

# New powers for unincorporated charities

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Guidance for trustees of unincorporated charities on powers to transfer property, replace purposes, modify administrative procedures or spend permanent endowment



# The Charity Commission for Northern Ireland

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Communities.

## Our vision

To deliver in partnership with other key stakeholders in the charitable sector “a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission’s effective delivery of its regulatory role.”

Further information about our aims and activities is available on our website [www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk)

## Equality

The Charity Commission for Northern Ireland is committed to equality and diversity in all that we do.

## Accessibility

If you have any accessibility requirements please contact us.

## Online or in print

If you are viewing this document online, you will be able to navigate your way around by clicking on links either within the contents page or text.

We have produced a glossary that provides further information, definitions and descriptions of some key terms. The words in **bold green type** indicate words that are found in the glossary towards the end of this document. If you are reading the document online you can click on the word and it will link you to the definition in the glossary.

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## Section 1: Overview

Charities need to adapt the way they operate to reflect changes in society and the context in which they work. 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 guidance provides information on these provisions, which are intended to reduce bureaucracy by allowing unincorporated charities to make some changes themselves. Where this is not possible, it may be necessary to notify the Commission, seek our agreement or consent to make changes or request that a **scheme** is drawn up by the Commission.

This guidance also explains how the **resolutions** to make the changes come into effect and what will happen if the Commission is not content with the nature of the changes proposed.

It is the duty of **charity trustees** to seek to change the governing document of the charity, or to take other relevant action, in order to ensure the charity's continuing effectiveness.

Please check our website [www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk) to make sure you are using the latest version of our guidance and forms.

## Section 2: About this guidance

### What does this guidance cover?

The guidance is divided into sections. Within each section we have detailed the provisions available within the Charities Act and how and when you should seek to use that provision.

**Section 3:** Transfer of all property to another charity

**Section 4:** Transfer of **permanent endowment** and unrestricted property

**Section 5:** Replacing the **purposes** of a charity

**Section 6:** Modifying administrative powers or procedures

**Section 7:** Spending permanent endowment funds given for a particular purpose

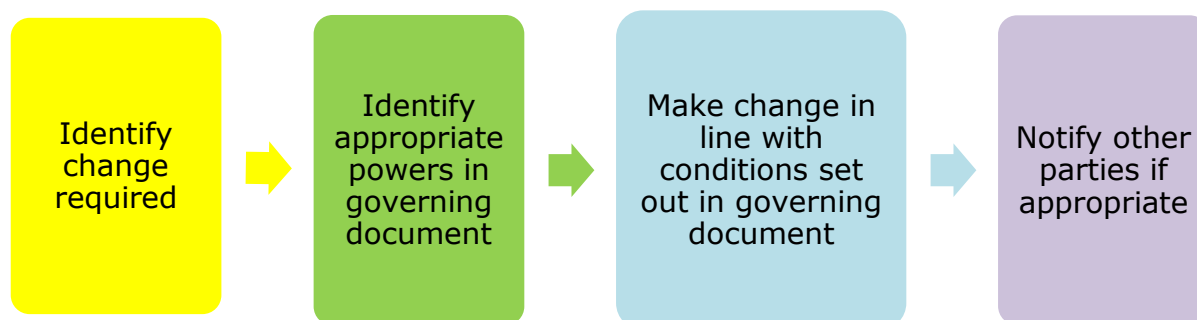
**Section 8:** Large charities spending permanent endowment funds given for a particular purpose

**Section 9:** Spending permanent endowment funds of **special trusts**

Each section contains a flow chart, which we hope will assist you in following the required procedure.

Remember: if you are an unincorporated charity and have provisions within your governing document to make these changes, you can make some changes yourself. See the flow chart below for more information. If the power within your governing document requires you to obtain the consent of the Commission or another regulatory body, you must obtain the consent in accordance with your governing document.

### What is the process you should follow if you have appropriate powers in your governing document?



## What does this guidance not cover?

You should not rely on this guidance to provide a full description of legal matters affecting your charity and the guidance does not replace advice from a charity's own professional advisers.

It can **harm** a charity if changes are made that are legally invalid, or do not have the required effect, and charity trustees may be held personally responsible for any liabilities incurred by the charity.

The Commission is not in a position to give informal advice or reassurances on specific changes or amendments.

Charities may also be subject to other legislation or regulation, for example, equality legislation.

## Who does this guidance apply to?

This guidance is aimed at the charity's trustees, members of management committees or someone acting on behalf of an unincorporated charity, for example, a solicitor, accountant, agent or adviser.

## What is our approach to decision making?

Some of the provisions detailed in this guidance do not require the Commission to take decisions. We adopt a risk based approach when making any decisions; this includes schemes, consents and objections. This means that we look at a range of factors when assessing and analysing information provided and in identifying any further information we might require. These factors may include, but are not limited to:

- the size of the charity
- the profile of the charity
- public interest in the organisation
- whether the case is likely to set a precedent.

## 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. Under these sections the Commission only makes a

decision where we do not concur with a resolution. We may do this using Sections 124 and 129 of the Charities Act. We will not usually publish these decisions, unless we consider there is a strong reason why we should.

### **What are legal requirements and best practice?**

In this guidance, where we use the word 'must' we are referring to a specific legal or regulatory requirement. We use the word 'should' for what we regard as best practice, but where there is no specific legal requirement. **Charity trustees** should follow the good practice guidance unless there is a good reason not to.

### **Where can you find definitions of key terms?**

You will find definitions of key terms in the glossary towards the end of this guidance. If you are viewing the guidance online, you can click on a word highlighted in **green and bold** and you will be brought straight to the definition in the glossary.

### **Charity legislation**

References in this document to 'the Charities Act' are to the Charities Act (Northern Ireland) 2008 as amended by the Charities Act (Northern Ireland) 2013.

## Section 3: Transfer of all property to another charity

### 3.1 When would we use this?

Sometimes charities may find it necessary to transfer all of their property to another charity, for example:

- a disaster relief charity that has completed its aims and no longer needs to continue will need to deal with any remaining property it holds before it closes and will need to transfer it all to another charity
- a change in the funding environment results in **charity trustees** deciding that another charity may be better placed to carry out the same purposes.

### 3.2 Who can use this?

The provisions under section 123 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
- either 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 charity cannot use this power because it does not meet the conditions, you will need to ask the Commission to make a scheme. Please refer to our *Requesting a scheme* guidance.

