



Changing your charity's name - seeking consent

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1. Introduction

This document has been written to help you with your application to **change the name of a charity**.

The appropriate use of names by charities helps to ensure that they are transparent in everything that they do and are easily recognisable. This, in turn, helps to encourage greater public confidence in charities and supports a flourishing sector.

This guidance note sets out what we take into account in deciding whether the name of a charity is 'objectionable' in terms of section 10 of the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act'). It has been written with registered charities in mind, but is also relevant for organisations that want to become charities in Scotland. This is because, under section 5(2)(a) of the 2005 Act we must refuse to enter in the Scottish Charity Register any body applying for charitable status whose name is objectionable.

1.1 How to use this guidance

This guidance is divided into three key sections:

- What we look for – explains what we look for before we give our consent to change the name of a charity.
- What our decision looks like – describes the possible outcomes of the application process.
- What you need to do – gives a breakdown of the application process and the timescales attached.

If you do not seek our consent before changing the name of your charity, you will be in breach of the charity trustees' duties found in section 66 of the 2005 Act. We regard this as misconduct. Evidence of misconduct may result in intervention or sanction by OSCR.

You must give us notice of your intention to change the name of your

charity **at least 42 days in advance of the proposed date of change**. So, make sure that you leave plenty of time to contact us. We would suggest that you seek our consent to change the name of your charity at least two months in advance.

For further details, see section 4 of this guidance.

An **application form for consent to change the name of charity** can be downloaded from the OSCR website (www.oscr.org.uk). Alternatively, we will send a copy to you, on request. Please complete this application form and send it to us.

Please enclose the following with your application:

- a copy of your charity's current constitution.

1.2 Changing your charity's name – timeline

- Not less than 42 days before the date on which you intend to make the change you must give us notice of your proposal to change (see section 4).
- We check whether or not we can give our consent to your proposal to change your charity's name (see section 2).
- Within 28 days of receiving your completed application we will either notify you that we grant our consent OR issue a direction not to change the charity's name for a period of not more than six months.
- If we grant consent, you can make the change, once the 42 day notice period is over (see section 4).
- Within three months of the date when you change the name of the charity, you must notify us that you have done so (see section 4).

1.3 Contact us

If you have any questions about changing the name of a charity or about how to apply, please contact us. You can get in touch by email, in writing or by telephone:

E-mail

info@oscr.org.uk

In writing

Please write to us at:

Office of the Scottish Charity Regulator (OSCR)
2nd Floor, Quadrant House 9 Riverside Drive
Dundee DD1 4NY

We will respond to your letter or email within 15 working days of receipt.

Telephone

01382 220446

2. What we look for

Section 11 of the 2005 Act states that you need to seek our consent in order to change the name of a charity that is entered in the Scottish Charity Register.

As the Regulator of charities in Scotland, we are concerned with two main things when dealing with charities that want to change their name:

1. **Is the name that you want to adopt ‘objectionable’?** – In other words, does it fall within section 10 of the 2005 Act?
2. **Are you, as charity trustees, complying with the requirements of the 2005 Act?** In other words, have you applied for consent in good time? You must seek our consent **at least 42 days** in advance of the proposed date of change taking place.

As charity trustees, you must also assure yourselves that you have the power to make this change. If we believe that you do not have this power, we will discuss this with you.

These questions are important throughout the life of a charity. Charity trustees must always act in accordance with the terms of their charity’s constitution, and a charity’s name must not, at any time, be ‘objectionable’.

Charity trustees

Depending on the individual charity and its legal form, the charity trustees may be called board members, directors, management committee members, trustees or whatever is relevant to the charity. Whatever the terminology used by the charity, the people in ‘general management and control’ of the charity are defined by the 2005 Act as being its charity trustees.

2.1 Is the name that you want to adopt 'objectionable'?

When an application is received, the first thing that we check is whether the name that you want to adopt is 'objectionable'. An 'objectionable' name is a name that is:

- the same as, or too like, the name of a charity
- likely to mislead the public as to the true nature of the purposes of the body or of the activities which it carries on, or intends to carry on, in pursuit of those purposes
- likely to give the impression that the body is connected in some way to the Scottish Administration, Her Majesty's Government in the United Kingdom, or any local authority, or with any person, when it is not so connected
- offensive.

This is set out in section 10 of the 2005 Act. While we explain some basic considerations in this paper, these are for broad guidance only. We will always consider the specific circumstances in making decisions in individual cases.

