



# Companies (Audit, Investigations and Community Enterprise) Act 2004

## 2004 CHAPTER 27

### PART 2

#### COMMUNITY INTEREST COMPANIES

##### *Becoming a community interest company*

- 40**    **[<sup>F1</sup>Becoming a community interest company: Scottish charities]**
- (1) [<sup>F2</sup>A [<sup>F3</sup>company that is a Scottish charity] may not become a community interest company.]
  - (2) [<sup>F2</sup>If a [<sup>F3</sup>company that is a Scottish charity] purports by special resolution to change its name to comply with section 33, the Commissioners of Inland Revenue may apply to the Court of Session for an order quashing any altered certificate of incorporation issued under section 28(6) of [<sup>F4</sup>the 1985 Act].]
  - (3) Regulations may repeal subsections (1) and (2); and subsections (4) to (7) have effect on and after the day on which regulations under this subsection come into force.
  - (4) A [<sup>F3</sup>Scottish charitable company] may not [<sup>F5</sup>become a community interest company] without the prior written consent—
    - (a) if the company's registered office is situated in Scotland, of the Scottish Charity Regulator, or
    - (b) if the company's registered office is situated in England and Wales (or Wales), of both the Scottish Charity Regulator and the [<sup>F6</sup>Charity Commission].
  - (5) If a [<sup>F3</sup>company that is a Scottish charity] contravenes subsection (4)(a), the Scottish Charity Regulator may apply to the Court of Session for an order quashing any altered certificate of incorporation issued under [<sup>F7</sup>section 38A].

*Changes to legislation: There are currently no known outstanding effects for the Companies (Audit, Investigations and Community Enterprise) Act 2004, Section 40. (See end of Document for details)*

- (6) If a [<sup>F3</sup>company that is a Scottish charity] contravenes subsection (4)(b), the Scottish Charity Regulator or the [<sup>F8</sup>Charity Commission] may apply to the High Court for such an order.
- (7) If a [<sup>F3</sup>company that is a Scottish charity] becomes a community interest company, [<sup>F9</sup>it shall continue to be under a duty to apply–
- (a) any property previously acquired, or any property representing property previously acquired,
  - (b) any property representing income which has previously accrued, or
  - (c) the income from any such property.
- in accordance with its purposes as set out in its entry in the Scottish Charity Register immediately before it became a community interest company.]

<sup>F10</sup>(8) .....

<sup>F11</sup>(9) .....

#### Textual Amendments

- F1** S. 40 heading substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 229(2)** (with art. 10)
- F2** S. 40(1)(2) repealed (E.W.S.) (1.10.2009) by The Community Interest Company (Amendment) Regulations 2009 (S.I. 2009/1942), regs. 1(1), 2
- F3** Words in s. 40 substituted (6.4.2007) by The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 4 para. 10(a)** (with art. 11(1))
- F4** Words in s. 40(2) substituted (6.4.2007) by The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 4 para. 10(b)** (with art. 11(1))
- F5** Words in s. 40(4) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 229(3)** (with art. 10)
- F6** Words in s. 40(4)(b) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 202**; S.I. 2007/309, art. 2, Sch.
- F7** Words in s. 40(5) substituted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 229(4)** (with art. 10)
- F8** Words in s. 40(6) substituted (27.2.2007) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 202**; S.I. 2007/309, art. 2, Sch.
- F9** Words in s. 40(7) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 8(3)(a)**
- F10** S. 40(8) omitted (6.4.2007) by virtue of The Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/1093), art. 1(3), **Sch. 4 para. 10(c)** (with art. 11(1))
- F11** S. 40(9) repealed (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242), art. 1(3), **Sch. para. 8(3)(c)**

#### Commencement Information

- I1** S. 40 in force at 1.7.2005 by S.I. 2004/3322, art. 2(3), **Sch. 3**

**Changes to legislation:**

There are currently no known outstanding effects for the Companies (Audit, Investigations and Community Enterprise) Act 2004, Section 40.