### 3.3 What is the process?

If your charity can use this power, you must be satisfied that the transfer of all property is necessary and will further the **purposes** of the charity. You must also be satisfied that the charity to which you are transferring the property has **substantially similar** purposes or can provide an effective method of applying the property.

If you are not satisfied that this is the case, you should reconsider the transfer.

If you are satisfied, you must pass a **resolution** by a majority of two thirds of the trustees who voted on the resolution. The resolution must



propose the transfer of all charity property and detail which charity or charities the property is being transferred to.

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.

### 3.4 What other documentation needs to be submitted?

We require a number of documents to assess the procedure followed and the merit of the charity trustees' decision. Please refer to Appendix 1 (section 123 column) for full details of what to submit along with your notification form.

### 3.5 What will the Commission do?

The Commission will consider the resolution within 60 days of receiving it, specifically, but not limited to:

- ensuring the **correct procedure** has been followed
- ensuring that the resolution and statement of reasons have merit, represent the most effective use of the charitable resources, advance the purposes of the charity and that the purposes of the charity to which the property is being transferred are substantially similar.

The Commission has 60 days to take one of four possible actions:

- request further information
- direct the charity to give **public notice**
- object on procedural grounds
- object on merit grounds.

If we require you to give public notice we may take into account any representations made within 28 days of the date of the public notice. If we do any of the above we will tell you within 60 days of receiving your notification form. If any issues are not resolved within 120 days the resolution will be treated as if it was never passed.

### 3.6 When will the resolution take effect?

The resolution will take effect 60 days after the Commission has received it unless we object, require further information or ask you to give public notice.

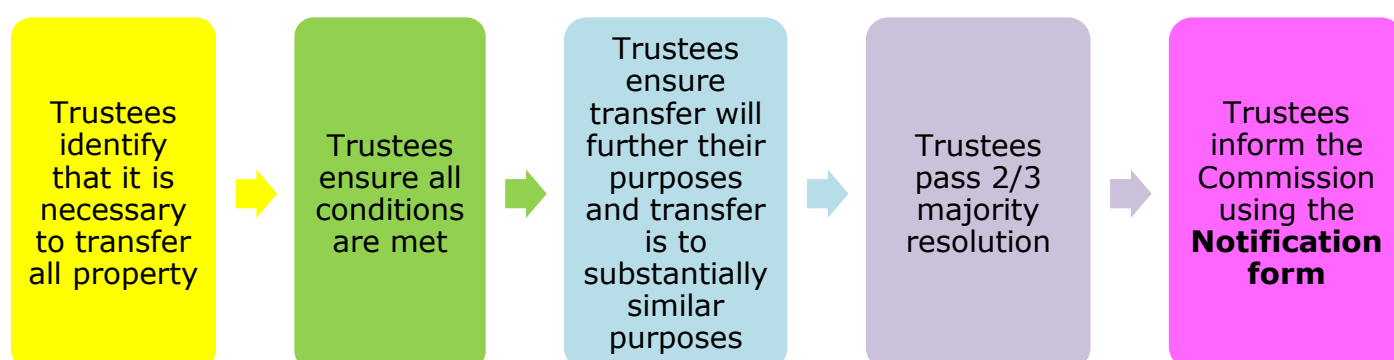
### 3.7 What about best practice?

It is best practice for the resolution to state the section of the Charities Act under which it has been passed.

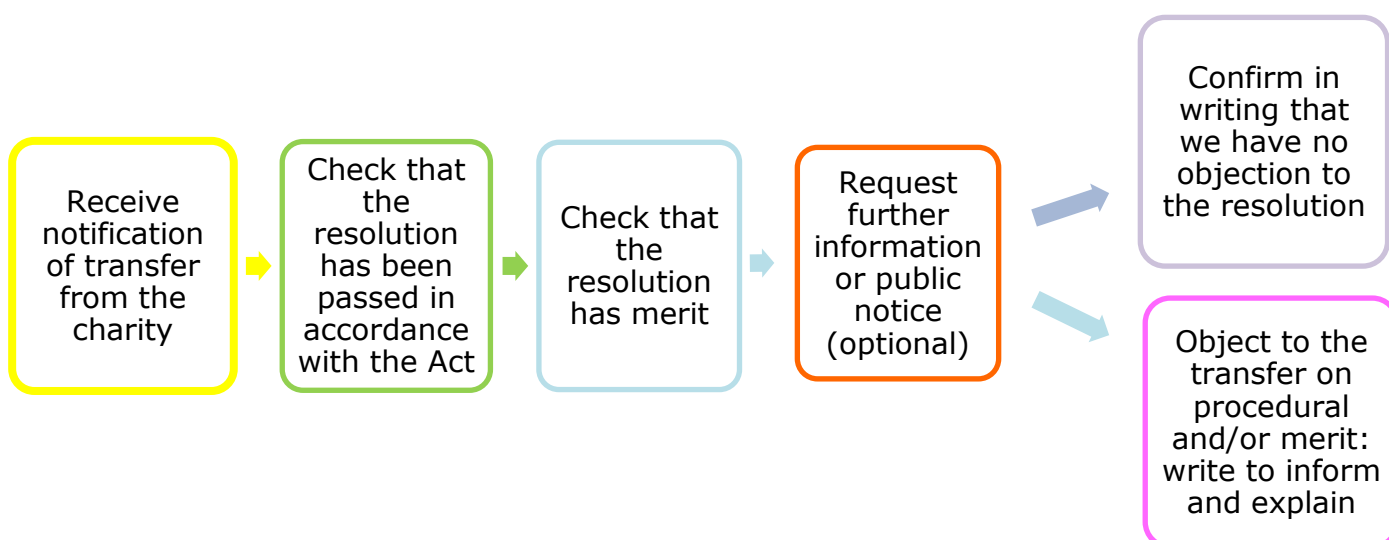
You should avoid using these powers to make amendments which affect third party rights. If you choose to do so, you should seek the consent of **affected third parties**. If this is not possible, you should apply to the Commission for a scheme to make the change. Please refer to our *Requesting a scheme*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

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

### What process should you follow?



### What process will the Commission follow?



## Section 4: Transfer of permanent endowment and unrestricted property

### 4.1 When would we use this?

**Unincorporated charities** are also able to use the power under section 125 of the Charities Act to transfer property to another charity if their property includes **permanent endowment**. 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.

