

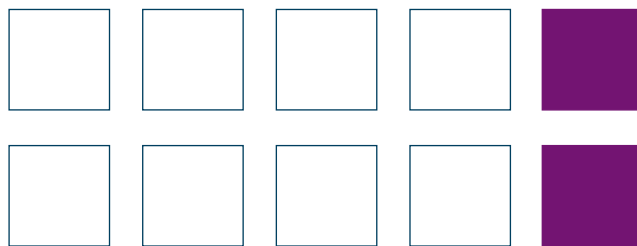
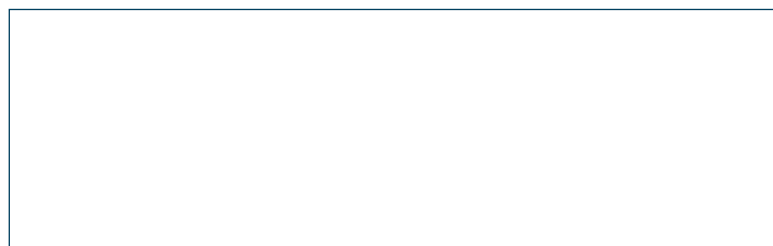
Charity Reorganisation:

Guidance for charity trustees and their advisers on reorganising a charity



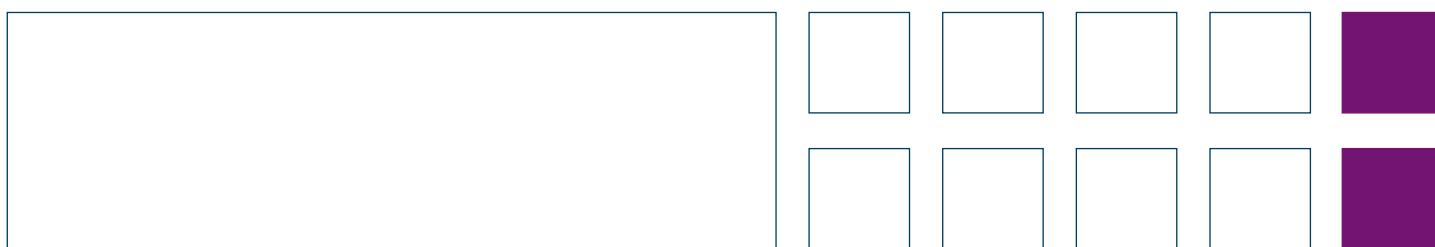
Office of the Scottish **Charity Regulator**



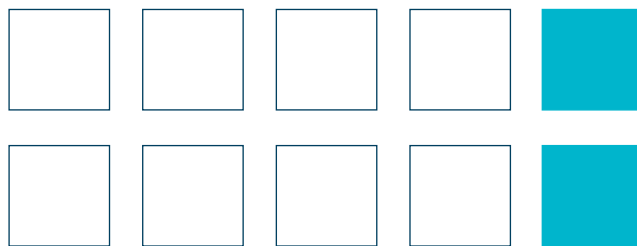
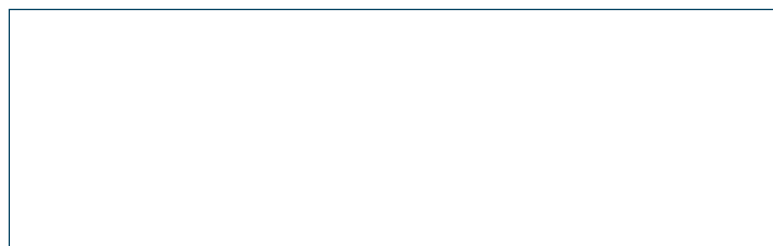


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Executive summary

Charity reorganisation is a valuable tool available to charities established in Scotland for releasing presently unused charitable funds back into Scotland's charity sector. It allows charities that do not have the power to make desirable changes to apply to the Office of the Scottish Charity Regulator (OSCR) for authority to do so.

Who can apply?

Charity trustees of charities registered in Scotland and established under Scots law can apply to OSCR to have a charity reorganisation scheme approved. Some categories of charity are excluded from this process. This includes some charities whose constitution is an Act of Parliament, a Royal Warrant or an Order of the Privy Council (a 'statutory enactment').

The process

Applications to reorganise take an average of six months to complete. You should allow for this when preparing your application. OSCR will approve or refuse a charity reorganisation scheme.

Charity reorganisation schemes

There are three types of charity reorganisation scheme:

- » A variation of the terms of the charity's constitution (whether or not in relation to its purposes);
- » A transfer of the charity's property (after satisfaction of liabilities) to another charity (whether or not involving a change to the purposes of the other charity); and
- » An amalgamation of the charity with another charity.

Charity reorganisation conditions

A charity that wants to reorganise must fulfil at least one reorganisation condition. There are seven reorganisation conditions. The reorganisation scheme must result in one of two outcomes for the charity. The outcome is determined by the condition or conditions to be met.

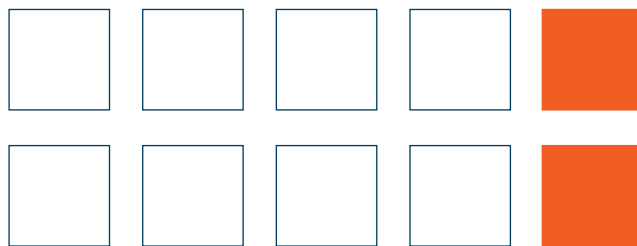
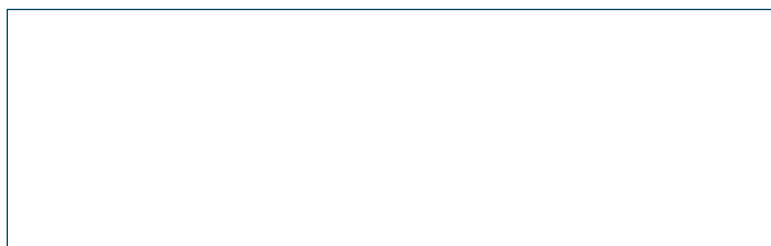
Publication and objections

To inform the public of what is proposed, an application summary must be published on the OSCR website for a period not exceeding 42 days. Larger charities will need to advertise in a local or national newspaper as well.

Members of the public may object to a proposed charity reorganisation scheme. OSCR must consider the content of any objections received.

OSCR decision and next steps

OSCR must approve or refuse a charity reorganisation scheme. If OSCR approves a scheme, the charity's trustees are responsible for the reorganisation of the charity and must notify OSCR when the charity's reorganisation is complete. If OSCR refuses a scheme, the charity's trustees can ask for this decision to be reviewed and can appeal against the outcome of the review if still dissatisfied.



1. Introduction

Charities often need to adapt the way they operate to reflect changes in society and the context in which they work. In many cases, charities clearly have the power to make these changes themselves, seeking regulators' consent when necessary. Sometimes, however, charities find that they are unable to make certain changes because the people who founded them did not anticipate the way that society would evolve.

This means that charities with outdated constitutions, out of step with modern needs or practices, may be unable to use their charitable funds, to fulfil the purpose they were set up for, or to operate efficiently. The charity reorganisation mechanism gives these charities the opportunity to make the changes they wish to make.

A. Consent or reorganisation?

Registered charities must seek the prior consent of OSCR to make certain changes. The changes that need OSCR's consent are:

- a) Changing your charity's name
- b) Changing your charity's constitution so far as it relates to purposes
- c) Amalgamating with another body
- d) Winding-up or dissolving your charity
- e) Applying to the Court in relation to actions (b) to (d) above.

Charities may also apply to OSCR to change their legal form.

Where a charity's trustees have the powers to make these changes, they will be able to apply for our consent to do so. All charities must give OSCR at least 42 days' notice before the proposed change takes place. Application forms

are available to help you with this. Any application for OSCR's consent must be made in writing.

Some charities, however, cannot make these or other changes. Constitutional provisions may stop charities from dissolving and passing on funds to another charity, even when this appears to be the most appropriate and efficient way to fulfil the charity's purpose. In other cases, the charity's constitution might not allow the charity's trustees to take the actions they feel are necessary to remain relevant and true to the spirit in which the charity was founded. It is also possible, particularly with older charities, that no constitution or governing document is available to be consulted, making it difficult for OSCR to grant consent.

Charities in this situation can apply to OSCR to reorganise. Charity reorganisation enables charity trustees to:

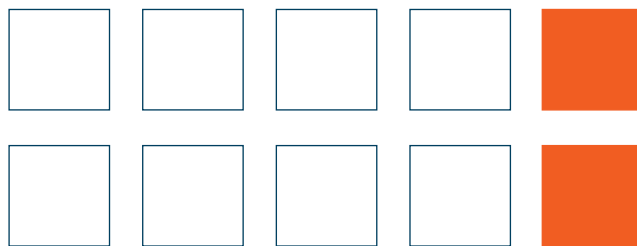
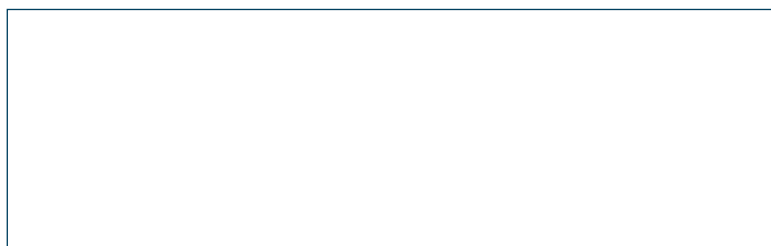
- » Vary the terms of the charity's constitution (whether or not in relation to its purposes); or
- » Transfer the charity's property (after satisfaction of liabilities) to another charity (whether or not involving a change to the purposes of the other charity); or
- » Amalgamate with another charity.

All of these changes require OSCR's approval.

B. Who is this guidance for?

This guidance explains what you need to do in order to reorganise a charity. It will be of help to trustees of charities of any size, and particularly older charitable trusts, which might benefit from reorganisation. It will also be of assistance to people working for charities and those who advise charity trustees.

This guidance also sets out how we will publicise a charity's intention to reorganise and how we consider any objections we receive. It is not aimed at guiding



the public through lodging an objection. If you want to find out how to object to a proposed charity reorganisation scheme, please read the relevant guidance on our website: www.oscr.org.uk

If you cannot find what you are looking for about charity reorganisation, please contact OSCR directly.

C. The legal framework

Chapter 5 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) describes what a charity must do in order for OSCR to approve an application for reorganisation. Minor amendments to Chapter 5 were introduced by the Public Services Reform (Scotland) Act 2010 (the PSR(S)A 2010).

The Charities Reorganisation (Scotland) Regulations 2007 (the 2007 Regulations) supplement the 2005 Act. These Regulations provide more detail about the procedures for charity reorganisation.

You will find references to the full legislation in section 10 of this guidance.

