

# CHARITIES (REGULATION AND ADMINISTRATION) (SCOTLAND) ACT 2023

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## EXPLANATORY NOTES

### COMMENTARY ON PROVISIONS

#### *Reorganisation of charities*

#### *Section 14 – Endowments*

90. A reorganisation scheme under Chapter 5 of Part 1 of the 2005 Act is a means by which a charity may act with OSCR’s consent to vary the charity’s constitution, transfer its property to another charity or amalgamate with another charity in a case where the charity’s constitution would not allow it to take such an action. However, charities constituted under Royal charter or warrant or an enactment (referred to in these notes as “statutory charities”) cannot generally use this mechanism. That rule is subject to an exception which originally applied to an endowment if its governing body was a charity. An endowment is property where the capital has to be preserved; only the income is spent on the fund’s charitable purposes.
91. However, the extent of the original exception was considered to be somewhat unclear: the original provisions in the 2005 Act were written for the paradigm case of reorganising a charity so they did not quite make sense when applied only to endowments within charities. In addition, the restriction that the governing body had to be a charity was considered to be unduly restrictive. There were cases where there was an endowment held by a statutory charity but because the trustees themselves were not also a charity, it did not qualify (despite the fact that it would be unusual for the trustees themselves to be a charity).
92. [Section 14](#) of the Act therefore adjusts the reorganisation provisions in order to allow OSCR to reorganise an endowment held by a statutory charity regardless of the status of the charity trustees. In addition, where the statutory charity is one set up by enactment (rather than by Royal charter or warrant) and the charity’s property consists only of an endowment(s), section 14 of the Act permits OSCR to reorganise the charity (again, regardless of the status of the charity trustees).
93. Specifically, section 14 of the Act—
- allows the reorganisation of endowments held by statutory charities regardless of the status of the charity trustees (see inserted section 42(6)(a) of the 2005 Act),
  - allows the reorganisation of a statutory charity which is established by enactment where its assets consist of only endowment(s) (see inserted section 42(6)(b) of the 2005 Act),
  - ensures that the rules about reorganisation schemes can be applied in a way that makes sense when what is being reorganised is an endowment within a charity rather than the whole charity (see inserted section 42(7) and (8) of the 2005 Act),

*These notes relate to the Charities (Regulation and Administration) (Scotland) Act 2023 (asp 5) which received Royal Assent on 9 August 2023*

- retains the original definition of “endowment” but clarifies that this includes income derived from the endowment and also takes a power (subject to the affirmative procedure) to modify this definition – for example, if that is needed as case law on the definition develops (see inserted section 42(9) and (10)(a) of the 2005 Act),
- grants Ministers a power (subject to the affirmative procedure) to disapply this exemption for particular charities or types of charity – for example, in the event that it is considered more appropriate for particular charities to still have to obtain an Act of Parliament due to, say, the nature of their activities, the precise way they are established within the broad category of statutory charity, or the document by which the endowment was created (see inserted section 42(10)(b) of the 2005 Act),
- adjusts the Education (Scotland) Act 1980 which allows for the reorganisation of non-charitable endowments, to ensure that there is no gap or overlap in the coverage between the two regimes as adjusted by section 14 (see subsections (4) and (5) of section 14).