### 4.2 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
- either 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 charity cannot use this power because it does not meet the conditions, please refer to our *Requesting a scheme* guidance.

### 4.3 What is the process?

If your charity can use this power, you must be satisfied that the transfer of the permanent endowment is necessary and will further the **purposes** of the charity. You must also be satisfied that the charity to which you are transferring the permanent endowment has **substantially similar** purposes to all of its purposes.

If the transfer is to a number of charities:

- when considered together, they must have purposes which are substantially similar to all of 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 not satisfied, you should reconsider the transfer.

If you are satisfied, 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 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.

#### 4.4 What other documentation needs to be submitted?

We require a number of documents to assess the procedure followed and the merit of the charity trustees' decision. Please refer to Appendix 1 (section 125 column) for full details of what to submit along with your notification form.

#### 4.5 What will the Commission do?

The Commission will consider the resolution within 60 days of receiving it, specifically, but not limited to:

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

#### 4.6 When will the resolution take effect?

The resolution will take effect 60 days after the Commission has received it unless we object, require further information or ask you to give **public notice**.

The Commission may:

- request further information
- direct the charity to give public notice

- provide guidance on the division of property where more than one charity would benefit
- object on procedural grounds, and/or
- object on merit grounds.

If we require you to give public notice we may take into account any representations made to us within 28 days of the date of the public notice.

If we do any of the above we will tell you within 60 days of receiving your notification.

If any issues are not resolved within 120 days the resolution will be treated as if it was never passed.

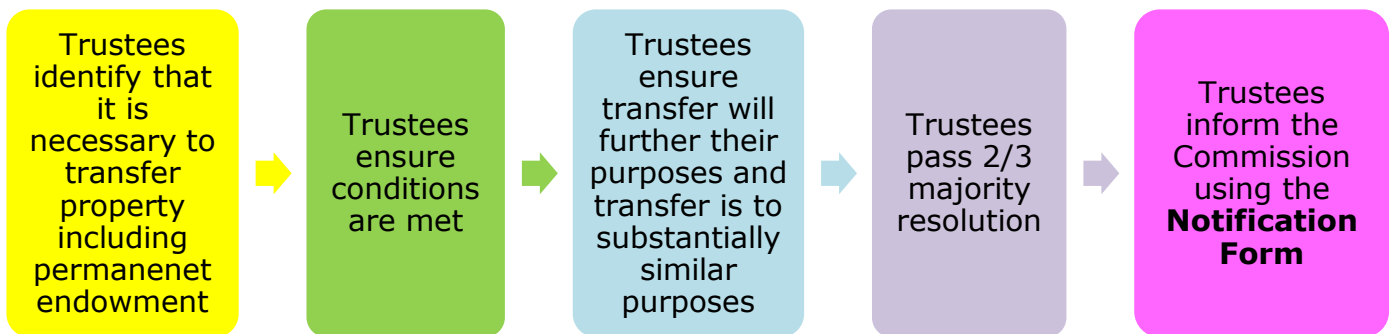
#### **4.7 What about best practice?**

It is best practice for the resolution to state the section of the Charities Act under which it has been passed.

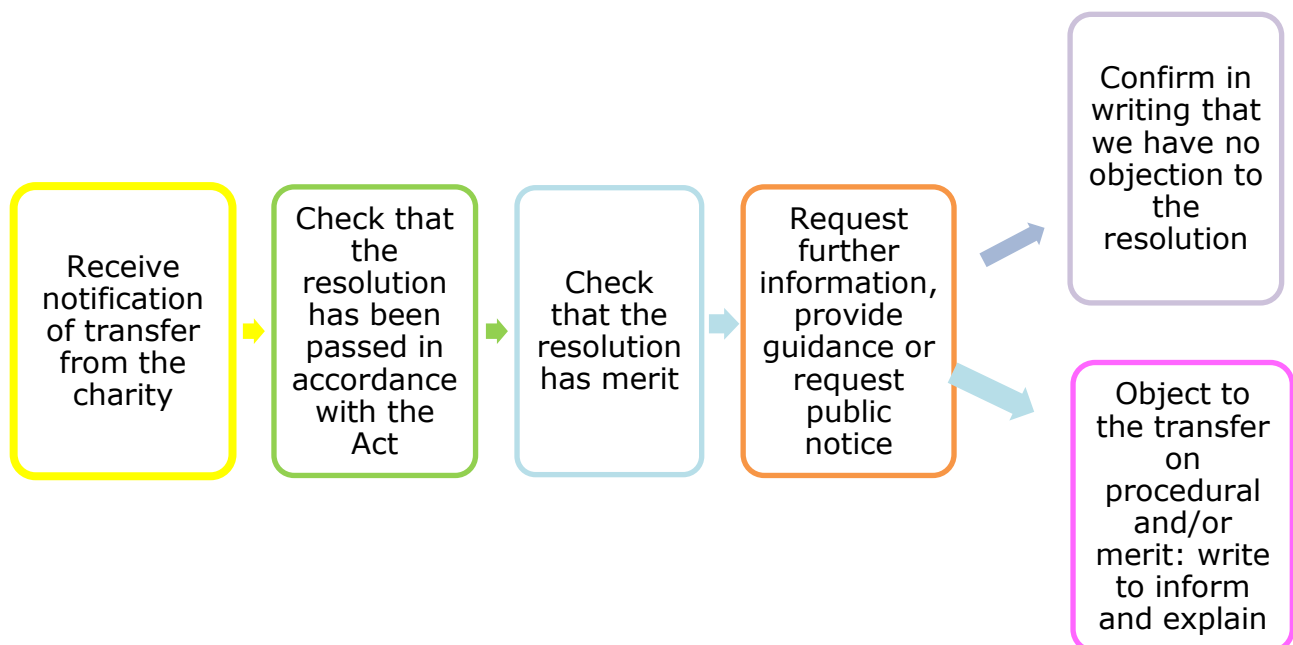
You should avoid using these powers to make amendments which affect third party rights. If you choose to do so, you should seek the consent of **affected third parties**. If this is not possible, you should apply to the Commission for a scheme to make the change. Please refer to our *Requesting a scheme*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

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

## What process should you follow?



## What process will the Commission follow?



# Section 5: Replacing the purposes of a charity

## 5.1 When would we use this?

Sometimes charities may find that they need to replace 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.

