

Charities and Communities

Charities | Training | Governance

Support and Resource Guide for Scottish Charities affected by COVID-19

Over the couple of months, both the UK and Scottish Governments have made multiple announcements on the financial and other support available for people, businesses and charities affected by COVID-19 as have some other organisations.

This document aims to pull together as much information as possible into a single place that would be most relevant to the Scottish charity sector.



We are here to help. Your charity will have its own circumstances and specific challenges. If you'd like to discuss any matters which relate to your charity and how you should respond, please contact a member of our Charities and Communities Team on 01796 472 606 or at j@hmittchell.co.uk, or your usual contact at J. & H. Mitchell W.S.

Whilst our office doors are currently closed, our virtual office remains open and we are continuing to meet our clients, remotely.

As this is a constantly changing situation, we will keep this resource guide on the Charities and Communities section of our website and will update this as we become aware of further relevant developments.

www.jandhmittchell.com/legalservices/charities-communities

This resource guide was **last updated on 26th May 2020** and covers the following topics in relation to Covid-19:

1. Holding meetings
2. AGMs
3. Changing your charity's activities in response to Covid-19
4. OSCR Annual Return
5. Notifiable Events
6. Funding
7. Help for charities with premises
8. Help for charities with employees

9. Help for charities that pay VAT
10. Other sources of help

1. Holding meetings

During this difficult time it is more important than ever that charity trustees can continue to communicate in order to take decisions at this difficult time, you should continue to hold trustee meetings virtually where possible.

Ideally, in order to do so your governing document (Constitution, Articles of Association, Deed of Trust) should cover this. However, during this time OSCR have said that, in the current situation, they are happy that charities hold their meetings in this way even if the governing document doesn't say anything about this. This will allow charity trustees to continue to have discussions and to take important decisions. Where you decide to take this virtual route, you should record that you have done so, thus demonstrating good governance of your charity.

If holding meeting in this way is not covered in your governing document then you should consider amending your governing document so as to allow the Trustees to do so in the future – **but see update below on temporary measures under the Corporate Solvency and Governance Bill 2020, relevant to Companies, Scottish Charitable Incorporated Organisations and Registered Societies.**

If you would like us to check what your governing document says about meetings and advise, we would be happy to do so.

2. AGMs

For charities that are required to have an AGM (either by law or because it is in the charity's governing document) it may not be possible or practical to hold the AGM virtually, in which case such charities may prefer to postpone their AGM. This means that the charity may not be fulfilling what it says in the governing document. OSCR have said that they will be understanding and proportionate regarding that.

There has been legal uncertainty as to the validity of a virtual only AGM, where there is no physical place that the meeting will be held, and in normal circumstance holding a virtual only AGM would be inadvisable, although it appears that help may be on its way (at least temporarily) in the form of new measures proposed under the Corporate Insolvency and Governance Bill 2020, detailed below.

Corporate Insolvency and Governance Bill 2020

The bill provides a relaxation for General Meetings and Board meetings of Companies, SCIO's and Registered Societies held between 26th March and 30th September 2020 in

that these can be held entirely virtually and that votes may be cast electronically, irrespective of what the organisation's governing document may (or may not) say.

The bill also allows for the possibility of extending the period for holding an AGM – if an organisation was legally required to hold an AGM between 26 March and 30 September 2020 then it can validly hold its AGM at any time up until 30 September 2020, even where this is outwith the timescale provided in its governing document and/or by legislation. This may be helpful for larger membership organisations who may find it difficult to conduct an entirely virtual AGM.

The bill is due to come into force by the end of June 2020 and it is important to remember that these measures are only proposed as temporary, to last until 30th September 2020, unless extended.

We are happy to provide practical advice to charities who would usually be making arrangements for their AGM now (or who have already send out their AGM notice) and require guidance as to how they should proceed. Our advice will depend on; the legal structure of the charity; the terms of the charity's governing document; and the size of the charity's membership (if any).

3. Changing your charity's activities in response to COVID-19

If you are changing some of the things your charity does in response to Covid-19 then please check any new proposed activities against your governing document. You must ensure that the charity is continuing to work within its purposes – which it is legally required to do.

If the proposed activities are out with your purposes then the Trustees will either need to reconsider or apply to OSCR for a temporary change to your purposes. For such cases, OSCR have put in place a process aimed at approving such changes as quickly as possible. If you feel you fall into this category, please get in touch and we can help to follow the correct process to make these changes via OSCR as swiftly as possible.

4. OSCR Annual Return – Charities are required to lodge their Annual Return to include the Trustees Annual Report and accounts with OSCR (and accounts with Companies House where the charity is also a UK company) within 9 months of the charity's financial year end. For some charities their governing document will require the accounts to be approved at the charity's AGM. Where the holding of your AGM requires to be postponed then this might make it difficult for some charities to finalise its accounts, and therefore meet the filing deadline with OSCR (and Companies House if the charity is also a UK company).

