

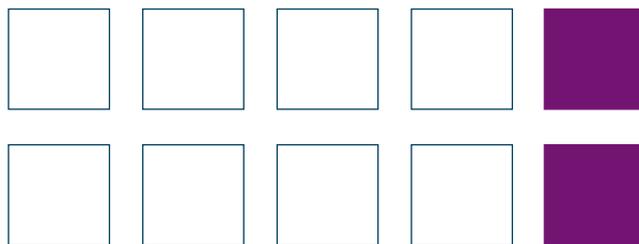


Charity Reorganisation:

Guidance for charity trustees and their advisers on reorganising a charity

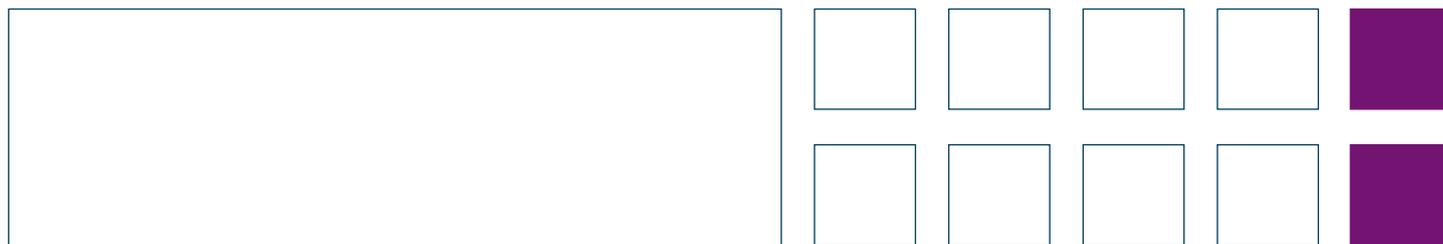
**OSCR**  
Scottish Charity Regulator



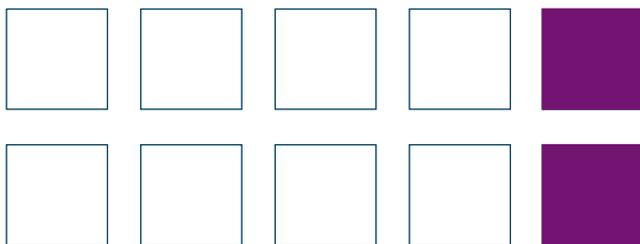


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## Who is this guidance for?

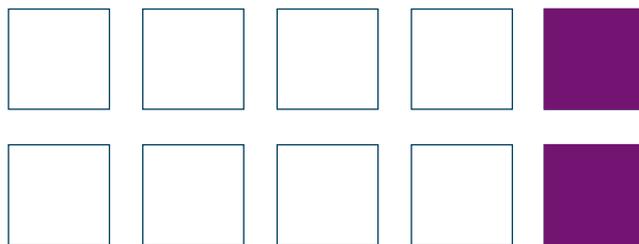
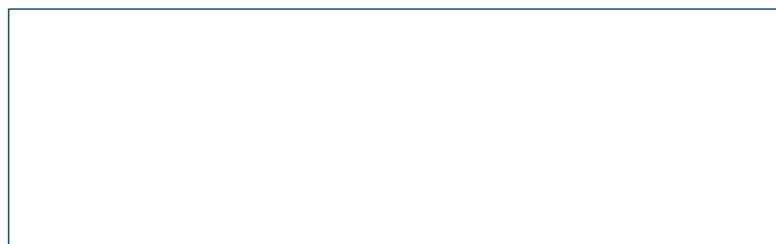
This guidance explains what you need to do in order to reorganise a charity. It is aimed at charity trustees of charities of any size, and particularly older charitable trusts, which might benefit from reorganisation. It will also be of assistance to people working for charities and those who advise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

This guidance also sets out when charities must publicise their intention to reorganise and how we will consider any representations received from the public.

If you want to find out how to make a representation either supporting or opposing a proposed charity reorganisation scheme, please read the relevant guidance on our website:

<http://www.oscr.org.uk/managing-your-charity/reorganisation-in-scotland/>

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



## Executive summary

Charity reorganisation is a valuable tool that allows charities which 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.

Charity trustees of most charities registered in Scotland and established under Scots law can apply to us to have a charity reorganisation scheme approved.

The timescale for reorganisation applications depends on the 'size' of the charity. We can treat very small charities in a simplified manner, on the basis of the following thresholds:

- » **'large charity'** means a charity with a gross annual income of £250,000 or more;
- » **'small charity'** means a charity with a gross annual income of less than £250,000; and
- » **'very small charity'** means a small charity whose assets do not include any land or buildings ('heritable property') or shares in a private limited company, and which has a gross annual income of less than £1,000.

Applications to reorganise 'large' and 'small' charities can take around six months to complete and applications which are particularly complex may take longer. You should allow for this when preparing your application.

We must make a decision on whether to approve or refuse applications to reorganise 'very small' charities within 13 weeks of receipt of an application.

There are three types of charity reorganisation scheme:

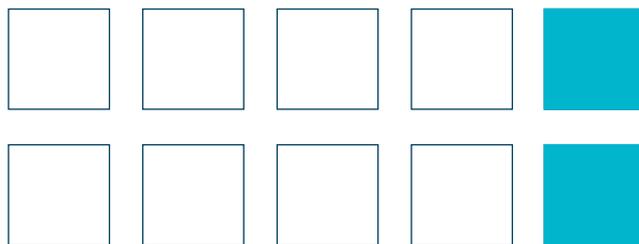
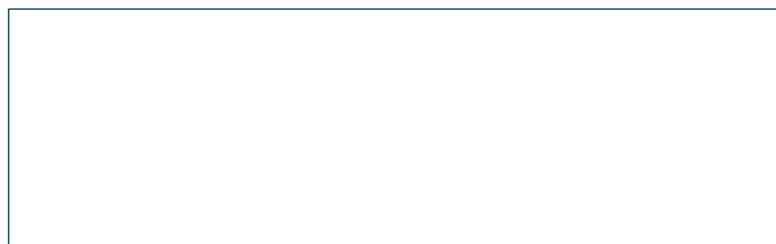
- » A variation of the terms of the charity's constitution
- » A transfer of the charity's property to another charity
- » An amalgamation of the charity with another charity.

