Guidance for ICAS members acting for Scottish charities (Updated)

Accounts prepared under the Charities Accounts (Scotland) Regulations 2006 (as amended)

Periods commencing on, or after, 1 January 2019
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FOREWORD

ICAS members have a long tradition of serving charities as advisers and have an important role in supporting charities deliver trustees’ annual reports and accounts which meet the expectations of their stakeholders from regulators to funders and private donors to beneficiaries.

Public trust in the charity sector has been tested of late by concerns over fundraising, financial management and, most recently, the safeguarding practices of international charities. Trust in the charity sector cannot be taken for granted and it is vital that all UK charities establish governance and risk management arrangements which are fit for purpose regardless of size, charitable objects or geography.

Part of every charity’s governance arrangements should be the timely preparation of its trustees’ annual report and accounts. A charity’s trustees can demonstrate the effectiveness of their stewardship of charitable assets and share their charity’s achievements with the world through the trustees’ annual report and accounts. ICAS members have the skills and experience to ensure that charities make the best of this opportunity and don’t fail on a technicality.

Our Guidance for ICAS members acting for Scottish charities is designed to assist accounts preparers, independent examiners and auditors navigate through the maze of requirements and standards placed on Scottish charities so that these do not stand in the way of improved year-end reporting.

On behalf of the ICAS Charities Panel, I am pleased to present this publication.

It reinforces our commitment to supporting ICAS members in providing the highest standard of service to Scottish charities.

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December 2018
ACKNOWLEDGEMENTS

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EXECUTIVE SUMMARY

Welcome to our updated Guidance for ICAS members acting for Scottish charities: for periods commencing on or after 1 January 2019.

The Guide has been prepared to reflect changes to accounting and auditing standards and guidance applicable to Scottish charities, including:

- The withdrawal of the Financial Reporting Standard for Smaller Entities (FRSSE) and the associated Charities SORP (FRSSE). (Chapter 4)
- The publication of the Charities SORP (FRS 102) (Second Edition—October 2019). This second edition of the Charities SORP (FRS 102) is applicable to reporting periods beginning on or after 1 January 2019. This edition incorporates amendments arising from both Update Bulletin 1 and Update Bulletin 2. (Chapter 4)
- A revised International Standards on Auditing (ISAs) (UK) and Practice Note 11: The Audit of Charities in the UK (Revised). (Chapter 5)

Other developments impacting on the Scottish charity sector where are covered in this edition, include:

- New ICAS auditor’s report guidance for firms acting as auditors of Scottish charities. (Chapter 5)
- New ICAS guidance for members acting as charity independent examiners on going concern. (Chapter 6)
- Joint guidance from UK charity regulators on reporting matters of material significance. (Chapter 8)
- Revised money laundering regulations. (Chapter 8)

UK Generally Accepted Accounting Practice (GAAP)

For periods commencing on or after 1 January 2019, charities preparing ‘true and fair’ accounts must comply with the following:

- The Charities SORP (FRS 102) (Second Edition—October 2019).

The Charities SORP (FRS 102) (Second Edition—October 2019) incorporates:

- Update Bulletin 1 which applies to periods commencing on or after 1 January 2016. This Bulletin makes several changes to the Charities SORP (FRS 102) which do not arise from changes to FRS 102.
- Update Bulletin 2 which applies to periods commencing on or after 1 January 2019. This Bulletin implements amendments to the Charities SORP (FRS 102) arising from the triennial review of FRS 102 and additional clarifying amendments.

Other ICAS guides for members

ICAS has published two further Guides:

- Auditor’s reports guidance for ICAS firms acting as auditors of Scottish charities: Illustrative auditor’s reports for Scottish charities for the audit of financial statements with reporting periods commencing on or after 17 June 2016.
- Guidance for ICAS members acting as charity independent examiners: Identifying, assessing and reporting on going concern. The guide applies to reporting periods commencing on or after 1 January 2016.
OSCR’s regulatory regime

OSCR’s regulatory regime is underpinned by the Targeted Regulation Framework of the Scottish charities regulator. The framework focuses on the protection of beneficiaries and charitable assets, and the protection and integrity of charitable status.

In April 2017 OSCR and the other UK charity regulators jointly issued revised guidance for auditors and independent examiners on their statutory duty for reporting matters of material significance.

Cross-border charities

Our Guide does not include detailed material on accounting matters relevant to charities based elsewhere in the UK or abroad which are registered with OSCR or for Scottish registered charities operating in other UK jurisdictions. Where a charity has cross-border operations, members should take account of the different requirements applicable in each UK charity law jurisdiction.

OSCR has published guidance for English and Welsh charities on its website and this Guide signposts this information. Any queries about cross-border charities should be directed to OSCR, although cross-border charities may need to consider seeking independent legal advice on how to comply with the Charities Accounts (Scotland) Regulations 2006 (as amended) along with the requirements of their jurisdiction of origin.

ICAS members acting for charities based in England and Wales

The Charity Commission for England and Wales provides accounting guidance for English and Welsh charities for periods ending on or after 1 November 2016 in its publication Charity reporting and accounting: The essentials (November 2016) (CC15d), CC15d covers similar ground to that covered in our Guide.

ICAS members acting for charities based in England and Wales and preparing accounts in accordance with the Charities SORP (FRS 102) should ensure that they follow the appropriate version of CC15, including any later edition which may be published.

Feedback

If you have any comments on our Guide, we would like to hear from you. Please email any comments to Christine Scott, Head of Charities and Pensions at: connect@icas.com.
1. INTRODUCTION

1.1 Aim of the Guide

The aim of the Guide is to support ICAS members acting for Scottish charities in gaining a broad understanding of the latest accounting, reporting and scrutiny requirements which apply to the sector. These requirements are established by the legal and regulatory framework governing charities in Scotland.

1.2 Scope of the Guide

The Guide covers the accounting and reporting requirements placed on Scottish charities, both company and non-company charities, including Scottish charitable incorporated organisations (SCIOs). It will be of assistance to ICAS members undertaking the following assignments for charitable clients, for accounting periods beginning on or after 1 January 2019:

- Accounts preparation.
- Audit.
- Independent examination.

An ICAS member who is a charity trustee or working as an accountant at a charity may find the Guide helpful in terms of understanding the accounting, reporting and scrutiny requirements placed on charities by the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Accounts (Scotland) Regulations 2006 (as amended) and, where applicable, the Companies Act 2006.

1.3 What can an ICAS member offer a charity?

An ICAS member can make a significant difference to the performance and success of any charity. Expertise in business planning, governance, financial controls, the legal and regulatory environment and compliance and assurance means an ICAS member can provide constructive advice to trustees and contribute ideas to improve performance.

ICAS members have a long tradition of supporting the charity sector in both voluntary and professional capacities. The ability to advise and, where practicable, introduce a suitable control environment and accounting system are areas where an ICAS member’s experience should benefit a charity.

Additionally, ICAS members have the technical knowledge required to prepare accounts or undertake external scrutiny of accounts in accordance with the applicable legislation and, where relevant, accounting and auditing standards and the Charities SORP (FRS 102).

Any ICAS member acting for a charity must have the necessary skills and knowledge to deliver a high standard of service. This is achieved through compliance with the ICAS requirements for continuing professional development (CPD). ICAS members must also comply with other relevant regulatory and professional requirements, including those contained within the ICAS Charter Rules and Regulations and ICAS Code of Ethics.

The training and ongoing professional requirements of an ICAS member are deliberately challenging so that as far as possible our members operate to the highest standards of professional practice in the public interest.
2. SCOTTISH CHARITIES AND THE LAW

This chapter of the Guide provides an overview of Scottish charity law and key aspects of interest to ICAS members acting for Scottish charities. It also highlights the importance of understanding how company law interacts with Scottish charity law and touches on cross-border matters relevant to:

- Charities based in England and Wales and in Northern Ireland operating in Scotland.
- Scottish charities with presence in England and Wales and in Northern Ireland operating in Scotland.

2.1 Charities and Trustee Investment (Scotland) Act 2005

The Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) establishes a comprehensive system of charity law and regulation in Scotland, including a statutory regulator, the Office of the Scottish Charity Regulator (OSCR), and a charity test, accompanied by a public benefit test, which must be met by any organisation registered or wishing to register as a charity in Scotland.

The 2005 Act allows for further changes to be brought about through secondary legislation. The following secondary legislation is of key importance to ICAS members acting for Scottish charities:

- The Charities Accounts (Scotland) Regulations 2006 (SSI 218).
- The Charities Accounts (Scotland) Amendment Regulations 2010 (SSI 287).
- The Charities Accounts (Scotland) Amendment (No. 2) Regulations 2014 (SSI 335).
- The Charities Accounts (Scotland) Amendment Regulations 2016 (SSI 76).
- The Charities Accounts (Scotland) Amendment Regulations 2017 (SSI 284).
- The Charities Accounts (Scotland) Amendment Regulations 2018 (SSI 344).

