

# GUIDANCE AND GOOD PRACTICE

for Charity Trustees

**OSCR**  
Scottish Charity Regulator

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Scottish Charity Regulator

**We have updated our guidance to reflect the practical experience of many Scottish charities. The law and charity trustees duties have not changed. What we are trying to do is set out in a more straightforward way what charity trustees must consider, so that they meet legal requirements, ensure that their charities are well-run, and avoid some of the common problems that can arise.**









# CHARITY TRUSTEE GUIDANCE

## Charity Trustee Duties





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# INTRODUCTION

## SUMMARY

**Charities make a big difference in all aspects of our society. Achieving this requires the hard work and commitment of thousands of [charity trustees](#) who give their time and energy to Scotland's charities.**

Charity trustees are the people who have general control and management of the [charity](#) and are responsible for making sure that the charity works to achieve its [charity's purposes](#) (the reasons the charity exists).

The role of a charity trustee is extremely important and can be very rewarding. It is important for both you and your charity, that you know what your responsibilities are, and understand what you are expected to do. This guidance will help you do this.

### What this guidance covers

The charity trustee duties are set out in [The Charities and Trustee Investment \(Scotland\) Act 2005](#), referred to in this guidance as the **2005 Act**. We, the [Scottish Charity Regulator](#), are responsible for regulating charities registered in Scotland and their charity trustees. This guidance explains what the 2005 Act says charity trustees must do or must not do.

The guidance does not cover all the laws that might be applicable to your charity. It covers the legal duties of charity trustees set out in the 2005 Act, with good practice recommendations and links to sources of advice.

As charities come in all different shapes and sizes, not everything in this guidance will apply to all charities registered in Scotland. In addition, many charities have to comply with other legislation and regulation, for example, charitable companies must also comply with [company law](#).

### Who is the guidance for?

This guidance is for:

- Anyone who is a trustee of a charity registered in Scotland.
- Anyone thinking of becoming a charity trustee.
- People working with, or advising, charity trustees.

### How to use the guidance

In this guidance, we explore the [general duties](#) and [specific duties](#) of charity trustees in the 2005 Act. We give you examples of how these might work and share good practice from our experience as Regulator and from organisations in the charity sector.

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Legal requirements are something that the law says you **must do** and are highlighted by the 'Legal Duty' icon:



LEGAL DUTY

Good practice is not required by law but is something you **could do** to help to make sure that your charity is doing its best to comply. What is good practice for your charity might depend on the size or type of charity you are. In this guidance, we try to give examples of good practice that will be applicable to many Scottish charities. Examples of good practice are highlighted with the 'Good Practice' icon:



GOOD PRACTICE

The **glossary** provides you with further information, definitions and descriptions of some key terms. We have highlighted these key terms in **bold purple type**. Clicking on these terms will take you straight to the glossary or the relevant section of the guidance.

The guidance is split into sections to help you find the information most relevant to you and your charity.

## MORE DETAIL

### Who are the charity trustees?

The people in charge of a charity and responsible for controlling its management and administration are its 'charity trustees'. You may call yourselves a committee, a board, Directors or something less formal but the 2005 Act says you are the charity's trustees and have legal responsibilities.

**Charity trustees are the people who control and manage a charity. They are responsible for complying with the law.**

There is no minimum age for charity trustees stated in the 2005 Act; however, we would expect charity trustees to be over the age of 16. If any charity trustees are under the age of 16, it would be best to get professional advice to determine if this is suitable and if there are any legal implications. Some model governing documents or specific legal forms (such as a company) state the minimum age of a charity trustee.

The 2005 Act states that charity trustees are the people who have "the general control and management" of a charity. However, there can be situations where people who are not formally appointed as charity trustees can exercise influence and even control over a charity. For example, an elected member or employee of a local authority attends meetings of the charity trustees. The 2005 Act makes the following two points clear:

1. Charity trustees are responsible for the charity and may not pass this responsibility onto anyone else as long as they remain a charity trustee.
2. Any person who, though not formally elected or appointed as a charity trustee, exercises some degree of control over a charity, may still be held legally liable as a charity trustee.

### Who cannot be a charity trustee?

Some people are not allowed by law to be a charity trustee. Every charity trustee must make sure that he or she is not breaking the law by being a charity trustee.

Certain people are disqualified from acting as charity trustees:

- Someone with an unspent conviction for an offence involving dishonesty or an offence under the 2005 Act.
- Someone who is an undischarged bankrupt or has a Protected Trust Deed or [Debt Arrangement Scheme \(DAS\)](#) to pay off debts with creditors.
- Someone who has been removed under either Scottish or English Law or the courts from being a charity trustee.
- Someone who is disqualified from being a company director.

It is the responsibility of individuals to make sure they are not disqualified from being a charity trustee. Anyone who acts as a charity trustee whilst disqualified is guilty of an offence punishable by a fine or imprisonment, or both.

It is also the collective responsibility of all the charity trustees to make sure that none of them are disqualified. If you know that one of your fellow charity trustees is disqualified and you do not do anything about it, you could be in breach of your charity trustee duties.

If you are not sure if you can be a charity trustee, you can [ask us](#).

Good practice is to:

- Get prospective charity trustees to sign a declaration before their election or appointment to confirm they are not disqualified from acting as a charity trustee.
- Consider whether any other checks need to be carried out. For example, a [Disclosure Scotland](#) check for charity trustees working with vulnerable beneficiaries.

In some cases a charity's governing document might say who can and cannot be a charity trustee, for example some charity trustees can only be chosen from the membership of the charity.

### Waivers

A disqualified person can apply to us for a waiver to lift the disqualification. You can do this in relation to a specific charity, type of charity or for charities in general. We will take into account all the circumstances when deciding if we can grant a waiver of disqualification. If you want to apply for a waiver please [contact us](#).

### What does being a charity trustee mean?

Being a charity trustee means you are fully responsible for how your charity is run and what it does. It does not necessarily mean running the charity on a day-to-day basis and making operational decisions. Your charity might have volunteers or staff that do this.

### All the charity trustees share responsibility

All of the group of charity trustees have charity trustee duties – no matter how small your charity is. A duty is something that you must do. The group shares the responsibility equally. No individual charity trustee, for example the Chair or Treasurer, has more responsibility than the other charity trustees do. We call this **collective responsibility**.



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See the section on [charity trustee duties](#) for more details.

### How many charity trustees should your charity have?

Your charity's governing document may set a minimum and/or maximum number of charity trustees needed and the minimum number required for a **quorum**. A **Scottish Charitable Incorporated Organisation (SCIO)** must have at least three charity trustees as stated in the [SCIO Regulations](#). For other **legal forms** the law does not set a minimum number of charity trustees, but it is good practice to have at least three.

### EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

### SOURCES OF HELP, ADVICE AND BEST PRACTICE

#### Sources of help, advice and best practice:

- Local [Third Sector Interfaces](#) offer support to voluntary organisations.
- The [Scottish Council for Voluntary Organisations \(SCVO\)](#).
- You may also wish to consult a professional advisor. The [Law Society of Scotland](#) and the [Institute of Chartered Accountants in Scotland](#) may be able to help you to identify a professional firm with expertise in charity law and accounting.
- The [Association of Charity Independent Examiners](#) can help you find a qualified Independent Examiner.
- [HMRC](#) will be able to help you with any questions you may have about tax.

### LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Charity trustee general duties: [section 66 of the 2005 Act](#):
- Disqualification from being a charity trustee and waivers: [sections 69 and 70 of the 2005 Act](#):
- SCIO provisions: the [Scottish Charitable Incorporated Organisations General Regulations 2011](#):