A charity that wants to reorganise must fulfil at least one of the seven reorganisation conditions. The reorganisation scheme must achieve one of two outcomes for the charity. We explain these in sections 5 and 6 of this guidance.

To inform the public, notice of a charity's intention to reorganise will be published on our website for a period not exceeding 42 days, with the exception of 'very small charities', where we may opt not to publish. 'Large charities' will also need to advertise in a newspaper or periodical.

The public may submit comments, which we call 'representations', either supporting or opposing a proposed reorganisation scheme for a 'large' or 'small' charity. We must consider the content of any representations received.

If we approve a scheme, the charity's trustees are responsible for the reorganisation of the charity and must notify us when the charity's reorganisation is complete. If we refuse a scheme, the charity's trustees can ask for this decision to be reviewed and can appeal against the outcome of the review.



# 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 OSCR's consent when necessary. Sometimes, however, charities find they are unable to make certain changes because the people who founded them did not anticipate the way that society or the economy would change.**

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?

Charities must seek our prior consent to make certain changes. The changes that need our consent are:

- » Changing your charity's name
- » Changing your charity's constitution so far as it relates to purposes
- » Winding-up or dissolving your charity
- » Amalgamating with another body
- » 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 may not allow the charity's trustees to take the actions they feel are necessary to remain relevant and true to the spirit in which it was founded. It is also possible, particularly with older bodies, that no constitution or governing document is available to be consulted, making it difficult for us to grant consent.

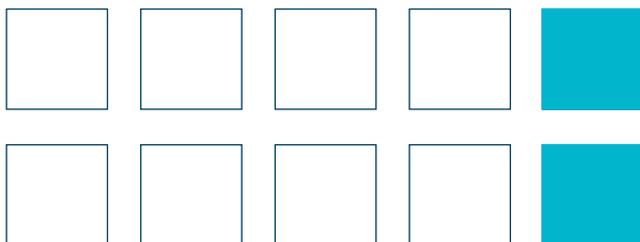
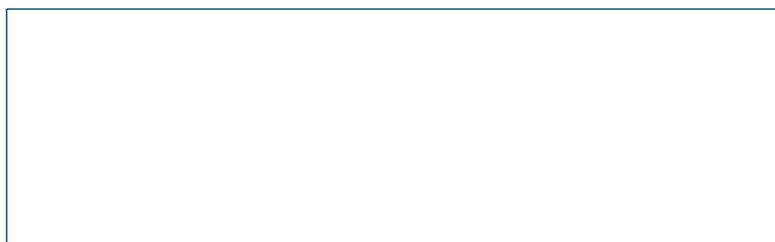
Charities in this situation can apply to OSCR to reorganise. Charity reorganisation enables charity trustees to:

- » Vary the terms of the charity's constitution (whether or not in relation to its purposes)
- » 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)
- » Amalgamate the charity with another charity

## B. 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 us to approve an application for reorganisation. Minor amendments to Chapter 5 were introduced by the Public Services Reform (Scotland) Act 2010 (the PSRSA 2010).

The Charities Reorganisation (Scotland) Regulations 2007 (the 2007 Regulations) supplement the 2005 Act and were amended by The Charities Reorganisation (Scotland) Amendment Regulations 2012. The Regulations provide more detail about the procedures for charity reorganisation.



The Charities Restricted Funds Reorganisation (Scotland) Regulations 2012 provide a mechanism for charities to reorganise their restricted funds. Separate guidance about this is available on OSCR’s website.

You will find references to the full legislation in the ‘Relevant legislation’ section of this guidance.

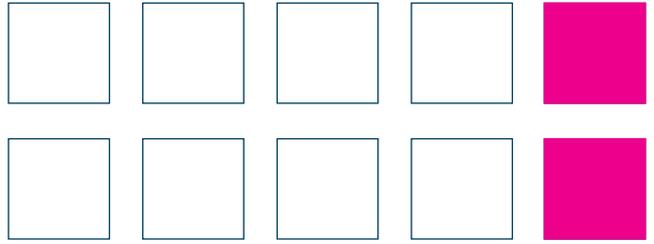
Charity reorganisation is a valuable tool available to charities established in Scotland for releasing presently unused charitable funds back into Scotland’s charitable sector.

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

**While we can facilitate and approve 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.**

### C. 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.

### A. Endowments and statutory enactments

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

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), they may be able to reorganise under the 2005 Act. Where the trustees of a charity constituted by a statutory enactment are unclear whether they can do so, we would recommend that they seek appropriate professional advice.

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 us.

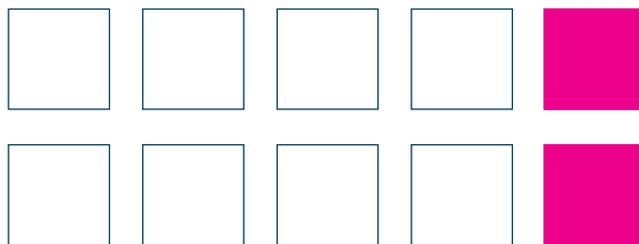
### B. "Who can make the application?"

A reorganisation application needs to be made by either the charity trustees or by someone acting on behalf of the charity trustees (for example 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 its 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.





## C. 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:

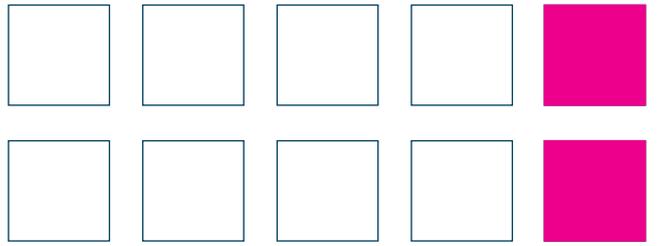
- » If you employ staff, has a due diligence exercise been carried out to assess the impact of reorganisation on employment contracts and pensions? If not, what steps are being taken to safeguard employees’ interests?
- » How will any other contracts that the charity has entered into be affected?
- » 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 reorganise?
- » Are there other factors to consider that might make charity reorganisation difficult? How might this play out in terms of representations?