## 5.2 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**.

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

## 5.3 What is the process?

If your charity can use this power, you must be satisfied that the changes in purposes are necessary and in the interests of the charity, that the new or modified purposes are sufficiently similar in character to those being replaced and that the new purposes are all exclusively charitable.

If you are not satisfied, you should reconsider the change in purposes. If you are satisfied, you must pass a **resolution** by a majority of two thirds of the charity trustees who voted on the resolution.

You must send a copy of the resolution detailing the new or modified purposes 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.

## 5.4 What other documentation needs to be submitted?

We require a number of documents to assess the procedure followed and the merit of the charity trustees' decision. Please refer to Appendix 1 (section 126 column) for full details of what to submit along with your notification form.

## 5.5 What will the Commission do?

The Commission will consider the resolution within 60 days of receiving it, specifically, but not limited to ensuring:

- the **correct procedure** has been followed
- the new or amended purposes are exclusively charitable and are **substantially similar** to those being replaced
- the resolution and statement of reasons have merit
- there is a justifiable reason for the new or amended purposes
- the change will cause no **harm** to the charity and helps to meet the longer term needs of the charity.

The Commission may:

- request further information
- direct the charity to give public notice
- object on procedural grounds and/or
- object on merit grounds.

If we require you to give public notice we may take into account any representations made to us within 28 days of the date of the public notice.

If we do any of the above we will tell you within 60 days of receiving your notification. If any issues are not resolved within 120 days the resolution will be treated as if it was never passed.

## 5.6 When will the resolution take effect?

The resolution will take effect 60 days after the Commission has received it unless we object, require further information or ask you to give public notice.

## 5.7 What about best practice?

It is best practice for the resolution to state the section of the Charities Act under which it has been passed.

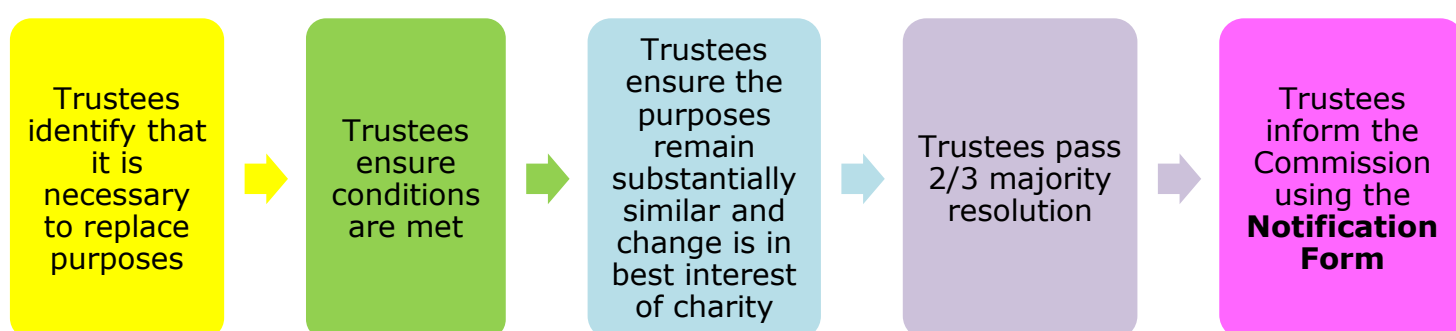
You should avoid using these powers to make amendments which affect third party rights. If you choose to do so, you should seek the consent of



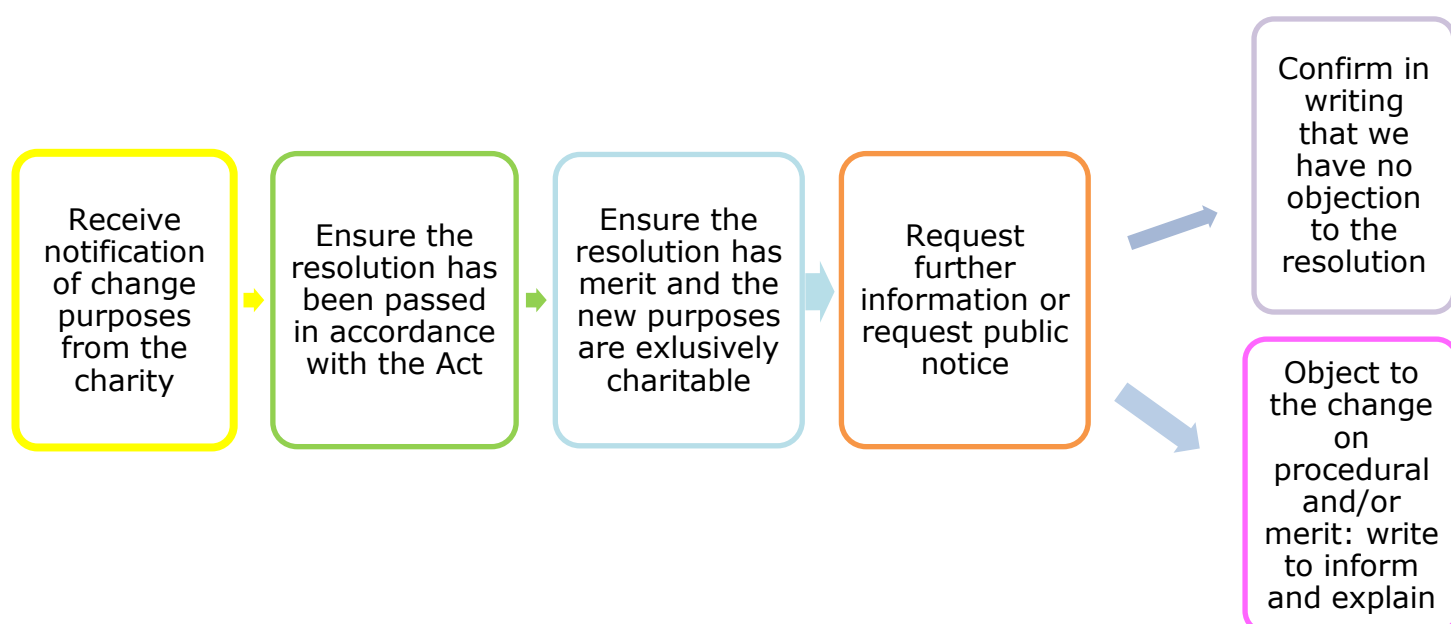
**affected third parties.** If this is not possible, you should apply to the Commission for a scheme to make the change. Please refer to our *Requesting a scheme* guidance.

