Office of the Scottish Charity Regulator

References to Charitable Status

A Guide to the Charities References in Documents (Scotland) Regulations 2007 (as amended)

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1. Introduction

The way in which charities in Scotland refer to their charitable status is governed by:

- The Charities and Trustee Investment (Scotland) Act 2005 ("the Act"), and
- The Charities References in Documents (Scotland) Regulations 2007 ("the 2007 Regulations")
- The Charities References in Documents (Scotland) Amendment Regulations 2008 ("the Amendment Regulations")

The Act and the 2007 Regulations introduce new requirements for charities entered in the Scottish Charity Register.

As well as outlining the information which must be stated on certain documents[1] specified in the 2007 Regulations, this guidance offers practical examples of the type of documents which **must** comply with the 2007 Regulations, indicating a requirement that is mandatory in law.

We also list examples of documents which we recommend **should** comply as a matter of good practice, although this is not a legal requirement.

2. Timescale for implementation

The Charities References in Documents (Scotland) Regulations 2007 (as amended) affect all relevant documents issued or signed on behalf of charities after 31 March 2008, although we would encourage early adoption of the 2007 Regulations.

Existing charities already entered in the Scottish Charity Register will have to ensure that the specified documents issued or signed on behalf of the charity after 31 March 2008 comply with the requirements of the 2007 Regulations.

For new charities that are entered in the Register on or after 1 October 2007, the 2007 Regulations will come into effect 6 months after the date of their entry in the Register. This short period will allow organisations which existed prior to gaining charitable status the opportunity to use up existing stocks of printed material and to make any other necessary changes.

If, at the time the 2007 Regulations take effect, a charity finds it still has a surplus of printed material which is not compliant, it will be acceptable to amend such material by hand, using stickers or by any other means so that the information stipulated in the 2007 Regulations is included.

3. Which charities are affected by the 2007 Regulations?

The 2007 Regulations apply to **all** charities entered in the Scottish Charity Register, including those charities that are also registered as charities in another country or territory.

Please note that there is no exemption to the 2007 Regulations for charities with an income below a certain threshold, as is the case in England and Wales.

[1] As outlined in regulation 4 of the 2007 Regulations and Part 5 of this guidance note.

All charities registered with OSCR must ensure that all relevant documents they issue after 31 March 2008 (or 6 months after the date of their entry in the Scottish Charity Register, whichever is later) are compliant with the 2007 Regulations. These Regulations apply regardless of **where** the documents in question are issued.

Where a charity is regulated in another jurisdiction and is required to comply with similar requirements in that jurisdiction, we will apply a proportionate response to any breach of the 2007 Regulations for documents circulating outwith Scotland.

4. What information must be included on documents?

All charities entered in the Register **must** clearly state the following information on all relevant documents issued or signed on behalf of the charity after 31 March 2008 (or 6 months after the date of their entry in the Scottish Charity Register, whichever is later):

- the charity's name as entered in the Register
- any other name by which the charity is commonly known
- the charity's Scottish Charity Number allocated to it at the time of registration, which begins SC0

Additionally, a charity whose name does not contain the word "charity" or "charitable" must also state on documents the fact that it is a charity. This can be done in a number of ways including using one of the terms referred to in Section 13 of the Act as follows:

- for any body entered in the Register, one of the following terms may be used:
  - charity
  - charitable body
  - registered charity
  - charity registered in Scotland
- charities entered in the Register which are established under the law of Scotland, or which are managed or controlled wholly or mainly from Scotland, are also permitted to use one of the following descriptions:
  - Scottish charity
  - registered Scottish charity

Any organisation that describes itself as a charity by using one of these six terms above or in any other way **without** being entered in the Register – unless it is entitled to refer to itself as a charity in another country and meets the requirements outlined in Section 14 of the Act – will be considered to be misrepresenting itself as a charity. OSCR may issue a direction to such a body under Section 31 of the Act to stop it from representing itself as a charity. It is an offence to breach such a direction.

In some instances, a charity may issue documents such as business letters or advertisements in a foreign language. Where such a document is wholly in a language other than English, the 2007 Regulations permit the required information to be stated in that other language.

The 2007 Regulations outline the information required to be included on the specified documents, but they do not govern where such information should be placed. Good practice, however, would dictate that the information **should** be placed in a prominent position, for example on the first page of a statement of account or at the foot of the charity's letter-headed notepaper.

