



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

^{F1}PART 1

CHARITIES

^{F1}CHAPTER 5A

REORGANISATION OF RESTRICTED FUNDS

Annotations:

Amendments (Textual)

- F1** Pt. 1 Ch. 5A inserted (1.10.2010 for specified purposes, 1.11.2012 in so far as not already in force) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 125(1), 134(7); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2012/218, art. 2

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
 - (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,

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- (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.
- (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.

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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.]

Changes to legislation:

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