

02/08

GUIDANCE FOR COLLEGES  
ON CHARITIES REFERENCES  
IN DOCUMENTS (SCOTLAND)  
REGULATIONS 2007

## Introduction

The purpose of this guidance is to clarify the legal requirements placed upon Scotland's Colleges under the Charities References in Documents (Scotland) Regulations 2007.

This Guidance covers the following topics:

### 1. Background

### 2. The Charities References in Documents (Scotland) Regulations 2007

### 3. Implications for Scotland's Colleges

### 4. Status of Guidance

## 1. Background

- 1.1 The Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") came into force in April 2006 with the aim of informing and modernising charity law in Scotland. New duties were introduced that apply to all bodies with charitable status, including Scotland's Colleges.
- 1.2 Under Section 13 of the 2005 Act, a body entered in the Scottish Charity Register may refer to itself as a "Charity", a "Charitable Body", a "Registered Charity" or a "Charity Registered in Scotland". If such a body is established under the law of Scotland, or is managed or controlled wholly or mainly in or from Scotland, it may also refer to itself as a "Scottish Charity" or a "Registered Scottish Charity".
- 1.3 Section 15 of the 2005 Act provides that the Scottish Ministers may by regulations require each body entered in the Scottish Charity Register to state:
  - that it is a charity; and
  - such other information as may be specified in the Regulations;on such documents issued or signed on behalf of the charity as may be so specified.
- 1.4 In exercise of the powers conferred by Section 15 of the 2005 Act, the Scottish Ministers made the Charities References in Documents (Scotland) Regulations 2007, with a view to clarifying the information that charitable bodies shall require to apply on documents, together with a list of specified documents upon which the required information must be applied.

## 2. The Charities References in Documents (Scotland) Regulations 2007 ("the Regulations")

- 2.1 The Regulations came into force on 1 April 2007 and affect all specified documents issued or signed on behalf of charities after 31 March 2008. Existing charities already entered in the Scottish Charity Register will have to ensure that the specified documents issued or signed on behalf of the charity after 31 March 2008 comply with the requirements of the Regulations. For new charities which are entered in the Scottish Charity Register on or after 1 October 2007, the Regulations will come into effect six months after the date of their entry in the Register.
- 2.2 The Regulations apply to all charities entered in the Scottish Charity Register, and will include all of Scotland's Colleges currently enjoying charitable status.
- 2.3 All Colleges entered in the Scottish Charity Register as a registered charity must clearly state the following information on all the specified documents issued or signed on behalf of the college after 31 March 2008 (or six months after the date of their entry in the Scottish Charity Register, whichever is later)
  - The College's name as entered in the Scottish Charity Register;
  - Any other name by which the College is commonly known; and
  - the College's Scottish Charity Number allocated to it at the time of registration (which begins "SC0").

- 2.4 Additionally, the College must also state on relevant documents the fact that it is a charity. This can be done in a number of ways, including using one of the terms referred to in Section 13 of the 2005 Act.
- 2.5 For any body entered in the Scottish Charity Register, one of the following terms may be used:
- charity;
  - charitable body;
  - registered charity;
  - charity registered in Scotland;
- and charities entered in the Scottish Charity Register which are established under the law of Scotland, or which are managed or controlled wholly or mainly from Scotland, are also permitted to use one of the following descriptions:
- Scottish charity; or
  - registered Scottish charity.
- 2.6 Any College which describes itself as a charity by using any of the above terms, or in any other way, without being entered in the Scottish Charity Register will be considered to be misrepresenting itself as a charity (unless it is entitled to refer to itself as a charity in another country and meets the requirements outlined in Section 14 of the 2005 Act).

### **3. Implications for Scotland's Colleges**

- 3.1 Any business letter or email issued externally or signed on behalf of the College must comply with the Regulations. Colleges should note that business letters or email issued or signed on behalf of the College by an agent of the College (including letters and emails sent by solicitors or other professionals) must also comply with the Regulations. Required information must also be applied to the College's advertisements, notices, official publications and any document which solicits money or other property for the benefit of the College.
- 3.2 Required information must be included on promissory notes, endorsements and orders for money or goods. This shall also apply to bills rendered by the College, invoices, receipts and letters of credit. Bills of exchange are also included, however it is important to note that the Regulations have been amended by the Charities References in Documents (Scotland) Amendment Regulations 2008, which clarifies that cheques are not included in the list of documents on which specified information about a charity must be stated.
- 3.3 Required information must be included in any statements of account prepared for the College in accordance with the Charities Accounts (Scotland) Regulations 2006. It is the responsibility of the College's Board of Management to make arrangements for the proper administration of its financial affairs, and to ensure that one of its officers has responsibility for the administration of those affairs. The Board of Management should ensure that the officer responsible for the preparation of the College's statement of accounts is fully aware of the requirements of the Regulations.
- 3.4 Required information must be provided within the College's educational or campaign documentation, in so far as such documentation is issued externally by the College, for example publicity leaflets, promotional materials or college prospectuses. However, this information shall not require to be provided on any documentation which is purely intended for internal circulation amongst the College's staff, for example staff bulletins and internal correspondence between staff. Colleges should also note that this information shall not require to be provided on any documentation which is intended for internal circulation amongst the College's enrolled students. The Regulations are only intended to target documents being issued externally to the general public, in order to provide clarity regarding whether or not a body has charitable status. Enrolled students will have already matriculated with the College,

and shall already have knowledge of the College and its activities (rather than uninformed members of the general public). It is therefore acceptable for Colleges to consider documents such as student handouts, lecture notes and the award of degree certificates to be internal documents and unaffected by the Regulations.

- 3.5 Required information must also be provided within conveyancing and other contractual documentation. It is recommended that this would be most easily provided for by referring to the College's Scottish Charity Number, together with the fact that it is a charity, within the College's legal designation for such documentation.
- 3.6 The Office of the Scottish Charity Regulator ("OSCR") has issued a guidance note on the Regulations<sup>1</sup> which sets out in detail what information needs to be included, what documents are affected and gives examples of acceptable wording.

#### 4. Status of Guidance

This guidance relates only to specific obligations applicable to Scotland's Colleges as a result of the legal requirements of the Regulations (as outlined above), and does not cover any other legal obligations which may apply to Scotland's Colleges under this and any other legislation referred to in this guidance or otherwise.

Thorntons Law LLP on behalf of the Association of Scotland's Colleges. April 2008.

<sup>1</sup> References to Charitable Status Guidance, 31/3/08 downloadable at [www.oscr.org.uk/PublicationItem.aspx?id=12da2ee8-fd5a-43b7-b79c-4a4342b5ba13](http://www.oscr.org.uk/PublicationItem.aspx?id=12da2ee8-fd5a-43b7-b79c-4a4342b5ba13)

