

Response to consultation paper

Charity accounting regulations

Introduction

Jordans is one of the UK's foremost and largest specialist providers of legal services to the professions (especially solicitors, accountants, chartered secretaries) and to commerce in general. With six offices across the world, including our Scottish operation based in Edinburgh (Jordans (Scotland) Limited, trading as Oswalds) and our group head office location in Bristol, we provide company formations, company secretarial and administrative support, assist with corporate legal transactions, supply business information and searching facilities, offer a range of property law and environmental law services. Jordan Publishing Limited, another of the group companies, publishes a wide range of authoritative legal books and reference materials (some 220 titles) as well as 14 major law reports (including Family Law Reports) and offers over 120 different legal training course topics.

Supported by the expertise of our central Charities and Voluntary Sector Department, Oswalds provides advice and assistance in matters of charity law and practice, private company law and practice and company secretarial matters as well as assistance in relation to the governance and administration of charities, other "not-for-profit" organisations and social enterprises. Our sister company, Jordans Limited, provides such services in relation to charities in England and Wales and Scotland.

We welcome the opportunity to respond to the consultation paper on charity accounting regulations for Scotland. Our comments are set out in three sections, the first gives general comments, the second addresses the specific questions posed in the paper and the third adds some further comments.

General comments

We support the overall approach being taken, which is to repeal the present statutory requirements for charity accounting and reporting and introduce an entirely new regime, within the framework set out in the Charities and Trustee Investment (Scotland) Bill. We believe this is the correct approach with regard to this aspect of the regulation of charities in Scotland.

We agree that the Statement of Recommended Practice – Accounting by Charities 2005 ("SORP") is the appropriate detailed general framework for charity accounting and reporting. All charities should be subject to SORP save for:-

(a) Where other regulatory requirements, specific to the specialist areas of activity in which that charity engages*, make different provision on detailed points (*eg registered social landlords or colleges of higher or further education);

(b) Where an individual charity's accounts and reports need to depart from some aspects of SORP in order to provide a true and fair view. In such a case we believe the particular departures should be specified and the reasons for them indicated.

Our main concerns regarding the proposals relate to the thresholds levels suggested and the failure to align English and Welsh requirements with Scottish requirements. We regard it as a matter of considerable concern that charities across the UK will not be regulated to the same thresholds. Should such divergences arise they would contradict the declared guiding principles of the charity law reform processes in both jurisdictions – especially proportionality, transparency and consistency. In addition, considerable variation of requirements between the jurisdictions could lead to public confusion and less (rather than greater) public understanding of charity accounting and reporting. It could even undermine public confidence in this vital area of charity regulation.

Further, it is inequitable that a charity registered in one part of Great Britain should be treated more favourably in such an important area than one registered in another part of Great Britain. In addition, we suggest there is considerable illogicality in pursuing consistency throughout Great Britain in some areas of regulation (eg Scottish charities' compliance with ASB agreed standards; compliance with SORP by all charities in Britain) whilst abandoning consistency in other areas (such as thresholds).

Responses to specific questions

Q1 Are the thresholds right and should there be a third category where independent examination is optional?

1. We support raising the upper thresholds for optional receipts and payments accounting to £250,000.
2. We do not consider it essential to align the compulsory audit threshold with the optional receipts and payments accounting upper threshold.
3. We agree that thresholds should not vary according to the charity's legal form. Therefore we support the principle that each threshold should apply to all types of charity.
4. However, we do not support the suggested divergence of thresholds between Scotland and England and Wales. Wherever the thresholds are set, they should apply to all charities in Great Britain (without distinction as to place of registration).
5. Should the thresholds in fact become different in the two jurisdictions, we do not support the suggestion that a charity registered in England and Wales, if it has an obligation to file accounts and reports with OSCR, should have to produce accounts complying with the lower Scottish thresholds.
6. We favour raising the compulsory audit threshold to the levels currently applicable for commercial companies. The threshold should then be adjusted in future to follow that level. Commercial companies can take far greater risks in their activities than charities can and they are not subject to the number and variety of significant additional statutory or common law constraints applicable to charities. The present compulsory audit threshold requirements for commercial companies have proved satisfactory and have not given rise to any significant public anxieties or regulatory concerns so far as we are aware.

