in subsection (2), the records must be preserved for the remainder of that period by—

- (a) the body which was the charity, or
- (b) where that body ceases to exist, a person notified to OSCR who, immediately before it ceased to exist, was—
 - (i) a charity trustee of the charity, or
 - (ii) where the body was not a charity at that time, concerned in the management or control of the body.”.

(4) In subsection (3), for “Subsection (2) is” substitute “Subsections (2) and (2A) are”.

Ability to appoint person to prepare statement of account

13 (1) Section 45 (failure to provide statement of account) of the 2005 Act is modified as follows.

(2) For subsection (1), substitute—

“(1) This section applies where—

- (a) a charity has failed to send a copy of its statement of account to OSCR in pursuance of section 44(1)(d), and
- (b) the time by which the statement was due to be sent to OSCR by virtue of provision made under section 44(4)(f) has passed.”.

Reports from auditors etc.

14 (1) Section 46 (duty of auditors etc. to report matters to OSCR) of the 2005 Act is modified as follows.

(2) In subsection (2), in the closing words, after “report” insert “in writing”.

Annual returns

15 (1) The 2005 Act is modified as follows.

(2) After section 48, insert—

“Duty to submit annual return

48A Annual returns

- (1) A charity must prepare for each of its financial years an annual return in such form, and containing such information, as may be required by OSCR.
- (2) Such a return must be sent to OSCR by the date by which the charity is, by virtue of provision made under section 44(4)(f), required to send OSCR a copy statement of account in respect of the financial year in question.
- (3) OSCR must publicise any requirements set under subsection (1).”.

Status: This is the original version (as it was originally enacted).

SCIO documents

- 16 (1) Section 52 (name and status) of the 2005 Act is modified as follows.
- (2) After subsection (3), insert—
- “(3A) Regulations under subsection (1) may also require such other information as may be specified in the regulations to be stated in legible characters in the documents referred to in that subsection.
- (3B) Such regulations may—
- (a) exempt SCIOs, or SCIOs of a particular type, from any of the requirements imposed by virtue of subsection (3A),
- (b) provide that any statement required may, in the case of documents which are otherwise wholly or mainly in a language other than English, be made in that other language.”.
- (3) The heading of the section becomes “References in SCIO documents”.

Conversion of charity which is a company or registered society

- 17 (1) Section 56 (conversion of charity which is a company or registered friendly society: applications) of the 2005 Act is modified as follows.
- (2) In subsection (1)(b), “(c.12)” is repealed.
- (3) The heading of the section becomes “Conversion of charity which is a company or registered society: applications”.

Existing powers to make secondary legislation

- 18 (1) The 2005 Act is modified as follows.
- (2) In section 64 (regulations relating to SCIOs)—
- (a) the existing text becomes subsection (1),
- (b) after subsection (1) (as formed), insert—
- “(2) Regulations under subsection (1) may add to, replace or omit any part of the text of an Act (including this Act).”.
- (3) In section 102(b) (ancillary provision), at the end insert “or any provision made under it”.
- (4) In section 103 (orders, regulations and rules)—
- (a) in subsection (3), at the end insert “(including this Act)”,
- (b) in subsection (4), for paragraphs (a) to (f) substitute—
- “(a) an order, regulations or rules specified in subsection (5),
- (b) an order under section 107(2),”,
- (c) in subsection (5), for paragraph (c) substitute—
- “(c) regulations under section 64(1)—
- (i) made by virtue of paragraph (d) of that section, or
- (ii) containing provisions which add to, replace or omit any part of the text of an Act.”.

Trustee remuneration

- 19 (1) The 2005 Act is modified as follows.
- (2) In section 67 (remuneration for services)—
- (a) in subsection (2), for paragraph (b) substitute—
“(b) is connected with a person who provides such services,”
 - (b) in subsection (4)(c), for “charity trustee who falls within sub-paragraph (a) or (b)” substitute “person who is party to an agreement or entitled to receive remuneration as mentioned in paragraph (a) or (b)”.
- (3) In section 68(2)(b) (remuneration: supplementary), after “spouse” insert “or civil partner”.

Notices

- 20 (1) Section 100 of the 2005 Act (notices, applications etc.) is modified as follows.
- (2) After subsection (5), insert—
- “(5A) Subsection (5B) applies where OSCR has cause to believe that giving or making a formal communication to a charity by the means specified in subsection (4)(b) or (5)(b) will not cause it to be received by the charity or, as the case may be, the charity trustee whose name is set out in the charity’s entry in the Register.
- (5B) The communication may also be given or made by OSCR sending it by post in a prepaid registered letter, or by the recorded delivery service, addressed to the charity at such address or addresses as OSCR considers is likely to cause it to be received by the charity or a charity trustee of the charity.
- (5C) Subsection (5D) applies where—
- (a) OSCR has cause to believe that giving or making a formal communication of a specified notice to a charity, body or person by the means specified in subsection (4)(b) or (5)(b) will not cause it to be received by the charity, body or person, and
 - (b) based on the contact details OSCR holds for the charity, body or person, OSCR considers that it is not reasonably practicable to give or make the communication by the means specified in subsection (4) (a) or (c) or (5B).
- (5D) The communication may also be given or made by such other means as OSCR considers appropriate (including, for example, by publishing the notice on its website or in a newspaper).
- (5E) For the purposes of subsection (5C), a specified notice is one given by OSCR under—
- (a) section 45A(2),
 - (b) section 72(1) so far as it relates to a decision referred to in one of the following paragraphs of section 71—
 - (i) paragraph (h),
 - (ii) paragraph (l) (so far as it relates to a direction under section 31(7) or (9)),
 - (iii) paragraph (mb),

Status: This is the original version (as it was originally enacted).

(iv) paragraph (pb).”.

Variation of constitution

21 (1) Section 106 of the 2005 Act (general interpretation) is modified as follows.

(2) In the definition of “constitution”, insert as closing words—

“but where the charity has varied its constitution (by means of a reorganisation scheme or otherwise), a reference to its constitution is a reference to its constitution as so varied.”.