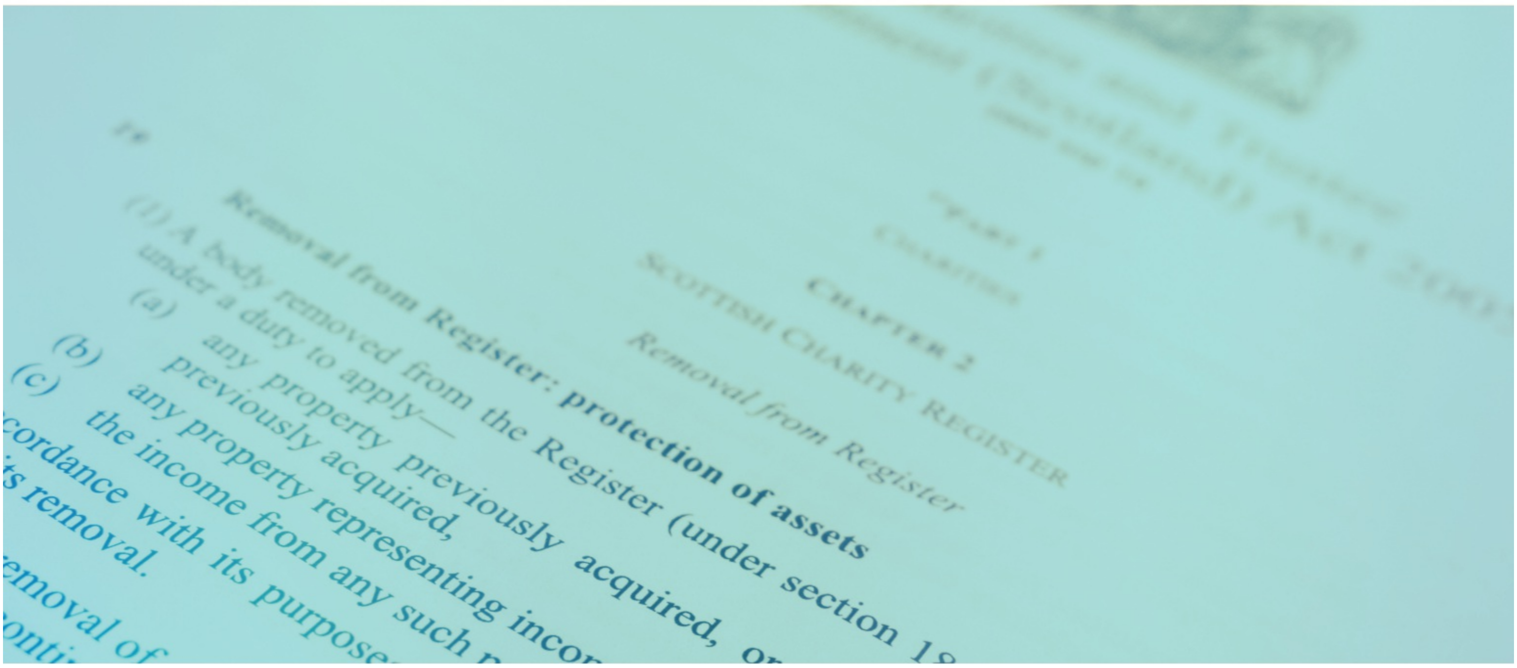
OSCR
Scottish Charity Regulator

Monitoring of former charities

What this guidance covers

This guidance is designed to explain to existing charities some of the implications of being removed from the Register and to help former charities understand their ongoing reporting responsibilities for charitable assets.



