

**EXECUTIVE NOTE TO**  
**THE CHARITIES REORGANISATION (SCOTLAND) REGULATIONS 2007**  
**SSI/2007/204**

1. The above Regulations were made in exercise of the powers conferred by section 39(2) and (3) of the Charities and Trustee Investment (Scotland) Act 2005 (“the Act”). The Regulations are subject to negative resolution procedure.

**Policy Objectives**

2. The changes in charity regulation that the Act puts in place are designed to provide a modern, proportionate regulatory framework that will support charities rather than tying them in red tape. Integral to this are the provisions in Chapter 5 of the Act, which set out an important foundation of statutory regulation for charity reorganisation. Section 39(2) and (3) provide Scottish Ministers with powers to regulate charity reorganisation through secondary legislation on a number of reorganisation matters, and provide a mechanism specifically for those charities that do not have the power to reorganise in their constitutions, to apply to OSCR to do so. Previously, charities that were public trusts or governing bodies of educational endowments had to apply to the Court of Session for approval to reorganise. This new reorganisation regime should provide a quicker and more cost-efficient route for charities to modernise and adapt their constitutions to better meet changing circumstances than was previously available to them through petition to the courts. Charities whose constitutions contain a power allowing them to reorganise must apply to OSCR for consent under section 16 of the 2005 Act.

3. The purpose of these Regulations is to set out the procedure for making and determining applications for the reorganisation of charities, in particular the form and manner in which the application is to be made and the publication of proposed reorganisation schemes. Under section 39, OSCR may approve a reorganisation scheme proposed by a charity if it considers any of the reorganisation conditions listed in section 42(2) is satisfied, and that the proposed reorganisation scheme will enable the resources of the charity to be applied to better effect for charitable purposes, consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted, or enable the charity to be administered more effectively. A reorganisation scheme is defined in section 42(3) as being a scheme to allow the variation of the constitution of the charity, to allow the transfer of the property to another charity, or to allow the amalgamation of the charity with another charity. Sections 39 and 40 do not apply to any charity constituted under a Royal charter or warrant or under any enactment but they do apply to an endowment if its governing body is a charity. Charities that are public trusts are, however, still able to apply to the Court of Session to consider a reorganisation under the Court’s *cy près* jurisdiction.

4. In order for OSCR to determine and approve a reorganisation scheme, the Regulations provide that the application must include certain information that will enable OSCR to ascertain whether the scheme meets the conditions for reorganisation laid down in section 42 of the Act. This information includes a copy of the constitution, where one exists, and a copy of the most recent statement of account or, where this is not available, confirmation of the charity’s income, assets and liabilities. The Regulations have been so drafted to allow those charities with very little identifiable documentation to be able to apply to reorganise, thus

enabling them to be administered more effectively and in compliance with regulatory requirements, such as those in the Charities Accounts (Scotland) Regulations 2006.

5. The Regulations do not set requirements concerning the provision or content of applications forms or checklists because these are essentially administrative matters and could be subject to change. However, the Regulations do require that OSCR acknowledge receipt of the application within 14 days.

6. The draft Regulations provide that charities with a gross annual income in excess of £250,000 must include, with the application, a draft notice of the proposed reorganisation scheme, advising that the charity has applied to OSCR for approval and signposting interested members of the public to the Regulations and to OSCR's website, where the full details of the proposed scheme and arrangements for making objections can be accessed. Under Regulation 4, charities with an income in excess of £250,000 must arrange for the notice to be published once, within the first 14 days of the publication period, in a newspaper circulating throughout Scotland, or if the charity's purposes relate to a particular region, it can arrange for the notice to be published in a local newspaper. The publication requirements for these larger charities have been revised following comments received during the consultation on the draft Regulations, which required the publication of an advertisement which set out the details of the proposed scheme in question. In recognition of the concerns expressed by the sector at the potential costs to charities that very detailed advertisements could entail, we have amended the Regulations so that only a short notice will be required, pointing to the OSCR website, thereby reducing potential costs but still providing for the transparency that is the linchpin of charity law reform.

