



# Welcome to our conference

Annual Charities Conference 2020

Tuesday 3 November 10.30am to 12 noon

# **Annual Charities Conference 2020**

**Victoria Simpson**

**Head of Charities at Anderson Strathern**

## Regulatory and Legal Update - Notifiable events regime

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- Updated OSCR guidance published in January 2020.
- Reports are now published online.
- A notifiable event could be:
  - fraud and theft
  - significant financial loss
  - incidents of abuse or mistreatment of vulnerable beneficiaries
  - insufficient number of charity trustees to make a legal decision
  - if a charity is being investigated/ sanctions imposed by another regulator or agency, or is subject to a criminal investigation
  - if a significant donation of money or property has been made to the charity from an unknown or unverified source
  - if there are suspicions that the charity or its assets are being used to fund a criminal activity including terrorism
  - if charity trustees are acting improperly or while disqualified.
- Reporting a significant event forms part of the good governance procedures of your charity.

## The SCIO Dissolution Working Group

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- The SCIO Dissolution Working Group published its recommendations for changing the law on SCIOs in March 2020.
- Their proposals included:
  - improving the dissolution provisions to give better protection to creditors and those with an interest in the SCIO, particularly for insolvent dissolutions
  - that OSCR can remove inactive SCIOs from the Scottish Charity Register
  - to allow SCIOs to go back on to the Charity Register if they come off

# The Corporate Insolvency and Governance Act 2020

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- Emergency legislation to help companies and SCIOs during the pandemic.
- The Act only applies to companies and SCIOs, not to other forms of charity.

## **It extended the date for holding an AGM**

- Constitution must either allow virtual meetings to take place, or is silent on the matter of holding virtual meetings.
- Applies to AGMs due to take place between **26 March** and **21 August 2020**.
- Allows companies and SCIOs to put back the date of their AGM until **30 September 2020**.

## The Corporate Insolvency and Governance Act 2020 - Continued

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### **Allows members meetings to take place virtually**

- Applies even if the constitution says that virtual meetings cannot take place.
- For members meetings due to take place between **26 March** and **30 September**.
- It allows members meetings to take place virtually.
- For SCIOs, this deadline has been extended to **30 December**.
- The same extension is expected shortly for companies.

## OSCR: Scottish Charity & Public Survey Report 2020

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- Shows public trust in the Scottish Charity sector has grown in the last year from one-half to two-thirds.
- The report shows that the public want greater transparency and openness, in particular they want to see:
  - how much of their donation goes directly to the cause they support
  - that the charity is well run
  - that there is a good governance structure in place
  - what the charity achieves with its funding

## OSCR's Strategic Plan 2020-21 -cont

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- The public think a charity should embody the following principals:
  - Honesty
    - Motivation
    - Empathy
    - Committed trustworthy people
    - Vision
      - Transparency
      - Passion
      - Volunteering
      - Local impact



# Reform of the Charities and Trustee Investment (Scotland) Act 2005

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- OSCR launched its public consultation for updating the Act in Jan 2019.
- The public consultation set out the following proposals:
  - that annual accounts and reports for all charities are published in full on the Scottish Charity Register
  - to set up a confidential internal charity trustee database and an external trustee register for use by the general public
  - to extend the disqualification criteria for charity trustees so they apply to both charity trustees and staff in a senior management position
  - to give OSCR power to issue positive direction notices to charities
  - power for OSCR to remove charities from the Scottish Charity Register that persistently fail to submit annual reports and accounts, or which no longer exist
  - that all charities under Scottish Charity Register should have and retain a connection in Scotland
  - that OSCR can make inquiries into former charities and their former trustees.  
new proposals for dealing with the assets of former registered charities.
  - increasing OSCR's inquiry powers.
  - to extend the reorganisation provisions to bodies established under Royal Charter, Warrant or Enactment.

## Aspects of Good Governance

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- Is your charity's constitution and charitable purposes still up to date and fit for purpose?
- Take the time to future proof your constitution.
- Review your charity's purposes and ensure that they are still relevant and cover all your activities and intended activities.
- Acting outwith the scope of your charity's purposes is mission drift – misconduct in the administration of the charity.
- Remember to seek OSCR's prior consent to amend purposes before doing so.

