

CHARITIES AND TRUSTEE INVESTMENT (SCOTLAND) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 1: Charities

Chapter 5 – Reorganisation of charities

55. **Sections 39 and 40** provide a new regime allowing charities (which do not otherwise have the power in their own constitutions to reorganise themselves) to do so by seeking OSCR's approval. Currently this process normally has to be undertaken by applying to the Court of Session.
56. Under **section 39**, OSCR may approve a reorganisation scheme of a charity as long as certain conditions are satisfied. These conditions are that the charity's purposes have been fulfilled as far as possible, can no longer be given effect to, are no longer charitable purposes, no longer provide an effective means of using its property or that part of the charity's constitution is no longer desirable. In addition, OSCR must be satisfied that the reorganisation will allow the charity's resources to be better used for its charitable purposes. Under **sections 39(2) and (3)**, the Scottish Ministers may make regulations setting out the detailed procedures relating to OSCR's dealing with charity reorganisations.
57. It is also worth noting that **section 42(4)** ensures that the new provisions do not prevent the Court of Session applying a *cy pres* scheme to reorganise a charity should it wish. This would normally be at the request of the charity or another person. **Section 42(5)** prevents charities established by Royal Charter, warrant or other enactment from using the provision in **sections 39 and 40**. However, a charitable endowment (either educational or non-educational) established under the Education (Scotland) Act 1980 may make use of the reorganisation provisions (**sections 42(6) and (7)**).

Endowments

58. **Section 43** provides that educational and non-educational endowments that are also charities will be covered by the reorganisation provisions in this part of the Act, rather than the regime set out in Part VI of the Education (Scotland) Act 1980. However, section 104 of that Act, which requires a register of educational endowments to be maintained by the Scottish Ministers (in fact currently by the Student Awards Agency for Scotland on the Scottish Ministers' behalf) continues to apply.