7. The procedures which OSCR must follow when publishing notices of reorganisation schemes on its website, as required by Regulation 3, are the same for all charities. The draft Regulations define a "publication period" as the period which begins when OSCR publishes the advertisement on its website and ends upon the removal of the advertisement or scheme summary from the website. OSCR will be obliged to keep the notice of the scheme on its website for at least 28 days and no more than 42 days. The notices published both on OSCR's website and in the newspaper must provide a deadline for receipt of objections (decided by OSCR), which should be no earlier than 14 days from the end of the publication period. This means that OSCR must allow at least 14 days for objectors to submit their concerns, following the removal of the notice from its website. At least 7 days prior to publication of the advertisement on OSCR's website, OSCR must advise the charity of the publication period and the deadline for objections.

8. The Regulations require that objections to the proposed reorganisation scheme be put in writing to OSCR and that they not arrive later than the date set out in the notice. Objections should state the objector's name and address, his/her interest in the charity, if any and the reasons for the objection. Objectors do not have a right to request a review or appeal of OSCR's decision under chapter 10 of the Act.

9. OSCR's consideration of the scheme must include consideration of any objections received. While we would expect such decisions to be reached within a timeframe of about 28 days, we have opted to set a deadline of 6 months in the Regulations to allow for the possibility that the proposals may be very detailed and that complex objections may be received, precluding straightforward determination of the application. The draft Regulations which were published for consultation did not stipulate any deadline for OSCR's decision-

making but the majority of responses argued that this would not be fair to charities; however, there was also widespread acknowledgement that some proposed particularly complex schemes would require longer and, thus, we have included a six month deadline. The Regulations require OSCR to send a copy of its decision to the charity and to any objectors, within 7 days of making it. Under Chapter 10 of the Act, a decision by OSCR to refuse an application for reorganisation made for the purposes of section 39(1) can be subject to review and appeal, if the charity requests this.

10. Section 41 of the Act allows the charity to proceed with the reorganisation once OSCR has approved it and section 17 of the Act effectively requires the charity to notify OSCR of the reorganisation once it has taken place, so we have made no further provision in respect of this.

11. The publication requirement in these draft Regulations is without prejudice to any advertising requirements flowing from other legislation e.g. company law. These Regulations are without prejudice to the requirements of any other legislation.

### **Consultation**

12. The proposals for the Regulations were the subject of a consultation exercise from 23 October 2006 to 15 January 2007. The consultation involved a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities and benevolent bodies, professional bodies, local authorities, and all those organisations which have responded to previous Scottish Executive consultations on charity law reform.

13. OSCR has also been consulted on the Regulations, both during and after the official consultation period.

### **Financial Effects**

14. There are some costs associated with these Regulations, although charities will find that they are significantly lower than the costs of making an appeal to the Court of Session, which was the only route available to reorganise previously. Charities will have to meet their own costs associated with making an application, although we expect these costs to be minimal. Charities with incomes in excess of £250,000 will be required to meet the cost of placing a notice, in either a national or local newspaper, depending on the charities geographical coverage, alerting the public to the scheme and pointing to OSCR's website. There will also be costs to OSCR associated with processing applications and considering objections but these were always included in assumptions and estimates of its running costs, as part of its day to day business and so we would expect the administration costs to be met within existing budgets. A Regulatory Impact Assessment has been prepared and will be available at <http://www.scotland.gov.uk/Topics/Business-Industry/support/15242/1462>.

Scottish Executive Development Department  
March 2007

**CHARITIES AND TRUSTEE INVESTMENT  
(SCOTLAND) ACT 2005**

**Charities Reorganisation (Scotland) Regulations  
2007**

**Regulatory Impact Assessment**

**Scottish Executive  
March 2007**

# CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005: CHARITY REORGANISATION (SCOTLAND) REGULATIONS 2007

## REGULATORY IMPACT ASSESSMENT (RIA)

### Introduction

1. This Regulatory Impact Assessment (RIA) aims to provide information on the options considered in relation to the Charities Reorganisation (Scotland) Regulations, made under section 39 of the Charities and Trustee Investment (Scotland) Act 2005 (the Act) and their likely impact on the sector. Under Scottish Cabinet rules, any piece of legislation which will create or extend a regulatory regime must include a consideration of the impact of regulation on the relevant sector.