# CHARITY TRUSTEE DUTIES

## SUMMARY

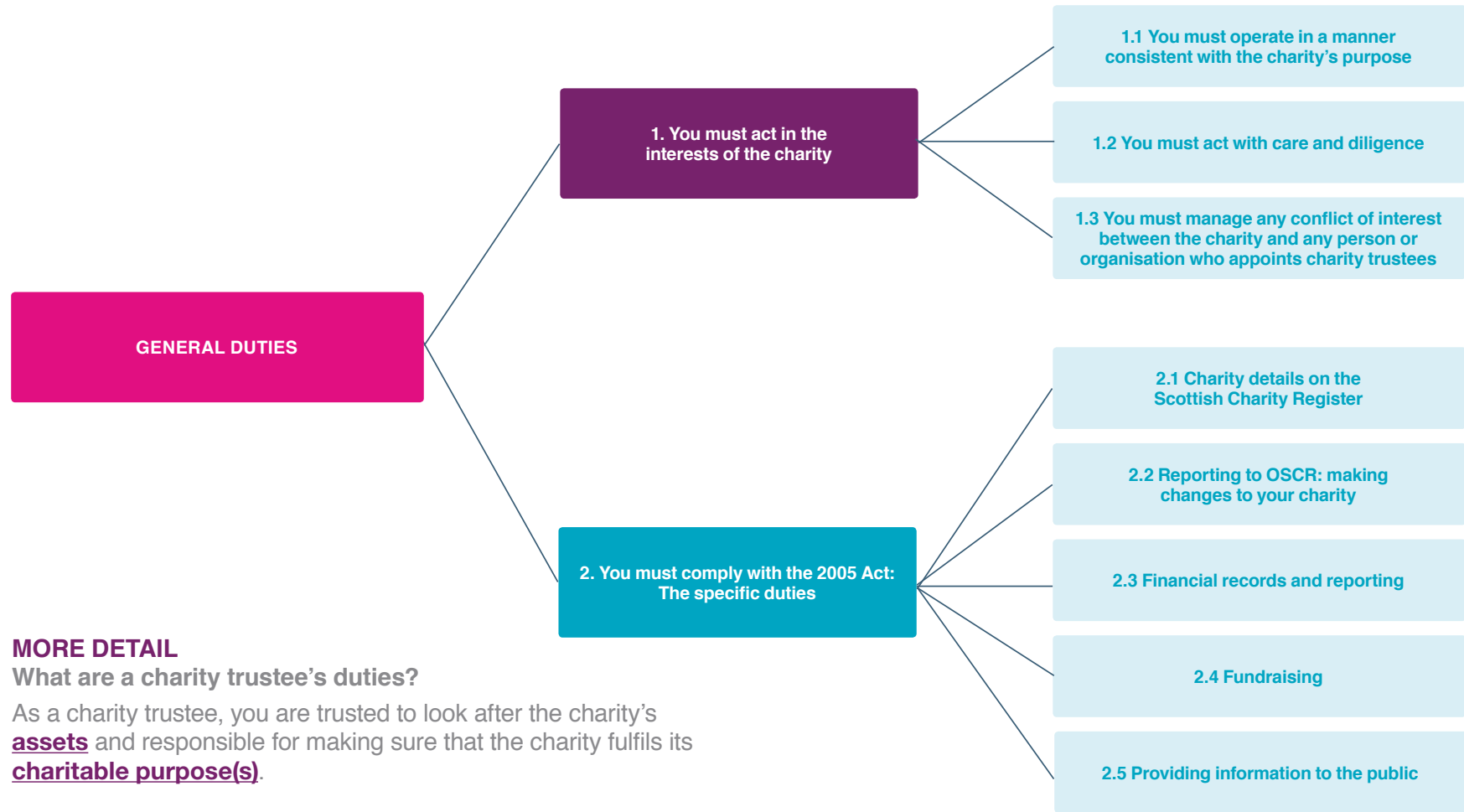
**All charity trustees have legal duties and responsibilities under the [2005 Act](#). A duty is something that you must do, and all the duties must be met. These duties are separated out into general duties, that set out a broad framework that all charity trustees must work within, and specific duties detailed in the [2005 Act](#).**

The general and specific duties apply equally to **all** charity trustees and to **all** charities registered in Scotland. All of the charity's trustees should work together to make sure that these duties are met.

We, the **[Scottish Charity Regulator](#)**, work with charity trustees to make sure these duties are understood and complied with. We also have powers to take action where we have concerns about particular charities and their trustees. See our [Inquiry Policy](#) for more details.

In this section we explain what the duties are, what the law says you must do and ways that you can meet the duties.

# General duties for all trustees



## MORE DETAIL

### What are a charity trustee's duties?

As a charity trustee, you are trusted to look after the charity's **assets** and responsible for making sure that the charity fulfils its **charitable purpose(s)**.

The charity trustee duties under the **2005 Act** set out a broad framework that all charity trustees must work within.

### 1. YOU MUST ACT IN THE INTERESTS OF THE CHARITY



- You must do what is best for the charity and its **beneficiaries**, not what is best for you, your friends or family or your business interests.
- You must put the needs of the charity before the needs of any other organisation that you are involved with, either in a personal or professional capacity.

Where you are faced with a decision where one option would be in your interest and the other in the interest of the charity you must choose the option that is in the charity's interest. To do this properly, you must declare what your interests are, know when it would be better that you did not take part in certain decisions and take appropriate action.

#### Good practice



- The charity has an up to date list (**register of interests**) detailing where charity trustees work and any other organisations they are involved with.
- The charity has a conflict of interest policy that says what charity trustees should do if there is a conflict of interest and what happens if a charity trustee does something wrong. See the **conflict of interest section** for more details.
- There is a policy that makes it clear when a charity trustee, their family or the organisation they work for can be paid, for services provided to the charity. See the **remuneration (payment) section** for more details.

- The charity has the power in its **governing document** to remove charity trustees if they are in serious or persistent breach of the charity trustee duties, or a breach of the requirements of that governing document.

If you are at all unsure, you should declare a potential conflict and the other charity trustees can decide whether it poses a conflict.

#### 1.1 You must seek in good faith to ensure the charity operates in a manner consistent with its purposes



Your charity's purposes are set out in your governing document (often called a constitution, trust deed or articles of association).

- A charity's purposes are what your charity has been set up to achieve and are the reason your charity exists.
- You must always act honestly and reasonably ("in good faith") when acting for the charity and make sure that the activities advance its charitable purposes.
- You must make sure that the charity's assets are used to advance its charitable purposes. This can be done directly by using an asset to undertake activities or indirectly by investing assets to generate funds for the charity.
- You should understand what the governing document says and means.
- You must make sure that the other charity trustees and people working at the charity follow the rules in the governing document.
- When the charity makes plans, the charity trustees must make sure that any decisions or actions fit with the purposes and powers set out in the governing document.

### Good practice

- Every charity trustee has the most recent copy of the charity's **governing document**.
- Every charity trustee gets an induction into the charity and their role when they start.



GOOD PRACTICE

See the **governing document and meetings section** for more details.

### 1.2 You must act with care and diligence



LEGAL DUTY

The role of a charity trustee will vary from charity to charity. Some charities have staff who are responsible for daily operations, with the charity trustees providing strategic oversight and governance. Other charities are run solely by charity trustees on a voluntary basis. Whatever your charity trustee role involves – hands on or strategic oversight – the decisions you make about the charity should show that you are acting with care and diligence that is reasonable to expect of a person who is managing the affairs of another person.

When you are dealing with the charity's affairs, you should do so as carefully as you would if you were looking after someone else's affairs, for example a relative or a friend.

#### For example:

You might decide to invest some of your own money on a high risk investment with potentially large returns. You would not be able to do that with the charity's money.

- As charity trustees, you must all work together to advance the charitable purposes, including making sure the charity is run properly, responsibly and lawfully.
- You have to protect your charity including its beneficiaries, assets and reputation. This means understanding and assessing potential risks to make sure decisions are as robust as possible.
- You should have a clear, up-to-date picture of how the charity is doing financially, and the charity should have procedures in place to reduce any risks. All the charity trustees should know what **assets** the charity has and understand any restrictions on how money can be spent. The charity must keep clear financial records and share them with all the charity trustees. See the **charity finances section** for more details.
- You can use the charity's money to get professional advice for the charity if needed.

#### For example:

If the charity was thinking about undertaking trading activities, it would be appropriate to seek professional advice around setting up a subsidiary company to carry out that trading.

Or

If the charity employs staff, some professional advice on HR matters might be needed.

As charity trustees:

- You must make sure that the charity has enough money to pay staff and other costs.
- You must make sure that any staff are treated properly and fairly.
- You must make sure that the charity's name and any logo are not used without the charity's permission.
- You are responsible for making sure your charity complies with any relevant laws. For example, health and safety, employment, data protection and equality laws.



LEGAL DUTY

### Good practice

As charity trustees, you should:

- Review and update the charity's plans regularly.
- Agree financial budgets and monitor financial performance.
- Review the performance of the charity and, where necessary, agree steps to improve performance.
- Regularly compare what the charity proposes to do with the governing document to see if anything needs to be changed or updated. See our [Making Changes to Your Charity](#) guidance if the governing document needs to be amended.
- Make sure there are rules in place which set out what happens if the charity trustees cannot agree with each other. For example, set out in a **code of conduct**.



GOOD PRACTICE

- Provide charity trustee induction packs and review the training needs of the charity trustees every year.
- Agree expectations of charity trustees' attendance at meetings and what to do if these are not met.
- Keep up to date with changes in the law that might affect your charity, and make changes when necessary.
- If your charity employs staff make sure there are rules in place to deal with any grievances raised by the charity's staff and/or volunteers. For example, an internal complaints procedure.
- Treat volunteers properly and fairly.
- Report any [notifiable events to OSCR](#), and/or other relevant regulators.

You do not need to be a legal expert yourself but you should know the basics and the laws that apply to your charity's activities and where to get help if you need it. See the **Sources of help, advice and best practice** for details of organisations that can help.

### 1.3 You must manage any conflict of interest between the charity and any person or organisation who appoints trustees



As a charity trustee, you are required to act in the interests of the charity.

A conflict of interest which arises between a charity trustee and a person or organisation that appointed them is called an 'appointment conflict'. Where such a conflict arises, the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- Disclose the conflict to the charity and
- not participate in any discussion or decision on the matter.

#### For example:

A charity trustee appointed to the charity by a Local Authority would need to put the interests of the charity first, above those of the Local Authority.

Conflicts of interest can and do happen in all shapes and sizes of charity, so we have a separate section of the guidance for how to manage them. See the [conflict of interest section](#) for more details.

Charitable companies also need to be aware of what [Company law](#) says about conflicts of interest.

