

Charities (Regulation and Administration) (Scotland) Bill — Stage 2

Section 2

Shirley-Anne Somerville

- 1 In section 2, page 1, leave out from line 14 to line 2 on page 2 and insert—
- <(4) Despite subsection (3)(aa) and (b), OSCR must exclude any information of the type specified in those provisions from a charity’s entry in the Register where—
 - (a) the information is the subject of an application for exclusion (whether as part of the application for the entry of a body in the Register or, subsequently, by a charity or any of its trustees), and
 - (b) OSCR is satisfied that including the information in the entry would be likely to jeopardise the safety or security of any person or premises.>

After section 8

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- 2 After section 8, insert—
- <Review of proposed appointment of interim trustee**
- (1) The 2005 Act is modified as follows.
 - (2) In section 71 (decisions), after paragraph (pa) (inserted by section 6(5)) insert—

“(paa) appoint an interim charity trustee under section 70A(1) or (2)(c),”.
 - (3) In section 72(2) (notice of decisions), after paragraph (ba) (inserted by section 14(3)(a)(ii)) insert—

“() in the case of a decision referred to in paragraph (paa) of section 71, the charity trustees of the charity in respect of which the decision was made,”.
 - (4) In section 73(2) (effect of decisions), in the opening words, after “(o)” insert “, (paa)”.
 - (5) In section 74 (review of decisions), after subsection (1) insert—

“() Where there is more than one charity trustee to whom notice of a decision referred to in section 71(paa) is given under section 72, a request under subsection (1) may be made by any of them.”.>

Section 12

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- 3 In section 12, page 13, line 7, leave out <must give OSCR notice of the merger as soon as reasonably practicable> and insert <may give OSCR notice of the merger at any time>

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- 4 In section 12, page 13, line 15, at end insert—

- <() The Scottish Ministers may by regulations make provision about the circumstances in which, and the time at which, notice of the merger is to be treated as having been given.>

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- 5 In section 12, page 13, line 21, leave out <of the recording of the merger in the record> and insert <notice of the merger was given to OSCR>

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- 6 In section 12, page 13, line 30, leave out <recorded> and insert <notified>

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- 7 In section 12, page 13, leave out lines 35 to 40 and insert—

<() the transferor either—

- (i) acquires a vested right in the legacy, or
 - (ii) does not acquire a vested right in the legacy by reason only of the transferor having wound up or dissolved in connection with the merger, and
- () notice of the merger was given in accordance with section 64B before the date on which the transferor acquires or (as the case may be) would, but for winding up or dissolving, have acquired the vested right in the legacy.>

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- 8 In section 12, page 14, line 1, leave out <transferee under the merger is entitled to receive the legacy> and insert <legacy is to be treated as having vested in the transferee under the merger>

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- 9 In section 12, page 14, line 15, leave out from first <the> to end of line 16 and insert <is to be treated as having vested in the transferee is the share that has vested or (as the case may be) would, but for winding up or dissolving, have vested in the transferor.>

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- 10 In section 12, page 14, leave out lines 18 to 22 and insert—

<() the transferee (“Charity A”) becomes the transferor under a further merger, and

- () notice of the further merger was given in accordance with section 64B before the date on which either—
- (i) the legacy was treated as having vested in Charity A by virtue of subsection (2), or
 - (ii) the legacy would have been treated as having vested in Charity A by virtue of subsection (2) but for Charity A having been wound up or dissolved in connection with the further merger.>

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11 In section 12, page 14, leave out lines 23 and 24 and insert—

<() The legacy is to be treated as having vested in the transferee under the further merger (and so on).>

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12 In section 12, page 14, line 40, leave out <64D(5)> and insert <64D(7)>

After section 12

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13 After section 12, insert—

<Reorganisation of charities

Endowments

- (1) The 2005 Act is modified in accordance with subsections (2) and (3).
- (2) In section 42 (reorganisation: supplementary), for subsections (6) and (7) substitute—
 - “(6) But, despite subsection (5), sections 39 and 40 apply—
 - (a) to any endowment held by such a charity,
 - (b) where such a charity’s property consists only of an endowment or endowments, to the charity.
 - (7) Where an application for a reorganisation scheme is made by virtue of subsection (6)(a)—
 - (a) a reference in section 39(1)(a) or 40(1)(a) to a condition being satisfied in relation to a charity is to be read as a reference to a condition being satisfied in relation to an endowment,
 - (b) the reference in section 41 to a charity’s constitution is to be read as including a reference to an instrument governing an endowment,
 - (c) a reference in subsection (2) or (3)(a) to the purposes of a charity is to be read as a reference to the purposes of an endowment,
 - (d) a reference in subsection (2)(c) or (d) or (3)(a) to a charity’s constitution is to be read as a reference to—
 - (i) a charity’s constitution as it relates to an endowment,
 - (ii) an instrument governing an endowment,
 - (e) the references in subsection (3)(c) to a charity are to be read as references to an endowment.
 - (8) Where an application for a reorganisation scheme is made by virtue of subsection (6)(b), a reference in section 41 or in subsection (2)(c) or (d) or (3)(a) to a charity’s constitution is to be read as including a reference to an instrument governing an endowment.
 - (9) In subsections (6) to (8), “endowment” has the same meaning as in Part 6 (reorganisation of endowments) of the Education (Scotland) Act 1980.

