GUIDANCE FOR ICAS MEMBERS
ACTING FOR SCOTTISH CHARITIES

ACCOUNTS PREPARED UNDER THE CHARITIES ACCOUNTS
(SCOTLAND) REGULATIONS 2006 (AS AMENDED)

PERIODS COMMENCING ON, OR AFTER, 1 JANUARY 2015
AND BEFORE 1 JANUARY 2016
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ICAS members have a long tradition of serving the charity sector and as advisers to the sector have an important role in supporting charities deliver annual reports and accounts which meet the expectations of their stakeholders from regulators to funders and private donors to beneficiaries.

Public trust in the Scottish charity sector cannot be taken for granted and concerns about the stewardship of charitable assets in one charity can impact more broadly on the reputation of the sector. The annual report and accounts is one means by which a charity’s trustees can demonstrate the effectiveness of their stewardship and share their charity’s achievements with the world. ICAS members have the skills and experience to ensure that charities make the best of this opportunity and don’t fail on a technicality.

In 2007, only 20% of charities with an income of under £25,000 and 66% of charities with an income over £25,000 met the legal requirements for the preparation of annual reports and accounts. By 2015, the figures had reached 78% and 83% respectively. Considerable progress has been made but there remains scope for improvement.

Changes to UK accounting standards and two new Statements of Recommended Practice for charities could place this progress at risk. 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 Committee, 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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It should be noted that the members of the ICAS Charities Committee were acting in their personal capacity and were not representing the organisations for which they work.

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EXECUTIVE SUMMARY

Welcome to our Guidance for ICAS members acting for Scottish charities: for periods commencing on or after 1 January 2015 and before 1 January 2016.

This edition of the Guide has been prepared primarily to reflect the implementation of two new Statements of Recommended Practice (SORPs), following changes to UK Generally Accepted Accounting Practice (GAAP):

• The Charities SORP (FRSSE)
• The Charities SORP (FRS 102)

Other developments impacting on the Scottish charity sector such as changes to OSCR’s monitoring regime are also covered.

Changes to UK Generally Accepted Accounting Practice (GAAP)


The Financial Reporting Standard for Smaller Entities (the FRSSE) is only being retained for one more year as it is no longer supported by old UK GAAP.

The Charities SORP-making body decided that charities, which are eligible, should be able to follow the FRSSE during the final year it is extant. Therefore, it has produced two versions of the Charities SORP.

Future developments in accounting and auditing

For periods commencing on or after 1 January 2016, the FRSSE and the Charities SORP (FRSSE) are withdrawn. This means that charities preparing ‘true and fair’ accounts for future reporting periods will need to comply with FRS 102 and the Charities SORP (FRS 102).

Ethical Standards for Auditors and Auditing Standards, to be known as ISAs (UK), are being revised for the audit of accounts for periods commencing on or after 17 June 2016. Earlier adoption is permitted but only if both the new Ethical Standards for Auditors and new Auditing Standards are applied.

Changes to OSCR’s monitoring regime

On 1 April 2016, OSCR introduced changes to its regulatory approach following consultation with the Scottish charity sector and other stakeholders. The changes are underpinned by The Targeted Regulation Framework of the Scottish Charities Regulator. Other changes include:

• a new annual return form
• the commencement of a ‘voluntary’ notifiable events reporting regime for charity trustees.
• The publication of the annual reports and accounts of all Scottish Charitable Incorporated Organisations (SCIOs) and other charities with an income of £25,000 or over.
The framework focuses on the protection of beneficiaries and charitable assets, and the protection and integrity of charitable status.

**Cross border charities**

Our Guide does not include additional material on accounting matters relevant to charities based elsewhere in the UK or abroad which are registered with OSCR.

OSCR has published guidance for English and Welsh charities on its website and our 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 (as amended) along with the requirements of their jurisdiction of origin.

