

Summary of Trustee Guidance from the Office of the Scottish Charity Regulator (OSCR)

For full detail go to: **Guidance for Charity Trustees** at:

<http://www.oscr.org.uk/media/1577/guidance-for-charity-trustees.pdf>

A. General Duties of a Trustee:

A charity trustee must:

1. Act in the interest of the charity. Trustees should put the interests of their charity before their own interests, or those of any other person or organisation.
2. Operate in a manner consistent with the charity's purposes. Trustees should carry out their duties in accordance with their governing document.
3. Act with due care and diligence. Trustees should take such care of their charity's affairs as is reasonable to expect of someone who is managing the affairs of another person.
4. Ensure that the charity complies with the provisions of the 2005 Act and other relevant legislation.

Our **Checklist for Charity Trustees - protecting charitable status** sets out some of the key areas charity trustees should keep in mind to ensure in particular that their charity continues to meet the requirements of the charity test.

B. Specific Duties of a Trustee

Additional duties for charity trustees include:

1. Updating your charity's details. Trustees must make sure that we hold the latest information about their charity on the Scottish Charity Register. Charities must seek our consent before taking certain actions. More information about when a charity must contact us for consent and when they must tell us after certain changes have been made is available on our **Making changes to your charity** page <http://www.oscr.org.uk/charities/managing-your-charity/making-changes-to-your-charity>

Note that charities are not required to notify us of changes to charity trustees. This is because the information is contained within the Trustees' Annual Report that each charity sends to us with its Annual Return form. If, however, a change of trustee means a change to the charity's principal contact, then the charity must notify us of the change as soon as possible.

However, if your charity is a SCIO you must keep an up to date **register of trustees and members**.

2. Reporting to OSCR.

Complying with the statutory duty to supply certain information to us:

- **Annual Monitoring** <http://www.oscr.org.uk/charities/managing-your-charity/annual-monitoring>
- **Charity Accounting** <http://www.oscr.org.uk/charities/managing-your-charity/charity-accounting>
- **Making Changes to Your Charity.** <http://www.oscr.org.uk/charities/managing-your-charity/making-changes-to-your-charity>

3. Financial record keeping and reporting.

Section 44 of the 2005 Act states that charities must:

- keep proper accounting records
- prepare a statement of account, including a report on its activities, at the end of each financial year
- have the statement of account independently examined or audited
- send a copy of the accounts, along with the annual return, to us.

Accounting records must be kept by the charity for a minimum of 6 years from the end of the financial year in which they were made.

4. Fundraising.

Trustees are responsible for taking control of how their charity fundraises.

5. Providing information to the public.

Trustees must make sure that their charity meets legal requirements when referring to their charitable status, for example in advertisements, and in their duty to provide information about their charity to the public.

C. Remuneration of Trustees

Information on charity trustee remuneration and the conditions for remuneration.

The 2005 Act states that remuneration of charity trustees may be any direct or indirect payment or benefit, including a benefit in kind. It can be for:

- being a charity trustee
- a contract of employment
- for other services to or on behalf of the charity.

Charity trustees must act in the interest of their charity and any personal benefit, whether direct or indirect, must be treated with caution. **Section 67** of the 2005 Act

states that a charity trustee must not be remunerated from charity assets unless certain conditions are met.

Conditions for remuneration

The conditions which allow remuneration are:

- the maximum amount of the remuneration is set out in a written agreement
- the maximum amount of the remuneration is reasonable in the circumstances
- the charity trustees are satisfied, before entering the agreement, that it is in the interest of the charity for that person to provide those services for that amount
- immediately after entering into the agreement, less than half of the total number of charity trustees are directly or indirectly remunerated
- the charity's governing document does not prohibit the remuneration of charity trustees.

There are some exceptions to meeting the above remuneration conditions. Further information on these exceptions is available from our **Guidance for Charity Trustees**.

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D. Trustees and Investments

Sections 93 to 95 of the 2005 Act <http://www.legislation.gov.uk/asp/2005/10/part/3>

sets out the powers of investment of trustees and associated duties.

Trustees are entitled to make any kind of investment of the trust estate, including a wider power to acquire stocks and shares. However, these powers are subject to restrictions and exclusions and do not extend to certain categories of trustees. Further information about the restrictions and exclusions can be found in section 6 of the **Guidance for Charity Trustees**.

E. Publicising our Charitable status

All charities entered into the Scottish Charity Register have a duty to promote their charitable status, find out more by reading our **Publicising Charitable Status** page:

<http://www.oscr.org.uk/charities/managing-your-charity/trustee-duties/publicising-charitable-status>

F. Equalities Act

As a charity trustee, you must be aware of other legal requirements such as equality law. Read our **equality guidance** – which is enclosed with the induction pack.

G. Breach of duties

As Regulator, we have a duty to act where there is evidence that charity trustees are behaving improperly. Our response will be proportionate depending on the breach. Further information on how we will take action in cases of misconduct is available in our guidance document.