



RESTRICTED FUNDS HELD BY CHARITIES

RESTRICTED FUNDS REORGANISATION GUIDANCE

What are restricted funds?

Restricted Funds are funds received from a donor for a specified purpose.

What sort of restricted funds might a congregation have?

- A bequest from a former member for a specified purpose, e.g. to buy flowers for the sanctuary or to repair the organ.
- A Parish Poor Fund
- Funds raised for a specific project

Problems with Restricted Funds:

- in the case of an endowment (where only income can be spent) there may be insufficient income to fulfil the purpose specified
- the restricted purpose may have been met in full
- circumstances may have changed and as a result it is no longer possible to fulfil the purpose.
- if the purpose is narrow and only some of the income can be used this has resulted in large reserves.

A Reorganisation Scheme can make changes possible by—

- changing the purpose for which the funds can be used
- changing or removing conditions on how the funds can be used.

The conditions which need to be met before a reorganisation can be approved are set out in s43(A)(2) of the Charities and Trustee Investment (Scotland) Act 2005.

“The conditions are—

- (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,
 - (ii) can no longer be given effect to (whether or not in accordance with the directions or spirit of the restricted funds' purposes),
 - (iii) have ceased to be charitable purposes,
 - (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,
- (b) that the purposes of the restricted funds provide a use for only part of its property.”

Application process:

An application is submitted to the Office of the Scottish Charity Regulator (OSCR). The Church of Scotland Law Department has a lot of experience of both charity and restricted funds reorganisation applications to OSCR can process the application for you.

What information do you need to provide?

- A copy of the deed setting up the fund or a letter or Session Minute setting out the original purposes.
- Information which shows how one (or more) of the reorganisation conditions (see above) can be met.
- A copy of the latest accounts for the fund. At a minimum, details of the assets held, income and expenditure in the last financial year are required. If no income has been spent in recent year the date when the last payment was made should be stated.
- Details of what is to be achieved by the reorganisation.
- If the donor is still alive, the donor's wishes must be ascertained. If the donor has died it would be helpful to have his/her date of death.

All restricted fund applications are different and the reorganisation process can take a number of months although funds with an income of under £1,000 per annum follow an expedited process with no public notice requirement.

Jennifer Hamilton, a Solicitor in the Law Department will be happy to discuss your individual requirements.

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