

Version	Author	Date approved
V8.0	PRO	19.02.2026

Powers for unincorporated charities

Guide 2: Changing the purposes of a charity



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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 make changes to their purposes.

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.

Changing the purposes of a charity

Charity trustees may be able to use the power under section 126 of the Charities Act to change all or any of its purposes provided certain conditions are met.

When would we use this?

Sometimes charities may find that they need to change some of their **purposes**, for example:

- a charity set up to help victims of a disaster that happened 50 years ago may need to re-examine its purposes as the number of beneficiaries it helps reduces
- a charity originally set up to relieve poverty amongst those suffering from a particular illness in County Antrim may take the decision to extend their purpose to the whole of Northern Ireland due to demand.

Who can use this?

The provisions under section 126 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 and
- it does not hold any **designated land**.

Even if your governing document contains provisions that say you cannot amend your purposes, you can still use section 126 of the Charities Act providing all three conditions above are met.

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

What is the process?

If your charity can use this power, you must be satisfied that it is in the best interests of the charity to do so. The new or updated purposes must be substantially similar to those that are to be replaced. It is also essential that the new purposes are all exclusively charitable.

What do I need to send to the Commission?

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 vote on the resolution. It is best practice for the resolution to state the section of the Charities Act under which it has been passed. Then you must send to the Commission:

- a copy of the resolution detailing the new or changed purposes
- a written statement from the charity trustees giving reasons for passing the resolution. This must include confirmation that the resolution was passed by a majority of no less than two thirds of charity trustees who voted
- a copy of your charity's current governing document
- a copy of your charity's latest annual accounts.

Use the *Notification form for unincorporated charities* to inform us and provide the required supporting documentation.

What will the Commission do?

The Commission will consider the **resolution** within 60 days of receiving it, to ensure:

- the **correct procedure** has been followed
- the new or changed purposes are exclusively charitable and are **substantially similar** to those being replaced
- the resolution and statement of reasons have merit
- the change will cause no **harm** to the charity and helps to meet the longer-term needs of the charity. Harm can be physical (for example cuts or bruises or becoming unconscious), mental (for example impact of bullying, blaming or constant criticism), environmental (for example damage to rivers or poor air quality) or social (for example poor housing, low incomes or lack of heating).

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
- object on procedural grounds and/or 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 are not substantially similar to those being replaced.

If the Commission objects to the resolution either on procedural grounds, or on the grounds of merit, it will notify the charity trustees in writing within 60 days of receiving the notification form.

When will the resolution take effect?

The resolution will take effect 60 days after the Commission has received it unless

- the Commission objects to the resolution
- requires further information or
- directs you to give public notice.

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 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 on by the charity. The Commission will not usually publish these decisions, unless it considers there is a reason why it should. For more information see the Commission's *Publishing our decisions* policy.

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.

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'.

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 guidance 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.

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.

Harm: Harm is caused when something your charity does has negative consequences for someone or something. It can be physical, mental, environmental or social.

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.

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

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.

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.
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.
Code of Fundraising Practice Code advice service Fundraising guide	The Code of Fundraising Practice sets the standards that apply to fundraising carried out by all charitable institutions and third party fundraisers in the UK. The Code Advice Service allows you to contact the Fundraising Regulator with specific questions about the Code of Fundraising Practice and how it applies to your fundraising activity. The Commission's Fundraising at a glance guide and more detailed guidance on fundraising is available at the link.

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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