### Purpose and intended effect of regulation

#### *(i) The objective*

2. The Scottish Executive is committed to reforming the regulatory regime for charities in order to support the charities sector and to safeguard the public interest in relation to charities. The Charities and Trustee Investment (Scotland) Act 2005 received Royal Assent on 14 July 2005. A draft partial version of this Regulatory Impact Assessment (RIA) formed part of the consultation paper published in October 2006, setting out the Executive's proposals for the Charities Reorganisation (Scotland) Regulations 2007 under section 39 of the Act, and set out what we considered the impact of our proposals on charities would be. The Regulations set out the conditions to be followed by charities that, lacking powers within their own constitutions, would have to apply to the Office of the Scottish Charity Regulator (OSCR) for permission to reorganise.

3. This RIA provides background information on the options considered when developing the proposals, and the probable impact and cost of these options. We considered the views received on the draft partial RIA during the consultation, and have amended it accordingly to be published in final form when the Regulations are laid before the Scottish Parliament.

4. **Devolution:** The Regulations will only apply to the reorganisation of charities on the Scottish Charity Register.

#### *(ii) The background*

5. The Charities and Trustee Investment (Scotland) Act 2005 received Royal Assent on 14 July 2005. Proposals for the Bill were consulted on during the summer of 2004.

6. Chapter 5 of the Charities and Trustee Investment (Scotland) Act 2005 sets out an important foundation of statutory regulation for charity reorganisation. It also gives Scottish Ministers powers to make Regulations on charity reorganisation under section 39. With the commencement of sections 39 to 42 of the 2005 Act, charities that do not have the power to reorganise in their own constitutions will have a dedicated statutory provision allowing them to reorganise in a simpler and more cost-effective manner than was possible under the

previous regime, which required application to the Court of Session. Sections 39 to 42 will be commenced to coincide with the coming into force date of the Regulations.

7. The Charities Reorganisation (Scotland) Regulations 2007 are made using these powers in section 39 of the Act and are intended to help maintain public confidence in the sector and increase transparency without placing undue burdens on charities and other benevolent bodies. They are integral to the aim of providing a modern, proportionate regulatory framework, that will support charities rather than tying them in red tape. They are intended to help charities to reorganise in a more straightforward and cost-effective manner than was previously possible.

8. Under section 39, OSCR may approve a reorganisation scheme prepared by a charity if it considers any of the reorganisation conditions satisfied and that the proposed reorganisation scheme will enable the resources of the charity to be applied to better effect for charitable purposes, consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted, or will enable the charity to be administered more effectively. The purpose of these Regulations is to set out the procedure for making and determining applications for the reorganisation of charities under the 2005 Act, in particular the form and manner in which the application is made, the period within which OSCR must make a decision on an application and the publication of proposed reorganisation schemes.

***(iii) Rationale for government intervention***

9. The Report of the Scottish Charity Law Review Commission (known as the “McFadden Report”), which was published in May 2001, observed the difficulties and expense that some charities faced when wishing to modernise or change their constitutions but lacked the mechanisms to do so. Ultimately, the expense incurred would be lost to the good causes that the charity was established to serve. The Report made a number of recommendations concerning the reorganisation of Scottish charities, including:

- that it should be made easier for Scottish charities to reorganise;
- that a new charity regulator should have broad powers to approve reorganisations;
- although not a specific recommendation, the report envisaged the consolidation of existing reorganisation provisions under the Law Reform (Scotland) Act 1990 and the Education (Scotland) Act 1980.

