



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## <sup>F1</sup>PART 1

### CHARITIES

#### CHAPTER 7

##### SCOTTISH CHARITABLE INCORPORATED ORGANISATIONS

###### *Conversion, amalgamation and transfer*

#### **56 Conversion of charity which is a company or registered friendly society: applications**

- (1) The following may apply to OSCR to be converted into a SCIO, and for the SCIO's entry in the Register—
  - (a) a charity which is a company,
  - (b) a charity which is a registered society within the meaning of [<sup>F1</sup>the Co-operative and Community Benefit Societies Act 2014] (c. 12).
- (2) But such an application may not be made—
  - (a) by a company or registered society having a share capital if any of the shares are not fully paid up,
  - (b) by a company having only a single member.
- (3) Such an application is referred to in this section and sections 57 and 58 as an “application for conversion”.
- (4) Section 54(2) applies in relation to an application for conversion as it applies to an application for a SCIO to be constituted (but sections 4 and 5 do not apply in relation to an application for conversion).

*Status: Point in time view as at 12/01/2018.*

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- (5) In addition to the documents referred to in section 54(2), the application for conversion must be accompanied by—
- (a) a copy of the resolution of the company or registered society that it be converted into a SCIO, and
  - (b) a copy of the resolution of the company or registered society adopting the proposed constitution of the SCIO.
- (6) The resolution referred to in subsection (5)(a) must be—
- (a) a special resolution of the company or registered society, or
  - (b) a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution.
- [<sup>F2</sup>(6A) In the case of a company which is [<sup>F3</sup> registered under the Companies Act 2006 in Scotland ], Chapter 3 of Part 3 [<sup>F4</sup> of that Act ] (resolutions and agreements affecting a company’s constitution) does not apply to the resolutions mentioned in subsection (5) (a) and (b).]
- (7) In the case of a registered society, “special resolution” has the meaning given in [<sup>F5</sup> section 113(2) of the Co-operative and Community Benefit Societies Act 2014 ].

#### Textual Amendments

- F1** Words in s. 56(1)(b) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 97(2)** (with Sch. 5)
- F2** S. 56(6A) inserted (1.10.2007) by Companies Act 2006 (Commencement No.3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), **Sch. 4 para. 110** (with art. 12)
- F3** Words in s. 56(6A) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 250(2)(a)** (with art. 10)
- F4** Words in s. 56(6A) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 250(2)(b)** (with art. 10)
- F5** Words in s. 56(7) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 97(3)** (with Sch. 5)

#### Commencement Information

- I1** S. 56 in force at 1.1.2012 by S.S.I. 2011/20, **art. 2(4)(a)**

## 57 Determination of application for conversion

- (1) Before determining an application for conversion, OSCR must consult—
  - (a) the appropriate registrar, and
  - (b) such other persons as it thinks fit,
 about whether the application should be granted.
- (2) OSCR may grant an application for conversion only if it considers that the charity, if converted into a SCIO as proposed, would continue to meet the charity test.
- (3) OSCR must refuse an application for conversion if—

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- (a) it considers that the SCIO's proposed name falls within section 10,
  - (b) the SCIO's proposed constitution does not comply with one or more of the requirements of section 50 and any regulations made under that section, or
  - (c) the application must, by virtue of regulations under section 6(1), be refused.
- (4) If OSCR considers that a charity, if converted into a SCIO as proposed in an application for conversion, would continue to meet the charity test, OSCR may refuse the application on grounds other than those set out in subsection (3) only if it is satisfied by any representations received from those whom it consulted under subsection (1) that such a refusal would be appropriate.

#### Commencement Information

**I2** S. 57 in force at 1.1.2012 by S.S.I. 2011/20, art. 2(4)(b)

## 58 Conversion: supplementary

- (1) If OSCR grants an application for conversion, it must—
- (a) enter the SCIO in the Register,
  - (b) send to the appropriate registrar a copy of each of the resolutions of the converting company or registered society referred to in section 56(5) and a copy of the entry in the Register relating to the SCIO, and
  - (c) once the SCIO's constitution as a SCIO has taken effect, remove from the Register the entry for the converting company or registered society.
- (2) The entry for the SCIO in the Register must, for so long as its constitution as a SCIO has not yet taken effect, include a note stating that fact.
- (3) If the appropriate registrar—
- (a) registers the documents sent under subsection (1)(b), and
  - (b) cancels the registration of the company under [<sup>F6</sup>the Companies Act 2006], or of the society under the [<sup>F7</sup>Co-operative and Community Benefit Societies Act 2014] (c. 12),
- subsections (4) and (5) apply.
- (4) The company or registered society is by virtue of this subsection converted into a SCIO, being a body corporate—
- (a) whose constitution is that proposed in the application for conversion,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first members are the members of the converting company or society immediately before the moment of conversion.
- (5) All property, rights and liabilities of the converting company or registered society become by virtue of this subsection the property, rights and liabilities of the SCIO.
- (6) The entry for the SCIO in the Register must include—
- (a) a note stating that the charity is constituted as a SCIO,
  - (b) the date on which it became so constituted, and
  - (c) a note of the name of the company or society which was converted into the SCIO.
- (7) In section 57 and in this section, the “appropriate registrar” means—