As the regulator, we cannot tell you if reorganising is right in these respects 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.

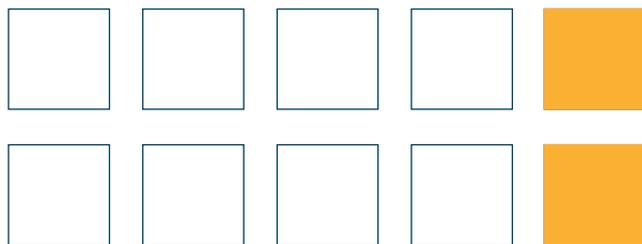
### » Independent advice

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](http://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.voluntaryactionscotland.org.uk](http://www.voluntaryactionscotland.org.uk).



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## 3. Charity reorganisation – an overview of the process

**Applications to reorganise ‘small’ and ‘large’ charities can take around six months to complete. Those applications that receive a number of representations for or against the proposal may take slightly longer. Applications to reorganise ‘very small’ charities will take less time as we must issue a decision within 13 weeks of an application being received. You should allow for this when preparing your application.**

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

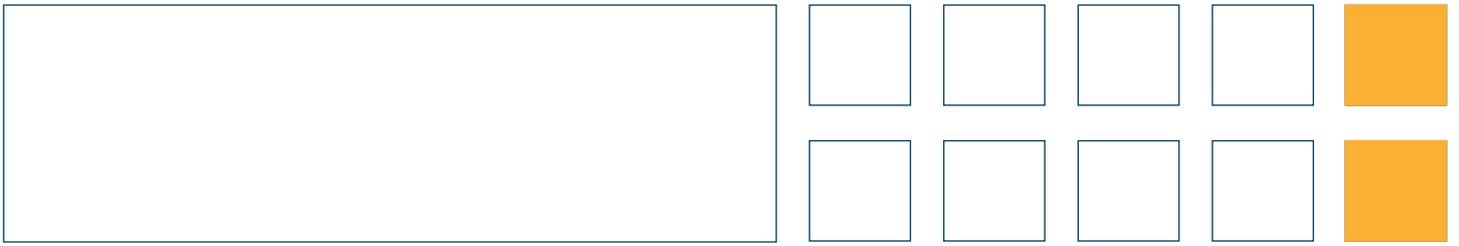
To be approved, a reorganisation scheme must:

1. Fall within one of the types of **reorganisation scheme** set out in the 2005 Act – there are three of these (section 4).
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 (section 5).
3. Achieve the prescribed **reorganisation outcome** – there are two possible outcomes. These describe what charity reorganisation must achieve if successful (section 6).

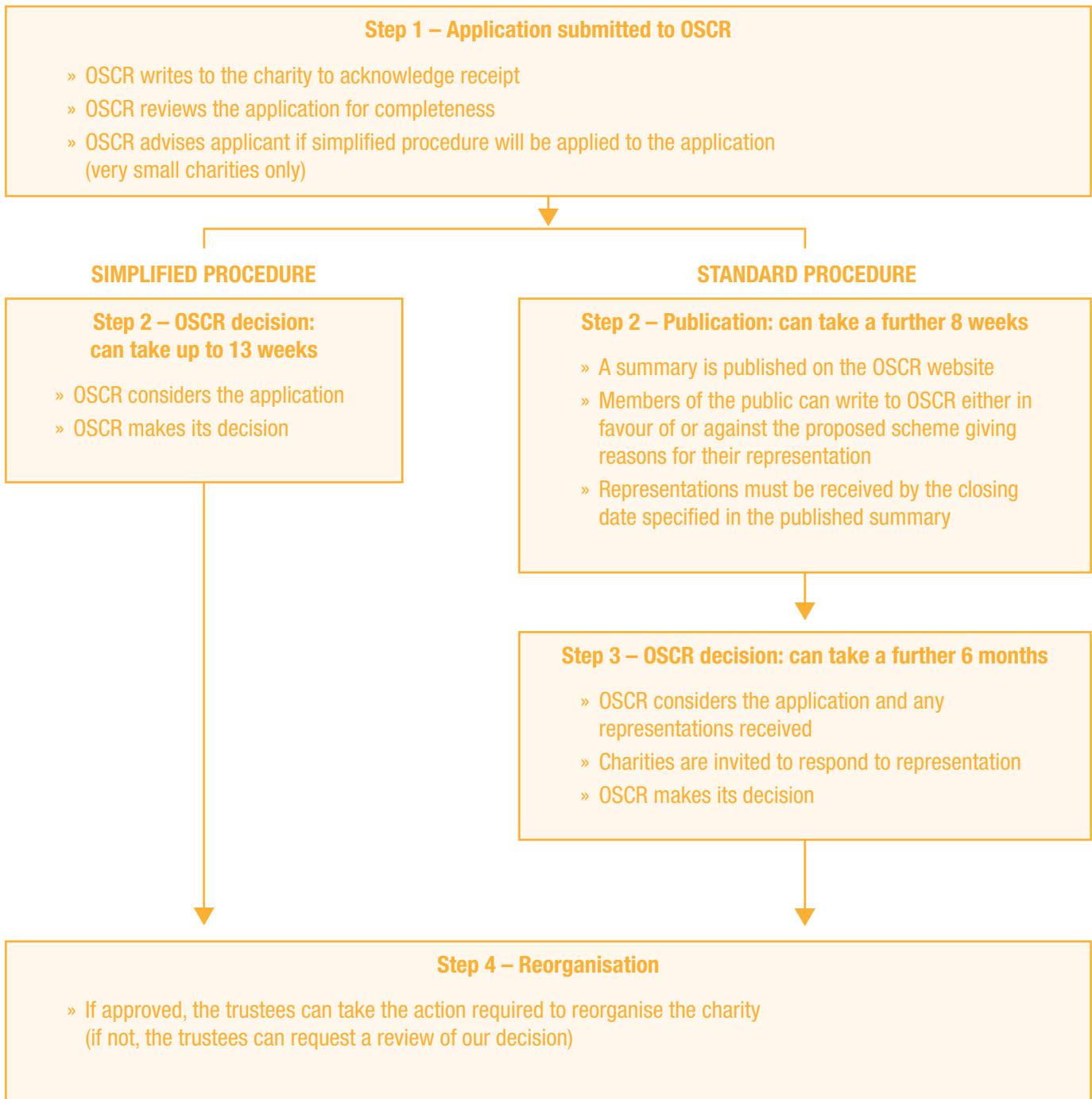
In addition, charities (other than ‘very small’ charities) submitting an application to reorganise must:

- » **Publish a summary of a proposed reorganisation scheme** in line with the amended 2007 Regulations, to allow representations from the public. Reorganisation schemes are published on the OSCR website. ‘Large’ charities will also need to publish a notice in a newspaper, magazine or journal (section 7).
- » **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 (section 8).

An outline of the reorganisation process follows. The time taken to complete each step will vary, depending on the complexity of the proposed scheme.



### Charity Reorganisation Application Process



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## B. Step 1 – We review the application form

Once we have received your application to reorganise (available from our website or by post on request), we will review it for completeness and may write to you if we need further information.

In the application, you must:

- » Send us a copy of the existing constitution of the charity (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 gross annual income
  - » 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).

If your charity has a gross annual income of £250,000 or more, you must also give us the name of the newspaper or publication that you wish to publish in, and send us a draft copy of this notice (see section 7 for details).

## C. Step 2 – Publication on the OSCR website

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

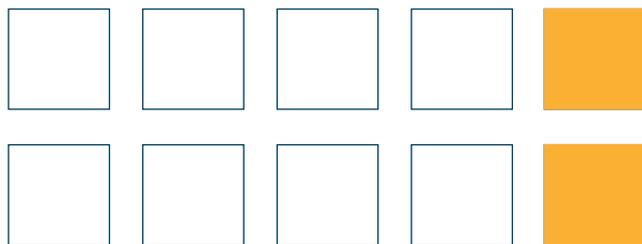
This summary of the application will be published on our website for between 28 and 42 days, depending on the nature of the proposed reorganisation scheme. The majority of summaries are published for 28 days only.

Sometimes you will need to publish a notice in a newspaper or periodical 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 make representations to OSCR, either supporting or opposing what is proposed. All representations must be received by OSCR by the deadline set.

The deadline for receipt of representations must be at least 14 days after the application summary is removed from our website. Taking all of the above into account (publication on the website and the time allowed for the lodging of representations), Step 2 can take up to 8 weeks to complete.

Please note however that for charities whose assets do not include any heritable property or shares in a private limited company, and with a gross annual income of less than £1,000, there is no obligation to publish and we have the discretion to apply a simplified procedure to the application. In such cases, we will write to you within 14 days of receipt of the application to confirm that a simplified procedure will be applied.



### D. Step 3 – OSCR issues its decision

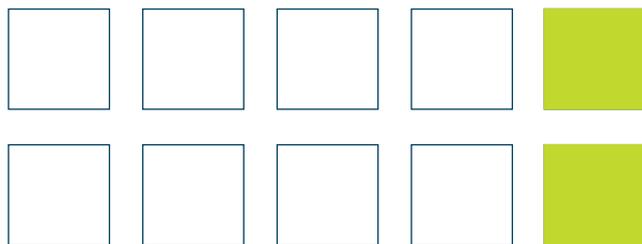
For ‘small’ and ‘large’ charities, we must make a decision within 6 months of the latest date for receipt of representations. Step 3 can therefore take up to 6 months to complete, although most decisions are made much more quickly than this (please see section 8). If we opt to apply a simplified procedure to an application from a ‘very small’ charity, we must issue a decision within 13 weeks of receipt of the application.

### E. Step 4 – The trustees reorganise the charity

If we approve an application to reorganise, the charity trustees must take the necessary steps to make the changes happen. This means that charity trustees must formally agree to give effect to the reorganisation scheme. You must do this in line with the requirements of your constitution, for example at a formal meeting such as an EGM, AGM or SGM. Once you have done this, you must notify us that the reorganisation process is complete.

If we refuse an 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.

Please see section 8 for more information on notification and the review process.



## 4. Charity reorganisation schemes

There are three types of charity reorganisation scheme, as follows:

- 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 be made, 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 like to revise your charity's purposes if, for example, these cannot clearly be linked to any of the 15 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.

### B. 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 15 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, please see section 6.

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 a subsequent application to reorganise having to be made.

#### » Future changes to the constitution

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

- a) Either restrict future changes to the charity's 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.

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We need to consider whether the changes proposed will result in the charity being able to fulfil its purposes into the future in the spirit in which it was originally set up. For example, you may like 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 in 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 may be the only change you wish to make, allowing changes to the constitution to be made at a later date.

#### » **Change to name**

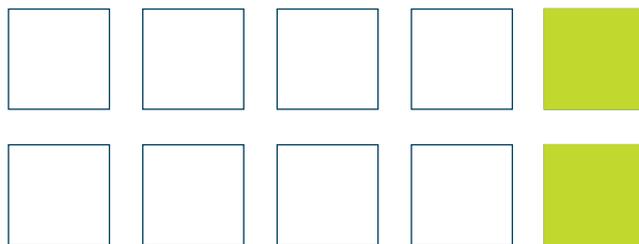
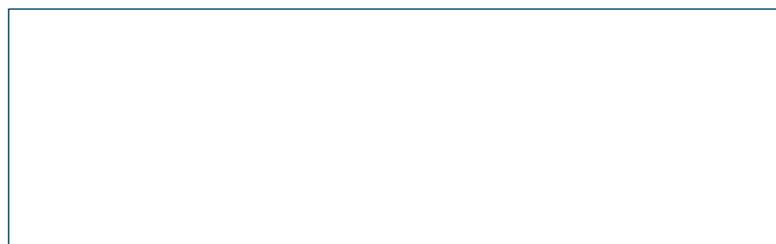
Changes to a charity’s name may be brought within a charity reorganisation scheme, where this is considered desirable. Charities wishing to include a name change in a reorganisation scheme should consult OSCR’s guidance publication, ‘Changing your charity’s name’, for more information. OSCR cannot enter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

<http://www.oscr.org.uk/publications-and-guidance/changing-your-charity-name/>

#### » **The ‘new’ constitution**

To vary the charity’s constitution you must send a draft copy of the ‘revised’ constitution to us with your application and 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 might 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 applied to vary the terms of its constitution because a provision of the charity's constitution (other than a provision setting out the charity's purposes) was considered to be no longer desirable.

