
CHARITABLE DE-REGISTRATION OF SBC COMMON GOOD FUNDS

Report by Acting Chief Financial Officer

SCOTTISH BORDERS COUNCIL

30 March 2023

1 PURPOSE AND SUMMARY

- 1.1 **This report advises Members of the intention by the Office of the Scottish Charity Regulator (OSCR) to remove the SBC Common Good Funds, charity number SC031538, from the Scottish Charity Register (the Register).**
- 1.2 The 12 Common Good Funds (Coldstream, Duns, Eyemouth, Galashiels, Hawick, Innerleithen, Jedburgh, Kelso, Lauder, Melrose, Peebles and Selkirk) are registered with the Office of the Scottish Charity Regulator (OSCR) as 1 registered charity, registration number SC031538.
- 1.3 A letter received from OSCR in December 2022 is attached at Appendix 1. This provides advance notification of the intention to remove the SBC Common Good Funds, registration number SC031538, from the Register, and outlines:
- The reason for the decision
 - The process by which the Charity will be removed from the Register
 - The effect of removal
- 1.4 OSCR has concluded that:
1. Scottish Borders Common Good is not a 'body' with a constitution distinct and separate from the Council that is capable of being entered in the Register
 2. The Charity does not meet the charity test because it does not have purposes that consist only of one or more of the charitable purposes in section 7(2) of the 2005 Act
 3. Because it has been concluded that the Charity does not have wholly charitable purposes an assessment of public benefit has not been carried out
- 1.5 The Council's Chief Legal Officer and Acting Chief Financial Officer agree with OSCR's conclusions that this is the correct approach. Following deregistration, annual accounts will not be prepared, audited and submitted to OSCR. The Common Good funds will instead be consolidated within the Council's statutory accounts. Outturn reports will continue to be presented to Common Good fund Committees setting out the annual income and expenditure associated with each fund and assets they hold on their balances sheet at 31 March each year. Separate records will still be maintained for each Common Good funds and current monitoring arrangements will continue.

2 RECOMMENDATIONS

- 2.1 It is recommended that Scottish Borders Council agrees with the notification from OSCR to remove the SBC Common Good Funds, charity number SC031538, from the Register and therefore resolves not to challenge the OSCR decision.**

3 BACKGROUND

- 3.1 The 12 Common Good Funds (Coldstream, Duns, Eyemouth, Galashiels, Hawick, Innerleithen, Jedburgh, Kelso, Lauder, Melrose, Peebles and Selkirk) are registered with the Office of the Scottish Charity Regulator (OSCR) as 1 registered charity, registration number SC031538.
- 3.2 The original registration was by Borders Regional Council prior to 1995, when charity registration was managed by HM Revenue & Customs. The reasons for this historic decision are not clear and records no longer exist to support the rationale. It was possibly to take advantage of tax benefits available at that time with regards to investment income, particularly in relation to share dividends. These tax benefits are no longer available, and there exists an anomalous position whereby the majority of Common Good Funds controlled by Scottish local authorities are not registered charities but those in the Borders still carry this designation.
- 3.3 There are particular costs associated with the accounting and auditing arrangements for charities, and these could be mitigated were the Funds not registered as a charity. The process for deregistering charities with OSCR has not previously been clear until now.

4 OFFICE OF THE SCOTTISH CHARITY REGULATOR (OSCR)

- 4.1 A letter received from OSCR in December 2022 is attached at Appendix 1. This provides advance notification of the intention to remove the SBC Common Good Funds, registration number SC031538, from the Register, and outlines:
- The reason for the decision
 - The process by which the Charity will be removed from the Register
 - The effect of removal
- 4.2 A charity is a body entered in the Register. OSCR may enter a body in the Register and allow a body to remain in the Register only if it considers that the body meets the charity test as set out in sections 7 and 8 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). The charity test comprises the following:
1. Assessment of whether the Charity is a 'body'
 2. Assessment of whether the Charity has only charitable purposes
 3. Assessment of whether the Charity provides public benefit
- 4.3 OSCR has concluded that:
1. Scottish Borders Common Good is not a 'body' with a constitution distinct and separate from the Council that is capable of being entered in the Register
 2. The Charity does not meet the charity test because it does not have purposes that consist only of one or more of the charitable purposes in section 7(2) of the 2005 Act
 3. Because it has been concluded that the Charity does not have wholly charitable purposes an assessment of public benefit has not been carried out

- 4.4 The Council's Chief Legal Officer and Acting Chief Financial Officer agree with OSCR's conclusions that this is the correct approach. The decision to remove the Charity will be made under section 30(1)(b) of the 2005 Act. It is the intention that the removal will take effect from 31 March 2023.
- 4.5 Scottish Borders Council will have a right to request a review of the formal decision during the 21 day period commencing on the date that the formal notice is issued in early March 2023. The procedure for requesting a review will be set out in the formal notice.
- 4.6 Once removed from the Register there will be no duty to account to OSCR and there will be no requirement to provide final accounts for the financial year ending on 31 March 2023.

5 IMPLICATIONS

5.1 Financial

There is an estimated charge of £1,000 for audit costs of the Common Good Fund accounts for 2022/23 which will no longer be applicable. This will be redirected to fund inflationary increases in the Council's external audit fees.

5.2 Risk and Mitigations

Following deregistration, annual accounts will not be prepared, audited and submitted to OSCR. The Common Good funds will instead be consolidated within the Council's statutory accounts. Outturn reports will continue to be presented to Common Good fund Committees setting out the annual income and expenditure associated with each fund and assets they hold on their balances sheet at 31 March each year. Separate records will still be maintained for each Common Good funds and current monitoring arrangements will continue.

5.3 Integrated Impact Assessment

There is no impact or relevance to Equality Duty or the Fairer Scotland Duty for this report.

5.4 Sustainable Development Goals

There are no economic, social or environmental effects arising from the proposals contained in this report.

5.5 Climate Change

There are no effects on climate change arising from the proposals contained in this report.

5.6 Rural Proofing

There are no effects on rural proofing arising from the proposals contained in this report.

5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Scheme of Administration or Scheme of Delegation arising from the proposals contained in this report.

6 CONSULTATION

6.1 The Chief Legal Officer (including as Monitoring Officer), the Chief Officer Audit and Risk, Director (People Performance & Change), the Clerk to the Council and Communications have been consulted and their comments have been incorporated into this final report.

Approved by

Suzy Douglas
Acting Chief Financial Officer

Signature

Author(s)

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Background Papers:

Previous Minute Reference:

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