
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 219

**The Charities Restricted Funds
Reorganisation (Scotland) Regulations 2012**

Citation and commencement

1. These Regulations may be cited as the Charities Restricted Funds Reorganisation (Scotland) Regulations 2012 and come into force on 1st November 2012.

Interpretation

2. In these Regulations—

“the 2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005;

“donor” has the meaning specified in regulation 3;

“gross annual income” means the gross annual income of the charity as shown in the charity’s most recent statement of account;

“large restricted funds” means restricted funds which comprise property of more than £1 million or have a gross annual income of more than £100,000;

“restricted funds” has the meaning given in section 43D of the 2005 Act;

“small restricted funds” means restricted funds which comprise property of £1 million or less and have a gross annual income of £100,000 or less; and

“very small restricted funds” means small restricted funds which do not include any heritable property or shares in a private limited company, and with a gross annual income of less than £1,000.

Meaning of “donor”

3. “Donor” is specified, in accordance with section 43D of the 2005 Act, as the person or body who gave the restricted funds to the charity.

Application by a charity to reorganise restricted funds

4. An application by a charity for approval to reorganise restricted funds under section 43A of the 2005 Act must include—

(a) either—

(i) a copy of the document which imposes the conditions as to the restricted fund’s use;
or

(ii) if such a document cannot be produced, a statement setting out the specific purpose for which the restricted funds were given to the charity and the restrictions which have been imposed as to the use of the restricted funds;

(b) details of the proposed restricted funds reorganisation scheme;

(c) a statement setting out the reasons why the charity considers any of the conditions specified in section 43A(2) of the 2005 Act to be satisfied;

- (d) a statement setting out why the charity considers that the proposed reorganisation will enable the resources of the restricted funds to be applied to better effect for charitable purposes consistently with the charity's constitution;
- (e) a statement that the charity has been unable to ascertain the wishes of the donor, including a description of the action that the charity has taken in attempting to ascertain the wishes of the donor;
- (f) a statement which shows, at the date the application is made, the balance of the restricted funds' assets and, for the preceding financial year, the incoming resources and resources expended; and
- (g) if regulation 6 applies, a draft of the notice to be published in a newspaper or periodical.

Notice of proposed restricted funds reorganisation scheme

5.—(1) On receipt of an application under section 43A of the 2005 Act in relation to large or small restricted funds, OSCR must publish a notice about the proposed restricted funds reorganisation scheme on its website.

(2) The notice must be published on OSCR's website for a period, to be determined by OSCR, of not fewer than 28 days and not more than 42 days.

(3) The notice must—

- (a) include details of the proposed restricted funds reorganisation scheme;
- (b) advise that any person who wishes to make a representation to OSCR, either supporting or opposing the proposed scheme, may do so in accordance with regulation 7; and
- (c) specify the deadline for making representations to OSCR.

(4) The day to be specified as the deadline for making representations to OSCR is the day falling 14 days after the final day on which the notice is to be published on OSCR's website.

Notice of proposed large restricted funds reorganisation scheme: newspaper or periodical

6.—(1) Where the restricted funds are large restricted funds, the charity must arrange for a notice to be published in an appropriate newspaper or periodical.

(2) The notice must—

- (a) be in the form set out in the Schedule; and
- (b) be published, at least once, within 14 days of the notice mentioned in regulation 5 being published for the first time on OSCR's website.

(3) In paragraph (1), "appropriate newspaper or periodical" means—

- (a) if the purposes of the restricted funds relate only to a particular locality, a newspaper or periodical circulating in that locality and being relevant to the purposes of the restricted funds; or
- (b) if the purposes of the restricted funds do not relate only to a particular locality, a newspaper or periodical circulating throughout Scotland and being relevant to the purposes of the restricted funds.

Representations in relation to a proposed large or small restricted funds reorganisation scheme

7.—(1) Any person may make a representation to OSCR either supporting or opposing a proposed large or small restricted funds reorganisation scheme.

(2) A representation must be in writing and may be sent to OSCR by email or by post or may be delivered personally.

(3) A representation must state—

- (a) the name and address (which may be an email address) of the person making the representation;
- (b) the name of the charity concerned as it appears in the notice on OSCR’s website or the notice published in a newspaper or periodical; and
- (c) the nature of the representation and the reasons for it.

(4) Representations must be received by OSCR not later than the deadline for making representations to OSCR, as specified in the notice on OSCR’s website.

(5) Not later than 14 days after the deadline for making representations to OSCR, as specified in the notice on OSCR’s website, OSCR must send to the charity a summary of the representations received which may include the name and address of the maker of the representation.

OSCR’s decision on a proposed large or small restricted funds reorganisation scheme

8.—(1) OSCR must make a decision on an application not more than 26 weeks after the deadline for making representations to OSCR, as specified in the notice on OSCR’s website.

(2) Before reaching its decision OSCR must consider—

- (a) all of the representations it has received which comply with the requirements of regulation 7; and
- (b) any response it has received to those representations from the charity.

(3) OSCR must send a copy of its decision to the charity and any person that has sent it a representation within 7 days of the date of the decision being made.

Very small restricted funds: simplified procedure

9.—(1) On receipt of an application under section 43A of the 2005 Act as regards very small restricted funds, OSCR may apply a simplified procedure to the application.

(2) Where OSCR applies a simplified procedure—

- (a) OSCR must write to the charity to confirm that a simplified procedure will be applied to the application, within 14 days of the date of receipt of the application; and
- (b) regulations 5, 7 and 8 do not apply to the application.

(3) Under the simplified procedure, OSCR must—

- (a) make a decision on the application within 13 weeks of receipt of the application; and
- (b) send a copy of its decision to the charity within 7 days of the date of the decision being made.

St Andrew’s House,
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