



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART I

CHARITIES

Reorganisation of public trusts

9 Reorganisation of public trusts by the court.

- (1) Where, in the case of any public trust, the court is satisfied—
- (a) that the purposes of the trust, whether in whole or in part—
 - (i) have been fulfilled as far as it is possible to do so; or
 - (ii) can no longer be given effect to, whether in accordance with the directions or spirit of the trust deed or other document constituting the trust or otherwise;
 - (b) that the purposes of the trust provide a use for only part of the property available under the trust;
 - (c) that the purposes of the trust were expressed by reference to—
 - (i) an area which has, since the trust was constituted, ceased to have effect for the purpose described expressly or by implication in the trust deed or other document constituting the trust; or
 - (ii) a class of persons or area which has ceased to be suitable or appropriate, having regard to the spirit of the trust deed or other document constituting the trust, or as regards which it has ceased to be practicable to administer the property available under the trust; or
 - (d) that the purposes of the trust, whether in whole or in part, have, since the trust was constituted—
 - (i) been adequately provided for by other means; or

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- (ii) ceased to be such as would enable the trust to become a recognised body; or
- (iii) ceased in any other way to provide a suitable and effective method of using the property available under the trust, having regard to the spirit of the trust deed or other document constituting the trust,
- the court, on the application of the trustees, may, subject to subsection (2) below, approve a scheme for the variation or reorganisation of the trust purposes.
- (2) The court shall not approve a scheme as mentioned in subsection (1) above unless it is satisfied that the trust purposes proposed in the scheme will enable the resources of the trust to be applied to better effect consistently with the spirit of the trust deed or other document constituting the trust, having regard to changes in social and economic conditions since the time when the trust was constituted.
- (3) Where any of paragraphs (a) to (d) of subsection (1) above applies to a public trust, an application may be made under this section for the approval of a scheme —
- (a) for the transfer of the assets of the trust to another public trust, whether involving a change to the trust purposes of such other trust or not; or
- (b) for the amalgamation of the trust with one or more public trusts,
- and the court, if it is satisfied that the conditions specified in subsection (2) above are met, may approve such a scheme.
- (4) Subject to subsection (5) below, an application for approval of a scheme under this section shall be made to the Court of Session.
- (5) From such day as the Lord Advocate may, by order, appoint, an application for approval of a scheme under this section may be made by a public trust having an annual income not exceeding such amount as the Secretary of State may, by order, prescribe—
- (a) to the sheriff for the place with which the trust has its closest and most real connection;
- (b) where there is no such place as is mentioned in paragraph (a) above, to the sheriff for the place where any of the trustees resides;
- (c) where neither paragraph (a) nor (b) above applies, to the sheriff of Lothian and Borders at Edinburgh.
- (6) Every application under this section shall be intimated to the Lord Advocate who shall be entitled to enter appearance as a party in any proceedings on such application, and he may lead such proof and enter such pleas as he thinks fit; and no expenses shall be claimable by or against the Lord Advocate in any proceedings in which he has entered appearance under this subsection.
- (7) This section shall be without prejudice to the power of the Court of Session to approve a cy pres scheme in relation to any public trust.

Commencement Information

- II** S. 9 wholly in force; s. 9(5) in force for certain purposes at 4.7.1992 and s. 9 wholly in force at 27.7.1992 see s. 75(2) and S.I. 1992/1599, arts.3,5, Schs. 1, 3.

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10 Small trusts.

- (1) Where a majority of the trustees of any public trust having an annual income not exceeding £5,000 are of the opinion—
 - (a) that the purposes of the trust, whether in whole or in part—
 - (i) have been fulfilled as far as it is possible to do so; or
 - (ii) can no longer be given effect to, whether in accordance with the directions or spirit of the trust deed or other document constituting the trust or otherwise;
 - (b) that the purposes of the trust provide a use for only part of the property available under the trust;
 - (c) that the purposes of the trust were expressed by reference to—
 - (i) an area which has, since the trust was constituted, ceased to have effect for the purpose described expressly or by implication in the trust deed or other document constituting the trust; or
 - (ii) a class of persons or area which has ceased to be suitable or appropriate, having regard to the spirit of the trust deed or other document constituting the trust, or as regards which it has ceased to be practicable to administer the property available under the trust; or
 - (d) that the purposes of the trust, whether in whole or in part, have, since the trust was constituted—
 - (i) been adequately provided for by other means; or
 - (ii) ceased to be such as would enable the trust to become a recognised body; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available under the trust, having regard to the spirit of the trust deed or other document constituting the trust,

subsection (2) below shall apply in respect of the trust.
- (2) Where this subsection applies in respect of a trust, the trustees may determine that, to enable the resources of the trust to be applied to better effect consistently with the spirit of the trust deed or other document constituting the trust—
 - (a) a modification of the trust's purposes should be made;
 - (b) the whole assets of the trust should be transferred to another public trust; or
 - (c) that the trust should be amalgamated with one or more public trusts.
- (3) Where the trustees of a trust determine as mentioned in subsection (2)(a) above, they may, subject to subsections (4) to (6) below, pass a resolution that the trust deed be modified by replacing the trust purposes by other purposes specified in the resolution.
- (4) The trustees shall ensure that, so far as is practicable in the circumstances, the purposes so specified are not so far dissimilar in character to those of the purposes set out in the original trust deed or other document constituting the trust that such modification of the trust deed would constitute an unreasonable departure from the spirit of such trust deed or other document.
- (5) Before passing a resolution under subsection (3) above the trustees shall have regard—
 - (a) where the trust purposes relate to a particular locality, to the circumstances of the locality; and
 - (b) to the extent to which it may be desirable to achieve economy by amalgamating two or more trusts.