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

## What process should you follow?



## What process will the Commission follow?



## Section 6: Modifying administrative powers or procedures

### 6.1 When would we use this?

Sometimes charities may find it necessary to modify their administrative powers or procedures to remain effective, for example, to:

- change the charity's name
- borrow or invest money
- co-operate with other charities
- deal with matters relating to membership
- appoint officers
- manage meetings.

### 6.2 Who can use this?

The provisions under section 127 of the Charities Act can be used by any charity as long as it is not a **charitable company** or other **corporate body**.

If your charity is a company or corporate body, please refer to our *Consents for charitable companies* guidance.

### 6.3 What is the process?

If your charity can use this power, you must be satisfied that the changes being made relate to the **administration** of the charity or relate to procedures used in connection with the administration of the charity.

If you are not satisfied, you should reconsider the use of this power.

If you are satisfied, you must pass a **resolution** which details the modification to the administrative powers or procedures.

If your charity has a membership that is separate from the charity trustees, a further resolution must be approved at a general meeting of members by either a two thirds majority of members attending and entitled to vote, or a vote where no objection is raised to the proposal.

You do not need to notify the Commission of administrative or procedural changes.

## 6.4 What about best practice?

It is best practice for the resolution to state the section of the Charities Act under which it has been enacted.

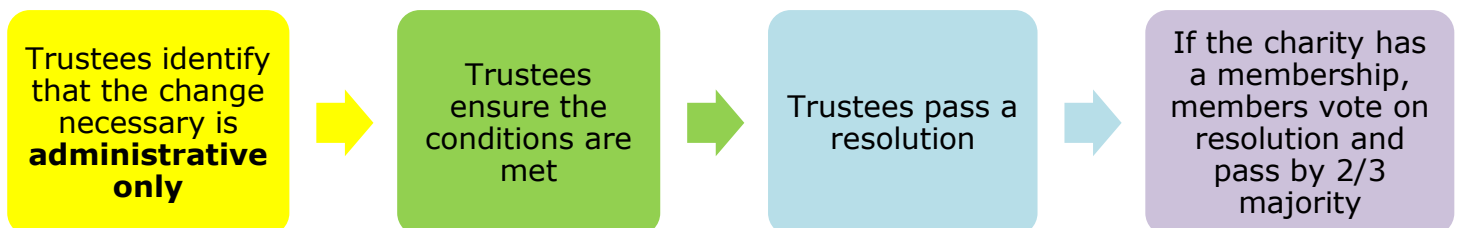
You should avoid using these powers to make amendments which affect third party rights. If you choose to do so, you should seek the consent of **affected third parties**. If this is not possible, you should apply to the Commission for a scheme to make the change. Please refer to our *Requesting a scheme*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

## 6.5 When will the resolution take effect?

The resolution will come into effect from the date the charity trustees pass the resolution. However, if the charity has members, the resolution will take effect from the date the members pass the resolution.

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

## What is the process you should follow?



## Section 7: Spending permanent endowment funds given for a particular purpose

### 7.1 When would we use this?

Sometimes charities may find that they need to spend a **permanent endowment** fund to meet their purposes 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 a significant expenditure (eg improvements to a building) and that the fund would be more effective in supporting the charity achieving its purposes if the capital and not just the income could be spent.

### 7.2 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 **body corporate**, 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, or
- the permanent endowment was not **entirely given**.

If you are a larger charity go to the next section. If you cannot use this power because you do not meet the conditions, please refer to our [Requesting a scheme](#) guidance.

### 7.3 What is the process?

If your charity can use this power, you must be satisfied that the **purposes** the fund is subject to 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 not satisfied, you should reconsider spending the capital.

If you are satisfied, you must pass a **resolution** which details the funds, or portion of the fund, that can be freed from the restriction. 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.

## 7.4 What about best practice?

It is best practice for the resolution to state what the funds may be spent on and the section of the Charities Act under which it has been passed.

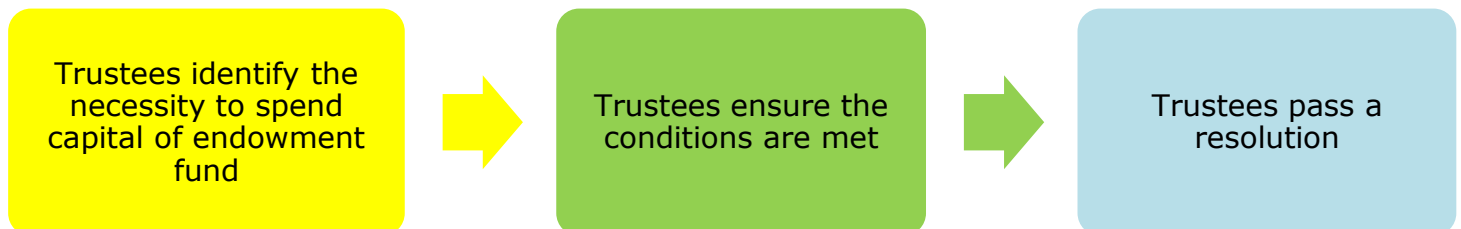
You should avoid using these powers to make amendments which affect third party rights. If you choose to do so, you should seek the consent of **affected third parties**. If this is not possible, you should apply to the Commission for a scheme to make the change. Please refer to our *Requesting a scheme*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

## 7.5 When will the resolution take effect?

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

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

## What is the process you should follow?



## Section 8: Large charities spending permanent endowment funds given for a particular purpose

### 8.1 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 (eg 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.

### 8.2 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
- its **gross income** must have exceeded £1,000 in the last financial year, and
- the **market value** of the endowment fund exceeds £10,000, and
- the permanent endowment was **entirely given**.

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

### 8.3 What is the process?

If your charity can use this power, you 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 you are not satisfied, you should reconsider spending the capital.

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

You must send the Commission a copy of the resolution detailing the proposal to free the fund or part of it from restrictions on spending 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.