2.2 Names that are 'the same as, or too like, the name of a charity'

A 'charity' means a body which is entered in the Scottish Charity Register, and this category of objectionable name applies only to these bodies, and not to bodies registered as charities elsewhere (such as England and Wales) or to bodies which are not charities. When deciding whether a name is 'the same as' the name of another charity, we will ignore very small differences between one name and the other. For example:

- 'The' at the beginning of the name: So 'Samaritans' would be

- regarded as the same name as 'The Samaritans'
- Different spellings of the same word (e.g. medieval and mediaeval) are considered to be the same. However, just because words sound the same does not mean they are the same word. So the 'Ayr Trust' and the 'Air Trust' would not be considered to be the same
- Abbreviations and different forms of the same word, such as 'Limited' and 'Ltd', and 'and' and '&'
- References to legal status such as PLC, Trust, Ltd, Co.

The mere fact that names are similar does not mean that they are 'too like'. To be 'too like' a name must be so similar to another that any reasonable person would consider them to refer to one and the same charity.

When deciding whether a name is 'too like' the name of another charity, we look at what the differences are between one name and another. The following are examples of circumstances in which we might consider a proposed new name to be 'too like' that of another charity:

- where the only difference is that the words are in a different order – for example 'Countrywatch Scotland' and 'Scotland Countrywatch'
- where a word in the name differs by one or two letters but has the same basic meaning: for example 'The Dundee Archaeology Society' and 'The Dundee Archaeological Society'.

In contrast, the names 'Edinburgh Aid Society' and 'Edinburgh AIDS Society' are not too like. The words 'Aid' and 'AIDS' in this case, despite only differing by one letter, have different meanings.

- where punctuation is used differently in the two names, for example 'Salvation' and 'Salvation!'

2.3 Names that are 'likely to mislead the public as to the true nature of the purposes of the body or of the activities which it carries on, or intends to carry on, in pursuit of those purposes'

When deciding whether a name is likely to mislead the public, we will look at what your charity's purposes, as set out in its constitution, say. We will also look at the day to day activities that your charity carries out in support of its purposes. We do this to ensure that the name that you propose to adopt is in keeping with your charity's purposes and activities.

What is a constitution?

By a constitution we mean the document or set of documents that sets up an organisation and tells us what its purposes are. It will also usually deal with other matters, including who manages and controls the organisation, what their powers are, what they can do with the organisation's property (money and other assets) and membership of the organisation.

What your charity's constitution is called and how it is put together will depend on what kind of organisation it is (what its legal form is). If it is a company, its constitution will be its memorandum and articles of association (or just its articles if incorporated from 1 October 2009). If it is a trust, its constitution will be a trust deed or similar document. If your organisation is an unincorporated association, it may be called a constitution.

This does not mean that we must be able to determine the purposes or activities of the charity from its name. Many charities have names that convey no sense of their purposes or activities. Charities named after specific people, such as the 'Gordon Fraser Charitable Trust' and the 'Matthews Trust' are common examples of these.

As these names convey no sense at all of the purposes or the activities of the charity, they cannot be said to be likely to mislead the public. Similarly, names which use words with unclear or imprecise meanings such as 'The Omega Association' or 'The Light Foundation' are unlikely to mislead the public as to the body's purposes or activities.

Sometimes a word or phrase within the name that you want to adopt has a dominant or more common meaning. When this happens, we will assume that the public will attach this more common meaning to the word or phrase used. We will also consider common associations with the word or phrase, for example, a charity called 'The Humpty Dumpty Trust' would be expected to have purposes related to children.

Many charities refer to a specific geographic area of operation in their names. If this reference is not accurate we may consider this to be likely to mislead the public. For example, a small charity whose constitution restricts its activities to Haddington and which has no intention of expanding its operations to other areas is likely to mislead the public if its name is the 'The Borders and Lothians Homelessness Society'.

We will consider the use of the term 'National' in the name of a charity in Scotland to be a reference to either the United Kingdom or Scotland. If a charity uses 'National' in its name when the nation to which it is referring is neither Scotland nor the United Kingdom then it could be misleading.

In addition, we will consider the use of a national reference, such as Scottish, National, British or UK, to imply a certain pre-eminence. Even where this may accurately describe the operational reach of the charity, if your charity is not outstanding in what it does or it does not enjoy particular recognition from government or otherwise, then its proposed new name may be misleading.

2.4 Names that are 'likely to give the impression that the body is connected in some way to the Scottish Administration, Her Majesty's Government in the United Kingdom, or any local authority, or with any person, when it is not so connected'

In order to decide whether a name is 'likely to give the impression that the body is connected ... when it is not so connected' we look at:

- (a) whether a name is likely to suggest a connection to government or some other person. By person we mean both 'natural' persons (human beings) and 'legal' persons (corporate or legal entities such as companies)

(b) whether the charity in question is in fact connected.

