
ARGYLL AND BUTE COUNCIL

OBAN COMMON GOOD FUND

CUSTOMER SERVICES

30 MARCH 2023

**PROPOSED DE-REGISTRATION OF OBAN COMMON GOOD FUND FROM
THE CHARITIES REGISTER**

1.0 EXECUTIVE SUMMARY

Notification has been received from OSCR of the intention to de-register the Oban Common Good Fund with effect from 31 March 2023.

OSCR base their decision on their assessment of whether the charity is a 'body' and whether the charity only has charitable purposes. They conclude that the Oban Common Good fund is not a 'body' with a constitution distinct and separate from the Council and that while the fund may be used for charitable purposes, it is not confined to doing so, taking the view that the single requirement for administering common good funds is in "having regard to the interests of the inhabitants of the area to which the Common Good formerly related".

While the decision can be challenged, the reasons for initially registering the Fund as a charity were to maximise the return on investment generating more income for distribution. The benefits previously gained are no longer applicable meaning there is no direct financial benefit and therefore there do not appear to be any grounds to challenge this decision. On this basis it is suggested that the Trustees note the decision to de-register, and consider whether in light of this they wish to review the application and distribution criteria.

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2.0 INTRODUCTION

- 2.1 This report advises trustees of the notice of an intention to remove the Oban Common Good Fund from the Scottish Charity Register, it being the view of OSCR, who regulate such matters, that the fund does not meet the charity test.

3.0 RECOMMENDATIONS

- 3.1 To note the notice for removal from the Scottish Charity Register that will come into effect at the end of the current financial year and to consider whether to make changes to the application and distribution criteria as a result of the de-registration.

4.0 DETAIL

- 4.1 OSCR have provided advance notice to Argyll and Bute Council of their intention to remove the Oban Common Good Fund from the Scottish Charity Register, and that they intend for this date of removal to take effect from 31 March 2023 to coincide with the end of the financial year.
- 4.2 OSCR base the charity test on the following criteria:
1. It's purpose consist only of one or more of the charitable purposes listed in section 7(2) of the 2005 Act; and
 2. It provides (or, in the case of an applicant provides or intends to provide) public benefit in Scotland or elsewhere.
- 4.3 While the Oban Common Good Fund was listed on the current Charities Register on 1 April 2006, Oban Common Good Fund was initially registered with HMRC as a charity in 1992 most likely to benefit from ACT (advance corporation tax) and thereby maximise the funding available to provide support to local charities and voluntary groups. These benefits no longer apply and as there is no direct financial effect on the investment fund, there does not appear to be any reason to challenge the de-listing.

- 4.4 In making the determination, OSCR took account of the purpose of a Common Good Fund, including the vesting of common good property in the newly created unitary authorities with effect from 1 April 1996. They noted that this arrangement does not involve the creation of a trust of any other form of body that is separate in identify from the Council, reaching the view that Oban Common Good Fund is not a 'body' with a constitution distinct and separate from the Council that is capable of being entered in the Register.
- 4.5 OSCR further assessed whether the Charity only has charitable purposes and on this point concluded that while the funds were being allocated to charitable purposes, it is not confined in doing so and therefore it does not have purposes that consist only of one or more of the charitable purposes set out in Section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005.
- 4.6 It appears that there is a consistent approach by OSCR in other local authority areas with regard to de-registering their Common Good Funds based on the same test.
- 4.7 In de-registering the Oban Common Good Fund will no longer require to prepare annual accounts in accordance with the Charities SORP (Statement of Recommended Practice).

5.0 CONCLUSION

- 5.1 There is no clear benefit in terms of appealing the decision to remove the Oban Common Good Fund from the Register of Charities in Scotland given that the financial benefits that existed are no longer relevant. It is recommended that the Trustees note the correspondence from OSCR and consider whether they wish to carry out a review the current application criteria and distribution guidance.

6.0 IMPLICATIONS

- 6.1 Policy – The council does not have a policy of registering common good funds with OSCR, the Oban funding being the only fund that had been registered in that way.
- 6.2 Financial – None. The benefits initially sought in terms of protecting the investment no longer apply.
- 6.3 Legal – None
- 6.4 HR - None
- 6.5 Fairer Scotland Duty:
6.5.1 Equalities – protected characteristics - None
6.5.2 Socio-economic duty – none
6.5.3 Islands – none
- 6.6 Climate Change – none
- 6.7 Risk - None
- 6.8 Customer Service - The current distribution guidance and

application criteria have proved to be an efficient way of dealing with different types of applications. Removal of the charitable status may open up the fund to other applicants.

Douglas Hendry
Executive Director with responsibility for Governance

Policy Lead – Alastair Redman
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For further information contact: David Logan, Head of Legal & Regulatory Support, Kilmory, Lochgilphead – 01546 604322