

1 - The Office of the Scottish Charity Regulator (OSCR)

Any organisation wishing to apply for charitable status would be required to apply to OSCR who are the regulators for Scottish Charities. For charities who are limited by guarantee will be required to be listed with the Registrar of Companies (Companies House). The first step for any organisation is to establish whether applying for charitable status is the best option for their organisation and what type of charity (legal form) they should be for example a charity could be a charitable company, a trust, a Scottish Charitable Incorporated Organisation (SCIO) or an Unincorporated Association. The main difference is a Scottish Charity can exist with or without Charitable Status whereas a SCIO's existence is dependent on its charitable status, (that is, upon being entered in the Register), and ceases to exist if it is removed from the register. The second step is meeting the charity test.

2 - The Charity Test

The charity test is the legal set of requirements that an organisation must pass to become a charity and be entered in the Scottish Charity Register. The charity test is in two main parts:

1. an organisation has to show that it has only charitable purposes and
2. that it provides public benefit in achieving those purposes

In total there are 16 charitable purposes listed in the Act, the one (h) the advancement of public participation in sport. This purpose focuses on advancing public participation in a sport that involves physical skill and physical exertion. It is not enough just to promote sport. The 2005 Act says that to be charitable, public participation in sport must be promoted and that the sport must involve physical skill and physical exertion. An organisation with this purpose must be able to demonstrate that it provides opportunities for a wide range of participants.

What do OSCR mean by sport?

To be charitable, sport means an activity that must involve both physical skill and physical exertion. Where there is doubt as to whether an activity is a sport, they may consider the following:

- is the activity governed or regulated by a set of rules or customs?
- is there a governing body?
- is the activity structured and organised?
- is there an element of competition and of increasing the health and fitness of the participants?
- has the activity been recognised as a sport by a national body?

It is not essential to have answers to all of these questions and each case will be looked at individually. However, if the activity does not fit any of the above, then it is less likely that we would regard the activity as a sport. OSCR will look to bodies such as **sportscotland** to see if they recognise activities as sports.

Does it provide opportunities for public participation?

Organisations applying to become a charity with this purpose must be able to demonstrate that they provide sufficient opportunity for the public to take part. OSCR will look at whether the organisation caters for a range of participants in terms of skill or ability, physical condition, age and sex. They recognise that many sports charities will have to limit the number of participants at any given time. They focus on how they encourage public participation. They accept that competition is an inherent and motivating factor in many sports and that sports charities will strive to be successful. Where charities have activities aimed at elite or professional athletes, they must be able to show that these help to further public participation in sport and are part of a range of activities for people of all levels of ability, as explained above. Organisations that limit participation only to people with a certain level of ability are unlikely to be able to further this purpose.

The charity test also states that an organisation cannot become a charity, or continue to be one, if:

1. it is set up to be or advance a political party
2. its governing document allows it to use its assets (cash or property) for non-charitable purposes
3. its governing document allows Scottish Ministers to direct or control its activities.

2.1 - Advantages of being recognised as a Charity

Below listed are just some of the advantages of being a charitable organisation. Some benefits include being exempt from Income Tax, Corporation Tax and Capital Gains tax on most of its income and gains as long as the income/gains were received in line with the charitable purpose. The main advantages of becoming a charity are financial and include some of the following:-

- Having a credible public image which may reassure and therefore attract potential donors;
- Eligibility for financial help from other charities (especially charitable trusts);
- No tax is payable on interest earned on bank deposits, rent from property or income from investments;
- Charities can recover income tax paid on donations made to them under Deed of Covenant or by way of a Gift Aid payment;
- Charities can obtain relief of 80% on local authority rates (usually brought up to 100% through discretionary relief) on the premises occupied by the charity and “wholly or mainly used for charitable purposes”;
- Possible VAT exemptions/concessions which of course must be agreed with HMRC.

2.2 – Disadvantages/Restrictions of being recognised as a Charity

The general principle is that a charity should only spend its money in one of two ways:-

- Furthering its charitable objectives, this will be outlined in the clubs constitution which must pass the charity test;
- Sound investment, involving a proper commercial return and proper security;
- The organisation must operate strictly within the limits set out in the governing document;
- The organisation cannot benefit anyone they have a relationship with, e.g. family members, friends or members of group or club;
- A charitable organisation cannot part in political activities and trading with other companies may be limited;
- Trustees cannot usually be paid or gain financially from the work of the charity.

2.3 - Duties of the Trustees

The Act imposes a number of general duties on charity trustees and have summarised one or two of them but the list is quite exhaustive:-

- Trustees must act in the interests of the charity and in particular act in a manner which is consistent with its purposes;
- A trustee must ensure that the charity complies with the 2005 Act for which they state is a strict one with no exoneration for minor breaches;
- The charity trustees must administer the charity in accordance with the terms which are outlined in the constitution;
- The trustees have the responsibility of protecting the charity assets,
- They must ensure that appropriate risk monitoring processes are in place;
- To ensure appropriate recruitment, induction and training practices are in place.
- To appoint advisors such as accountants and lawyers to assist them to meet their reporting requirements.
- Devote time to the charity's affairs.

3 – Constitutional Requirements

1. That all clubs granted charitable status before the introduction of the Charities and Trustee Investment (Scotland) Act in 2005 should review their constitution to ensure that it states the charity purposes in line with the Act. To pass the Charity Test under the Act; basically it should include the following:-

- The nature of the business;
- The purpose;
- A dissolution clause (Section 7 (4) (a) the constitution should clearly state that the assets will not be distributed for purposes which are not charitable).

2. There is a requirement for the accounts to be examined in line with the legislation as set out by OSCAR and statutory reporting requirements. The audit requirement is generally dependent on turnover only, it may also be required if a particular grant funder stipulates an audit is required if it is in the offer of award letter or if the charity has stipulated in the constitution that an audit is required rather than an independent examination.

4 – Summary

Clubs should also know that once they have received charitable status then they will be categorised as a charity for the life of the club or charitable “arm” of the club. If a club decides it no longer wishes to function as a charity, in a dissolution situation it would be the responsibility of the charity to list all of the assets held at the point of the proposed dissolution, inform OSCAR how they would like to distribute the assets (as per the charity’s constitution). If OSCAR agree to the distribution this would be agreed and the dissolution can go ahead. If OSCAR did not feel that the assets were being distributed in line with the constitution or they were not being distributed to further benefit charities with similar objectives to the Charity then they may decide how the assets should be distributed or disallow the dissolution.

In terms of membership, any club that is a charity should ensure that the membership is open to anyone who wishes to be a member; they cannot exclude a member of the public that wishes to be a member of the charity or charity “arm”. This is because all charitable club or “charitable arm” of a club is owned by the Voluntary Sector Organisation and the committee members of the charitable club should be members of the Voluntary Sector Organisation and not solely club members to avoid any potential conflict of interest. This is particularly important when it comes to making financial/non-financial decisions regarding the club which should be documented and retained for future reference.

It is worth noting that the Charity SORP 2015 for accounting periods beginning on or after 1 January 2015 relates to reporting requirements around Trustees Annual Report and Financial Statements.

Clubs wishing any further information or has any questions regarding the above should contact their Regional Swimming Development Manager.