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examiners

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**To whom it may concern**

**Charities and Trustee Investment (Scotland) Act 2005  
and Charities Accounts (Scotland) Regulations 2006**

**Consultation Paper**

Please find enclosed the response from the Association of Charity Independent Examiners (ACIE) in respect of the above consultation paper.

As the name suggests, the Association's members carry out the Independent Examination of charity accounts. It is a UK-wide organisation, with a total of 569 members, of whom 74 live in Scotland (although we know that a number of our members who live in England also carry out a significant body of IE work for Scottish charities).

This response is based upon discussions at a small workshop held at the ACIE conference in early June as well as conversations held informally with Scottish members over recent months on the issues raised in the consultation.

Yours faithfully

Fiona Gordon  
Director

**CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005  
CONSULTATION ON DRAFT CHARITIES ACCOUNTS (SCOTLAND)  
AMENDMENT REGULATIONS 2009**

**SUMMARY OF QUESTIONS ASKED IN CONSULTATION PAPER**

**Question 1** *Do you agree that allowing OSCR to appoint additional trustees, to approve changes when charities wish to add new unrelated provisions to their constitution, and to reorganise restricted funds will enable OSCR to assist charities without unintended consequences?*

Yes, assuming that the third element about re-organising restricted funds is carried out in consultation with, and with the permission of, the donor(s)/funder(s) of the relevant restricted funds.

**Question 2** *Do you agree the phrase “charitable purposes” in charity constitutions written before 2005 should be read as including a reference to charitable purposes as defined by the 2005 Act?*

Yes. Does this also apply to cross-border charities and have a benefit there too?

**Question 3** *Do you agree that requiring charities to state their name, charitable status and charity number on their websites will increase transparency? Can this be done without imposing significant costs on charities?*

Yes and Yes.

**Question 4** *Do you agree OSCR should be allowed to vary the details of directions given under Section 30(1)(a) to require a charity to take such steps as it considers necessary for the purposes of meeting the charity test? If so, do you think this would be better achieved by: a) permitting OSCR to vary or revoke the direction; b) allowing the charity to request a review of the decision to give a direction; or c) both?*

Yes and (c).

**Question 5** *Do you agree that that replacing “accounts collated into a single document” with “a single set of accounts” would allow connected charities greater freedom to meet the requirements of the regulations in the most convenient fashion?*

Yes.

**Question 6** *Do you agree that including a specific requirement for consolidated accounts to be audited will bring greater clarity?*

Yes.

**Question 7** *Do you agree that clarifying the asset threshold relates to the assets at the end of the financial year will make the definition of the asset threshold easier to understand and assess?*

Yes.

**Question 8** *Do you agree that the proposed amendments set out in part 1B above are both helpful in either clarifying or updating the existing regulations? Do you agree that they will have only limited real world effect?*

#### 1 The Definition of Gross Income

Firstly, our understanding of the Regulations for England and Wales is that the equivalent definition also excludes capital received into an endowment fund - whether permanent or expendable.

Secondly, this existing definition has a logic in many situations where the capital received is one large lump sum, for example, from a legacy. However, where an endowment is being built up from numerous small donations, then the sheer number of donations might suggest need for increased rigour in the scrutiny of the accounts (even if the format of their preparation is less of an issue here).

Thus, a non-company charity with non-endowment income of £80,000 and an endowment of £40,000, under present Regulations, can prepare R&P accounts and have them examined by someone without a professional qualification. If endowment income is included in the definition, then they would have to prepare accrued accounts and have them examined by someone with a relevant professional qualification. If the £40,000 is made up of several hundred donations from several hundred donors in order to build an endowment, then accrued accounts is not particularly the issue, but scrutiny of the handling of that number of donations might be.

#### 2 References to various SORPs (Regulations 1 and 14)

The logic for referring to specific SORPs is acknowledged but it does have practical consequences in terms of having to amend the Regulations every time one of the SORPs is updated. Is it possible to find a wording which meets both requirements, say, 'the current edition of SORP if/once it has been approved by the Scottish Parliament' - or somesuch?

Also, reference to the '2008 edition' (of the Charities SORP) is incorrect/confusing. It is still the 2005 edition - it has simply been updated/amended in 2008 - and it is still referred to as the 2005 edition on the Charity Commission website which is the starting point for finding it. So, the more correct wording would be the '2005 edition (as amended in 2008)'

**Question 9** *Are there other similar changes we should make, or are you aware of alternative approaches to tackling any of the issues raised in Part 1B?*

See above.