In considering whether a proposed name suggests a possible connection we particularly look at the uniqueness or 'brand value' of the word or words used in the name.

By 'brand value', we mean words and word combinations that are unique to a particular body or person by general association. For example, names that include the words 'Greenpeace' or 'Red Cross' (but not 'Red' or 'Cross' on their own) suggest a connection to those organisations.

We also look for words or word combinations that might suggest a connection to government. For example, the name 'Scottish Assembly' could suggest a connection to the Scottish Government and/or the Scottish Parliament (where one does not exist).

If your charity has in its name a reference to any person who is a well known public figure, a genuine, personal connection must exist. We may ask for evidence from you that this is the case.

Our determination is not made on the basis of the proposed new name alone. For example, where the names in question are not well known and the bodies concerned operate in very different geographic areas, we will consider what the likelihood is of these two bodies giving an impression that they are connected.

For example, it seems unlikely that 'Rose Fund Dunfermline' (dedicated to planting roses in Dunfermline) suggests a connection to the Rose Fund (established to run the Clan Rose Museum in Moray).

If a proposed new name suggests a connection and we establish that no such connection exists, the name will be objectionable.

2.5 Names that are 'offensive'

In general terms we consider names as 'offensive' if they contain racist, sexist, vulgar or derogatory references or suggest contempt for a particular religion. This includes offensive acronyms.

We recognise that the sensibilities of the general public can vary significantly in terms of what is and is not considered to be offensive. We will carefully consider the specific contextual factors in each case before reaching our decision.

2.6 Index of Company Names

From 1 January 2018, SCIOs and Charitable Incorporated Organisations (CIOs) will appear in the Registrar’s Index of Company Names, which is maintained by Companies House. Charities that are incorporated as companies already appear on the index. Please read [FAQs: SCIOs on the Index of Company Names](#) for more information.

3. The nature of our decision

3.1 How quickly we will decide

The legislation says that we need to give you our decision on your application for consent to change the name of your charity within 28 days of you having 'given us notice' of your intention to do so.

It does not always mean that we will be able to issue a decision within 28 days of you having applied to us. If you do not give us all the information that we need to determine if the proposed name is objectionable and we need to ask for more, then OSCR may direct the charity not to change the name until you have given us the further information that we have asked for.

We will let you know our decision by letter. If we do not issue our decision within 28 days of you providing OSCR with notice of the proposed change, unless OSCR has directed the charity not to change its name, you can assume that our consent has been given.

3.2 Possible outcomes

There are two possible outcomes to the application process. These are:

- we give our consent
- we refuse to consent and direct the charity not to change its name

If we believe that the proposed new name for your charity is **not** 'objectionable', we will give consent to your proposal.

If we believe that that the proposed new name for your charity is 'objectionable', we will refuse to consent and direct your charity under section 11 (3) of the 2005 Act not to change its name.

Whatever the outcome of the application process, a letter will be sent to you confirming this.

- **Giving our consent to change the name of a charity**

If we give you our consent to change the name of your charity, this does not mean that the name is then changed. All it means is that you can now take the action.

As charity trustees you must still take the necessary steps to officially change the name of your charity. For example, you may need to hold a meeting of the charity trustees, get the agreement of your charity's members (perhaps through a general meeting), and/or ensure that the name of the charity (if it is a company) is also amended in the Register of Companies at Companies House.

You are responsible for doing all of this. You must follow the procedures for decision-making set out in your constitution.

Our decision letter will ask you to send us supporting documentation once you have made this change. Please see section 4.5 for more information.

- **Refuse to Consent and Issue a Direction not to change the name of a charity**

If we feel that that the proposed new name for your charity is 'objectionable', we will refuse to consent and direct the charity (or more precisely you, as charity trustees) under section 11 (3) of the 2005 Act not to change its name.

If we issue your charity with such a Direction, we will give you our reasons for doing so. If you disagree with the reasons given for this Direction being issued, you have the right to ask us to review it. Our decision letter will tell you how to do this. Please see section 4.4 for more details.

4. What you need to do

The following general steps need to be taken into account when you want to get our prior consent to change the name of a charity in the Scottish Charity Register:

- **Plan ahead** – think about timing, prepare your application form and think about the supporting evidence that you need to send us
- **Check** – you can save time by checking for some problems before you submit your application
- **Submit your application**
- **Act on our decision letter when it is issued to you** – remember, we do not change the name of your charity, but only give prior consent for you to do so
- **Remember to notify us when the process of changing the name of your charity is complete.** The Scottish Charity Register will not be updated until you do so.