## 2. YOU MUST COMPLY WITH THE 2005 ACT

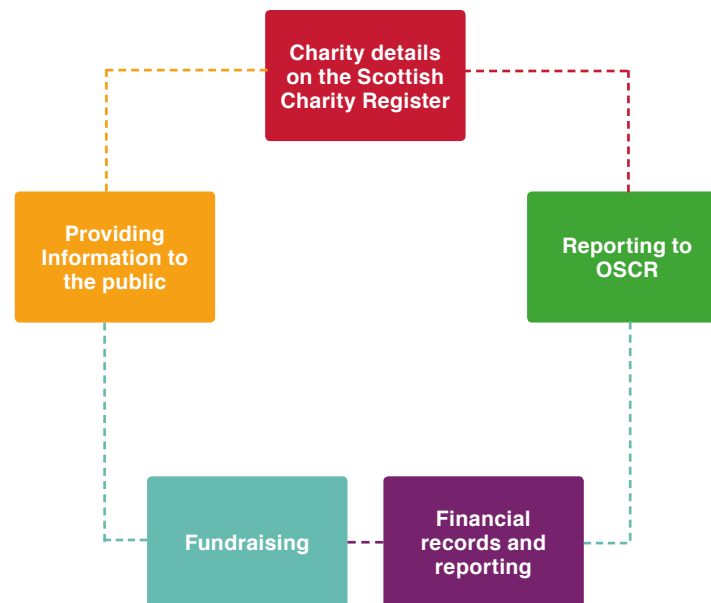


- You must understand the legal requirements of being a charity.
- You must comply with the specific duties of the 2005 Act.

See the **specific duties section** below for more information.

### Specific duties for all charity trustees

There are **specific duties** in [the 2005 Act](#) that all charity trustees must meet. You might delegate the practical details of these duties to your charity's staff, volunteers or professional advisers (if you have them), but you, as charity trustees, are responsible for making sure the specific duties are met.



## 2.1 Charity details on the Scottish Charity Register

Your charity must give us the information we need to keep the **Scottish Charity Register** accurate and up to date.



This means making sure that we hold the latest information about your charity:

- The name of the charity.
- The principal office or the name and address of one of the charity trustees.
- The charity's purposes.

Your charity **must tell us** as soon as possible about any changes to the **principal contact** for the charity.

## 2.2 Reporting to OSCR: Making changes to your charity

If you want to make any changes to your charity, first check what the rules set out in your **governing document** say. If you do not follow these rules then any decisions you make could be invalid and we may refuse our consent to make the changes if it is required.

Under the 2005 Act you must seek our consent before making any of the changes listed below. You need to ask for our **consent** at least 6 weeks (42 days) before you plan to make the proposed change.

Changes that need our consent are:

- Changing the name of the charity.
- **Winding up or dissolving** the charity.
- Amending the **objects and purposes** of the charity.
- Amalgamating the charity with another body.
- Applying to the court to change purposes, amalgamate or wind-up.
- Changing your charity's **legal form**.

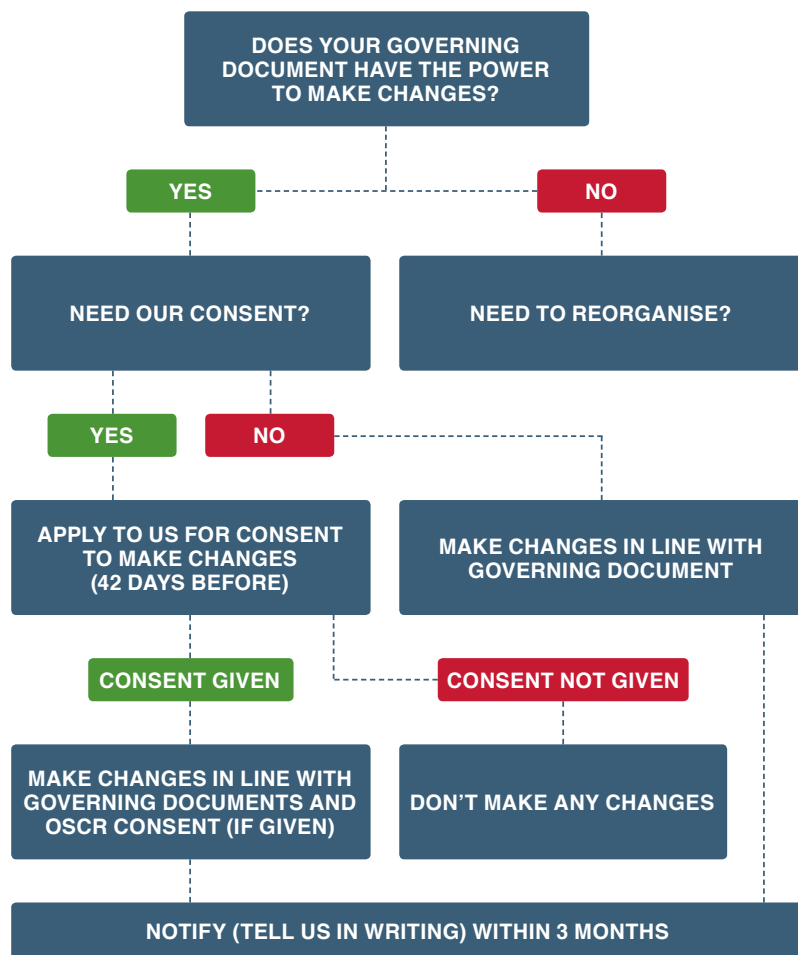
If we consent to the change you must notify us (tell us in writing) once you have made the change. Where a change to the governing document has been made you should send us the updated version.



If you have the power to make other changes to your governing document (that do not need our consent) you must tell us what the changes are and send an updated version of your governing document **within 3 months** of the changes being made.



See the flow chart below to decide if you can make changes and, if so, how. See our [Making Changes to Your Charity](#) page for more details.



## 2.3 Financial records and reporting

Every year, every charity must:

- Keep proper accounting records.
- Prepare a statement of account, including a report on its activities, at the end of each financial year.
- Have the statement of account independently examined or audited.
- Send a copy of the accounts, along with the **annual return**, to us, the Scottish Charity Regulator.

You must keep a copy of the accounting records for at least 6 years. Other laws or funding arrangements might require you to keep records for longer.

See our [charity finance section](#) and [Charity Accounting page](#) for more details.

## 2.4 Fundraising

As charity trustees you are responsible for taking control of how your charity raises funds.

You must make sure that anyone who professionally raises funds for the charity has an agreement that says how much they will get paid to do it.

See our [Fundraising page](#) for more details.

## 2.5 Providing information to the public

There is information that you must give to the public:



1. You must state your charity's name and Scottish charity number (SC0[zero]xxxxx) on your charity's website home page and all external documents, like letters, emails, adverts, posters, invoices and other publications. See the [publicising that you are a charity section](#) for more details.
2. You must give a copy of your [governing document](#) and/or the latest examined or audited [accounts](#) to anyone that asks for them. The reason a person asks for a copy of these documents does not matter; provided it is a reasonable request, you must give them a copy.

Good practice is to publish your governing document and accounts on the charity's website, if you have one.

### What is an unreasonable request?

What is reasonable or unreasonable will depend on the circumstances of each case. It is important to understand that it is the request that must be unreasonable not the reasons for the request or the identity of the requester.

The examples below are when a request might be unreasonable:

- A request for copies of accounts and/or governing document that are already publicly available, in which case you should tell the person where to get the information, for example on the charity's website.
- A request for documents that the person already has.
- A request for the documents within an unreasonable timescale, for example within 24 hours, or in an unreasonable format.

If you decide a request is unreasonable you should be able to justify your decision, bearing in mind that a concern could be raised with us about it. Where appropriate, you should work with the requester to fulfil their request.

### Can you charge a fee for the request?

Yes, you can, but only for any administrative costs in producing and sending a copy of the document, for example, the cost of photocopying and postage. You cannot charge for the costs associated with preparing the accounts or staff time taken to copy and post the documents.

Many charities publish their governing document and annual accounts on their own websites. You can put a link to your accounts on your entry in the [Scottish Charity Register](#) by emailing us the link and your charity's details.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is [misconduct](#) and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

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Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

## EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

## SOURCES OF HELP, ADVICE AND BEST PRACTICE

These organisations can help with some or all of the duties.

- Local [Third Sector Interfaces](#) offer support to voluntary organisations.
- The [Scottish Council for Voluntary Organisations](#) (SCVO).
- You may also wish to consult a professional advisor. The [Law Society of Scotland](#) and the [Institute of Chartered Accountants in Scotland](#) may be able to help you to identify a professional firm with expertise in charity law and accounting.
- The [Association of Charity Independent Examiners](#) can help you find a qualified Independent Examiner.
- [HMRC](#) will be able to help you with any questions you may have about tax.
- [Consent Flowchart pdf](#).

## LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

### Specific duties:

- Charity details: [section 3 of the 2005 Act](#).  
Reporting changes:
  - [sections 10 – 12 \(consent for change of name\)](#).
  - [sections 16 – 17 \(consent for changes including purposes\)](#).
  - [sections 39 – 43D \(reorganisation\)](#).
- Financial reporting: [sections 44 – 45 of the 2005 Act](#) and [The Charities Accounts \(Scotland\) Regulations 2006](#) as amended.
- Fundraising: [sections 79 – 83 of the 2005 Act](#).
- Charity trustee general duties: [section 66 of the 2005 Act](#).
- OSCR's powers and duties following inquiries: [Sections 29 – 35 of the 2005 Act](#).

# GOVERNING DOCUMENTS AND MEETINGS

## SUMMARY

Knowing what your **governing document** says and understanding what it means, having well-run charity meetings and keeping good records of the meetings are all important factors in making sure that you are carrying out your **general charity trustee duties** set out in the **2005 Act**.

