

This Statutory Instrument supersedes S.I. 1993/2036 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

1993 No. 2254 (S.241)

CHARITIES

The Public Trusts (Reorganisation) (Scotland) (No.2) Regulations 1993

<i>Made</i>	- - - -	<i>15th September 1993</i>
<i>Laid before Parliament</i>		<i>16th September 1993</i> <i>22nd September</i>
<i>Coming into force</i>	- -	<i>1993</i>

The Secretary of State, in exercise of the powers conferred on him by sections 10(13) and 11(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Public Trusts (Reorganisation) (Scotland) (No.2) Regulations 1993 and shall come into force on 22nd September 1993.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“the Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;

“small trust” means a public trust in respect of which section 10(2) of the Act applies;

“trust deed”, in relation to a public trust, means a trust deed of or other document constituting the trust;

“trustees” means the trustees of a small trust,

and any other expression used in these Regulations which is also used in Part I of the Act shall have the same meaning in these Regulations as it has in that Part.

Small trusts: advertisement

3.—(1) Subject to paragraphs (2) and (3) below, not later than 28 days after the date when the trustees of a small trust have passed a resolution under section 10(3), (8) or (10) of the Act or, if that date is before the date of coming into force of these Regulations, the date when these Regulations come into force, they shall publish, in a newspaper circulating throughout Scotland or, if the purposes of the trust relate to a particular locality, in a local newspaper circulating in that locality, a notice—

- (a) in the case where the trustees have passed the resolution under section 10(3) of the Act, in the form set out in Schedule 1 to these Regulations;
- (b) in the case where the trustees have passed the resolution under section 10(8) of the Act, in the form set out in Schedule 2 to these Regulations;
- (c) in the case where the trustees have passed the resolution under section 10(10) of the Act, in the form set out in Schedule 3 to these Regulations,

or in a form substantially to the like effect.

(2) Where the trustees of more than one small trust have each passed a resolution under section 10(8) of the Act providing that the trusts be wound up and that the assets of the trusts be transferred to the same trust, the trustees may, instead of publishing a separate notice in respect of each trust in terms of paragraph (1)(b) above, publish a combined notice in the form set out in Schedule 4 to these Regulations or in a form substantially to the like effect, which combined notice shall be published—

- (a) not later than 28 days after the earliest date when the trustees of any of the trusts have passed the resolution under that section or, if that date is before the date of coming into force of these Regulations, the date when these Regulations come into force; and
- (b) in a newspaper circulating throughout Scotland or, if the purposes of all the trusts relate to a particular locality, in a local newspaper circulating in that locality.

(3) Where the trustees of more than one small trust have each passed a resolution under section 10(10) of the Act providing that the trusts be amalgamated with each other, the trustees may, instead of publishing a separate notice in respect of each trust as required by paragraph (1)(c) above, publish a combined notice in the form set out in Schedule 5 to these Regulations or in a form substantially to the like effect, which combined notice shall be published—

- (a) not later than 28 days after the earliest date when the trustees of any of the trusts have passed the resolution under that section or, if that date is before the date of coming into force of these Regulations, the date when these Regulations come into force; and
- (b) in a newspaper circulating throughout Scotland or, if the purposes of all the trusts relate to a particular locality, in a local newspaper circulating in that locality.

Small trusts: notification to Lord Advocate

4. The trustees shall send to the Lord Advocate the following documents to arrive not later than 7 days after the date of publication of the notice in a newspaper as required by regulation 3 above, namely:—

- (a) a copy of the trust deed;
- (b) a copy of the newspaper containing the published notice;
- (c) a copy of the most recent accounts of the trust; and
- (d) in the case where the resolution is passed under section 10(3) of the Act—
 - (i) a copy of the resolution;
 - (ii) a statement of the date as to when the trustees propose, subject to section 10(14) of the Act, to give effect to the resolution; and