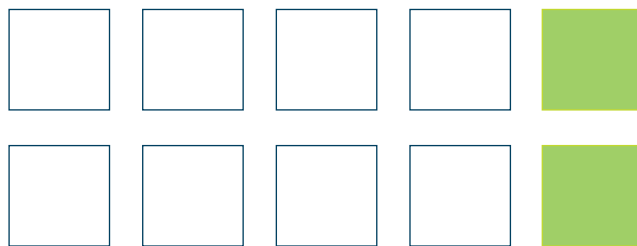
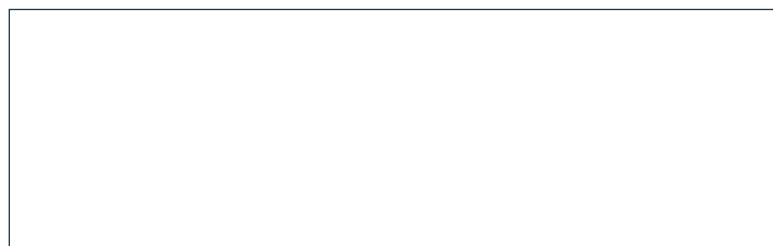
All charities must apply for OSCR's approval if they want to reorganise.

While OSCR facilitates and approves the reorganisation process, it is the charity's trustees who carry out the reorganisation of the charity and make the changes that have been approved.

The PSR(S)A 2010 makes provision for OSCR to approve the reorganisation of restricted funds. These provisions have yet to commence, but should do so in 2012. This guidance does not deal with the reorganisation of restricted funds. OSCR will issue separate guidance on this in 2012.

D. Use of 'must' and 'should' in this guidance

Where we use **'must'**, this indicates a legal requirement. Where we use **'should'** we are providing examples of good practice, based on our regulatory experience, which will help to demonstrate that charity trustees are fulfilling their duties and responsibilities. These examples are illustrations of how a legal requirement may be achieved in a given set of circumstances.



2. Who can apply for charity reorganisation?

Charities entered in the Scottish Charity Register (the Register), and established under Scots law, can apply to reorganise. This is because OSCR has jurisdiction only within charity law which is devolved to Scotland. OSCR does not have powers to consent to changes in bodies established in other countries. For example, a trust established in Ireland would be subject to Irish trust law.

A charity established in any other country but registered in Scotland would therefore need to consider other means of reorganising. Cross-border charities established in another UK jurisdiction must approach the charity regulator in the jurisdiction in which they were first established.

The reorganisation provisions are for charities that do not have power to make the changes they desire. Primarily they will apply to trusts, since companies, SCIOs and most unincorporated associations can amend their constitutions in order to widen trustee powers and update their purposes.

A. Endowments and statutory enactments

The 2005 Act excludes a small number of charities from the scope of OSCR's reorganisation powers, namely those charities whose constitution is an Act of Parliament, a Royal Warrant or an Order of the Privy Council (a 'statutory enactment').

However, where such a charity's property is an endowment (broadly, any property which has been dedicated for charitable purposes, and held subject to conditions), and where the governing body wishes the reorganisation to apply to this endowment, OSCR will be able to authorise the reorganisation of the endowment in terms of the 2005 Act. A charity whose constitution is a statutory enactment must therefore consider a number of matters in order to determine whether such a charity may be reorganised under the 2005 Act.

Some charities should also be aware that reorganisation may not in itself result in the desired change: it is the charity's responsibility to ensure that where changes require the consent of any third party (such as the Privy Council or the Secretary of State for Scotland), the terms of any such consent are fully complied with. It may be necessary to contact the Privy Council or the Scotland Office prior to submitting the reorganisation application to OSCR.

Where the trustees of a charity constituted by a statutory enactment are unclear about the appropriate steps to take, we would recommend that they get in touch with OSCR in the first instance to discuss their application.

B. How to make an application

A reorganisation application needs to be made by either the charity trustees or by someone acting on behalf of the charity trustees (e.g. a solicitor, an accountant, agent or adviser). We will also consider applications in respect of a charity where it is not at first clear whether the applicant is a charity trustee, or acting on behalf of the charity trustees, as charity reorganisation is a process sometimes used to address problems a charity may have with administration or governance arrangements.

Examples of such a situation could be:

- » where the executor of a deceased's estate becomes aware of the existence of a charitable trust of which the deceased was the only remaining charity trustee, or
- » where the constitution of an older charity cannot be found, is incomplete, or makes no adequate provision for the succession of charity trustees.

We will adopt a pragmatic approach in these circumstances. In the interest of transparency, we may highlight on the OSCR website (see section 7) that an application has been received from an applicant who is neither a charity trustee, nor someone acting on behalf of the charity's trustees.

Things to think about

Application form

OSCR has developed an ‘application for approval of a charity reorganisation scheme’ form. If an application does not provide sufficient detail or explanatory information, or is particularly complex, we will write back to you with follow-up questions. We will always write separately to acknowledge receipt.

Possible implications

There are a number of things to think about before you submit your application to OSCR. For example:

- » Has a due diligence exercise been carried out to assess the impact of reorganisation on employment contracts and pensions? If not, what steps are being taken to safeguard employees’ interests?
- » How will any other contracts that the charity has entered into be affected?
- » Is there likely to be a financial cost to the charity if it reorganises? If so, is it in the charity’s best interest to do so?
- » Are there other factors to consider that might make charity reorganisation difficult? Could this result in one or more objections?

As the regulator, we cannot tell you if reorganising is right for your charity. The possible impact of reorganisation should be taken into account before you submit your application to us. This might mean seeking independent advice on the potential risks associated with reorganisation.

Independent advice

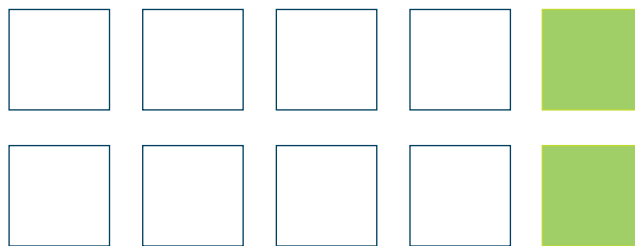
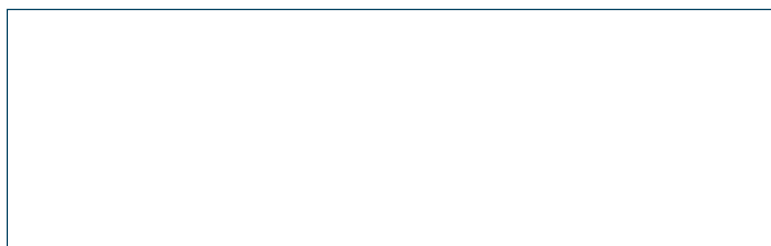
If you want independent legal advice, you can find a solicitor or law firm by using the ‘Find a Solicitor’ section of the Law Society of Scotland website:

www.lawsocietyofscotland.org.uk.

You can search by name, area of work or accredited specialism.

Your local Third Sector Interface may also be able to help. Interfaces offer free support to voluntary organisations and charities in Scotland. Your local Interface can be found by using the ‘Interface list’ section of the Voluntary Action Scotland website:

www.voluntaryactionsotland.org.uk.



Case study: Paisley & District Hospitals Voluntary Services Association (SC012073)

The Paisley & District Hospitals Voluntary Services Association (SC012073) applied to OSCR for approval of a charity reorganisation scheme for the transfer of the property of the charity to another charity.

The charity was established in 1949 to encourage public interest in the welfare of patients and staff in any Hospitals and similar Institutions within the area administered by the then Paisley & District Hospitals Board of Management.

The Paisley & District Hospitals Board of Management was succeeded by the Renfrew District of Argyll & Clyde Health Board in 1974. In 2005, authority for this district (the Renfrew District of Argyll & Clyde) passed to NHS Greater Glasgow.

The charity considered that some or all of the purposes of the charity could no longer be given effect to (whether or not in accordance with the directions or spirit of the charity's constitution) – condition (a)(ii).

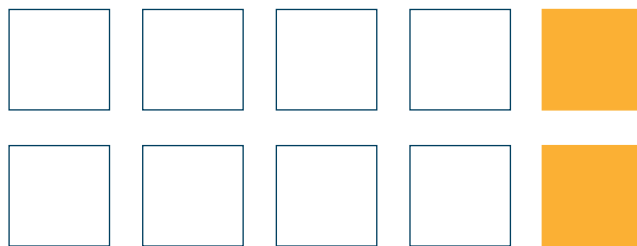
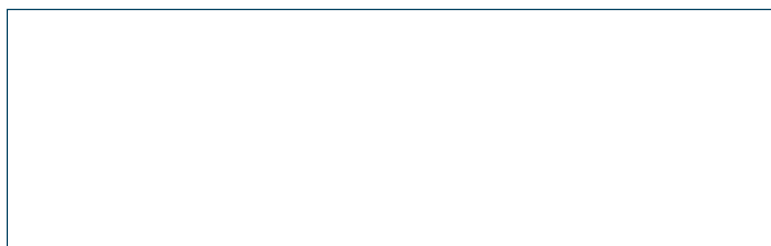
It was argued that this condition was met because the terms of the constitution required 'a quorum of three quarters of those entitled to be present and a majority of three quarters of those present and voting... to dissolve the Association'. The charity's constitution provided that trustees were to be appointed from a number of local organisations. Many of these organisations had ceased to exist and none of the original trustees remained.

The last known disbursement by the charity was in 1999. The Solicitors to the charity had held their assets on account since that time.

The Solicitors wished to transfer the charity's property to the Yorkhill Children's Foundation (SC007856).

It was argued that reorganisation would enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of the charity's constitution, having regard to changes in social and economic conditions since it was constituted (the outcome set by the 2005 Act). This was because the charity's property had lain untouched for many years and the Yorkhill Children's Foundation had related purposes and was in need of financial support.

No objections were received and the application to reorganise was approved by OSCR. A total of £32,799.70 was transferred to the recipient charity.



3. An overview of the application process

Applications to reorganise take, on average, six months to complete. Those that receive a number of objections may take slightly longer. You should allow for this when preparing your application.

A. What do you need to do? Meeting OSCR's requirements

To be approved, a reorganisation scheme must:

1. Fall within one of the types of **reorganisation scheme** set out in the 2005 Act – there are three of these (see section 4 of this guidance)
2. Meet one of the **reorganisation conditions** – there are seven to consider. The reorganisations conditions relate either to some sort of 'failure' in the current purposes of the charity or to an aspect of the charity's constitution that is no longer desirable (see section 5 of this guidance)
3. Achieve the prescribed **reorganisation outcome** – there are two possible outcomes. These describe what charity reorganisation must achieve if successful (see section 6 of this guidance).