## MORE DETAIL

### Governing documents

A charity's governing document is the written statement that sets out its purpose, structure and describes how it will operate. The trustees must make sure that the charity complies with its governing document, which usually contains key information about:

- What the charity exists to do (its charitable purposes).
- What powers it has to further its charitable purposes.
- Who the trustees are, how many charity trustees there should be and how they are appointed and removed.
- Whether the charity has any members and if so who can be a member.
- Rules about charity trustees' and members' (if any) meetings, how they are arranged and conducted and how decisions are made and recorded, etc.
- How to change the governing document.
- How to close the charity down.

The name given to your charity's governing document will depend on its legal form.

The most common legal forms for charities are:

LEGAL FORM	TYPE OF CONSTITUTION OR GOVERNING DOCUMENT
Company	Articles of association
Unincorporated association	Constitution
Trust	Trust deed
Scottish Charitable Incorporated Organisation (SCIO)	SCIO constitution
Community Benefit Society	Rules

Some governing documents are made up of a combination of items, such as standing orders, rules or supplemental deeds. The key to any governing document and to the overall governance of the charity are the charity's purposes, which are the reason the charity exists.



LEGAL DUTY

**Charity trustees** must make sure that:

- The activities of the charity advance the **charitable purposes** set out in the governing document.
- The charity follows the rules of its governing document.
- The charity's **assets** are only used to advance the charitable purposes set out in the governing document.

### Good practice

- Every charity trustee has an up-to-date copy of the governing document. You should know what it says and understand what it means.
- All new charity trustees get an induction pack which includes the governing document and up-to-date information about the activities of the charity.
- When planning what the charity will do, you make sure the plans fit with what the governing document says you can do.
- You read and review the governing document regularly to make sure it is still fit for purpose. You should do this at least once a year.



### Can you change your governing document?

If you do want to make changes to your **governing document**, you need to follow any rules about changes set out in your document. This flows from the general principle that charities have to follow the specific terms of their governing document.

If you want to make any changes to your governing document see our [Making Changes to Your Charity](#) page. You must tell us of any changes that you make and in some cases ask for our **consent** first.



### For example:

If you want to change the wording of charitable purposes in your governing document, you will need to get our consent first. This is because any changes to the charitable purposes could affect your ability to meet the charity test and to continue to be a charity.

Some charities do not have the power in their governing document to make changes. If you are not sure whether you have the power to make changes you should get professional advice.

If you do not have the power to make changes you can apply to us to reorganise your charity. See our [Charity reorganisation](#) page for more details.

### Charity Trustee Meetings

Charity trustees have collective responsibility for running the charity. Meetings are often the best way to make decisions and make sure that you keep all of the charity trustees informed.

When and how meetings will be held will usually be set out in your governing document. You must follow the rules set out in your governing document about meetings. If you do not, any decisions you make could be invalid and you will not be acting in accordance with your charity trustee duties.

### What should a governing document say about meetings?

If your governing document does not mention meetings or is not clear about how meetings should be run, then you may want to add some rules about:

- When you have meetings and how often you have them.
  - Plan your charity trustee meetings so you can meet at the right time to look at the **charity's accounts** before submitting them to OSCR.
- What type of meetings you have.
  - For example charity trustee meetings, annual general meetings (AGMs), membership meetings.
- Who is entitled to vote at meetings and how **proxies** can be appointed.
- Who can attend the meetings (just the charity trustees or members too?) and how many people have to be there to form a **quorum**.



- What you do if charity trustees have a **conflict of interest**.
- How you minute meetings and how long you keep records of the meetings.
  - It is a good idea to decide how long you will keep records of meetings and decisions, bearing in mind any other legal requirements you have to follow. For example, financial records must be kept for 6 years.
- What to do if a charity trustee misses too many meetings and/or does not follow the rules.
- What your governing document says about removing charity trustees.

### What else do you need to think about for meetings?

- Make sure everyone knows about the meeting – when and where it is.
  - Make sure you know who should or can attend the meeting.
- Make sure everyone has the agenda and relevant papers – know what you are going to be talking about!
- Do not be afraid to ask questions if you do not understand or something is not clear – you all have responsibility, not just the chair or the treasurer.
- Follow the voting rules in your governing document – if you do not, any decisions you make could be invalid.
- Assign someone to prepare minutes of the meeting – note the decisions taken and the reasons for them.
- Make sure the minutes are agreed and approved at the next meeting.
- Have clear action points – know who is responsible for them and for following up on them.

**NOTE: If you are a SCIO or a company and want to use telephone or video conferencing you must state this in your governing document.**

**A SCIO's governing document is a constitution.**

**A company's governing document is its Article of Association. For more information on the rules about meetings in company law, see the Companies House website.**

See **Sources of help, advice and best practice** for agenda and minutes templates.

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## Quorum

This is the minimum number or proportion of people (members, charity trustees or their proxies) that can vote and must be present or represented at a meeting to make the proceedings and any decisions taken valid.

### For example:

Your governing document says that 50% of trustees must be present at a meeting. If you have 10 trustees in total but only four are present at the meeting, then you will not have a quorum and the meeting will not be valid.

If you are having trouble always getting enough charity trustees to form a **quorum** then you may need to recruit more charity trustees or look at alternative ways of holding meetings such as telephone or video conferencing. You may need to amend your governing document to do so.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

## EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

## SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Trustee Meetings: Agenda template](#)
- [Trustee Meetings: Minutes template](#)
- [SCVO model governing documents](#)
- [SCVO guide to Board meetings](#)
- OSCR: [Who's in charge](#)

The Charity Commission for England and Wales:

- [Charity trustee meetings: 15 questions you should ask](#)
- [Charities and meetings \(CC48\)](#)

## LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Charity trustee general duties and misconduct: [section 66 of the 2005 Act](#).
- OSCR's powers and duties following inquiry: [sections 29 to 35 of the 2005 Act](#).

# CONFLICT OF INTEREST

## SUMMARY

**As a charity trustee, you must put the interests of the charity before your own interests or those of any other person or organisation including those responsible for your appointment. Where you cannot do that, there may be a conflict of interest.**

A conflict of interest exists when your duty to act in the interests of the charity conflicts with:

- The interest of the person or organisation that appointed you as a charity trustee (an “appointment conflict”); or
- Conflicts with your own personal or business interest in relation to that matter (a “personal conflict”).

**Conflicts of interest can and do come up: it is how you manage them that is important**

In this section we explain how you as a charity trustee can prepare for potential conflicts of interest, what you could do if a conflict arises, and highlight common examples of conflicts of interest.

## MORE DETAIL

### What is a conflict of interest?

A conflict of interest is any situation where there is a potential for a **charity trustee’s** personal or business interests (or the interests of someone they are connected with) to be different from the interests of the **charity**. In this situation, it may sometimes be difficult for the charity trustee to make an impartial decision. However, with proper handling charity trustees can overcome these difficulties.

There are two main types of conflict of interest:

- 1. Appointment conflict:** This is a conflict of interest which can arise between a charity trustee and the person or organisation which appointed them.



LEGAL DUTY

### For example:

A charity trustee appointed by a local school, church or Local Authority and a decision is required on a matter which affects both the charity and the other organisation.



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**2. Personal conflict:** When you might not be able to do what is best for the charity because it conflicts with your own personal or business interest in relation to that matter.

**For example:**

When a charity is considering a contract with a business and one of the charity trustees is also a director of that business.

In both cases, the **charity trustee duties** require you to act in the interests of the charity.

Where there is an ‘appointment conflict’ the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- disclose the conflict to the charity; and
- not participate in any discussion or decision making on the matter.

It is important that even where there appears to be a conflict of interest, whether it materialises or not, you take appropriate steps to manage the conflict and be seen to be acting in the best interests of the charity.

The term ‘conflict of interest’ can cover a range of situations and may also be called a ‘conflict of roles’ or ‘conflict of duty’.

**For example:**

- a charity trustee could get direct financial benefit from a decision the charity has to make
- a charity trustee is discussing a contract or business arrangement with an organisation their family have links to
- a charity trustee is also an employee of a company that the charity is doing business with
- an employee, or potential employee, of the charity is connected to one of the charity trustees.
- being a trustee of two or more charities that are competing with each other for the same grant(s) or funding
- being a trustee of a charity that gives out grants and a trustee of another charity applying for one of these grants
- being a trustee of a charity that is part of a group structure and being on the board of the parent charity
- being a trustee of a charity where you are also a service user or customer
- a charity trustee applying for a job in the charity.

**Examples of what is not a conflict of interest:**

- being a charity trustee and donating funds to the charity
- being both a volunteer and a trustee of charity.

### What should you do if there is a conflict of interest?

Having a conflict of interest does not necessarily mean that anyone has acted improperly. As charity trustees you all have a **collective responsibility** to manage conflicts of interest and to act clearly in the charity's best interests.

There are four key steps to dealing with conflict of interest.

#### 1. Identify:

- Have a conflict of interest policy so that all the charity trustees (and potential charity trustees) understand what could be a conflict of interest.
- Know what the charity's **governing document** says about conflicts of interest.
- Set up a **register of interests** for all charity trustees and make sure it is kept up to date.
- Have conflict of interest as a regular agenda item at the beginning of the charity trustee meetings.
- Declare any potential conflict of interest as soon as you become aware of them.