- (iii) a statement of the reasons as to why the trustees consider that they have fulfilled their obligations under section 10(4) and (5) of the Act and, where the trust is a recognised body, under section 10(6) of the Act, together with, in the latter case, any supporting evidence from the Commissioners of Inland Revenue confirming the matters as to which the trustees are required to ensure by section 10(6) of the Act;
- (e) in the case where the resolution is passed under section 10(8) of the Act—
 - (i) a copy of the resolution;
 - (ii) a statement of the date as to when the trustees propose, subject to section 10(14) of the Act, to give effect to the resolution;
 - (iii) a statement of the reasons as to why the trustees consider that they have fulfilled their obligations under section 10(9)(a) of the Act and, where the trust is a recognised body, under section 10(9)(b) of the Act, together with, in the latter case, any supporting evidence from the Commissioners of Inland Revenue confirming the matters as to which the trustees are required to ensure by section 10(9)(b) of the Act;
 - (iv) a statement as to what is to happen about any liabilities of the trust and whether those liabilities are to be met by the trustees of the trust or trusts to which it is proposed to transfer the assets of the small trust; and
 - (v) a copy of a letter from the trustees of the trust or trusts to which it is proposed to transfer the assets of the small trust confirming that those trustees will consent to the transfer of those assets; and, if necessary, to meet any liabilities of the small trust; and
- (f) in the case where the resolution is passed under section 10(10) of the Act—
 - (i) a copy of the resolution;
 - (ii) a statement of the date as to when the trustees propose, subject to section 10(14) of the Act, to give effect to the resolution;
 - (iii) a statement of the reasons as to why the trustees consider that they have fulfilled their obligations under section 10(11)(a) of the Act and, where the trust is a recognised body, under section 10(11)(b) of the Act, together with, in the latter case, any supporting evidence from the Commissioners of Inland Revenue confirming the matters as to which the trustees are required to ensure by section 10(11)(b) of the Act; and
 - (iv) a copy of a letter from the trustees of the other trust or trusts with which it is proposed that the small trust will be amalgamated confirming that those trustees will agree to such amalgamation.

Small trusts: objections

5.—(1) Where, following the publication of the notice in a newspaper as required by regulation 3 above, any person with an interest in the purposes of the small trust wishes to object to what is proposed in the resolution passed by the trustees, he shall send his objection in writing to the trustees at the address specified in the notice to arrive not later than 14 days after the date of publication of the notice in the newspaper and shall state, in his objection—

- (a) his name and address;
- (b) the nature of his interest in the purposes of the trust; and
- (c) the nature of his objection and the reasons for that objection.

(2) The trustees shall send to the Lord Advocate the following documents to arrive not later than 14 days after the end of the period of 14 days referred to in paragraph (1) above:—

- (a) a copy of any objection which has been received by them; and

(b) a letter containing any comments which they may have upon that objection, and shall, at the same time, send a copy of that letter to the objector who made the objection and shall inform him of—

- (i) his right under paragraph (3) below to send to the Lord Advocate comments upon the points raised in that letter;
- (ii) the address of the Lord Advocate to which those comments should be sent; and
- (iii) the date by which those comments must arrive at that address.

(3) Any objector, to whom the trustees have sent a copy of their letter to the Lord Advocate as mentioned in paragraph (2) above, may send to the Lord Advocate his written comments upon the points raised in that letter to arrive not later than 14 days after the date on which the trustees sent to him a copy of their letter to the Lord Advocate.

Small trusts: notification to Inland Revenue

6. Where the trustees of a small trust which is a recognised body have passed a resolution under section 10(3), (8) or (10) of the Act, they shall, not later than 7 days after the date when that resolution takes effect, send to the Commissioners of Inland Revenue—

- (a) a copy of the resolution; and
- (b) a statement as to the date when the resolution took effect.

Public trusts under section 11: advertisement

7. For the purposes of subsection (3) of section 11 of the Act (requirement on trustees of certain public trusts to advertise their intention to expend trust capital), the trustees of any public trust to which that section applies shall advertise their intention to expend the capital of the trust by publishing, in a newspaper circulating throughout Scotland or, where the purposes of the trust relate to a particular locality, in a local newspaper circulating in that locality, a notice in the form set out in Schedule 6 to these Regulations or in a form substantially to the like effect.

Sending documents to the Lord Advocate

8. Any document which is required by these Regulations to be sent to the Lord Advocate shall be sent to him at the Scottish Charities Office, Crown Office, Edinburgh.

Revocation

9. The Public Trusts (Reorganisation) (Scotland) Regulations 1993(2) are hereby revoked.

St Andrew's House,
Edinburgh
15th September 1993

Allan Stewart
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE 1

Regulation 3(1)(a)

FORM OF NOTICE OF RESOLUTION UNDER SECTION 10(3) OF THE ACT

“[Name of small trust]

Notice of proposed modification of trust purposes

Notice is hereby given that the trustees of [specify name of small trust] have passed a resolution under section 10(3) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 that the trust deed be modified by replacing the trust purposes by other purposes specified in the resolution.