The Bothy Trust was established in 2002, to restore and maintain simple shelters for the use and benefit of people who access the hills and remote areas of the British Isles. The charity's trustees applied to us 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 it no longer wished to do so.

The charity's trustees also proposed the following changes:

- » 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.

The trustees considered that these changes would ensure that all accounting requirements would continue to be met and encourage the recruitment of trustees with suitable expertise to govern the charity in the future. This proposed

reorganisation scheme was advertised on our website for 28 days. No objections were received. The application to reorganise was approved by OSCR.

### C. A transfer of the property of the charity to another charity

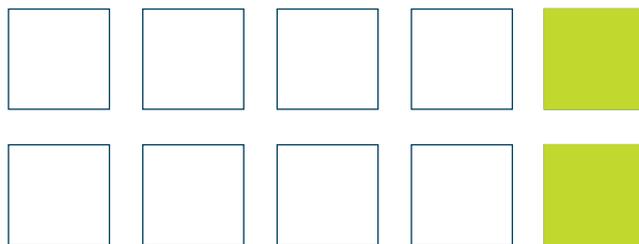
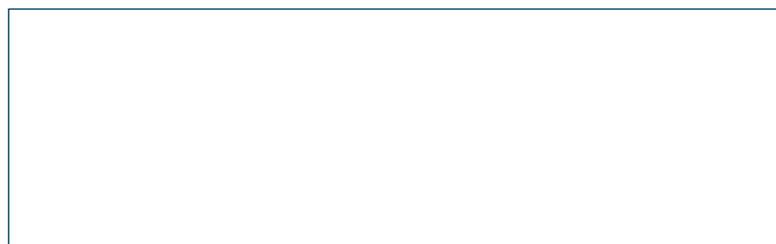
This type of scheme allows for a charity's property to be transferred to another charity or charities after satisfaction of any outstanding liabilities (whether or not involving a change to the purposes of the other charity). The recipient body must be a charity. A charity is a body entered in the Scottish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

Most, although not all, of the charities that reorganise are trusts. Therefore, transferring all of a trust's property will result in the donor charity ceasing to exist (that is, will dissolve it).

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.

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 charity has ceased to exist once evidence of the conclusion of the transfer process is provided.



## D. 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 us.

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 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.

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 our Meeting the Charity Test guidance:

<http://www.oscr.org.uk/publications-and-guidance/meeting-the-charity-test-guidance-in-full/>

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.

### » 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 draft form).

## Case study:

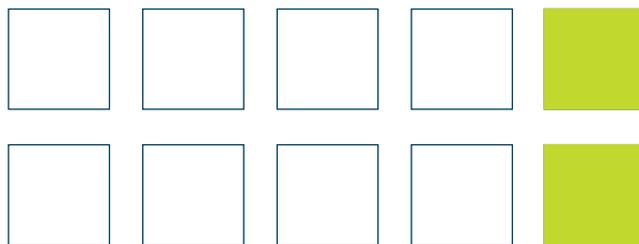
### Joseph Thomson's Mortification (SC015911)

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. 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. The charity's trustees were unable to identify a local shop or a larger food store able to issue vouchers that could only be redeemed for food and not, for example, 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.

This charity applied to OSCR to transfer its property to another charity, as it could no longer give effect to its purposes, and because its purposes had ceased 'to provide a suitable and effective method of using its property, having regard to the spirit of its (the charity's) constitution'.

The charity's trustees suggested that the reorganisation would allow the charity's property to be used to better effect for its charitable purposes. They proposed 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.

The proposed reorganisation scheme was advertised on our website for 28 days. No objections were received. The application to reorganise was approved by OSCR.

## E. 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.

## F. Amalgamation – things to think about

### » Settling outstanding liabilities

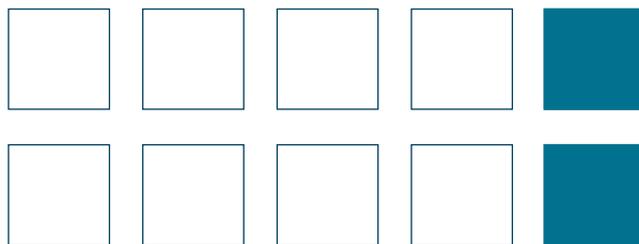
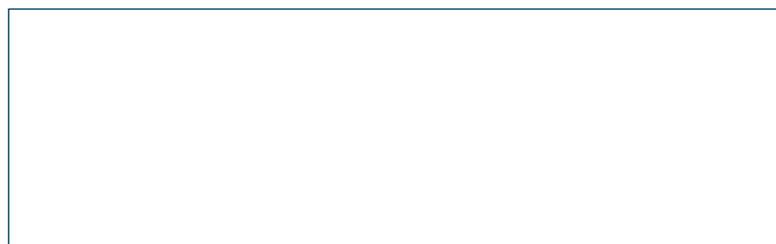
Before making this decision, it is important to be aware that this type of scheme involves the coming together of participants' assets and liabilities (including any pension liabilities). Please seek independent advice on the best route to take where contracts and binding financial agreements are involved.

### » Timing

The timing of your application(s) 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 process is subject to representations (see section 7).

### » Continuity

In considering applications for amalgamation, we look for evidence of continuity in what has gone before, and what will take place in the future. This is important 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 that 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 the charity. At least one reorganisation condition must be met.