#### 2. Manage:

- Have clear procedures in place that state what should happen if there is a conflict of interest and how the charity trustees will deal with it. For example, the conflicted charity trustee might withdraw from the meeting or part of the meeting.
- If the charity has a **conflict of interest policy** make sure it is applied in all situations where there is a conflict or potential conflict. The policy should also distinguish between the two different types of conflict, 'appointment conflicts' and 'personal conflicts'.

- Decide if the person(s) with a conflict of interest should be involved in any discussions or decisions about the situation – if it is decided they should be involved be prepared to justify that decision.
- Where there is a conflict, make sure that decisions are taken in the charity's interests.
- Make sure that your charity can still carry on its business and still form a quorum even if a number of charity trustees have to withdraw.

#### 3. Record:

- Keep a written record of the situation and what the charity did about it, including:
  - Recording who the conflict affected.
  - Recording when the conflict was identified and declared.
  - Recording what was discussed and decided.
  - Recording who withdrew from the decisions and how the remaining charity trustees made a decision in the best interests of the charity.
  - Maintaining the charity's register of interests.

#### 4. Learn:

- Learn from the experience, make improvements to the charity's policy and procedures and where necessary seek professional advice.
- Where conflicts of interest arise frequently and a number of charity trustees must withdraw from discussion, the charity should consider whether the make up of the Board is preventing the effective management of the charity.
- Make sure the charity's governing document has the power to remove charity trustees who are in serious or persistent breach of **the 2005 Act**.

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If members from a linked organisation dominate the make-up of your Board of charity trustees this can lead to a risk of recurrent conflict of interest. How you manage this risk is very important.

### What should be included in a conflict of interest policy?

A conflict of interest policy should set out:

- What a conflict of interest is and the conflicts that are likely to be relevant to your charity.
- The distinction between a “personal” conflict and an “appointment” conflict.
- When and how the charity trustees should declare a potential conflict of interest.
- What the charity’s governing document says (if anything) about conflicts of interest.
- When a conflicted charity trustee should withdraw from decision making and the procedures for making decisions in those circumstances.

SCIOs must have procedures for dealing with any conflict of interest within their SCIO constitution.

See the **sources of help, advice and best practice** section for links to example conflict of interest policies.

### When should a charity trustee withdraw from a meeting?

When a charity trustee is aware of a conflict of interest and they feel unable to put the interests of the charity first, they must withdraw from the discussion or decision concerned.

It may also be appropriate for charity trustees to withdraw from discussions in other circumstances of conflict of interest. Where they do not, they should be able to demonstrate that they have acted in the interests of the charity.

The charity trustees should make sure there is a record of who took part in the discussions and decisions. Where there is a conflict and the conflicted charity trustee still takes part, how this is in the best interests of the charity needs to be explained.

### For example:

A Board made up mainly of service users is asked to vote on an increase to the fees that service users pay to the charity. It is not practical for all the service user trustees to withdraw as there wouldn’t be enough trustees to form a quorum and make a valid decision.

The trustees need to put their own interests to one side and choose what is best for the charity. A clear record should be taken of the decision and why it was made.

However, if there is only one service user on the Board then it might be felt that they should withdraw, which would be easier for the person concerned and does not affect the quorum.

### What should you do if another charity trustee has a conflict of interest?



All charity trustees must act in line with the duty to **protect the interests of the charity**. This means that you and the other charity trustees must take collective responsibility to make sure that a breach of charity trustee duties is corrected and not repeated.

If you know another charity trustee is conflicted, and it is not declared, it is your duty to speak up.

If there is serious or persistent breach of duty by an individual, the other charity trustees should look at whether the governing document has the power to remove the charity trustee.

### What happens if a conflict of interest is not managed properly?

As charity trustees you must try to make sure that any breach of duty regarding conflict of interest is corrected and not repeated. Where there is a serious or persistent breach the charity trustee should be removed, providing the governing document allows. If the other charity trustees fail to do so, this could be considered **mismanagement or misconduct** in the administration of the charity.

As regulator, we are required to identify and investigate any apparent misconduct and, where appropriate can take protective action. See our [Inquiry Policy](#) for more details. Our response will be proportionate; where a charity trustee has acted honestly and reasonably.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

## EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

## SOURCES OF HELP, ADVICE AND BEST PRACTICE

- OSCR: [Who's in charge?](#)
- SCVO: [how to avoid conflicts of interest](#)

## LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

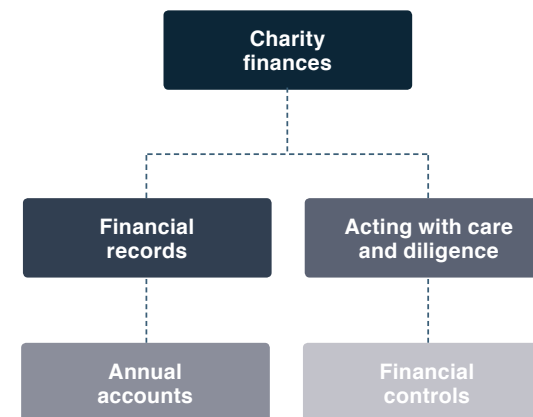
- Charity trustee general duties and misconduct: [section 66 of the 2005 Act](#).
- SCIO conflict of interest provision in constitution: [The Scottish Charitable Incorporated Organisations General Regulations 2011](#).

# CHARITY FINANCES

## SUMMARY

In this section, we explain the legal requirements and good practice for protecting your charity's finances. The section splits into two areas of charity finance:

- 1. Financial Records:** Charities have specific duties under the **2005 Act** to maintain financial records, prepare annual **accounts** and submit these accounts to us. It is the responsibility of all the charity trustees to make sure that these requirements are met.
- 2. Financial Controls:** The 2005 Act requires you, as charity trustees, to act with **care and diligence** when managing the affairs of the charity. This means that you must make sure you have suitable controls over financial procedures to protect the **assets** of the charity.



## MORE DETAIL



### Financial records and accounts

The **2005 Act** requires that as charity trustees, you must:

- keep proper accounting records
- prepare a statement of accounts, including a report on the charity's activities, each financial year
- have the accounts independently examined or audited
- send a copy of the accounts to us
- keep the accounting records for 6 years.

Anyone who has given time or money to a charity will have an interest in seeing its resources used properly. A well prepared and informative set of accounts will give members, funders, donors and anyone else with an interest in your charity a good picture of the activities and how well you are using the resources.

### What are proper accounting records?

Proper accounting records must detail day by day the money received and spent by the charity, the assets and liabilities of the charity and show the financial position of the charity at any time.

How you keep the records will depend on the size and complexity of your charity. For small charities, a manual record or simple spreadsheet may be enough. Larger charities may need specialist accounting software.

However you keep the records they should be easy to follow and kept up to date so that the financial position of the charity is clear at all times.

### What do I need to include in the accounts?



What you need to put in the accounts is set out in the [Charities Accounts \(Scotland\) Regulations 2006 \(as amended\)](#). These Regulations detail the different types of accounts that can be prepared and what you must include in them.

The Regulations also contain specific rules for reporting on the activities of the charity, as well as the financial information. This activities report is called the [Trustees' Annual Report](#).

For more details, please see our [guide to the accounts Regulations](#).

### External scrutiny of the accounts

All sets of charity accounts must be scrutinised by someone outside of the charity. This means that an independent person checks that the information in the accounts is a fair reflection of the charity's financial position.



The type of scrutiny required is dependent on the charity's turnover, [governing document](#) and the requirements of any funders.

For more details, please see our [Independent Examination: Guidance for Charities and Independent Examiners](#).



### What financial information do you need to submit?

Every year you need to send us:

1. the [Annual Return](#)
2. [statement of accounts](#)
3. [trustees' annual report](#) and
4. [external scrutiny report](#)

We use the annual return to gather information about your charity. Depending on the income of your charity, we may ask more questions about the charity's finances and how it operates.

### Note: Charitable Companies, Charities registered in England and Wales and Registered Social Landlords.

You will also need to follow the accounting requirements of the other regulators. See our [accounts guidance](#) for more information.

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## Financial controls

As a charity trustee, you have a duty under the 2005 Act to act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.

This means that you must act with a higher level of care than you do with your own finances and affairs. You must make sure that you protect the charity's resources and that you do not put the assets of the charity at risk. One way of doing this is to make sure that there are proper **financial controls** in place.

### What do we mean by financial controls?

Good financial controls are tools for making sure that you manage the charity effectively and meet your legal duty to act with care and diligence.

Financial controls are the systems you have in place to make sure that you protect the **assets** of the charity. The controls aim to identify and manage the risks of theft or fraud, loss and **conflicts of interest**.

#### ■ Reviewing accounts

A major part of financial control is to review the accounts. A useful way to do this is to compare the amounts spent on individual expense categories since they were last reviewed with what was expected to be spent in that period. Ideally, a budget will be prepared and approved by the charity trustee board before the beginning of the financial year. Then the actual results can be compared to the expected or budgeted results, making it easier to investigate any differences or 'variances'.

In a small organisation it may be appropriate just to compare the expenditure of one period with that of the corresponding previous period, for example the month before.

#### ■ Controls offer protection

It is important to remember that being a charity trustee is a significant responsibility. Where controls are correctly set up and used they will both protect the assets of the charity and you as a charity trustee.