These regulations set out the accounting and scrutiny requirements for all sizes and forms of Scottish charity, including SCIOs and charitable companies. The accounting regulations are referred to collectively within the Guide as the 2006 accounting regulations (as amended).

Also of significance to ICAS members acting as auditors or independent examiners for Scottish charities is the duty under the 2005 Act to report matters of material significance to OSCR (the whistleblowing duty). Further information is given in chapter 8 of this Guide on the duty and right to report to OSCR.

2.2 Charity accounting matters and the law

The 2006 accounting regulations (as amended) require charities preparing accounts which purport to give a ‘true and fair’ view to prepare their accounts in accordance with the methods and principles set out in:

- Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland, known as the Charities SORP (FRS 102).

For the avoidance of doubt the 2006 accounting regulations (as amended) refer to ‘true and fair’ accounts as ‘fully accrued accounts’. Smaller charities with a gross income of less than £250,000, except those which are charitable companies, may be eligible to prepare their accounts on a receipts and payments basis.
Charitable companies must also comply with company law and therefore must be aware of the differences in the narrative reporting, accounts preparation and external scrutiny requirements which exist between the Companies Act 2006 and Scottish charity law. Charities must comply with the strictest thresholds or the most onerous requirements in place for a reporting period. Charitable companies must also file accounts with Companies House.

The following aspects of Scottish charity law deal with the maintenance of accounting records, the duty and right of independent scrutinisers (i.e. auditors and independent examiners) to report to OSCR and financial reporting requirements:

- Part 1, chapter 6, section 44 of the 2005 Act sets out the duty of the charity to keep proper accounting records and prepare a statement of account for filing with OSCR.
- Part 1, chapter 6, section 45 of the Act sets out the remedies available to OSCR and the courts if a charity fails to provide a statement of account.
- Part 1, chapter 6, section 46 of the Act sets out the duty and right of independent scrutinisers (auditors and independent examiners) to report to OSCR. The duty to report requires independent scrutinisers to report instances of apparent misconduct in the administration of a charity and the right to report permits independent scrutinisers to report other matters relevant to the exercise of OSCR’s functions.
- The 2006 accounting regulations (as amended) prescribe: the form and content of accounts for Scottish charities; and the external scrutiny requirements.

Section 44 of the 2005 Act sets out the requirements placed on charities to keep accounting records. A charity must:

- Keep proper accounting records.
- Prepare for each financial year a statement of account and a report on its activities.
- Have a statement of account independently examined or audited.
- After such an examination or audit send a copy of the statement of account and report on its activities to OSCR.

Accounting records must be kept for a minimum of six years from the end of the financial year to which they relate.

2.3 Public Services Reform (Scotland) Act 2010

The Public Services Reform (Scotland) Act 2010 (2010 Act) made a number of changes to Scottish charity law.

Under Part 9 of the 2010 Act (which amends the Charities and Trustee Investment (Scotland) Act 2005):

- The Court of Session can prevent a former charity trustee from ever being a charity trustee again.
- The Court of Session can permit a charity to alter its charitable purpose(s).
- A charity can ask OSCR for assistance in appointing trustees where the required constitutional levers to do so are not in place.
- A charity can ask OSCR to amend or withdraw a direction.
- A charity can ask OSCR to approve a reorganisation of its restricted funds.
- A charity can purchase trustee indemnity insurance.
- A charity is required to refer to its charity number on its website.
Trustee indemnity insurance
Charities with a prohibition on the purchase of trustee indemnity insurance within their constitutions are not able to take advantage of the change in the law made by the 2010 Act. However, charities do have the option of amending their constitutions through the consents regime, if appropriate, or through a reorganisation scheme.

2.4 The Scottish Charitable Incorporated Organisation

The Scottish Charitable Incorporated Organisation (SCIO) is a corporate body with legal personality, which is able to enter into contracts, employ staff, incur debts, own property, sue and be sued in its own name. It offers limited liability protection to trustees within a corporate form tailored to Scottish charities.

SCIOs are required to comply with the 2006 accounting regulations (as amended) and those SCIOs which have an annual gross income of under £250,000 will have the option of preparing receipts and payments accounts provided they are not otherwise prohibited from doing so.

From 1 April 2011, the SCIO model became available to charitable trusts and unincorporated charities and to Scottish organisations obtaining charitable status for the first time.

From 1 April 2012, the SCIO model became available to charitable companies and charitable co-operative and community benefit societies (previously known as industrial and provident societies).

The following aspects of Scottish charity law specifically relate to the SCIO model:

- Part 1, chapter 7, sections 49 to 64 of the 2005 Act, cover: the nature and constitution of the SCIO; the creation of the SCIO and entry on the Scottish charity register; SCIO conversions, SCIO amalgamation and the transfer of SCIO undertakings; and general provisions.


From 1 January 2018, SCIOs and Charitable Incorporated Organisations (CIOs), which are regulated by the Charity Commission for England and Wales, appear in the Registrar’s Index of Company Names, which is maintained by Companies House. This will help protect SCIOs’ names, for instance in the event of others looking to set up a company or CIO with the same name as a SCIO.

It also means that Companies House now checks whether a SCIO’s proposed name includes ‘sensitive words or expressions’ as may be considered to be the case under the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014.

2.5 Consents, reorganisations and notifications

In November 2018, OSCR issued a new guide: Making changes to your charity which covers the consents process and related notifications. Other OSCR guidance and information relating to consents, reorganisations and notifications are signposted in this section.

Consents
Under section 16 of the 2005 Act, charity trustees may be able to use the consents regime to:

- Change the name of their charity.
- Amend the objects or purposes of their charity.
- Transfer charity assets to another charity.
- Change their charity’s legal form.
- Amalgamate their charity with another body.
- Wind-up their charity.
Also, the trustees of one SCIO can ask for consent to transfer its assets, liabilities, rights and responsibilities to another SCIO known as a transfer of undertaking. The transferor SCIO would then be dissolved.

Charity trustees must receive prior consent from OSCR before undertaking any of the above. However, where a charity’s constitutional provisions do not give the trustees the power to make the desired changes, the trustees can instead apply to OSCR for permission to reorganise under Chapter 5 of the 2005 Act.

Prior consent must be sought at least 42 days in advance of the proposed change taking effect. In the event that consent is given, OSCR must also be notified, under section 17 of the 2005 Act, of the date any change or action took place.

OSCR’s ‘Consent application…’ forms are available through the documentation & guidance search facility on the OSCR website.

**Reorganisations**

Under Chapter 5 of 2005 Act, charity trustees not able to use the consents regime may apply to OSCR for permission to reorganise.

Reorganisations fall into the following categories:

- A variation or update of the terms of the charity’s constitution or purposes where the trustees lack a particular power.
- A transfer of the charity’s property to another charity.
- An amalgamation of the charity with another charity.
- A reorganisation of restricted funds.

OSCR’s Charity reorganisation: Guidance for charity trustees and their advisers on reorganising a charity and Reorganisation of restricted funds: Guidance for charity trustees and their advisers are available on the OSCR website.

**Notifications**

Under section 17 of the 2005 Act, charity trustees must notify OSCR:

- Of changes to contact details included in the Scottish Charity Register.
- Of a change in the name of the charity.
- Of changes to the charity’s constitution, including reorganisations.
- If the charity has amalgamated with another body.
- If the charity has wound-up or dissolved, including reorganisations.
- If an administration order for winding-up has been made by the Court in respect of the charity.
- If a receiver has been appointed in respect of any of the charity’s property.

OSCR must be notified of any of the above, taking place under section 17, within three months of a change or action taking place except in the case of an administration order for winding-up or the appointment of a receiver where notice must be given within one month.

Charity trustees are also expected to notify OSCR once a reorganisation has been undertaken under Chapter 5 of the 2005 Act.

OSCR’s Notifications of changes made form is available on the OSCR website.
2.6 OSCR guidance for cross-border charities

The scope of this Guide excludes matters specific to charities based elsewhere in the UK or abroad which are required by the 2005 Act to register with OSCR. However, charities based elsewhere which are required to register with OSCR should comply with the 2005 Act and the 2006 accounting regulations (as amended). This includes filing trustees’ annual reports and accounts and annual returns with OSCR.

OSCR has issued the following guidance for cross border charities on registering with OSCR and on cross-border charity regulation:

- [Guidance on registering as a charity, including a cross border charity](#)
- [Cross border constitution briefing note](#)
- [Cross border charity regulation in Scotland](#)

The OSCR guidance is primarily focussed on English and Welsh charities. Some of the material within the guidance refers to the regulatory approach taken by OSCR prior to 1 April 2016. Section 3.2 of this Guide outlines OSCR’s current regulatory approach.

2.7 Cross-border provisions in other UK charity law jurisdictions

**England and Wales**

In England and Wales, the Charities Act 2011 has no cross-border provisions therefore a charity established in Scotland and registered with OSCR has no requirement to register with the Charity Commission for England and Wales (the CCEW) or to make any annual filings even if it is active in England and/or Wales.