- (10) The Scottish Ministers may by regulations—
 - (a) modify this section so as to amend the meaning of “endowment”,
 - (b) disapply subsection (6) in relation to any charity or endowment, or type of charity or endowment, specified in the regulations.”.
- (3) In section 103(5) (orders, regulations and rules), after paragraph (ba) (inserted by section 16(8)(b)), insert—
 - “(bb) regulations under section 42(10).”.
- (4) The Education (Scotland) Act 1980 is modified in accordance with subsection (5).
- (5) In section 122(4) (interpretation of Part 6), for “the governing body of which is a charity within the meaning of section 106” substitute “which may be reorganised by virtue of section 42(6)”.>

Section 14

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- 14** In section 14, page 16, line 3, leave out <must be given to the body,> and insert <is to be given to the body as required by subsection (2)(ba), but>

Schedule

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- 15** In the schedule, page 24, leave out line 4

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- 16** In the schedule, page 24, line 8, at end insert—
 - <Giving notice to OSCR: removal of 42 day rule
 - (1) The 2005 Act is modified as follows.
 - (2) In section 11 (change of name), in subsection (2), the words “, not less than 42 days before doing so,” are repealed.
 - (3) In section 16 (changes which require OSCR’s consent), in subsection (4)—
 - (a) the words “, not less than 42 days before the date on which the action is to be taken,” are repealed,
 - (b) the words “specifying that date” are repealed.>

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- 17** In the schedule, page 24, line 15, at end insert—
 - <() The heading of section 17 becomes “Notification of changes”.>

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- 18** In the schedule, page 25, line 29, at end insert—

<Disclosure of information by and to designated religious charities

- (1) The 2005 Act is modified as follows.
- (2) The heading of section 24 becomes “Disclosure of information by and to OSCR: public bodies or office-holders”.
- (3) After section 24, insert—

“24A Disclosure of information by and to OSCR: designated religious charities

- (1) OSCR may disclose any information to a designated religious charity—
 - (a) for any purpose connected with the exercise of OSCR’s functions, or
 - (b) for the purpose of enabling or assisting the charity in relation to the exercise of any supervisory or disciplinary functions in respect of the component parts of the charity.
 - (2) A designated religious charity may disclose any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions.”.
- (4) In section 25(1) (removal of restrictions on disclosure of certain information), after paragraph (b) insert—
- “(ba) OSCR from disclosing any information to a designated religious charity for—
- (i) any purpose connected with the exercise of OSCR’s functions,
 - (ii) the purpose of enabling or assisting that charity in relation to the exercise of any supervisory or disciplinary functions in respect of the component parts of the charity,
- (bb) a designated religious charity from disclosing any information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions.”.>

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- 19** In the schedule, page 27, line 7, at end insert—

<Conversion of charity which is a company or registered society

- (1) Section 56 (conversion of charity which is a company or registered friendly society: applications) of the 2005 Act is modified as follows.
- (2) In subsection (1)(b), “(c.12)” is repealed.
- (3) The heading of the section becomes “Conversion of charity which is a company or registered society: applications”.>

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- 20** In the schedule, page 28, line 12, at end insert—

<(5C) Subsection (5D) applies where—

- (a) OSCR has cause to believe that giving or making a formal communication of a specified notice to a charity, body or person by the means specified in subsection (4)(b) or (5)(b) will not cause it to be received by the charity, body or person, and

- (b) based on the contact details OSCR holds for the charity, body or person, OSCR considers that it is not reasonably practicable to give or make the communication by the means specified in subsection (4)(a) or (c) or (5B).
- (5D) The communication may also be given or made by such other means as OSCR considers appropriate (including, for example, by publishing the notice on its website or in a newspaper).
- (5E) For the purposes of subsection (5C), a specified notice is one given by OSCR under—
 - (a) section 45A(2),
 - (b) section 72(1) so far as it relates to a decision referred to in one of the following paragraphs of section 71—
 - (i) paragraph (h),
 - (ii) paragraph (l) (so far as it relates to a direction under section 31(7) or (9)),
 - (iii) paragraph (mb),
 - (iv) paragraph (paa).”.>