

English & Welsh Charities

Problems for English Charities trying to register in Scotland and Existing Scottish Charities with charitable purposes based on UK tax law.

For a body to be entered in the Scottish Charity Register it must meet the Scottish Charity Test set out in The Charities and Trustee Investment (Scotland) 2005 Act and one of the key parts to the Charity Test is that the **charity's constitution must not allow it to distribute or otherwise apply any of its property for a purpose which is not a charitable purpose in terms of the Act.**

The Act 2005 also requires that all English and Welsh charities that wish to refer to themselves as charities in Scotland and that have a significant presence in Scotland must be entered in the Scottish Charity Register.

Charitable purposes are different on either side of the Border

Charitable purposes in Scotland are very similar to but not the same as charitable purposes in England and Wales. This presents problems for both existing Scottish Charities and English charities which define "charitable" or "charitable purposes" by reference to the Income Tax Corporation Taxes Act 1988, which uses the English definition.

OSCR has indicated that such a definition could potentially result in a body making a distribution other than for a charitable purpose and therefore it is not entitled to be entered on the Scottish Charity Register. OSCR is advising all Scottish Charities already on the Register to amend their constitutions and also they are advising English and Welsh charities who have this problem to amend their constitutions before applying to be entered on the Register.

Where an English charity governed by English law allows its assets to be distributed for "other charitable purposes" the same problem arises when it applies to be entered on the Scottish Charity Register. It is potentially possible for that charity to make a distribution which would be consistent with English charitable purposes but not with Scottish ones.

Charities being advised to amend their constitutions

The practical consequence of this decision is that many English or Welsh charities who wish to be entered on the Scottish Charity Register must amend their constitution. OSCR has agreed with the Charity Commission wording for standard amendments which meet the requirements of the Scottish Charity Test and also meet concerns raised concerning the English and Welsh regulatory situation.

Paradoxically the result of this outcome is that for UK charities there is now only one acceptable definition of charitable purposes. A nation wide charity is now effectively restricted to charitable purposes which are recognised on both sides of the Border.

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