### What areas do you need to consider?

#### ■ Collective responsibility

All of the charity trustees have responsibility for the financial records, not just the treasurer. As charity trustees, it is important that you all have a basic understanding of the finances of your charity and can quickly identify if there are any problems.

The financial information should be discussed at meetings to make sure that everyone knows the charity's financial situation. For example, finance should be a recurring item on the agenda of every board meeting. It is good practice that someone other than the treasurer also has an understanding of how the charity's financial records are kept.

#### ■ Finance Committee

Some organisations find it helpful to set up a finance sub-committee of charity trustees and advisors with financial or accounting knowledge. They have additional meetings to spend extra time on detailed finance matters, like budget preparation, and then report back to the charity trustee board. Having a committee does not absolve the other charity trustees of their collective responsibility but can be helpful in clarifying matters that are submitted to the full charity trustee board.

### ■ Separation of duties

Where possible, you should separate out the administrative tasks so that no one individual has sole responsibility for the financial transactions of your charity. We call this '**separation of duties**'.

For example, when your charity makes a purchase the same individual (whether it is a charity trustee, employee or volunteer) should not be responsible for arranging the purchase, authorising the payment and making the payment. In very small charities, it can be difficult to have a separation of duties. You should make sure that checks are regularly carried out on financial records and transactions to compensate for this.



### ■ Written procedures

Your financial procedures should be documented. This will help where charity trustees change regularly and if something unexpected happens such as a treasurer being taken ill.

You should review your procedures annually to make sure they are still fit for purpose, being followed correctly and understood.

### ■ Controls over cash

Where possible, it is best to avoid the use of cash, as it is harder to maintain a trail of cash and much easier for theft or fraud to happen. You should encourage donations to be made by bank transfer, cheques or online and you should make payments in this way wherever possible.

If you do receive cash donations, two people should count these and then make sure the money is banked as soon as possible. You should issue receipts for the donations and not make any payments out of this cash before taking it to the bank.

You should keep petty cash to a minimum. Receipts should be required for all items of petty cash. Access to the petty cash box should be restricted. It should be held in a secure place, counted and agreed. A cash book should be kept to record what goes into the petty cash and what is paid out of it. Each time there is money added to or taken out of the petty cash it should be recorded in the cash book with supporting documentation, such as a copy of a donation receipt or expenditure receipt. The amount in the petty cash box should be regularly counted and compared to the balance in the cashbook to make sure that all money is properly recorded and accounted for.

### ■ Banking

Banking is an important part of the financial controls. When considering your charity's banking arrangements, you should think about the full range of services that you need and look for a bank that can provide them.

Banks will ask for details of all signatories and usually all the charity trustees, so be prepared to have this information available. You should be aware of the terms and conditions of your banking arrangements and advise the bank immediately of any changes that may affect these for example, a change of signatories. Bank statements should be agreed to the accounting records regularly, at least monthly, and someone other than the person who is otherwise involved in the banking process should review these reconciliations.

Bank reconciliations should be reviewed at trustee meetings. In smaller charities, bank statements and transactions may be checked at trustee meetings.



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### ■ Cheque payments

Cheques should have a minimum of two signatories to make sure that it is not just one person who can make payments. You should have systems in place to check invoices and authorise payments before they are made.

You should not sign cheques where the amount and the recipient are not already filled in (blank cheques). You should ensure that the details on the cheque stub match the corresponding cheque. If this is not done the cheques may not be accounted for correctly and might result in lost or stolen money.

### ■ Automated payments

Automated payments from the bank account such as Direct Debits and Standing Orders should be subject to the same controls as other payments. A review of all such automated expenditure should take place regularly.

**Internet banking and online payments:** it can be more difficult to develop tight financial controls for bank transfers as access may be restricted to a single log in. You should consider making a rule that two people have to be present when large transactions are being processed.

- Some banks allow charities to provide more than one person to authorise payments (dual authority). You should ask your charity's bank for details of their dual authority options so that you can consider what is right for your charity.
- **Credit cards:** credit cards are often required to pay for travel or purchase items online. There should be internal control procedures to cover this including credit limits, authorisation procedures and review and authorisation of credit card statements.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

## EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

## SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Independent Examination: Guidance for Charities and Independent Examiners](#)
- [Guidance on the Charities Accounts \(Scotland\) Regulations](#)
- The Charity Commission for England and Wales have produced detailed [guidance on internal financial controls](#) that are applicable to Scottish charities.
- [Banking for charities](#)

## LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Financial reporting: [sections 44 – 45 of the 2005 Act](#) and [The Charities Accounts \(Scotland\) Regulations 2006](#) as amended

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# REMUNERATION (PAYING CHARITY TRUSTEES AND CONNECTED PERSONS)

## SUMMARY

The **2005 Act** sets out when charity trustees (and people who are connected to them) can receive payment from the charity for services provided to it. A charity must not pay charity trustees, and people who are connected to them, unless the charity can satisfy the conditions set out in the 2005 Act.

This section explains what those conditions are and gives examples of when it is and is not appropriate to pay **charity trustees** and **people connected** with them.

The rules on paying charity trustees do not apply to reclaiming expenses, like train fares to get to a charity trustee meeting.

## MORE DETAIL

### What is remuneration?

Remuneration in the **2005 Act** means any payment received for services provided to the charity either as a charity trustee or under a contract of employment with the charity, and includes **people connected** with charity trustees. It is any such payment from the charity's funds. Payment may be received in the form of a salary, payment for services or in the form of other benefits such as a company car, medical plan or pension plan.

### For example:

Out of pocket expenses paid to charity trustees, for instance travel expenses to attend meetings, are not considered remuneration, although receipts for expenses are still required.

In this guidance, we refer to **remuneration** as 'payment' or 'paying charity trustees'.

### What are the rules on paying charity trustees?

The **2005 Act** states that **you must not pay a charity trustee**, for services provided to the charity, either as a charity trustee or under contract, **unless** you meet **all** of these conditions:

- there is no restriction to the payment in the charity's **governing document**



- less than half the total number of charity trustees are getting paid (directly or indirectly) from the charity
- there is a written agreement between the charity and the charity trustee
- the written agreement sets out the maximum amount to be paid, and
- the charity trustees are satisfied it is in the interest of the charity for the services to be provided by the charity trustee for that maximum amount.

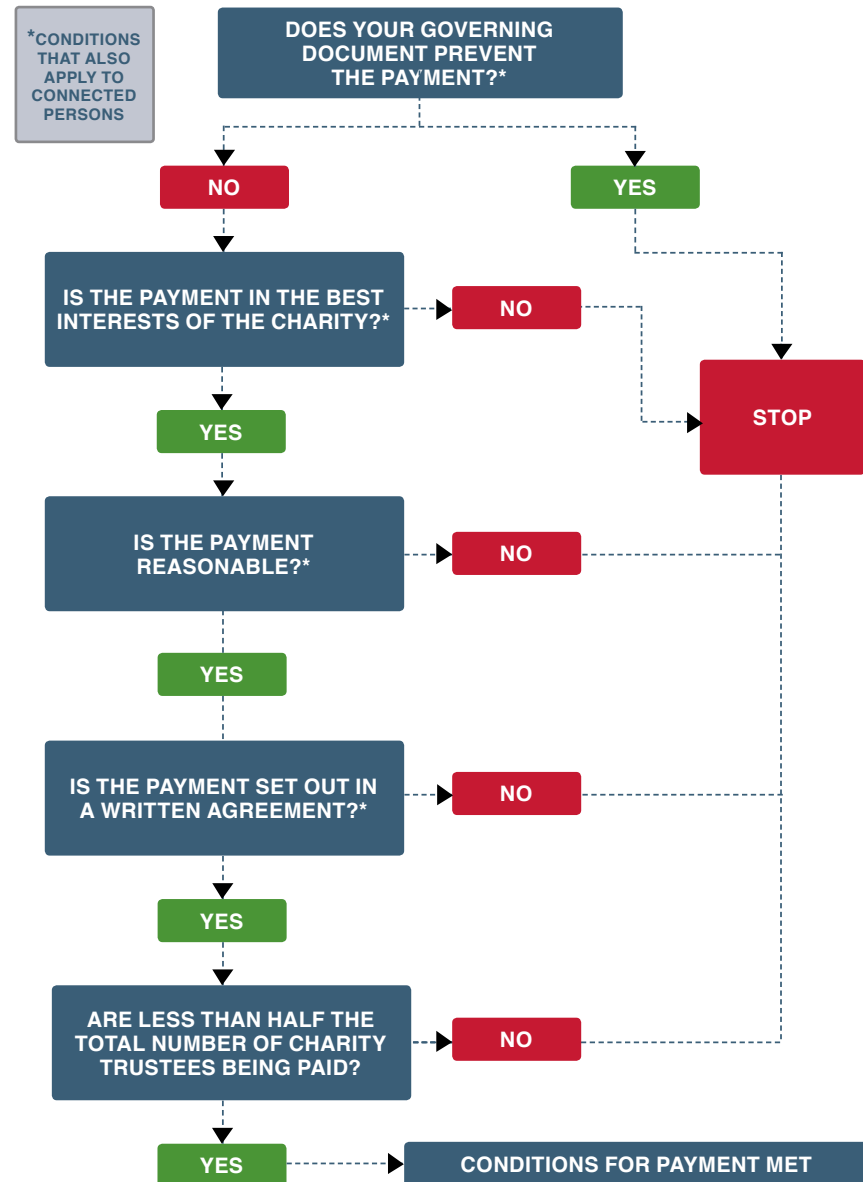
If your governing document says that the charity trustees cannot be paid, then even if the other rules from the 2005 Act are met, you will not be able to pay any of the charity trustees.