**Question 10** *Do you agree introducing a requirement for reporting on public benefit increases transparency without placing a significant additional burden on charities?*

Yes, especially if OSCR were to provide some guidance and samples (without producing a lengthy document).

**Question 11** *Should the accounting thresholds be increased? If so, should they be increased to match the proposed thresholds in England and Wales?*

1 There is no support at the moment from ACIE for increasing the point at which Scottish charities have to prepare, submit and have their report/accounts scrutinised. As well as the argument that says that the new framework still needs time, there needs to be a debate about what level, if any, of non/poor-compliance (amongst smaller charities) is acceptable. For example, once any requirements are eased, any good practice learnt over preceding years will begin to dissipate, at the very least because of the change of relevant personnel in small charities.

2 Whilst there is general support for as much synchronisation of thresholds between Scotland and England & Wales as possible, there is not much appetite amongst ACIE's Scottish members for increasing the R&P threshold to £250,000, in terms of the preparation of accounts.

3 However, in terms of their scrutiny and the requirement that the Independent Examiner has to have a professional qualification to examine accrued accounts, members from all backgrounds are saying that this means that smaller charities having to prepare accrued accounts are having to pay more for their IE than they might otherwise have to. Whilst ACIE is doing what it can to encourage and enable persons willing to act as IE as volunteers or for lesser/nominal fees for these charities, there is currently a shortfall in the number of such persons.

4 The obvious group of charities affected by this, as mentioned in the consultation document, is those with incomes just over £100,000. However, the other group which is seriously affected is those very small (often well under £100,000) company charities which, by definition, have to prepare accrued accounts. Whilst company status may not be relevant for all of these charities, some have deliberately and rightly chosen it because, for example, whilst their income may be low, they may own a building. (This may be an argument for allowing SCIO's to prepare R&P accounts as and when that form of charity is available.)

5 As per the consultation document, there has been little enthusiasm amongst ACIE's Scottish members for an incremental uplift for inflation as described. However, there has been a suggestion that a mechanism is put in place to make such adjustments at a regular interval, eg, every five or ten years, or to coincide with the re-issue of the Charities' SORP (approximately every five years).

**Question 12** *Do you consider there is a case for a less burdensome treatment for charities who breach the accounting threshold for one year only?*

There is support from amongst Scottish ACIE members for trying to find a way of making this possible, but a recognition that it may end up being more complicated than helpful. For example, one suggestion is whether, for the year in which the £100,000 threshold is breached, the charity prepares accrued accounts, as legally required, but is exempt from having to provide previous year's comparatives (presumably also for the following year when it reverts to R&P accounts) - but then we recognise that previous year's comparatives are an integral part of accrued accounts ...

**Question 13** *Are there any advantages to reducing the formal requirements on charities with no income, expenditure or assets from the accounting regulations? Is it right to do so?*

This seems such an obscure situation and, presumably, one which occurs only infrequently, and the preparation and scrutiny of accounts in such a situation should take minimal effort, which would suggest leaving well alone.

**Question 14** *Do you consider there is a case for changing any of the other requirements for charities - or any subset of charities - to prepare, have scrutinised and submit annual accounts to OSCR?*

No.

**Question 15** *What would the impact on public confidence in the charity sector be of any potential changes?*

Minimal.

**Question 16** *Do you have any views on how far changes would genuinely benefit charities, and whether these benefits would outweigh the disruptive effects of change?*

The proposal seem mainly about tidying up anomalies etc and as such to cause minimal benefit or disruption.

**Question 17** *Do you agree with our conclusion that the issues covered in Part 3 should not be addressed in the 2009 Amendment Regulations?*

Yes.

**Question 18** *Do you agree that it is not appropriate for the Annual Report to be subject to audit/independent examination beyond assessment of its consistency with the financial statements? Is legislative change needed to address any real world issues caused by the existing regulations?*

Yes and No.

**Question 19** *Are there any other issues with the existing regulations you think we should address?*

A number of our Scottish members have asked why there are no Statutory Directions for IE in Scotland (as per England and Wales), which would be particularly useful when there is a dispute between an Examiner and a charity about what an Examiner must do/can do.

Our understanding is that what would be required for this to happen is for OSCR to be given permission in statue to issue such Directions and we would welcome this being done at the earliest opportunity.

**Question 20** *Do you agree with our assessment that the changes included in the draft regulations will not have a significant impact on charities or any other party? Do you have any further information that could be helpful in producing a Regulatory Impact Assessment if any changes to thresholds are taken forward?*

Yes and No.