



# Public Services Reform (Scotland) Act 2010

2010 asp 8

## PART 9

### CHARITIES

#### 120 Information to appear on charity websites

(1) In section 15 of the 2005 Act (references in documents), after subsection (2) insert—

“(3) For the purposes of this section, a reference to a document issued or signed on behalf of the charity includes a reference to a web page on a website operated by or on behalf of the charity.”.

(2) In section 52 of that Act (name and status of Scottish charitable incorporated organisations), after subsection (4) insert—

“(5) For the purposes of this section, a reference to a document—

- (a) issued by or on behalf of the SCIO, or
- (b) signed by or on behalf of the SCIO,

includes a reference to a web page on a website operated by or on behalf of the SCIO.”.

#### Annotations:

#### Commencement Information

II S. 120 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

#### 121 Variation, revocation and review of directions

(1) In section 30 of the 2005 Act (removal from Register of charity which no longer meets charity test), after subsection (2) insert—

“(2A) The power of OSCR to give a direction under subsection (1)(a) includes the power to—

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- (a) vary the direction, but only by—
    - (i) extending the time period specified in the direction, or
    - (ii) removing steps which the charity is required to take, or
  - (b) revoke such a direction.”.
- (2) In section 71 of that Act (decisions), after paragraph (i) insert—  
“(ia) give a direction under section 30(1)(a),”.
- (3) In section 73(2) of that Act (effect of decisions), after “(i),” insert “ (ia), ”.

**Annotations:**

**Commencement Information**

**I2** S. 121 in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

**122 Powers of Court of Session: deemed removal of persons**

In section 34(5) of the 2005 Act (powers of Court of Session), after paragraph (e) insert—

- “(ea) make an order declaring that any person who was concerned in the management or control of a charity or body is to be treated, for the purpose of section 69(2)(c) (disqualification from being charity trustee) as having been removed from being concerned in the management or control of the charity or body, notwithstanding that—
- (i) the person is no longer concerned in the management or control of the charity or body,
  - (ii) the body is no longer a charity,
  - (iii) the body is no longer controlled by a charity (or charities), or
  - (iv) the charity or body has ceased to exist,”.

**Annotations:**

**Commencement Information**

**I3** S. 122 in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

**123 Delegation of functions**

In section 38(1) of the 2005 Act (exercise of OSCR functions by Scottish Ministers), after “section 30)” insert “ and section 70A ”.

**Annotations:**

**Commencement Information**

**I4** S. 123 in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

**124 Reorganisation of charities**

- (1) In section 39 of the 2005 Act (reorganisation of charities: applications by charity)—
- (a) in subsection (1)(b)(ii), after “paragraph (c)” insert “ or (d) ”,

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(b) after subsection (1) insert—

“(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) In section 40 of that Act (reorganisation of charities: applications by OSCR)—

- (a) in subsection (1)(b)(ii), after “paragraph (c)” insert “ or (d) ”,
- (b) after subsection (2) insert—

“(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) In section 42(2) of that Act (reorganisation: supplementary)—

- (a) the word “and” immediately following paragraph (b) is repealed, and
- (b) after paragraph (c) insert “, and
- (d) that it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity's constitution.”.

**Annotations:**

**Commencement Information**

**I5** [S. 124](#) in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

**125 Reorganisation of restricted funds**

(1) After section 43 of the 2005 Act insert—

**“CHAPTER 5A**

**REORGANISATION OF RESTRICTED FUNDS**

**43A Reorganisation of restricted funds: applications by charity**

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

- (a) it considers—
  - (i) that any of the conditions specified in subsection (2) is satisfied in relation to the restricted funds, and

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- (ii) 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, and
  - (b) it is satisfied that the charity is unable to ascertain the wishes of the donor.
- (2) The conditions are—
- (a) that some or all of the purposes of the restricted funds—
    - (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 the restricted funds' purposes),
    - (iii) have ceased to be charitable purposes,
    - (iv) have ceased in any other way to provide a suitable and effective method of using the funds, having regard to the spirit of the restricted funds' purposes,
  - (b) that the purposes of the restricted funds provide a use for only part of its property.
- (3) The Scottish Ministers may by regulations make such provision as they think fit in relation to making and determining applications under this section.
- (4) 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 restricted funds reorganisation schemes,
  - (d) the action a charity may take in order to satisfy OSCR of the matters described in subsection (1)(b),
- and may make different provision in relation to different types of charity.

### **43B Reorganisations of restricted funds: applications by OSCR**

- (1) Where OSCR—
- (a) considers—
    - (i) that any of the conditions specified in section 43A(2) is satisfied in relation to a charity, and
    - (ii) that a restricted funds reorganisation scheme proposed by it or by the charity trustees of the charity will enable the resources of the restricted funds to be applied to better effect for charitable purposes consistently with the charity's constitution, and
  - (b) is satisfied that it is not possible to ascertain the wishes of the donor, 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 restricted funds reorganisation scheme if it considers that the matters set out in paragraphs (a) and (b) of that subsection are satisfied in relation to the restricted funds to which the application relates.

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- (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.
- (5) The Scottish Ministers may by regulations make such provision as they think fit in relation to action which may be taken to satisfy OSCR of the matter described in subsection (1)(b).
- (6) Nothing in this section affects the power of the Court of Session to approve a cy près scheme in relation to a charity.

