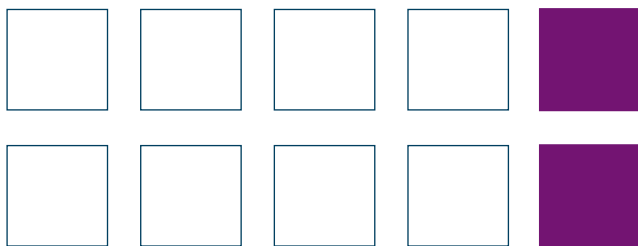
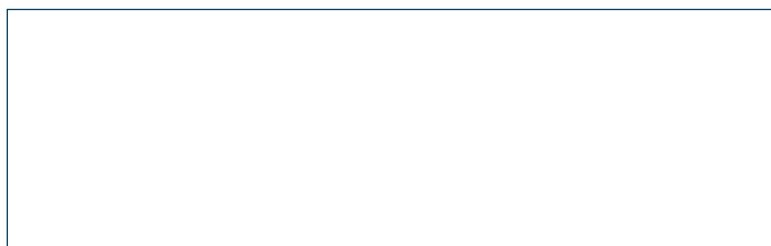


Reorganisation of
Restricted Funds

Guidance for charity
trustees and their
advisers

OSCR
Scottish Charity Regulator

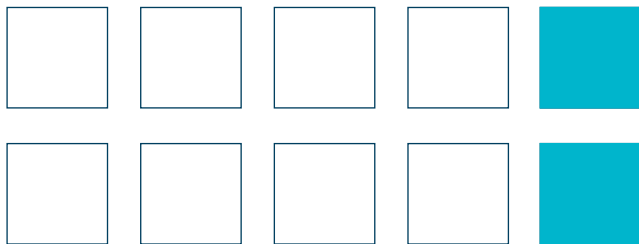
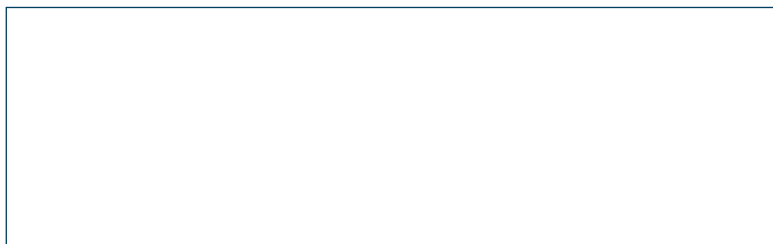




Executive summary

Since 2007, Scottish charities have been able to apply to OSCR for consent to reorganise. Charity reorganisation is a tool for charities that wish to make changes (such as amend their constitutions, transfer assets, or wind up) but which do not have the power to make the desired changes. From November 2012, Scottish charities can also apply to reorganise restricted funds. This guidance is primarily aimed at trustees of charities with restricted funds to which they may be considering making changes.

- » From 1 November 2012, charities will be able to apply to OSCR for consent to reorganise restricted funds
- » Applicants must satisfy OSCR that their proposal meets one of the specified reorganisation conditions
- » Applicants must satisfy OSCR that their proposal meets the specified reorganisation outcome
- » The applicant must have been unable to find out the wishes of the person who gave the funds
- » There will be a simplified application process for very small funds
- » For all but very small funds, information about the proposed reorganisation will be published and members of the public will be allowed to express their views.

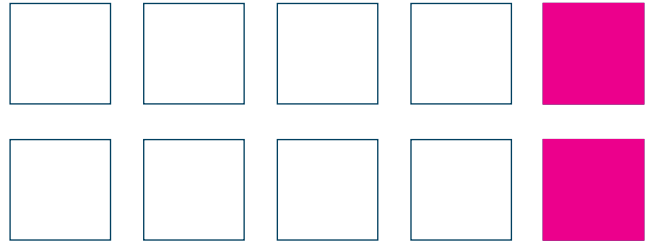


1. Background

Many charities in Scotland have what are called ‘restricted funds’. Restricted funds are property which has been given to the charity for a specific purpose and which it can only use under particular conditions. Until now, the only way for charities to reorganise and make changes to restricted funds (for instance where a fund’s purposes had become outdated and no longer allowed its assets to be used effectively) was by application to the court.