#### 8.4 What other documentation needs to be submitted?

We require a number of documents to assess the procedure followed and the merit of the charity trustees' decision. Please refer to **Appendix 1** (section 129 column) for full details of what to submit along with your *Notification form for unincorporated charities*.

#### 8.5 What will the Commission do?

We will consider the resolution within three months of receiving it, specifically, but not limited to:

- ensuring the **correct procedures** have been followed
- consideration of any evidence available in respect of original donors' wishes
- consideration of changes relating to the charity since the making of the gift, for example, its financial position, beneficiary needs, social, economic and legal environment
- ensuring the **spirit** of the gift is compatible with the proposed spend
- ensuring the charity's purposes could be carried out more effectively by spending the permanent endowment rather than relying on its income.

The Commission may:

- request further information
- direct the charity to give **public notice**
- object on procedural grounds
- object on merit grounds.

If we require you to give public notice we may take into account any representations made to us within 28 days of the date of the public notice.

If we do any of the above we will tell you within three months of receiving your notification.

## 8.6 When will the resolution take effect?

The resolution will take effect three months after the Commission has received it unless we object, require further information or ask you to give public notice.

## 8.7 What about best practice?

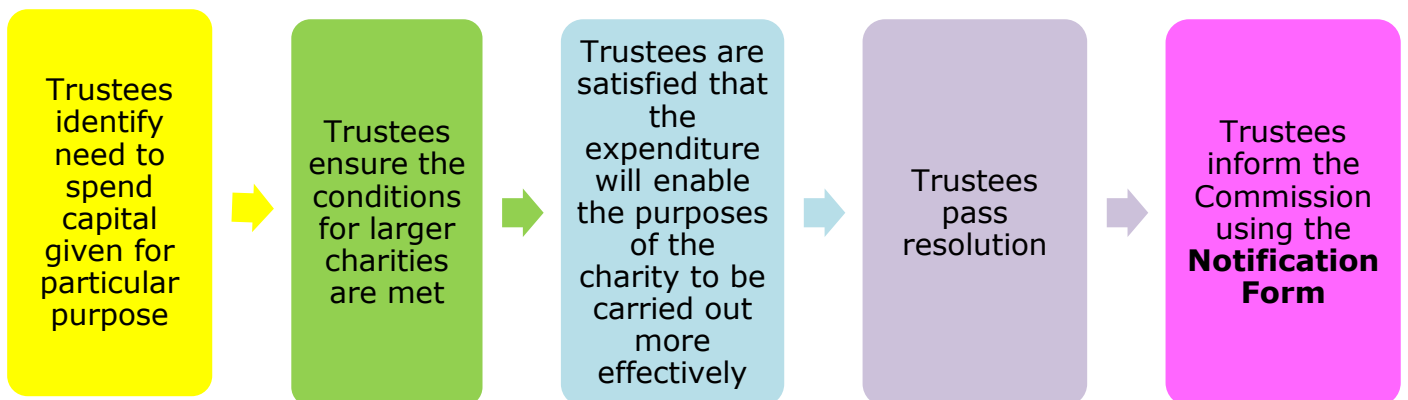
It is best practice for the resolution to state what the funds may be spent on and the section of the Charities Act under which it has been passed.

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* guidance.

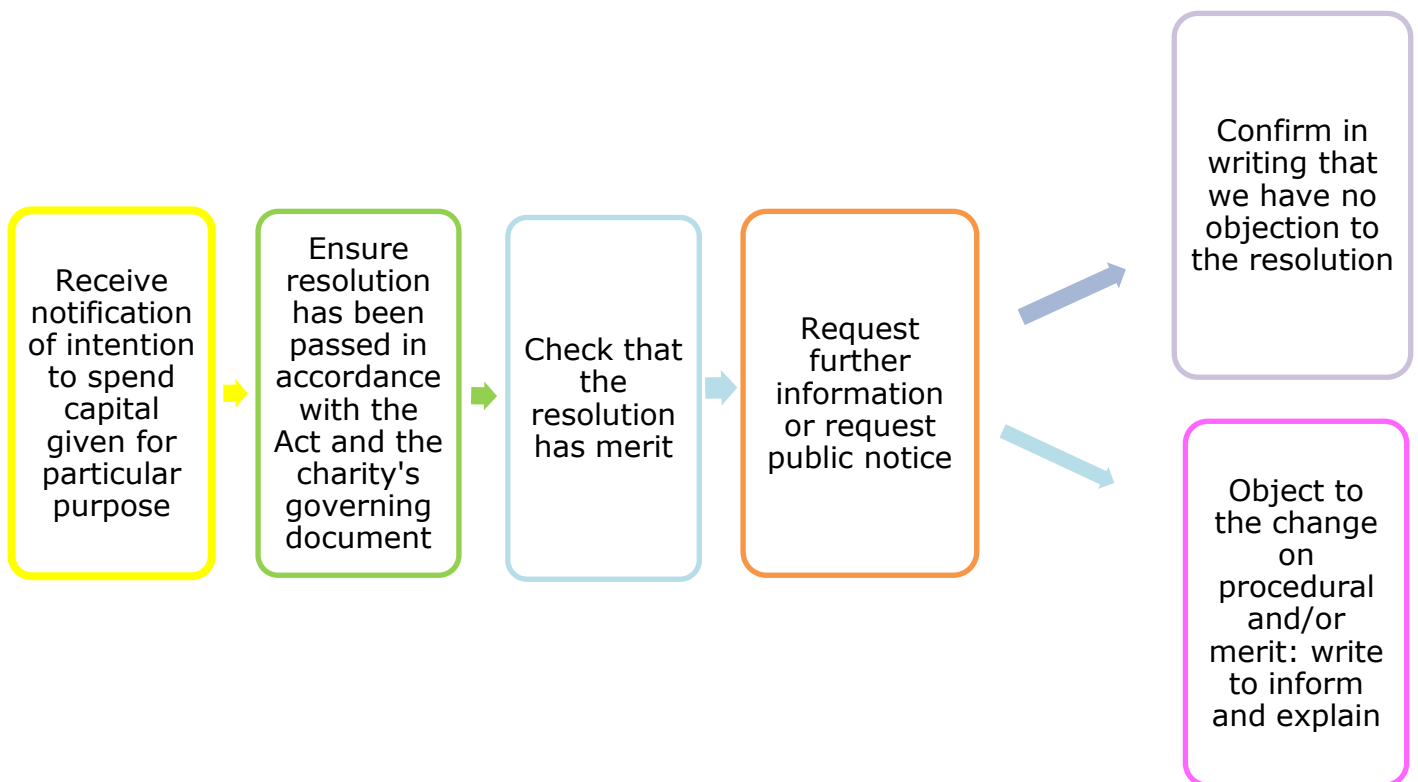
The following flow charts will assist you in following the required procedure.