It should be noted that individual charities can always choose to have their accounts audited even if theoretically audit exempt and, where appropriate, a charity's governing document can insist on audit.

Against this background and given the underlying principles of proportionate requirements for the new accounting rules, plus the wider significant controls and restraints applied to charities, we suggest thresholds for charities at commercial corporate entity levels would be appropriate and reasonable.

7. We do not support introducing a third category of thresholds for independent examination. The experience in England and Wales (where three thresholds bands do apply – compulsory audit, independent examination, neither required) is that a third tier carries no obvious benefits and does have disadvantages – including confusion amongst charities and their advisers as to the precise legal obligations, a lack of clarity in public perceptions and understandings and the costs to smaller charities of arranging independent examination. The latter is important since it is rare for a volunteer (unpaid) suitably qualified person to make themselves available as examiner. Accordingly, charities have to pay professional fees for examination of accounts and this involves a significant level of expense. That expense would be even more significant for Scottish charities, since most have very small income levels (generally lower than their English counterparts).

Q2 Is the approach to UK wide charities the right one?

We note that in fact, the issue concerns charities in Great Britain rather than the UK (charities in Northern Ireland do not appear to be referred to in the Consultation Paper and there is, of course, a separate review of charity law underway in Northern Ireland, which remains at a very early stage).

We do not consider the suggested approach to be correct. Our view is that a charity registered anywhere in Great Britain should be subject to standard accounting rules, including standard thresholds (eg for compulsory audit). We refer you to the further comments we have already made (see “General comments” above).

We observe that it is undesirable for charities to create separate accounts for part only of their operations (ie Scotland specific accounts). This does not aid public understanding nor does it enhance transparency and accountability. The entire affairs of the whole organisation ought to be reported in one comprehensive document, readily accessible to any interested party via the Scottish Charity Register. Further, the Scottish activities should be reported within that document, to set them in the context of the whole organisation and its activities in the year in question. To do otherwise leads to partial, fragmented and perhaps even misleading information and runs the risk of misunderstandings or misinterpretations.

Q3 Is the suggested approach to exemptions right?

We agree that charities subject to other SORPs should be given exemptions. However these should be statutory and not subject to the regulator’s discretion. We consider it inappropriate for there to be a risk of inconsistency and unfairness if discretion is involved. We also view it as highly undesirable for a regulator to have discretion as to what regulations the entities it regulates must observe. A regulator’s role should be confined to monitoring compliance with regulations made by the Scottish Parliament (and using its enforcement powers, where necessary, to ensure compliance).

Q4 Should Designated Religious Charities be obliged to comply with the accounting regulations?

Yes.

Q5 Should the compulsory audit threshold for charitable companies be £250,000?

All charitable companies should have the same exemption threshold, regardless of whether they are registered in England and Wales or in Scotland. We also believe all British charities (regardless of legal form) should be subject to harmonised thresholds (ie there should not be differing thresholds for different legal forms). We have stated earlier that in our view the audit exemption threshold for all charities ought to be set at that applicable to commercial companies under the Companies Act.

Q6 Do you agree with the proposals on accounting periods, time limits for submission of accounts and OSCR’s powers in respect of non-compliance.

1. We are unclear as to what is proposed for charitable companies regarding accounting periods and their alteration. Are they to remain subject to present Companies Act rules? If so, is it the intention that rules for charitable companies will differ from rules for other legal forms of charities? If the answer is yes, we regard that as inequitable, confusing and unjustifiable.

2. For charitable companies, we suggest time limits and indeed dates for submission to OSCR should be aligned to those for submission of accounts to Companies House. This would simplify their annual administration.

3. We support the general principle that accounts should be publicly filed within seven months of a charity’s financial year end. However to minimise the regulatory burden (and associated administration and costs) for charities, public filing deadlines for submission to different regulators

should be aligned (ie file by the same date at Companies House, OSCR, Charity Commission for England and Wales etc).

4. We believe the powers given to OSCR with regard to default to be too severe (in particular the power to appoint an accountant of OSCR's choice to prepare accounts at the charity's expense).

Q7 Re accounts in Gaelic

1. We agree that all accounts and reports should be required to be in English.

2. OSCR should not accept accounts and reports in Gaelic.

Q8 Is the approach re adoption of SORP right?