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- (6) As regards a trust which is a recognised body, the trustees shall ensure that the purposes specified as mentioned in subsection (3) above are such as will enable the trust to continue to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the ^{M1}Income and Corporation Taxes Act 1988 (exemption from tax for charities).
- (7) Subject to subsection (14) below, a modification of trust purposes under this section shall not have effect before the expiry of a period of two months commencing with the date on which any advertisement in pursuance of regulations made under subsection (13) below is first published.
- (8) Where the trustees determine as mentioned in subsection (2)(b) above they may pass a resolution that the trust be wound up and that the assets of the trust be transferred to another trust or trusts the purposes of which are not so dissimilar in character to those of the trust to be wound up as to constitute an unreasonable departure from the spirit of the trust deed or other document constituting the trust to be wound up.
- (9) Before passing a resolution under subsection (8) above, the trustees shall—
- (a) where the trust purposes relate to a particular locality, have regard to the circumstances of the locality;
 - (b) where the trust is a recognised body, ensure that the purposes of the trust to which it is proposed that the assets be transferred are such as will enable the trust to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the Income and Corporation Taxes Act 1988 (exemption from tax for charities); and
 - (c) ascertain that the trustees of the trust to which it is proposed to transfer the assets will consent to the transfer of the assets.
- (10) Where the trustees determine as mentioned in subsection (2)(c) above, they may pass a resolution that the trust be amalgamated with one or more other trusts so that the purposes of the trust constituted by such amalgamation will not be so dissimilar in character to those of the trust to which the resolution relates as to constitute an unreasonable departure from the spirit of the trust deed or other document constituting the last mentioned trust.
- (11) Before passing a resolution under subsection (10) above, the trustees shall—
- (a) where the trust purposes relate to a particular locality, have regard to the circumstances of the locality;
 - (b) where any of the trusts to be amalgamated is a recognised body, ensure that the trust purposes of the trust to be constituted by such amalgamation will be such as to enable it to be granted an exemption from tax by the Commissioners of Inland Revenue under section 505(1) of the ^{M2}Income and Corporation Taxes Act 1988 (exemption from tax for charities); and
 - (c) ascertain that the trustees of any other trust with which it is proposed that the trust will be amalgamated will agree to such amalgamation.
- (12) Subject to subsection (14) below, a transfer of trust assets or an amalgamation of two or more trusts under this section shall not be effected before the expiry of a period of two months commencing with the date on which any advertisement in pursuance of regulations made under subsection (13) below is first published.
- (13) The Secretary of State may, by regulations, prescribe the procedure to be followed by trustees following upon a resolution passed under subsection (3), (8) or (10) above,

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and such regulations may, without prejudice to the generality, include provision as to advertisement of the proposed modification or winding up, the making of objections by persons with an interest in the purposes of the trust, notification to the Lord Advocate of the terms of the resolution and the time within which anything requires to be done.

(14) If it appears to the Lord Advocate, whether in consideration of any objections made in pursuance of regulations made under subsection (13) above or otherwise—

- (a) that the trust deed should not be modified as mentioned in subsection (3) above;
- (b) that the trust should not be wound up as mentioned in subsection (8) above; or
- (c) that the trust should not be amalgamated as mentioned in subsection (10) above,

he may direct the trust not to proceed with the modification or, as the case may be winding up and transfer of funds or amalgamation.

(15) The Secretary of State may, by order, amend subsection (1) above by substituting a different figure for the figure, for the time being, mentioned in that subsection.

(16) This section shall apply to any trust to which section 223 of the ^{M3}Local Government (Scotland) Act 1973 (property held on trust by local authorities) applies.

Marginal Citations

M1 1988 c. 1.

M2 1988 c. 1.

M3 1973 c. 65.

11 Expenditure of capital.

(1) This section applies to any public trust which has an annual income not exceeding £1,000 where the trust deed or other document constituting the trust prohibits the expenditure of any of the trust capital.

(2) In the case of any trust to which this section applies where the trustees—

- (a) have resolved unanimously that, having regard to the purposes of the trust, the income of the trust is too small to enable the purposes of the trust to be achieved; and
- (b) are satisfied that either there is no reasonable prospect of effecting a transfer of the trust's assets under section 10 of this Act or that the expenditure of capital is more likely to achieve the purposes of the trust,

they may, subject to subsection (3) below, proceed with the expenditure of capital.

(3) Not less than two months before proceeding to expend capital, the trustees shall advertise their intention to do so in accordance with regulations made by the Secretary of State and shall notify the Lord Advocate of such intention.

(4) 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, and if the court is satisfied that there are such insufficient grounds it may grant the order.

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- (5) The Secretary of State may, by order, amend subsection (1) above by substituting a different figure for the figure, for the time being, mentioned in that subsection.

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