

2012 No. 219

CHARITIES

**The Charities Restricted Funds Reorganisation (Scotland)
Regulations 2012**

Made - - - - *4th July 2012*

Laid before the Scottish Parliament *6th July 2012*

Coming into force - - *1st November 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 43A(3) and (4), 43B(5), 43D and 103(2) of the Charities and Trustee Investment (Scotland) Act 2005(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Charities Restricted Funds Reorganisation (Scotland) Regulations 2012 and come into force on 1st November 2012.

Interpretation

2. In these Regulations—

“the 2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005;

“donor” has the meaning specified in regulation 3;

“gross annual income” means the gross annual income of the charity as shown in the charity’s most recent statement of account;

“large restricted funds” means restricted funds which comprise property of more than £1 million or have a gross annual income of more than £100,000;

“restricted funds” has the meaning given in section 43D of the 2005 Act;

“small restricted funds” means restricted funds which comprise property of £1 million or less and have a gross annual income of £100,000 or less; and

“very small restricted funds” means small restricted funds which do not include any heritable property or shares in a private limited company, and with a gross annual income of less than £1,000.

Meaning of “donor”

3. “Donor” is specified, in accordance with section 43D of the 2005 Act, as the person or body who gave the restricted funds to the charity.

(a) 2005 asp 10; sections 43A, 43B and 43D were inserted by section 125 of the Public Services Reform (Scotland) Act 2010 (asp 8).

Application by a charity to reorganise restricted funds

4. An application by a charity for approval to reorganise restricted funds under section 43A of the 2005 Act must include—

- (a) either—
 - (i) a copy of the document which imposes the conditions as to the restricted fund's use; or
 - (ii) if such a document cannot be produced, a statement setting out the specific purpose for which the restricted funds were given to the charity and the restrictions which have been imposed as to the use of the restricted funds;
- (b) details of the proposed restricted funds reorganisation scheme;
- (c) a statement setting out the reasons why the charity considers any of the conditions specified in section 43A(2) of the 2005 Act to be satisfied;
- (d) a statement setting out why the charity considers 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;
- (e) a statement that the charity has been unable to ascertain the wishes of the donor, including a description of the action that the charity has taken in attempting to ascertain the wishes of the donor;
- (f) a statement which shows, at the date the application is made, the balance of the restricted funds' assets and, for the preceding financial year, the incoming resources and resources expended; and
- (g) if regulation 6 applies, a draft of the notice to be published in a newspaper or periodical.

Notice of proposed restricted funds reorganisation scheme

5.—(1) On receipt of an application under section 43A of the 2005 Act in relation to large or small restricted funds, OSCR must publish a notice about the proposed restricted funds reorganisation scheme on its website.

(2) The notice must be published on OSCR's website for a period, to be determined by OSCR, of not fewer than 28 days and not more than 42 days.

(3) The notice must—

- (a) include details of the proposed restricted funds reorganisation scheme;
- (b) advise that any person who wishes to make a representation to OSCR, either supporting or opposing the proposed scheme, may do so in accordance with regulation 7; and
- (c) specify the deadline for making representations to OSCR.

(4) The day to be specified as the deadline for making representations to OSCR is the day falling 14 days after the final day on which the notice is to be published on OSCR's website.

Notice of proposed large restricted funds reorganisation scheme: newspaper or periodical

6.—(1) Where the restricted funds are large restricted funds, the charity must arrange for a notice to be published in an appropriate newspaper or periodical.

(2) The notice must—

- (a) be in the form set out in the Schedule; and
- (b) be published, at least once, within 14 days of the notice mentioned in regulation 5 being published for the first time on OSCR's website.

(3) In paragraph (1), "appropriate newspaper or periodical" means—

- (a) if the purposes of the restricted funds relate only to a particular locality, a newspaper or periodical circulating in that locality and being relevant to the purposes of the restricted funds; or

- (b) if the purposes of the restricted funds do not relate only to a particular locality, a newspaper or periodical circulating throughout Scotland and being relevant to the purposes of the restricted funds.

