SW/NS/NIN/2/25

Proposed Constitutional Changes to the Nine Incorporated Trades of Dundee

Following the investigation into the Nine Trades, carried out by OSCR, a potential long term solution to the Constitutional problem was discussed at a meeting with OSCR's representatives and is seen as a way forward.

The Nine Incorporated Trades has been in existence for many centuries but, like many ancient organisations, the question of updating — or in some cases introducing — a formal Constitution has not been addressed. Until the Scottish Charity Regulator was brought into existence in 2005, many older organisations had been granted Charitable Status by HMRC purely on the basis of their activities with no reference to any Constitution. Since OSCR took control of Charity regulation in Scotland in 2005, there has been a progressive updating of the Constitutions of many old charities. The Nine Trades — or lack thereof — would have come to OSCR's attention at some point in the future but this was accelerated by the complaint which was submitted to them.

There are two aspects to the Nine Trades. One is its original role as the organisation responsible for the oversight of individual trades within the city of Dundee. This work gave the organisation a high status within the city and that status has been maintained through the centuries. Today it is one of the most prominent civic organisations within the city.

The other side of the Nine Trades is its charitable work. This originated in its role providing support for craftsmen who had fallen on hard times and for their families and dependents. While this direct type of support has significantly diminished in recent years, it has not entirely disappeared. What has significantly increased is the charitable support to the wider community provided by the Nine Trades, particularly in the field of education.

While, for the most part, these activities sit comfortably side by side, there are issues in that charity law requires all the assets of a charity to be used exclusively for charitable purposes. It has been necessary to accept that some of the expenditure and activities carried out under what could be described as "The Trades' side" do not properly fall within the definition of charitable purposes.

The proposed solution to this dilemma is that a new charity will be created which it is suggested will be called "The Nine Incorporated Trades of Dundee General Fund Charity." This new charity, as is indicated by its name, reflects the charitable work that the Nine Trades has conducted throughout the centuries through the vehicle of the General Fund Court. Once this new charity has been created, the assets of the Nine Incorporated Trades will be transferred from the existing charity to the new charity. Once that process has been completed, the existing Nine Trades will be removed from the Charity Register.

The effect of this change is that the Nine Incorporated Trades of Dundee will continue to exist as an organisation, as it has done for many hundreds of years. It will continue to carry out its functions in relation to the Trades and its position within the civic life of the city of Dundee. However, the Nine Incorporated Trades will no longer be a charity and all the charitable work will be carried out through the vehicle of the new charity — The Nine Incorporated Trades of Dundee General Fund Charity.

The Nine Trades, despite being described as the Nine Incorporated Trades of Dundee, is in fact an unincorporated body and there are some potential risks to those who act as Trustees of an unincorporated body particularly in situations where there are significant property interests as is the case with the Nine Trades. It is therefore intended that the new charity will be established as a Scottish Charitable Incorporated Organisation – a SCIO. The new body will have trustees who will be responsible for the management of the charity within the framework of the current and future legislation. There will be a modern, clearly understandable, constitution and, because its activities will be entirely charitable, there will be significantly less opportunity for problems of the sort that arose recently to recur.

Once the new charity is in existence and the assets of the existing body have been transferred to it, the current General Fund Court will cease to exist and be replaced by the new charity.

Any organisation which wishes to operate as a charity has to meet the charitable test established by OSCR. OSCR has set out a number of purposes which are classed as charitable. The proposed charity – following on the work already done by the Nine Trades – is able to satisfy a number of these. They are :‑

1. The prevention or relief of poverty – the Nine Trades is already engaged in this work by way of payment of pensions or grants to tradesmen or their dependents.
2. The advancement of education – the Nine Trades is already engaged in the provision of bursaries, etcetera.
3. The advancement of a religion – the Nine Trades is, and has been for many years, engaged in supporting the Trades Kirk.
4. The advancement of health.
5. The advancement of citizenship or community development.
6. The advancement of the arts, heritage, culture or science – the Nine Trades cover both 5 and 6 in their role in the civic life of the city of Dundee.
7. Relief of those in need – this is similar to number 1 and already within the scope the Nine Trades activities.
8. Any other purpose that may reasonably be regarded as analogous to the preceding purposes. This purpose is put into just about every new constitution to reduce the risk of getting caught out.

The new charity as mentioned above will be a SCIO and will require trustees. It is proposed that the trustees will be:‑

1. The Deacon Convenor
2. The Collector
3. The Clerk
4. The Immediate Past Deacon Convenor

5/6. Two members of the Nine Trades

7/8. Up to two persons deemed suitable to act as trustees if so invited by all of the other six trustees. (This to be checked and confirmed before circulation.)

The Deacon Convenor, Collector, and Clerk will serve as trustees during their respective terms in office. The other trustees will serve a term not exceeding two years in length. The limitation of two years serving as a trustee shall not apply to persons serving as Deacon Convenor, Collector, Clerk, or Immediate Past Deacon Convenor, providing that the service in excess of two years shall only apply while they hold of these offices. Any person who has been a trustee and has completed the maximum permissible period of service shall be eligible to become a trustee in the future once a period of twelve months has passed since they demitted office as a trustee.

The trustees will have the power to invite members of the Nine Trades as they consider necessary to attend trustees meetings but without voting rights.