

LEGAL BACKGROUND FOR CHARITIES



The context of the Charities Act

- Improving the governance of charities in Scotland
- Ensuring that money given to charities is spent:
 - Correctly
 - Wisely
 - Efficiently
- Securing
 - Transparency
 - Accountability

Regulation by OSCR

- New charities regulator. Office of Scottish Charity Regulator (OSCR).
- To keep a public register of charities.
- Power to grant and remove charitable status
- Investigate and act upon misconduct
- To encourage and monitor compliance

OSCR Principles

- Proportionate
- Accountable
- Consistent
- Transparent
- Targeted only at cases where action is needed

OSCR's Powers – Inquiries (1)

- OSCR's can inquire into
 - charities
 - “bodies controlled by a charity”
 - non charities
 - persons representing a charity or trading arm

OSCR's Powers – Inquiries (2)

- Direction not to undertake specified activities during inquiries
- Notice to provide any type of information OSCR considers necessary
- Criminal offence to fail to comply without reasonable excuse

Who are the Charity Trustees in your Organisation?

- Those who exercise the “general control and management” of the Charity

General Duties of Trustees

- Act in the interests of the Charity
- Operate in a manner consistent with its purposes
- Act with care and diligence of one managing the affairs of another person
- Ensure the Charity complies with the Charities Act and all other relevant legislation

Session One

- Act in best interests of the Charity
- Operate in a manner consistent with its purposes

Session Two

- Act with care and diligence of one managing the affairs of another person
- Ensure the Charity complies with the Charities Act and all other relevant legislation

MORE LEGAL STUFF ABOUT CHARITIES



What is unlimited liability

- Members responsible for debts and other liabilities incurred by the charity

What is limited liability

- Charity is a person!
- Charity responsible for its own debts and other liabilities
- Members liability limited to £1 guarantee

Typical Legal Structures

- Trust (unlimited)
- Unincorporated associations (unlimited)
- Companies (limited)
- SCIOs (limited)

Charity Trustee

- Trustee – those in general control and management of the charity
- Shadow trustee – not appointed formally as a trustee BUT exercising control and management