Changes to the law now mean that charities can ask OSCR to approve reorganisations of restricted funds. The Charities Restricted Funds Reorganisation (Scotland) Regulations 2012 (referred to as ‘the Regulations’) set out the procedures for making an application and the matters which OSCR has to consider in order to approve a scheme to reorganise a restricted fund. This process is broadly similar to charity reorganisation which has been in place since 2007.

Links to the relevant legislation are provided at the end of this guidance. References to ‘the 2005 Act’ refer to the Charities and Trustee Investment (Scotland) Act 2005.



2. What is a restricted fund?

The law defines restricted funds as:

‘property (including money) given to a charity for a specific purpose and in respect of which conditions have been imposed as to its use’

This contrasts with unrestricted funds which are to be used or applied in any way the charity trustees determine for the furtherance of the purposes of the charity. The charity trustees themselves may have power to change the charity’s purpose, or alternatively they may be changed by means of a charity reorganisation scheme.

Similarly, a designated fund is where the trustees have decided to ring-fence some of their unrestricted funds for a specific purpose. For example, if the trustees are aware that they will have significant repairs to their building in the next few years they may ring-fence some of their funds for this purpose. The assets in the designated fund remain part of the unrestricted funds of the charity and the trustees could decide to use them for something else.

If you are trying to work out whether funds are restricted, you need to identify whether there are restrictions on the use of the funds which are different from, or more limited than, the overall objects of your charity. There is a difference between formal, legally binding restrictions and mere wishes and it may be necessary to obtain legal or other professional advice if the nature of the restriction is not clear. The term ‘funds’ may also refer to assets such as land and buildings (‘heritable property’), vehicles or machinery, as well as money.

You may find that the ‘restriction’ or conditions imposed by the **donor** (see page below) are set out in a document, but this may not always be the case. For example, where funds have been raised as a result of a public subscription or appeal there may be no surviving documentation and the only remaining clue will be in the fund’s name (for example – ‘the Church Roof Fund’). In some cases there will be a minute of a meeting, an extract from a will, a letter or other similar documentary evidence.

Other examples of restricted funds are:

- 1) If a charity receives a donation of £2,000 on condition that it is used to purchase hymn books, the donation is then a restricted fund.
- 2) A charity holds a collection to raise funds to buy a stair lift. All funds received as part of this collection would be restricted for the purchase of this stair lift.
- 3) A legacy is received which states it must be used for maintaining a building. All income from this legacy would be restricted for maintaining this building.
- 4) A playgroup receives specific funding for a healthy eating initiative from their local authority. This funding must be used to carry out this initiative.

What is a ‘donor’?

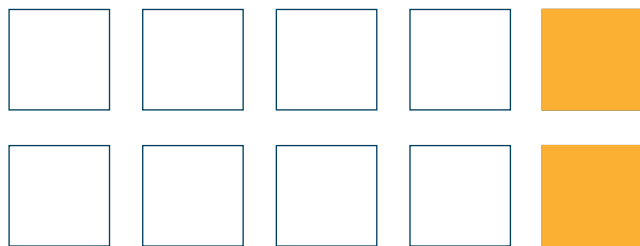
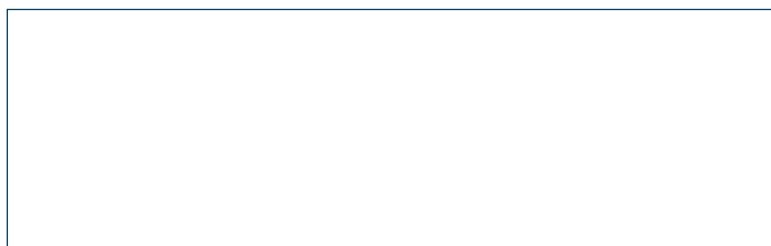
In charity law, the donor is:

‘the person or body who gave the restricted funds to the charity’

The donor may, for example, be a funder who has given the charity money for a particular project, or the donor could be an individual who has left money in their will to your charity, but only for a specific purpose.

The donor is crucial to the reorganisation of restricted funds. We need to be satisfied before approving a reorganisation scheme that you have been unable to find out the wishes of the person who gave the funds and placed conditions on their use. If you are unable to contact the donor (where for example there are multiple donors, or you have no current contact details) then you could consider placing an advertisement in a publication which you consider likely to attract the notice of former donors (for example, a trade or professional journal).