Executive summary

- All Scottish charities are required to report on their charitable assets to the Scottish charity regulator, OSCR, and this requirement continues even when an organisation is removed from the Scottish Charity Register.
- The responsibility applies both to bodies removed at their own request and those removed by OSCR because they no longer meet the charity test.
- OSCR has a duty to ensure that such assets **and** any income from these are used solely for the charitable purposes for which they were originally acquired. Such assets and associated income will be referred to in this note as "charitable assets".
- On removal from the Register, OSCR will consider the value and nature of an organisation's charitable assets and decide if ongoing monitoring is appropriate. If so, the organisation must continue to submit annual accounts to OSCR for those assets.
- OSCR will no longer monitor assets if they are deemed to have negligible value or the body shows they have been used up on its previous charitable purposes. However, some charitable assets, by their nature, cannot be disposed of, such as permanent endowments and some buildings.
- When the appropriate Regulations come into force, OSCR will have the right, where it considers necessary, to apply to the Court of Session for assets to be removed from a former charity and transferred to a charity so as to protect the property or income, or to make sure these are applied to the relevant charitable purposes. The term "former charity" refers here to a body removed from the Register.
- OSCR retains powers over former charities in respect of the assets held by them at the time of removal from the Register and any income from these assets. These include:
  - Powers to make inquiries and to obtain information for inquiries.
  - Powers to make directions – this includes restricting the transactions that the former charity may enter into or directing any financial institution holding assets not to part with those assets without OSCR's consent.
  - Power to apply to the Court of Session for power to be exercised against the former charity. This can include power to interdict the former charity from such action as the court thinks fit, the appointment of a judicial factor and the restriction of transactions or payments that may be made.

1. About this guidance

This guidance is designed to explain to existing charities some of the implications of being removed from the Register and to help former charities understand their ongoing reporting responsibilities for charitable assets.

A number of the words used in this guidance are shown in *italics* to indicate that their meaning is explained in the glossary that can be found at the end of the document.

2. Removals from the Register

2.1 Charities may be removed from the Scottish Charity Register at their own request or because OSCR decides to remove them.

2.2 Under Section 18 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act), a charity may ask to be removed from the Register.

2.3 Under Section 30 of the 2005 Act, OSCR has the power to remove a charity from the Register if it no longer meets the charity test.

2.4 Under Section 19, the 2005 Act requires OSCR to continue to monitor any assets held by a charity at the time of removal, and any income derived from these assets. This applies regardless of the reason for removal.

3. Section 19 in detail

3.1 Section 19 of the 2005 Act deals with the assets a charity has at the time of removal from the Register. These assets include:

- any property (assets) previously acquired
- any property representing income previously acquired
- the income from such property.

3.2 Regarding these assets, it states that:

- A body removed from the Register continues to have a duty to ensure such assets are used for the purposes of the charity as set out in the Register immediately before its removal.
- OSCR continues to have a duty to monitor those assets and any income from them as set out in certain provisions of the 2005 Act.
- Bodies are still required to prepare accounts for these assets and make sure the accounts are externally scrutinised in line with the 2005 Act and the Charities Accounts (Scotland) Regulations 2006 (the 2006 Accounts Regulations).

3.3 Once any assets held at the date of removal from the Register (or any income from them) have been used up and are no longer held by the former charity, Section 19 no longer applies and OSCR will have no further interest in the organisation.

3.4 Scottish Ministers can, by order, override the provisions of Section 19 in relation to any property specified in the order.

4. What happens once a charity is removed from the Register?

4.1 When a charity is removed from the Register, OSCR will ask the former charity to provide the following information:

a) **A statement of assets** at the date of removal from the Register.

b) A statement of the **proposed use** of these charitable assets.

c) Any outstanding accounts, if appropriate, which were due to be filed with OSCR up to the date of removal from the Register.

d) Confirmation of **the chosen *accounting reference date*** for reporting to OSCR – this can be the date the organisation was removed from the Register, the organisation's existing financial year-end date or some other date chosen by the organisation within the constraints applied by the 2006 Accounts Regulations.