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- (a) in the case of an application for conversion by a company, the registrar of companies <sup>F8</sup> ...,
- (b) in the case of an application for conversion by a registered society, the [<sup>F9</sup> Financial Conduct Authority ].

#### Textual Amendments

- F6** Words in s. 58(3)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 250(3)(a)** (with art. 10)
- F7** Words in s. 58(3)(b) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 98** (with Sch. 5)
- F8** Words in s. 58(7)(a) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 250(3)(b)** (with art. 10)
- F9** Words in s. 58(7)(b) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 11 para. 7** (with Sch. 12)

#### Commencement Information

- I3** S. 58 in force at 1.1.2012 by S.S.I. 2011/20, **art. 2(4)(c)**

## 59 Amalgamation of SCIOs

- (1) Any 2 or more SCIOs (“the old SCIOs”) may, in accordance with this section, apply to OSCR to be amalgamated, and for a new SCIO (“the new SCIO”) to be constituted and entered in the Register as their successor.
- (2) Such an application is referred to in this section and section 60 as an “application for amalgamation”.
- (3) Subsections (2) to (4) of section 54 apply in relation to an application for amalgamation as they apply to an application for a SCIO to be constituted, but with references to the SCIO being read as references to the new SCIO (but sections 4 and 5 do not apply in relation to an application for amalgamation).
- (4) In addition to the documents and information referred to in section 54(2), the application for amalgamation must be accompanied by—
  - (a) a copy of a resolution of each of the old SCIOs approving the proposed amalgamation, and
  - (b) a copy of a resolution of each of the old SCIOs adopting the proposed constitution of the new SCIO.
- (5) The resolutions must be passed—
  - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
  - (b) unanimously by the SCIO's members, otherwise than at a general meeting.

#### Commencement Information

- I4** S. 59 in force at 1.1.2012 by S.S.I. 2011/20, **art. 2(4)(d)**

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## 60 Amalgamation: supplementary

- (1) If OSCR grants an application for amalgamation, it must—
  - (a) enter the new SCIO in the Register, and
  - (b) remove from the Register the entries for the old SCIOs.
- (2) On the new SCIO being entered in the Register it becomes by virtue of this section a body corporate—
  - (a) whose constitution is that proposed in the application for amalgamation,
  - (b) whose name is that specified in the constitution, and
  - (c) whose first members are the members of the old SCIOs immediately before the new SCIO was entered in the Register.
- (3) On the removal of the old SCIOs from the Register—
  - (a) all the property, rights and liabilities of each of the old SCIOs become by virtue of this subsection the property, rights and liabilities of the new SCIO, and
  - (b) each of the old SCIOs is dissolved.
- (4) The entry for the new SCIO in the Register must include—
  - (a) a note stating that it is constituted as a SCIO,
  - (b) the date on which it became so constituted, and
  - (c) a note that it was constituted following amalgamation, and of the name of each of the old SCIOs.
- (5) OSCR must send a copy of the entry in the Register to the new SCIO at its principal office.

### Commencement Information

**I5** S. 60 in force at 1.1.2012 by S.S.I. 2011/20, art. 2(4)(e)

## 61 Transfer of SCIO's undertaking

- (1) A SCIO may resolve that all its property, rights and liabilities should be transferred to another SCIO specified in the resolution.
- (2) Where a SCIO has passed such a resolution, it must send to OSCR—
  - (a) a copy of the resolution, and
  - (b) a copy of a resolution of the transferee SCIO agreeing to the transfer to it.
- (3) A resolution referred to in subsections (1) and (2)(b) must be passed—
  - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
  - (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (4) The resolution referred to in subsection (1) does not take effect until confirmed by OSCR.
- (5) If OSCR confirms the resolution—
  - (a) all the property, rights and liabilities of the transferor SCIO become by virtue of this subsection the property, rights and liabilities of the transferee SCIO in accordance with the resolution,

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- (b) the transferor SCIO is dissolved, and
- (c) OSCR must remove from the Register the entry for the transferor SCIO.

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**Commencement Information**

**I6** S. 61 in force at 1.1.2012 by S.S.I. 2011/20, art. 2(4)(f)

**Status:**

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