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Powers for unincorporated charities

Guide 6b: Large charities spending permanent endowment funds given for a particular purpose



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About this guide

Some unincorporated charities may have the power in their governing document to make changes. Others may be able to use provisions set out specifically for unincorporated charities in the Charities Act (Northern Ireland) 2008 (as amended) ('the Charities Act'). This guide is for large unincorporated charities that do not have the power in their governing document to spend capital (for example money or other assets) subject to permanent endowment.

Key terms

There are some key terms that will be useful to understand when reading this guide. We have highlighted these in **bold green type**. A list of the key terms is available in Appendix 1 and in the glossary published on the Commission's website.

Large charities spending permanent endowment funds given for a particular purpose

Charity trustees may be able to use the power under section 129 of the Charities Act to make a decision to spend capital (money or other assets) subject to **permanent endowment** provided certain conditions are met.

When would we use this?

Sometimes larger charities may find it necessary to spend permanent endowment funds to remain effective, for example:

- a charity holding an investment permanent endowment sees the price of shares fall significantly so that the income from the fund is very small. The charity has identified a significant expenditure (for example, improvements to a building) and that the fund would be most effective in supporting the charity achieving its **purposes** if the capital and not just the income could be spent.

Who can use this?

The provisions under section 129 of the Charities Act can be used by any charity as long as:

- it is not a **charitable company** or other **corporate body**, and
- the permanent endowment was **entirely given**, that is the capital of the fund consists of property given –
 - (a) by a particular individual
 - (b) by a particular institution (by way of grant or otherwise), or
 - (c) by two or more individuals or institutions in pursuit of common purposes, and
- its **gross income** must have exceeded £1,000 in the last financial year,
- the **market value** of the endowment fund exceeds £10,000

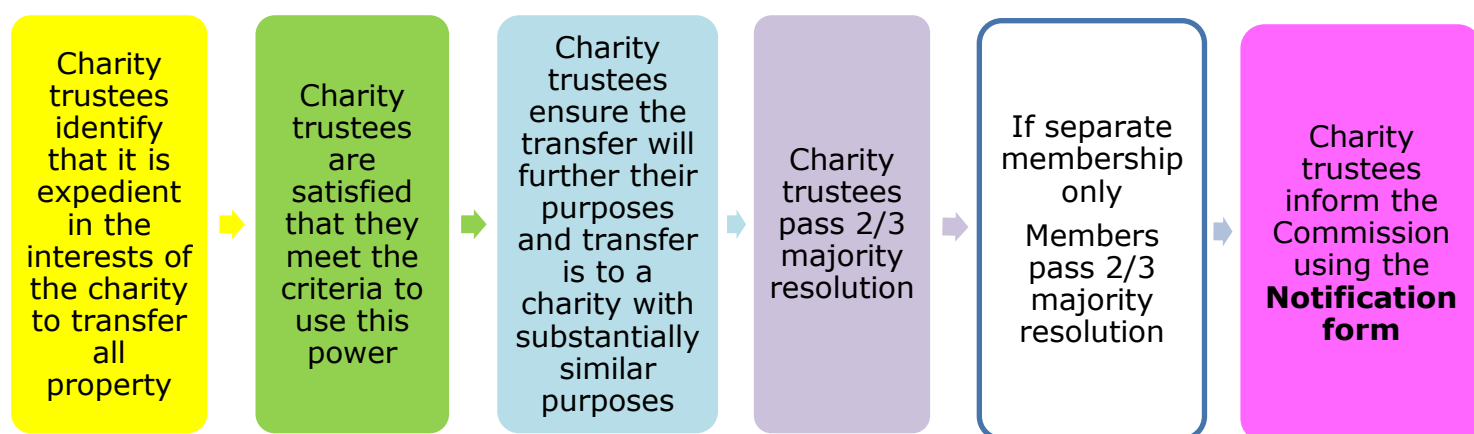
If you cannot use this power because you do not meet the conditions, please refer to our [Requesting a scheme](#) guide.

What is the process?

