

**Congregational  
Federation in  
Scotland**

**The Church as a Charity**

In Scotland, a Church which has its own trustees will already be a legal entity, but it may also be subject to Scottish Charity Law.

### **The Present Position**

The law in relation to Scottish charities is much less formal than in other parts of the UK and any body wishing to call itself a charity has simply to be recognised by the Inland Revenue and then conform to the appropriate sections of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990. Organisations which are recognised in this way are allowed to represent themselves as charities in respect of Section 505 of the Income & Corporation Taxes Act 1988 thereby allowing them to receive such financial benefits as Bank Interest paid gross of Tax, Gift Aid donations etc.

The 1990 Act requires all recognised charities to produce annual accounts and to include in them a statement of their charitable purpose and charities are required to provide certain information to members of the public on request. This information includes a copy of the charity's founding document, a copy of its most recent statement of accounts and the accounting reference date of the charity.

The rules in relation to the auditing of recognised charities' accounts allow for a less formal approach where the charity turnover is less than £ 100,000 per annum and in such cases, the accounts need only be "examined" by someone who is "competent". However, charities whose turnover exceeds this figure must have their accounts professionally audited. All charities must retain their financial records for a period of at least six years.

Finally, anyone with a conviction for any of the following may not hold office in a Scottish charity :

Any person who has been convicted of an offence involving dishonesty.

An undischarged bankrupt.

Anyone who has been removed from office for mismanagement of a charity.

Anyone who is subject to disqualification under the Company Directors Disqualification Act 1986.

### **The Future**

The Scottish Parliament set up the Charity Law Review Commission which produced 114 recommendations as to how the law in relation to Scottish charities should be changed and many of these recommendations have now been incorporated into a draft bill which went through a consultation process during the summer of 2004.

While the Inland Revenue still retains overall responsibility for Scottish charities at present, the Scottish Parliament has established the OSCR - Office of the Scottish Charity Regulator, whose initial job is to establish an up to date list of live Scottish charities. They have decided to do this by sending a communication to the last known address of the charities on the Inland

Revenue list and where they receive a reply, the charity will then be placed on the new Charity Index.

This method has the drawback of placing at a disadvantage those charities which may have changed their contact person but not advised anyone of the change.

In order that all of our Churches are included in the new Index, it is important that any who do not currently appear on the list make representation to the OSCR at the earliest opportunity. It only takes a phone call. You will need to have to hand details of your Scottish Charity Number and the person who is to be the contact.

Under the new legislation which will ultimately be known as the Charities & Trustee Investment (Scotland) Act, the Office of the Scottish Charity Regulator will assume the role of :

- \*\* the determination of charitable status
- \*\* the maintenance of the charity register
- \*\* the provision of public accountability of charities
- \*\* the monitoring of Scottish Charities
- \*\* the provision of a support service
- \*\* the protection of the public

To achieve this, it is proposed that the definition of a charity should conform to the Home Office proposals published in May 2004. The definition of the charitable purposes of an organisation must fall into one or more of the following categories :

- \*\* The prevention or relief of poverty
- \*\* The advancement of education
- \*\* The advancement of religion
- \*\* The advancement of health
- \*\* The advancement of civic responsibility or community development
- \*\* The advancement of the arts, heritage, culture or science
- \*\* The advancement of amateur sport
- \*\* The advancement of human rights, conflict resolution or reconciliation
- \*\* The advancement of environmental protection or improvement
- \*\* The provision of accommodation to those who need it by reason of age, ill health, disability, financial hardship or other disadvantage
- \*\* The provision of care to the aged, people with disability, young people or children
- \*\* The advancement of animal welfare
- \*\* Any other purpose intended to provide community benefit

In addition, organisations wishing to qualify for charitable status will have to show that the organisation provides public benefit. The proposed criteria for assessing public benefit are :

- \*\* Public benefit must outweigh any possible public harm.
- \*\* The benefit need not be restricted to material benefit.
- \*\* Public benefit must be provided to a class of beneficiaries who are members of the general public or who constitute a sufficient number of members of the public within a particular community. It must not be provided on the basis of personal or other connection to a charity.
- \*\* Any private benefit to an individual, other than those arising through pursuit of the charity's purposes, must be legitimate and incidental to the pursuit of the charity's purposes.
- \*\* Public benefit is not affected by any charge for services providing charges are set at a level that does not exclude or deter a substantial proportion of potential beneficiaries.

The final arbiter of "public benefit" in Scotland will be the Scottish Courts.

Tax relief will still be granted by the Inland Revenue, but only AFTER charitable status has been granted by the OSCR. (this is the situation in England & Wales)

Local Government legislation will be amended to ensure that all charities registered by the OSCR have access to mandatory local rates reliefs.

All charities on the register will be expected to state their charitable status on correspondence and published documents and to complete an annual report form for the OSCR. This return will include a copy of the charity's latest accounts.

The OSCR will have the status of a non-ministerial department with a governing board, independent of Ministers, and with accountability to Parliament. (As this is a devolved matter, this accountability would be to the Scottish Parliament) It would be staffed by civil servants in the same way as the Inland Revenue or the Office of Fair Trading.

Since the word "Trustee" has a legal significance within Trust Law in Scotland, it is proposed that volunteers who sit on the governing body of a charity be called Charity Stewards.

The duties of charity stewards will vary from organisation to organisation, but the professionalism and diligence with which these duties are carried out will be subject to the scrutiny by the OSCR.

The present law regarding who may or may not serve on the governing body of a charity will be incorporated into the new bill to include charity stewards.

The OSCR already has the powers to investigate charities and to request relevant information from any person or any body for the purpose of its investigations. The OSCR will have the power to suspend stewards, managers, agents or employees of a charity where they appear to have been responsible for any misconduct.

The OSCR will be able to freeze the assets of a charity and restrict its transactions for up to six months and will have the power to stop a non-charity from calling itself a charity. It will be an offence for a body or person not to comply with the directions from the OSCR where misconduct is thought to have taken place. A system of appeals will be put in place.

Any charity wishing to change its contact name and address must notify the OSCR.

Any charity wishing to change its constitution, merge with another charity or wind up must notify the OSCR.

Certain religious bodies may be treated as Designated Religious Charities (DRC's)

A designated religious charity will be one whose principal purpose is the promotion of a religious objective; their principal activity is the regular holding of acts of worship; they have been established in Scotland for at least 10 years and can demonstrate a membership of not less than 3000 people resident in Scotland aged over 16.

Existing designated religious bodies under the 1990 Act will be deemed to be DRC's for a period of one year during which they must apply to the OSCR to have this status confirmed.

DRC's will be exempt from requirements to provide their accounts in the standard charity format and the powers of the OSCR/Court of Session to suspend or disqualify a person from management etc. will not apply to them.

HOWEVER, DRC's will be required to provide their accounts in an agreed format and to report to the OSCR.

For more information, contact :

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