In practice, it is likely that Scottish charities which are also registered as charities in another country or territory, or those which are subject to another regulator, will have to comply with two or more sets of requirements in respect of the same document. This may have implications for the form of wording used.

Please see the Appendix for examples of acceptable wording for a variety of different types of charity.

5. Which documents are affected by the 2007 Regulations?

The 2007 Regulations affect a number of specified documents which are "issued or signed on behalf of the charity".

As the primary aim of the 2007 Regulations is to provide clarity to the general public regarding whether or not a body has charitable status, OSCR's view is that the 2007 Regulations apply only to external communications and documents intended for circulation outwith the charity.

In practice, this means documents issued outwith the charity for distribution to the general public **must** comply with the 2007 Regulations. Internal correspondence between charity trustees, staff, volunteers and members of a charity is not required by the 2007 Regulations to comply, although we recommend such documents **should** comply as a matter of good practice.

Correspondence between separate organisations which share a relationship – for example from a parent charity to any constituent or subsidiary body, or from a charitable subsidiary to its parent body – is not considered to be internal, and therefore **must** comply with the requirements of the 2007 Regulations.

Any of the specified documents which are issued or signed on behalf of the charity by a third party rather than by the charity itself **must** also comply with the 2007 Regulations. This will include documents issued or signed by an agent of the charity on its behalf, for example, by a solicitor writing on a charity's behalf or by an accountant requesting payment from a body on the charity's behalf.

The 2007 Regulations specify that the following documents **must** by law, from 1 April 2008 (or 6 months after the date of the charity's entry in the Scottish Charity Register, whichever is later), incorporate the information outlined in Part 4 of this guidance:

- business letters and emails
- advertisements, notices and official publications
- any document which solicits money or other property for the benefit of the charity
- promissory notes, endorsements and orders for money or goods
- bills rendered
- invoices, receipts and letters of credit
- statements of account prepared in accordance with Regulations 8, 9 or 14 of the Charities Accounts (Scotland) Regulations 2006
- educational or campaign documentation
- conveyances which provide for the creation, transfer, variation or extinction of an interest in land
- contractual documentation
- bills of exchange (except cheques)

While it is not a requirement of the 2007 Regulations, we would recommend that charities **should** also, as a matter of good practice, include the information outlined in the 2007 Regulations on any other means of communication with which the public regularly comes into contact. By doing this, the organisation is advertising its charitable status as widely as possible and this should lead to greater confidence in the charity and support for its purposes and activities.

The following list outlines the documents specified in the 2007 Regulations, with some indication of the type of document which **must** comply with the 2007 Regulations within each category, and those which **should** comply as a matter of good practice.

This list of examples is not intended to be exhaustive, but rather a basis from which each charity can consider its individual circumstances.

Business letters and emails

Any business letter or email issued externally or signed on behalf of the charity.

Documents which must comply:

- any letter or email concerned with the business of the charity
- letters and emails sent by solicitors or other professionals on behalf of a charity client
- correspondence between parent and subsidiary charities

Good practice:

- compliment slips
- business cards
- charity's website homepage

Advertisements, notices and official publications

Any printed advertisement, public notice or official published document.

Documents which must comply:

- printed advertisements in newspapers or magazines
- posters
- published notices, for example, in advance of an AGM
- annual reports
- magazines and external newsletters
- charity information booklets
- flyers and hand-outs advertising events

Good practice:

- advertisements on the internet, radio or television
- signage and displays

Any document which solicits money or other property for the benefit of the charity

Any document which requests the donation of money or property to be used for the benefit of a charity.

Documents which must comply:

- sponsorship forms
- printed collection envelopes issued to local households
- leaflets requesting clothes, bric-a-brac or other property for sale by the charity

Good practice:

- labels on collection buckets. Charities which undertake charitable collections in a public place or door to door must also comply with the Public Charitable Collections (Scotland) Regulations 1984

Promissory notes, endorsements and orders for money or goods

Any promissory note, which is an unconditional written, signed promise by one person to another to repay a specific amount of money at a specified time. This is usually in connection with a loan.

Any endorsement, which is a signed amendment to a commercial document for the purpose of changing the original terms.

Any written order for the payment of a sum or supply of goods to a named individual.

