**CHARITIES (REGULATION AND ADMINISTRATION) (SCOTLAND) ACT 2023**

This Act has been approved by the Scottish Parliament. However its eventual commencement date is as yet uncertain, and it may be that certain parts will be brought into force at different times. The practical operation of the Act will no doubt be governed by subordinate regulations yet to be finalised.

As soon as the commencement and operation of the Act have been clarified this article will be updated. Although what is stated below is necessarily tentative, it is good to be aware of, and prepared for, this new direction of travel in church charity administration.

Unfortunately for lovers of crustaceans, the initials of the Act spell CRAAS rather than CRABS. I will take a quick scuttle through its provisions. Apart from strengthening the twin pincers of charity law and its regulation by the Office of the Scottish Charity Regulator (“OSCR”), there is nothing here that specifically targets churches or should cause church trustees undue concern. There are many provisions which are undeniably beneficial. However, more information will require to be disclosed, and less leniency will be shown to those charities which fail to comply with their accounting and other obligations.

The Act itself is quite difficult to read and understand, as it is a succession of detailed modifications to the principal legislation governing charity law in Scotland, the Charities and Trustee Investment (Scotland) Act 2005. This is a strengthening and updating of the current regime, not a radical departure. It is all part of the general move towards greater transparency and accountability, especially for church and other charities which are supposed to provide public benefit and which enjoy the financial and other privileges associated with charitable status. Here is a brief summary of those matters which may be of most interest to charity trustees, and which you can look forward to complying with or benefiting from, as the case may be:

* **Disclosure of Trustee Information**
  + Names of charity trustees are to be included on OSCR’s public Scottish Charity Register.
  + Changes in trustees must be notified to OSCR.
  + Principal office or contact trustee address must be disclosed (as before), but the addresses of all the other charity trustees do not require to be disclosed.
  + Disclosure provisions are all subject to the proviso that OSCR must exclude such information from the Register if it is satisfied that including the information is likely to jeopardise the safety or security of any person or premises.
  + OSCR can obtain further information from trustees and compile its own Schedule of Charity Trustees. That will be kept internally for regulatory and communication purposes and will not be available to the public.
* **Widening Scope of Disqualification**
  + Disqualification can affect not only charity trustees, but those holding senior management functions in a charity, such as a chief executive or financial officer.
  + The range of offences triggering disqualification is increased, including not only dishonesty, but crimes such as terrorism, money laundering, bribery and perverting the course of justice.
  + Bankruptcy related prohibitions will be extended to other debtor contexts.
  + It will still be possible for a charity to apply to OSCR for a waiver in respect of individual trustees or senior managers who would otherwise be disqualified.
  + There will be a searchable record of those who have been removed from office as charity trustees or senior managers by court order due to misconduct in the administration of the charity. This will enable churches to check out specific individuals prior to appointment.
* **Submission of Accounts**
  + Requirement to have accounts audited or independently examined clarified to provide that the report must form part of the accounts submitted to OSCR.
  + The obligation on charities to provide copies of their latest accounts to an enquirer now extends to include the auditor’s or independent examiner’s report.
  + Submission of the Annual Return is now compulsory rather than voluntary.
  + If the deadline for submission of accounts has passed and the charity has not responded to communications from OSCR in respect of such failure, OSCR can give the charity notice of intention to remove it from the Register.
  + A list of charities at risk of removal will be published on the OSCR website.
  + OSCR can proceed to remove the charity from the Register if there is no effective contact within 3 months.
* **Strengthening OSCR Powers**
  + Ability to appoint interim trustees where for whatever reason a charity has an insufficient number of trustees who are contactable and capable of acting.
  + Enhanced powers to require information, issue positive as well as negative directions, and conduct inquiries.
  + Investigations into the conduct of a charity trustee can continue even if the charity has ceased to exist.
* **Beneficial New Provisions**
  + OSCR will maintain a register of charity mergers notified to it:
    - Ensures that successor charity receives benefit under legacy to its now defunct predecessor even if no specific provision in the Will.
    - Extends to include not only amalgamations and takeovers, but also changes in form, for example where an unincorporated voluntary association (“UVA”) restructures as a Scottish Charitable Incorporated Organisation (“SCIO”) or charitable company limited by guarantee.
  + Relaxation of prohibition on certain unacceptable names. For example this may allow a SCIO to retain the same name as the UVA it has been set up to replace, rather than have to find a different name (and then perhaps change again after the UVA has been removed from the Register).

**Principal takeaways:**

* The main increased administrative burden would appear be the need to supply information on charity trustees and to notify changes in trustees. It is to be hoped that OSCR will provide a straightforward online mechanism for doing this, and that it will soon become second nature for church secretaries or administrators.
* It would be helpful now for church treasurers or finance leads to maintain, or if need be get into, the habit of ensuring that accounts are prepared and lodged timeously. A random look at Baptist church charities on the OSCR website would indicate that this is not always the case!
* If OSCR is endeavouring to communicate with your church charity, resist the temptation to go into your shell or crawl under a rock. Engage with OSCR! I do not think that the increased powers and tightened regulatory supervision will change the general character of OSCR as a benevolent regulator, more keen to support charities and encourage trustees (especially those who are genuinely struggling for whatever reason) in the public interest, rather than to exercise discipline.

In conclusion, a well-run church charity which complies timeously with its obligations should have nothing to fear from CRAAS, but the inefficient and the uncommunicative may fall foul of the long arm of the claw.

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*PS. If you want to read about this in much more detail, here are some useful links:*

The text of the Act

<https://www.legislation.gov.uk/asp/2023/5/contents/enacted>

Explanatory Notes on the Bill which became the Act

<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/charities-regulation-and-administration-scotland-bill/introduced/enaccessible.pdf>

Policy Memorandum

<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/charities-regulation-and-administration-scotland-bill/introduced/pmaccessible.pdf>