
ARGYLL AND BUTE COUNCIL

**OBAN, LORN & THE ISLES AREA
COMMITTEE**

**CHIEF EXECUTIVE , FINANCE AND
CUSTOMER SERVICES**

12TH SEPTEMBER 2018

**PUBLIC TRUST FUNDS
KILMORE AND KILBRIDE FUND**

1.0 EXECUTIVE SUMMARY

The purpose of this report is to advise members of a request to transfer trust funds held in respect of grass cutting at Kilmore and Kilbride cemetery by Friends of Kilmore, a registered charity.

2.0 RECOMMENDATIONS

Members are asked to consider whether to recommend to the full Council that a resolution be made to transfer the trust funds held in respect of Kilmore and Kilbride to Friends of Kilmore.

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3.0 BACKGROUND

Argyll and Bute Council hold a trust fund is for grass cutting at Kilmore and Kilbride. The fund held is currently £498.96

It was raised by public subscription in 1925 when Kilbride Burial Ground was transferred to Kilmore and Kilbride Parish Council was transferred to Kilmore and Kilbride Parish Council under the Church of Scotland (Parish and Endowments) Act 1925.

A request has been made to transfer the fund to “Friends of Kilbride”, charity No SCO46175. The chapel and grounds are now looked after by this registered charity whose objects are: the advancement of heritage, by way of preserving the listed Sixth Century Chapel and surrounding graveyard, at Kilbride, Kilmore, by Oban, Argyll; the advancement of education and culture by way of researching, recording, and preserving the history and records of the Kilbride Chapel and graveyard, and providing educational material for the benefit of the public on the subject.

3.1 In terms of section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 where a majority of the trustees of any public trust having an annual income not exceeding £5,000 are of the opinion—

(a) that the purposes of the trust, whether in whole or in part—

(i) have been fulfilled as far as it is possible to do so; or

(ii) can no longer be given effect to, whether in accordance with the directions or spirit of the trust deed or other document constituting the trust or

otherwise;

- (b) that the purposes of the trust provide a use for only part of the property available under the trust;
- (c) that the purposes of the trust were expressed by reference to—
 - (i) an area which has, since the trust was constituted, ceased to have effect for the purpose described expressly or by implication in the trust deed or other document constituting the trust; or
 - (ii) a class of persons or area which has ceased to be suitable or appropriate, having regard to the spirit of the trust deed or other document constituting the trust, or as regards which it has ceased to be practicable to administer the property available under the trust; or
- (d) that the purposes of the trust, whether in whole or in part, have, since the trust was constituted—
 - (i) been adequately provided for by other means; or
 - (ii) ceased to be such as would enable the trust to be entered in the Scottish Charity Register; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available under the trust, having regard to the spirit of the trust deed or other document constituting the trust, subsection (2) below shall apply in respect of the trust.

Then, the trustees may determine in terms of section 10 (2) of the Act that, to enable the resources of the trust to be applied to better effect consistently with the spirit of the trust deed or other document constituting the trust that –

- a) a modification of the trust's purposes should be made;
- b) the whole assets of the trust should be transferred to another public trust;
- c) that the trust should be amalgamated with one or more public trusts.

If the trustees agree to either transfer the assets to another trust they must ensure that, so far as is practicable in the circumstances, the purposes of the trust are not so far dissimilar in character to those of the purposes set out in the trust to which the resolution relates as to constitute an unreasonable departure from the spirit of such trust.

The trustees must have regard to the circumstances of the locality where the trust purposes relate to a particular locality.

It is also necessary to ascertain that the trustees of the trust which it is proposed to transfer funds to are in agreement with the proposal.

The Inland Revenue also require to be consulted to ensure the trust could continue to be granted exception from tax if transferred.

4.0 CONCLUSIONS

If members are satisfied that the criteria are met they can if so minded recommend to

the full Council that consideration be given to a resolution that the trust funds be transferred to the Friends of Kilbride Trust on the condition that the funds are used for grass cutting at Kilbride Cemetery.

If such a recommendation was made it would be necessary to consult the Lord Advocate and the Inland Revenue and thereafter refer to the full Council for consideration of the proposals in order that it can decide whether to resolve accordingly. If the Council agreed to so resolve the proposal would require to be advertised by the Council. The Lord Advocate can intervene during the 2 month period and prevent the transfer of assets if it appears to him that the proposed variation should not go ahead. Any variation would be effective if not challenged 2 months after the resolution has been properly advertised.

5.0 IMPLICATIONS

5.1 Policy: None

5.2 Financial: Financial implication set out in report

5.3 Legal: The Council requires to comply with the relevant legislation in administering trust funds

5.4 Personnel: None

5.5 Equalities: None

5.6 Risk: None

Douglas Hendry
Executive Director of Community Services

Date:

Policy Lead: Rory Colville

For further information contact:

Sheila MacFadyen, Tel 01546 604265

Sandra Coles, Tel 01546 604303