



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

PART 1 **S**

CHARITIES

CHAPTER 5 **S**

REORGANISATION OF CHARITIES

39 Reorganisation of charities: applications by charity **S**

(1) OSCR may, on the application of a charity, approve a reorganisation scheme proposed by the charity if it considers—

- (a) that any of the reorganisation conditions is satisfied in relation to the charity, and
- (b) that the proposed reorganisation scheme will—

- (i) where the condition satisfied is that set out in paragraph (a) or (b) of section 42(2), enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted, or
 - (ii) where the condition satisfied is that set out in paragraph (c) [^{F1} or (d)] of that section, enable the charity to be administered more effectively.

[^{F2}(1A) But OSCR must not approve a reorganisation scheme where—

- (a) the reorganisation condition satisfied is that set out in section 42(2)(d), and
- (b) the proposed provision would enable the charity to make amendments to its constitution which would not be consistent with the spirit of the constitution.]

(2) The Scottish Ministers may by regulations make such provision as they think fit in relation to the procedure for applying for and determining applications under this section.

Status: Point in time view as at 01/08/2010.

Changes to legislation: Charities and Trustee Investment (Scotland) Act 2005, Chapter 5 is up to date with all changes known to be in force on or before 10 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) Such regulations may in particular make provision about—
- (a) the form and manner in which applications must be made,
 - (b) the period within which OSCR must make a decision on an application,
 - (c) publication of proposed reorganisation schemes,
- and may make different provision in relation to different types of charity.

Textual Amendments

- F1** Words in s. 39(1)(b)(ii) inserted (1.8.2010) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 124(1)(a), 134(7); S.S.I. 2010/221, art. 3(2), Sch.
- F2** S. 39(1A) inserted (1.8.2010) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 124(1)(b), 134(7); S.S.I. 2010/221, art. 3(2), Sch.

Commencement Information

- I1** S. 39 in force at 1.1.2006 for specified purposes by S.S.I. 2005/644, art. 2(1), Sch. 1
- I2** S. 39 in force at 31.5.2007 in so far as not already in force by S.S.I. 2007/117, art. 2(2)

40 Reorganisation of charities: applications by OSCR S

- (1) Where OSCR considers—
- (a) that any of the reorganisation conditions is satisfied in relation to a charity, and
 - (b) that a reorganisation scheme proposed by it or by the charity trustees of the charity will—
 - (i) where the condition satisfied is that set out in paragraph (a) or (b) of section 42(2), enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted, or
 - (ii) where the condition satisfied is that set out in paragraph (c) ^[F3] or (d) of that section, enable the charity to be administered more effectively,

OSCR may, of its own accord or on the application of the charity trustees of the charity, apply to the Court of Session for approval of the scheme.
- (2) The Court of Session may, on an application under subsection (1), approve the proposed reorganisation scheme if it considers that the matters set out in paragraphs (a) and (b) of that subsection are satisfied in relation to the charity to which the application relates.
- ^[F4](2A) But the Court of Session must not approve a reorganisation scheme where—
- (a) the reorganisation condition satisfied is that set out in section 42(2)(d), and
 - (b) the proposed provision would enable the charity to make amendments to its constitution which would not be consistent with the spirit of the constitution.]
- (3) The charity trustees of a charity may enter appearance as a party in proceedings on an application under subsection (1) in relation to the charity.
- (4) OSCR must, not less than 28 days before making an application under subsection (1), notify the charity in question of its intention to do so.

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Textual Amendments

- F3** Words in s. 40(1)(b)(ii) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 124\(2\)\(a\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2), Sch.
- F4** [S. 40\(2A\)](#) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 124\(2\)\(b\)](#), 134(7); [S.S.I. 2010/221](#), art. 3(2), Sch.

Commencement Information

- I3** S. 40 in force at 31.5.2007 by [S.S.I. 2007/117](#), [art. 2\(2\)](#)

41 Approved schemes **S**

A charity may, despite any provision of its constitution having contrary effect, proceed with any variation, transfer or amalgamation for which an approved reorganisation scheme makes provision.

Commencement Information

- I4** [S. 41](#) in force at 31.5.2007 by [S.S.I. 2007/117](#), [art. 2\(2\)](#)

42 Reorganisation: supplementary **S**

- (1) This section applies for the interpretation of Chapter 5.
- (2) The “reorganisation conditions” are—
 - (a) that some or all of the purposes of the charity—
 - (i) have been fulfilled as far as possible or adequately provided for by other means,
 - (ii) can no longer be given effect to (whether or not in accordance with the directions or spirit of its constitution),
 - (iii) have ceased to be charitable purposes, or
 - (iv) have ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution,
 - (b) that the purposes of the charity provide a use for only part of its property, ^{F5}...
 - (c) that a provision of the charity's constitution (other than a provision setting out the charity's purposes) can no longer be given effect to or is otherwise no longer desirable, ^{F6} and
 - (d) that it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity's constitution.]
- (3) A “reorganisation scheme” is a scheme for—
 - (a) variation of the constitution of the charity (whether or not in relation to its purposes),
 - (b) transfer of the property of the charity (after satisfaction of any liabilities) to another charity (whether or not involving a change to the purposes of the other charity), or
 - (c) amalgamation of the charity with another charity.

Status: Point in time view as at 01/08/2010.

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- (4) Nothing in section 40 affects the power of the Court of Session to approve a cy près scheme in relation to a charity.
- (5) Sections 39 and 40 do not apply to any charity constituted under a Royal charter or warrant or under any enactment.
- (6) But, despite subsection (5), those sections do apply to an endowment if its governing body is a charity.
- (7) In subsection (6), “endowment” and “governing body” have the same meaning as in Part 6 (reorganisation of endowments) of the Education (Scotland) Act 1980 (c. 44).

Textual Amendments

- F5** Word in s. 42(2) repealed (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 124\(3\)\(a\)](#), 134(7); S.S.I. 2010/221, art. 3(2), Sch.
- F6** S. 42(2)(d) inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 124\(3\)\(b\)](#), 134(7); S.S.I. 2010/221, art. 3(2), Sch.

Commencement Information

- I5** S. 42 in force at 31.5.2007 by [S.S.I. 2007/117](#), [art. 2\(2\)](#)

43 Endowments **S**

In section 122 (interpretation of Part 6) of the Education (Scotland) Act 1980 (c. 44), after subsection (3) insert—

“(4) This Part, apart from section 104, does not apply in relation to any endowment the governing body of which is a charity within the meaning of section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).”

Commencement Information

- I6** S. 43 in force at 1.4.2006 by [S.S.I. 2006/189](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)

Status:

Point in time view as at 01/08/2010.

Changes to legislation:

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