4.2 Statement of assets

4.2.1 When preparing a statement of assets, both *permanent* and *non-permanent* assets should be included.

- Permanent assets are those which either cannot be fully disposed of, or will only be disposed of or written off over a significantly long period. Examples of these are buildings, which may be subject to depreciation, *heritage assets, and permanent* or *expendable endowments.*
- Non-permanent assets are either held in a form that is easy to spend (e.g. cash) or can be readily changed into liquid funds where the value is known e.g. a debt due to be repaid to the charity in a short period.

4.2.2 How to value charitable assets

Charitable assets should be stated at a *'realisable' value* – that is the price you would expect to receive if you sold the assets now to a third party. Note that this is <u>not</u> necessarily the value that is shown for these assets in your accounts (particularly if you submit *Receipts and Payments* accounts) since this may reflect the original price paid for the assets or the expected cost to replace these.

4.3 How does OSCR decide if the former charity will be subject to ongoing monitoring?

On receipt of all the requested information, OSCR will consider:

- the value of charitable assets for monitoring purposes
- whether the assets are permanent or non-permanent
- whether the organisation will be subject to ongoing monitoring and required to submit annual accounts.

5. OSCR's procedures in more detail

5.1 When valuing the assets for monitoring purposes, OSCR will compare the statement of assets at the date of removal with those recorded in the last set of accounts of the former charity.

5.2 OSCR will take account of the fact that the valuation of assets may vary between the accounts of those charities preparing Receipt and Payments (R&P) accounts and those preparing Fully Accrued accounts. Statutory requirements for R&P accounts state that investments must be included at market value, while other assets should be included at cost or valuation. For Fully Accrued accounts, the provisions within 'Accounting and Reporting by Charities: Statement of Recommended Practice Charities SORP 2005' *(SORP)* are fairly prescriptive in terms of rules to be applied to different kinds of assets.

5.3 Non-permanent assets:

OSCR will consider the fair value of an organisation's non-permanent assets, including any notional *depreciation*. This means that OSCR will look at the value attributed to these assets in the accounts but will also consider that the 'fair value' (that is, the price that could be obtained by selling these on in the open market) may be different. This will allow OSCR to determine the value of these assets for monitoring purposes.

5.4 Permanent assets:

Since permanent assets, by their nature, either cannot be disposed of, or can only be disposed of or written off over a long period, these are likely to be subject to ongoing monitoring.

The value attributed to permanent assets can be a complex issue because some assets that charities may hold are not common in a commercial context – for example, *heritage assets* or *endowed assets*. OSCR will ensure, on the basis of evidence supplied, that any value attributed to an asset is in line with regulations and is fair and reasonable given the circumstances.

6. What happens if OSCR decides my former charity has ongoing reporting responsibilities?

If OSCR decides that Section 19 monitoring is appropriate, the former charity is required to continue to submit annual accounts to OSCR within nine months of its chosen accounting reference date.

The required accounts should:

a) Show that the assets and income derived from these assets are being used for charitable purposes.

b) Record any changes in the value of the charitable assets.

c) Include some narrative to demonstrate that the assets are being used in line with the charitable purposes set out in the former charity's Register entry immediately before removal. This may include a description of the activities that have been undertaken.

d) Be scrutinised by an independent examiner or auditor as required under the 2006 Accounts Regulations.

7. When does OSCR stop monitoring?

7.1 The ongoing monitoring of former charities will cease when the former charity no longer has any of the assets that were held when it was removed from the Register.

7.2 Non-permanent assets:

In the case of *non-permanent assets*, monitoring will cease when:

- Cash held is spent on the charitable purposes for which it was originally acquired by the former charity. These purposes are those set out in the former charity's Register entry immediately before removal.
- The assets have been sold and any income from the sale has been spent on the charitable purposes for which the assets were originally acquired. These purposes are those set out in the former charity's Register entry immediately before removal.
- Using a notional depreciation rate (e.g. a percentage), the value of the assets reaches zero. This includes items which in *accrued accounts* may not have been *capitalised*. The useful life of the asset is normally between three and five years and should take into account the value of the asset to a member of the general public and not its historical or sentimental value. For example, Boys Brigade colours would have a 'value' to the Boys Brigade Company but probably a significantly lesser value to a member of the public not connected to that particular Boys Brigade Company.