If your charity can use this power, the charity trustees must be satisfied that the **purposes** of the trust fund could be carried out more effectively if some or all of the capital could be spent as well as the income that the fund would generate.

If your charity has a membership that is separate from the charity trustees, a further **resolution** must also be brought to a general meeting of members (two resolutions). The members must approve the resolution by either a two thirds majority of members attending and entitled to vote, or a vote where no objection is raised to the proposal.

The following flow chart will assist you in following the required procedure.



What do I need to send to the Commission?

- copy of resolution.
- written statement from charity trustees giving reasons for passing resolution.
- a copy of your charity's current governing document.
- a copy of your charity's latest annual accounts.

What will the Commission do?

The Commission will consider the resolution within three months of receiving it, in order to:

- ensure the **correct procedures** have been followed
- ensure the resolution and **statement of reasons** have merit including that the charity's purposes could be carried out more effectively by spending the permanent endowment rather than relying on its income.
- consider whether to concur (agree) with the resolution
- Factors considered by the Commission when deciding whether to concur include:
 - any evidence available in respect of original donors' wishes
 - any changes in circumstances relating to the charity since the making of the gift, for example, its financial position, beneficiary needs, social, economic and legal environment
 - the **spirit** of the gift and whether it is compatible with the proposed spend

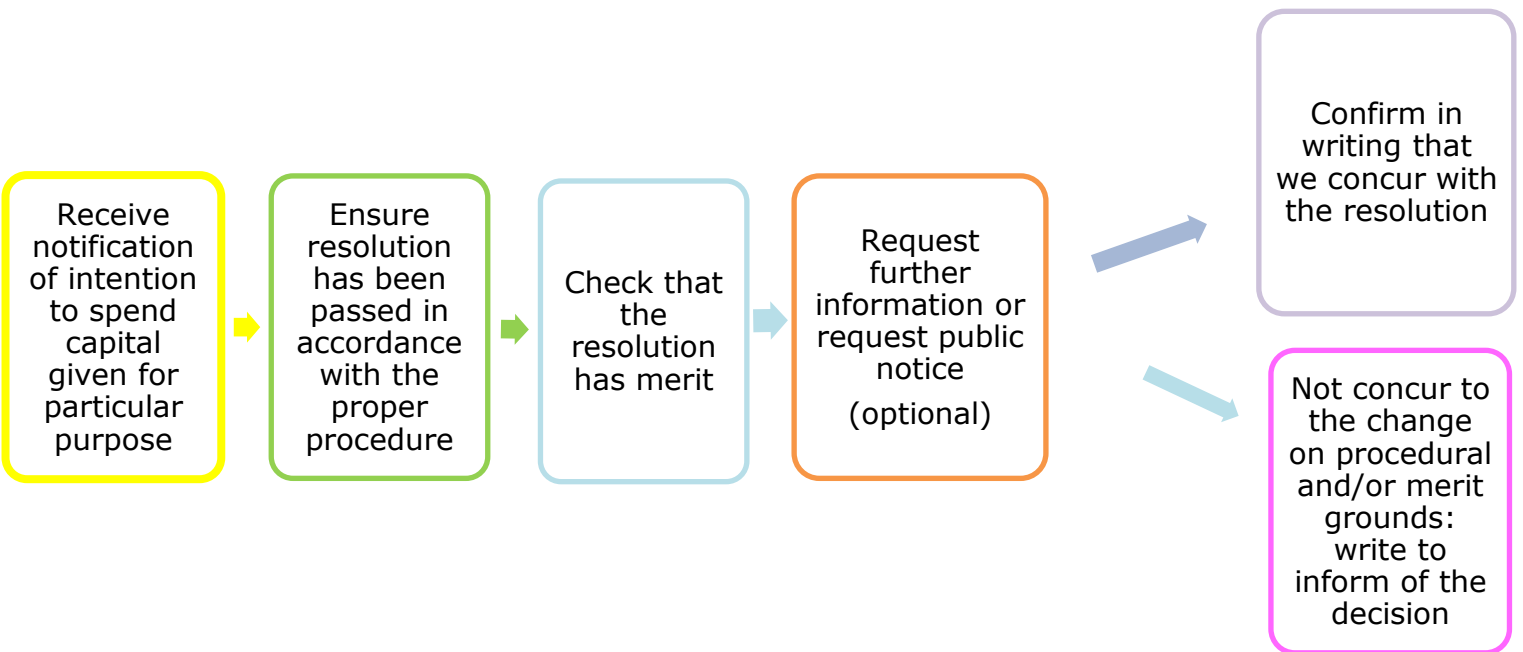
The Commission may:

- have to establish if your organisation is a charity in law
- request further information, and/or
- direct the charity to give **public notice**, or
- concur (agree) with the resolution, or
- not concur (disagree) on procedural or merit grounds

By procedural grounds we mean where the proper process has not been followed. For example, a resolution wasn't passed by correct majority.

By grounds of merit, we mean in terms of the facts. For example, where the proposal is not within the spirit of the original gift.

What process will the Commission follow?



When will the resolution take effect?

The resolution will take effect where the charity trustees are notified by the Commission that it concurs (agrees) with the resolution, or where the period of three months has elapsed after the relevant date without the Commission notifying the charity trustees that it does not concur with the resolution.

Can the resolution fail?

A resolution will fail where it does not meet the criteria for use of the power or where the charity trustees fail to give public notice or provide information where directed. A resolution will also fail if the Commission objects to it within the three month period. However, it is unlikely to do this if the power has been properly used by the charity trustees.

You should avoid using these powers to make amendments which affect third party rights. If you choose to do so, you should seek the consent of **affected third parties**. If this is not possible, you should apply to the Commission for a scheme to make the change. Please refer to our *Requesting a scheme* guide.

Will the Commission publish its decisions?

The Commission has considered the publication of decisions under sections 123-130 of the Charities Act in line with our *Publishing our decisions* policy. The Commission can make a decision to object to, concur (agree) with or not concur (disagree) with a resolution depending on the section of the Charities Act being relied upon by the charity. The Commission will not usually publish these decisions, unless it considers there is a reason why it should.

Appendix 1: Key terms

Affected third parties: This refers to individuals or entities that are not directly involved in an agreement or transaction but are impacted by its outcome.

Charitable company: This is a charity that is registered under the Companies Act 2006 (or earlier company law) and is registered with Companies House. It is a type of legal structure for a charity.

Corporate body: A corporate body or body corporate is a collection of persons which, in the eyes of the law, has its own legal existence (and rights and duties) separate from those of the persons who form it from time to time. It has a name or title of its own and may also have a common seal for use on official documents. Also known as corporations, bodies corporate are not necessarily companies, but companies are by definition bodies corporate.

Correct procedures: All unincorporated charities must follow a certain procedure when passing a resolution under sections 123-130 of the Charities Act.

- The Charity trustees must have been properly appointed in accordance with the governing document of the charity
- They must have passed the resolution by the required majority as set out in this guide and
- The meeting must have had sufficient numbers in attendance where specific provisions are set out in the governing document on this point.

Entirely given: This refers to charities whose permanent endowment consists entirely of property given by:

- a particular individual (including a bequest made in a will) or
- a particular institution (by way of a grant or otherwise) or
- two or more individuals or institutions for the same purpose.

In practice, this covers most charities with permanent endowment. Charities with permanent endowment which is not entirely given include those that have created their own permanent endowment using a power in their governing document.

Gross income: The Charities Act defines gross income to mean the gross recorded income from all sources including special trusts. For accounts

prepared on a receipts and payments basis gross income is simply the total receipts recorded in the statement from all sources excluding the receipt of any endowment, loans and proceeds from the sale of investments or fixed assets. For accruals accounts this is the income from all sources in the accounting period, including the conversion of endowment to income, but excluding: gifts of endowment, net investment gains/(losses), all revaluation gains/(losses) on retained assets not due to impairment, actuarial gains/(losses) and such other gains(losses) that are excluded by accounting standards from the calculation of net income.