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.

The reorganisation conditions 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 the purposes in order for the charity to have exclusively charitable purposes and meet the requirements of the 2005 Act.

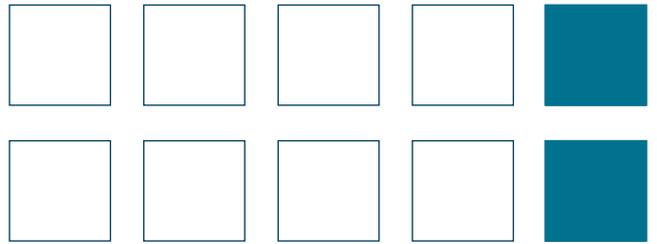
#### (iv) **ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution**

For example, a charity established to 'provide coal to poor householders in Kelso' find they are accumulating income because there are very few beneficiaries given the declining number of households with coal fires. Given the narrow focus of the purposes the charity trustees may consider it would be a better use of its property if it were to transfer its assets to another larger charity that supports those in, or at risk of, poverty generally thereby supporting a wider range of beneficiaries.

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.



For example, upon 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 to allow them to sell the house, and to use the income from this sale to construct a purpose-built facility nearby.

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## 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 PSRA 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, your 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 (i.e. trustees who are appointed because they hold another office), giving no power for this provision 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 might 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 might 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.

## C. 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.

### » Incidental administrative changes

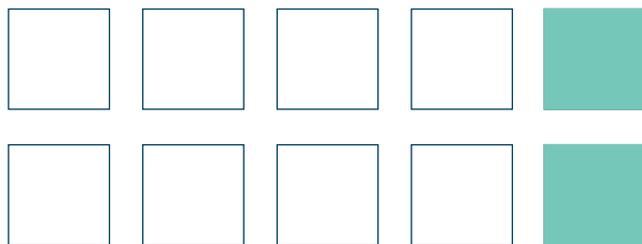
If you want to vary the terms of your charity's constitution, a reorganisation condition does not need to be satisfied for every incidental administrative change you want to make.

### » 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.


### Elements of reorganisation

REASONS YOU CAN APPLY – what’s wrong with your constitution?	WHAT DO YOU WANT TO DO TO FIX IT?	WHAT WILL BE THE RESULT OF THE ACTIONS YOU WANT TO TAKE?
<ul style="list-style-type: none"> <li>» Your purposes have largely been fulfilled</li> <li>» You are unable to fulfil the charity’s existing purposes in the spirit of the constitution</li> <li>» Your purposes are no longer considered charitable</li> <li>» You can’t use property effectively (in the spirit of your constitution)</li> <li>» You are only able to apply part of your property (and you want to do more)</li> </ul>	<ul style="list-style-type: none"> <li>» Change the constitution (change purposes or otherwise)</li> <li>» Transfer you assets to another charity</li> <li>» Amalgamate with another charity</li> </ul>	<ul style="list-style-type: none"> <li>» You will be able to apply your resources to better effect to fulfil the charity’s purposes in the spirit of its constitution</li> </ul>
<ul style="list-style-type: none"> <li>» Another provision (other than purposes) is not feasible or practicable anymore; or is no longer desirable</li> <li>» It is desirable to introduce a provision (other than a provision setting out a new purpose) to the charity’s constitution</li> </ul>	<ul style="list-style-type: none"> <li>» Change the constitution (but not the purposes)</li> </ul>	<ul style="list-style-type: none"> <li>» You will be able to administer your charity more effectively</li> </ul>



## 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 need to be met, we will look at whether both of these 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 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.

In the case of variation, we will look at how similar the draft (revised) purposes of the charity are to its existing

purposes. We look for continuity between the past and the present. 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 appears to be consistent with the spirit of the charity's constitution.

In the case of a transfer of the property of the charity to another charity, we will look at the purposes of the (proposed) recipient charity, and consider how similar or otherwise these are to the purposes of the applicant. In considering the suitability of a potential recipient charity, the same principles apply as 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 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 charitable 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) was established in 1984. The purpose of Bell's Nautical Trust is: 'to provide or promote or otherwise to benefit maritime education in Leith or elsewhere in Scotland'. Bell's Nautical Trust achieves this objective by providing grants to appropriate organisations and individuals.

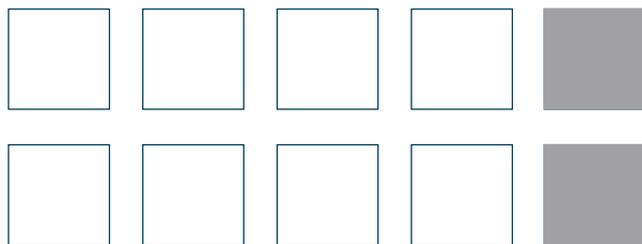
The charity's trustees applied to reorganise the charity because they considered:

- » 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 were appointed by the Firth of Forth Shipowners' Association, an organisation that no longer exists. This meant that no new trustees could be appointed to the charity.

The charity's trustees wished to vary the terms of the charity's constitution to allow for the orderly appointment of trustees in the future. They suggested that reorganisation would 'enable the charity to be administered more effectively' because the appointment of trustees is essential for the ongoing administration and operation of the charity. This outcome must be achieved where the reorganisation condition met is (c) or (d). Please see section 6 for more information on outcomes.

OSCR approved the charity reorganisation scheme.



## 7. Publication and representations

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 representation process gives interested parties an opportunity to make sure our decision is as informed as possible. However, we may use a simplified procedure for applications from charities whose assets do not include any heritable property or shares in a private limited company, and with a gross annual income of less than £1,000. For such charities, there is no obligation for OSCR or the charity to publish the scheme, if, in our view, the simplified procedure is justified on the grounds of the level of funds remaining together with low risk and lack of public interest.

### A. Publication on the OSCR website

We publish a notice of proposed charity reorganisations on our 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 website is referred to as the publication period. Reorganisation notices are displayed on our 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 instead.

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 or periodical – 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, journal or magazine relevant to the purposes of the charity. This advert 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.

