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Powers for unincorporated charities

Guide 6a: 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 explains the process of how charity trustees can make a decision 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.

Spending permanent endowment funds given for a particular purpose

Charity trustees may be able to use the power under section 128 of the Charities Act to make a decision to spend capital (for example money or other assets) subject to permanent endowment provided certain conditions are met.

When would we use this?

Sometimes smaller charities may find that they need to spend a **permanent endowment** fund to carry out their purposes (what the charity has been set up to achieve) more effectively. 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 that the fund would be more effective in achieving the charity's purposes, if it could spend the capital which is subject to permanent endowment on improvements to their building.

Who can use this?

The provisions under section 128 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 £1,000 in the last financial year, or
- the **market value** of the permanent endowment fund does not exceed £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 the charity can use this power, the charity trustees must be satisfied that its **purposes** could be carried out more effectively if the capital, or a portion of it, could be spent as well as the income that the fund would have generated.

If you are satisfied, you must pass a **resolution** to free all or some of the fund from restrictions on spending.

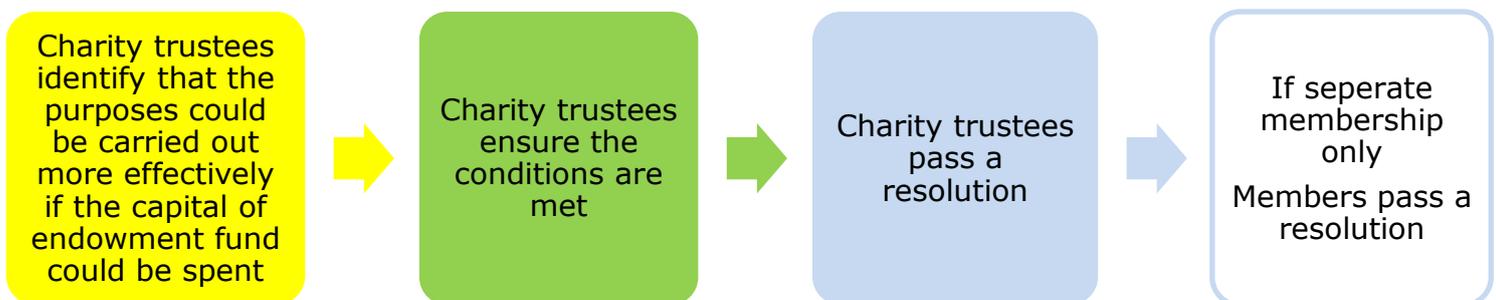
For example, if a charity received £10,000 to buy books for a reading project, and they spent £8,000 on them. Now that the reading project is finished, the charity trustees decide the remaining £2,000 doesn't have to be used for books anymore. Their official record, the resolution, states that this £2,000 is now free to be used for other things, like arts supplies.

The resolution must specify the date from which the fund, or portion of the fund, free from restriction may be spent.

The resolution does not require the Commission's consent, and you do not need to notify the Commission that you intend to spend the capital of an endowment fund provided you meet the circumstances set out under 'Who can use this' above.

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. 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.



When will the resolution take effect?

The resolution will come into effect from the date it is passed 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.

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.

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.

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 decisions

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>
Cyber security - Presentation Cyber security: Small charity guide	<p>Cyber security is aimed at protecting the devices we all use, such as tablets, smartphones and laptops, as well as preventing unauthorised access to the personal data we store on these devices, and online.</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 we 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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