Documents which must comply:

- purchase orders
- loan agreements issued or signed on behalf of a charity
- corporate bonds
- endorsements, for example, a signed instruction on an uncrossed cheque for the purpose of making it payable to another person

Bills rendered

All bills issued by the charity.

Documents which must comply:

- all bills submitted for payment by or on behalf of a charity
- demands for rent by charitable housing associations

Invoices, receipts and letters of credit

Any invoice or receipt issued or signed on behalf of a charity and any letter of credit, which is a document issued by a bank guaranteeing the payment of a customer's draft.

Documents which must comply:

- all invoices and receipts for goods and services issued or signed on behalf of a charity
- any letter of credit issued or signed by a bank on behalf of a charity

Statements of account prepared in accordance with Regulations 8, 9 or 14 of the Charities Accounts (Scotland) Regulations 2006

Any statement of account prepared on either a receipts and payments basis, an accruals basis or, for special case charities, in line with the charity's appropriate Statement of Recommended Practice (SORP).

Please note that these Charities References in Documents Regulations exceed the requirements of the Charities Accounts (Scotland) Regulations 2006. Therefore, if the charity's name does not include the term "charity" or "charitable", the statement of account must also state that the organisation is a charity in order to comply with regulation 2(1)(d) of the Charities References in Documents (Scotland) Regulations 2007 (as amended).

Documents which must comply:

- annual financial statement of account

Good practice:

- any interim accounting information which may be issued in the course of the financial year

Educational or campaign documentation

Any document issued or signed on behalf of a charity which is intended to educate the public about the charity and its work and any campaign or promotional material aimed at raising the charity's profile or the profile of a topical issue.

Documents which must comply:

- publicity leaflets highlighting a charity's activities or projects
- any campaign or promotional material intended to raise funds or support for a charity
- contributions to consultations, for example, those conducted by the Scottish Government

Good practice:

- campaigns or promotional broadcasts on the internet, radio or television

Conveyances which provide for the creation, transfer, variation or extinction of an interest in land

All legal conveyancing documents concerned with rights over land, such as the buying, selling or transfer of such land.

Documents which must comply:

- all relevant legal conveyancing documents issued or signed on behalf of a charity by a solicitor or other professional

Contractual documentation

Any document which sets out the terms of an agreement or contract.

Documents which must comply:

- legal contracts or agreements, for example, contracts for the provision of services issued or signed on behalf of a charity
- tickets for events containing contractual information, such as terms and conditions

Bills of exchange (except cheques)

Any bill of exchange, which is a signed written order instructing the person to whom it is addressed to pay an amount of money to another person.

Although cheques are a type of bill of exchange, the Amendment Regulations have made clear that cheques are excluded from the requirement to comply with the 2007 Regulations.

Documents which must comply:

- all bills of exchange (except cheques)

6. Charitable companies

Charitable organisations which are also companies are subject to the requirements of both charity and company law.

The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 came into effect on 1 January 2007 and also require companies to state certain information on the documents and correspondence they produce.

These Regulations can be viewed at:
http://www.companieshouse.gov.uk/promotional/busStationery.shtml.

Appendix: Examples of acceptable wording

The following examples are intended to provide guidance to charities regarding forms of wording which would be compliant with the 2007 Regulations and with other relevant legislation. However, this list is not exhaustive and alternative forms of wording may also be acceptable to OSCR and other regulators provided they satisfy the requirements of all relevant legislation.

Please note that the examples below may not be relevant to charitable companies, as in some instances additional information is required to be stated in line with the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (see Part 6 above).

Any charity entered on the Scottish Charity Register:

(excepting dual-registered charities)

- The DEF Fund is a charity registered in Scotland, No: SC000000.
- The DEF Fund (known as The Fund), Charity No: SC000000.

Charities established under Scottish law or managed mainly from Scotland:

(excepting dual-registered charities)

- The ABG Trust is an operating name of the Alpha Beta Gamma Trust. Scottish Charity Number SC000000.
- The Alpha Beta Gamma Trust (ABG Trust) is a registered Scottish charity, No: SC000000.

Dual-registered charities registered with OSCR and the Charity Commission:

- The DEF Fund is a charity registered in Scotland (SC000000) and in England and Wales (1234567).
- The Alpha Beta Gamma Trust (known as The ABG Trust) is a registered charity in England and Wales (1234567) and in Scotland (SC000000).

This document is also available on the OSCR website: www.oscr.org.uk

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