A copy of the trust deed and of the resolution may be inspected at [specify address] between [specify between what dates and hours].

Any person with an interest in the purposes of the trust may object to what is proposed by sending his objection, in writing, to the trustees at [specify address] to arrive not later than [specify date ie 14 days after the date of publication of this notice]. The objection should state the objector’s name and address, his interest in the trust purposes, and his objection and reasons for the objection.

Any such objection will be sent to the Lord Advocate by the trustees with their comments and the objector will be given another opportunity to comment. The Lord Advocate has power to direct the trust not to proceed with the modification.”.

SCHEDULE 2

Regulation 3(1)(b)

FORM OF NOTICE OF RESOLUTION UNDER SECTION 10(8) OF THE ACT

“[Name of small trust]

Notice of proposed winding-up and transfer of assets

Notice is hereby given that the trustees of [specify name of small trust] have passed a resolution under section 10(8) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 to wind up the trust and to transfer its assets amounting to [specify amount in sterling] to [specify name of receiving trust or trusts].

A copy of the trust deed of [specify names of small trust and receiving trust or trusts] and of the resolution may be inspected at [specify address] between [specify between what dates and hours].

Any person with an interest in the purposes of the [specify name of small trust] may object to what is proposed by sending his objection, in writing, to the trustees at [specify address] to arrive not later than [specify date ie 14 days after the date of publication of this notice]. The objection should state the objector’s name and address, his interest in the trust purposes, and his objection and reasons for the objection.

Any such objection will be sent to the Lord Advocate by the trustees with their comments and the objector will be given another opportunity to comment. The Lord Advocate has power to direct the [specify name of small trust] not to proceed with the winding-up and transfer of funds.”.

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SCHEDULE 3

Regulation 3(1)(c)

FORM OF NOTICE OF RESOLUTION UNDER SECTION 10(10) OF THE ACT

“[Name of small trust]

Notice of proposed amalgamation

Notice is hereby given that the trustees of [specify name of small trust] have passed a resolution under section 10(10) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 that the trust be amalgamated with [specify name of the other trust or trusts]. The trust to be constituted by such amalgamation is proposed to be known as [specify name of proposed new trust].

A copy of the resolution, of the trust deeds of [specify name of small trust and of the trust or trusts with which it is proposed to be amalgamated] and of the draft of the trust deed of [specify name of proposed new trust] may be inspected at [specify address] between [specify between what dates and hours].

Any person with an interest in the purposes of [specify name of small trust] may object to what is proposed by sending his objection, in writing, to the trustees at [specify address] to arrive not later than [specify date ie 14 days after the date of publication of this notice]. The objection should state the objector’s name and address, his interest in the trust purposes, and his objection and reasons for the objection.

Any such objection will be sent to the Lord Advocate by the trustees with their comments and the objector will be given another opportunity to comment. The Lord Advocate has the power to direct the [specify name of small trust] not to proceed with the amalgamation.”.

SCHEDULE 4

Regulation 3(2)

FORM OF COMBINED NOTICE OF RESOLUTIONS UNDER SECTION 10(8) OF THE ACT

“NOTICE OF PROPOSED WINDING-UP AND TRANSFER OF ASSETS

Notice is hereby given that the trustees of each of the trusts listed in column 1 of the Annex to this notice have passed a resolution under section 10(8) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 that each of these trusts be wound up and that its assets amounting to the amount specified in relation to that trust in column 2 of that Annex, be transferred to [specify name of receiving trust].

A copy of the resolutions passed by the trustees of each of those trusts, of the trust deeds of each of those trusts and of [specify name of receiving trust] may be inspected at the address or addresses specified in column 3 of the Annex to this notice between [specify between what dates and hours].

Any person with an interest in the purposes of any of those trusts may object to what is proposed by sending his objection, in writing, to the trustees of the trust concerned at the address specified in relation to that trust in column 3 of the Annex to this notice to arrive not later than [specify date ie 14 days after the date of publication of this notice]. The objection should state the objector’s name and address, his interest in the trust purposes and his objection and reasons for the objection.

Any such objection will be sent to the Lord Advocate by the trustees with their comments and the objector will be given another opportunity to comment. The Lord Advocate has the power to direct any or all of the small trusts not to proceed with the winding-up and transfer of funds.