You must supply a statement with your application confirming you have been unable to ascertain the wishes of the donor, and to help with this, a template is attached to the application form which sets out what is needed in this statement.



3. What kinds of change can be a reorganisation scheme?

A restricted funds reorganisation scheme can do either or both of these things:

- » Change the purpose for which the funds may be used
- » Change or remove the conditions imposed on the charity on how it can use the funds.

A scheme may be for either one of these two options; or it may be for both. So, for example, a legacy may have left a sum of money to provide an annual award for retired seamen. It may be specified that each year there should be 10 such awards made. A scheme could therefore:

- (a) change the funds' purposes by broadening them to include retired men or women who had, while employed, been engaged in occupations connected with the sea
- (b) change the conditions on the funds by reducing the number of awards, on the grounds that the funds could no longer provide a meaningful award to so many beneficiaries.

The legislation does not permit applications to directly transfer or wind up restricted funds. The result of a reorganisation scheme will always be that the funds continue to exist but with amended conditions of use and/or purposes. However, an amendment to the conditions of use might permit you to exhaust the funds and thus wind up in future.

Your application must include a draft copy of the statement the charity will adopt to give effect to the scheme (the application form contains a template outlining what should be contained in the statement).

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4. What are the conditions for a reorganisation?

If you want us to approve a reorganisation scheme for a restricted fund you must be able to show why change is necessary and so fulfil the **reorganisation conditions**. You must be able to show that the changes you want to make will deal with a problem that makes the restricted funds ineffective or less effective than they might be. The law sets out these conditions, one of which must apply to the restricted funds (s43(A)(2) of the 2005 Act):

(b) that the purposes of the restricted funds provide a use for only part of its property

For example, a legacy leaving funds to a school to provide an annual prize for a pupil who is outstanding in Science. The funds have over the years accrued into a considerable sum yielding an income of far more than would usually be used for a school prize. The charity trustees wish to use these funds for some other purpose in addition to the prize – for example, to equip a new library or laboratory.

You must provide a statement (on the application form) outlining which of the conditions you feel applies to the restricted fund, and why you think it applies. For example, a house donated for the purpose of providing a care home may no longer be fit for that purpose in terms of current standards. A scheme may seek to remove a restriction on sale and permit use of the proceeds for the wider purposes of the charity. This scheme would meet the condition that the purpose of the fund can no longer be given effect to.

(a) that some or all of the purposes of the restricted funds:

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

For example, if a charity had been left funds which were to be used solely to erect a War Memorial and there were funds remaining after the Memorial had been erected.

(ii) can no longer be given effect to (whether or not in accordance with the directions or spirit of the restricted funds' purposes)

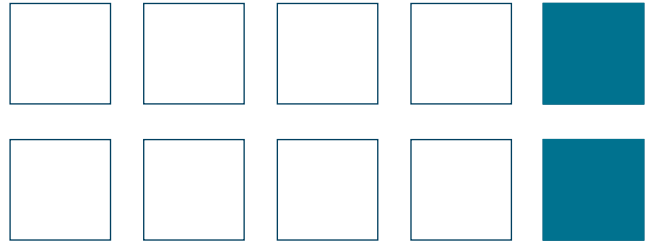
For example, if the beneficiary of the restricted fund is a named institution which no longer exists.

(iii) have ceased to be charitable purposes

For example where a charity holds a fund to be used specifically for the upkeep of a grave.

(iv) have ceased in any other way to provide a suitable and effective method of using the funds, having regard to the spirit of the restricted funds' purposes

For example, the purpose of the restricted fund is to apply the annual income towards cancer research, but the annual income has become so small that it is unlikely to provide significant benefit.