If our prior consent is given, you can go ahead and change the name of your charity.

If a Direction is issued, you will need to decide if you want to seek a Review.

4.1 Plan ahead – the importance of timing

You must give us notice of your intention to change the name of your charity **at least 42 days in advance of the proposed date of change**. So, make sure that you leave plenty of time to contact us. We would suggest that you seek our consent to change the name of your charity at least two months in advance.

4.2 Check

Have you checked our online register (www.oscr.org.uk) in case the new name you are thinking of is already the name of another charity? If your charity is a company, will the new name comply with company law requirements, and have you considered Companies House guidance (www.companieshouse.gov.uk)?

4.3 Submit

An **application form for consent to change the name of charity** can be downloaded from the OSCR website (www.oscr.org.uk). Alternatively, we will send a copy to you, on request. Please complete the application form and send it to us.

Please enclose the following with your application:

- a copy of your charity's current constitution.

4.4 Act on our decision letter

If we issue your charity with a Direction, and if you disagree with our decision, you have the right to ask us to review the Direction that we have issued. To do so you must contact the Review Officer within 21 days of the date on our decision letter.

Your request for review can be a letter, fax or email, but must be in writing. You can send your review request to us at:

Review Officer
Office of the Scottish Charity Regulator (OSCR)
2nd Floor Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

Alternatively, email your review request to: info@oscr.org.uk with 'Review

Officer' in the title.

We will always acknowledge receipt of your request.

Please note that during the period in which the review is taking place the direction has effect and you may not change the name.

4.5 Remember to notify us

Once you have changed the name of your charity, you must notify us. This is required under section 17 of the 2005 Act.

This must be done within three months of the name change taking place. This may be done by letter, fax or email, but must be in writing.

A link to an online form can be downloaded from the OSCR website (www.oscr.org.uk). Alternatively, we will send a copy to you, on request. Please complete the form and send it to us.

Please enclose the supporting documents with your form.

- **The supporting documentation that we may ask for**

If we give you our consent, we may ask for different documents to be sent to us when the process of changing the name of your charity is complete.

These documents will be of an administrative nature and will vary from case to case.

The following are examples of the type of document(s) that we might request from you:

A copy of the certificate of incorporation on change of name (only if your charity is a company). We ask for this if your charity is a company as this confirms that the name has been amended in the Register of Companies at Companies House.

A copy of a minute of the meeting at which the charity trustees

decided to make the proposed change(s). We ask for this to make sure that the charity's name change has happened with the right number of people present.

The constitution often says how decisions must be taken. Sometimes, charity trustees cannot complete the change process because too few people have been able to meet. If this situation is likely to affect you, please tell us before we issue our decision to you.

Depending on the circumstances, we may also ask you to send us:

A copy of the letter from another Regulator (for example the Charity Commission for England and Wales) confirming that they are also happy for your charity to change its name.

The consent of other Regulators is required when some types of charity want to change their name.

Charities which are incorporated as companies will need to comply with the requirements of company law.

We ask for these pieces of evidence to be provided to ensure that the process of changing the name of your charity is complete and to enable us to update the Scottish Charity Register.

Appendix 1: From the Charities and Trustee Investment (Scotland) Act 2005

Charity names

Section 10 Objectionable names

- (1) A body's name falls within this section if it is—
 - (a) the same as, or too like, the name of a charity,
 - (b) likely to mislead the public as to the true nature of the purposes of the body or of the activities which it carries on, or intends to carry on, in pursuit of those purposes,
 - (c) likely to give the impression that the body is connected in some way to the Scottish Administration, Her Majesty's Government in the United Kingdom or any local authority, or with any other person, when it is not so connected, or
 - (d) offensive.

- (2) The reference in subsection (1)(b) to a body's purposes are—
 - (a) in the case of an applicant, the purposes set out in the statement accompanying its application,
 - (b) in the case of a charity, the purposes set out in its entry in the Register, and
 - (c) in the case of an SCIO proposed in an application under section 54(1), 56(1) or 59(1), the purposes set out in the SCIO's proposed constitution accompanying the application.

Section 11 Change of name

- (1) A charity may change its name only with OSCR's consent.

- (2) A charity which proposes to change its name must, not less than 42 days before doing so, give notice to OSCR specifying its proposed new name.

- (3) Unless OSCR, within 28 days of the date on which a notice is given

under subsection (2), directs the charity not to change its name, OSCR is to be taken as having given its consent.