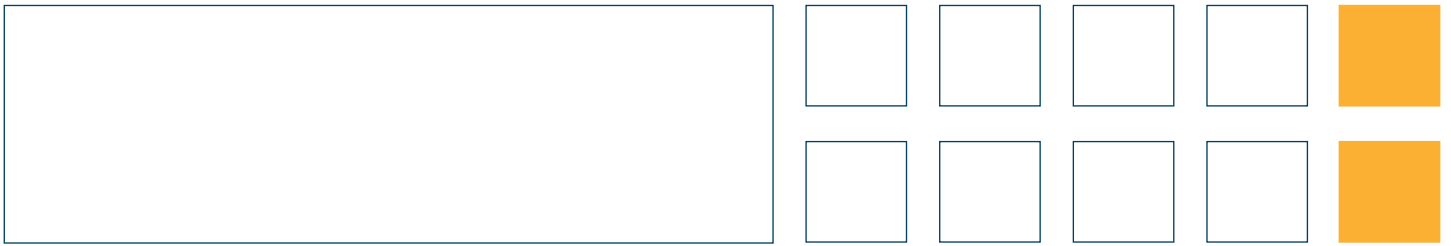
In addition, OSCR must:

- » **Publicise** the charity reorganisation scheme in line with the 2007 Regulations, to allow objections from the public. Notices of all proposed charity reorganisation schemes are published on the OSCR website www.oscr.org.uk. Sometimes a charity will need to publish a notice in a newspaper too (see section 7 of this guidance).

To complete the process, you must:

- » **Act** on our decision. If we approve the reorganisation, it is up to the charity's trustees to implement the reorganisation and notify us once the process is complete. If we refuse the proposed reorganisation, the charity has the right to ask for a review of our decision (see section 9 of this guidance).

The following chart gives an outline of the reorganisation process. The time taken to complete each step will vary, depending on the complexity of the proposed scheme.



Overview of the process



B. Step 1: We review the application form

When we receive your application to reorganise, we will review it for completeness and may write to you if we need further information. Step 1 can take up to six weeks to conclude.

With your application form, you must:

- » Send us a copy of the charity's constitution (where available)
- » Send us a copy of the charity's most recent statement of account. Where this is not available, please send us:
 - a statement confirming the charity's gross annual income in the last financial year
 - a separate statement of assets and outstanding liabilities
- » Indicate which of the reorganisation conditions is satisfied and provide details of the reasons for this
- » Explain how, depending on the condition selected, reorganisation will have the relevant outcome (this will depend on which condition is met)
- » Send us either details of the proposed destination of any assets or liabilities to be transferred (if applying to transfer property), or a draft of the proposed new or amended constitution of the charity (if applying to vary the terms of your charity's constitution).

A charity with a gross annual income of £250,000 or more must also give us the name of the newspaper that it wishes to publish in, and send us a draft copy of this newspaper notice (see section 7 of this guidance for details).

C. Step 2: We publish on the OSCR website

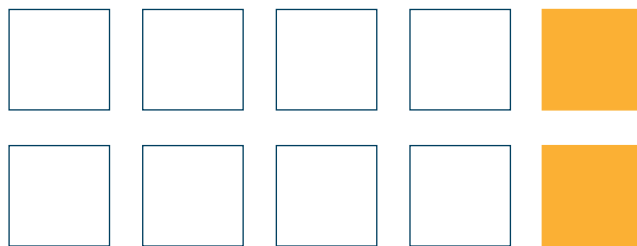
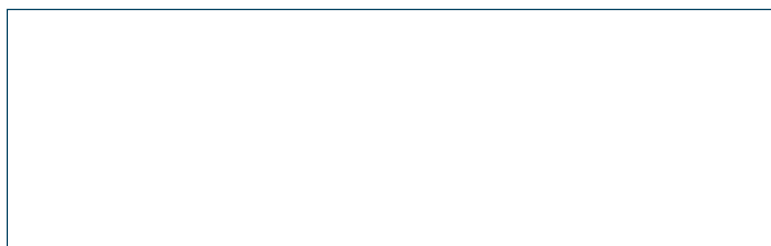
When we have sufficient information to consider the application, we will prepare a summary for publication on the OSCR website. We will do this using the information that you provide.

The summary of the application will be published on the OSCR website for between 28 and 42 days, depending on the nature of the proposed reorganisation scheme. The majority of summaries are published for 28 days only.

Sometimes a charity will need to publish a notice in a newspaper as well as having this summary appear on our website. The charity must do so within the first 14 days of the summary appearing on the OSCR website. It need appear only once.

This period of time is referred to as the publication period. During this time, and for at least 14 days thereafter, members of the public can object to what is proposed. All objections must be received by OSCR by the deadline set.

The deadline for receipt of objections must be at least 14 days after the application summary is removed from the OSCR website. Taking all of the above into account, Step 2 can take up to eight weeks to complete.



D. Step 3: We make our decision

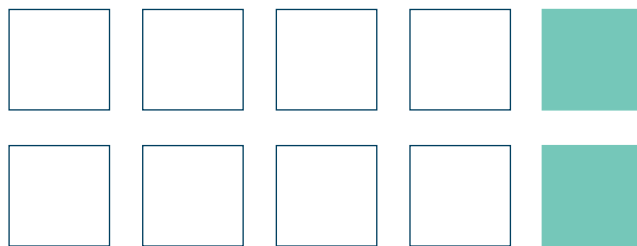
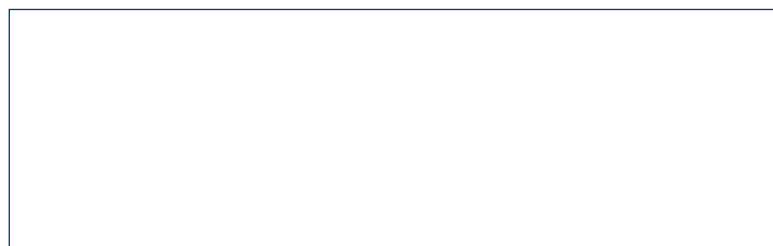
This is the time when OSCR considers its decision. The 2007 Regulations set out that OSCR must make its decision within six months of the latest date for receipt of objections. Step 3 can therefore take up to six months to complete, although most decisions are made much more quickly than this (see section 9 of this guidance).

E. Step 4: You reorganise the charity

The next step is for the charity's trustees to take. If we approve an application to reorganise, the charity's trustees must take the necessary steps to make the changes happen. This means meeting in order to formally agree to give effect to the reorganisation scheme. You must do this in line with the requirements of your constitution, for example at an EGM, AGM or SGM. Once you have done this, you must notify OSCR that the reorganisation process is complete. This is a requirement under section 17 of the 2005 Act.

If we refuse your application, we will write to you and explain the reasons for our decision. If you disagree with our decision, you will have the right under section 74 of the 2005 Act to ask us to review it.

See section 9 of this guidance for more information on the notification and the review processes.



4. Charity reorganisation schemes

Reorganisation schemes describe what the charity wishes to achieve overall, taking into account the changes that the charity's trustees wish to make.

There are three types of charity reorganisation scheme:

- a) A **variation** of the constitution of the charity (whether or not in relation to its purposes),
- b) A **transfer** of the property of the charity (after satisfaction of any liabilities) to another charity (whether or not involving a change to the purposes of the other charity), or
- c) An **amalgamation** of the charity with another charity.

A charity that varies the terms of its constitution will remain in existence, with a revised, updated constitution. This may or may not involve a change to the charity's purposes.

A charity that transfers its property to another charity will, in most cases, cease to exist, resulting in the charity being removed from the Scottish Charity Register.

If two charities decide to amalgamate, one will remain in existence. The other will cease to exist (dissolve).

A. A variation of the constitution of the charity

This type of scheme allows for additions to, or removals from, the constitution of a charity (whether or not in relation to its purposes). There may be many changes to make, or there may be just one or two.

For example, you may want to change the constitution's provisions for the appointment of ex-officio trustees, where these are highly prescriptive and make it difficult or impossible for the named positions to be filled. Or, you may want to remove the need for your charity's accounts to be audited, where the charity falls below the legal threshold for an audit to be undertaken. Here, having the charity's

accounts externally scrutinised in line with the applicable charity accounting regulations would better suit the needs of the charity.

Alternatively, you may wish to revise your charity's purposes if, for example, these cannot clearly be linked to any of the 16 charitable purposes set out in the 2005 Act, or if the purposes are so outdated or narrow that it is no longer possible to fulfil them.

It is for you, as charity trustees, to decide what changes to the charity's constitution are necessary or desirable.

Variation – things to think about

Changes to purposes

Newly drafted purposes must be charitable. In other words, they must be able to be clearly linked to one or more of the 16 charitable purposes in the 2005 Act and they must not include any elements which are non-charitable.

Any change of purpose must be consistent with the spirit of the charity's current constitution. This means that a revised charitable purpose must be similar to or clearly relate to the charity's purposes at the time of application, and its constitution as a whole. For more information on what we mean by changes that are in the spirit of the existing constitution, see section 6 of this guidance.

Future changes to the constitution

When varying the constitution, we advise that trustees give themselves the power to amend the constitution in the future, and the power to dissolve. This is to avoid having to make a subsequent application to reorganise.

Any clause that permits the trustees to make changes to the constitution, specifically the charity's purposes, in the future must:

--

- a) Either restrict future changes to the purposes to changes that are consistent with the spirit of the charity's constitution only, or
- b) Limit the exercise of this power so that it cannot be used to change the charity's purposes at any time. This would mean applying to OSCR to reorganise again.

We need to consider whether the changes proposed will mean the charity will be able to fulfil its purposes into the future in the spirit in which it was originally set up. For example, you may wish to say:

'If in the opinion of the Trustees any change in circumstances or alteration in the law has made or is likely to make execution of the Trust's purposes impossible or impracticable or, if in the opinion of the Trustees, the administration of the Trust could be improved, or the Trust's purposes be advanced in a more appropriate manner, the Trustees may at their discretion:

- (a) supplement or amend the provisions of this Trust Deed or any deed supplemental to this Trust Deed provided always that such supplement or amendment is consistent with the spirit of the Trust Deed; or
- (b) wind up the Trust and transfer the Trust property (after settlement of all debts and liabilities) to some other charity or charities having similar objects to those of the Trust.

In no circumstances is the Trust property to be held or applied for any purpose which is not an exclusively charitable purpose.'

In some cases, this might be the only change you wish to make, allowing changes to the constitution to be made at a later date. Please note that any subsequent change to the name or purposes of a charity will require our consent, using this new provision (see section 1 of this guidance).

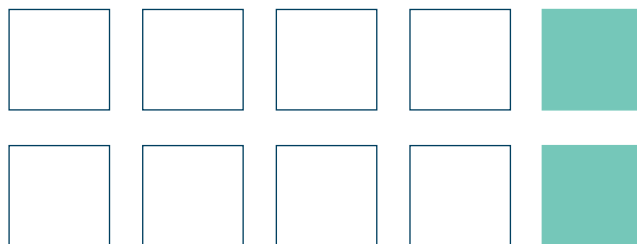
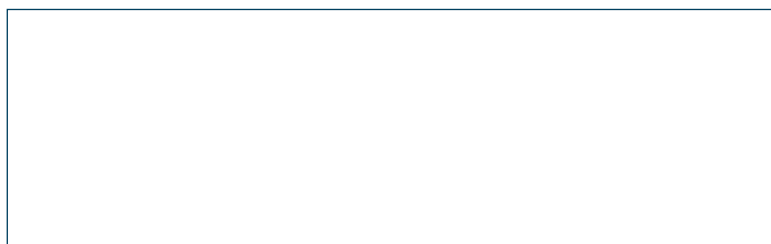
Change to name

Changes to a charity's name may be brought within a charity reorganisation scheme, where this is considered desirable. Charities wishing to include a name change in a reorganisation scheme should consult OSCR's guidance publication, 'Changing your charity's name', for more information: www.oscr.org.uk. OSCR cannot enter into the Scottish Charity Register a name that is 'objectionable'.