OSCR have said that no charity will be penalised for late filing, however, as the process for updating the Scottish Charity Register is automated, there may be some cases where charities are marked as being late on the Scottish Charity Register. OSCR are currently working to see what they can do to resolve that issue.

If a charity knows that it is not going to be able to submit its accounts and annual return on time, then they should contact info@oscr.org.uk.

As OSCR's office is closed any accounts that have been posted may be processed slower. If you require to post accounts to OSCR you should email info@oscr.org.uk to let them know.

At this time OSCR will allow charities to submit annual reports and accounts with typed signatures to help charities meet OSCR deadlines and finalise accounts without physical or 'wet' signatures.

For Charities that are also UK Companies - Charities can apply to Companies House for up to a three month extension to file accounts.

If the charity does not apply for an extension and the accounts are filed late, an automatic penalty will be imposed. The registrar has very limited discretion not to collect a penalty.

<https://www.gov.uk/government/news/companies-to-receive-3-month-extension-period-to-file-accounts-during-covid-19>

The Corporate Solvency and Governance Bill 2020 also allows for the Secretary of State to extend filing deadlines.

5. **Notifiable Events** – If the current situation is having a negative impact on your charity the charity trustees should consider whether they should be reporting the charity's circumstances to OSCR as a Notifiable Event.

Notifiable events do not cover every incident, only those that may have a significant impact on a charity.

The same would apply in the current situation. However, OSCR have said they would only need to hear about something if it was likely to have a serious impact on a charity in the longer term.

<https://www.oscr.org.uk/managing-a-charity/notifiable-events/>

6. Funding

Whilst we have listed some funding that we have identified below, new funds are announced regularly and existing funds close from time to time due to demand.

We would recommend that charities refer to The Scottish Council for Voluntary Organisations (SCVO), for the most up-to-date information. SCVO which have a central updated resource of funding available to support through the crisis.

<https://scvo.org.uk/support/covid-19>

SCVO have also set up a dedicated Third Sector Bulletin that organisations can sign-up to, in order to receive funding updates.

<https://scvo.org.uk/support/coronavirus/what-scvo-is-doing/bulletin>.

The Third Sector Resilience Fund - delivered by the social enterprise agency Firstport, Social Investment Scotland and the Corra Foundation, will provide grants of between £5,000 and £100,000 or fully flexible zero per cent interest loans of £50,000 or more.

The fund is open to charities, social enterprises or voluntary organisations based in Scotland and/or already delivering services and activities in Scottish communities, and which need the funding to stabilise cash flows directly as a result of the impact of Covid-19.

<https://scvo.org/support/coronavirus/your-funding/for-organisations/third-sector-resilience-fund>

The Scottish Government **Wellbeing Fund** - established to support organisations across the third sector that are providing important services to people who are most affected by the coronavirus pandemic. Round 2 of the fund has now closed.

Community Response, Recovery & Resilience Fund - The RRR Fund will support local charities and grassroots organisations across Scotland to help them respond to the outbreak of the coronavirus pandemic and recover from its impact.

Most immediately, Response is about providing emergency funding for local charities and grassroots organisations who are currently supporting some of Scotland's most affected and vulnerable people.

In the medium and longer term, Recovery and Resilience will be about funding a wider group of local charities and community organisations whose operations and finances have been affected so they can recover, re-establish or re-design their activities once the outbreak eases in response to community needs at that point.

[https://www.foundationscotland.org.uk/programmes/the-national-emergencies-trust-\(net\)/](https://www.foundationscotland.org.uk/programmes/the-national-emergencies-trust-(net)/)

Creative Scotland has launched three funding programmes designed to provide further support to sustain the country's creative community during the COVID-19 outbreak.

The most relevant programme for Arts charities will be the Open Fund which aims to provide support for individuals and organisations to sustain their creative development in the coming months.

<https://www.creativescotland.com/what-we-do/latest-news/archive/2020/03/covid-19-impact-funds>

Covid-19 Rapid Response Fund - The Fund has been established by the William Grant Foundation, Faith in Community Scotland and the National Lottery Community Fund so that Scotland's network of local faith groups and related community organisations can provide immediate support for individuals and families during the early stages of COVID-19.

<https://www.faithincommunity.scot/covid19info>

Support through the Coronavirus Business Interruption Loan Scheme - The temporary Coronavirus Business Interruption Loan Scheme supports SMEs with access to loans, overdrafts, invoice finance and asset finance of up to £5 million and for up to 6 years.