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Annex

Column 1	Column 2	Column 3
Name of small trusts	Amount of assets	Address of small trusts”

SCHEDULE 5

Regulation 3(3)

FORM OF COMBINED NOTICE OF RESOLUTIONS UNDER SECTION 10(10) OF THE ACT

“NOTICE OF PROPOSED AMALGAMATION OF SMALL TRUSTS

Notice is hereby given that the trustees of each of the trusts listed in column 1 of the Annex to this notice have passed a resolution under section 10(10) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 that these trusts be amalgamated with each other. The trust to be constituted by such amalgamation is proposed to be known as [specify name of proposed new trust].

A copy of the resolution passed by the trustees of each of those trusts, of the trust deeds of each of those trusts and of the draft of the trust deed of the [specify name of proposed new trust] may be inspected at the address or addresses specified in column 2 of the Annex to this notice between [specify between what dates and hours].

Any person with an interest in the purposes of any of those trusts may object to what is proposed by sending his objection, in writing, to the trustees of the trust concerned at the address specified in relation to that trust in column 2 of the Annex to this notice to arrive not later than [specify date ie 14 days after date of publication of this notice]. The objection should state the objector’s name and address, his interest in the trust purposes and his objection and reasons for the objection.

Any such objection will be sent to the Lord Advocate by the trustees with their comments and the objector will be given another opportunity to comment. The Lord Advocate has the power to direct any or all of the small trusts not to proceed with the amalgamation.

Annex

Column 1	Column 2
Name of small trusts	Address of small trusts”

SCHEDULE 6

Regulation 7

FORM OF NOTICE OF PROPOSAL TO EXPEND THE CAPITAL
OF A PUBLIC TRUST UNDER SECTION 11(3) OF THE ACT

“[Name of public trust]

Proposed expenditure of capital

Notice is hereby given that, in accordance with section 11(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, the trustees of [specify name of public trust]–

- (a) have resolved unanimously that the income of the trust is too small to enable the trust purposes to be achieved; and

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(b) are satisfied [delete whichever of the following statements does not apply] [that there is no reasonable prospect of effecting a transfer of the trust’s assets under section 10 of that Act] [that the expenditure of capital is more likely to achieve the purposes of the trust], and, accordingly, intend to expend the capital of the trust which amounts, in total, to [specify amount in sterling]. Such expenditure cannot take place before [specify date which is not less than 2 months after the date of the advertisement].

The Lord Advocate has been notified of this intention. If it appears to the Lord Advocate that there are insufficient grounds for the expenditure of capital, he may apply to the court for an order prohibiting such expenditure.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the procedure to be followed by the trustees of a public trust having an annual income not exceeding £5000 “a small trust”) who resolve, under section 10(3), (8) or (10) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”) to modify the trust purposes, to wind up the trust and transfer its assets or to amalgamate the trust with one or more other trusts, namely—

- (a) regulation 3 requires the trustees not less than 28 days after the date of the resolution or, if that date is before the date of the coming into force of these Regulations, the date when these Regulations come into force, to publish a notice of the resolution in the form set out in Schedule 1, 2, 3, 4, or 5 as the case may be, or in a form substantially to the like effect;
- (b) regulation 4 requires the trustees not less than 7 days after the date of publication of such a notice to notify the Lord Advocate and to send him various documents;
- (c) regulation 5 makes provision with regard to objections being made to the proposal contained in the resolution; and
- (d) regulation 6 requires the trustees to notify the Commissioners of Inland Revenue when their resolution takes effect.

Section 11 of the 1990 Act empowers the trustees of a public trust, which has an annual income not exceeding £1000 and which prohibits the expenditure of the trust capital, to expend such capital in certain circumstances. Regulation 7 makes provision as to how, for the purposes of section 11(3) of that Act, the trustees of such a public trust are to notify their intention to expend such capital. It requires the trustees to publish in a newspaper a notice of their intention in the form set out in Schedule 6 to these Regulations or in a form as near thereto as circumstances permit.

Regulation 8 makes provision as to where any document, which is required by these Regulations to be sent to the Lord Advocate, is to be sent.

These Regulations supersede and revoke the Public Trusts (Reorganisation) (Scotland) Regulations 1993 (S.I. 1993/2036) because of an error in the date of commencement of those Regulations.