7.3 Permanent assets:

The nature of permanent assets, such as buildings or *permanent endowments*, means that many former charities will be reporting to OSCR similar information on an annual basis, if there is no movement in the value of the asset(s).

8. Future developments and review of this policy

8.1 Section 19 of the 2005 Act contains some provisions that have not yet been commenced. Once Regulations in relation to Transfer Schemes are in place, OSCR will also have powers under Section 35 to apply to the Court of Session for the transfer of any property or income of a body removed from the Register to a charity. This may be necessary to protect the property or income or to better achieve the relevant charitable purposes.

8.2 OSCR undertakes to review this reporting policy based on its experience after a period of monitoring. This period will be, as a minimum, five years from the date of publication.

Glossary

Accounting reference date	The date up to which the accounts are prepared. The last date of the accounting period.
Accrued Accounts	These are accounts prepared on the accruals basis which recognises the transaction when it is legally entered into. This may be when a third party is instructed to undertake a task as opposed to when a debt is settled or money received. This normally depends upon entitlement to the resources, certainty that they will be received and a reliable estimate of the amount.
Capitalisation	An accounting treatment used in accrued accounts where an asset is likely to be used and of value to the organisation over more than one, in many cases several, accounting periods.
Depreciation	A charge applied in accrued accounts to release the cost of any capitalised asset to the income statement, subsequently reducing the holding value of the asset. This ensures that the income statement includes the cost of all assets consumed or partly consumed within an accounting period.
Endowed Assets	Assets gifted to a charity which are to be held for long term benefit. The benefit may be income or the use of a functional asset (e.g. a building) to enable the charity to fulfil its purposes. The benefit is expected to be derived over several accounting periods.
Expendable Endowments	An expendable endowment is a fund consisting of asset(s) that have been gifted to the charity with specific conditions attached and which cannot be spent except in certain circumstances specified within the terms of the endowment.
Functional Assets	These assets are given a value (usually cost) when they are first introduced on the Balance Sheet. Unlike investment assets they do not require to be shown at market value in subsequent balance sheets. An example would be a building owned by a charity which was used by the charity to help fulfil its charitable purposes.
Heritage Assets	These assets are of historical, artistic or scientific importance and are held in pursuance of the charity's preservation or conservation objectives. These assets may be integral to a broader objective such as educating the public in history.
Investment Assets	These are assets which are generally held for the continuing long term benefit of the charity in the form of income derived and capital appreciation e.g. shares.
Non-permanent Assets	These are assets which are either held in a readily spendable (cash) form or can be readily changed into liquid funds where the value is known e.g. cash or a debt due to be repaid to the charity in a short period.

Permanent Assets	These are assets which will be consumed over several accounting periods e.g. buildings.
Permanent Endowments	A permanent endowment is a fund consisting of assets that have been gifted to the charity with specific conditions attached and which cannot be spent.
Receipts & Payments	Receipts and payments accounts are a simple form of accounting that consist of a summary of all monies received and paid via the bank and in cash by the charity during its financial year, along with a statement of balances.
Realisable Value	The price expected when an asset is sold to a third party. Not the cost recorded in the seller's accounts or the cost to the seller of replacing the asset or the value to the existing organisation (the seller).
SORP	The abbreviation given to "Accounting and Reporting by Charities: Statement of Recommended Practice Charities SORP 2005". The Accounting Standards Board (ASB) issues accounting standards that are primarily applicable to general purpose company financial statements. A SORP provides further guidance to a specific sector to ensure consistent implementation of these accounting standards. The Charities SORP 2005 has legal status in Scotland and is therefore mandatory as it is referred to in the Charities Accounts (Scotland) Regulations 2006.

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