5. What is the reorganisation outcome?

For us to approve an application to reorganise a restricted fund, you must show that the scheme will enable:

‘the resources of the restricted fund to be applied to better effect for charitable purposes consistently with the charity’s constitution’

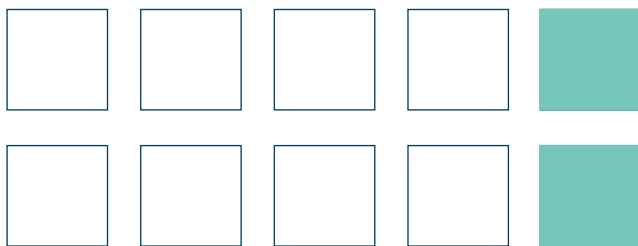
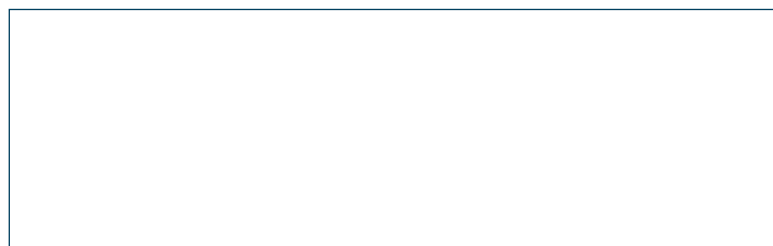
For example, if the purpose of a restricted fund is no longer a suitable and effective method of using its property, then a reorganisation scheme could propose new purposes, as long as they are consistent with the charity’s constitution.

This is illustrated below:

An animal welfare charity which operates throughout Scotland has been given funds specifically to build an animal shelter in Orkney, but some funds remain after completion of the shelter. The applicants can confirm that they are unable to ascertain the wishes of the donor.

Following reorganisation, it is desirable that the purposes be widened to enable the charity to use the remaining funds for the ongoing maintenance of the shelter and care of the animals in the Orkney shelter. This outcome is consistent with the purposes in the charity’s constitution and will enable the fund to be used to provide public benefit.

Applicants must describe fully how the proposed reorganisation will meet the required reorganisation outcome.



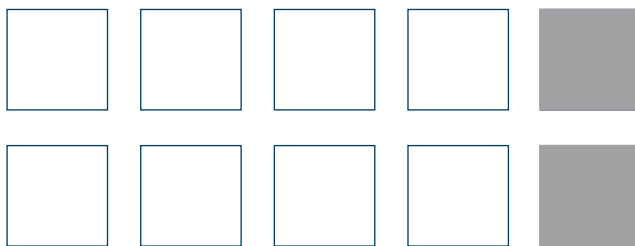
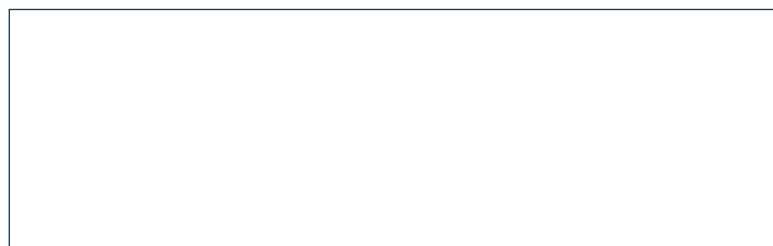
6. How to apply to OSCR

You should submit:

- i. a copy of the document which imposes the conditions as to the restricted fund's use or, if such a document cannot be produced, a statement setting out the specific purpose for which the restricted funds were given to the charity and the restrictions which have been imposed as to the use of the restricted funds
- ii. an application form, which you can download from OSCR's website: <http://www.oscr.org.uk/guidance-and-forms/forms-and-templates>

On the application form, you will be asked for the following information:

- » details of the proposed restricted funds reorganisation scheme
- » a statement setting out the reasons why you consider any of the conditions specified in section 43A(2) of the 2005 Act to be satisfied – see section 4
- » a statement setting out why you consider that the proposed reorganisation will enable the resources of the restricted funds to be applied to better effect for charitable purposes consistently with the charity's constitution – see section 5
- » a statement that you have been unable to ascertain the wishes of the donor, including a description of the action that the charity has taken in attempting to ascertain the wishes of the donor
- » a statement which shows, at the date the application is made, the balance of the restricted funds' assets and, for the preceding financial year, the incoming resources and resources expended; and
- » if applicable, a draft of the notice to be published in a newspaper or periodical – see section 7.