The Charity Commission provides accounting guidance for English and Welsh charities for periods ending on or after 31 March 2015 in its publication *Charity reporting and accounting: The essentials (CC15c)*, which is available on the www.gov.uk website. CC15c covers similar ground to that covered in our Guide.

**Feedback**

If you have any comments on our Guide, we would like to hear from you. Please email any comments to Christine Scott, Assistant Director, Charities and Pensions at: accountingandauditing@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 accounts and scrutiny requirements which apply to the sector.

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 charitable incorporated organisations. It will be of assistance to ICAS members undertaking the following assignments for charitable clients, for accounting periods beginning on or after 1 January 2015 and before 1 January 2016:

- 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 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.

An updated version of this Guide will be produced for periods commencing on or after 1 January 2016.

1.3 What can an ICAS member offer a charity?

An ICAS member can make a big difference to the performance of any charity. Expertise in business planning, financial controls and the legal and regulatory environment 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 in accordance with the applicable legislation and, where relevant, accounting standards and the Charities SORPs.

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 the regulation of English and Welsh charities 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 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);
- and
- the Charities Accounts (Scotland) Amendment Regulations 2016 (SSI 76).

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 accounting regulations 2006 (as amended).

Also of significance to ICAS members acting as auditors or independent examiners for Scottish charities is the whistleblowing duty under the 2005 Act. Further information on whistleblowing arrangements 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 either:

(i) 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); or
(ii) Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard for Smaller Entities, known as the Charities SORP (FRSSE).

For the avoidance of doubt the 2006 accounting regulations (as amended) refer to true and fair accounts as ‘fully accrued accounts’. Smaller charities, 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 cognisant 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 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; and
• 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 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. 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 to trustees within a corporate form tailored to Scottish charities.

SCIOs are required to comply with the accounting regulations 2006 (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


2.5 Consents, reorganisations and notifications
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
- change their charity’s legal form
- amalgamate their charity with another body
- wind-up their charity
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 'Application for consent.....' 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 of the terms of the charity’s constitution 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:

- Seeking charitable status for cross border charities
- Cross border constitution briefing note
- Cross border charity regulation in Scotland

The 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 provides an update on OSCR’s new regulatory approach, including changes to its monitoring arrangements.

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 whistleblowing duty 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.
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 activities 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; and
- 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 activities

On 1 April 2016, OSCR introduced changes to its regulatory approach following consultation with the Scottish charity sector and other stakeholders. The changes are underpinned by The Targeted Regulation Framework of the Scottish Charities Regulator (‘The risk framework’). Other changes include:

- a new annual return form
- the commencement of a notifiable events reporting regime
- the publication of the annual reports and accounts for certain charities

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; and
- the protection and integrity of charitable status.

OSCR says the following about the framework in practice:

“The framework will be used as a tool to ensure that both our proactive and reactive activities are influenced and prioritised. It will help us to introduce a consistent approach across our organisation and help us to detect and deal with problems in a more focused way.”

**Annual return form**

The new annual return form must be completed by charities filing after 1 April 2016. There are a number of new questions which reflect the more targeted approach articulated in the risk framework.

Most charities will have to answer no more questions than before, with many having to answer fewer questions.

The new annual return form and accompanying annual return guidance are available on the OSCR website.

**Notifiable events reporting regime**

OSCR is asking 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.

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 Charity Commission for England and Wales (the Charity Commission) 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.
Publication of annual reports and accounts
At first, OSCR will publish, on its website, the 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 OSCR has no statutory requirement to make the annual reports and accounts of charities available on its website.

Alternatively, if a charity publishes its 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 public document: section 23 of the 2005 Act entitles any person to a copy on reasonable request.

Work with other regulators
OSCR works closely with a number of other regulators, including the Charity Commission 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 memorandum of understanding with the Charity Commission will be of interest to English and Welsh charities which are also registered with OSCR.

