

Changing charity law in Scotland

The Charities (Regulation and Administration) (Scotland) Act 2023
and what it will mean for charities and charity trustees

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Why does Scotland need new charity law?

- Current legislation is 18 years old and has remained largely unchanged since enacted
- Practical improvements identified by OSCR
- More recent modernisation in other nations of the UK
- Changes in the charity sector and in the public expectation of charities

What does the new Act aim to achieve?

- Greater transparency of charities and accountability of charity trustees
- Improved accuracy and currency of the Scottish Charity Register
- Enhanced powers for OSCR to make inquiries and to protect charitable assets and address misconduct
- Alignment of key aspects of charity law in Scotland with other nations in the UK

What will be changing?

PROTECTING CHARITIES

PUBLIC CONFIDENCE

OSCR database of all charity trustees

Publishing all charity accounts

Disqualification of senior managers

Trustee names added to public Register

Disqualification of charity trustees

Published list of removed trustees

Inquiries into ceased charities and former trustees

Charities required connection to Scotland

Appointment of interim trustees

Removal of defaulting, non-responding charities

OSCR power of positive direction

Register of charity mergers

What will not change?

- New Act amends and supplements the 2005 Act, it does not repeal or replace it
- OSCR's form and regulatory functions
- The 'charity test' (charitable purposes and public benefit)
- General duties of charity trustees
- Charities' accounting, reporting and notification requirements
- OSCR's existing powers – although new powers will be added

Information about charity trustees

- OSCR to hold a schedule (database) of all charity trustees
- For **internal use only**
- Data processed to verify identity and enable OSCR to exercise its regulatory functions
- Data entered by charities through OSCR Online portal
- Charity trustee **names only** will be published on Register
- Dispensation where there is a risk to personal safety or security of premises

Publishing charity accounts

- New duty on OSCR to make accounts available to the public
- Unredacted accounts for all charities will be published
- Published for the most recent 5 reporting periods
- Accounts format and deadline for submission **will not change**
- RSLs will continue to send accounts to SHR
- Onus on charities to ensure accounts are 'publication ready'
- Trustee names can be excluded where dispensation granted

Automatic disqualification of charity trustees

CURRENT

Conviction for offence involving dishonesty

Disqualified as a company director

Undischarged bankruptcy

Removed as trustee by the Court

Removed as trustee by Charity Commission

NEW

Conviction under bribery legislation

Conviction under proceeds of crime legislation

Conviction for perverting the course of justice

Terrorism or association with proscribed terrorist group

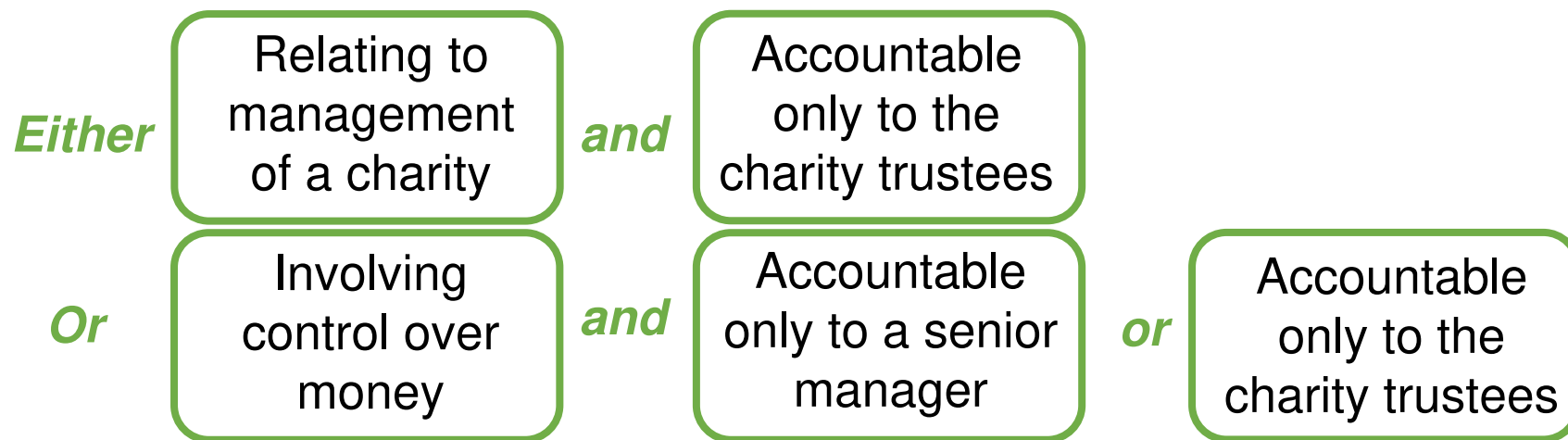
Misconduct or negligence as a public official

Disobedience with an order of Court

Sexual offences subject to notification

Disqualification of senior managers

- Disqualification rules extended to include individuals holding office or employment with senior management functions
- A **senior management function** means:



- OSCR discretion to **waive disqualification** in exceptional circumstances

When will the changes happen?

- Royal assent granted on 9 August (Bill became an Act)
- Commencement expected in two phases:

Spring 2024

OSCR inquiry powers
Connection to Scotland
Removal of unresponsive defaulters
Positive directions
Interim trustee appointments
Minor amendments
Advanced consideration of waivers

Summer 2025

OSCR internal trustee schedule
Trustee names published on Register
Publishing of accounts
New disqualification criteria
Register of mergers

- Secondary legislation (regulations)

What can charities do to prepare?

- Ensure that you know who all your trustees are and collect up to date information on them
- Ensure that your annual accounts are prepared to a style and standard that you would be content to be published
- Identify early any charity trustees or managers who might be affected by the new disqualification rules
- Update your own governance materials (eg. induction packs, trustee declarations, due diligence on trustee appointments)
- Keep a watch for new OSCR guidance and news updates

Keep up to date

OSCR Reporter Newsletter

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