10. In the consultation on, and during parliamentary passage of, the draft Charities and Trustee Investment (Scotland) Bill, there was widespread support for the proposed regime, with many respondents welcoming what would be a simpler and cheaper process for charities to reorganise than was available under other statutes. Consequently, the Act, as passed in 2005, provides for the handling of all charity reorganisations (where charities do not possess powers to reorganise themselves) by OSCR rather than the Court of Session, except for charities constituted under a Royal charter or warrant or under any enactment. They do, however, apply to an endowment if its governing body is a charity.

***(iv) Risk assessment***

11. The new Regulations are an essential part of the implementation of the Charities and Trustee Investment (Scotland) Act 2005. Without the new Regulations, there would be no

statutory basis for the procedures to be followed by charities that lack powers to reorganise themselves, in seeking the consent of OSCR to reorganise. A lack of regulation would severely hamper the attempts to provide a transparent and straightforward regulatory framework for charities in Scotland and undermine the principles of the Charities and Trustee Investment (Scotland) Act 2005.

## **Public consultation**

12. A public consultation was carried out on the draft Regulations on charities reorganisation from 23 October 2006 to 15 January 2007. The written responses that the Executive has been given permission to publish are available in the Scottish Executive Library and can be viewed on request by phoning the Scottish Executive Library Information Service on 0131 244 4552. They can also be viewed online at <http://www.scotland.gov.uk/publications/2007/02/15145747/0>. A Consultation Report will be published and the Regulations finalised, to be laid before the Scottish Parliament.

## **Options**

### *Option 1: Do nothing*

13. This option would involve not using the powers in section 39 of the Charities and Trustee Investment (Scotland) Act 2005 to regulate charity reorganisation. Without the commencement of sections 39 to 42, and the making of Regulations under section 39, charities that lack authorising provisions within their constitutions would have no legitimate route to reorganise themselves and OSCR would be unable to approve any such schemes. This would mean that those charities would have no means by which to modernise their constitutions or effect other basic changes. By failing to implement these sections of the Act, the more efficient and cost-effective reorganisation mechanism set out in those provisions would remain closed. If we were to commence sections 39 to 42 but opt not to make Regulations under section 39, there would be no clear procedure for charities and the Regulator to follow in the implementation of those sections and no statutory basis setting out the requirements which both must follow.

### *Option 2: Implement draft Charities Reorganisation (Scotland) Regulations 2007*

14. Implementation of the Charities Reorganisation (Scotland) Regulations 2007 will introduce statutory control of charity reorganisation, which will provide a clear and transparent basis upon which OSCR can determine applications and consider potential objections. These Regulations set out the information which must be included in applications for authorisation, sufficient to allow the Regulator to consider the merits of the proposed scheme against the requirements set out in sections 39 and 42 of the Act. The Regulations also set out publication requirements, varied according to the income of the charity, and also the procedures for lodging objections to reorganisation schemes. By requiring applicants to advertise proposed schemes, detailing certain key features, interested members of the public are given the opportunity to lodge objections within specified timeframes.

*Option 3: Introduce more extensive Regulations using all the powers available to Scottish Ministers to regulate charity reorganisation.*

15. Under section 39, Ministers may make different provision in relation to different types of charity. While the Regulations do differentiate between charities on the basis of income when detailing publication requirements, no further distinction is made. This one distinction is made in recognition of the difficulties faced by smaller charities in meeting advertisement costs. It is open to Ministers to vary the regulatory requirements according to charity type; thus, separate provisions could be introduced for charities with specific purposes or for those that operate in certain sectors. We have not opted to make such distinctions because there is currently no perceived need for any further differentiation and we are not aware of any justification for imposing different requirements on specific types of charity, nor for exempting them.

### **Costs and benefits**

#### *Business sectors affected*

16. Only those existing charities in whose constitutions there are no provisions authorising reorganisation of the charity will require to comply with these Regulations. Many charities do possess such powers within their constitutions and OSCR has processed a large number of consents and notifications of changes under Sections 16 and 17 of the Charities and Trustee Investment (Scotland) Act 2005, since their commencement in April 2006. We would expect that the number of charities who will be subject to the provisions in these Regulations, to whom the procedures under Sections 16 and 17 are not available on account of constitutional restrictions, would be comparatively few. That is not to say that we would do not place significance on the implementation of these provisions; on the contrary, we are aware of the importance of these Regulations to charities who cannot avail themselves of the procedures under sections 16 and 17.