**Northern Ireland**

A charity which is established in Scotland (or in England and Wales) with activities in Northern Ireland may in future be required to register with the Charity Commission for Northern Ireland (the CCNI) if it is not a charity under the law of Northern Ireland but operates for charitable purposes in or from Northern Ireland. Such a charity is known as ‘a Section 167 charity’.

In future, a Section 167 charity will be required to file with the CCNI a financial statement and a statement of activities relating to its operations in or from Northern Ireland. At the date of publication of this Guide, the provisions of Section 167 of the Charities (Northern Ireland) Act 2008 Act (NI) have not been implemented.

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**Key points for ICAS members arising from chapter 2:**

- The 2005 Act and 2006 accounting regulations (as amended) apply to all sizes and forms of Scottish charity, including charitable companies and SCIOs.
- Scottish charitable companies must comply with the accounting and auditing requirements of both the Companies Act 2006 and Scottish charity law.
- Auditors and independent examiners have a duty to report matters of material significance to OSCR under the 2005 Act.
- Charities can incorporate solely under charity law, using the SCIO form.
- Charities must comply with the 2005 Act requirements on consents, reorganisations and notifications when certain changes are planned or made.
- Charities based outside of Scotland but operating in Scotland, in a manner caught by the 2005 Act, must register with OSCR.
- Scottish charities operating in England and Wales and/or Northern Ireland must comply with requirements in these jurisdictions as and when they are implemented.
3. OFFICE OF THE SCOTTISH CHARITY REGULATOR

This chapter of the Guide sets out OSCR’s statutory functions under the 2005 Act and describes its core regulatory activities.

OSCR recognises the complex regulatory environment for charities and has mechanisms in place for working with other regulators, including the other UK charity regulators, with a view to reducing regulatory burdens where possible. Further details of these mechanisms are included in this chapter.

It is important that ICAS members acting for Scottish charities are familiar with OSCR’s regulatory approach and the practical aspects of OSCR’s arrangements for receiving annual returns and trustees’ annual reports and accounts.

ICAS has a good working relationship with OSCR and seeks to influence developments where it can.

3.1 The statutory regulator

OSCR is an independent statutory body accountable directly to the Scottish Parliament. Its statutory powers and responsibilities were assumed in April 2006 under provisions of the 2005 Act. OSCR’s main functions are to:

- Determine whether bodies are charities (the charity and public benefit tests).
- Keep a public register of charities (the Scottish charity register).
- Encourage, facilitate and monitor compliance with Scottish charity law.
- Identify and investigate apparent misconduct within charities.

The OSCR website includes information on how to be placed on the Scottish charity register, completing annual returns and many other aspects of the regulatory regime.

ICAS members assisting charities should ensure that they monitor the OSCR website on a regular basis for news on the latest developments. There is a sign-up facility on the OSCR website for its newsletter called the OSCR Reporter, which is issued every two or three months. The OSCR Reporter is a roundup of recent developments and is not a substitute for checking the OSCR website.

3.2 OSCR’s regulatory approach

OSCR’s regulatory approach is underpinned by The Targeted Regulation Framework of the Scottish Charities Regulator.

OSCR also works closely with other regulators with charity sector responsibilities and umbrella organisations which are sector stakeholders.

The Targeted Regulation Framework

Targeted regulation is a risk based approach about prioritising OSCR’s regulatory activities to enhance public confidence in the charity sector.

OSCR has identified two key themes or ‘clusters of issues’ in support of this objective which are set out as follows in its Targeted Regulation Framework:

- The protection of beneficiaries and charitable assets.
- The protection and integrity of charitable status.
From April 2018, OSCR is focusing its regulatory activities on the following six key risks in order of priority:

1. Deliberate mismanagement of charities.
2. Criminal activity.
3. Charity trustees’ lack of knowledge.
4. Attempts to gain charitable status for private benefit.
5. Lack of clarity of the charities brand i.e. bodies at the margins of charitable status and/or with complex or novel structures.
6. Charities which don’t provide public benefit.

**The OSCR annual return**

All charities must complete an annual return. OSCR strongly encourages charities to complete and submit an online version of the annual return form. However, in exceptional circumstances charities may request a paper copy of the annual return from OSCR which may be submitted in lieu of the online version.

**Notifiable events reporting regime**

OSCR asks charity trustees to report details of events which have happened or are happening at their own charity which have a significant impact on the charity or its assets and beneficiaries. OSCR has prepared guidance to assist charity trustees determine which events are significant in the context of the charity. OSCR does not envisage becoming involved with every charity submitting a report. Instead, OSCR will consider each report received and will only contact the charity trustees if it believes additional support is required.

There is no legal requirement for charity trustees to comply with the notifiable events reporting regime. However, failure to notify OSCR in accordance with the regime could be viewed by OSCR as a failure to comply with charity trustees’ duties under section 66 of the 2005 Act and therefore could be met with a regulatory response. OSCR’s guidance identifies the following categories of notifiable events:

- Fraud and theft.
- Substantial financial loss.
- Incidents of abuse or mistreatment of vulnerable beneficiaries.
- Not enough charity trustees to make a legal decision.
- Charity has been subject to a criminal investigation or an investigation by another regulator or agency.
- Significant sums of money or other property have been donated to the charity from an unknown or unverified source.
- Suspicion that the charity and/or its assets are being used to fund criminal activity (including terrorism).
- A charity trustee is acting whilst disqualified.

The notifiable events reporting regime is entirely separate from the whistleblowing provisions in the 2005 Act which apply to independent examiners and auditors.

Any registered Scottish charity which is registered with the CCEW, the CCNI or the Scottish Housing Regulator is requested not to report any notifiable events separately to OSCR as information sharing arrangements are in place under Memoranda of Understanding.

OSCR’s guidance [Reporting Notifiable Events to the Scottish Charity Regulator](#) is available on the OSCR website.

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Safeguarding
Following recent concerns about the conduct of staff working for international aid charities and criticism of the way those charities responded to allegations of misconduct, OSCR issued guidance on safeguarding for Scottish charities.

The Safeguarding guidance: keeping vulnerable beneficiaries safe (March 2018) is interim guidance, issued urgently due to the importance of the issue. There is a clear expectation from OSCR that charities have adequate safeguarding policies and procedures appropriate for their activities which reflect both the law and best practice.

Incidents of abuse or mistreatment of vulnerable beneficiaries are considered by OSCR to be notifiable events.

Publication of trustees’ annual reports and accounts
OSCR publishes, on its website, the trustees’ annual reports and accounts of charities with an income of £25,000 and over, and of all SCIOs: personal and sensitive information will be redacted before publication. The redaction process is required as there is no statutory requirement for OSCR to make the annual reports and accounts of charities available on its website.

Alternatively, if a charity publishes its trustees’ annual report and accounts on its own website, the charity can share the hyperlink on the annual return form and OSCR will publish the hyperlink on the Charity Register.

The trustees’ annual report and accounts is already a public document: under section 23 of the 2005 Act any person is entitled to a copy on reasonable request.

Work with other regulators
OSCR works closely with a number of other regulators, including the CCEW, the CCNI and HMRC, with a view to reducing the regulatory burden on the sector. Memoranda of understanding have been established between OSCR and these other regulators which set out how they intend to achieve this objective.

The memoranda of understanding with other UK charity regulators will be of interest to English and Welsh and Northern Irish charities which are also registered with OSCR.

3.3 ICAS engagement with OSCR

OSCR has a policy of liaising with umbrella organisations which represent groups of charities and with organisations such as ICAS which represent professional advisers. Equally, ICAS recognises the importance of regular engagement with OSCR.

Key points for ICAS members arising from chapter 3

- Keep an eye on the OSCR website as it is an important source of information about developments in charity regulation.
- All charities must file an annual return with OSCR accompanied by their trustees’ annual report and accounts.
- Charity trustees are being asked to report significant events to OSCR via the notifiable events reporting regime.
- The annual reports and accounts of all SCIOs and other charities with a gross income of £25,000 and over are published on the OSCR website.
- OSCR works closely with other regulators to minimise regulatory burdens on the sector and share good practice.
4. CORPORATE REPORTING AND ACCOUNTS REQUIREMENTS

This chapter of the Guide explains how the corporate reporting and accounts requirements within Scottish charity law and company law interact with accounting standards and the Charities SORP (FRS 102).

ICAS members acting for Scottish charities will find this chapter useful in assessing how these various requirements apply to the charities they are involved with and in establishing the various concessions which are available to smaller charities under the Charities SORP. Scottish charities come in all sizes but the vast majority are small and are likely to be eligible for several concessions.

Concessions available under the Charities SORP should simplify the preparation of reports and accounts for smaller charities and once eligibility is established it is just a matter of confirming continued eligibility each year.

The trustees’ annual report and accounts requirements in the 2006 accounting regulations (as amended) apply to SCIOs in exactly the same way as other non-company charities, including the group accounts requirements.