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

### C. What to include – required text

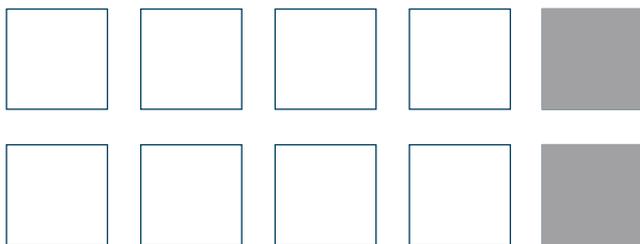
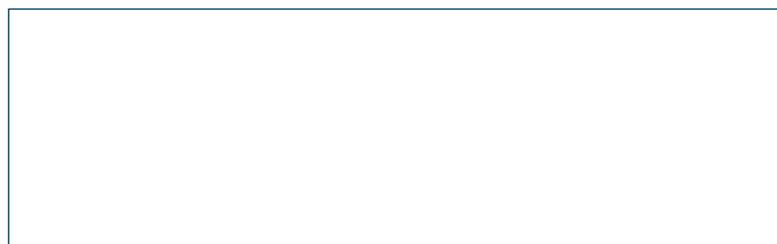
The advert must appear during the first 14 days of the publication period. The Notice **must** be in the form set out in the Schedule at Appendix 1 to this guidance.

### D. Evidence of publication

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

If you refuse or fail to publish a notice, we must refuse the reorganisation scheme, unless the simplified procedure is being applied. 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.

**E. Representations – an overview**

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 contacts us to either support or object to a charity reorganisation scheme.

Anyone may make a representation to OSCR either supporting or opposing a proposed reorganisation scheme for a large or small charity, whether they are beneficiaries, funders, service partners, creditors or members of the general public. Representations inform the process but they do not determine the outcome. We can refuse to approve a reorganisation scheme whether or not representations are received and we may approve it even if representations opposing the scheme are received.

A representation must be in writing and may be sent to OSCR by e-mail or post or may be delivered in person.

A representation about a proposed charity reorganisation scheme must include:

- » the name and address (which may be an e-mail address) of the person making the representation
- » the name of the charity concerned as it appears in the notice on our website or the notice published in a newspaper or periodical, and
- » the nature of the representation and the reasons for it

A representation 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 representations which will be at least 14 days after the notice has been removed from the OSCR website.

The latest date for receipt of representations always appears on the charity reorganisation summary page (accessed via our website).

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

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

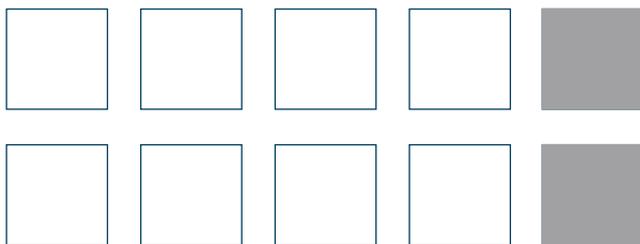
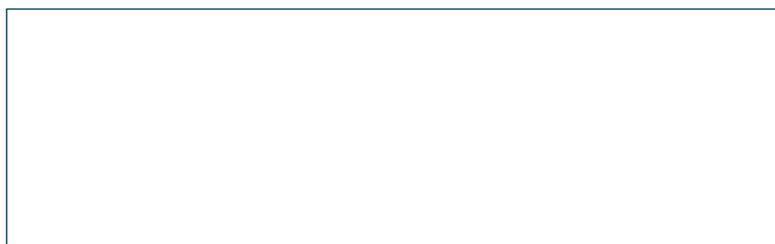
**F. How we consider a representation**

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

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

In some cases representations will bring new information to light. Representations from the public may lead us, for example, to consider contractual obligations the charity might 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. Equally, representations in support of the proposed scheme may provide us with information which strengthens the case for reorganisation. Representations 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, our Inquiry and Investigation Team will look at whether any further inquiries are needed to establish if there has been misconduct 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 our website.

Ultimately, the weight given to representations depends on the information provided and how relevant this is to the scheme proposed. OSCR can refuse to approve a charity reorganisation scheme, even where no representations opposing the scheme have been received.

### G. What to expect

We will inform the charity if representations are received, and will ask you to comment on the representations. 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 (name and address) of those making representations will normally be given to you. If the person making a representation wishes to have his or her personal details withheld, they should tell us why. We 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 the details of the person making a representation might jeopardise our ability to fulfil our regulatory functions.

We must notify those making representations of our decision to approve or refuse a charity reorganisation scheme and will send them a copy of our decision letter within seven days of our decision being made. Those persons making representations have no right of review or appeal in respect of our decision.

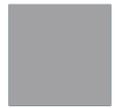
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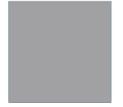


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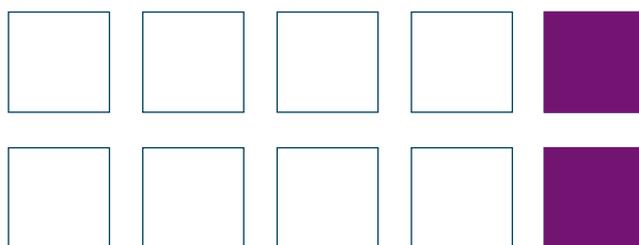
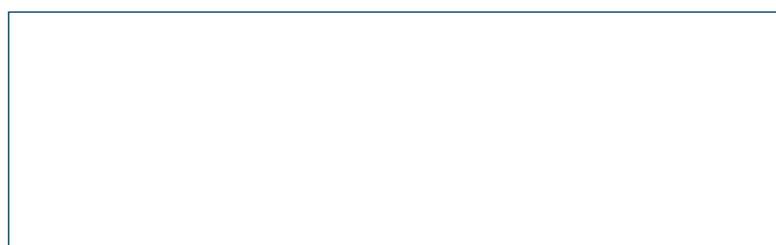
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## 8. OSCR decision and next steps

**There are two possible outcomes of the application process – approval or refusal. 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.