The government will also make a Business Interruption Payment to cover the first 12 months of interest payments and any lender-levied fees, so smaller businesses will benefit from no upfront costs and lower initial repayments.

many charities and social enterprises could struggle to gain access the government's £330bn scheme available to businesses, because of a lack of social lenders accredited within the scheme and the fact that charities that get less than half of their income through trading will not be eligible.

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses#support-for-businesses-through-the-coronavirus-business-interruption-loan-scheme>

The Bounce Back Loan scheme - helps small and medium-sized businesses to borrow between £2,000 and £50,000.

The Scheme is open to most businesses, regardless of turnover, who meet the eligibility criteria. There is a requirement for more than 50% of the income of the business (together with that of any member of any group of which it is a part) is derived from its trading activity: this confirmation is not required if the borrower is a charity or a further education college. The UK government will 100% of the loan and there won't be any fees or interest to pay for the first 12 months.

<https://www.gov.uk/guidance/apply-for-a-coronavirus-bounce-back-loan>

Big Society Capital is to launch a £100m emergency loan fund to help charities deal with cash-flow problems caused by the coronavirus pandemic.

BSC said its Emergency Liquidity Facility would allow trading charities and social enterprises to borrow money for working capital or to help with cash flow.

CAF Coronavirus Emergency Fund is a fund is to help smaller charitable organisations in the UK affected by the impact of Covid-19. Grants of up to £10,000 are

available. Applications for the current round of funding are now paused due to demand. Interested organisations should look out for further announcements by checking the CAF website or their social media channels.

www.cafonline.org/charities/grantmaking/caf-coronavirus-emergency-fund

Heritage Emergency Fund - £50million fund to support the heritage sector as an immediate response to the coronavirus (COVID-19) outbreak. The fund will be available for grants of between £3,000 and £50,000. It is available to organisations across the full breadth of heritage, including historic sites, industrial and maritime heritage, museums, libraries and archives, parks and gardens, landscapes and nature.

Organisations which have received funding in the past or are either a current grantee, or still under contract following a previous grant, can apply.

www.heritagefund.org.uk/news/heritage-emergency-fund-launches-help-sector

Standard Life Foundation - funding available for work directly related to the pandemic, addressing specific challenges and helping to contribute to social change which tackles financial problems and improves living standards for those on low-to-middle incomes in the UK. Grants will range from £5,000 to larger amounts.

www.standardlifefoundation.org.uk/funding/coronavirus_funding

The Leathersellers Company Small Grant scheme, which funds up to £3000, is prioritising grants to support small charities, with a response within 4 weeks to funding requests. Supporting nursing care to vulnerable people is one of the key areas they are looking to support. Deadline for applications is May 11th 2020.

www.leathersellers.co.uk/small-grants-programme/

Princes Countryside Fund Rural Response Emergency Grants Programme - the fund assists projects that support farm businesses or other rural business and communities to cope. Grants of up to £2,500 are intended for costs outside of regular expenditure. They are available for projects starting in the next six months.

<https://www.princescountrysidefund.org.uk/grant-giving-programme/>

National Lottery Community Fund - all the funding decisions the National Lottery Community Fund make for the next six months (up to £300m of National Lottery funding) will be devoted to addressing the crisis.

<https://www.tnlcommunityfund.org.uk/funding/programmes?location=scotland>

Directory of Social Change have created a useful hub for UK charities to access available funding programmes.

www.dsc.org.uk/content/coronavirus-funding-updates/

7. **Help for Charities and organisations with Premises**

Grants for small businesses: Grant support is now available from the Scottish Government to help businesses deal with the impact of COVID-19. The purpose of these one-off grants is to help protect jobs, prevent business closure and promote economic recovery.

Two types of grant are available to ratepayers:

£10,000 grant to ratepayers of businesses in receipt of the Small Business Bonus Scheme or Rural Relief. Business with a rateable value up to £18,000 are eligible. You can also get this grant if you applied for Nursery Relief or Disabled Relief but are eligible for the Small Business Bonus Scheme.

Retail, hospitality and leisure business ratepayers with a rateable value between £18,001 - £50,999 can apply for a one-off grant of £25,000.

Charities can apply for the £10,000 with respect to any property which are is in receipt of any Charitable Rates Relief or Sports Relief but are otherwise eligible for the Small Business Bonus Scheme and £7,500 on any additional eligible properties.

Rates Relief - To help owners of non-domestic properties deal with the impact of COVID-19, the Scottish Government has made changes to non-domestic rates (business rates) for 2020-21. The Scottish Government has introduced extra rates reliefs (discounts). Many charities will already benefit from charity relief so this will not be relevant to all.