ICAS also explains its stance on application of Section 1A of FRS 102 by charities. Our view is that charities preparing ‘true and fair’ accounts should not take advantage of the presentation and disclosure concessions in Section 1A.

4.1 Overview

The following topics are covered in this chapter:

- Receipts and payments accounts (non-company charities only).
- ‘True and fair’ accounts.
- The Charities SORP and Scottish charity law: a clarification.
- Charitable companies only.
- Consolidated (group) accounts.
- Smaller charities preparing ‘true and fair’ accounts.
- Filing requirements.

4.2 Receipts and payments accounts (non-company charities only)

Non-company charities, including SCIOs, which have a gross income of less than £250,000, have the option of preparing accounts on a receipts and payments basis, unless this is prohibited by the charity’s constitution. Schedule 3 of the 2006 accounting regulations (as amended) provides a format for accounts prepared on this basis.

All charities preparing receipts and payments accounts must also prepare an accompanying trustees’ annual report. The requirements are set out in Schedule 1 of 2006 Regulations (as amended).

OSCR’s receipts and payments accounts work pack includes a trustees’ annual report template, a receipts and payments accounts template and illustrative examples. However, it is not compulsory for charities to use the template.

Gross income is defined in the 2006 accounting regulations (as amended) as:

“Incoming resources of the charity in all restricted and unrestricted funds but excluding the receipt of any donated asset in a permanent or expendable endowment fund.”
However, establishing a charity’s gross income in order to determine the form of accounts required is not always a simple matter.

Gross income is not a cash-based measure and it is our experience that OSCR interprets the receipts and payments accounts threshold as follows:

- Gross income of less than £250,000, and/or
- Gross receipts of less than £250,000.

Therefore, any charity which breaches either of the above should prepare ‘true and fair’ accounts.

Also, in our experience OSCR considers:

- Accounting profits from the sale of fixed assets or investments, which are not part of an endowment fund, to be part of gross income for the purpose of applying the receipts and payments accounts preparation threshold. This means that profits from sale are a factor in determining whether a charity can move from preparing ‘true and fair’ accounts to receipts and payments accounts.
- Cash proceeds from the sale of fixed assets or investments, which are not part of an endowment fund, to be part of gross receipts for the purpose of applying the receipts and payments accounts threshold. This means that the proceeds from sale are a factor in determining whether a charity can continue to prepare receipts and payments accounts or move from preparing ‘true and fair’ accounts to receipts and payments accounts.

Charities must not offset:

- Costs against income, unless this is permitted by the Charities SORP (FRS 102), in calculating gross income for the purpose of applying the receipts and payments accounts threshold.
- Payments against receipts in calculating gross receipts for the purpose of applying the receipts and payments accounts threshold.

4.3 ‘True and fair’ accounts

For the avoidance of doubt, the Charities Accounts (Scotland) Regulations 2006 (as amended) refer to ‘true and fair’ accounts as ‘fully accrued accounts’.

In order to meet the obligation to prepare accounts showing a ‘true and fair’ view, the accounts should follow UK Generally Accepted Accounting Practice (GAAP) which comprises both the legal requirements pertaining to a charity’s accounts and accounting standards and applicable Statement of Recommended Practice (SORP). For periods commencing on or after 1 January 2016, the only accounting standard which applies is The Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102).

Additionally, charities must comply with the edition of the Charities SORP (FRS 102), applicable to their accounting period, in order to show a ‘true and fair’ view in their accounts.

All charities preparing ‘true and fair’ accounts must comply with the Charities SORP (FRS 102) requirements for the preparation of the trustees’ annual report. In addition, all charitable companies must comply with the directors’ report requirements in the Companies Act 2006, including the strategic report requirements where these are applicable. Reporting concessions are available to some charities.

The Charities SORP provides guidance on and interpretation of the most suitable application of UK accounting standards for charities and SORP compliance is a legal requirement for Scottish charities not preparing receipts and payments accounts.
For accounting periods commencing on or after 1 January 2016, there is one Charities SORP:

- Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland: the Charities SORP (FRS 102).

For periods commencing on or after 1 January 2019, the Charities SORP (FRS 102) (Second Edition – October 2019) applies.

**Charities SORP (FRS 102) Update Bulletins**

The purpose of SORP Update Bulletins is to amend the text of the underlying SORP for changes in accounting standards and legislation subsequent to the publication of the latest edition of the SORP. The requirements of Update Bulletins 1 and 2 have now been incorporated into the revised edition of the Charities SORP published in October 2019. The effective dates of the requirements set out in each bulletin are set out below:

- **Update Bulletin 1** applies to periods commencing on or after 1 January 2016.
- **Update Bulletin 2** applies to periods commencing on or after 1 January 2019, with clarifying amendments applying to reporting periods commencing on or after the date of publication (5 October 2018).

**Update Bulletin 1**

Amendments to Update Bulletin 1 relate to:

- Minor amendments arising from changes to FRS 102.
- A new Charities SORP definition of a ‘larger’ charity as a charity with gross income of more than £500,000. Concessions are available to charities which are not ‘larger’.
- The removal of references to the Charities SORP (FRSSE) and FRSSE to reflect their withdrawal for periods commencing on or after 1 January 2016.

**Update Bulletin 2**

Amendments to the Charities SORP (FRS 102) arising from Update Bulletin 2 consist of clarifying amendments and amendments to reflect changes to FRS 102. Further information about the purpose of these amendments is set out below:

**Clarifying amendments**

- To clarify two existing requirements in relation to presentation of comparative information and the recognition of corporate gift aid.
- To remove the undue cost or effort exemption, from the Charities SORP, by requiring charities to depreciate the major components of an asset separately where they have substantially different useful economic lives. This is to align the Charities SORP with FRS 102 and is also treated as a clarifying amendment.

**Amendments arising from changes to FRS 102**

- To make significant amendments arising from changes to FRS 102, following the first triennial review of the FRS.
- To make less significant amendments arising from changes to FRS 102, following the first triennial review of the FRS.

Charities registered in Scotland with OSCR, including cross-border charities, are not permitted to early adopt the above amendments arising from changes to FRS 102.

Charities and their advisers should note that they should already be complying with the Charities SORP (FRS 102) and the FRS 102 requirements on the presentation of comparatives and the recognition of corporate gift aid.
Charities SORP (FRS 102) Information Sheets and Help Sheets

Information Sheets and Help Sheets do not form part of the SORP nor do they amend the SORP. Information Sheets are authoritative in that these express the views of the Charities SORP-making body and its advisory SORP Committee. Help Sheets are designed to provide information about changes to the SORP.

Three Information Sheets are extant:

- Information Sheet 1: Implementation Issues (April 2017) clarifies the application of certain aspects of the Charities SORP (FRS 102) where a need was identified shortly after its implementation.
- Information Sheet 2: Accounting for gift aid payments made by a non-charitable subsidiary to its parent charity where no legal obligation to make the payment exists (January 2019).
- Information Sheet 3: The Companies (Miscellaneous Reporting) Regulations 2018 and UK Company Charities (September 2019).

There are four Help Sheets available on the Charities SORP microsite. The content of three of these is largely relevant to the transition from old UK GAAP to new UK GAAP, including FRS 102. The other Help Sheet provides information on changes to FRS 102 since 2015.

Charities and International Financial Reporting Standards (IFRS)

Charities, including charitable companies, are not currently permitted to prepare their accounts in accordance with IFRS. The requirement for all Scottish charities to comply with the Charities SORP, or for special case charities another sector specific SORP, effectively prohibits charities from adopting IFRS. In addition, the Companies Act 2006 prohibits charitable companies from preparing their accounts in accordance with IFRS.

FRS 102 requires the use of consistent accounting policies within group accounts but does not require all members of the group to apply consistent accounting policies to their individual accounts. Therefore, where group accounts are being prepared and the parent charity has overseas subsidiaries preparing their accounts in accordance with IFRS, it may be necessary to make recognition and measurement adjustments on consolidation so that the parent’s group accounts comply with the Charities SORP (FRS 102) and FRS 102.

4.4 The Charities SORP and Scottish charity law: a clarification

Regulation 8 of the 2006 accounting regulations (as amended) sets out the requirements for the preparation of ‘true and fair’ accounts and lists the components of the statement of account e.g. statement of financial activities, balance sheet etc. Schedule 1 of the 2006 accounting regulations (as amended) requires ‘true and fair’ accounts to be prepared in accordance with the methods and principles set out in the Charities SORP. Departure from the Charities SORP is permitted to the extent necessary for the accounts to give a ‘true and fair’ view.

Section 44 of the 2005 Act and regulation 8 refer to the trustees’ annual report forming part of the statement of account. Therefore, charity law is effectively requiring the methods and principles contained within the Charities SORP in relation to the trustees’ annual report to be complied with by Scottish charities. ICAS takes the view that this means that the material within the Charities SORP on the trustees’ annual report should be complied with, not that the trustees’ annual report should fall within the scope of the ‘true and fair’ view. The Scottish Government confirmed this view in its April 2009 consultation paper on proposed changes to the charity accounting regulations but has not yet amended the regulations accordingly.
4.5 **Charitable companies**

In addition to preparing their accounts under Scottish charity law, charitable companies must prepare accounts which comply with the requirements of company law. A trustee of a charitable company is a director and has the same duties and responsibilities as any other company director under company law.

