POLICY NOTE

THE CHARITIES (REGULATION AND ADMINISTRATION) (SCOTLAND) ACT 2023 (COMMENCEMENT NO. 2, TRANSITIONAL AND SAVING PROVISIONS) REGULATIONS 2025

SSI 2025/168 (C. 16)

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 21(2) and (3) of the Charities (Regulation and Administration) (Scotland) Act 2023 ("the Act"). The instrument is laid in the Scottish Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Summary Box

The purpose of this instrument is to bring a number of provisions of the Act into force on 30 June 2025 and 31 August 2025.

Policy Objectives

The Act strengthens and updates the existing regime created under the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") by:

- increasing transparency and accountability in charities;
- making improvements to the Scottish Charity Regulator's ("OSCR") powers; and
- bringing Scottish charity legislation up to date with certain key aspects of charity regulation in England, Wales and Northern Ireland.

The instrument will bring the following provisions of the Act into force:

- Section 3 (Information about charity trustees for OSCR's use);
- Section 4 (Disqualification: offences);
- Section 5 (Disqualification: other cases);
- Section 6 (Disqualification: senior management functions); and
- Section 13 (Recording of charity mergers and treatment of legacies).

This instrument will bring section 3 (information about charity trustees for OSCR's use) of the Act into force on 30 June 2025. Section 3 places a duty on OSCR to keep, in such manner as it thinks fit, a schedule of all charity trustees. The schedule will contain a separate entry for each charity trustee. It may include such information as OSCR considers appropriate and is intended to consist of the contact details of each charity trustee to provide the information needed for OSCR to carry out its regulatory duties effectively. OSCR intend to collect relevant information to populate the schedule primarily through additional questions to be specified in the annual return form, which charities are required to complete alongside the submission of their statement of account. Charities will also have the ability to update relevant information through their OSCR Online account on an ad hoc basis, and this will extend to the new information required for the schedule. Regulation 3 makes transitional provision which provides section 17(1)(ba) of the 2005 Act (as inserted by section 3(2) of the Act) does not apply to any change of circumstance that occurs before an answer to a question specified by OSCR has been provided to OSCR, whether through the annual return process or otherwise by virtue of the OSCR Online portal.

This instrument will bring sections 4, 5 and 6 (disqualification from being charity trustee etc.) of the Act into force on 30 June 2025 for limited purposes, with those sections then coming fully into force on 31 August 2025. These sections expand the criteria by which a person will be automatically disqualified from acting as a charity trustee, and also extends the disqualification rules to persons holding office or employment with senior management functions. As with the existing disqualification criteria under the 2005 Act, it will continue to be possible for an affected person to apply to OSCR for a waiver. Sections 4, 5 and 6 will accordingly come into force on 30 June 2025 for limited purposes in order to facilitate OSCR assessing and issuing decisions regarding waiver applications relating to the new extended criteria ahead of the these sections coming fully into force on 31 August 2025.

This instrument will bring section 13 (recording of charity mergers and treatment of legacies) of the Act fully into force on 30 June 2025. Section 13(1) and (2) were commenced in the first commencement regulations for the limited purpose of inserting section 64A(2) into the 2005 Act, required as a consequence of the commencement of paragraph 4 of the schedule of the Act. Section 13 inserts new chapter 7A into the 2005 Act with the aim to prevent loss of legacy income to charities through the creation of a record of charity mergers, together with a new rule providing for the transfer of a legacy made out in favour of a charity which has merged ("the transferor") to the charity it has merged with ("the transferee"). The record of charity mergers can then be consulted by executors (and their advisors) to identify the transferee and the legacy can then be transferred to the transferee (subject to cerain criteria being met), and not lost to the charitable sector. Regulation 4 makes saving provision setting out that the new chapter 7A will not apply to mergers concluded prior to 30 June 2025 as OSCR needs to be able to verify the details of the merger in order to be satisfied that it is appropriate for it to be entered in the record of mergers. Practically, OSCR would only be able to do so where it still retains information relating to the specific application resulting in a merger, and due to document retention periods, it may not be possible for OSCR to verify mergers that took place prior to commencement.

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
In 2018, OSCR submitted a paper to the Scottish Ministers with practical proposals to 'modernise' the 2005 Act, focused on improving trust and confidence in the charity sector and updating the existing law. A 12-week consultation on the proposals closed on 1 April 2019, with 307 responses indicating broad support for all proposals. However, some respondents felt that certain proposals needed further development before they could be considered and that almost all of the proposals required refinement and/or further policy development. The responses from OSCR and the Law Society of Scotland Charity Law sub-committee also suggested a longer list of more technical changes that would require to be taken forward by primary legislation. Further proposals were identified following analysis of the consultation responses and discussions with stakeholders.

Progress on further engagement with the sector to help define and refine the proposals was delayed due to COVID-19. The engagement with the charity sector re-started in December 2020. Targeted stakeholder events with partners took place in December 2020 and January 2021 with a mix of charity professionals, trustees, charity staff, volunteers and practitioners, including:

- The Law Society of Scotland Charity Law sub-committee, made up of practising legal professionals and academics;
- OSCR charities reference group, representatives from approximately 35 charities reflecting the range and breadth of the sector;
- The Scottish Council for Voluntary Organisations (SCVO) and the Association of Chief Officers of Scottish Voluntary Organisations (ACOSVO) jointly hosted two events with 33 attendees; and
- Local charities took part in events held by 12 Third Sector Interfaces (TSIs).

A Citizen Space survey ('Strengthening Scottish Charity Law') asked detailed questions about six of the proposals and ran between December 2020 and February 2021 with 100 responses received. The remaining proposals were not considered appropriate for this strand of engagement due to their technical nature and/or limited application to the wider sector. The proposals were implemented via the Act and the Citizen Space survey suggests a high level of support for the changes.

Impact Assessments
The following impact assessments were carried out as part of the Parliamentary passage of the Act:

- Business and regulatory impact assessment[1]
- Data protection impact assessment[2]
- Equalities impact assessment[3]
- Island communities impact assessment[4]

Financial Effects
The Cabinet Secretary for Social Justice confirms that no BRIA is necessary as one was completed as part of the Parliamentary passage of the Act.

Scottish Government
Tackling Child Poverty and Social Justice Directorate

June 2025

[1] Charities (Regulation and Administration) (Scotland) Bill: business and regulatory impact assessment - gov.scot (www.gov.scot)
[2] Charities (Regulation and Administration) (Scotland) Bill: data protection impact assessment - gov.scot (www.gov.scot)
[3] Charities (Regulation and Administration) (Scotland) Bill: equalities impact assessment - gov.scot (www.gov.scot)
[4] Charities (Regulation and Administration) (Scotland) Bill: island communities impact assessment - gov.scot (www.gov.scot)