There is a UK and Ireland Regulators’ Forum which was formed in 2006 by all the charity regulators operating in the UK and in Ireland and the respective tax authorities, HMRC and Revenue Ireland. The Forum’s key objectives are to:

• encourage co-ordination of and consistency in regulatory approaches in the UK and Ireland, accepting that regulators work within different legislative frameworks;
• share information and good practice on charity regulation; and
• encourage effective working relationships between the devolved administrations responsible for the regulation of charities.

The Charity Commission for Northern Ireland hosts the Regulators’ Forum minutes on its website.

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.
- Changes in arrangements for filing annual returns and annual reports and accounts have been introduced from 1 April 2016.
- Charity trustees are being asked to report significant events to OSCR via a new notifiable events reporting regime.
- The annual reports and accounts of all SCIOs and other charities with a gross income of £25,000 and over will now be published on the OSCR website.
- OSCR works closely with other regulators to minimise regulatory burdens on the sector and share good practice.
4. ACCOUNTS REQUIREMENTS

This chapter of the Guide explains how the accounts requirements within Scottish charity law and company law interact with accounting standards and the Charities SORPs. It also touches on trustees’ annual report requirements and future developments.

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 SORPs. 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 SORPs 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.

ICAS also explains in detail 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 SORPs and Scottish charity law
- Financial Reporting Standard for Smaller Entities (FRSSE)
- Concessions available under the Charities SORPs for smaller charities
- Charitable companies only
- Consolidated (group) accounts
- Filing requirements
- Future developments

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.

OSCR’s receipts and payments accounts work pack includes a trustees’ annual report template, a receipts and payments accounts template and illustrative examples.

‘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, 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, OSCR considers profits or proceeds from the sale of fixed assets or investments, which are not funded by a permanent endowment, as gross income for the purpose of the receipts and payments accounts preparation 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 2015 and before 1 January 2016, the accounting standards which apply are:

- The Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102), or

Additionally, charities must comply with a Charities SORP, applicable to their accounting period, in order to show a true and fair view in their accounts.

The Charities SORPs provide 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 2015 and before 1 January 2016 only, there are two versions of the Charities Statement of Recommended Practice available:

i. 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), and

ii. Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard for Smaller Entities: the Charities SORP (FRSSE).

Charities applying the Charities SORP (FRS 102) must prepare a statement of cash flows for periods commencing on or after 1 January 2015 and before 1 January 2016. A statement of cash flows exemption will only become available to certain Scottish
Charities under the Charities SORP (FRS 102) for periods commencing on or after 1 January 2016.

Charities applying the FRSSE and the Charities SORP (FRSSE) do not need to prepare a cash flow statement.

**Charities SORP (FRS 102) Update Bulletin 1**
The amendments made to the Charities SORP (FRS 102) by the Charities SORP (FRS, 102): Update Bulletin 1 come into force for periods commencing on or after 1 January 2016. Scottish charities are prohibited from adopting the changes early by the Charities Accounts (Scotland) Amendment Regulations 2016 (SSI 76). It is these regulations which prevent charities eligible to apply the FRSSE but choosing to apply FRS 102 from taking advantage of the statement of cash flows exemption for periods commencing on or after 1 January 2015 but before 1 January 2016.

**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 one of the two 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.

4.4 **The Charities SORPs and Scottish charity law**

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 SORPs. Departure from a 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 SORPs 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 SORPs 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 **The Financial Reporting Standard for Smaller Entities**

In general, charities (whether or not they are companies) which satisfy the criteria of a small company as defined by the Companies Act 2006 may adopt the Financial Reporting Standard for Smaller Entities (FRSSE).

Charities applying the FRSSE do not need to prepare a cash flow statement.

The FRSSE (2015) is currently in force for periods commencing on or after 1 January 2015 and before 1 January 2016. The UK Financial Reporting Council (FRC) has withdrawn the FRSSE for periods commencing on or after 1 January 2016.
A charitable company or non company charity generally qualifies to be treated as small and can apply the FRSSE in relation to a financial year if the qualifying conditions are met in the current financial year and the preceding financial year.