Module 15 of the Charities SORP set outs how charitable companies can comply with both Scottish charity law and UK company law, including:

- Preparation of the directors’ report.
- Requirement for an income and expenditure account.
- Preparation of a combined SoFA and income and expenditure account.
- Additional considerations which apply when consolidated (group) accounts are prepared under company law.
- Disclosure of equity on the balance sheet.
- The disclosure of revaluation and fair value reserves.

**Directors’ report including the strategic report (charitable companies only)**

Charitable companies need to comply with the requirements for the directors’ report set out in the Companies Act 2006. The directors’ report requirements can be met within the text of the trustees’ annual report rather than by preparing a separate report. Medium-sized and large companies and groups, as defined by the Companies Act 2006, also need to comply with the strategic report requirements of that Act.

For companies receiving an audit, section 418 of the Companies Act 2006, requires that each person who is a director at the time the directors’ report is approved makes a statement about the completeness of the disclosure of relevant information to the company’s auditors.

4.6 **Consolidated (group) accounts**

A charity which is a parent must establish whether or not it should prepare consolidated accounts for the group it heads. The consolidated accounts threshold in the 2006 accounting regulations (as amended) is likely to be the strictest threshold which applies to a parent charity. It is stricter than the threshold in the Companies Act 2006, which charitable companies must be mindful of.

Non-company parent charities preparing consolidated accounts should do so under all applicable legislation. For the majority of non-company parent charities, the applicable legislation will be the 2005 Act and the 2006 accounting regulations (as amended) only, even if the group has a component which is a company.

Company parent charities preparing consolidated accounts should also prepare these under all applicable legislation. For the majority of company parent charities, the applicable legislation will be the 2005 Act, the 2006 accounting regulations (as amended) and the Companies Act 2006.

**Compliance with the 2005 Act and the 2006 accounting regulations (as amended)**

Under the 2005 Act and the 2006 accounting regulations (as amended), consolidated accounts should be prepared by a parent charity if the group has:

- Gross income (after consolidation adjustments) of £500,000 or more.

This means that a parent charity which heads a group with a combined gross income of £500,000 or more before consolidation adjustments will need to identify intra-group transactions in order to establish whether they can take advantage of the exemption from preparing consolidated group accounts.
The Charities SORP (FRS 102) and FRS 102, permit a parent charity to exclude a subsidiary from consolidation when its inclusion is not material for the purpose of giving a ‘true and fair’ view (but two or more subsidiaries may be excluded only if they are not material when taken together). Therefore, a charity may take this accounting policy choice into consideration when assessing its gross income for the purpose of applying the group accounts threshold.

A parent charity is required to prepare and file individual accounts, including a SoFA, even if it is also preparing consolidated accounts. However, it is generally accepted accounting practice for these to be combined in the same document.

Where a parent charity has gross income of £500,000 or more it will also need to include an individual statement of cash flows within the group accounts in order to comply with the Charities SORP (FRS 102).

Charitable companies
In addition to complying with the requirements of Scottish charity law, charitable parent companies preparing consolidated accounts must also prepare these in accordance with the requirements of company law.

In reality, it is Scottish charity law which is likely to trigger the requirement for the preparation of consolidated accounts by a charitable company which is a parent. However, the Companies Act 2006 will also apply to the preparation of consolidated accounts by a charitable parent:

- A charitable parent company which heads a small group which is exempt from the Companies Act 2006 requirement to prepare consolidated accounts is permitted to prepare these by section 399(4); and
- A charitable parent company which heads a medium-sized or large group must prepare these under section 399 of the Companies Act 2006.

Section 383 of the Companies Act 2006 defines a small group.

A group generally qualifies as small in relation to a financial year if it is not otherwise excluded from the small companies regime and meets two out of the following three conditions in the current financial year and the previous financial year:

- Aggregate turnover not exceeding £10,200,000 net (or £12,200,000 gross).
- Aggregate balance sheet total not exceeding £5,100,000 net (or £6,100,000 gross), and
- Average number of employees not exceeding 50.

The net amounts referred to above are after consolidation adjustments have been made while the gross amounts are before consolidation adjustments have been made. These thresholds were introduced to comply with the EU Accounting Directive by the Companies, Partnership and Group (Accounts and Reports) Regulations 2015 and represent significant increases over the previous thresholds.

4.7 Smaller charities preparing ‘true and fair’ accounts

While there are no definitive criteria for a ‘small’ charity, there are a range of matters for smaller charities preparing ‘true and fair’ accounts and their advisers to consider when determining what concessions do or don’t apply in a particular circumstance. These matters are covered under the following headings:

- Concessions available under the Charities SORP for smaller charities.
- Other aspects of the new small entities’ regime.
- FRS 102, Section 1A: small entities.
- FRS 105: The FRS applicable to the micro-entities regime.
- Abridged accounts.
Concessions available under the Charities SORP for smaller charities

Under the Charities SORP there are concessions for smaller charities with a gross income of £500,000 or less:

- Module 1 of the Charities SORP sets out the additional trustees’ annual report content which larger charities, as defined by the Charities SORP (FRS 102) must prepare separately from the content which must be prepared by smaller charities.
- Smaller charities do not need to analyse either their income or expenditure by activity category in the Statement of Financial Activities (SoFA). These concessions also apply to the related notes. Module 4 of the Charities SORP sets out the presentation requirements which can be applied to smaller charities separately from the requirements for charities reporting on an activity basis.
- An exemption from preparing a Statement of Cash Flows is available to most charities meeting the size criteria i.e. those charities with a gross income of £500,000 or less.

FRS 102: Section 1A

Section 1A provides presentation and disclosure concessions to companies eligible to apply the Companies Act small companies’ regime and to other entities which meet the size criteria for a small company.

It is not clear whether charities which meet the small entity size criteria are eligible to apply the concessions in Section 1A of FRS 102. However, as charities must comply with the Charities SORP (FRS 102) which is based on full FRS 102 it is difficult to see how a charity could follow Section 1A and prepare accounts which give a ‘true and fair’ view. Therefore, for all intents and purposes, charities cannot apply Section 1A.

FRS 105: The FRS applicable to the micro-entities regime

Charities, including charitable companies, are ineligible to qualify as micro-entities. FRS 105 is a single accounting standard for use by companies and other specified entities qualifying as micro-entities and choosing to apply the micro-entities regime. FRS 105 specifically scopes out charities from its application.

Abridged accounts (companies only)

The legislation which introduced abridged accounts, The Companies, Partnerships and Groups (Accounts and Reports) Regulations 2015, specifically excludes charitable companies from preparing them.

4.8 Filing requirements

All charities

In order to comply with regulation 5 of the 2006 accounting regulations (as amended), a charity must send a copy of its signed trustees’ annual report and statement of account to OSCR within a period of not more than nine months from the end of its financial year or nine months from the date of its removal from the Scottish charity register.

Accounts filed with OSCR may be made publicly available either on OSCR’s own website or via a link to the charity’s website. Accounts made available on the OSCR website will be subject to the redaction of personal information to meet data protection requirements.

Charitable companies

In addition to filing accounts with OSCR, a charitable company must also send a signed copy of its statement of account to Companies House within a period of not more than nine months from the end of its financial year in accordance with sections 441 and 442 of the Companies Act 2006.
Charitable companies – ‘filleted’ accounts
The revised small company filing requirements set out in section 444 of the Companies Act 2006 include the option of filing so called ‘filleted’ accounts. This option allows small companies to choose not to file the profit and loss account and/or the directors’ report. If a profit and loss account is not filed there is no requirement to file any notes that relate solely to it nor is it required to file its auditor’s report.

Charitable companies are not excluded from the provisions relating to filleted accounts. However, ‘full accounts’ must be filed with OCSR. Full accounts are accounts prepared in accordance with both the Charities SORP (FRS 102) and FRS 102, with no element removed.

It is difficult to envisage a scenario where it would make sense for a charitable company to file filleted accounts with Companies House given that the full accounts can be obtained directly from the charity as a matter of law or, for charities with gross income of more than £25,000 from the OSCR website.

Key points for ICAS members arising from chapter 4:

- OSCR has developed a receipts and payments accounts work pack for non-company charities, meeting the receipts and payments accounts threshold, to assist them in preparing their trustees’ annual report and accounts.
- All charities preparing ‘true and fair’ accounts must comply with the Charities SORP (FRS 102) and FRS 102.
- There are a number of concessions available to smaller charities, under the Charities SORP (FRS 102), which can simplify the preparation of the trustees’ annual report and the format of the SoFA.
- All Charitable companies must prepare their accounts in accordance with the Charities SORP (FRS 102).
- Charitable companies can comply with the directors’ report requirements within the trustees’ annual report.
- A group headed by a charity must prepare consolidated accounts if the gross income of the group is £500,000 or more after consolidation adjustments.
- ICAS takes the view that compliance with Section 1A of FRS 102 is not sufficient for a charity’s accounts to give a ‘true and fair’ view and therefore charities should not take advantage of its presentation and disclosure concessions.
- Charities are specifically excluded from taking advantage of the FRS 105 micro-entities regime.
5. AUDIT REQUIREMENTS

This chapter of the Guide sets out audit requirements for non-company charities and charitable companies, setting out the source of the requirements.