Examples of when it might be reasonable to pay a charity trustee, provided the conditions above are met:

- When a local tradesman is a charity trustee and provides services to the charity at a competitive rate.
- When employees of the charity are also charity trustees because of their position: for example, as chief executive or because they are elected as a staff representative.

An indirect payment to a charity trustee is where two or more charity trustees are connected and one of them is being paid.

See the flowchart opposite to see if a payment meets the conditions.



### What are the rules for paying a connected person?

The **2005 Act** states that **you must not pay** a person connected to a charity trustee for services provided to the charity, **unless** you meet **all** of these conditions:

- there is no restriction on the payment within the charity's governing document
- the payment is reasonable
- there is a written agreement between the charity and the connected person
- the written agreement sets out the maximum amount to be paid
- the charity trustees are satisfied it is in the interest of the charity for the services to be provided by the connected person for that amount.

### What happens if you want to pay charity trustees and/or connected persons for services provided to the charity?

In order to pay a charity trustee or connected person, provided the exemptions do not apply, the conditions detailed above must be met. If a decision is taken to pay a charity trustee or connected person, you should keep a record of the charity trustees considerations and must enter into a written agreement with them setting out the maximum amount to be paid.

### What is a reasonable amount?

What is reasonable will depend on the circumstances. The important thing is that whatever the decision is, the interests of the charity come first and you can demonstrate that.

The process for deciding the level of payment must be open and transparent and **must not** involve the charity trustee who is to receive payment or is connected to the person who will.



You could compare payment amounts with similar roles at other charities or the wider market place.

If the payment appears to be excessive, there may have been a breach of charity trustee duties, which would be **misconduct**.

### Good practice



- Have a payment policy that makes sure any payments to charity trustees and/or connected people complies with the conditions set out in the 2005 Act
- establish a register of charity trustees' interests
- obtain at least two separate quotes for services
- clearly minute the decision that paying a particular charity trustee or a person connected to them for services is in the charity's interest.

If you are not sure if a charity trustee, or connected person, can be paid for services you should get professional advice.

### What else do you need to consider about payments?

If you are thinking about employing a charity trustee or connected person, you must make sure that:

- there is a genuine need for a paid position or for the services to be provided
- as charity trustees, you assess any potential risks, manage any conflicts of interest and are open and transparent about the decision
- any charity trustee who has a **conflict of interest** is not involved in the decision
- no one individual takes a decision about employment on their own

- any payments to charity trustees are declared in the **annual accounts**.

We have particular concerns where the charity trustees of a charity are the people benefiting from it as private individuals, or where those benefiting most are people connected with the charity trustees such as family members or companies in which the charity trustees have an interest.

Where there is such **private benefit** we may need to consider whether it causes the charity to fail the **charity test**. This is the legal test as to whether or not your organisation can be, or remain, a charity.

#### **What is an honorarium?**

An honorarium is generally a small amount of money paid to someone for a service; unlike a fee or salary, an honorarium is not contractual but is a gift.

We would not expect honoraria payments to be paid on a regular basis as a matter of course. As charity trustees, you should review the situation every year and only award a payment if there are exceptional reasons for doing so. We would expect you to clearly explain and record your decision.

In order to make payment of honoraria to a charity trustee or a connected person the remuneration conditions detailed above would have to be met.

#### **Charities registered in England and Wales and Registered Social Landlords**

If you are also registered with the Charity Commission for England and Wales you will also need to follow their rules on payments to charity trustees.

If you are a cross-border charity and you are paying charity trustees in line with the law of England and Wales you will need to take into account the rules under the 2005 Act and whether those rules allow the payment in question.

Registered Social Landlords must follow the rules set out by the Scottish Housing Regulator about payments to charity trustees.

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### Trustee indemnity insurance

You are allowed to use your charity's funds to provide your charity trustees with indemnity insurance.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

### EXCEPTIONS

These rules for paying charity trustees and connected persons do not apply if:

- there is a provision authorising payment of the charity trustees (and/or connected persons) in the charity's **governing document** and this was in force on or before the 15 November 2004
- there is legislation or an order made by the Court of Session that allows charity trustees (or connected persons) to receive payment.

### EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

### SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Meeting the Charity Test – Private Benefit section](#)
- [Payment Flowchart pdf](#)

### LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Remuneration: [sections 67 and 68 of the 2005 Act](#)
- Trustee indemnity insurance: [section 127 of the Public Services Reform \(Scotland\) Act 2010](#)

# PUBLICISING THAT YOU ARE A CHARITY

## SUMMARY

Making sure that people know you are a charity is one of the **specific charity trustee duties** set out in the **2005 Act**. You must provide certain **charity details** in certain **external documents** (hard copy and electronic). What you need to tell people and how you need to do this are set out in specific **Regulations**. This section sums up what you need to do, and gives suggestions about how best to do it.

## MORE DETAIL

All charities registered in Scotland must publicise the fact that they are a charity. **Charity trustees** must make sure that certain **charity details** are on all of the charity's **external documents** listed below.

These rules also apply to any third parties who publish documents on behalf of your charity, for example legal advisors, accountants, or organisations working on your behalf.

### What do you need to tell people?

You need display your **charity's details**. This means:

- your charity's name, as entered in the **Scottish Charity Register**
- any other name your charity is known as (the 'known as' name)
- your **Scottish Charity Number** (SC0[zero]xxxxx)
- the fact that you are a charity, if this is not already clear from your name.



### For example:

'Monkstown After School Club (known as Monkey Club) is a Scottish Charity, SC098765'.

If you are a **Scottish Charitable Incorporated Organisation (SCIO)**, you need to tell people:

- the SCIO's name as entered in the Scottish Charity Register
- if the name does not include the terms 'Scottish Charitable Incorporated Organisation' or 'SCIO', the fact that it is a SCIO.

As a SCIO, you do not have to include your Scottish Charity Number but we strongly recommend that you do.

### For example:

'Monkstown After School Club (known as Monkey Club) is a Scottish Charitable Incorporated Organisation (SCIO), Scottish Charity number: SC098765'.



## Which external documents need to have these details?

You must put the charity's details on:

1. all your external letters and emails
2. your website's home page
3. all your adverts, notices and official publications
4. documents that ask for donations for your charity
5. bills your charity issues
6. direct debit and standing order mandates
7. all invoices and receipts
8. annual accounts
9. educational, promotional or campaign materials
10. legal conveyance documents about land rights (buying, selling or transferring land)
11. contracts.

## In addition to above requirements, it is good practice to put charity details on:

- all your website pages
- your charity's social media accounts
- campaigns or adverts that are online, on the radio or television
- business cards
- signs and displays.

Add the '[charity registration](#)' logo to your website to help you show the public that you're entered in the Scottish Charity Register.

## Why do you need to tell people that you are a charity?

It is important that the people you come into contact with, the public, funders, contractors and other organisations, know and can check that you are a genuine **charity**.



It also gives people confidence in supporting your charity and knowing that we regulate you.



## When do you have to put your charity's details on documents?

If you are a SCIO, you must have the details on your **external documents** as soon as possible after your charity is registered. For all other charities, you must put the charity details on your external documents as soon as possible and no later than **6 months** of becoming a charity.

## What happens if you do not put the charity details on documents?

The rules about having these details on the documents are set out in [regulations](#). All charity trustees have responsibility for making sure that their charity complies with these regulations. A breach of the regulations is a breach of your **general duties** and is **misconduct**.

If you are a SCIO it is an offence to issue or sign any of the **external documents** which do not include the charity's details, or to authorise such actions.

## Charitable companies

Charities whose **legal form** is a company must comply with both company law and charity law. Charitable companies must include **charity details** set out above and the information required by company law, for example the company number.

Find out more about company law requirements at the [Companies House website](#).



### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

### EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

### SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Publicising Charitable Status](#)
- [The Charities References in Documents \(Scotland\) Regulations 2007](#) and [The Charities references in Documents \(Scotland\) Amendment Regulations 2008](#): these Regulations set out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents.
- [SCIO's: A Guide](#)

### LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- [The Charities References in Documents \(Scotland\) Regulations 2007](#) and [The Charities references in Documents \(Scotland\) Amendment Regulations 2008](#): these Regulations set out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents.

# GLOSSARY OF TERMS

This glossary provides you with further information, definitions and descriptions of some key terms. Where appropriate, it links to the relevant sections of law that underpin the terms.

TERMS	EXPLANATION	TERMS	EXPLANATION
2005 Act	The <a href="#">Charities and Trustee Investment (Scotland) Act 2005</a> : the primary piece of charity law in Scotland.	Assets	This means everything a charity owns; property, money, equipment, including heritable property (such as land and buildings and rights attached to it).
Accounts	Accounts represent the organisations finances for a particular period (usually a year). They show how much money was received and how much was spent, broken down into different categories. Charities must prepare accounts each year and must send a copy of to us (the Scottish Charity Regulator) each year.  For more information see <a href="#">Charity Accounting</a> .	Beneficiaries	These are the people your charity is set up to help, those who benefit from what you do.
Annual return	The online form charities complete each year to provide us with information about the charity (in particular for the Scottish Charity Register, and including information about the charity’s finances).  This can be completed in <a href="#">OSCR online</a> .	Care and diligence	This means a very high level of care and thoroughness.  This is set out in <a href="#">Section 66 of the 2005 Act</a> .

