

Charities and Communities

Charities | Training | Governance

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

In the last few weeks, 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 offices are currently closed we are continuing to work, and 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 29th March 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.

If you would like us to check what your governing document says about meeting 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.

Scottish Charitable Incorporated Organisations (SCIOs) require to hold their Annual Members Meeting at least once every 15 months thereafter.

Charities that are UK Companies require to hold their AGM within 15 months of the previous AGM, if they have an AGM.

For Charities that are UK Companies – in terms of UK Company Law there is legal uncertainty as to the validity of a virtual only AGM, where no physical meeting is held and in normal circumstance holding a virtual only AGM would be unadvisable, however on 28th March the UK Government announced that they will be introducing measures to allow companies that are required to hold AGMs to do so flexibly in a matter compatible with public health guidance, to include postponing or holding the AGM online, or by phone using only proxy voting. At the time of writing further guidance or information is not yet available and affected charities should look out for further information and guidance becoming available from the UK Government.

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).

At the time of writing OSCR are not planning to extend filing deadlines and are encouraging charities to continue to try to get these to them on time, or as much information that they can provide.

OSCR have said that they understand that it might be difficult for some and we will take an understanding and proportionate approach to this.

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.

Be minded that if an extension is awarded that the charity would still require to endeavour to meet the OSCR deadline, unless OSCR announce an extension in due course.

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

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

Given the Prime Minister has said that the Culture Secretary and the Chancellor are 'looking at a package of measures to support charities' it is hoped that further financial support will be announced to support the Charity Sector. In the meantime details of sources of funding information that we have identified can be found below.

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 primarily 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 have pledged a £50 million '**Wellbeing Fund**' to support their third sector partners, as well as other organisations, who will require additional capacity to deal with challenges as a result of COVID-19. This fund will be targeted at organisations who specifically assist those who are already vulnerable, for example people experiencing homelessness, fuel poverty or difficult living circumstances. Details of how to apply have not yet been announced at the time of writing.

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>

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.

The Scottish Council for Voluntary Organisations (SCVO) have a central resource where other funds can be found, including those from the government that offer funding due to loss of income, or other reasons.

<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>

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.

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.

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 ensure charity trustees and managers ensure that they 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 previously 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.