



Renfrewshire
Council

To: Finance, Resources and Customer Services Policy Board

On: 15 June 2022

Report by: Director of Finance & Resources

Heading: Charitable Registration of Common Good Funds

1. Summary

- 1.1. On 5 September 2018, following a report from the Director of Finance and Resources, the Board agreed to submit a formal application to the Office of the Scottish Charity Regulator (OSCR) requesting the de-registration of the Paisley Common Good Fund SCO19478, Renfrew Common Good Fund SCO19479 and Johnstone Common Good Fund SCO19480.
- 1.2. A request was submitted to OSCR in 2018 and, due to their staff turnover followed by COVID-19 related delays, a response was only received by the Council from OSCR in March 2022.

2. Recommendations

- 2.1 (a) Following approval from the Board in 2018 and OSCR's recent confirmation of the position, Members are asked to note that withdrawal in accordance with the Section 30 route will be selected to progress de-registration of Renfrewshire's Common Good Funds from the OSCR register.
- (b) Members are asked to approve delegated authority to the Director of Finance and Resources to write to OSCR on behalf of the Board in this regard.

3. Background

- 3.1 The three Common Good Funds controlled by the Council (Paisley, Renfrew and Johnstone) are registered with the Office of the Scottish Charity Regulator (OSCR) as charities, each in their own right. The original registration of the Funds as charities was made many years ago when charity registration was managed by HM Revenue & Customs, possibly to take advantage of tax benefits available at the time with regards investment income, particularly in relation to share dividends. These tax benefits are no longer available, and there exists an anomalous position whereby the majority of common good funds controlled by Scottish local authorities are not registered as charities.
- 3.2 The provisions of local government legislation in relation to the use of Common Good Funds would suggest that there is a question as to whether any Common Good Fund should be registered as a charity.
- 3.3 In addition, there are particular costs associated with the accounting and auditing arrangements for charities, which the Common Good Funds currently bear, and that could be mitigated were the Funds not registered as charities.

4. Response from OSCR

- 4.1 OSCR has now advised that Renfrewshire's Common Good Funds do not meet the charity test on two grounds, as follows:
1. Common Good Funds are not 'bodies' as required by section 7 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). Although common good property is held in trust by Scottish local authorities, this arrangement does not involve the creation of a trust or any other form of body that is separate in identity from the administering local authority.
 2. The application of common good property is not confined to charitable purposes, again as required by section 7 of the 2005 Act. Common Good property vested in local authorities must (in the case of Renfrewshire) be administered having regard to the interests of the local inhabitants, but this is a broad discretion, which is not limited to charitable purposes as defined under the Act.
- 4.2 OSCR concludes that the Renfrewshire Common Good Funds should therefore be removed from the Scottish Charity Register. There are two mechanisms available in the Charities and Trustee Investment (Scotland) Act 2005 to progress this: Section 18 and Section 30.
- Section 18 removal would result in OSCR removing the Funds from the register of charities within 28 days of receiving an application from the charity. It does not require an inquiry report to be published and there is no right of appeal.

- Section 30 removal arises where a charity no longer meets the charity test and in such a case, OSCR would either advise mitigating steps, or move to de-register the charity. An inquiry report would then be published by OSCR. This process is longer because, as a formal decision, it is subject to the provisions of Chapter 10 of the 2005 Act regarding notice periods and also the decision is reviewable on request by the person or body that is the subject of the decision (there is no third party right to make representations).

4.3 Given the significant public interest in this change, the Section 30 option is considered to be the most transparent and appropriate route for the basis of the withdrawal application.

Implications of the Report

1. **Financial** - The Common Good Funds of Paisley, Renfrew and Johnstone spent a total of £4,660 on audit costs in 2021/22. This would not be chargeable to the Common Good Funds once de-registration is complete.
2. **HR & Organisational Development** – none arising from this report.
3. **Community/Council Planning** – none arising from this report.
4. **Legal** – The Office of the Scottish Charity Regulator has advised that the Common Good Funds of Paisley, Renfrew and Johnstone do not meet the charity test required by the Charities and Trustee Investment (Scotland) Act 2005 and that the Renfrewshire Common Good Funds should be removed from the Scottish Charity Register.
5. **Property/Assets** - none arising from this report.
6. **Information Technology** - none arising from this report.
7. **Equality & Human Rights** - none arising from this report.
8. **Health & Safety** - none arising from this report.
9. **Procurement** – none arising from this report.
10. **Risk** – none arising from this report.
11. **Privacy Impact** - none arising from this report.
12. **Cosla Policy Position** – none arising from this report.
13. **Climate Risk** – none arising from this report.

Author: Alastair MacArthur, Director of Finance & Resources

Background Report: Charitable Registration of Common Good Funds, Finance, Resources and Customer Services Policy Board, 5 September 2018. [Document.ashx \(cmis.uk.com\)](#)