

1. The Context

- 1.1 OSCR is the registrar and regulator of over 23,500 Scottish charities. The 2005 Act includes a statutory responsibility for monitoring charities compliance with the new legislation, as well as encouraging and facilitating that compliance. The intention is to increase public confidence in charities through effective regulation.
- 1.2 OSCR is committed to the principles of effective regulation. OSCR has a statutory duty to take into account principles of regulatory practice in carrying out our functions. OSCR has developed these principles in the context of charity regulation, and aims to be:
 - **Independent:** we will maintain our operational independence, acting without fear or favour, in the public interest.
 - **Accountable:** we will be proactive in accounting to all our stakeholders, which will include involving others on a continuous and appropriate basis.
 - **Proportionate:** our actions, procedures and culture will be proportionate to the burden of regulation on charities of different sizes, to the degree of risk involved and to the potential impact.
 - **Transparent:** we have adopted a Freedom of Information culture from the outset.
 - **Consistent:** we will act consistently in our decision making and will also aim to act as an exemplar, observing best practice.
 - **Fair:** we will exercise our powers and discretion in a way which is consistent, impartial and even handed.
- 1.4 OSCR has therefore developed various procedures support the aim of increasing public confidence in charities through effective regulation which:
 - Meets the key objective of balancing public confidence with clarity for charities themselves.
 - Is realistic in its expectations of charities
 - Is realistic in terms of OSCR resources
 - Is consistent with the requirements of the Act including the requirement to take into account the principles of best regulatory practice

2. Routine Monitoring

A proactive monitoring programme has been developed after consultation with the sector and is based upon the submission of an annual return, a supplementary monitoring return, for charities with a gross income of £25,000 or more, and a set of annual accounts submitted to OSCR within 9 months of the charity financial year end date.

All accounts are reviewed to ensure that they meet the basic accounts requirements of the Act and any deficiencies are highlighted to the charity, for either compliance in the next year or rectification in the case of failure in completeness of primary statements.

The information provided on the supplementary monitoring return is assessed against 41 active triggers used for exception reporting. Any exceptions triggered are considered in line with the accounts submitted to establish whether an explanation is immediately available or followed up directly with the charity. The information sought and questions raised in the supplementary monitoring return reflect current OSCR monitoring priorities.

In keeping with the objectives, and the principles of effective regulation, the OSCR monitoring programme is therefore intended to be:

- (a) **Comprehensive** - each charity on the Register is required to respond to enquiries from OSCR through the completion of an annual return either confirming or amending its entry on the Scottish Charity register, and to file annual accounts

- (b) **Fair** – the monitoring programme is proportionate and takes into account the burden of compliance, particularly for smaller charities that make up approximately two thirds of the sector.

In order to ensure fairness and consistency, OSCR will take appropriate action to ensure all charities meet their requirements to file returns and accounts with OSCR. This will include the identification of overdue status on the Register; the publication of defaulting charities 6 months after the filing deadline, and use of sanctions introduced by the Act which can lead to removal from the Register.

- (c) **Proportionate for charities** - the monitoring programme is proportionate to the size of charity by the limiting of information required from small charities with an income of under £25,000.

OSCR will look at identified areas of risk. Initially we have focussed on 3 areas identified as of key public interest: financial compliance, governance and fund raising.

- (d) **Consistent** - OSCR has developed a programme which is intended to be stable over a defined initial period of 4 years (2006/10).

OSCR aims to work with other regulators, to reduce the burden of regulation for charities. Supervisory functions are delegated under the Act to the Scottish Housing Regulator for registered social landlords on the Register. The extent to which charities, also registered in other jurisdictions, will be subject to the proactive monitoring programme is under consideration. Proposals developed through a reference group that includes charities and other UK charity regulators are the subject of a formal OSCR consultation (October to December 2008).

3. Tailored monitoring

Monitoring is also needed for individual charities as a result of specific legislative requirements or where certain criteria are met.

3.1 Use of assets under section 19 of the Act following removal from the Register.

Where a charity is removed from the Register either voluntarily or by OSCR, the body is under a duty to apply the assets and any income derived from the assets in accordance with its purposes as set out in the Register immediately before its removal and report annually to OSCR.

OSCR will agree with the body the extent of the assets at date of removal and the appropriate reporting arrangements.

OSCR will apply a proportionate approach to the reporting requirements based on the nature of the assets and any associated restrictions on their use.

3.2 Compliance with OSCR directions

Under the Act OSCR has statutory powers to issue directions relating to change of name; constitutional and winding up consent matters; obtaining of information for enquiries; restriction of activities transactions and funds movements; misrepresentation as a charity; and recovery of illegal remuneration. OSCR can also direct charities to take action to meet the charity test.

An appropriate timeframe for compliance will be included within the direction, and such directions will be monitored through case management to ensure directions have been satisfied.

3.3 Compliance with advice and assurance provided through inquiries

The statutory powers available to OSCR under the Act in respect of enquiries arising out of complaints and referrals, whether internal or external, are only used where action is needed. OSCR takes a risk based and proportionate response to case work and much of OSCR actions involve advice, obtaining Trustee assurance or commitment to take action. OSCR will monitor compliance with such assurances through case management.

3.4 Preventative monitoring

As a result of assessing new applications and due to limited information being available at this early stage about how the charity will conduct its affairs or deliver public benefit, OSCR may identify high risk cases for ongoing monitoring. OSCR will be open and transparent in informing the charity as to any additional information and timescale requirements that are required to enable OSCR to assess compliance with the legislation.

3.5 Exempt Promoters

OSCR monitors the requirements of entities that have exempt promoter status under the Civic Government (Scotland) Act 1982. In due course such status will be replaced by the designated national collector provisions of the 2005 Act.

4. OSCR Monitoring and Co-operation with Others

OSCR recognises the benefit of working strategically with others. OSCR's resources are relatively limited and in any event there are clear benefits in working with advisors and intermediaries, as well as the charities themselves.

OSCR will work with others by:

- Entering into concordats with other regulators, aimed at agreeing exchange of information and consistency of intervention
- Issuing general guidance, where appropriate in co-operation with others such as the Charity Commission.
- Working with intermediaries and umbrella bodies to grow sector understanding of monitoring.

October 2008