

2011 No. 44

CHARITIES

**The Scottish Charitable Incorporated Organisations
Regulations 2011**

<i>Made</i>	- - - -	<i>26th January 2011</i>
<i>Laid before the Scottish Parliament</i>		<i>28th January 2011</i>
<i>Coming into force</i>	- -	<i>1st April 2011</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 50(3), 52(1) and 64(b), (e) and (f) of the Charities and Trustee Investment (Scotland) Act 2005(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Scottish Charitable Incorporated Organisations Regulations 2011 and come into force on 1st April 2011.

(2) In these Regulations—

- (a) “the 2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005; and
- (b) “address” means an address notified for the purposes of sending documents by post or leaving documents and in the case of a body corporate, the address of the registered or principal office of that body;
- (c) “the Register” means the register of charities known as the “Scottish Charity Register” and kept by OSCR under section 3(1) of the 2005 Act.

Constitution

2. In addition to the requirements in section 50 of the 2005 Act the constitution of a SCIO must make provision about—

- (a) any restrictions on its powers;
- (b) the organisational structure of the SCIO;
- (c) its procedural rules, including—
 - (i) the convening of meetings;
 - (ii) records of meetings;
 - (iii) the quorum for any meeting;
 - (iv) voting rights of members and of charity trustees; and
 - (v) how resolutions may be passed;

(a) 2005 asp 10.

- (d) the processes for withdrawal and for removal of members and of charity trustees;
- (e) any circumstances in which remuneration may not be paid to charity trustees, which go beyond the restrictions in section 67 of the 2005 Act;
- (f) procedures for dealing with any conflict of interest; and
- (g) those purposes which are the same as or which resemble closely the purposes of the SCIO, for which any surplus assets available to the SCIO immediately preceding its winding up or dissolution must be used.

Register of charity trustees

3.—(1) Every SCIO must keep a register of its charity trustees.

(2) The register of charity trustees must contain the following information for each current charity trustee—

- (a) the name of the charity trustee;
- (b) the address of the charity trustee;
- (c) the date of appointment of the charity trustee; and
- (d) any offices the charity trustee holds in the SCIO.

(3) Where any charity trustee is not a natural person, the register of charity trustees must also contain—

- (a) any other name by which the charity trustee is, or makes itself, known;
- (b) the principal contact for the charity trustee;
- (c) any number assigned to it in the Register, if it is a charity; and
- (d) any number with which it is registered as a company, if it is a company.

(4) Where a charity trustee is appointed by OSCR under section 70A of the 2005 Act^(a) the SCIO must record this in the register of charity trustees.

(5) The register of charity trustees must contain the following information for each former charity trustee for at least 6 years from the date on which each person ceased to be a charity trustee—

- (a) the name of the charity trustee;
- (b) any offices the charity trustee held in the SCIO; and
- (c) the date on which the person ceased to be a charity trustee.

(6) The SCIO must update the register of charity trustees within 28 days of receiving notice of any change.

Right to require copies of the register of charity trustees

4.—(1) A person who requests a SCIO to provide a copy of its register of charity trustees is, if the request is reasonable, entitled to be given a copy by the SCIO within 28 days.

(2) Where a person, not being a charity trustee of a SCIO, makes such a request, the SCIO may, in accordance with paragraph (3), provide a copy of the register of charity trustees with the name and address of any of its charity trustees redacted.

(3) The name of any of its charity trustees may be redacted only if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

(a) Section 70A was inserted into the 2005 Act by section 126 of the Public Services Reform (Scotland) Act 2010, (asp 8).

Register of members

5.—(1) Where the members of a SCIO are not identical to its charity trustees, the SCIO must keep a register of members.

(2) The register of members must contain the following information for each current member—

- (a) the name of the member;
- (b) the address of the member; and
- (c) the date of registration as a member of the SCIO.

(3) Where any member is not a natural person, the register of members must also contain—

- (a) any other name by which the member is, or makes itself, known;
- (b) the principal contact for the member;
- (c) any number assigned to it in the Register, if it is a charity; and
- (d) any number with which it is registered as a company, if it is a company.

(4) The register of members must contain the following information for each former member for at least 6 years from the date on which each person ceased to be a member—

- (a) the name of the member; and
- (b) the date on which the person ceased to be a member.

(5) The SCIO must update the register of members within 28 days of receiving notice of any change.