## Changing Legal Form

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- It may also be appropriate to review your constitutional form.
- Unincorporated charities should consider whether it is appropriate to incorporate as a charitable company limited by guarantee or as a SCIO.
- Charitable companies can convert in to SCIOS using a conversion process – but it may not be straight forward. Do your homework first.
- **Housekeeping**
  - Use this time to put your housekeeping in order.
  - Review all policies, procedures and reporting structures.
  - Identify any gaps where a new policy or procedure is required.
  - Update at least once a year.
  - Provide regular training to staff, trustees and volunteers.

# Virtual Platforms

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- There are advantages to using a digital platform such as Zoom, Microsoft teams etc
  - it allows cost effective and flexible home working
  - Easy communication with beneficiaries ( for those with access to a computer)
  - It saves on travel time, so meetings take less time
  - Easier for more people to attend a virtual meeting
  - You can reach a wider geographic spread
- Remember to keep proper Minutes of all virtual meetings.
- It is a question of balance, to juggle between a virtual platform and face to face contact as we move forward.

## Joint Working

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- New levels of collaboration between charities.
- Collaboration can be informal by exchanging ideas and practical tips/ experience.
- Seeing a growth in partnerships, joint funding initiatives and mergers.
- Advantages of collaborative working – your charity can potentially deliver its activities to a wider range of beneficiaries.
- Improved service delivery.
- More cost effective.
- If considering a merger, also look at your shared objectives and values, as well as the financial picture.

# Thank you

For more information on anything covered in today's session, please contact:



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# Anderson Strathern Charity Conference

3<sup>rd</sup> November 2020

## Graham Robertson

Development Director



&

Director



Get young people. Get results.

# Our Background - ProjectScotland:



**AND WE'RE GROWING ALL THE TIME.**



[getthegen.com](http://getthegen.com)



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GET  
THE  
GEN



Get young people.  
Get results.

# Response to COVID Challenges



Get young people. Get results.

Government /  
Emergency Funds

Existing Partners  
/ Funders

Diversity of  
Income Streams

Social Enterprise

Adapt &  
Evolve

Align Messaging  
to Key Themes

Virtual  
Fundraising  
Events

# **Annual Charities Conference 2020**

**Barry Nichol**

**Employment Law Partner and Head of Arts & Theatre**

## Employment Law Update – Building Back Better

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- Job Retention Scheme / Job Support Scheme (Furlough) where are we now ?
  - Furlough / Flexible Furlough was due to come to an end on 31 October 20
  - Was to be replaced by the Job Support Scheme from 1 Nov 20 to 30 April 21
  - Announced on 31 October that England is to effectively lockdown from Thursday
  - Scotland will continue with the regional tiers which came into effect on 2 November 20
  - Furlough has been reinstated for the month of November.
  - Some initial concern as to whether this would cover Scotland – now confirmed that it will.
  - Furlough now due to end on 30 November to be replaced by the Job Support Scheme on 1 December.

# Employment Law Update – Building Back Better

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- Home working – key legal and practical considerations
  - Home working policy / contractual arrangements
  - Reporting and appraisals
  - Data Protection / confidentiality
  - Health & Safety
  - Insurance
  - Wellbeing

## Employment Law Update – Building Back Better

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- Flexible Working requests
  - Employees with 26 weeks service can make a request of FW for any reason
  - Procedure far less prescriptive than it was previously and now an employee triggers this by making a written request and the employer has a three month decision making period.
  - Timeframe can be extended by agreement.
  - Employer must deal with the application in a reasonable manner.
  - Employer can still only refuse a request for one (or more) of the eight reasons set out in the legislation (see next slide).
  - An employee can only make one request in any 12 month period.
  - Employee should be allowed an internal appeal and can bring a claim to the ET if the application has not been dealt with appropriately or is discriminatory.

## Employment Law Update – Building Back Better

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- Flexible Working requests – statutory grounds for refusal
  - the burden of additional costs
  - detrimental effect on ability to meet customer demand
  - inability to reorganise work among existing staff
  - inability to recruit additional staff
  - detrimental impact on quality
  - detrimental impact on performance
  - insufficiency of work during the periods the employee proposes to work or
  - planned structural changes

# Employment Law Update – Building Back Better

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- Conclusion

- What is the best way of working for your charity – appreciating considerable uncertainties.
- Proactively take a stance on homeworking and flexible working that is right for your organisation (building in flexibility) rather than deal reactively with requests.
- Review policies and procedures on how best embrace new working patterns while maintaining appropriate controls and wellbeing.





**Thank you for joining our webinar**

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