Most Scottish charities in terms of size will be below the audit threshold. Some charities which are below the audit threshold will receive an audit because their constitution requires one or due to trustee or donor preference. ICAS members acting for charities in this position should encourage the trustees to review on a regular basis whether an audit is the most appropriate form of scrutiny for the charity. Where donor preference is the only reason for undertaking an audit, charity trustees should be encouraged to engage with donors to establish whether an audit is really necessary to meet their needs.

Only accountancy firms which are registered to undertake audit work can audit a charity.

All charities not receiving an audit will require an independent examination. Chapter 6 of this Guide sets out the independent examination requirements for Scottish charities.

5.1 All charities

The 2006 accounting regulations (as amended) state that a charity must be subject to audit by a registered auditor (i.e. a firm included in the register of statutory auditors) if in any financial year:

- It has gross income of £500,000 or more, or
- The aggregate value of its assets (before deduction of liabilities) at the end of the financial year exceeds £3,260,000, or
- It is required to do so by the constitution of the charity, any other enactment, or on the instruction of its trustees.

Also, in our experience OSCR considers accounting profits from the sale of fixed assets or investments to be part of gross income for the purpose of applying the audit threshold.

Charities must not offset expenditure or other items against income or offset liabilities against assets, unless this is permitted by the Charities SORP (FRS 102), for the purpose of establishing whether an audit is required.

For charitable companies the audit threshold set out in the 2006 accounting regulations (as amended) will trigger an audit as the income condition is stricter under charity law than under company law.

5.2 Receipts and payments accounts (non-company charities only)

Charities eligible to prepare receipts and payments accounts may need an audit if the constitution of the charity, another enactment, or the trustees or donors require. Receipts and payments accounts are not required to give a ‘true and fair’ view therefore the auditor will be required to give an opinion on whether the accounts properly present the receipts and payments of the charity for the financial year and the assets and liabilities of the charity reported in the statement of balances.

5.3 Requirements for charitable companies

The audit arrangements for charitable companies were complicated following the removal of special provisions relating to charities from company law by the Companies Act 2006. This change has allowed an interpretation of the law whereby a charitable company, which is below the audit threshold in the Companies Act 2006 but is being audited, can opt for an audit solely under Scottish charity law. ICAS takes the view that it is good practice for entities to be audited under all applicable legislation therefore we strongly recommend that charitable companies being audited are audited under both company law and Scottish charity law.
We do not believe that it is appropriate for a charity to include an audit exemption statement on its balance sheet claiming exemption for audit under company law to then receive an audit under charity law. This gives the misleading impression that an audit under charity law is less rigorous.

Therefore, engagement letters and auditor’s reports for charitable companies should refer to the Charities and Trustee Investment (Scotland) Act 2005, the Charities Accounts (Scotland) Regulations 2006 (as amended) and the Companies Act 2006. However, if a decision is taken to audit a charitable company solely under charity law, the audit firm should check with its professional indemnity insurance provider to discuss any implications for its insurance cover.

5.4 Entitlement to audit exemption: group situation

If the charity is a component of a group then both the group and the individual audit exemption conditions must be met in relation to charity law and company law, where applicable. In group situations it may be necessary to seek specialist assistance.

Under the Charities Accounts (Scotland) Regulations 2006 (as amended), where a parent charity is required to prepare groups accounts i.e. the gross income of the group (after consolidation adjustments) is £500,000 or more those accounts must be audited.

5.5 International Standards on Auditing (ISAs) (UK)

Audits must be conducted in accordance with the FRC’s Ethical Standard and ISAs (UK).

The FRC issued Practice Note 11 (Revised): The audit of charities in the UK in November 2017, updating the previous version of the Practice Note issued in March 2012. Practice Notes are intended to assist practitioners to comply with the requirements of UK auditing standards, by providing additional contextual material on the application of those standards in particular circumstances or in specialised sectors. The revised Practice Note reflects:

- Revisions to International Standards on Auditing (ISAs) (UK) effective for the audit of financial statements with reporting periods commencing on or after 17 June 2016.
- Changes to UK accounting standards (FRS 102) and the revision of the Charities SORP (FRS 102).
- Continuing developments in regulation and guidance issued by UK charity regulators.
- Changes in relevant legislation.

The Practice Note is based on the legislation and regulations published as at 31 October 2017.

There are no illustrative auditor’s reports for charities included within the Practice Note. However, ICAS has published Auditor’s report guidance for ICAS firms acting as auditors for Scottish charities. The guidance includes Illustrative auditor’s reports for Scottish charities for the audit of financial statements with reporting periods commencing on or after 17 June 2016.

5.6 ICAS Practice Support Service

The ICAS Practice Support Service is able to help firms with their requirements for confidential audit hot or cold file reviews and help to establish, maintain and monitor the effectiveness of their quality control procedures.

To find out more, please contact the Practice Support Team at practicesupport@icas.com.
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<thead>
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<th>Key points for ICAS members arising from chapter 5:</th>
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<tr>
<td>• Most Scottish charities will not require an audit. Where a charity is below the audit threshold but is still receiving an audit, the trustees should be encouraged to consider whether an audit is still required or is the most appropriate form of scrutiny.</td>
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<tr>
<td>• All audits must be undertaken by a registered auditor in accordance with the FRC’s Ethical Standard and ISAs (UK).</td>
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<tr>
<td>• All Scottish charitable companies receiving an audit should be audited under Scottish charity law and company law.</td>
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<tr>
<td>• A revised Practice Note 11 has been issued to assist practitioners comply with the requirements of UK auditing standards where there is a specific charity perspective.</td>
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<td>• ICAS has published illustrative auditor’s reports for Scottish charities with accompanying commentary.</td>
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6. INDEPENDENT EXAMINATION REQUIREMENTS

This chapter of the Guide looks at the independent examination requirements within Scottish charity law. All Scottish charities not receiving an audit will require an independent examination under the 2005 Act and the 2006 accounting regulations (as amended), including charitable companies. An ICAS member can undertake:

- The independent examination of receipts and payments accounts.
- The independent examination of ‘true and fair’ accounts prepared in accordance with the Charities SORP (FRS 102).

6.1 Independent examination threshold

Under regulation 11 of the 2006 accounting regulations (as amended), a charity which is not audited must have an independent examination. Therefore, charities meeting the following conditions are eligible to have an independent examination so long as an audit is not required by its constitution, any other enactment, or on the instruction of its trustees:

- Gross income of less than £500,000, and
- A balance sheet total (i.e. gross assets) of £3,260,000 or less.

Also, in our experience OSCR considers accounting profits from the sale of fixed assets or investments to be part of gross income for the purpose of assessing whether an independent examination is permitted.

Charities must not offset expenditure or other items against income or offset liabilities against assets, unless this is permitted by the Charities SORP (FRS 102), for the purposes of establishing whether an independent examination is permitted.

In addition, charitable companies must also qualify as small under the Companies Act 2006 to be eligible for independent examination under charity law rather than an audit.

Before agreeing to undertake an independent examination, we recommend reviewing the charity’s constitution to confirm that an audit is not required.

A charitable company receiving an independent examination must include a company law audit exemption statement within its balance sheet. This statement should not refer to charity law.

6.2 The independent examiner

The term ‘Independent’ is not defined within Scottish charity law. However, ICAS members acting or thinking of acting as an independent examiner should comply with the guidance on independence within OSCR’s Independent examination: A guide for independent examiners. Compliance with this guidance is required in order to comply with the requirements of the ICAS Code of Ethics.

An independent examiner must be an individual and the independent examiner’s report must be signed in the name of the individual appointed by the charity to be its independent examiner. Therefore, where an accountancy firm is appointed to undertake the independent examination, the independent examiner’s report must not be in the name of the firm but in the name of the individual appointed as the independent examiner.
Receipts and payments accounts

Non-company charities which prepare receipts and payments accounts are required to appoint an independent examiner who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts.

‘True and fair’ accounts

‘True and fair’ accounts must be examined by a member of one of a number of specified professional bodies: the specified professional bodies include the six principal UK professional accountancy bodies (including ICAS).

6.3 Purpose of an independent examination

The purpose of an independent examination is to assess and to report whether:

- Accounting records have not been kept by the charity in accordance with the Charities and Trustee Investment (Scotland) Act 2005.
- The accounts do not accord with those records.
- The accounts have not been prepared in accordance with the Charity Accounts (Scotland) Regulations 2006 (as amended).