All non-domestic properties in Scotland will get a 1.6% rates relief. This relief effectively reverses the change in poundage for 2020-21. You do not need to apply for this relief as it will be applied to your bill by your local council.

Retail, hospitality and leisure businesses will get 100% rates relief. To get this relief, a property has to be occupied. Properties that have closed temporarily due to the government's COVID-19 advice will be treated as occupied.

You do not need to apply for this relief and it will be applied to your bill by your local council.

Water Rates – Most charities will already be eligible for an exemption for water, waste and drainage rates. For charities that are not, a package worth £60 million has been agreed with water companies to help businesses that are facing difficulties with their water charges. Scottish Water has agreed to suspend pre-payment charges for licensed

providers for two months, beginning with the April payment. This means water suppliers can now be flexible with their customers. We would encourage charities that pay water rates to contact their provider to discuss.

8. Help for charities with employees

Coronavirus Job Retention Scheme: This funding will be open to all employers with a PAYE payroll scheme that was created and started on or before 28 February 2020, including charities. Employers can apply for grants of 80% of furloughed employees' (employees on a leave of absence) monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage, provided they keep the worker employed. The scheme will cover the cost of wages backdated to 1 March 2020, if applicable.

Guidance for employers is available on GOV.UK. You may also find the guidance for employees helpful.

Your charity may be entitled to **reclaim the costs of Statutory Sick Pay (SSP)** for sickness absence. This refund will cover up to two weeks' SSP per eligible employee who are either ill or been told to self-isolate because of COVID-19. This is in line with the recommended isolation period.

Employers with fewer than 250 employees will be eligible. The size of an employer will be determined by the number of people they employed as of 28 February 2020. Employers will be able to reclaim expenditure for any employee who has claimed SSP (according to the new eligibility criteria) as a result of COVID-19. The UK Government will work with employers over the coming months to set up the repayment mechanism for employers as soon as possible. Existing systems are not designed to facilitate employer refunds for SSP. The eligible period for the scheme began on 13 March

9. Help for charities that pay VAT

The UK government announced on Friday 20 March that all UK businesses may **defer VAT payments** due between 20 March and 30 June 2020. There is no application required and the deferral can be applied automatically. Taxpayers must cancel their direct debit instruction for their VAT payment. If this is not actioned HMRC will take the payment on the normal due date. If you pay by bank transfer this step is not required. VAT refunds and claims will be paid as usual under the normal rules. The deferred VAT will need to be repaid no later than the end of the 2020/2021 tax year.

10. Other Help

Insurance cover – Charities with insurance policies that cover pandemics or government-ordered closures should be covered under their policies. However, the terms and conditions of any insurance policy should be examined closely, as many standard business interruption insurance policies will not cover pandemics.

A **national service providing free advice** on coronavirus for Scotland has been launched run by the charity Advice Direct Scotland, offers practical advice and information on issues including employment, housing and personal finance, as well as cancellations and consumer rights.

It can be contacted on 0808 800 9060 between 9am and 5pm on Mondays to Friday, and via live webchat or email at www.coronavirusadvice.scot.

A **free COVID-19 and Fraud Webinar** ‘What to watch out for and how to stay safe’, produced by the Fraud Advisory Panel and the Charity Commission for England and Wales on COVID-19 and charity fraud is now available on the on the Charity Fraud Awareness Hub. This webinar will highlight some of the common ways that charities may be affected by fraud during the COVID-19 pandemic and provide some simple prevention tips.

Our Charities and Communities Team



Sarah Brown – Sarah is a Partner at J. & H. Mitchell W.S. and Head of their Charities and Communities Team. Sarah has a significant portfolio of charity clients locally, regionally and internationally, covering a variety of sectors. Sarah is regularly asked to deliver training to charities throughout Scotland, speak at events, and deliver online webinar training sessions to help charity trustees and managers understand their legal responsibilities and follow best practice. Sarah has particular expertise in helping charities change their legal structure.



Jenny Temblett – Jenny brings a wealth of experience in Business Law having preciously practiced at a large international law firm, and is a great asset to the team. Jenny assists with a wide range of charity and legal matters and has particular expertise in dealing with commercial contracts.



Colin Liddell – Colin retired as senior partner of the firm in March 2019 and stays on as a Consultant. the first solicitor in Scotland to be accredited as a specialist in Charity Law. Currently, Colin is Chair of Pitlochry Festival Theatre, and a Trustee of a number of other charities including Royal High School Preservation Trust and Dunard Fund. Colin is a contributing author to ‘*A Practical Guide to Charity Law in Scotland*’ (2016).

Disclaimer

The information in this newsletter provides only an overview of legislation in force at the date of publication and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this newsletter can be accepted by J & H Mitchell W.S.