

## **OSCR Rolling Review**

OSCR's publication of *'Rolling Review – Phase 1a, OSCR's decision on 30 charities'* has created a flurry of media interest. The headlines have concentrated on the decision by OSCR that four of the independent schools which were reviewed did not satisfy all of the requirements of the public benefit test and in particular that they imposed unduly restrictive conditions on accessing their benefits. OSCR is obliged by the terms of the Scottish legislation to balance public benefit against disbenefit, private benefit and unduly restrictive conditions. Not all of these concepts are paralleled in the Charities Act 2006.

However, the Rolling Review Report also raises a number of other issues which have (so far) been overlooked and which have implications for all charities.

Seven of the 30 charities reviewed were found to have problems with their constitutions. Six of those encountered difficulties because they had documents which defined 'charity' or 'charitable purposes' by reference to the Taxes Acts.

Prior to the 2005 Scottish charities legislation it was common for charities to refer to the Taxes Acts when defining 'charitable purposes' in their constitutions. However, the new legal landscape makes such references not just obsolete but actively problematic.

References to the Taxes Acts are deemed by OSCR to be references to 'charity' as defined in English law. The definition of 'charity' is of course different in Scots law than it is in English law. Consequently, such references are no longer acceptable and all six charities have been directed by OSCR to alter their constitutions accordingly. This problem is so widespread that OSCR has referred the matter to the Scottish Government.

One charity was found to have a constitution which included charitable purposes which did not meet the 'new' definition of charity (as brought in by the Scottish 2005 Act). This organisation has also been directed by OSCR to make suitable amendments to its constitution.

So, the central message for the majority of charities is one of focusing on the detail of compliance. OSCR makes "a general recommendation to all charities ... to ensure that the charity's constitution is up to date, is in keeping with the requirements of the [legislation], and accurately reflects

the charity's activities." Put your house in order before OSCR comes to call.