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Powers for unincorporated charities

Guide 6c: Spending permanent endowment funds of special trusts



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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 spend any available endowment fund of a special trust.

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 of special trusts

Charity trustees may be able to use the power under section 130 of the Charities Act to make a decision to spend any available endowment fund of a **special trust** provided certain conditions are met.

When would we use this?

Under section 130 of the Charities Act, you may wish to release some or all of the funds of a special trust. This section only applies where a direction has been given by the Commission that a special trust has been registered separately as a charity under section 1(4) of the Charities Act. For example:

- a medical school or hospital has a permanent endowment fund which restricts spend to research into a specific illness but may wish to broaden the use of the fund to associated illnesses.

Who can use this?

The provisions under section 130 of the Charities Act can be used by any charity which qualifies as a special trust, as a result of a direction of the Commission.

If you cannot use this power because you do not meet the conditions of section 130, please go to our *Requesting a scheme* guide.

What is the process?

The process for using Section 130 will vary depending on the **market value** of the endowment fund and whether the **capital** of the fund is **entirely given**.

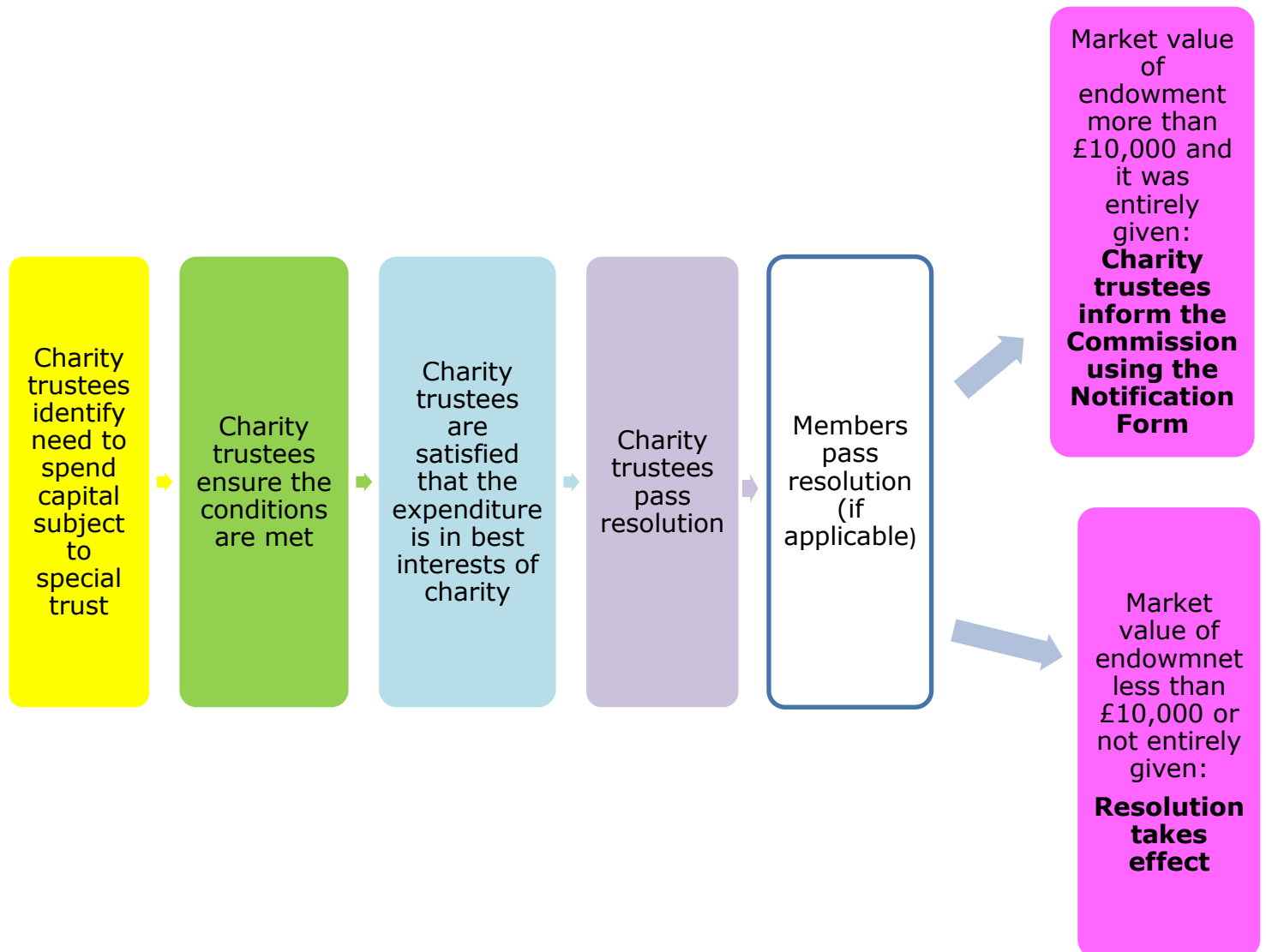
If your charity can use this power, the charity trustees must be satisfied that the **purposes** of the special trust could be carried out more effectively if the capital, or a portion of it, could be spent at least as well as the income that the fund would have generated.

If you are satisfied that this is the case, the charity trustees must pass a **resolution** to free all or some of the fund from restrictions on spending.

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 chart below will assist you in following the required procedure.