- (4) OSCR may refuse to consent to a charity changing its name only where it considers that the proposed new name falls within section 10.

Section 12 Power of OSCR to require charity to change name

- (1) A charity may, if it considers that the name of another charity is too like its name, request OSCR to review the names.
- (2) OSCR must, if satisfied following such a review that the names of two charities are too alike, direct either one or both of the charities to change its name.
- (3) OSCR must, where at any other time it considers that a charity's name falls within section 10, direct the charity to change its name.
- (4) Section 11 applies in relation to a change of name in compliance with a direction under this section (and the charity directed must give notice of its proposed new name under subsection (2) of that section within such period as may be specified in the direction).
- (5) OSCR must remove from the Register any charity which fails to comply with a direction under this section.

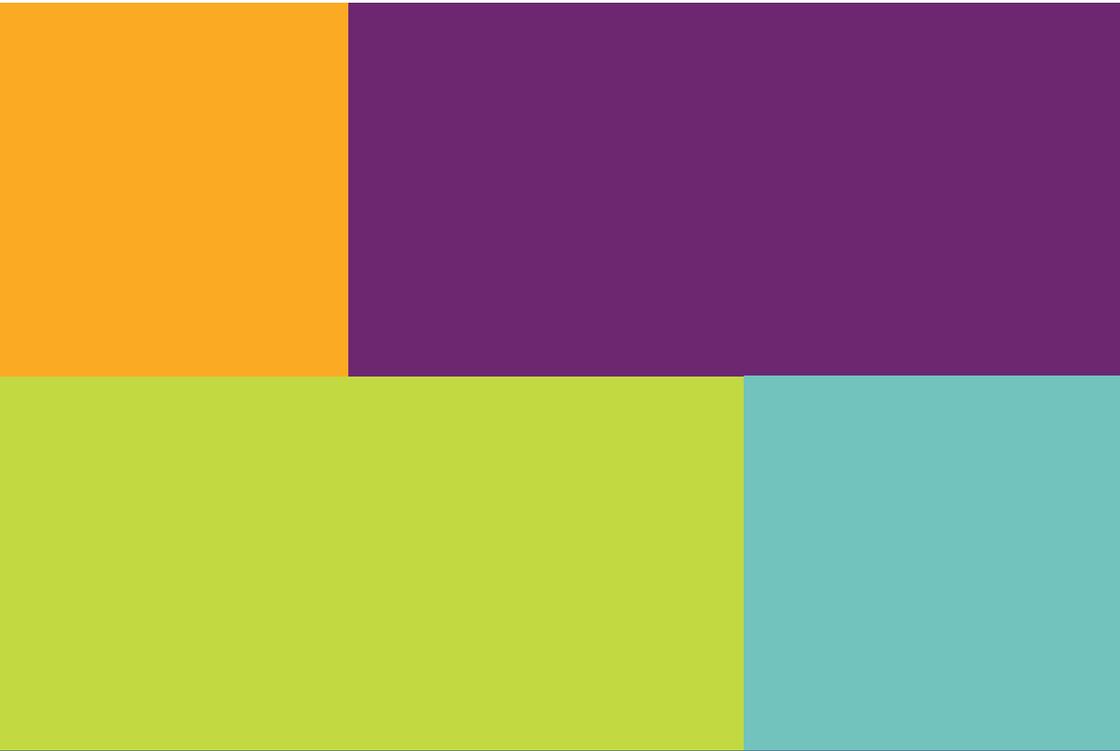
Section 17 Notification of other changes

- (1) A charity must give OSCR notice of—
 - (a) any change in—
 - (i) the principal office of the charity, or
 - (ii) where it does not have such an office, the name or address of the charity trustee specified in the Register (or which would, but for section 3(4), be so specified),
 - (b) any change in any other details set out in its entry in the Register,
 - (c) any change to its constitution,
 - (d) any action set out in section 16(2)(b) to (d) which the charity has taken,
 - (e) any administration order or an order for winding up made

- by the court in respect of the charity,
- (f) the appointment of a receiver in respect of any of the charity's property, setting out the date on which the change, action, order or appointment took effect.
- (2) Subsection (1) does not apply in relation to any action which requires OSCR's consent under section 16.
- (3) A notice under any of paragraphs (a) to (d) of subsection (1) must be given within 3 months of the date of the change or action to which it relates.
- (4) A notice under paragraph (e) or (f) of subsection (1) must be given within 1 month of the date of the order or appointment to which it relates.

Notes

Notes



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