The threshold in the Companies Act 2006 (section 382) for qualification as a ‘small’ can be interpreted as any company charity or non company charity which is not otherwise excluded from the regime (section 384), and meets two out of the following three conditions:

- annual gross income not exceeding £6,500,000;
- balance sheet total (i.e. gross assets) not exceeding £3,260,000; and
- average number of employees not exceeding 50.

For accounting periods which are shorter or longer than twelve months the gross income condition should be adjusted in proportion to the accounting period.

Changes to the Companies Act 2006 arising from the EU Accounting Directive, including increases in the gross income and balance sheet conditions referred to above do not apply to charities or other entities when determining their eligibility to apply the FRSSE.

**4.6 Concessions available under the Charities SORPs for smaller charities**

Under the Charities SORPs there are concessions for smaller charities in relation to the preparation of the trustees’ annual report and the SoFA. In this instance, smaller charities are those charities which are eligible for audit exemption, even if an audit is being undertaken.

**Concessions in relation to the trustees’ annual report**

Module 1 of both versions of the Charities SORP set out the additional trustees’ annual report content which larger charities must prepare separately from the content which must be prepared by all charities.

**Concessions in relation to the Statement of Financial Activities (SoFA)**

Smaller charities do not need to analyse either their incoming resources or resources expended by activity category. These concessions, cover both the SoFA and related notes.

Module 4 of both versions 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.

**4.7 Charitable companies**

In addition to preparing their accounts under Scottish charity law, charitable companies must prepare accounts that 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 both versions 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
• 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 also need to comply with the strategic report requirements of the Companies Act 2006.

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.

### 4.8 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.
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.

**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 will prepare these under section 398 of the Companies Act 2006. The section permits consolidated accounts to be prepared for a small group even though the Companies Act does not impose a requirement; and
- A charitable parent company which heads a medium-sized or large group will prepare these under section 399 of the Companies Act 2006. This section contains a requirement to prepare consolidated accounts for groups which are not small.

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 company regime and meets two out of the following three conditions in the current financial year and the previous financial year:

- annual gross turnover (gross income) not exceeding £6,500,000 net (or £7,800,000 gross);
- balance sheet total (gross assets) not exceeding £3,260,000 net (or £3,900,000 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.

Changes to the Companies Act 2006 arising from the EU Accounting Directive, including increases in the gross income and balance sheet conditions, referred to above, do not apply to consolidated accounts prepared by a charitable company which is a parent for periods commencing on or after 1 January 2015 and before 1 January 2016:

- For a charitable company parent preparing its accounts under the FRSSE, there is no scope within company law, Scottish charity law, the FRSSE (2015) or the Charities SORP (FRSSE) to adopt elements of the new small companies’ regime, including threshold increases contained in the Companies, Partnerships and Groups (Accounts and Reports) Regulations 2015.
- For a charitable company parent preparing its accounts under FRS 102, there is no scope under Scottish charity law to adopt the elements of the new small companies’ regime before 1 January 2016. As SSI 2016 No 76 prevents the early adoption of changes to the SORP (FRS 102) set out in Update Bulletin 1, it effectively prohibits a Scottish charity adopting the increased thresholds for small companies, in the
Companies, Partnerships and Groups (Accounts and Reports) Regulations 2015. This is due to the requirement in FRS 102 to adopt amendments to FRS 102 and the 2015 Regulations as a package.

4.9 Filing requirements

**OSCR (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.

**Companies House (company charities only)**

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.

4.10 Future developments

From accounting periods commencing on or after 1 January 2016 there are a number of significant changes, largely driven by the EU Accounts Directive which will impact on both company and non company charities. The changes and their impact are set out below under the following headings:

- Withdrawal of the FRSSE
- Changes to accounts preparation thresholds for small entities
- Other aspects of the new small entities regime
- FRS 102, Section 1A: small entities
- FRS 105: The FRS applicable to the micro-entities regime
- Charities SORP (FRS 102): Update Bulletin 1

An updated version of this Guide will be produced for periods commencing on or after 1 January 2016.

