



# 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 [<sup>F1</sup>be entered in the Scottish Charity Register]; 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.

#### Textual Amendments

- F1** Words in s. 9(1)(d)(ii) substituted (1.4.2006) by [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\)](#), s. 107(2), [Sch. 4 para. 7\(c\)](#); S.S.I. 2006/189, art. 2(1), Sch. Pt. 1

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#### **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.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 21A(1)(c) words substituted by [2007 asp 5 Sch. 5 para. 3\(7\)\(a\)\(iii\)](#)
- s. 33(6) inserted by [2007 asp 5 Sch. 5 para. 3\(11\)](#)