

POLICY NOTE

THE CHARITIES RESTRICTED FUNDS REORGANISATION (SCOTLAND) REGULATIONS 2012

SSI 2012/219

The above Regulations were made in exercise of the powers conferred by sections 43A and 43D of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”). The instrument is subject to the negative procedure.

Policy Objectives

The purpose of this instrument is to set out the process which charities and the Office of the Scottish Charity Regulator (OSCR) must follow when making and considering an application to reorganise a restricted fund. A restricted fund is a fund of property (which may include money) which has been given to a charity for a specific purpose.

The Regulations set out a process for application by charities to OSCR and for decisions by OSCR which applies regardless of the size of the fund. However, where a fund is large (property of over £1million or income over £100,000) the Regulations set out a higher level of publicity than is needed otherwise. Similarly, the Regulations allow OSCR discretion to dispense with the need to publish information about proposed schemes involving very small funds. This recognises that OSCR must act in a proportionate manner in the exercise of its functions.

Consultation

The proposal to allow OSCR to approve the reorganisation of restricted funds was consulted on in spring 2009 in a consultation which covered proposed minor amendments to the 2005 Act and charities accounts regulations. Respondents were asked if they supported OSCR having the power to be able to approve such a scheme.

47 respondents commented on the question, with 46 agreeing with the proposal. The remaining respondent did not offer a view on this point. A number of those in agreement highlighted that OSCR would only be able to act in such circumstances where the charity opted to approach it.

In addition, a consultation was held in winter 2011-2012 on the detail of the Regulations. The majority of respondents agreed with the approach that was taken with the Regulations – which was to align them, as far as possible, with the Charities Reorganisation (Scotland) Regulations 2007.

Financial Effects

The Cabinet Secretary for Finance, Employment and Sustainable Growth confirms that no BRIA is necessary as the instrument imposes no financial effects on the Scottish Government, local government or on business. There may be some financial effect on those charities who opt to make an application under the provisions. However, only those charities which apply to OSCR as regards large restricted funds (having property of over £1million or

income over £100,000) will incur any additional cost. This cost will be offset, if the charities' applications to OSCR are granted, with the more effective use of charitable funds by the charities.

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