17. Where such charities would previously have applied to the Courts, with the commencement of Sections 39 to 42 of the Charities and Trustee Investment (Scotland) Act 2005 and the introduction of these Regulations, they will be able to apply to OSCR for consent to reorganise. This should represent a significant improvement, particularly in terms of reduced expense and timescale, for parts of the charity sector, although it may result in a slight reduction in case load for some members of the legal profession.

### **Benefits**

#### *Option 1: Do Nothing*

18. There would be little benefit from this option; on the contrary, to fail to implement the reorganisation provisions in the Act would be to neglect a pressing need within the parts of the charity sector. Although the sector would have fewer legislative requirements to comply with, there would be no avenue for charities to reorganise if their constitutions do not authorise reorganisation, and this would run counter to our intention to support and encourage charities in Scotland. There was widespread support from the sector during the consultation on the Draft Charities and Trustee Investment (Scotland) Bill in 2004, and during the parliamentary passage of the Bill, for the introduction of a quicker and cheaper means of reorganisation for these charities. So to fail to deliver the promised benefits of a simpler



system would be a serious setback in our endeavour to improve regulation for charities in Scotland.

*Option 2: Implement draft Charities Reorganisation (Scotland) Regulations 2007*

19. As indicated above, there has been considerable support for this approach. The Regulations will ensure accountability and transparency to help assist public confidence in the sector, but also provide the operational context in which charities can seek approval for proposed reorganisations. Charities that lack powers to reorganise should see the benefits of a more straightforward and significantly less expensive system, with requirements clearly set out in these Regulations. Other stakeholders and members of the public will also have the opportunity to see the details of proposed reorganisation schemes and lodge objections in line with procedures which these Regulations will establish.

*Option 3: Introduce more extensive Regulations using all the powers available to Scottish Ministers to regulate charity reorganisation.*

20. Introducing more extensive Regulations with separate provisions for different types of charity is an option that Ministers could follow but we are not aware of any specific benefits that such an approach might bring. We have always endeavoured to create a level playing field for charities ensuring that the regulatory framework is fair and consistent, distinguishing only to recognise the significant differences in income that exist between different sizes of charity, and, consequently, their differing abilities to meet costs.

## **Costs**

*Option 1: Do nothing*

21. There would be no direct costs to charities in this option. However, it is conceivable that some charities, lacking a route for reorganisation, would be prevented from pursuing more cost effective means of working that modernisation and change could potentially bring about. To do nothing would leave no detailed requirements for charity reorganisation in Scotland and would seriously undermine the principle of improving the regulatory framework for charities, which underpins the Charities and Trustee Investment (Scotland) Act 2005.

*Option 2: Implement Charities Reorganisation (Scotland) Regulations 2007*

22. Those undertaking charity reorganisation will need to ensure that they are aware of, and comply with, the requirements the Regulations place on them. Many charities will face no additional costs because they possess the necessary powers within their constitutions and can seek OSCR's consent to reorganise under section 16 of the Charities and Trustee Investment (Scotland) Act 2005. For those charities that will be subject to these Regulations, the new regime should represent a not inconsiderable reduction in costs for reorganisation, when compared with the costs incurred in applying to the Court of Session to approve a reorganisation scheme, which would run to several thousand pounds. We have received informal indications that costs of applying to the Court of Session for approval can range from £7,500 to £15,000; however, if the case is subject to challenge or prolonged, those costs could rise substantially.

