



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART I

CHARITIES

Reorganisation of public trusts

10 Small trusts.

- (1) Where a majority of the trustees of any public trust having an annual income not exceeding £5,000 are of the opinion—
 - (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 [^{F1}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,
- subsection (2) below shall apply in respect of the trust.
- (2) Where this subsection applies in respect of a trust, the trustees may determine that, to 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—
- (a) a modification of the trust’s purposes should be made;
 - (b) the whole assets of the trust should be transferred to another public trust; or
 - (c) that the trust should be amalgamated with one or more public trusts.
- (3) Where the trustees of a trust determine as mentioned in subsection (2)(a) above, they may, subject to subsections (4) to (6) below, pass a resolution that the trust deed be modified by replacing the trust purposes by other purposes specified in the resolution.
- (4) The trustees shall ensure that, so far as is practicable in the circumstances, the purposes so specified are not so far dissimilar in character to those of the purposes set out in the original trust deed or other document constituting the trust that such modification of the trust deed would constitute an unreasonable departure from the spirit of such trust deed or other document.
- (5) Before passing a resolution under subsection (3) above the trustees shall have regard—
- (a) where the trust purposes relate to a particular locality, to the circumstances of the locality; and
 - (b) to the extent to which it may be desirable to achieve economy by amalgamating two or more trusts.
- ^{F2}(6)
- (7) Subject to subsection (14) below, a modification of trust purposes under this section shall not have effect before the expiry of a period of two months commencing with the date on which any advertisement in pursuance of regulations made under subsection (13) below is first published.
- (8) Where the trustees determine as mentioned in subsection (2)(b) above they may pass a resolution that the trust be wound up and that the assets of the trust be transferred to another trust or trusts the purposes of which are not so dissimilar in character to those of the trust to be wound up as to constitute an unreasonable departure from the spirit of the trust deed or other document constituting the trust to be wound up.
- (9) Before passing a resolution under subsection (8) above, the trustees shall—
- (a) where the trust purposes relate to a particular locality, have regard to the circumstances of the locality;
 - ^{F3}(b)
 - (c) ascertain that the trustees of the trust to which it is proposed to transfer the assets will consent to the transfer of the assets.
- (10) Where the trustees determine as mentioned in subsection (2)(c) above, they may pass a resolution that the trust be amalgamated with one or more other trusts so that the purposes of the trust constituted by such amalgamation will not be so dissimilar in character to those of the trust to which the resolution relates as to constitute an

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unreasonable departure from the spirit of the trust deed or other document constituting the last mentioned trust.

- (11) Before passing a resolution under subsection (10) above, the trustees shall—
- (a) where the trust purposes relate to a particular locality, have regard to the circumstances of the locality;
 - ^{F4}(b)
 - (c) ascertain that the trustees of any other trust with which it is proposed that the trust will be amalgamated will agree to such amalgamation.
- (12) Subject to subsection (14) below, a transfer of trust assets or an amalgamation of two or more trusts under this section shall not be effected before the expiry of a period of two months commencing with the date on which any advertisement in pursuance of regulations made under subsection (13) below is first published.
- (13) The Secretary of State may, by regulations, prescribe the procedure to be followed by trustees following upon a resolution passed under subsection (3), (8) or (10) above, and such regulations may, without prejudice to the generality, include provision as to advertisement of the proposed modification or winding up, the making of objections by persons with an interest in the purposes of the trust, notification to the Lord Advocate of the terms of the resolution and the time within which anything requires to be done.
- (14) If it appears to the Lord Advocate, whether in consideration of any objections made in pursuance of regulations made under subsection (13) above or otherwise—
- (a) that the trust deed should not be modified as mentioned in subsection (3) above;
 - (b) that the trust should not be wound up as mentioned in subsection (8) above; or
 - (c) that the trust should not be amalgamated as mentioned in subsection (10) above,
- he may direct the trust not to proceed with the modification or, as the case may be winding up and transfer of funds or amalgamation.
- (15) The Secretary of State may, by order, amend subsection (1) above by substituting a different figure for the figure, for the time being, mentioned in that subsection.
- (16) This section shall apply to any trust to which section 223 of the ^{M1}Local Government (Scotland) Act 1973 (property held on trust by local authorities) applies.

Textual Amendments

- F1** Words in s. 10(1)(d)(ii) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 4 para. 7(d)(i)**; S.S.I. 2006/189, art. 2(1), Sch. Pt. 1
- F2** S. 10(6) repealed (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 4 para. 7(d)(ii)**; S.S.I. 2006/189, art. 2(1), Sch. Pt. 1
- F3** S. 10(9)(b) repealed (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 4 para. 7(d)(ii)**; S.S.I. 2006/189, art. 2(1), Sch. Pt. 1
- F4** S. 10(11)(b) repealed (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), s. 107(2), **Sch. 4 para. 7(d)(ii)**; S.S.I. 2006/189, art. 2(1), Sch. Pt. 1
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Marginal Citations

- M1** 1973 c. 65.

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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\(11\)](#)