There are also certain other matters which should be reported on by the independent examiner if they come to light during the examination, e.g. if the trustees’ annual report is inconsistent in any material respect with the statement of account.

The publication Independent examination: A guide for independent examiners, (April 2019) contains good practice guidance on how to conduct an independent examination. It also includes examples of independent examiner’s reports for receipts and payments accounts and ‘true and fair’ accounts for non-company charities and charitable companies.

6.4 Statement in the independent examiner’s report on responsibility to the trustees

Independent examiners can, if they wish, include a statement in their independent examiner’s report that, to the fullest extent permitted by law, no responsibility will be accepted for the work or the report to anyone other than the trustees as a body. For a charitable company, the responsibility will be to the board of directors (who are also the trustees under charity law) as a body.

There is no requirement to include such a statement and, if the appointed independent examiner is in public practice, the inclusion of any wording and the specific wording used will depend on the firm’s risk management policy.
6.5 ICAS Guidance for independent examiners on going concern

ICAS has published Guidance for ICAS members acting as charity independent examiners on identifying, assessing and reporting on going concern for periods commencing on, or after, 1 January 2016. The guidance:

- Applies UK-wide to the independent examination of accounts prepared to give a ‘true and fair’ view. It is intended to be practical and contains decision-making tools and a case study to support the independent examiner’s own professional judgement.
- Is designed to support the independent examiner’s work relevant to the accounting concept of going concern and to meet any related reporting requirements. It is not designed to increase the independent examiner’s workload or broaden the scope of the examination.
- Reflects the requirements of UK charity regulators’ guidance on Matters of material significance, to the extent that this is pertinent to the examiner’s work on going concern.

6.6 Members providing accountancy services without a practising certificate

An independent examination can be undertaken as a voluntary assignment by an ICAS member who does not have a practising certificate, where:

- The independent examination is not conducted ‘by way of business’.
- The independent examination is conducted free of charge or for a nominal fee of £100 or less.
- There is a maximum of ten accountancy-related appointments.
- No audit is being undertaken.
- The charity has a gross income of £500,000 or less.

Visit the ICAS Practising Certificates page for more information about providing accountancy services to charities without a Practising Certificate.

There is a possibility that an ICAS member who charges nominal fees for accountancy services, including independent examinations, but who does not currently hold a practising certificate may be considered to be acting by way for business. For example, if a member is undertaking the maximum ten assignments and charging £100 for each, earning a total of £1,000, ICAS may consider this to be acting by way of business and require the member to obtain a Practising Certificate.

If an ICAS member is charging nominal fees and believes they could be acting by way of business they should send an initial inquiry to connect@icas.com. (Additional guidance is available in Section 8.4 ‘Money Laundering Reporting’.)

Any member acting by way of business is required to comply with UK’s anti-money laundering regime: money laundering reporting is covered in Section 8.4 of this Guide.

6.7 ICAS Practice Support Service

The ICAS Practice Support Service is able to help firms with their requirements for confidential assignment reviews and help to establish, maintain and monitor the effectiveness of their quality control procedures.

To find out more, please contact the Practice Support Team at practicesupport@icas.com.
Key issues for ICAS members arising from chapter 6

- All Scottish charities which do not receive an audit must receive an independent examination under Scottish charity law.
- Charitable companies receiving an independent examination must include a company law audit exemption statement on their balance sheet.
- ICAS members undertaking independent examinations should ensure that they comply with the guidance on independence in the publication Independent examination: A guide for independent examiners.
- Members who do not hold a practising certificate should ensure that this is appropriate, i.e. the accountancy services they are providing fall within the scope of concessions available under the ICAS Public Practice Regulations.
7. CHARITIES SUBJECT TO OTHER REQUIREMENTS

This chapter of the Guide highlights special arrangements, including accounts requirements which exist for particular types of charity.

ICAS members acting for charities which are also, for example, co-operative and community benefit societies, educational institutions, registered social landlords or designated religious charities must ensure they are familiar with any special arrangements which impact on their accounts and audit requirements. Due to the diversity of the sector these issues are not considered in detail by the Guide.

7.1 Scottish Charitable Incorporated Organisations

Aspects of Scottish charity law relating specifically to SCIOs and OSCR guidance for SCIOs and their advisors are signposted in paragraph 2.4 of chapter 2 of this Guide.

SCIOs are subject to the accounts and scrutiny requirements contained in the 2006 accounting regulations (as amended). For the purposes of material in this Guide in chapters 4, 5 and 6 on accounts and scrutiny requirements, SCIOs fall within the non-company charity category.

7.2 Charities incorporated under other legislation

Some charities are incorporated under acts of parliament other than the Charities and Trustee Investment (Scotland) Act 2005 or the Companies Act or under Royal Charter. Other acts include those establishing a single charity.

In such cases reference should be made to the requirements of the appropriate legislation, e.g. the Co-operative and Community Benefit Societies Act 2014 and to sector specific SORPs e.g. the National Housing Federation SORP: Accounting by Registered Social Landlords or the Universities UK SORP: Accounting for Further and Higher Education.

In such circumstances it may be advisable to seek expert technical assistance to ensure that the accounts comply with the relevant regulatory framework.

7.3 Designated Religious Charities

The following organisations along with their component elements are Designated Religious Charities or DRCs:

- The Church of Scotland.
- The Free Church of Scotland.
- The Roman Catholic Archdiocese of St Andrews and Edinburgh.
- The Roman Catholic Archdiocese of Glasgow.
- The Roman Catholic Diocese of Aberdeen.
- The Roman Catholic Diocese of Argyll and the Isles.
- The Roman Catholic Diocese of Dunkeld.
- The Roman Catholic Diocese of Galloway.
- The Roman Catholic Diocese of Motherwell.
- The Roman Catholic Diocese of Paisley.
- The United Free Church of Scotland.
There are a number of provisions of the 2005 Act which do not apply to DRCs:

- A DRC does not require the consent of OSCR to: amend its charitable purposes per its constitution; merge with another body; or to wind up.
- OSCR is not permitted to direct a DRC which is subject to an inquiry to cease any activity.
- OSCR cannot suspend a member of the management who appears to be responsible for misconduct.
- If it appears to the Court of Session, on application from OSCR, that there has been misconduct in the administration of the DRC, the Court cannot: appoint a judicial factor to manage its affairs; appoint a trustee; or suspend or remove any person concerned in the management of the charity.
- A DRC can appoint a trustee who may otherwise be disqualified from being a trustee under the 2005 Act.

DRCs are required to comply with part 1, chapter 6, section 44 of the 2005 Act on the duty to keep proper accounting records and prepare a statement of account for filing with OSCR and the 2006 accounting regulations (as amended).

Component elements of DRCs, for example congregations, should also be aware that it is common for additional guidance on preparing a trustees’ annual report and accounts to be issued centrally by the DRC’s headquarters or equivalent, e.g. National Officer. Where this is the case the component element must comply with the 2005 Act, the 2006 accounting regulations (as amended) any denominational regulations (where appropriate) and any centrally issued guidance.

**Notifiable events**

As the scope of OSCR’s role in regulating DRCs is limited by the 2005 Act, DRC’s take a different approach to notifiable events. It is a DRC’s designated OSCR contact who is responsible for informing OSCR of any notifiable events which have occurred in any DRC component element. Also, it is the DRC’s headquarters or equivalent which is responsible for assessing what, if any, further action is required in relation to the notifiable event, rather than OSCR.

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**Key points arising for ICAS members from chapter 7:**

- **SCIOs and DRCs must apply the 2006 accounting regulations (as amended).**
- **Charities come in many forms and it is important that they comply with all relevant legislation and accounting guidance when preparing their trustees’ annual report and accounts.**
- **DRCs should follow any additional guidance on accounting matters issued centrally by the DRC’s headquarters or central office.**
8. **DUTY AND RIGHT TO REPORT TO OSCR**

Under the 2005 Act, auditors and independent examiners have had a statutory duty to report to OSCR if they believe there is misconduct within the charity client. Such a report must be made as soon as the auditor or independent examiner believes there may be misconduct.

In addition, auditors and independent examiners have a right to report to OSCR on other matters they believe may be of concern to OSCR.

Under the 2005 Act, an auditor or independent examiner exercising their duty or right to report is protected from any action by the charity for breach of confidentiality, providing the report was made in good faith.

8.1 **Overview of section 46 of the 2005 Act**

Section 46 of the 2005 Act sets out the legal provisions which apply to the duty and right of auditors and independent examiners to report to OSCR. The provisions apply equally to auditors and independent examiners (described collectively as independent scrutinisers) and to all forms of charity, including non-company charities and charitable companies.

The independent scrutiniser’s duty and right to report extends to the activities or affairs of any institution or body corporate connected to the charity. Independent scrutinisers continue to have a duty and right to report even when they have ceased to act in that capacity.

Once an independent scrutiniser has reported a matter to OSCR no additional work should be required in the discharge of the duty or right. However, the independent scrutiniser will need to consider if further work needs to be undertaken in relation to, for example, the issuance of the auditor’s report or the independent examiner’s report.