The 'new' constitution

To vary the constitution you must send a draft copy of the 'revised' constitution to us with your application. This must show all of the changes to be made. This might be a copy of the current constitution showing the changes to be made, or it may be a newly drafted constitution (to replace the existing document).

The way this document is presented will depend on the legal form of the charity. In the case of an unincorporated association, you must draft a revised or new constitution. In the case of a trust, you must prepare a supplemental deed of trust or a new deed of trust (making clear the continuity with the existing trust). Charities established by statute must modify the existing constitutional document or prepare a new document for adoption.



Case study: The Bothy Trust (SC033337)

The Bothy Trust (SC033337) applied to OSCR for approval of a charity reorganisation scheme in order to vary the terms of its constitution.

The Bothy Trust was established in 2002 to restore and maintain simple shelters in their remote environment for the use and benefit of people who access the hills and remote areas of the British Isles.

The charity considered that a provision of the charity's constitution (other than a provision setting out the charity's purposes) was no longer desirable – condition (c).

It was argued that this condition was met because the charity's constitution required that the charity's accounts be fully audited, causing the charity unnecessary expense. In addition to this, the Mountain Bothies Association no longer wished to appoint a trustee to the charity on a formal basis. This suggested the need to revisit the suitability of future trustees appointed to the charity.

The charity's trustees wished to reorganise the charity in order to:

- » remove the requirement for the annual accounts to be fully audited, and instead allow for these to be independently examined; and

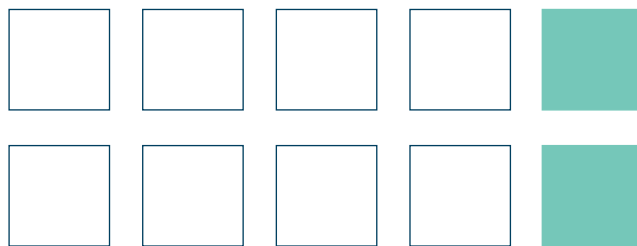
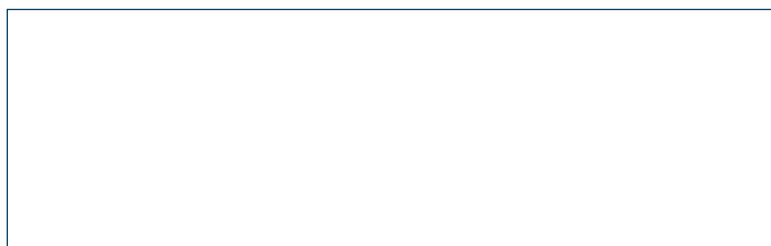
- » remove the provision for the Mountain Bothies Association to appoint a representative as a trustee. The Mountain Bothies Association had confirmed that they no longer wished to do so.

They also wished:

- » to increase the maximum number of trustees from seven to eight
- » to include a requirement for prospective trustees to confirm in writing their willingness and eligibility to serve as charity trustees
- » to remove the restriction that prevented amendment of the constitution other than to preserve charitable status
- » to include a requirement for trustees to seek consent from OSCR should they choose to wind up or dissolve the charity in the future.

It was argued that overall, reorganisation would enable the charity to be administered more effectively (the outcome set by the 2005 Act) because all accounting requirements would continue to be met and the charity would be able to recruit trustees with suitable expertise to govern the charity in the future.

No objections were received and the application to reorganise was approved by OSCR.



B. A transfer of the property of the charity to another charity

This type of scheme allows for a charity's property to be transferred to another charity or charities after satisfaction of any outstanding liabilities (whether or not involving a change to the purposes of the other charity). The recipient body must be a charity. A charity is a body entered in the Scottish Charity Register.

Some or all of a charity's property can be transferred. Transferring some property results in the donor charity continuing to exist. For example, a charity may want to transfer ownership of a building to another charity, if the recipient charity has occupied these premises for a while. This would result in some of the charity's property (title to the building) being transferred.

Transferring all property usually results in the charity dissolving (ceasing to exist). Charities wishing to dissolve will have different reasons for doing so. For example, a charity might not have been active for a number of years, due to difficulties identifying potential beneficiaries. Or a charity might have had difficulty in appointing trustees, making it impossible for the charity to operate.

Most, although not all, of the charities that reorganise are trusts. It is not necessary for the charity's constitution to be amended for the eventual dissolution of the charity to go ahead. We will be satisfied that the trust has ceased to exist once evidence of the conclusion of the transfer process is provided.

Transfer – things to think about

Liaising with the recipient charity

When deciding which charity or charities to transfer your charity's property to, you must contact the proposed recipient charity to bring your proposal to their attention. You should do this before applying to OSCR.

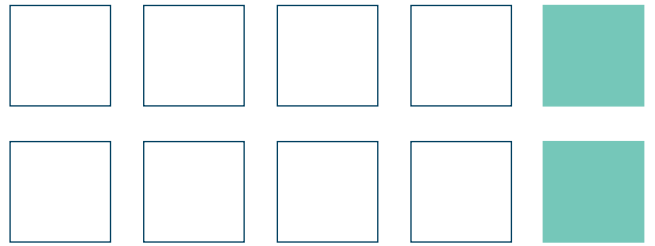
It may be appropriate to ask the recipient charity to hold the property as a restricted fund. This can be useful in cases where your own charity's purposes are quite specific. You should discuss this with the recipient charity.

Settling outstanding liabilities

If all property is to be transferred, any outstanding liabilities must be satisfied first. Where outstanding liabilities are greater than remaining property you must bring this to our attention. You must satisfy us that arrangements are in place for any outstanding liabilities to be met before we issue our decision.

In order to issue our decision, we will ask for evidence of the recipient charity's willingness to accept the donor charity's property and any outstanding liabilities, where these exist. We would be unlikely to approve a reorganisation scheme where the proposed recipient was not willing to accept.

If only some of the property of the charity is to be transferred, then adequate funds must remain with the charity to ensure it remains able to provide public benefit. For information on public benefit and the charity test, please see OSCR's Meeting the Charity Test guidance: www.oscr.org.uk



Case study: Joseph Thomson's Mortification (SC015911)

Joseph Thomson's Mortification (SC015911) applied to OSCR for approval of a charity reorganisation scheme for the transfer of the property of the charity to another charity.

Joseph Thomson was a saddletree maker. His settlement in 1774 set up a perpetual fund, the interest from which was to be used to buy oatmeal, or oats to be made into meal, to be distributed among 'poor householders' in the City of Edinburgh. These terms were extended over the years, through applications to the Court of Session:

- » in 1908, to additionally allow the supply of milk, oatcakes, bread or flour;
- » in 1946, to allow the awarding of grant relief to a maximum of £15 to any family in any one year; and
- » in 1981, to permit awards throughout the District of the City of Edinburgh following local authority reorganisation. At this point in time, the award limit was also increased to £200 and index linked.

In the more recent past, awards had been made through an independent shopkeeper who worked with local churches to identify those in need, and give food vouchers, to be redeemed in the shop. However, the shopkeeper retired and the shop closed.

Since that time, the charity's trustees had been unable to identify a local shop or a larger food store able to issue vouchers that could only be redeemed for food and not alcohol or tobacco. As a result, the charity's income had continued to accumulate at the rate of around £10,000 a year, without any awards being made.

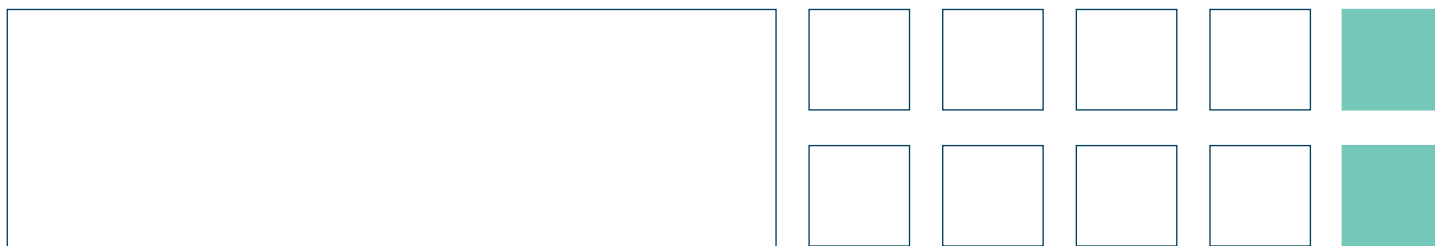
The charity's trustees considered that some or all of the purposes of the charity could no longer be given effect to (whether or not in accordance with the spirit of its constitution) – condition (a)(ii). It was argued that this condition was met because the food voucher system could no longer be given effect to and so there was no longer a mechanism of distributing the charity's property in the method set out in the charity's constitution.

The charity's trustees also considered that some or all of the purposes of the charity had ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution – condition (a)(iv). It was argued that the accumulation of the charity's income meant that the charity's trustees were unable to apply the charity's property effectively, in furtherance of its charitable purposes.

The solicitors wished to transfer the charity's property to the Scottish Community Foundation (SC022910), to be maintained in a named, restricted fund to support disadvantaged people in Edinburgh.

It was argued that reorganisation would enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of the charity's constitution, having regard to changes in social and economic conditions since it was constituted (the outcome set by the 2005 Act). This was because the unused funds would be put to immediate use in supporting those in need in Edinburgh, as envisaged by the charity's founder in the 18th Century.

No objections were received and the application to reorganise was approved by OSCR. A total of £141,270.65 in cash and the charity's investment portfolio was transferred to the recipient charity.



Complex transfer proposals

Where the transfer process is complex or the total value of the charity's property is very high, a legally binding 'transfer' document should be drafted. Where available, please send a copy of this to us with your application (even if it is in draft form).

C. Amalgamation of a charity with another charity

Amalgamation occurs when two or more charities come together to carry on as a single charity. If you are considering applying for amalgamation, please contact us to discuss your application.

Amalgamation – things to think about

Settling outstanding liabilities

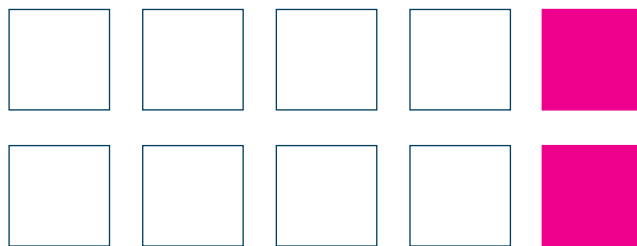
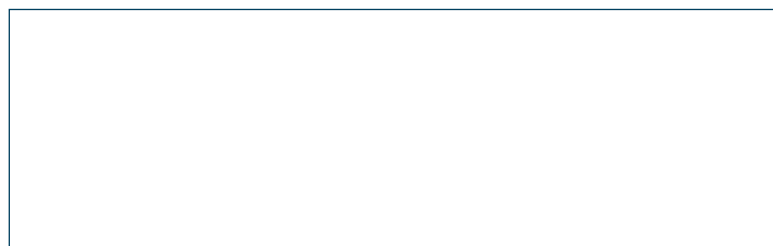
Before making this decision, it is important to be aware that this type of scheme involves the coming together of participants' assets and liabilities (including any pension liabilities). Please seek independent advice on the best route to take where contracts and binding financial agreements are involved.