#### **43C Approved restricted funds reorganisation schemes**

A charity may, despite any condition relating to restricted funds having contrary effect, use the restricted funds in such manner as permitted by an approved restricted funds reorganisation scheme.

#### **43D Restricted funds reorganisations: supplementary**

In this chapter—

“donor” means such person or body who may vary the purpose of, or any conditions imposed in relation to, restricted funds as may be specified by regulations made by the Scottish Ministers as they think fit,

“restricted funds” means property (including money) given to a charity for a specific purpose and in respect of which conditions have been imposed as to its use,

a “restricted funds reorganisation scheme” is a scheme for—

- (a) the variation of the purpose for which restricted funds may be used,
- (b) the variation or removal of any condition imposed on the charity in relation to the use of restricted funds.”

- (2) In section 71 of that Act (decisions), after paragraph (m) insert—

“(ma) refuse an application made for the purposes of section 43A,”.

- (3) In section 106 of that Act (general interpretation), after the entry for “reorganisation scheme” insert—

““restricted funds reorganisation scheme” has the meaning given in section 43D and references to “approved restricted funds reorganisation schemes” are references to schemes approved under section 43A or 43B,”.

#### **Annotations:**

#### **Commencement Information**

**I6** S. 125 in force at 1.10.2010 for specified purposes by S.S.I. 2010/321, art. 3, Sch.

**I7** S. 125 in force at 1.11.2012 in so far as not already in force by S.S.I. 2012/218, art. 2

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## 126 Appointment of charity trustees

After section 70 of the 2005 Act, insert—

### *“Appointment*

#### **70A Appointment of charity trustees**

- (1) Subsection (2) applies where—
  - (a) a charity has an insufficient number of charity trustees to be able to appoint a charity trustee under its constitution, and
  - (b) the constitution does not provide a mechanism for appointing a charity trustee in such circumstances.
- (2) OSCR may, upon the request of—
  - (a) the majority of the charity trustees of a charity,
  - (b) if there are only two charity trustees, either of them,
 appoint a person as an acting charity trustee for the charity.
- (3) OSCR may appoint more than one acting charity trustee under subsection (2), but only as many as is necessary for the charity to be able to appoint charity trustees under its constitution.
- (4) A person appointed as an acting charity trustee under subsection (2)—
  - (a) is appointed for the period of 12 months (or such shorter period as OSCR thinks fit) starting with the date of appointment, and
  - (b) has the same functions as a charity trustee appointed under the charity's constitution.
- (5) Despite subsection (4)(a), if—
  - (a) at the end of the period mentioned in that subsection, the charity is still not (but for the acting charity trustee) able to appoint a charity trustee under its constitution, and
  - (b) OSCR, the majority of the charity trustees (or if only two trustees, either of them) and the acting charity trustee agree to an extension,
 an acting charity trustee's period of appointment may be extended by one period of up to three months starting with the expiry of the original period of appointment.
- (6) Nothing in subsections (1) to (5) prevents a person appointed as an acting charity trustee by OSCR under subsection (2) from being appointed as a charity trustee by the charity under its constitution.
- (7) But the acting charity trustee may not vote on whether to make such an appointment.
- (8) Where an acting charity trustee is appointed as a charity trustee under the charity's constitution, the person's appointment as an acting charity trustee comes to an end on the date of that subsequent appointment.”.

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**Annotations:**

**Commencement Information**

**I8** S. 126 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

**127 Charity trustees' indemnity insurance**

- (1) In section 67(5)(c) of the 2005 Act (remuneration for services), for “any” substitute “this Act or any other”.
- (2) After section 68 of that Act insert—

**“68A Charity trustees' indemnity insurance**

- (1) The charity trustees of a charity may arrange for the purchase, from the charity's funds, of insurance designed to indemnify the charity trustees against personal liability in respect of any negligence, default or breach of duty committed by them in their capacity as—
  - (a) charity trustees, or
  - (b) directors or officers of any body corporate carrying on any activities on behalf of the charity.
- (2) The terms of such insurance must, however, be framed to exclude the provision of any indemnity for a charity trustee in respect of any liability incurred by the charity trustee—
  - (a) to pay—
    - (i) a fine imposed in criminal proceedings,
    - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature,
  - (b) in respect of representation in any criminal proceedings in which the charity trustee is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the charity trustee,
  - (c) to the charity that arises out of any conduct which the charity trustee knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which the charity trustee did not care whether it was in the interests of the charity or not.
- (3) For the purposes of subsection (2)(b) the reference to conviction does not include a conviction—
  - (a) quashed by an order under section 118(1)(b) or 183(1)(c) of the Criminal Procedure (Scotland) Act 1995 (c. 46),
  - (b) quashed by an order under section 118(1)(c) of that Act and which order has the effect of an acquittal by virtue of section 119(9) of that Act or otherwise,
  - (c) in relation to which the verdict is set aside by an order under section 183(1)(d) of that Act and which order has the effect of an acquittal by virtue of section 185(9) of that Act or otherwise.
- (4) This section—

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- (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the charity's constitution,
- (b) has effect despite any provision prohibiting the charity trustees receiving any personal benefit from the charity's funds.”.

**Annotations:**

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**Commencement Information**

**I9** S. 127 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

**128 Interpretation of Part 9**

For the purposes of this Part, the “2005 Act” is the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

**Annotations:**

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**Commencement Information**

**I10** S. 128 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

**Changes to legislation:**

There are currently no known outstanding effects for the Public Services Reform (Scotland) Act 2010, Part 9.