Representations in relation to a proposed large or small restricted funds reorganisation scheme

7.—(1) Any person may make a representation to OSCR either supporting or opposing a proposed large or small restricted funds reorganisation scheme.

(2) A representation must be in writing and may be sent to OSCR by email or by post or may be delivered personally.

(3) A representation must state—

- (a) the name and address (which may be an email address) of the person making the representation;
- (b) the name of the charity concerned as it appears in the notice on OSCR's website or the notice published in a newspaper or periodical; and
- (c) the nature of the representation and the reasons for it.

(4) Representations must be received by OSCR not later than the deadline for making representations to OSCR, as specified in the notice on OSCR's website.

(5) Not later than 14 days after the deadline for making representations to OSCR, as specified in the notice on OSCR's website, OSCR must send to the charity a summary of the representations received which may include the name and address of the maker of the representation.

OSCR's decision on a proposed large or small restricted funds reorganisation scheme

8.—(1) OSCR must make a decision on an application not more than 26 weeks after the deadline for making representations to OSCR, as specified in the notice on OSCR's website.

(2) Before reaching its decision OSCR must consider—

- (a) all of the representations it has received which comply with the requirements of regulation 7; and
- (b) any response it has received to those representations from the charity.

(3) OSCR must send a copy of its decision to the charity and any person that has sent it a representation within 7 days of the date of the decision being made.

Very small restricted funds: simplified procedure

9.—(1) On receipt of an application under section 43A of the 2005 Act as regards very small restricted funds, OSCR may apply a simplified procedure to the application.

(2) Where OSCR applies a simplified procedure—

- (a) OSCR must write to the charity to confirm that a simplified procedure will be applied to the application, within 14 days of the date of receipt of the application; and
- (b) regulations 5, 7 and 8 do not apply to the application.

(3) Under the simplified procedure, OSCR must—

- (a) make a decision on the application within 13 weeks of receipt of the application; and

- (b) send a copy of its decision to the charity within 7 days of the date of the decision being made.

St Andrew's House,
Edinburgh
4th July 2012

JOHN SWINNEY
A member of the Scottish Government

SCHEDULE

Regulation 6(2)

FORM OF NOTICE OF PROPOSED RESTRICTED FUNDS REORGANISATION SCHEME

“[insert the name of the charity as entered in the Scottish Charity Register] ([insert the registered number allocated to the charity]) has applied to the Office of the Scottish Charity Regulator (“OSCR”) for approval of a restricted funds reorganisation scheme. Details of the proposed reorganisation scheme may be obtained from OSCR’s website (www.oscr.org.uk), or by writing to OSCR [insert OSCR’s postal address]. Anyone who wishes to make representations to OSCR may do so in accordance with regulation 7 of the Charities Restricted Funds Reorganisation (Scotland) Regulations 2012. All representations must reach OSCR not later than [insert the deadline for making representations to OSCR, as specified in the notice on OSCR’s website].”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out how charities may apply to the Office of the Scottish Charity Regulator (“OSCR”) for approval to reorganise restricted funds and how OSCR must handle such applications. Regulation 3 specifies the meaning of “donor” which is relevant to the tests which OSCR must apply to a proposed reorganisation scheme under Chapter 5A of the Charities and Trustee Investment (Scotland) Act 2005 when considering an application to approve a restricted funds reorganisation scheme. The application process is set out in regulation 4. For applications in connection with large or small restricted funds there is a notice process for OSCR’s website in regulation 5. For applications in connection with large restricted funds there is a notice process for a newspaper or periodical in regulation 6. Under regulation 9 OSCR may apply a simplified procedure to applications in connection with very small restricted funds which does not involve notice. Under regulation 7 representations can be made about a proposed scheme in connection with small and large restricted funds. Regulations 8 and 9 set the deadlines within which OSCR must decide applications and copy its decisions to the charities.

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