Timing

The timing of your application(s) to OSCR is important. If you have a particular date in mind for the amalgamation to take place, please be aware that we cannot guarantee that this deadline will be met. This is because the application process is subject to objections (see section 7 of this guidance).

Continuity

In considering applications for amalgamation, we look for evidence of continuity with what has gone before, and what will take place in the future. This is an important consideration for charities wishing to amalgamate, as more than one charity is involved.



5. Charity reorganisation conditions

There are seven reorganisation conditions. These are the criteria which must be satisfied to allow us to approve a reorganisation scheme. They describe the difficulties currently being experienced by the charity which the charity's trustees want to address.

In the application form, you must explain in your own words why you want to reorganise. You must also explain which of the reorganisation condition(s) you believe best describes why you want to reorganise. At least one reorganisation condition must be met.

The reorganisation condition(s) relate either to some sort of 'failure' in the current purposes of the charity or to an aspect of the charity's constitution that is no longer desirable.

The reorganisation condition(s) are as follows:

A. Conditions (a) and (b) – relating to purposes

The 2005 Act suggests five possible ways in which the current purpose(s) of a charity may no longer be suitable. These are:

(a) That some or all of the purposes of the charity:

- (i) **have been fulfilled as far as possible or adequately provided for by other means**

An example of this might be where a charity was set up to support British veterans of the First World War and finds itself no longer able to identify eligible beneficiaries as none survive. Its own purposes have been fulfilled as far as possible.

- (ii) **can no longer be given effect to (whether or not in accordance with the directions or spirit of its constitution)**

An example of this might be where a charity was set up to support poor, aged and infirm widows of the local Parish, over the age of 65, who through no fault of their

own, have fallen on hard times and are in need of financial assistance. Today, there exists a state pension system which did not exist when the charity was established, as well as other benefits for which men and women are eligible to apply and which reflect level of need. The need for the type of support envisaged by the charity's founders is therefore very much diminished.

(iii) **have ceased to be charitable purposes**

For example, a charity might have been established 'to promote trade and industry'. This is not a charitable purpose as defined in the 2005 Act. The trustees wish to change their purposes in order to have exclusively charitable purposes and meet the requirements of the 2005 Act.

(iv) **ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution**

For example, it may be that the trustees of a charity find that once the cost of producing the accounts and/or any professional fees have been met, there is little money left for disbursement to beneficiaries. This apparently disproportionate use of the charity's property for administrative purposes in comparison with benefit for charitable purposes is not considered to be a suitable or an effective method of using the charity's property. The trustees may wish to transfer the charity's property to another, larger charity, so that beneficiaries can be better supported.

Or

(b) **That the purposes of the charity provide a use for only part of its property**

It is possible that a charity's purposes will, unintentionally, limit the ability of the trustees to expend the charity's property in furtherance of this purpose.

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For example, on his death, Mr Black leaves his house in trust as an eventide home for the elderly. The trustees follow Mr Black's wishes, and operate the house as a small care home for a number of years. However, the house is in need of renovation which requires a large capital investment. The terms of the Trust Deed do not permit the trustees to accumulate any funds. The trustees wish to vary the terms of the Trust Deed to allow them to sell the house, and to use the income from this sale to construct a purpose built facility nearby.

B. Conditions (c) and (d) – relating to other provisions in the constitution

Perhaps another aspect of your charity's constitution creates difficulties. The 2005 Act (as amended by the PSR(S)A 2010), gives two possible ways in which other aspects of the constitution may no longer be considered appropriate. These are:

(c) That a provision of the charity's constitution (other than a provision setting out the charity's purposes) can no longer be given effect to or is otherwise no longer desirable

For example, a charity's constitution might prohibit new trustees from being appointed. This can become problematic when the trustees become older and no longer wish to act as trustees and/or they become physically or mentally unable to fulfil their duties.

Alternatively, a constitution might name ex-officio trustees, giving no power for these to be amended. This too can become problematic, especially when a named body or organisation no longer exists and/or no longer wishes to be involved as a trustee of the charity.

Or

(d) That it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity's constitution

This condition permits new administrative provisions to be introduced to a charity's constitution, where these have not existed before.

For example, you may want the power to make changes to your charity's constitution in the future, without actually making these changes as part of this particular reorganisation scheme. Or you may want to introduce a provision to the constitution that describes what should happen if the charity trustees decide to dissolve the charity at some point in the future, where such a power does not currently exist. See section 4 of this guidance for information on future changes to the constitution.

Conditions – things to think about

Changes to your charity's purposes

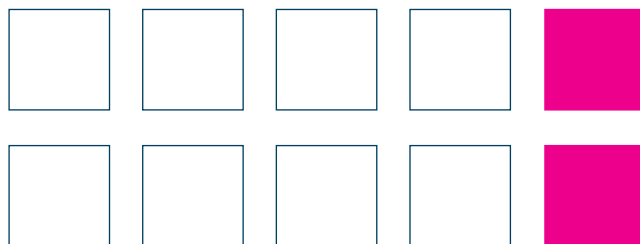
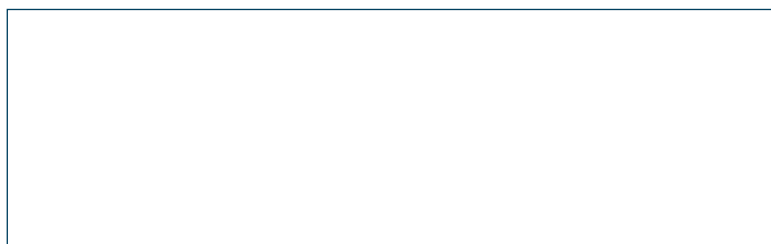
If one of the changes you want to make to your charity's constitution includes a change to your charity's purposes, one of the conditions relating to purpose (the conditions at (a) or (b)) must be satisfied. This applies even when the majority of the changes you want to make concern other elements of your charity's constitution (and satisfy the condition at (c) or (d)).

Incidental administrative changes

If you want to vary the terms of your charity's constitution, a reorganisation condition does not need to be satisfied for every incidental administrative change you wish to make.

Identifying the condition that best describes the problem

In your application, we will look for a statement that tells us which of the reorganisation conditions you think best applies to your charity's situation and why. If you are not sure which reorganisation condition is most appropriate, you should still complete the Application Form. We will be happy to advise which of the conditions (if any) is appropriate and whether any further information is required once we have received your application.



Case study: Andrew Adie and Margaret Thom Fund For Poor Gentlewomen (SC012180)

The Andrew Adie and Margaret Thom Fund For Poor Gentlewomen (SC012180) applied to OSCR for approval of a charity reorganisation scheme for the transfer of the property of the charity to another charity.

The charity was established in the 1930s to apply the fund's free income annually to provide for 'poor gentlewomen who may be resident in the city of Dundee or in Broughty Ferry who are in necessitous circumstances through no fault of their own'. The charity's constitution stipulated that recipients must 'not be engaged in menial service, be protestant, connected with The Church of Scotland, and must not be in receipt of any public assistance (this does not include the state pension)'. No payments had been made since 2001.

The charity's trustees considered that some or all of the purposes of the charity could no longer be given effect to (whether or not in accordance with the directions or spirit of the charity's constitution) – condition (a)(ii). They felt that this condition was met because the size of the charity was such that, after

meeting essential governance costs, the amount of income available for distribution was very limited.

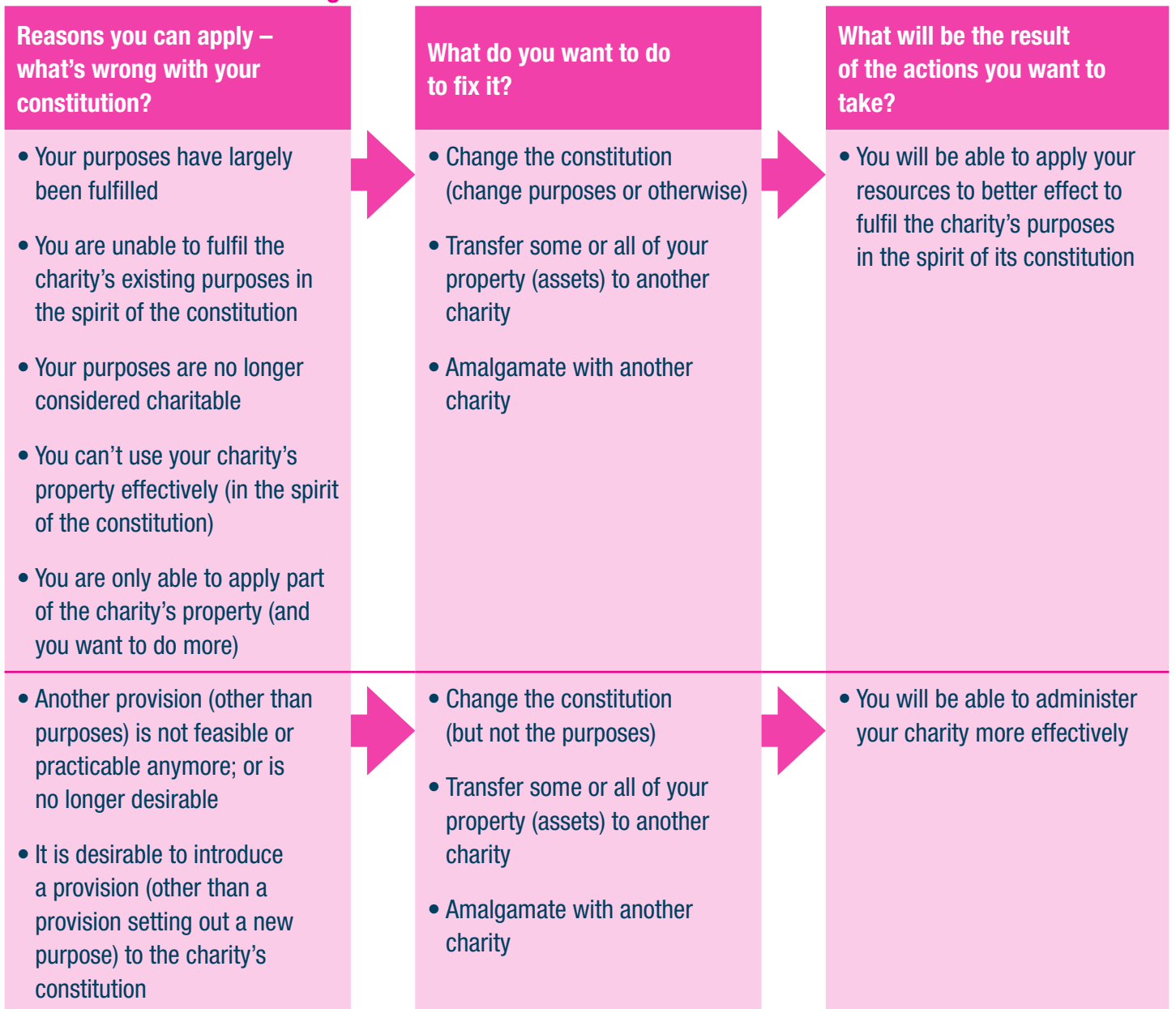
The charity's trustees also considered that some or all of the purposes of the charity had ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution – condition (a)(iv). The charity's trustees felt that this condition was met because the terms of the charity's constitution were unnecessarily restrictive and no longer appropriate for modern times.