TERMS	EXPLANATION	TERMS	EXPLANATION
Charitable Purposes	<p>A charity's purposes are usually set out in the objects, aims or purposes section of its governing document. The purposes say what your organisation has been set up to achieve, and should reflect its broad aims rather than the day-to-day activities. Each purpose your charity has must fit within at least one of the 16 charitable purposes set out in <a href="#">section 7(2) of the 2005 Act</a>, that is:</p> <ul style="list-style-type: none"> <li>(a) the prevention or relief of poverty,</li> <li>(b) the advancement of education,</li> <li>(c) the advancement of religion,</li> <li>(d) the advancement of health,</li> <li>(e) the saving of lives,</li> <li>(f) the advancement of citizenship or community development,</li> <li>(g) the advancement of the arts, heritage, culture or science,</li> <li>(h) the advancement of public participation in sport,</li> <li>(i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,</li> </ul>	Charitable Purposes	<ul style="list-style-type: none"> <li>(j) the advancement of human rights, conflict resolution or reconciliation,</li> <li>(k) the promotion of religious or racial harmony,</li> <li>(l) the promotion of equality and diversity,</li> <li>(m) the advancement of environmental protection or improvement,</li> <li>(n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,</li> <li>(o) the advancement of animal welfare,</li> <li>(p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.</li> </ul>
		Charity	<p>An organisation is a charity in Scotland when it is entered on the <a href="#">Scottish Charity Register</a>.</p>

TERMS	EXPLANATION	TERMS	EXPLANATION
Charity Test	<p>This is the test set out under the <a href="#">Charities and Trustee Investment (Scotland) Act 2005</a>, which determines whether an organisation can be a charity.</p> <p>The charity test has two main elements:</p> <ol style="list-style-type: none"> <li>1. an organisation has to show that it has only charitable purposes and</li> <li>2. that it provides public benefit in achieving those purposes.</li> </ol> <p>This is set out in <a href="#">sections 7 and 8 of the 2005 Act</a>.</p>	Connected person	<p>The term connected person includes:</p> <ul style="list-style-type: none"> <li>■ spouses, civil partners and cohabitants of a charity trustee</li> <li>■ child, stepchild, parent, grandchild, grandparent, brother or sister of a charity trustee (and a spouse of any such person)</li> <li>■ an institution controlled by a charity trustee or a person connected with them or two or more trustees/connected persons when taken together</li> <li>■ a body corporate or company in which the charity trustee or a person connected with them has a substantial interest, or</li> <li>■ a Scottish partnership (business) in which the charity trustee or, a person connected with them is a partner.</li> </ul>
Charity Trustee	<p>'Charity trustees' are defined in <a href="#">section 106 of the 2005 Act</a> as people having the general control and management of the administration of a charity. Charity trustees can also sometimes be known as committee members, directors or board members.</p>	Conflict of interest (policy)	<p>A conflict of interest may arise in a situation where a charity trustee may obtain personal benefit from a particular decision in relation to the charity. A policy setting out what a conflict of interest is and how you will manage situations where a conflict arises is strongly recommended. See the <a href="#">Conflict of interest sources of help, advice and best practice</a> section for links to example policies.</p>
Collective responsibility	<p>Charity trustees are not only responsible for their own actions, they are also responsible for the actions and decisions taken by the charity trustees when acting together.</p>		

TERMS	EXPLANATION	TERMS	EXPLANATION
Consent	<p><a href="#">Section 16 of the 2005 Act</a> says that you must seek OSCR’s consent before making any of the changes listed below. You need to ask for our consent at least 6 weeks (42 days) before you plan to implement the proposed change.</p> <p>Changes that need our consent are:</p> <ul style="list-style-type: none"> <li>■ changing the name of the charity</li> <li>■ winding up the charity</li> <li>■ amending the objects or purposes of the charity</li> <li>■ amalgamating the charity with another body</li> <li>■ changing the charity’s legal form</li> <li>■ applying to the court to change purposes, amalgamate or wind-up.</li> </ul> <p>For more information, see <a href="#">Making Changes to Your Charity</a>.</p>	External scrutiny report	Your charity’s accounts must be externally scrutinised. That is, someone who is independent of your charity must review the accounts and produce a report, attached to the accounts, that highlights any issues to the reader.
		Governing Document	<p>A governing document (or constitution) is the document (or set of documents) that sets up an organisation and says what its purposes are. It will usually deal with other matters, including who will manage and control the organisation, what its powers are, what it can do with the organisation’s money and other assets, and membership of the organisation. For more information, see our <a href="#">FAQs</a>.</p> <p>This is defined in <a href="#">section 106 of the 2005 Act</a>.</p>
Disbenefit	<p>This is the opposite of benefit and is equivalent to detriment or harm.</p> <p>This is set out in <a href="#">section 8 (2) (ii) of the 2005 Act</a>.</p>		

TERMS	EXPLANATION	TERMS	EXPLANATION
Legal Form	<p>Charities can take a number of legal forms. The legal form is the structure or entity, which then becomes a charity. For example:</p> <ul style="list-style-type: none"> <li>■ Unincorporated associations</li> <li>■ Companies</li> <li>■ Scottish Charitable Incorporated Organisations (SCIO)</li> <li>■ Trusts</li> <li>■ Community Benefit Society</li> <li>■ Statutory corporation established by an Act of Parliament or Royal Charter</li> <li>■ Educational endowment</li> </ul>	Misconduct	<p>Misconduct (which includes mismanagement) means any action by charity trustees which may result in a significant loss or harm to the charity (and this includes failing to act). It arises where the general duties are not met and/or where charity trustees fail to comply with any direction, requirement, notice or duty imposed under the 2005 Act (<a href="#">section 66(2) of the 2005 Act</a>).</p>
Ministerial direction or control	<p>This is where a governing document gives Scottish or UK Ministers the power to direct or otherwise control an organisation's activities.</p> <p>This is set out in <a href="#">section 7 (4) (b) of the 2005 Act</a>.</p>	Principal contact	<p>The person who will act as the main point of contact for the charity.</p> <p>This can be updated in <a href="#">OSCR online</a>.</p>
		Private Benefit	<p>This is where benefit from the charities activities is provided to members of the organisation or other individuals not as a member of the public.</p> <p>This is set out in <a href="#">Section 8 (2) (a) (i) of the 2005 Act</a>.</p>
		Property	<p>By 'property' we mean all property and assets (money and other assets) belonging to a charity, including heritable property (such as land and buildings and rights attached to it).</p>

TERMS	EXPLANATION	TERMS	EXPLANATION
Protect the interests of the charity	Trustees should put the interests of their charity before their own interests, or those of any other person or organisation. They must actively work towards the achievement of the charity's purposes.  This is set out in <a href="#">Section 66 of the 2005 Act</a> .	Remuneration	Remuneration in the 2005 Act means any payment or benefit in kind. <a href="#">Sections 67 and 68 of the 2005 Act</a> state that a charity trustee must not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) from a charity's funds unless certain conditions are met.  For more information, see <a href="#">Trustee Remuneration guide</a> .
Proxy	Someone who is authorised to act as a substitute for another.	SCIO	The Scottish Charitable Incorporated Organisation is a legal form unique to Scottish charities and is able to enter into contracts, employ staff, incur debts, own property, sue and be sued.  For more information see <a href="#">SCIO guidance</a> .
Public Benefit	This is the way a charity makes a positive difference to the public through the activities it carries out when advancing its charitable purposes.  This is set out in <a href="#">Section 8 of the 2005 Act</a> .	Scottish Charity number	This is the unique number given to all Scottish charities, beginning with SC0 (zero) followed by five numbers.
Quorum	The minimum number of people necessary to make decisions and conduct the charity's business. A quorum can refer to: <ul style="list-style-type: none"> <li>the number of charity trustees required for board meetings, or</li> <li>the number of the charity's members required for membership meetings, for example Annual General Meetings (AGMs).</li> </ul> This number is often set out in the charity's governing document.	Scottish Charity Register	This means the register of all Scottish charities kept by OSCR.  For more information, see the <a href="#">Scottish Charity Register</a> .
Register of interests	A record of the personal, business and financial interests of a charity trustee that may potentially lead to a conflict of interest.		



TERMS	EXPLANATION
Scottish Charity Regulator	<p>The independent regulator and registrar for over 23,500 Scottish charities, established by the 2005 Act.</p> <p>For more information, see <a href="#">About OSCR</a>.</p>
Trustees Annual Report	<p>The Trustees Annual Report is a part of the annual Accounts and contains information about the charity and its activities and achievements in that year.</p>
Undue Restriction	<p>This is a restriction on who can access the benefit provided by a charity: it will be undue if excessive or unnecessary. It includes fees and charges.</p> <p>This is set out in <a href="#">Section 8 (2) (b) of the 2005 Act</a>.</p>
Wind up	<p>To wind up or dissolve a charity means that the charity ceases to exist. Before winding up a charity must get OSCR's consent.</p> <p>This is set out in <a href="#">Section 16 of the 2005 Act</a>. For more information, see <a href="#">Making Changes to Your Charity</a>.</p>





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