**Withdrawal of the FRSSE**

For accounting periods commencing on or after 1 January 2016, the UK Financial Reporting Council (FRC) has withdrawn the FRSSE. In response to this OSCR and the Charity Commission (joint makers of the Charities SORP), are withdrawing the Charities SORP (FRSSE) for accounting periods commencing on or after that date. In Scotland, the withdrawal of the Charities SORP (FRSSE) is mandated through changes to the 2006 accounting regulations (as amended).

Following the withdrawal of the FRSSE and the Charities SORP (FRSSE), all UK charities preparing true and fair accounts will need to apply FRS 102 and the Charities SORP (FRS 102).
**Changes to accounts preparation thresholds**

For accounting periods commencing on or after 1 January 2016, under section 382 of the Companies Act 2006 a company generally qualifies as small in relation to a financial year if it is not otherwise excluded from the small company regime and meets two out of the following three conditions in the current financial year and the previous financial year:

- annual gross income not exceeding £10,200,000;
- balance sheet total (i.e. gross assets) not exceeding £5,100,000; and
- average number of employees not exceeding 50.

For accounting periods commencing on or after 1 January 2016, under section 383 of the Companies Act 2006 a group generally qualifies as small in relation to a financial year if it is not otherwise excluded from the small company regime and meets two out of the following three conditions in the current financial year and the previous financial year:

- annual gross turnover (gross income) not exceeding £10,200,000 net (or £12,200,000 gross);
- balance sheet total (gross assets) not exceeding £5,100,000 net (or £6,100,000 gross); and
- average number of employees not exceeding 50.

Following the implementation of the changes more charitable companies and groups with a charitable company parent will fall to be classified as small for the purposes of company law. References to accounts preparation requirements within a charitable company’s accounts should therefore be updated if appropriate.

As discussed further below, Scottish charity law prohibits Scottish charitable companies from adopting the new accounts preparation thresholds early, for periods commencing on or after 1 January 2015 and before 1 January 2016. This prohibition extends to the adoption of the disclosure exemptions available to small entities under Section 1A of FRS 102. ICAS also takes the view that charitable companies will not able be able to apply Section 1A of FRS 102 for periods commencing on or after 1 January 2016.

An increase in the accounts thresholds for companies in the past would normally mean an increase in the number of non company charities which would be able to take advantage of accounts concessions available within UK GAAP to small entities. ICAS takes the view that non company charities, like charitable companies, will not be able to take advantage of the disclosure exemptions available to small entities in Section 1A of FRS 102.

Further details of why charities must comply with full FRS 102 and cannot apply Section 1A of FRS 102 are set out below.

**Other aspects of the new small entities regime**

A new small entities regime replaces the FRSSSE for periods commencing on or after 1 January 2016. There are two parts to the new regime: the introduction to FRS 102 of Section 1A small entities; and FRS 105: The Financial Reporting Standard applicable to the micro-entities regime.
This new regime is driven by the EU Accounts Directive and its translation into UK company law. This section of the guide, considers the new small entities regime in relation to Scottish charities.

**FRS 102, Section 1A: small entities**

Section 1A provides presentation and disclosure concessions to small entities although the recognition and measurement requirements of full FRS 102 must still be applied.

According to FRS 102, early adoption of Section 1A is permitted for accounting periods commencing on or after 1 January 2015, by companies, provided certain other requirements are met, and by other entities.

The applicability of Section 1A to charities which are small entities is difficult to determine as neither FRS 102 nor the Charities SORP (FRS 102) make explicit reference to this.

There is a statement within FRS 102 that “amendments to the relevant SORPs will not be necessary before any changes to FRS 102 can take effect because a change in accounting standards after a SORP has been issued means that any inconsistent provisions of a SORP cease to have effect.” Section 1A is an amendment to FRS 102 but the lack of an explicit statement on its applicability to charities, has created uncertainty with regard to its applicability.