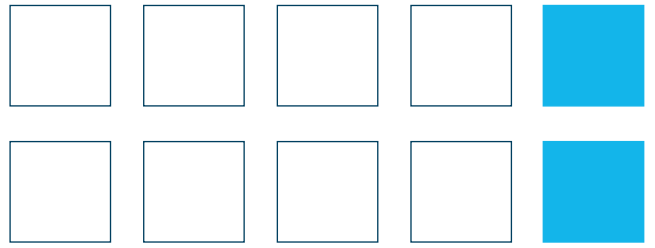
The charity's trustees wished to transfer the charity's property, after satisfaction of liabilities, to the Annie Ramsay Mclean Trust For The Elderly (SC014238).

It was argued that reorganisation would enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted (the outcome set by the 2005 Act) because The Annie Ramsay Mclean Trust For The Elderly (SC014238) provides for elderly people who are in need, in a similar geographical location, but without the restrictions which currently make recipients difficult to identify.

No objections were received and the application to reorganise was approved by OSCR. A total of £41,407.44 was transferred to the recipient charity.

Overview or elements of reorganisation





6. Charity reorganisation outcomes

Reorganisation outcomes are closely tied to the condition that is met. Reorganisation outcomes are what reorganisation as a whole must achieve. There are two outcomes in the 2005 Act.

Where the condition satisfied relates to issues with the charity's purposes (conditions (a) or (b)), the charity reorganisation scheme must:

- » enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted.

Where the condition satisfied relates to another provision (conditions (c) or (d)) in the constitution (excluding the purposes), the charity reorganisation scheme must:

- » enable the charity to be administered more effectively.

If both of the above outcomes must be met, we will look at whether both of these outcomes are satisfied in reaching our decision.

A. Changes to purposes – are they consistent with the spirit of the charity's constitution?

In order for OSCR to approve a reorganisation scheme, any change to the purposes of the charity must result in the charity's property being expended for charitable purposes in a way that is consistent with the spirit of the charity's constitution. In practice, this means that we will look at the similarities and differences between the old and the new purposes of the charity and decide how consistent or otherwise we believe these to be. We must do so having regard to any changes in social and economic conditions since the charity was established.

We look for continuity between the past and the present. In the case of variation, we look at how similar the draft (revised) purposes of the charity are to its existing purposes.

Where a charity wishes to vary its purposes, we will expect the kind of activity that it carries on to continue. Similarly, where a charity's purposes are anchored to a specific geographic location, we would, in most cases, expect there to be continuity here too (perhaps as part of an expanded or larger geographic area of operation). This has the effect of ensuring that the spirit of the charity when first established continues throughout its lifetime.

To introduce a new purpose to the constitution that has no connection with what has gone before is unlikely to illustrate continuity and so is likely to be refused. An amendment that removes all references to a specified area of operation is likely to be refused as well.

For example, a charity currently works with children and young people in Dundee, but wants to work across Tayside and Fife. We will consider the reasons put forward by the applicant for this change. We will also consider whether there is anything in the charity's constitution that expressly prohibits this. The fact that Dundee City remains within this larger geographic boundary is persuasive; if this were not the case, we would be likely to view this less favourably.

However, if this charity wanted to reorganise in order to work with the elderly, or to fulfil a very different charitable purpose, for example the advancement of animal welfare, we would take a less sympathetic view. Neither of these proposed changes appear to be consistent with the spirit of the charity's constitution (working with children and young people in Dundee).

In the case of a transfer of property to another charity, we look at the purposes of the (proposed) recipient charity, and consider how similar or otherwise these are to the purposes of the applicant. Our considerations are similar to those above.

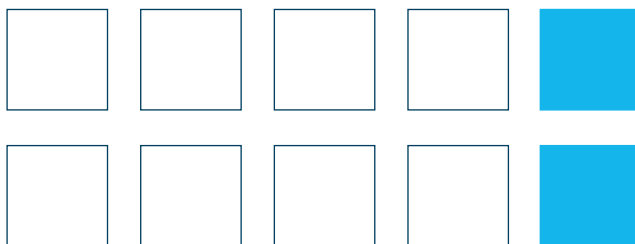
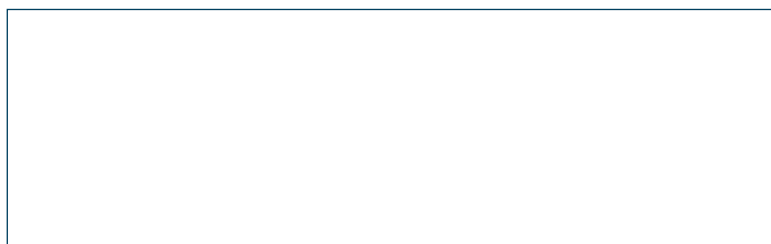
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B. Changes to other provisions – will they help to administer the charity more effectively?

Any changes to other provisions in the constitution – not related to the purposes – must result in the charity being administered more effectively.

For example, a charity's constitution might require that the charity's trustees meet in person at least once a month. However, as a result of other, conflicting, commitments of the charity's trustees, this may no longer be considered to be appropriate or desirable. Meeting four or six times a year is considered sufficient, given that business can be done by electronic communication in between meetings. Amending a provision in the charity's constitution to reflect this change could therefore result in the more effective administration of the charity.

We approach this assessment depending on the extent and nature of the changes to be made. Generally speaking, we look at how easy or otherwise it is for the charity's trustees to fulfil their duties under the 2005 Act. Where there is a case for change, especially where this concerns trusteeship, we accept that this is likely to result in the charity being administered more effectively. Similarly, where charitable assets are lying untouched in the bank, and there is a will to release these back into the charity sector, we accept that this too is likely to result in the charity's property being administered more effectively.



Case study: Bell's Nautical Trust (SC017199)

Bell's Nautical Trust (SC017199) applied to OSCR for approval of a charity reorganisation scheme in order to vary the terms of its constitution.

Bell's Nautical Trust was established in 1984 to provide or promote or otherwise to benefit maritime education in Leith or elsewhere in Scotland. The charity fulfils this purpose by providing grants to eligible organisations and individuals.

The charity's trustees considered that a provision of the charity's constitution (other than a provision setting out the charity's purposes) could no longer be given effect to or was otherwise no longer desirable – condition (c).

They felt that this condition was met because the charity's constitution required that all of the charity's trustees be appointed by the Firth of Forth Shipowners' Association, an organisation that no longer exists. In practice, this meant that no new trustees could be appointed to the charity.

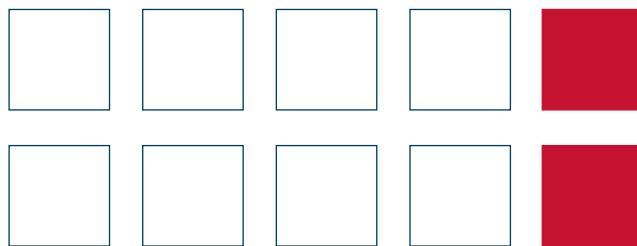
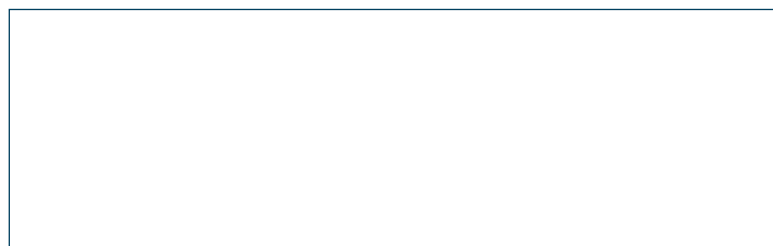
The charity's trustees wished to reorganise the charity in order to replace this existing clause with the following:

'All of the said Trustees shall be appointed by the Trustees from persons who by virtue of either their academic standing or expertise within the areas of maritime education, engineering, navigation, marine electronics or otherwise, or their position held with any institution, college, association, authority, government department, regional council, district council, chamber of commerce, trade union or within any sector of any industry or otherwise may be considered by the Trustees to be persons whose experience would benefit Bell's Nautical Trust.'

As part of the reorganisation scheme, the charity's trustees also proposed to give the charity's trustees the power to make amendments to the constitution and to wind-up or dissolve the charity in the future.

It was argued that overall, reorganisation would enable the charity to be administered more effectively (the outcome set by the 2005 Act) because the changes proposed to the constitution would bring the charity's constitution in line with regulatory requirements and support the good governance of the charity.

No objections were received and the application to reorganise was approved by OSCR.



7. Publication

Publication is a central element of the reorganisation process. It is there to reassure OSCR, the charity and the public that the process is open and transparent. The objection process gives interested parties an opportunity to make sure that our decision is as informed as possible.

A. Publication on the OSCR website – all charities

We publish a notice of all proposed charity reorganisations on the OSCR website. These notices summarise what the applicants want to do and why they want to do it.

The time that this notice appears on the OSCR website is referred to as the publication period. We publish all notices on the OSCR website for the minimum period of 28 days, unless particular circumstances, such as times of extended public or religious holidays, or applications that may be of significant public interest (for example an application from a charity that works with vulnerable client groups) merit extending this to the maximum of 42 days.

We will send a copy of the summary to you seven days before the publication period starts. This is to let you see what we propose to say, and allows you to correct any inaccuracies before publication. The responsibility, if required, to notify other regulatory bodies, funders or partners of the proposed reorganisation lies with the trustees of the charity.

B. Publication in a newspaper – charities with a gross annual income of £250,000 or more

If your charity had a gross annual income of £250,000 or more in the last financial year, you must place a notice in a newspaper. This advertisement need appear only once.

In most cases, newspaper notices must be published in a newspaper circulating throughout Scotland. Charities whose constitutions make explicit reference to a certain locality or area may publish this notice in a local newspaper instead. Publication in specialist or trade press only is not appropriate and will result in an unsatisfactory notice being published.

Please tell us which newspaper you wish to publish in and include a draft newspaper notice when you submit your application to us.

