

Comment on...

The Charity Test

What is the “Charity Test”?

The Office of the Scottish Charity Regulator (“OSCR”) has a statutory responsibility to monitor charities’ compliance with Scottish Charity law and maintain the charity register. Included within this role is determining whether bodies are charities whether they are those with existing charitable status or those applying to be charities.

What does the test consist of?

An organisation can only become a charity if it meets the “Charity Test”, which is set out in the Charities and Trustee Investment (Scotland) Act 2005. To pass the test, the organisation:

- a) Must have only charitable purposes, *and*
- b) Its activities must provide public benefit in Scotland or elsewhere.

In addition, specifically, the test will be failed if:

- The organisation’s constitution allows its property to be distributed or applied for non-charitable purposes; and/or
- Its constitution expressly permits government Ministers to control its activities; and/ or
- It is political party or one of its purposes is to advance a political party.

Which purposes are deemed to be “charitable”?

The Charities and Trustee Investment (Scotland) Act 2005 details the following:

- The prevention of relief of poverty
- The advancement of education
- The advancement of religion
- The advancement of health
- The saving of lives
- The advancement of citizenship or community development
- The advancement of the arts, heritage, culture or science

- The advancement of public transport
- The provision of recreational facilities for improvement of conditions of life
- The advancement of human rights, conflict resolution or reconciliation
- The promotion of religious or racial harmony
- The promotion of equality and diversity
- The advancement of environmental protection or improvement
- The relief of those in need by reason of ill health, disability or hardship
- The advancement of animal welfare
- Any other purpose reasonably analogous to the above.

How is “public benefit” assessed?

OSCR will look to see that the organisation actively provides benefit to the public. It will, however, also consider whether:

- Any private benefit arises from the organisation’s activities;
- There is any disbenefit to the public from its activities; and
- There are any unduly restrictive conditions on accessing the benefit provided by the organisation.

In assessing the above OSCR looks at the organisation overall, and does not provide detailed guidance on what is acceptable and what is not. It will depend on the context and the sector in which the organisation operates, and the extent to which public benefit outweighs any private benefit, disbenefit, or restrictive conditions.

How are existing charities reviewed?

Individual charity reviews is the means by which OSCR carry this out. In respect of these, a risk based approach is taken, which targets those thought most at risk of failing to meet the test.

The reviews themselves are “desktop reviews” where OSCR examines information it already has on the charity, together with a limited amount of additional information specifically requested, such as the most recently available accounts. This reduces the time taken to complete the assessment.

What happens if a charity fails the test?

OSCR will make “directions” to the charity to make changes, such that it would then meet the test. If it failed to make these, or was unable to, it would ultimately be removed from the Scottish Charity Register.

Are the results of reviews available?

The list of charities reviewed and undergoing review is available on OSCR’s website.

For further information, please contact:

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