Right to require copies of the register of members

6.—(1) A member or a charity trustee of a SCIO who requests the SCIO to provide a copy of its register of members is, if the request is reasonable, entitled to be given a copy by the SCIO within 28 days.

(2) Where a member, not being a charity trustee, of a SCIO makes such a request, a SCIO may provide a copy with the address of any of its members redacted.

Prohibition on transfer of membership

7. Membership of a SCIO may not be transferred by a member.

Meetings of members

8.—(1) A SCIO must hold a meeting of its members within 15 months of the date on which OSCR enters the SCIO in the Register, and at least once every 15 months thereafter.

(2) A SCIO must give at least 14 days notice of such meetings to its members and its charity trustees.

Name and status

9. For the purposes of section 52 of the 2005 Act the following documents are specified:—

- (a) business letters and emails;
- (b) advertisements, notices and official publications;
- (c) any document which solicits money or other property for the benefit of the SCIO;
- (d) promissory notes, endorsements and orders for money or goods;
- (e) bills rendered;
- (f) invoices, receipts and letters of credit;

- (g) statements of account prepared in accordance with either regulation 8, 9 or 14 of the Charities Accounts (Scotland) Regulations 2006^(a);
- (h) educational or campaign documentation;
- (i) conveyances which provide for the creation, transfer, variation or extinction of an interest in land;
- (j) contractual documentation;
- (k) bills of exchange, other than those which are cheques within the meaning of section 73 of the Bills of Exchange Act 1882^(b);
- (l) the home web page on a website operated by or on behalf of the SCIO.

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
26th January 2011

(a) S.S.I 2006/218, as amended by S.S.I. 2007/136 and S.S.I. 2010/287.
(b) 1882 c.61.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) makes provision for a new incorporated form for Scottish charities. These regulations set out in more detail how that new form, known as the Scottish charitable incorporated organisation (“SCIO”), will work.

Section 50 makes provision about a SCIO’s constitution, which is its governing document. Section 50(1) and (2) sets out what a SCIO’s constitution must contain and section 50(3) requires a SCIO to also provide for certain other matters specified in regulations. Regulation 2 lists those matters.

Regulation 3(1) places a duty on a SCIO to keep a register of its charity trustees. The information that must be kept on that register in relation to current charity trustees is set out at regulation 3(2). Regulation 3(3) sets out what additional information the register must contain in relation to charity trustees that are legal persons (e.g. corporate bodies). If a charity trustee is appointed by OSCR in exercise of its powers under section 70A of the 2005 Act, this must be recorded in the register by virtue of regulation 3(4). The information that must be kept on the register in relation to former charity trustees is set out at regulation 3(5); that information must be kept for at least 6 years. Regulation 3(6) provides that, within 28 days of receiving notice of any change, a SCIO must update the register of charity trustees.

Regulation 4 sets out the right of any person to request a copy of the register of charity trustees and, if the request is reasonable, receive that copy within 28 days. Where the person making the request is not a charity trustee of the SCIO to which the request is made, the SCIO may redact the name and address of any of its charity trustees by virtue of regulation 4(2). Regulation 4(3) provides that the name may only be redacted if the SCIO is satisfied as to the test set out in the Regulations in relation to safety and security.

Regulation 5 requires a SCIO whose members are not identical to its charity trustees to keep a register of members in addition to the register of charity trustees. The register of members must contain the information set out in regulation 5(2) for current members. Regulation 5(3) sets out what additional information the register must contain in relation to members that are non-natural persons (i.e. corporate bodies). The register of members must also contain the information in regulation 5(4) for former members; this information must be kept for at least 6 years. Regulation 5(5) provides that, within 28 days of receiving notice of any change, a SCIO must update the register of members.

Regulation 6 sets out the right of a member or charity trustee of a SCIO to request that SCIO to provide a copy of its register of members and, if the request is reasonable, to be provided with a copy within 28 days. The SCIO may redact the addresses of any of its members if the request is made by a person who is not a charity trustee of the SCIO.

Regulation 7 prohibits a member from transferring membership of a SCIO.

Regulation 8(1) places a duty on a SCIO to hold a meeting of its members within 15 months of the date on which OSCR enters the SCIO in the Register. A SCIO must also hold a meeting of its members at least once every 15 months from the date of the previous meeting. Regulation 8(2) requires a SCIO to give its members and charity trustees at least 14 days notice of such meetings.

Regulation 9 specifies the documents on which a SCIO must state its name in legible characters and, in the circumstances set out in section 52(3) of the 2005 Act, the fact that it is a SCIO.

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