C. What to include – suggested text

The newspaper advertisement must appear during the first 14 days of the publication period. The details that must be included in the newspaper notice are:

- » The name and address of the charity as entered in the Scottish Charity Register
- » The charity's Scottish Charity Number
- » A statement advising that the charity has applied to OSCR for approval of a charity reorganisation scheme
- » A statement advising that details of the proposed reorganisation can be viewed on OSCR's website and obtained from OSCR
- » The internet address of OSCR's website, and OSCR's registered office address
- » A statement advising that any notices of objections to the proposed reorganisation must be sent to OSCR, and
- » A statement referring objectors to the 2007 Regulations.

If we believe that the draft notice supplied will not comply with these requirements, we will advise you of this prior to commencing with the publication period.

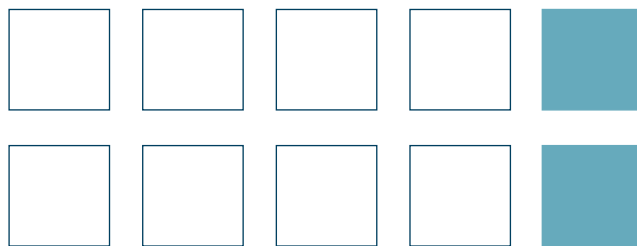
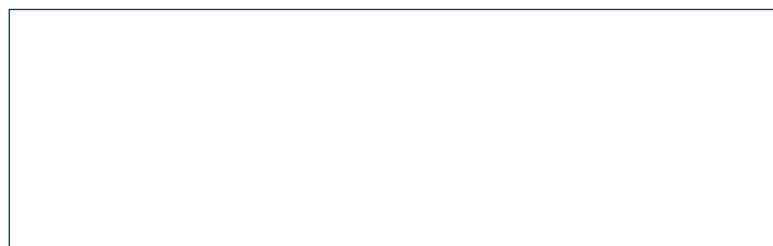
We have produced suggested text to help you with this (see Appendix 1). Use of our suggested text should help to avoid the possibility of an unsatisfactory notice being published. If an unsatisfactory notice is published, a second satisfactory notice will need to be published separately.

D. Evidence of publication

You must send us evidence that the newspaper notice has been published. We do not require original newspaper advertisements to be sent to us. A photocopy will suffice, so long as this clearly shows the name of the newspaper and the date on which the advertisement appeared in print.

If you refuse or fail to publish a newspaper notice, OSCR must refuse the reorganisation scheme. This is because the statutory requirement has not been fulfilled.

If you publish a notice that contains minor typographical or administrative errors which do not affect the substance of the information presented, we will either ask you to re-advertise or tell you that no further action need be taken. This will depend on the nature and extent of the matters arising.



8. Objections

OSCR acts in the public interest and, therefore, we consider charity reorganisation in terms of whether it will ultimately benefit the public or not. One aspect that may affect our decision is whether or not anyone objects to a charity reorganisation scheme.

A. How to object

Anyone may object to a proposed reorganisation scheme, whether they are beneficiaries, funders, service partners, creditors or members of the general public. If one or more objections is received, this does not mean that the scheme will automatically be refused. Objections inform the process but they do not determine the outcome.

An objection to a proposed charity reorganisation scheme must include:

- » the name and address of the person making the objection;
- » the nature of their interest in the charity (if any); and
- » the nature of the objection and the reasons for it.

An objection to a proposed charity reorganisation scheme can be made at any time during the publication period. It can also be made up until the latest date for receipt of objections which will be at least 14 days after the notice has been removed from the OSCR website. The latest date for receipt of objections always appears on the charity reorganisation summary page (on the OSCR website).

Objections received after this date cannot be considered unless there have been exceptional circumstances which have led to the objection being received late. For example, if receipt of the objection by OSCR has been delayed due to industrial action, we will still consider the objection.

We suggest that any notices of objection are sent to OSCR by a prepaid registered letter or recorded delivery, or by e-mail. We will always acknowledge receipt.

B. How we consider an objection

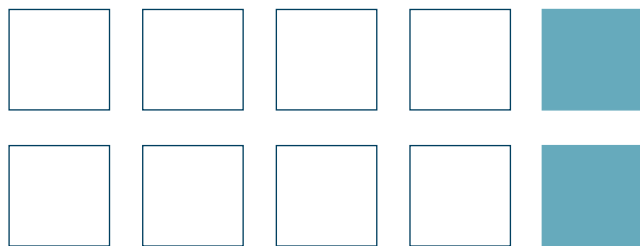
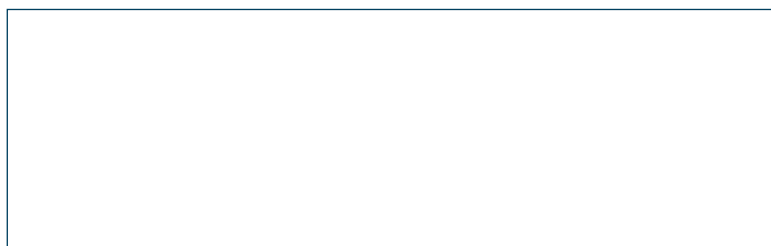
In looking at any objection we receive, we will look at how the substance of this relates to the scheme under consideration. Do the objections received have any bearing on whether:

- » a reorganisation condition is met?
- » the reorganisation outcome is likely to be achieved?

In some cases objections will bring new information to light. Objections from the public may lead us, for example, to consider contractual obligations the charity may have, matters that may be of interest to the public, or matters that may affect the charity's beneficiaries and that the charity has not told us about. Objections will normally result in us asking further questions of the applicant charity.

If the information we receive appears to be a complaint about the charity, rather than about the proposed reorganisation scheme, OSCR's Inquiry and Investigation Team will look at whether any further inquiries are needed to establish if there has been misconduct or mismanagement in the administration of the charity. This will be considered separately from the charity's application to reorganise. OSCR's Inquiry and Intervention Policy sets out how we deal with complaints about a charity. You can find this document on the OSCR website.

Ultimately, the weight given to objections depends on the information provided and how relevant this is to the charity reorganisation scheme proposed.

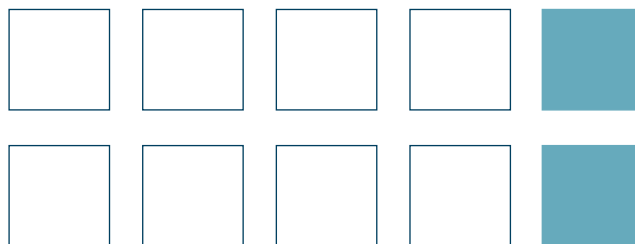
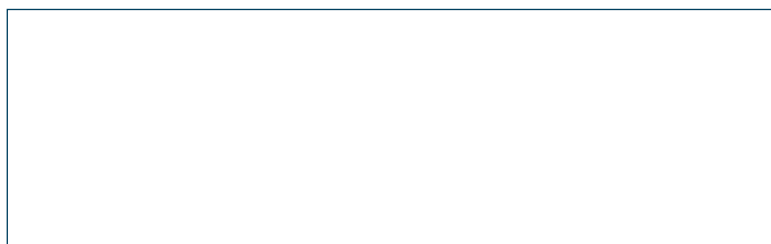


C. Your opportunity to respond

OSCR will inform you when objections to your reorganisation scheme are received, and will ask you to comment on the issues raised. You will be invited to reply within 28 days of this information being copied to you, but are under no obligation to do so.

The personal details (names and addresses) of objectors will normally be given to the applicant charity. If an objector wishes to have his or her personal details withheld, they must tell us why. OSCR will decide whether or not this is appropriate in the circumstances. Personal details will not be disclosed if there is an open OSCR investigation into the reorganising charity and to supply objector details may jeopardise our ability to fulfil our regulatory functions.

We must notify objectors of our decision to approve or refuse a charity reorganisation scheme and will issue a copy of our decision letter to objectors within seven days of our decision being made. Objectors do not have a right of review or appeal in respect of our decision.



Case study: The Auchlochan Trust (SC011644)

The Auchlochan Trust (SC011644) applied to OSCR for approval of a charity reorganisation scheme for the transfer of the property of the charity to another charity.

The charity was established in 1977 to provide a suitable Christian Home for needy and elderly persons with necessary attendance in relation to their daily physical needs against a background of Christian service; and to provide a Home for children in need of care; and to train the older children referred towards employment.

At the time the charity was established, it was envisaged that it would be a small trust providing care to young children and approximately 12 elderly residents within the property and the grounds of the then ageing Auchlochan House. Today, the charity provides care for over 360 elderly people and is the recognised model for a care village in Europe.

The charity's trustees considered that a provision of the charity's constitution (other than a provision setting out the charity's purposes) could no longer be given effect to or was otherwise no longer desirable – condition (c).

They felt that this condition was met because there was a restriction in the Trust Deed to applying the free available income and the capital of the Trust for the benefit of persons resident in any establishment run by the Trust only. This power did not extend to ultimately expending the capital of the Trust in order to wind-up or dissolve the charity, as was now the trustees' intention.

The charity's trustees wished to transfer all of the charity's property, after satisfaction of liabilities, to MHA Auchlochan (SC040155), a new Scottish charitable company limited by guarantee.

It was argued that overall, reorganisation would enable the charity to be administered more effectively (the outcome set by the 2005 Act) because in its present legal form (a trust), the trustees carried the risk of potentially unlimited personal liability.

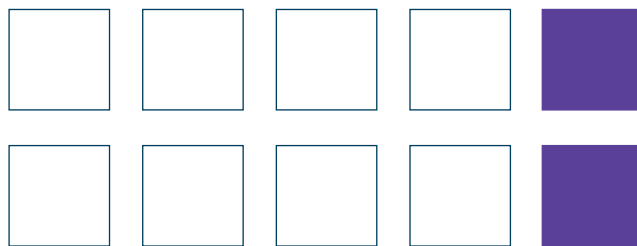
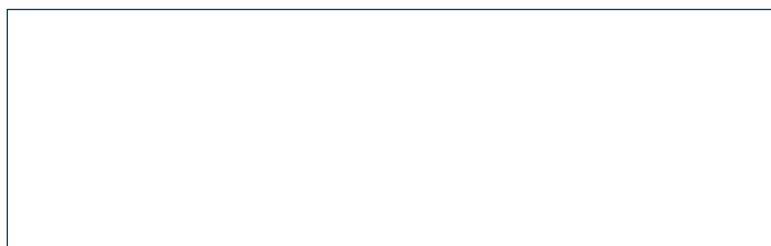
In the year 2006-07, the income of the charity was £10,295,826.00. The trustees therefore considered that the Auchlochan Trust was of such a size that it was no longer possible or advisable to continue to administer the charity with this incumbent risk to its trustees. It was considered more appropriate that the Trust's charitable activities be delivered through a new charitable company on account of the limited liability offered.

It was also argued that reorganisation offered financial security in the current economic climate, as the proposed recipient charity was a subsidiary of the MHA Care Group, a charity registered with the Charity Commission in England and Wales that specialises in the provision of care for the elderly.

One objection was received to the proposed reorganisation scheme. The terms of the objection were clear – there was a claim outstanding against the charity, and the Trust had not made adequate provision for the transfer of its liabilities to the new body. Chapter 5 of the 2005 Act provides that transfer may go ahead only after the satisfaction of all outstanding liabilities.