Company law restricts the ability of the FRC to place additional requirements on companies, which are small entities, beyond Section 1A and the FRC applies this approach to other small entities. However, if a charity adopts Section 1A it will be unlikely to comply with all the requirements of the Charities SORP (FRS 102) which is a legal requirement under Scottish charity law.

There is an overriding requirement within Section 1A for an entity’s accounts to give a ‘true and fair’ view and for charities it is widely accepted that this means compliance with the Charities SORP. ICAS takes the view that compliance with Section 1A is not sufficient for a charity’s accounts to give a true and fair view. Therefore, for periods commencing on or after 1 January 2016, Scottish charities must comply in full with FRS 102 and the Charities SORP (FRS 102) and cannot take advantage of Section 1A. It also follows, that Scottish charities should not early adopt 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. The FRS specifically scopes out charities from its application.

LLPs and qualifying partnerships are now specified entities.

Although FRS 105 is based on FRS 102, it offers extensive concessions from FRS 102 for qualifying entities.

**Charities SORP (FRS 102): Update Bulletin 1**

OSCR and the Charity Commission have published an update Bulletin (Update Bulletin 1), which amends the Charities SORP (FRS 102) to:

- Reflect changes made to FRS 102 by the FRC following its initial publication, including minor amendments driven by changes to company law.
- Revise the definition of a larger charity to mean charities with a gross income of more than £500,000. Currently the Charities SORP definition of a larger charity aligns with the audit threshold which applies to a charity’s legal form and the jurisdiction(s) it is registered in. The new definition applies to all UK charities applying the Charities SORP (FRS 102) and determines whether a charity is eligible to apply the narrative reporting concessions available for the trustees’ annual report and the presentational concessions available for the statement of financial activities.
- Formally withdraw the Charities SORP (FRSSE).

The Update Bulletin applies to accounting periods commencing on or after 1 April 2016, with early adoption permitted except where this is prohibited by regulations or charity or company law.

OSCR has clarified that Scottish charities are not permitted to early adopt Update Bulletin 1. The Charities Accounts (Scotland) Amendment Regulations 2016 (SSI 76) make changes to the 2006 accounting regulations (as amended) and specifically prohibit the early adoption of Update Bulletin 1.

Key points for ICAS members arising from chapter 4:

- There are a number of concessions available to smaller charities, under the Charities SORPs which can simplify the preparation of the trustees’ annual report and the format of the SoFA.
- 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.
- Charitable companies must prepare their accounts in accordance with a Charities SORP.
- 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.
- The FRSSE and the Charities SORP (FRSSE) are withdrawn for accounting periods commencing on or after 1 January 2016.
- 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.
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 required or 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 the 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 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.

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 & Ireland)

Audits must be conducted in accordance with the FRC’s Ethical Standards for Auditors and ISAs (UK & Ireland).

The FRC issued Practice Note 11 (Revised): The Audit of Charities in the UK in March 2012, updating the previous version of the Practice Note to reflect the implementation of clarified ISAs (UK & Ireland) and to reflect regulatory and legislative changes across the UK at the time.

While Practice Note 11 remains extant it has not been updated since it was last published to reflect any changes to ISAs (UK & Ireland) or any changes to charity law and regulation. Therefore, auditors referring to the Practice Note should be mindful of more recent developments.

There are no illustrative auditor’s reports for charities included within the Practice Note. These are included in the FRC’s Compendium of illustrative auditor’s reports on United Kingdom private sector financial statements.

5.6 Future developments

The FRC has revised both its Ethical Standards for Auditors and auditing standards, to be known as ISAs (UK). The revised standards apply to the audits of financial statements for periods commencing on or after 17 June 2016. Earlier adoption is permitted but only if both the revised ethical and revised auditing standards are adopted earlier as a package.