7. Publicity requirements

The law says that reorganisations of some restricted funds must be publicised so that members of the public can express their views about the changes being suggested. However, the publicity requirements depend on the **size** of the restricted funds:

a **large restricted fund** contains property of more than £1 million or has a gross annual income of more than £100,000

a **small restricted fund** comprises property of £1 million or less and has a gross annual income of £100,000 or less

a **very small restricted fund** does not have any land or buildings ('heritable property') or shares in a private limited company, and has a gross annual income of less than £1,000.

Size of restricted fund	Publicity requirement
Large	OSCR publishes a notice on its website and the charity must place an advert in a newspaper or periodical
Small	OSCR publishes a notice on its website
Very small	OSCR has the discretion not to publish the proposed reorganisation

7.1 Publication on the OSCR website – small and large restricted funds

We will provide you with a copy of this notice, and inform you at least seven days in advance of the period during which it will be published on our website.

We will publish all notices on the OSCR website for a period of 28 calendar days, unless particular circumstances, such as periods of extended public or religious holidays, or applications that may be of significant public interest merit an extension of the 'publication period' to the maximum of 42 calendar days.

7.2 Requirement for large restricted funds to advertise in a newspaper or periodical

Charities wishing to reorganise large restricted funds (those which comprise property of more than £1 million or have a gross annual income of more than £100,000) must arrange for a notice to be published in an appropriate newspaper or periodical. Regulation 6 defines 'an appropriate newspaper or periodical' as follows:

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

The charity must publish the advertisement during the first 14 days of the publication period, which is during the first two weeks after publication of the summary notice on the OSCR website.

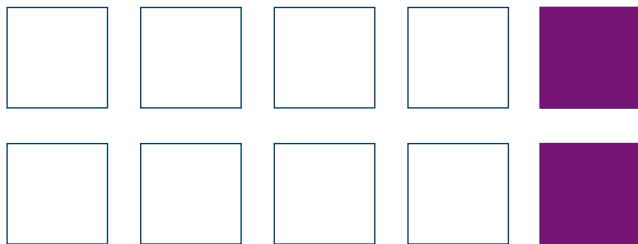
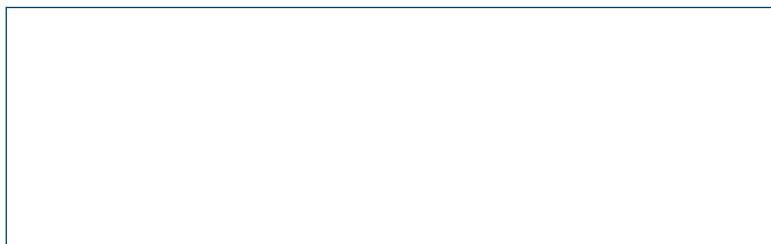
The content of the notice placed in a newspaper or periodical MUST be in the form contained in the Regulations. This wording is contained in an appendix to the restricted funds reorganisation application form.

Please tell us which publication you wish to publish in having regard to the definitions set out above, and include a draft notice when you submit your application.

You must also 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, OSCR must refuse the reorganisation scheme. This is because the charity has failed to fulfil the statutory notice requirement for a restricted funds reorganisation.

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 you need take no further action. This will depend on the nature and extent of the matters arising.

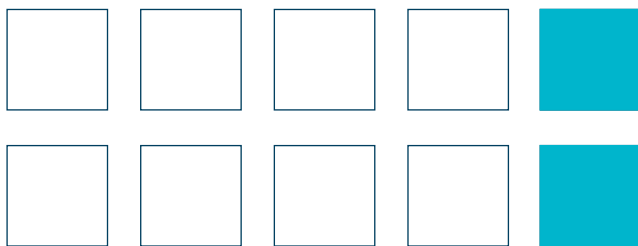
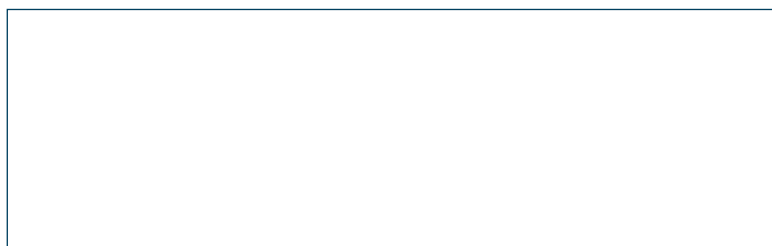


8. Representations

OSCR acts in the public interest and, therefore, we consider reorganisation in terms of whether it will ultimately benefit the public or not. Other than for applications from ‘very small’ charities, when proposed reorganisations are published the public have the opportunity to comment by making a representation to OSCR. A representation may be either in support of, or opposed to a proposed reorganisation.

