

# Scottish Charity Regulator (OSCR)

## Application for Approval of a Charity Reorganisation Scheme under Section 39 of the Charities and Trustee Investment (Scotland) Act 2005

### Summary of Application – Robb’s Trust Scheme 1934 (SC002872)

#### Type of Scheme

Robb’s Trust Scheme 1934 (‘the charity’) has applied to the Office of the Scottish Charity Regulator (OSCR) for approval of a reorganisation scheme for a variation of the constitution of the charity (whether or not in relation to its purposes) under section 42(3)(a) of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).

The charity was set up for charitable purposes as an educational endowment, operating as a scheme under the Educational Endowments (Scotland) Act 1928. The scheme was established to administer a bequest contained in the Trust Disposition and Settlement of the late Reverend John Robb of Pittrichie dated 21 May 1988, encompassing a Disposition of the Lands of Pitcow also dated 21 May 1988, as supplemented by a Scheme of Directions dated 16 November 1888. In August 2018 the trustees reviewed and updated the trust’s governing document. This was to ensure any failed beneficiaries were replaced with new beneficiaries having similar purposes and to ensure that all distributions are meaningful.

#### Reasons for reorganisation

The charity’s governing document is a Deed of Trust which predates modern charity law and has not been modernised to reflect current best practice for charities. The current governing document is outdated and restrictive for the trustees.

The Charity wishes to update its current Constitution: –

- (1) to remove the fixed scheme of distribution and the requirement to annually distribute all net income as set out under the current Constitution to provide flexibility in the level of funds to be distributed, the timing of distributions and which beneficiaries are to benefit on each occasion;

(2) to bring the current list of beneficiaries up to date and give greater flexibility in allowing the trustees to make payments direct to churches rather than just to Ministers personally;

(3) to remove the ex officio appointments under the Constitution and amend the number of required trustees from 5 to a minimum of 3 and maximum of 5, thus providing further flexibility in the administration of the charity;

(4) to introduce a new power to enable the trustees to meet virtually and make decisions at virtual meetings; and

(5) to add a further additional power to enable the trustees to make future changes to the Constitution as may be required from time to time which do not require the consent of OSCR.

## Reorganisation conditions

The Trustees suggest that the following reorganisation conditions are met:

42(2)(iv) that some or all of the purposes of the charity have ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution

The trustees suggest the condition is met because the current provisions of the Constitution are leading to an erosion in the value of the Trust Fund year on year. The original Constitution envisaged the charity continuing indefinitely and this will not be the case under current arrangements. It is therefore desirable to remove the current purpose requiring funds to be distributed in accordance with the Scheme of Distribution.

42(2)(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

The trustees suggest the condition is met because the appointment of the ex officio trustees is proving problematic in practice, it is burdensome and leading to significant expenditure within the charity. It is felt more appropriate to appoint individuals to the role who have an interest in the charity and wish to remain involved longer term.

42(2)(d) that it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity's constitution

The trustees suggest the condition is met because they wish to include new powers to meet virtually to provide greater flexibility in the administration of the charity. They also wish to include a power to enable them to amend the charity Constitution without having to complete a full reorganisation application where this would not otherwise be necessary. Again, it is hoped that this will provide greater flexibility in the administration of the charity, as well as reducing future expenditure.

## Reorganisation outcomes

The trustees suggest that the following reorganisation outcome is met:

39(1)(b)(i) that the proposed reorganisation scheme will 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 trustees suggest this outcome is met because by removing the need for the net income of the charity to be distributed annually, this will provide the trustees with greater flexibility. At present the Trust Fund is being eroded as a result of this requirement. The current beneficiaries will still stand to benefit in order to maintain the spirit of the original Constitution, but going forward the trustees will be able to determine what level of funds are to be distributed or retained within the Trust.

There would also be scope to make more than one round of distributions annually if it was felt that this was appropriate. Removing the fixed Scheme of Distribution will also provide greater flexibility in who the trustees can benefit in each round of distributions. In years where income is low, it may be desirable to benefit only certain of the beneficiaries rather than making very modest payments to all beneficiaries. The charity has also encountered issues where certain beneficiaries have refused payment. Greater flexibility would be provided for this situation also.

39(1)(b)(ii) that the proposed reorganisation scheme will enable the charity to be administered more effectively.

The trustees suggest that the outcome is met because they believe that removing the ex officio appointments will improve efficiency within the charity by reducing compliance requirements and avoiding the need to regularly train new trustees. It will also enable longer term views to be taken within the charity and ensure that appropriate individuals who have relevant skills and interests, ideally those who would wish to be involved in a longer-term basis, can be appointed in the role.

A provision to enable the trustees to meet and make decisions virtually will provide greater flexibility in arranging meetings. A power to enable the trustees to amend the Constitution as they see fit will also provide greater flexibility and efficiency, reducing the requirement to apply to OSCR any time an update is required beyond adjusting the beneficiaries (as is currently permitted). This will enable the Trust to continue to operate efficiently and will reduce administration expenses, thereby also assisting with improving the Trusts financial position going forward.

## Further Information

Further information on this application for charity reorganisation may be made available, upon request. Please contact the Office of the Scottish Charity Regulator on 01382 220446 and ask to speak to a member of staff in the Charities Team for further details.

## How to make a representation in relation to the proposed reorganisation scheme

Any person may make a representation to OSCR either supporting or opposing this proposed reorganisation scheme. Should you wish to make a representation, you may do so by writing to OSCR providing the following information:

- Your name and address
- The name of the charity concerned
- The nature of the representation and reasons for it

These are the terms of Regulation 5 of the Charities Reorganisation (Scotland) Regulations 2007).

All representations should be sent to OSCR at the following address:

OSCR – Charity Reorganisations  
2<sup>nd</sup> Floor Quadrant House  
Riverside Drive  
Dundee  
DD1 4NY

Representations can be made up to 14 days following the end of the publication period. The latest date for the receipt of representations is 13 January 2024.

We **cannot** accept representations through Twitter.

A copy of any representations will be provided to the applicant charity for comment. If you do not wish the charity to be provided with your personal details, please indicate this in your representation.

Personal details will otherwise be disclosed to the applicant charity.

**OSCR**  
**09/12/2024**