Yes. We believe SORP compliance should be the compulsory norm for Scottish charities. Please also refer to the comments made earlier (see "General comments").

Q9 Re partial regulatory impact assessment.

1. We believe the RIA is over optimistic with regard to costs for charities in complying with the regulations and training their personnel.

2. Many Scottish charities are very small, with very limited financial and other resources and often have no paid staff at all. For those fortunate enough to be able to afford employees, staff numbers will usually be very small. Staff and indeed trustees rarely have any detailed experience or knowledge of financial matters and accounting. Further, compliance with present accounting requirements (which are less substantial than the proposed new requirements) is generally poor and charities and their personnel (paid and volunteer) and indeed their professional advisers have little acquired knowledge and experience of proper charity accounting and accurate and timely compliance with regulatory requirements. The new rules will demand a "sea change" in practices, procedures, attitudes and behaviour, with attendant resource demands and significant direct and indirect costs.

3. As an example of realistic costings for training, our sister company Jordan Publishing Limited charges £275 plus VAT for a full day seminar on charity accounts and reporting (with a discount for charities with turnovers below £250,000). The target audience being voluntary charity treasurers, finance staff employed by charities and professional advisers to charities (especially accountants and auditors). Added direct costs would include travel costs and perhaps accommodation costs (in Scotland a professional training provider would probably base a course in Edinburgh as first choice). There are also indirect costs of time out of the office (particularly relevant to charity staff and professional advisers).

4. We disagree with the RIA's comments on issues of equity and fairness because of the inequitable and disproportionate effect of the proposals as between charities registered in different parts of Great Britain. Equity and fairness, as well as proportionality, demand equal treatment and thus the same rules for all British charities.

5. Compliance costs – we observe that significant information should be easily available from sources in England and Wales. Directly from individual charities' public accounts (eg charitable companies' filed accounts reveal audit fee levels), from sub-sector specific charity umbrella bodies, from sector wide charity umbrella bodies (NCVO, DSC), from professional bodies, especially those relevant to accountants and auditors (ICAEW, ACCA etc) or those relevant to the charity sector (eg Charity Finance Directors' Group).

6. Compliance costs – the experience in England and Wales is that free of charge independent examination is not commonly obtained!

7. Training costs – we believe the RIA seriously underestimates time requirements and direct costs and ignores wider indirect costs as well as ongoing costs and time demands (note that charity

staff and trustees change relatively often). We have already made additional observations on this aspect (see 2 above).

8. Training costs – we remind you that the Home Office estimates relate to SORP 2000. The new SORP (2005) enhances requirements, so compliance costs, including training costs, will increase rather than reduce in future. Costs are ongoing, since SORP is regularly reviewed and altered.

Other comments

With regard to non-disclosure of officers' names in annual reports, for reasons of personal safety, we comment:-

1. A full regime for non-disclosure of address should be implemented for the entire Scottish Charity Register (including non-disclosure at initial charity registration). Anything less offers no effective protection. We are doubtful that non-disclosure of names is appropriate.

2. We regard to the statutory requirements, we suggest sections 723B-F Companies Act 1985 and associated regulations and the practical procedures adopted by Companies House in relation to those are a useful model. We suggest there should be a statutory basis for similar Scottish charity exemptions.

3. A serious flaw in the company related protections, however, is that previous entries on the public record are not removed when the Confidentiality Order is granted. It only offers confidentiality of residential address for future filing of documents.

4. Non-disclosure consent by OSCR should only be given if OSCR has adequate evidence of risk from independent sources and the risk is serious and relates to potential violence or intimidation.

5. Regard should be had to the safety of persons living with the trustee in question and to the safety of other officers and/or staff (eg company secretary of a charitable company, Chief Executive or other senior staff named in the trustees' annual report).

6. Orders allowing suppression of information from the public domain should be a rarity. In general charity trustees should be recorded publicly on the Scottish Charity Register and in all extracted and linked data sources (eg Guidestar UK).

1 July 2005

Cecile Gillard (Miss), Head of Charities and Voluntary
Sector Department (Jordans Limited) for Jordans (Scotland) Limited
Email: cecile_gillard@jordans.co.uk
Tel: 0117 918 1319 (direct)
Postal address: 21 St Thomas Street, Bristol, BS1 6JS