## What is the process you should follow?



## What process will the Commission follow?



# Section 9: Spending permanent endowment funds of special trusts

## 9.1 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
- a religious organisation has an outreach and mission fund restricted to a specific geographical area, but wishes to expand its outreach and missionary activities to neighbouring areas
- a charity that relieves poverty has a fund that is restricted to providing an income to people aged over 75 years of age but wishes to broaden access to those over 65 years of age.

## 9.2 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 long as it is not a **charitable company** or other **corporate body**.

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

## 9.3 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, you must be satisfied that the **purposes** to which the fund is subject 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 not satisfied, you should reconsider spending the capital.

If you are satisfied you must pass a **resolution** which details the funds, or portion of funds, that can be freed from the restriction.

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**.

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, you must send a copy of the resolution detailing the proposed spend of capital 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 documentation.

#### 9.4 What other documentation needs to be submitted?

We require a number of documents to assess the procedure followed and the merit of the charity trustees' decision. Please refer to **Appendix 1** (section 130 column) for full details of what to submit along with your notification form.

#### 9.5 What will the Commission do?

We will consider the resolution within three months of receiving it, specifically, but not limited to:

- consideration of any evidence available in respect of original donors' wishes
- consideration of changes relating to the charity since the making of the gift, for example, its financial position, beneficiary needs, social, economic and legal environment
- ensuring the **spirit** of the gift is compatible with the proposed spend.

The Commission may:

- request further information
- direct the charity to give public notice
- object on merit grounds.

If we require you to give public notice we may take into account any representations made to us within 28 days of the date of the public notice.

If we do any of the above we will tell you within three months of receiving your notification.

### 9.6 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 three months after the Commission has received it unless we object, or ask you to give **public notice**.

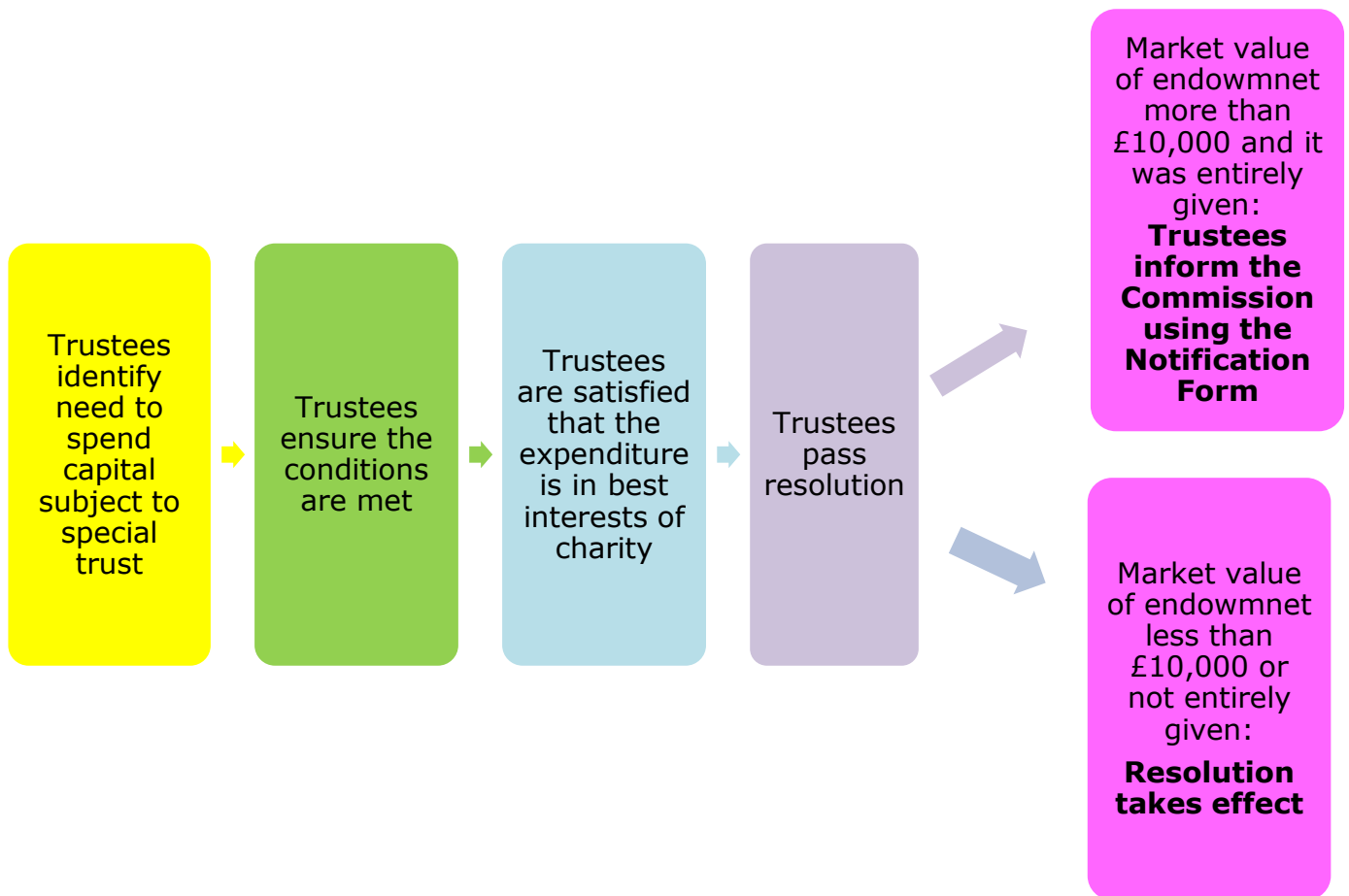
### 9.7 What about best practice?

It is best practice for the resolution to state what the funds may be spent on and the section of the Charities Act under which it has been passed.

