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Powers for unincorporated charities

Guide 5: Transfer of permanent endowment and unrestricted property



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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 unincorporated charities that do not have the power in their governing document to transfer permanent endowment and unrestricted property.

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.

Transfer of permanent endowment and unrestricted property

Charity trustees may be able to use the power under section 125 of the Charities Act to transfer property to another charity if their property includes **permanent endowment**.

When would we use this?

Permanent endowment is a term used for money or property that was originally meant to be held by a charity forever. The law now recognises that this is not always practical, and charities can transfer permanent endowment in certain circumstances. For example:

- a charity wishing to merge with another charity will need to deal with any permanent endowment it holds as part of the merger and transfer its permanent endowment to the receiving charity.

Who can use this?

The provisions under section 125 of the Charities Act can be used by any charity as long as:

- it is not a **charitable company** or other **corporate body** and
- its **gross income** does not exceed £10,000 in the last financial year or
- it does not hold any **designated land** or, if it does hold designated land, the **market value** of that land does not exceed £90,000.

If your unincorporated charity cannot use this power because it does not meet the conditions above, please refer to our *Requesting a scheme* guide.

What is the process?

If your charity can use this power, you must be satisfied that:

- the transfer of the permanent endowment is advantageous (beneficial or favourable) to the **purposes** of the charity.
- the charity to which you are transferring the permanent endowment has **substantially similar** purposes to your charity's purposes.

If the transfer is to several charities:

- when considered together, they must have purposes which are substantially similar to the purposes of the transferring charity, and

- each must have at least one purpose which is substantially similar to one or more of the purposes of the transferring charity.

If you are satisfied that this is the case, you must pass a **resolution** by a majority of two thirds of the charity trustees who voted on the resolution. The resolution must detail which charity or charities the permanent endowment is being transferred to and include the division of both permanent endowment and any other unrestricted property.

You must send a copy of the resolution to the Commission together with a **statement of reasons** for passing the resolution. Use the *Notification form for unincorporated charities* to inform us and provide the required supporting documentation.

What do I need to send to the Commission?

The Commission requires documents to assess the procedure followed and the merit of the charity trustees' decision. Along with your notification form you must submit:

- a written statement from charity trustees giving reasons for passing the resolution
- confirmation in written statement that the resolution was passed by majority of no less than two thirds of charity trustees who voted
- a copy of your charity's current **governing document**
- a copy of the governing document of charity or charities to receive the property transfer
- your charity's latest annual accounts
- a copy of the resolution

What will the Commission do?

The Commission will consider the resolution within 60 days of receiving it, in order to:

- Ensure the **correct procedure** has been followed
- Ensure that the resolution and statement of reasons have:
 - merit
 - represents the most effective use of the charitable resources
 - advances the purposes of the charity
 - and that the purposes of the charity or charities to which the property is being transferred are substantially similar.

When will the resolution take effect?

The resolution will take effect 60 days after the Commission has received it unless the Commission objects, requests further information or directs you to give **public notice**.

The Commission may:

- have to establish if your organisation or the receiving organisation is a charity in law
- request further information and/or
- direct the charity to give public notice or
- provide guidance on the division of property where more than one charity would benefit or
- object on procedural grounds and/or on merit grounds.

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

By grounds of merit, we mean in terms of the facts. For example, where the purposes of the receiving charity are not substantially similar to those being replaced.

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 60-day period. However, we are 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 decide 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 procedure: 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.

Designated land: This is land held on charitable trusts that require it to be used for any or all purposes of the charity, for example a village hall or a recreation ground.

Governing document: This is a formal document that sets out your charity's purposes and, usually, how the charity will be run. It may be a trust deed, a constitution, a memorandum and articles of association, a conveyance, a will, a Royal Charter, or a Scheme.

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'.

Unincorporated charities: An unincorporated association is a group of individuals operating for a common purpose for the benefit of its users. Its governing document is usually a constitution or a set of rules. It is not incorporated, so it cannot enter into contracts or own property in its own

right and individual members are personally responsible for any debts and contractual obligations.

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

Substantially similar: For something to be substantially similar to another there must be a strong resemblance. The term substantially similar is one which the Commission will assess on a case-by-case basis.

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

Support and resources

Resource	What it is
Helper groups	<p>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.</p>
Annual reporting	<p>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.</p>
AMR tutorial video	<p>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.</p>
Reporting on the public benefit toolkit	<p>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.</p>

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
Tribunals Hearing Centre
2nd Floor, Royal Courts of Justice
Chichester Street
Belfast
BT1 3JF
Tel: 0300 0200 7812
Email: tribunalsunit@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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