

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005-12-02

CONSULTATION ON PROPOSALS FOR REGULATIONS UNDER SECTION 15 ON CHARITY REFERENCES IN DOCUMENTS

SUMMARY OF QUESTIONS ASKED IN CONSULTATION PAPER

Question 1: Do you agree that all charities should have to follow the same mandatory requirements for references in documents (i.e. no exemptions)? Or do you consider that a financial threshold (such as a gross income of £5,000 pa) should be used to exempt smaller charities? If such an exemption threshold were to be set, what level do you consider is appropriate?

All charities should have to follow the same requirements. This increases transparency, allowing other parties to identify whether or not they are dealing with a charity. SCFDG view charitable status as a privilege which brings accompanying responsibilities.

Question 2: Do you agree that requirements in relation to references in documents should be unchanged for charitable companies registered as companies in Scotland?

See above. Where other regulation requires further information, this should be seen as additional to, rather than replacing, the rules governing charities.

Question 3: Do you agree with the main categories of document proposed to be included in the Regulations as requiring mandatory identification information? Are there other types or examples of document which should be included? Is the format in the Charities Act 1993 (section 5) the best way to describe them?

In general, the documents mentioned are correctly included within the requirements. However, the issue of emails and cheques requires further consideration. The former are increasingly used as a method of communication, albeit still relatively informal, however, if letters and similar communications are to be covered, then some thought needs to be given to emails. Cheques represent resources leaving a charity. As there is no solicitation of funds, it is less important that the charity identifies itself. Combining this with the potential additional costs involved in getting further information printed on cheques and the difficulties that may be encountered by charities which issue payments from a base outside of Scotland, it was felt that cheques could be left outside of any document references regulations. Furthermore, payment by BACS would probably prove awkward to encompass within any regulations. A further category of document that perhaps should fall under any regulations would be those used during direct fundraising. For example, labels on collecting tins or ID cards.

Question 4: Do you agree that the information charities should be required to include on documents is their name (stating that they are a charity if not included in the name)? Should they also be required to include a charity reference number?

A declaration that the organisation is a charity is crucial, and the charity reference number would aid those dealing with the charity to identify it accurately and find out more information should they require.

Question 5: Do you agree that the “normal” charity name which appears on the Register should be included in all formal documents under section 15?

It is important that there is consistency with other regulation. Company law requires ‘proper’ names to be stated and it is our view that charities should be no different. This might prove a tricky area to legislate for. Some trading subsidiaries, whilst not charities themselves, might also like to mention the relationship with a charity, and, if they are presenting themselves as charities they should also be governed. On the other hand, other trading subsidiaries may want to distance themselves from the parent charity believing they will be seen as more ‘commercial’, and this should also be possible. This area could be further complicated when considering those trading subsidiaries which are not wholly owned by parent charities. It is very important that all, and only, charities are able to declare themselves as such. For example, there are not for profit organisations which may think it beneficial to be seen as a charity, or which the public might perceive as charities.

Question 6: Is this the correct approach to documents in other languages?

Provided all the same information is shown on the document, the charity information could appear in the same language. However, this information should also be required in English as this is the ‘common language’ in Scotland.

Question 7: Do you agree that component elements of Designated religious charities should have to provide the additional information, as proposed, on all formal documents?

As in question 1, all separately registered charities should provide the information on the relevant documents. Therefore, the guiding principle behind the registration of a charity (namely, that an independent Trustee body is making the decisions) will drive whether component parts will need to provide information

Question 8: Do you agree that 12 months from the date the proposed regulations come into force is an appropriate period of grace for existing charities to use up existing stationery and make relevant changes?

Twelve months was felt to be sufficient time for charities to make the necessary amendments

Question 9: Does the RIA provide an accurate picture of the impact of the proposed requirements and options? Do you have any comments on the draft RIA? Are you able to provide any further information which might help expand or improve the RIA?

The group was of the opinion that the RIA was satisfactory.

General Comments

1. There was concern about the length of time suggested before Designated National Collectors would also be regulated. We believe this to be a missed opportunity as one of the main drivers for assessing and amending Charity law in Scotland was high profile, negative publicity around this type of activity.
2. Whilst we believe it important that OSCR has sufficient authority to deal with non-compliance, we hope that it will maintain a 'reasonable' view.
3. SCIOs did not appear to be heading towards the kind of organisation that was originally envisaged, and, in our opinion, would not be taken up in their current form. Being a company limited by guarantee was considered the more useful option.

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