23. In contrast, there are no plans for OSCR to operate a charging scheme for charity reorganisation approval procedures. It has not been possible to provide accurate estimates of compliance costs for charities, although we do not believe they will be significant, including mainly administration costs for preparing and sending an application to OSCR and publication costs, which will vary according to the size of the charity. If a charity has an income over £250,000, it will be required to publish details of the proposed reorganisation scheme in a notice placed in a newspaper with Scotland-wide distribution or, if its purposes are specific to a particular geographical area, the notice can be placed in a local newspaper. The publication requirements for these larger charities have been revised following comments received during the consultation on the draft Regulations, which required the publication of an advertisement which set out the details of the proposed scheme in question. In the draft partial RIA that issued with the consultation, we estimated that costs of an advertisement which included the details of the proposed scheme could be in the region of £5,000. In recognition of the concerns expressed by the sector at the potential costs to charities that very detailed advertisements could entail, we have amended the Regulations so that only a short notice will be required, pointing to the OSCR website, thereby reducing potential costs but still providing for the transparency that is the linchpin of charity law reform. Costs for notices of 5cm with 3 columns, we estimate could average at around £700 for the Scotsman, Herald and Daily Record, prices varying according to the precise size and amount of text in the notice.

24. The costs to OSCR for processing applications and considering objections were always included in assumptions and estimates of its running costs, as part of its day to day business and so we would expect the administration costs to be met within existing budgets.

*Option 3: Introduce more extensive Regulations using all the powers available to Scottish Ministers to regulate charity reorganisation.*

25. While it is not possible to estimate the costs for introducing more extensive Regulations which differentiate between different types of charity, we would expect that the costs of determining several assorted types of application could result in increased administration costs for OSCR.

### **Consultation with small business**

26. These Regulations will only apply to charities and we do not, therefore, expect that they will have an impact on small firms or micro-businesses. The consultation in 2004 on the draft Charities and Trustee Investment (Scotland) Bill included our proposals for the reorganisation of charities. This consultation paper was sent to a wide variety of bodies and individuals, as well as being available on the SE website. No concerns were raised about the impact on small businesses.

### **Test run of business forms**

27. The Regulations introduce requirements which certain charities must meet when preparing and publicising proposed reorganisation schemes. However, they do not introduce a statutory business form which must be completed, but merely certain things which must be included in the application to be submitted to OSCR. Therefore there is no business form which needs to be tested.

## **Competition Assessment**

28. The Charities Reorganisation (Scotland) Regulations 2007 are not expected to have any impact on competition. They will make the reorganisation of charities more straightforward and cost-effective, introducing a simplified approval regime operated by OSCR, which we would not expect to distort or restrict competition within markets in which charities operate.

## **Enforcement, sanctions and monitoring**

29. The provisions will be enforced by the Office of the Scottish Charity Regulator (OSCR). Under Chapter 10 of the Act, a decision by OSCR to refuse an application for reorganisation made for the purposes of section 39(1) can be subject to review by OSCR, in the first instance, and appeal to the Scottish charity Appeals Panel, if the charity requests this.

## **Consultation**

30. The Charities and Trustee Investment (Scotland) Act 2005 was developed following extensive consultation. This RIA was published in draft form for consultation, along with the proposals for the Charities Reorganisation (Scotland) Regulations 2007 themselves. It was distributed to a range of key stakeholders, including national and local voluntary sector intermediary organisations, representative bodies of particular groups of charities and benevolent bodies, professional bodies, local authorities, and all those organisations which have responded to previous Executive consultations on charity law reform. It was also available on the Scottish Executive website consultations page ([www.scotland.gov.uk/consultations](http://www.scotland.gov.uk/consultations)).

## **Implementation and delivery plan**

31. The Regulations will be laid before the Scottish Parliament on 7 March 2007 and will come into force on 31 May 2007. They will apply to charities wishing to apply for reorganisation to the Office of the Scottish Charity Regulator, as outlined in Chapter 5 of the Charities and Trustee Investment (Scotland) Act 2005.

## **Post-implementation review**

32. OSCR will be tasked with reviewing implementation of the legislation and Regulations, and advising the Executive of any need for change. The Executive will review the impact of the Regulations within ten years of them coming into force.

## **Summary and recommendations**

33. Based on the analysis outlined above and the analysis of the responses to the consultation, the Executive recommends the adoption of option 2. The Regulations have been drafted on this basis.

## **Declaration and Publication**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Responsible Minister

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Rhona Brankin

Date

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## **Contact**

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