It is not for OSCR to assess the merits of any claim against a charity that seeks to reorganise. At the time of making our decision, a draft transfer agreement between the Auchlochan Trust and MHA Auchlochan was copied to OSCR. This expressly provided that all liabilities incurred by the Trust would be honoured by the successor company. This provided us and the objector with sufficient reassurance that its claim would be upheld following the reorganisation of the charity.

The application to reorganise was approved by OSCR. The formal execution of the transfer agreement was made a condition of OSCR's approval.



9. OSCR decision and next steps

There are two possible outcomes of the application process – approval or refusal of the reorganisation scheme. If we approve an application to reorganise, we do not make the reorganisation happen. As charity trustees, you must do this.

A. Approval of a charity reorganisation scheme

Once formal notice of OSCR's approval has been received, the charity's trustees may, despite any provision in the charity's constitution having contrary effect, proceed with any variation, transfer or amalgamation as set out in the charity's reorganisation scheme.

We will write to you confirming our decision to approve the proposed charity reorganisation scheme. This decision letter will be sent by first class delivery and will contain details of any conditions that OSCR might attach. Any conditions attached will be of an administrative nature and will relate to the information that must be sent to OSCR when the charity's trustees have concluded the reorganisation process.

As charity trustees, you must meet in order to formally agree to give effect to the charity reorganisation scheme. You can do this, for example, at an EGM, AGM or SGM. Once you have done this, you must notify us under section 17 of the 2005 Act that the reorganisation process is complete.

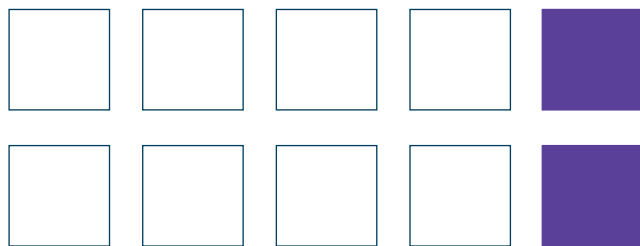
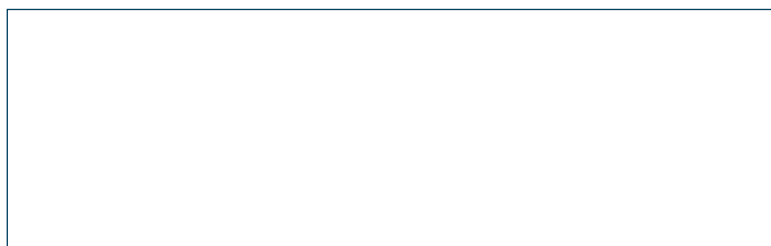
B. Notifying OSCR that reorganisation is complete

You must notify OSCR of the fact that the reorganisation scheme has been adopted. This is a requirement under section 17 of the 2005 Act and must be done in writing. The basic information OSCR needs to accept notification of a change, action or other matter is:

- » The charity's name and number
- » The details of the change or action that has been taken
- » A clear statement of the date this change or action took effect
- » The name and signature of one charity trustee (on behalf of all).

The additional documentation we need will be outlined in our decision letter and will depend on the type of reorganisation scheme adopted. For example, in the case of any change to a charity's constitution, we will ask for a copy of the charity's new constitution (as adopted) to be sent to us. In the case of a transfer of property (and liabilities, where this applies), we will ask for a copy of the receipt from the recipient charity and a set of final accounts to be provided.

There is no timeframe within which you must conclude the reorganisation process. However, we ask that you do so at your earliest convenience. A 'Notification of Changes Made' form is available from the OSCR website to help you complete this process: www.oscr.org.uk



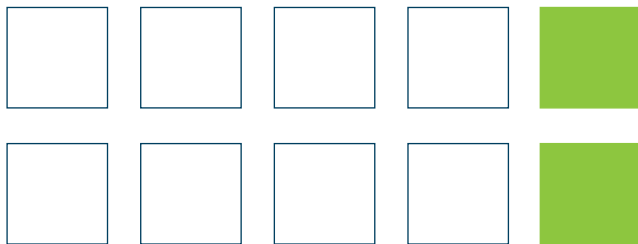
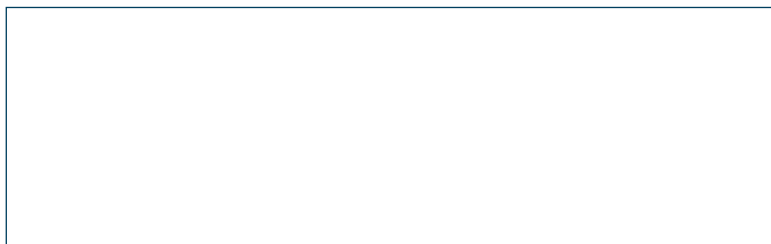
C. Refusal of a charity reorganisation scheme

If we refuse an application to reorganise your charity, we will write to you and give an explanation of how we reached our decision. If you disagree with our decision, you have the right under section 74 of the 2005 Act to ask us to review it. Charities must ask for a review of OSCR's decision within 21 days of the decision being notified to them.

The review will be undertaken by a member of OSCR's Senior Management Team who was not involved in the original decision. The review will result in one of four outcomes:

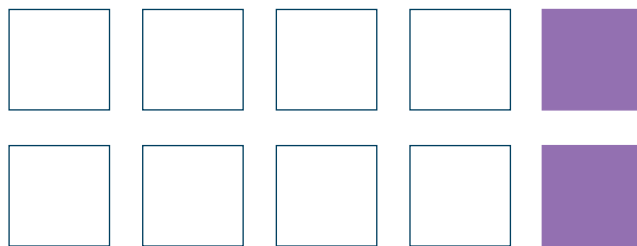
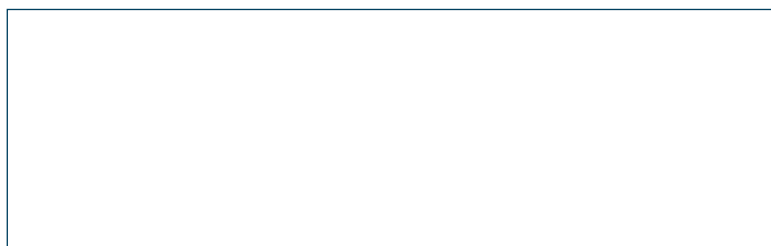
- » The decision is confirmed – the decision remains the same
- » The decision is varied – the decision is changed in some substantive way, such as a change to the grounds for the decision
- » The decision is reversed – the decision is changed from refusal to approval
- » The decision is revoked – the decision is withdrawn. This means that the decision has been officially declared null and void, the effect being as if OSCR has not yet made the decision. The application will be passed to a member of staff who was not involved in the initial decision or the review, in order for a new decision to be made.

If you are dissatisfied with the outcome of the review, you can appeal to the Scottish Charity Appeals Panel (SCAP) and ultimately to the Court of Session.



10. Relevant legislation

- » The Charities and Trustee Investment (Scotland) Act 2005
<http://www.legislation.gov.uk/asp/2005/10/contents>
- » The Charities Reorganisation (Scotland) Regulations 2007
<http://www.legislation.gov.uk/ssi/2007/204/contents/made>
- » The Public Services Reform (Scotland) Act 2010
<http://www.legislation.gov.uk/asp/2010/8/contents>



11. Glossary of terms

Assets – Assets are property, goods, money, investments, rights to receive money in the future and logos, names, data and other intellectual property belonging to the charity.

Charity Reorganisation – The process by which a charity can apply to OSCR to do certain things where there is no power to do so.

Consent – The process by which a charity can apply to OSCR to do certain things where there is power to do so.

Constitution – The document which generally sets out the purposes or reasons for which the charity was set up, the charity's powers, the role and duties of charity trustees (who may be referred to as board, committee members or office holders) and the way in which the charity manages its property. What your charity's constitution is called and how it is put together will depend on the charity's legal form. If it is a company, its constitution will be its memorandum and articles of association (or just its articles if incorporated from 1 October 2009). If it is a trust, its constitution will be a trust deed or similar document. If your organisation is an unincorporated association, it may simply be called your constitution. Other legal forms (and types of constitution) also exist.

Ex-officio appointment – An appointment made on the basis of a post, office or role.

Objection – The means by which members of the public can comment to OSCR on a proposed charity reorganisation scheme.

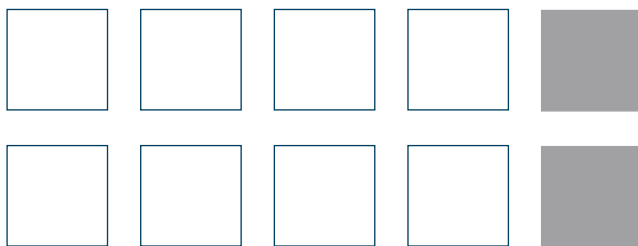
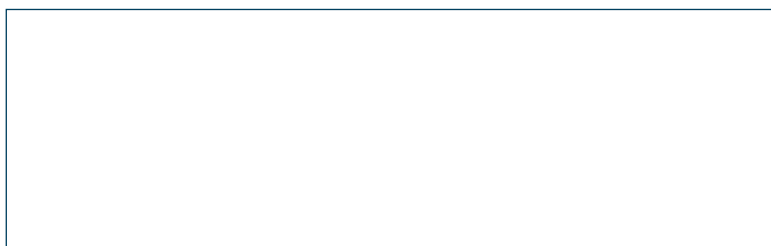
Powers – The clauses, usually in the constitution, that give the trustees permission to do certain things, such as wind-up or dissolve the charity or amend its purposes.

Property – See definition of assets.

Publication notice – The document that summarises the details of, and reasons for, the proposed reorganisation scheme.

Publication period – The period fixed by law as being between 28 and 42 days, during which time a notice is published on the OSCR website.

Reorganisation scheme – Describes the changes the trustees wish to make to the charity or its constitution.



Appendix 1 Suggested Text for a Newspaper Notice

Below is some suggested text for a Newspaper Notice. Please complete the text by adding your charity's details and the latest date for receipt of objections where prompted to do so.

APPLICATION FOR THE APPROVAL OF A CHARITY REORGANISATION SCHEME

CHARITY LEGAL NAME (as entered in the Register) (SCOXXXX), ADDRESS (as entered in the Scottish Charity Register)

This charity has applied to the Office of the Scottish Charity Regulator (OSCR) for approval of a charity reorganisation scheme.

Details of the scheme can be viewed on the OSCR website at www.oscr.org.uk or can be obtained from OSCR, 2nd Floor, Quadrant House, 9 Riverside Drive, Dundee DD1 4NY.

Notices of objection to the proposed scheme must be made in writing and returned to OSCR at the above address. The latest date for the receipt of objections is XXXX (date). Objectors may wish to refer to the Charities Reorganisation (Scotland) Regulations 2007 for information. These can be accessed from the OSCR website at www.oscr.org.uk, or obtained from OSCR at the above address.