The FRC is expected to update Practice Note 11: The Audit of Charities in the UK and the charity examples in the Compendium of illustrative auditor’s reports to reflect the requirements for the revised ISAs (UK).
5.7 ICAS Practice Review Service

The ICAS Practice Review Service undertakes confidential audit cold file reviews to help firms establish, maintain and monitor the effectiveness of their quality control procedures.

With experience covering a wide range of charity assignments, the team can provide an independent and objective review of the firm’s charity audit work, resulting in a comprehensive report and checklist highlighting any areas of major weakness or non-compliance with professional and charity specific requirements. Detailed feedback sessions can also be provided if required.

To find out more about how the Practice Review Service can help your firm please contact the Practice Support Team on 0131 347 0249 or email practicesupport@icas.com.

Key points for ICAS members arising from chapter 5:

- 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.
- All audits must be undertaken by a registered auditor in accordance with the FRC’s Ethical Standards for Auditors and ISAs (UK and Ireland) or ISAs (UK), as appropriate.
- All Scottish charitable companies receiving an audit should be audited under Scottish charity law and company law.
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; and
- the independent examination of true and fair accounts prepared in accordance with the Charities SORP.

An independent examination can be undertaken as a voluntary assignment by an ICAS member who does not have a practising certificate. Accountancy firms also take on independent examination engagements.

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.

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 publication Independent examination: OSCR guidance for independent examiners and charities. 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 be signed in the name of the engagement partner not the firm.
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 or by a Fellow of the Association of Charity Independent Examiners (FACIE). The specified professional bodies include the six 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; and
• the accounts have not been prepared in accordance with the Charities 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.

OSCR guidance on understanding independent examination Independent examination: OSCR guidance for independent examiners and charities 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.

A word of caution: Appendix 5 of OSCR’s independent examination guidance contains an example letter of appointment (i.e. an engagement letter). This example letter is not recommended for use by ICAS firms or ICAS members providing independent examinations in a voluntary capacity. The example letter of appointment is not sufficiently comprehensive for ICAS firms and references to reporting responsibilities under the Proceeds of Crime Act 2002 are not relevant to ICAS members undertaking independent examinations in a voluntary capacity. Section 8 (paragraph 8.1) of this Guide includes additional information on whistleblowing for ICAS members acting in a voluntary capacity.

6.4 Members providing accountancy services without a practising certificate
ICAS members can provide accountancy services, including independent examinations, to charities without the need to hold a practising certificate. However, ICAS places a limit on the number of engagements which can be undertaken without a practising certificate and also on the value of the nominal fee which can be charged.
Before agreeing to undertake an engagement for a charity without a practising certificate, ICAS members should ensure that they comply in full with the ICAS Public Practice Regulations.

In addition to the Public Practise Regulations, members should also refer to the accompanying frequently asked question: Do I need a PC in relation to accountancy services to charities? on the Practising Certificates page. The frequently asked questions set out the most up to date ICAS position of the number of engagements which can be undertaken without a practising certificate and the maximum nominal fee which can be charged.

6.5 ICAS Practice Review Service

The ICAS Practice Review Service undertakes a wide range of assignment reviews to help firms establish, maintain and monitor the effectiveness of their quality control procedures.

With experience covering a wide range of charity assignments, the team can provide an independent and objective review of the firm’s work, resulting in a comprehensive report and checklist highlighting any areas of major weakness or non-compliance with professional and charity specific requirements. Detailed feedback sessions can also be provided if required.

To find out more about how the Practice Review Service can help your firm please contact the Practice Support Team on 0131 347 0249 or email 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: OSCR guidance for independent examiners and charities.
- Members who do not hold a practising certificate should ensure that they do so within the scope of concessions available in the ICAS Public Practice Regulations.
7. OTHER FORMS OF CHARITY

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 other than the Charities and Trustee Investment (Scotland) Act 2005 or the Companies Act. 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. Where this is the case the component element must comply with the 2005 Act, the 2006 accounting regulations (as amended) and the centrally issued guidance.