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 that the reorganisation process is complete.

### B. Notifying OSCR that reorganisation is complete

You must notify us in writing that the reorganisation scheme has been adopted. The basic information we need 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 assets (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 a charity's trustees 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 our website to make the notification stage as easy as possible:

[www.oscr.org.uk/publications-and-guidance/notifications-of-changes-made-application-form/](http://www.oscr.org.uk/publications-and-guidance/notifications-of-changes-made-application-form/)

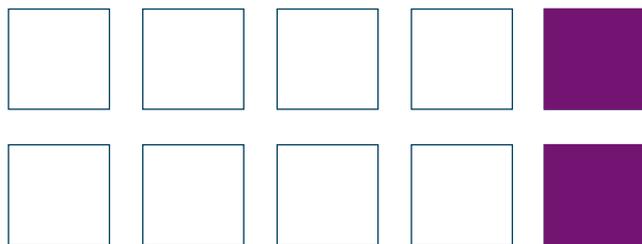
### C. Refusal of a charity reorganisation scheme

If we refuse to approve 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. You must ask for a review of OSCR's decision within 21 days of the decision being made. See OSCR's Reviews policies at:

<http://www.oscr.org.uk/publications-and-guidance/review-procedures/>

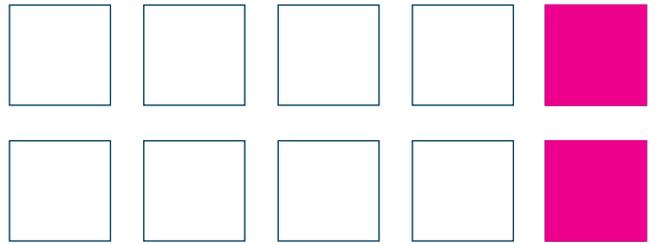
The review will be undertaken by someone who was not involved in the original decision. The review will result in one of four outcomes:

- » 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 or the timescales attached



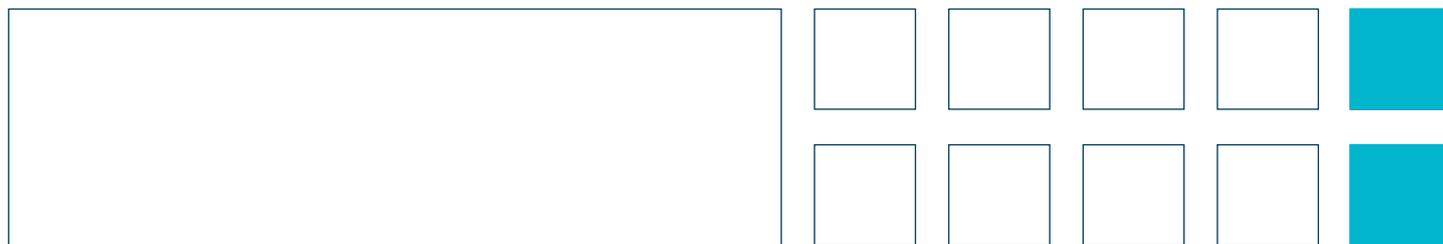
- » The decision is reversed – the decision is changed from refusal to approval
- » The decision is revoked – the decision is withdrawn. This means that the decision has been officially declared null and void, the effect being as if OSCR has not made the decision. The application will be passed to a 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.



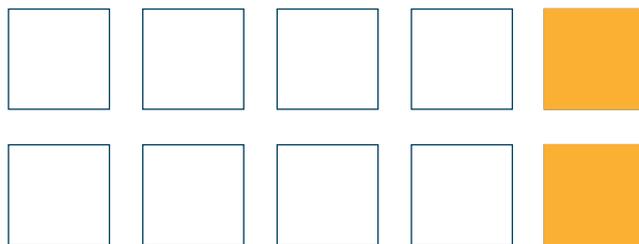
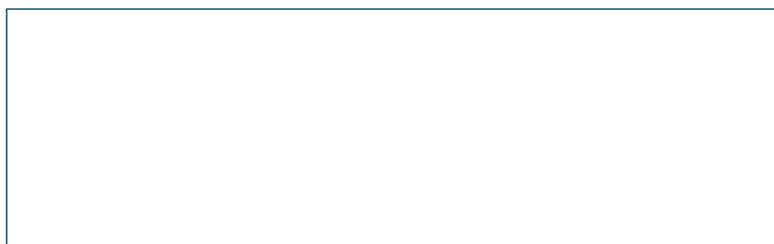
## 9. Relevant legislation

- » The Charities and Trustee Investment (Scotland) Act 2005  
<http://www.legislation.gov.uk/asp/2005/10/contents>
  - » The Charities Reorganisation (Scotland) Regulations 2007 (as amended)  
<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>
-



## Glossary

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 an 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
<i>Ex-officio</i> appointment	An appointment made on the basis of a post, office or role
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', above
Publication notice	The document that summarises the details of, and reasons for, the proposed reorganisation scheme
Publication period	The period fixed by regulation 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
Representation	The means by which members of the public can comment to OSCR on a proposed charity reorganisation scheme



## Appendix 1 – Required text for a newspaper notice

The following text has been prepared in the Ariel Narrow font. All text is size 10 font, with the exception of the charity's legal name, the charity number and the charity's business address. These details are the only details that require completion by the applicant and are in size 12 font.

### **FORM OF NOTICE OF PROPOSED REORGANISATION SCHEME**

“[Insert the name of the charity as entered in the Scottish Charity Register] ([insert the registered number allocated to the charity]) has applied to the Office of the Scottish Charity Regulator (‘OSCR’) for approval of a reorganisation scheme. Details of the proposed reorganisation scheme may be obtained from OSCR’s website ([www.oscr.org.uk](http://www.oscr.org.uk)) or by writing to OSCR [insert OSCR’s postal address]. Anyone who wishes to make representations to OSCR may do so in accordance with regulation 5 of the Charities Reorganisation (Scotland) Regulations 2007. All representations must reach OSCR not later than [insert the deadline for making representations to OSCR, as specified in the notice on OSCR’s website].”