A medical research charity received a £150,000 donation in a person's will. The donor states that the money should be invested, with the income generated to be used for the special purpose of research into Dementia. As this is a special trust specifically for research into dementia, the medical research charity got a direction from the Commission to register it as a special trust forming part of the medical research charity. After a number of years, the charity realised that the investment wasn't earning enough income to make a real difference in their research. The charity trustees decide that research could be carried out more effectively if some of the investment capital could be spent, as well as the limited income the fund is generating. The charity trustees consider this to be in the best interest of the special trust and decide to pass a resolution using the powers under section 130 to release capital from the fund.

In the above example as the total fund is over £10,000 and was given by one individual for a special purpose, the trustees are required to inform the Commission of the resolution passed to spend some of the capital.

The Commission has three months to notify the charity if it agrees or disagrees with the decision to spend some of the capital.

Having passed a resolution, you do not need to approach the Commission if:

- the **market value** of the endowment fund is £10,000 or less, or
- the permanent endowment was not **entirely given**.

However, you must seek the consent of the Commission if:

- the **market value** of the endowment fund exceeds £10,000, and
- the permanent endowment was **entirely given**.

If consent is needed, use the *Notification form for unincorporated charities* to inform us. Then you must send to the Commission:

- a copy of the resolution
- a written statement from the charity trustees giving reasons for passing the 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 capital rather than relying on its income only.
- 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.

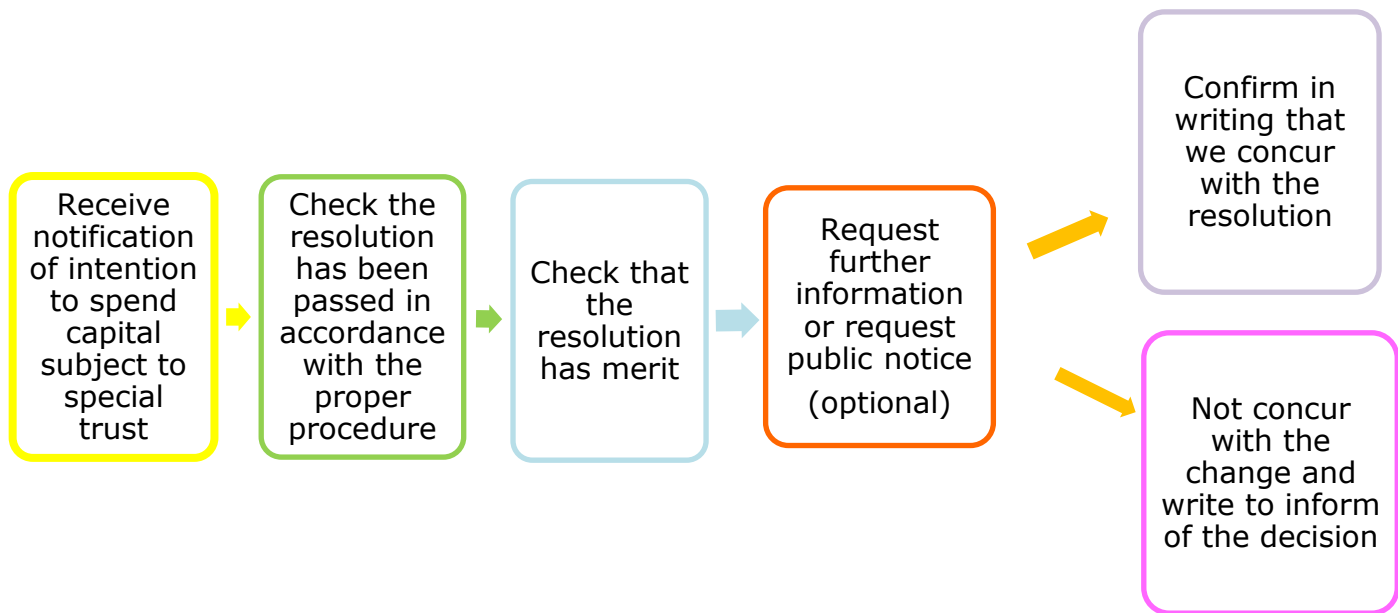
The Commission may:

- 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) with the resolution on procedural or merit grounds

An example of procedural grounds is where the proper process has not been followed.

An example of on the grounds of merit, is where the proposal is not within the spirit of the original gift.

What process will the Commission follow?



When will the resolution take effect?

If the market value of the permanent endowment fund is less than £10,000 or if the permanent endowment was not entirely given, the resolution will take effect immediately.

If the market value of the permanent endowment fund is more than £10,000 and the permanent endowment fund was entirely given, 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 (disagree) with the resolution.

You should avoid spending the capital or part of the capital if this affects 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: An individual or other entities that are not directly involved in an agreement or transaction but are impacted by its outcome.

Capital: Capital is the amount of cash and other assets owned by an organisation. These assets include accounts receivable, equipment and land/buildings. Capital can also represent the accumulated wealth of an organisation, represented by its assets less liabilities.

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.

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.

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 decisions.

Special trust: A special trust means funds or property held and administered on its own separate trusts by or on behalf of a main charity for any special purposes of that charity. It follows that the objects of a special trust must be narrower than those of the main charity. Sometimes these funds are separate charities, run and administered by its own Charity trustees, and at other times the funds are part of a main charity.

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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