



# Charities (Regulation and Administration) (Scotland) Act 2023

## 2023 asp 5

### *Charity mergers*

PROSPECTIVE

#### **13 Recording of charity mergers and treatment of legacies**

- (1) The 2005 Act is modified as follows.
- (2) After section 64, insert—

#### **“CHAPTER 7A**

#### **CHARITY MERGERS**

##### **64A Meaning of “charity merger” etc.**

- (1) This section applies for the interpretation of sections 64B to 64E.
- (2) A “charity merger” means a scheme in which—
  - (a) either—
    - (i) all the property, rights and liabilities of one or more charities (a “transferor”) are transferred to another charity (the “transferee”), or
    - (ii) two or more charities (“transferors”) are amalgamated and all the property, rights and liabilities of both or all of them are transferred to a new charity (the “transferee”), and
  - (b) the transferor (or transferors) is (or are) wound up or dissolved, or is (or are) to be wound up or dissolved, in connection with the scheme.
- (3) A reference (however expressed) to—
  - (a) a transferor under a charity merger is a reference to a transferor within the meaning of subsection (2),

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- (b) a transferee under a charity merger is a reference to—
  - (i) the transferee within the meaning of subsection (2), if it is a company or other body corporate,
  - (ii) otherwise, the charity trustees of the transferee (within the meaning of subsection (2)).

#### **64B Notification of charity mergers**

- (1) A transferee under a charity merger may give OSCR notice of the merger at any time after all the property, rights and liabilities of the transferor (or of all of the transferors, where there is more than one) under the merger are transferred to the transferee.
- (2) A notice under subsection (1) must—
  - (a) include such documents and information, and
  - (b) be given in such form and manner,
 as OSCR may require.
- (3) OSCR must publicise any requirements set under subsection (2).
- (4) The Scottish Ministers may by regulations make provision about the circumstances in which, and the time at which, notice of the merger is to be treated as having been given.

#### **64C Record of charity mergers**

- (1) OSCR must keep, in such manner as it thinks fit, a record of all charity mergers notified to it in accordance with section 64B.
- (2) The record of charity mergers must contain a separate entry for each charity merger setting out—
  - (a) the date notice of the merger was given to OSCR,
  - (b) any other information which OSCR considers appropriate in relation to the merger.
- (3) Section 22 applies to documents and information which OSCR requires in relation to an entry in the record of charity mergers which relates to the charity as it applies to documents and information which OSCR requires in relation to the charity's entry in the Register.
- (4) In this section and sections 64D and 64E, “the record of charity mergers” means the record kept under subsection (1).

#### **64D Legacies: effect of charity merger being notified**

- (1) This section applies where—
  - (a) a person (the “testator”) by will bequeaths a legacy to a charity,
  - (b) the charity to which the legacy is bequeathed becomes a transferor under a charity merger,
  - (c) the transferor either—
    - (i) acquires a vested right in the legacy, or

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- (ii) does not acquire a vested right in the legacy by reason only of the transferor having wound up or dissolved in connection with the merger, and
  - (d) notice of the merger was given in accordance with section 64B before the date on which the transferor acquires or (as the case may be) would, but for winding up or dissolving, have acquired the vested right in the legacy.
- (2) The legacy is to be treated as having vested in the transferee under the merger unless it is clear from the terms of the will that the testator intended otherwise.
- (3) Without prejudice to the generality of subsection (2)—
  - (a) it is to be regarded as clear from the terms of the will that the testator intended otherwise if the will provides expressly that the legacy is not to be paid to a transferee under a charity merger,
  - (b) it is not to be regarded as clear from the terms of the will that the testator intended otherwise only by reason of the will providing that the legacy is bequeathed—
    - (i) to the charity, which failing to another person (or persons),
    - (ii) to the charity and another person (or persons) and to whichever of them is still in existence or, as the case may be, is the survivor (or survivors) of them.
- (4) Where the legacy is bequeathed to more than one person, the share of it which is to be treated as having vested in the transferee is the share that has vested or (as the case may be) would, but for winding up or dissolving, have vested in the transferor.
- (5) Subsection (6) applies where—
  - (a) the transferee (“Charity A”) becomes the transferor under a further merger, and
  - (b) notice of the further merger was given in accordance with section 64B before the date on which either—
    - (i) the legacy was treated as having vested in Charity A by virtue of subsection (2), or
    - (ii) the legacy would have been treated as having vested in Charity A by virtue of subsection (2) but for Charity A having been wound up or dissolved in connection with the further merger.
- (6) The legacy is to be treated as having vested in the transferee under the further merger (and so on).
- (7) In this section, a “will” means any document of a testamentary nature and includes a reference to—
  - (a) a testamentary trust disposition and settlement,
  - (b) a codicil.

#### **64E Public access to the record of charity mergers**

- (1) OSCR must make the record of charity mergers available for public inspection—

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- (a) at all reasonable times at its principal office,
  - (b) at such other places as it thinks fit, and
  - (c) otherwise as it thinks fit.
- (2) It is for OSCR to determine the form and manner in which the record of charity mergers is made available; but in doing so OSCR must ensure that the information in the record is made reasonably obtainable.
- (3) OSCR must publicise the arrangements which it makes in pursuance of subsection (1).”.
- (3) It does not matter if the will (within the meaning given in section 64D(7) of the 2005 Act) which gives rise to the legacy was executed before the date the amendment made by this section comes into force.

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**Commencement Information**

**II** S. 13 not in force at Royal Assent, see [s. 21\(2\)](#)

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