While there is no legal requirement to report to OSCR in writing, this is OSCR’s preferred method. OSCR has a set up an email address specifically to take whistleblowing reports: Section46@oscr.org.uk.

Appendix 5 of the OSCR’s independent examination guidance (August 2017) includes an example letter of appointment which makes reference to reporting under the Proceeds of Crime Act 2002 and the Serious Organised Crime and Police Act 2005. This letter of appointment is not recommended for use by ICAS members.

OSCR is in the process of updating its guidance on independent examination. ICAS members should ensure that they refer to the version of the guidance applicable to the independent examination engagement they are undertaking.

8.2 **Duty to report**

An independent scrutiniser must report to OSCR any matter he or she has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by OSCR of its function to identify and investigate apparent misconduct in a charity’s administration.

OSCR has expressed some concern that they are not receiving all the reports that are required under this mandatory reporting duty. ICAS members acting as auditors or independent examiners of charity accounts must ensure that they fully comply with this reporting duty. Particular note should be taken regarding the duty to report any modified audit opinions or qualified independent examiner’s reports.
In November 2017, OSCR and the other UK charity regulators jointly issued revised guidance on *Reporting matters of material significance* which specifies the following nine matters considered to be reportable:

1. Matters suggesting dishonesty or fraud involving a significant loss of, or a material risk to, charitable funds or assets.

2. Failure(s) of internal controls, including failure(s) in charity governance that resulted in, or could give rise to, a material loss or misappropriation of charitable funds, or which leads to significant charitable funds being put at major risk.

3. Knowledge or suspicion that the charity or charitable funds including the charity’s bank account(s) have been used for money laundering or such funds are the proceeds of serious organised crime or that the charity is a conduit for criminal activity.

4. Matters leading to the knowledge or suspicion that the charity, its trustees, employees or assets, have been involved in or used to support terrorism or proscribed organisations in the UK or outside of the UK, with the exception of matters related to a qualifying offence as defined by Section 3(7) of the Northern Ireland (Sentences) Act 1998.

5. Evidence suggesting that in the way the charity carries out its work relating to the care and welfare of beneficiaries, the charity’s beneficiaries have been or were put at significant risk of abuse or mistreatment.

6. Single or recurring breach(es) of either a legislative requirement or of the charity’s trusts leading to material charitable funds being misapplied.

7. Evidence suggesting a deliberate or significant breach of an order or direction made by a charity regulator under statutory powers including suspending a charity trustee, prohibiting a particular transaction or activity or granting consent on particular terms involving significant charitable assets or liabilities.

8. Making a modified audit opinion, emphasis of matter, material uncertainty related to going concern, or issuing of a qualified independent examiner’s report identifying matters of concern to which attention is drawn, notification of the nature of the modification/qualification/emphasis of matter or concern with supporting reasons including notification of the action taken, if any, by the trustees subsequent to that audit opinion, emphasis of matter or material uncertainty identified/independent examiner’s report.

9. Evidence that significant conflicts of interest have not been managed appropriately by the trustees and/or related party transactions have not been fully disclosed in all the respects required by the applicable SORP, or applicable Regulations.

**8.3 Right to report**

An independent scrutiniser has a right but not a duty to report when he or she becomes aware of a matter which they have reasonable cause to believe is likely to be relevant for the purposes of the exercise by OSCR of any of its functions other than the function to identify and investigate apparent misconduct.

Also, in November 2017, OSCR and the other UK charity regulators issued guidance on the discretionary right to report: [Guidance to assist auditors and independent examiners in understanding when they can usefully use their discretion to report relevant matters of interest to regulators](#).
8.4 Money laundering reporting

External scrutinisers do not discharge their duty to report to OSCR by making a money laundering report to the National Crime Agency (NCA) or vice versa.

ICAS members who provide audit, independent examination or other accountancy related-services, by way of business fall within the money laundering reporting regime under the Proceeds of Crime Act 2002 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The 2017 Regulations contain a number of important changes to the anti-money laundering regime and ICAS members who fall within their scope should ensure they are compliant with the revised regulations.

However, ICAS members who, free of charge, provide accountancy services, including independent examinations, to charities and therefore do not require a practising certificate do not fall within the money laundering reporting regime.

ICAS members who charge nominal fees, for example, up to the maximum permitted by ICAS may be considered by ICAS to be acting by way of business and therefore may be required to obtain a practising certificate and to comply with the UK’s anti-money laundering regime. (Additional guidance is available in Section 6.6 ‘Members providing accountancy services without a practising certificate’.)

Any member charging nominal fees who believes they may be acting by way of business should:

- Make an initial inquiry to connect@icas.com to establish whether they require a practising certificate.
- Contact the Practice Support Team at practicesupport@icas.com to inquire about their duties under the UK’s anti-money laundering regime.

Where a money laundering reporting duty exists, ICAS members reporting to OSCR under section 46 of the 2005 Act should be mindful when making such a report that the report must be made without ‘tipping off’ any persons suspected of money laundering. Making a report to OSCR does not constitute ‘tipping off’ per se.

**Key points arising for ICAS members from chapter 8:**

- Auditors and independent examiners have a statutory duty to report matters of material significance to OSCR as soon as they can.
- Auditors and independent examiners can report other matters to OSCR which they believe may be relevant to OSCR’s functions but which fall outside the duty to report.
- Auditors and independent examiners making a report to OSCR under section 46 of the 2005 Act cannot be sued by the charity for breach of confidentiality provided the report is made in good faith.
- ICAS members who, free of charge, provide accountancy services, including independent examinations, to charities and therefore do not require a practising certificate do not fall within the money laundering reporting regime.
- Members who do not hold a practising certificate should ensure that this is appropriate, i.e. the accountancy services they are providing fall within the scope of concessions available under the ICAS Public Practice Regulations.
9. CHARITIES AND UK TAXATION

Organisations in the UK with charitable status may qualify for a number of tax exemptions and reliefs on income and gains, and on profits from some activities. A charity must be registered with HMRC to be recognised as a charity for tax purposes. This is separate from being registered with OSCR, the CCEW or the CCNI.

Recognition as a charity for tax purposes does not mean that a charity will never pay tax. If a charity receives taxable (non-exempt) income or incurs gains it must inform HMRC and complete a tax return.

Charities qualify for certain VAT reliefs and exemptions. However, if a charity has business activities the VAT rules will apply as they do for any other business. The application of VAT rules is a particularly complex area for charities and it is essential that a charity understands the rules prior to undertaking a transaction to ensure that the VAT treatment is correct from the outset.

9.1 Registration with HMRC for tax purposes

All organisations recognised as charities by HMRC before April 2006 remained registered for tax purposes following the establishment of the Scottish Charity Register by OSCR. These charities will still be registered with HMRC provided no action has been taken subsequently to remove them.

Organisations placed on the Scottish charity register since April 2006 are not automatically registered with HMRC for tax purposes and should register with HMRC, using its on-line facility, in order to take advantage of charity tax reliefs.

For a Scottish based organisation to receive recognition from HMRC as a charity, prior registration with OSCR is required.

9.2 Information available from HMRC for Charities

HMRC maintains a section on the GOV.UK website for charities and community amateur sports clubs. Information on key topics for charities is currently available at:

- Claiming Gift Aid as a charity or CASC
- Charities and tax
- VAT returns

9.3 HMRC charity tax queries service

HMRC Charities operates a telephone helpline. Queries can also be submitted on-line through smart forms.

There is information on the Charities and Community Amateur Sports Clubs landing page about how to raise tax and VAT queries with HMRC.

9.4 Non-domestic rates relief

Mandatory relief of 80% of non-domestic rates is available to charities from the local authority where:

- Property is occupied by a charity or a trustee of a charity, and
- Property is wholly or mainly for charitable purposes.
Charity shops can also receive mandatory relief where:

- They are wholly or mainly used for the sale of goods donated to the charity, and
- Proceeds from the sale of goods are used for the purposes of the charity.

Further relief of 20% may also be available to charities at the discretion of the local authority.

Rates relief available to independent schools is expected to be curtailed by the Scottish Government from April 2020 except for music schools and schools supporting children with special needs.

### 9.5 Charity Tax Group

The [CTG website](#) includes regular updates on charity tax matters and has a ‘Charity Tax Map’ which enables charities and their advisors to search for charity tax information by tax type and activity type. The ‘Charity Tax Map’ can be found at the top of the homepage.

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<th><strong>Key points arising for ICAS members from chapter 9</strong></th>
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<td>- Charities must be registered with HMRC to be recognised as charities for tax purposes.</td>
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<td>- Charities may have to pay tax in certain circumstances.</td>
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<td>- Organisations which have been awarded charitable status by OSCR since April 2006 should make sure that they are also registered with HMRC for tax purposes.</td>
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<td>- HMRC Charities operates a helpline and online query service to assist with queries on charity tax matters including VAT</td>
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