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 annual accounts and reports.
- DRCs should follow any additional guidance on accounting matters issues centrally by the DRC’s headquarters.
8. DUTY AND RIGHT TO REPORT TO OSCR

Since the implementation of 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. Moreover, the 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.

OSCR’s whistleblowing guidance, prepared in conjunction with the Charity Commission for England and Wales, is available on the OSCR website.

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

In addition to the main whistleblowing guidance, OSCR has issued tailored guidance for independent examiners in chapter 9 of Independent examination: OSCR guidance for independent examiners and charities. Chapter 9 points out that those independent examiners who charge a fee have reporting responsibilities under the Money Laundering Regulations 2007.

Appendix 5 of the OSCR guidance includes an example letter of appointment which makes further reference to reporting under the Proceeds of Crime Act 2002 without recognition that reporting responsibilities only apply when a fee is charged, excluding a nominal fee. This letter of appointment is not recommended for use by ICAS members.
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’s whistleblowing guidance includes the following examples of issues which must be reported:

- Matters suggesting dishonesty or fraud involving a significant loss of, or a major risk to, charitable funds or assets
- Failure(s) of internal controls, including failure(s) in charity governance, that resulted in a significant loss or misappropriation of charitable funds, or which leads to significant charitable funds being put at major risk
- Matters leading to the knowledge or suspicion that the charity or charitable funds 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
- Matters leading to the belief or suspicion that the charity, its trustees, employees or assets, have been involved in or used to support terrorism or proscribed (i.e. banned) organisations in the UK or outside of the UK
- 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
- Significant or recurring breach(es) of either a legislative requirement or of the charity’s trusts
- 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
- The notification on ceasing to hold office or resigning from office, of those matters reported to the charity’s trustees

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.

Given the broad discretion which is permitted by the right to report OSCR’s whistleblowing guidance does not list instances for reporting but states the following:

“Matters falling within this discretionary category are likely to be indicative of significant risks to charitable funds or their proper application and would therefore normally be relevant to the work of the regulators. Where such a matter arises, the auditor may discuss the matter with the trustees to identify whether it remains a matter of concern and whether the trustees have taken or are taking action which can reasonably be expected to remedy or mitigate the effect on the current or future years.”
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. The whistleblowing guidance touches on money laundering reporting responsibilities.

The whistleblowing guidance was initially developed by OSCR and the Charity Commission for auditors for inclusion in Practice Note 11 (Revised): The Audit of Charities in the UK. Auditors fall within the money laundering reporting regime under the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007 as do ICAS members who provide other accountancy services, including independent examinations, by way of business. However, ICAS members who, free of charge or for a nominal fee, provide accountancy services, including independent examinations, to charities and therefore do not require a practise certificate do not fall within the money laundering reporting 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.

8.5 Future developments

The UK charity regulators are working together to develop joint whistleblowing guidance for auditors and independent examiners. A draft of the guidance is out for consultation with a deadline for comment of 11 September 2016.

While the legislation underpinning the right and duty to report is different in each jurisdiction, the charity regulators are looking to provide auditors and independent examiners with consistent guidance on matters of material significance to the charity regulators in the UK.

This will be of particular assistance where charities operate across borders.

Key points arising for ICAS members from chapter 8:

• Auditors and independent examiners have a statutory duty to report incidences of possible misconduct 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 or for a nominal fee, 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.
9. CHARITIES AND UK TAXATION

Organisations in the UK which are awarded 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 or the Charity Commission.

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 tax 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 UK Government’s website for charities and community amateur sports clubs. This area of the website is currently under development therefore there may be changes to presentation of information and the content. Links to key topics for charities are 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 Charity Tax Group

The Charity Tax Group (CTG) makes representations to government on charity taxation. 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.

Key points arising for ICAS members from chapter 9:

- Charities must be registered with HMRC to be recognised as charities for tax purposes.
- Charities may have to pay tax in certain circumstances.
- 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.
- HMRC Charities operates a helpline and online query service to assist with queries on charity tax matters including VAT.