Market Value: Market value is the likely price an asset would be sold for in a voluntary transaction between a buyer and seller, neither of whom is under any obligation to buy or sell.

Permanent endowment: The property of the charity, for example land, buildings, investments or cash which the charity trustees may not spend as if it were income. It must be held permanently, sometimes to be used in furthering the charity's purposes, sometimes to produce an income for the charity.

Public notice: We may ask you to give public notice when there are matters which may have a detrimental effect on people with a clear interest in your charity such as beneficiaries, original donors and their descendants, other charities or sector representatives, local authorities, those owed money by the charity, donors and employees. Circumstances where we may require public notice include but are not limited to where:

- the charity has been recently founded
- large amounts of permanent endowment funds will be expended and the Charity trustees have provided no evidence that they have consulted with interested parties
- we are aware the proposal has created a lot of public interest.

Public notice could take the form of, for example, a newspaper advertisement or notice on a bulletin board or website. The type of notice required will be determined by the Commission at the time of request.

Purposes: A charity's purposes are what the charity is set up to achieve. They are usually set out in the charity's governing document. Some charities call their purposes 'objectives', 'goals' or 'aims'.

Resolution: A formal decision made by a group that is responsible for considering and making.

Spirit: This relates to the context in which the original gift was to be applied; what were the intentions of the donors / founders in the context of the social and economic circumstances prevailing at the time?

Statement of reasons: The justification provided by the charity for its decision.

Support and resources

Resource	What it is
Helper groups	A number of organisations have agreed to act as Helper groups for the sector to assist them with registration, annual reporting or other aspects of managing their charity. Contact details, along with information on the support each organisation can offer and who they work with, can be found at the link opposite.
Annual reporting	Annual reporting by registered charities is a key element of the Commission's ongoing regulatory and monitoring work and is essential to keeping the <i>register of charities</i> up to date. A suite of guidance is available on the annual reporting page.
AMR tutorial video	A video on how to complete and submit your annual monitoring return (AMR) is available on the AMR tutorial video page of the Commission's website. A table on this page lets you see where to go to on the video for the parts of the AMR that are compulsory for your charity.
Reporting on the public benefit toolkit	The <i>Reporting on the public benefit toolkit</i> will help Charity trustees to report how their charity is continuing to meet the public benefit requirement when preparing their Trustees' Annual Report (TAR) as part of the annual reporting process.
Code of good governance	A number of organisations within the charity sector have come together to produce a Code of Good Governance: the DIY Committee Guide is a resource for people working to improve the governance of their organisations by implementing the Code of Good Governance.

If you disagree with our decision

If you disagree with one of our decisions, you may wish to request an internal decision review within 42 days of our decision being issued.

Our internal decision review procedure offers a genuine opportunity for our decisions to be looked at afresh. If you ask us to review a decision, where possible the Commission will refer the matter to someone who did not make the original decision.

You may also be able to appeal a decision to the Charity Tribunal. However, you must send a 'notice of appeal' to the Charity Tribunal within 42 calendar days of receiving our original decision. This time limit applies even if you have requested a decision review.

A full list of the decisions which may be appealed or reviewed to the Charity Tribunal can be found at Schedule 3 of the Charities Act.

Any appeals to the Tribunal should be sent to:

Charity Tribunal
4th Floor
92 Ann Street
Belfast
BT1 3HH
Tel: 028 9032 7703
Email: CharityTribunal@courtsni.gov.uk

If you are dissatisfied with our service

The Commission is committed to delivering a quality service at all times. However, the Commission knows that sometimes things can go wrong. If you are dissatisfied with the service you have received, we would like to hear from you and have a procedure that you can use. You will find further information on these processes in our guidance, [Making a complaint about our services](#), which is on our website www.charitycommissionni.org.uk

More information

Website: www.charitycommissionni.org.uk

Email: admin@charitycommissionni.org.uk

Phone: 028 3832 0220

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