A representation to a proposed charity reorganisation scheme can be made at any time during the publication period and 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 weight given to representation in the decision-making process depends on the information provided and how relevant this is to the scheme proposed. We must notify people making representations of our decision to approve or refuse a charity reorganisation scheme and will issue a copy of our decision letter to them within seven days of our decision being made. There is no right of review or appeal in respect of our decision available to those who have made representations.



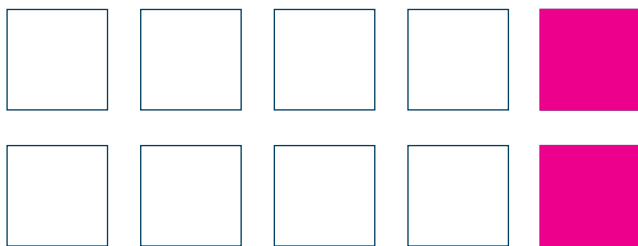
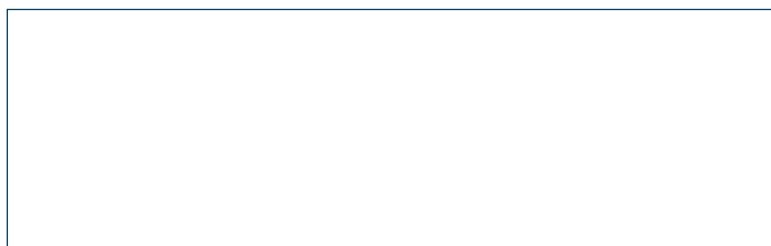
9. Very small restricted funds

For applications to reorganise very small restricted funds (funds which do not include any land or buildings or shares in a private limited company, and with a gross annual income of less than £1,000), OSCR may apply a simplified procedure.

We will exercise our discretion in deciding whether any factors exist which would mean that it would not be in the public interest to apply the simplified procedure even though the fund meets the definition of ‘very small’. For example, we may not apply the simplified procedure where we know that the charity administers the fund for a very sensitive purpose, or where we know of compliance issues with the charity.

Where we consider that the simplified procedure is appropriate, a notice of the proposed scheme is not required. We must make a decision on such applications within 13 weeks of receipt of the application.

Where we apply a simplified procedure, we will write to you to confirm this within 14 days of receipt of the application.



10. OSCR decision and next steps

There are two possible outcomes of the application process – approval or refusal. If we approve an application to reorganise a restricted fund, we do not make the reorganisation happen. As charity trustees, you must, once approval is granted, make the necessary changes to put the scheme into effect.

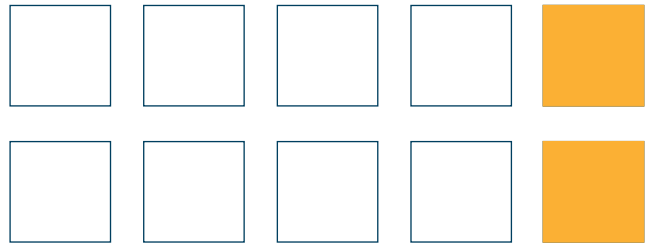
A. Approval of a restricted funds reorganisation scheme

We will write to you to notify you of our decision to approve the proposed restricted funds reorganisation scheme within seven days of the decision being made. We must also send a copy of our decision to anyone who has sent in a representation within seven days of the decision being made.

B. Refusal of a restricted funds reorganisation scheme

If we refuse to approve your application, we will write to you with 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. See OSCR's Reviews policies at:

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



11. Relevant legislation

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

- » The Public Services Reform (Scotland) Act 2010
<http://www.legislation.gov.uk/asp/2010/8/contents>

- » The Charities Restricted Funds Reorganisation (Scotland) Regulations 2012
<http://www.legislation.gov.uk/ssi/2012/219/introduction/made>

