

Joint statement from the Scottish Charity Regulator (OSCR) and Her Majesty's Revenue and Customs (HMRC)

Defining the phrase '**charitable purpose**' or the word '**charitable**' in the constitutions of Scottish Charities

Date: 19 February 2008

OSCR and HMRC have clarified the requirement for 'definition clauses' (defining the meaning of the words 'charitable', 'charitable purpose' or 'charity') in constitutions of bodies on the Scottish Charity Register that also wish to seek tax relief from HMRC.

The agreement reached between OSCR and HMRC was informed by the knowledge that there is very little divergence between the concept of what is 'charitable' etc in terms of the Charities and Trustee Investment (Scotland) Act 2005 and what is 'charitable' etc for the purposes of the Taxes Acts and the mutual desire to maintain that position going into the future. The objective of the agreement has been to arrive at an operational arrangement that has a minimum impact on Scottish charities.

HMRC and OSCR have therefore agreed as follows:

1. Not all charities on the Scottish Charity Register that have been established under Scottish law need a definition of the terms 'charitable' or 'charitable purpose' to be included in their constitution in order to be able to meet the requirements of HMRC and qualify for tax relief. A definition clause is **not** needed if:
 - a. The terms 'charitable' or 'charitable purpose' are not used in the constitution; or
 - b. The constitution does not contain a reference to general 'charitable purposes', nor a dissolution clause which allows the distribution of assets for 'any charitable purpose'.

2. Any charities on the Scottish Charity Register that may have adopted a definition or interpretation clause published by OSCR prior to February 2008, that was different from those contained in this statement, do **not** need to change this in order to be able to benefit from tax relief
3. Scottish charities **already on the Register** and which are already registered with HMRC which do not have a 'definition clause' in their constitution will **not** be required by HMRC to change their constitutions in order to qualify for tax relief. (However, HMRC stress that it would be good practice to make such a change if the constitution were updated for another reason).
4. Scottish charities to be entered **new** on the Register by OSCR (and that use the terms charitable etc in their draft constitutions), will be advised (both by OSCR and HMRC) that, should they at any point wish to claim tax relief, they will probably need to define the terms 'charitable' or 'charitable purpose' (where used) in a way acceptable to HMRC, i.e. by inserting the model definitions clause(s) (see below).
5. HMRC and OSCR wish to maintain the working practice (of HMRC) that entry on the Scottish Charity Register would, in the vast majority of cases, satisfy HMRC for the purposes of granting tax relief (and that separate submission of a constitution to HMRC will not usually be necessary). OSCR will therefore bring to the attention of HMRC any charities that are entered on the Register without a definition clause in the constitution, where exact drafting of the constitution would need this for HMRC purposes. (OSCR will also inform the relevant charity if this is the case). This will allow HMRC to make separate, individual assessments of these cases should these charities request tax relief.

Example definition clauses

These clauses can be amended or adjusted as appropriate and necessary within the context of the exact drafting of the constitution concerned. What is to be achieved is a definition which **unambiguously** defines the terms 'charitable purpose', 'or 'charitable' in terms of the 2005 Act **as well** as the Tax legislation. Which one of the example clauses should be used depends on the drafting of the constitution.

- To define the term ‘charitable purpose’:

‘The expression ‘charitable purpose’ shall mean a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the applications of the Taxes Acts.’

- To define the term ‘charity’ or charitable body’, charitable institution’, charitable organisation (etc):

“ Charitable body’, ‘charitable institution’, ‘charitable organisation’ [as applicable in the context of the constitution] and charity’ shall mean a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts.”

Further information

Charities entered on the Scottish Charity Register have to satisfy OSCR in terms of compliance with the Charities and Trustee Investment (Scotland) Act 2005 and satisfy HMRC in relation to all tax matters. This joint statement does not provide comprehensive guidance on the necessity for definition clauses or any other issues.

Further information on charity regulation in Scotland can be found at www.oscr.org.uk

Further information and guidance on charities and tax can be found at <https://www.gov.uk/charities-and-tax>