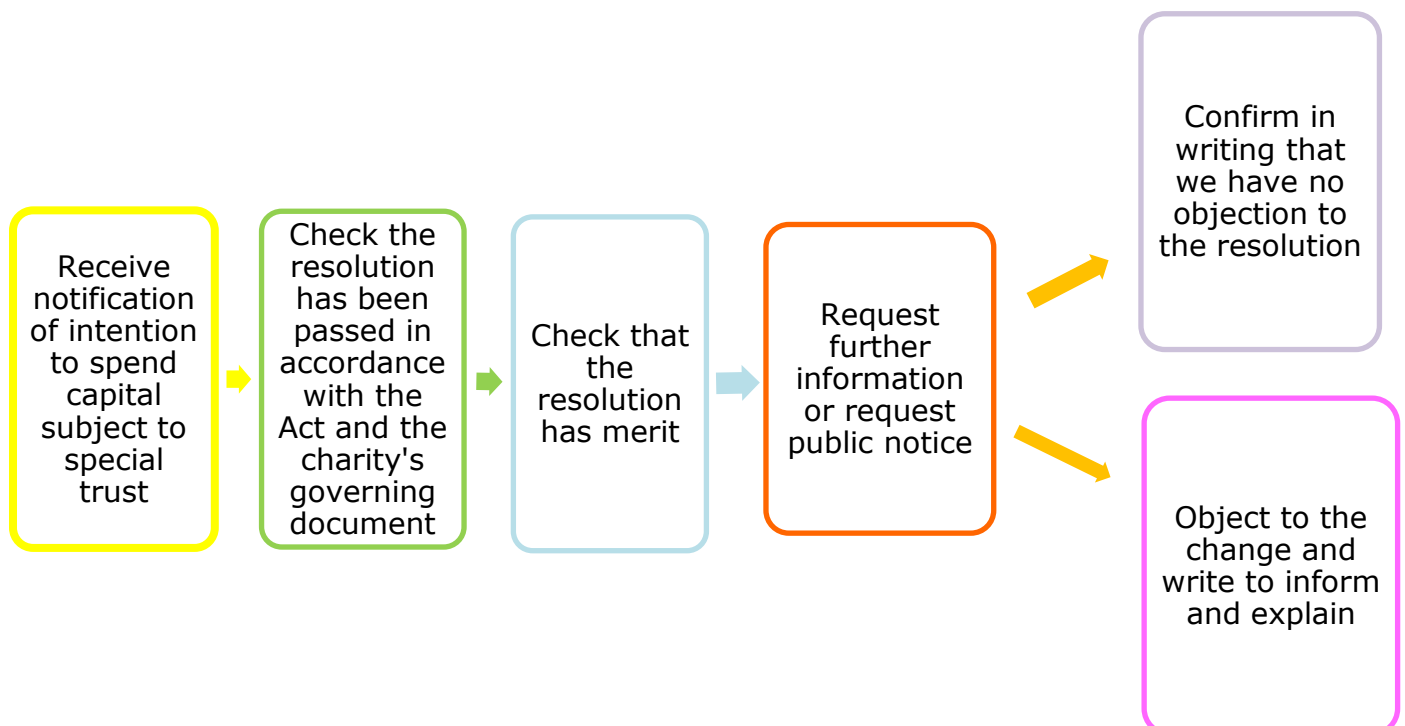
You should avoid spending the capital or part of the capital if this affects third party rights. If you choose to do so, you should seek the consent of **affected third parties**. If this is not possible, you should apply to the Commission for a scheme to make the change. Please refer to our *Requesting a scheme* guidance.

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

## What process should you follow?



## What process will the Commission follow?



## Appendix 1: What you need to attach to the *Notification form*

The table below is a checklist of the relevant documents you need to ensure are submitted to the Commission along with the completed *Notification form for unincorporated charities*. If you do not submit all of the required documents, your application will be treated as incomplete. We cannot begin the assessment of applications until we have received all the documentation we require.

What should be attached?	What does your charity want to do?				
	Transfer all property	Transfer permanent endowment	Replace some or all of the purposes of the charity	Spend permanent endowment funds given for particular purpose	Spend permanent endowment of special trusts (if consent needed)
Section of the Charities Act	123	125	126	129	130
Copy of resolution	✓	✓	✓	✓	✓
Written statement from charity trustees giving reasons for passing resolution	✓	✓	✓	✓	✓
Confirmation in written statement that resolution was passed by majority of no less than two thirds of charity trustees who voted	✓	✓	✓		
Copy of governing document of applicant	✓	✓	✓	✓	✓
Copy of governing document of charity to receive property transfer	✓	✓			
Annual Accounts	✓	✓	✓	✓	✓

Glossary	Definition
<b>Administration</b>	<p>These are provisions not related to the charitable purposes of the organisation. Examples include:</p> <ul style="list-style-type: none"> <li>• changes to the charity's procedures for instance the quorum for charity trustees' meetings</li> <li>• notice periods required for meetings</li> <li>• changes to the requirements of membership</li> <li>• powers to change a charity's name</li> <li>• powers to borrow or invest money and to co-operate with other charities.</li> </ul>
<b>Affected third party</b>	<p>An individual or other entity who is not a direct party to an agreement or other interaction but who somehow has an interest in or is affected by it.</p>
<b>Capital</b>	<p>Capital is the amount of cash and other assets owned by an organisation. These assets include accounts receivable, equipment and land/buildings.</p> <p>Capital can also represent the accumulated wealth of an organisation, represented by its assets less liabilities.</p>
<b>Charitable company</b>	<p>This is a charity, which is formed and registered under the Companies Act 2006, or any companies that were already established under previous legislation. Charitable companies are registered with Companies House. It will usually have memorandum and articles of association as its governing document and it has its own legal identity. It must be established for exclusively charitable purposes.</p>
<b>Charity trustee</b>	<p>These are the people who are legally responsible for the control and management of the administration of a charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors or they may be referred to by some other title. Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who:</p> <ul style="list-style-type: none"> <li>• has been convicted of an offence involving deception or dishonesty, unless the conviction is a spent conviction under the Rehabilitation of Offenders (NI) Order 1978</li> <li>• is an undischarged bankrupt or has made arrangement with creditors</li> </ul>

Glossary	Definition
	<ul style="list-style-type: none"> <li>• has previously been removed as a trustee by the Commission or by the Courts</li> <li>• is subject to disqualification under company legislation.</li> </ul>
<b>Corporate body</b>	<p>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.</p>
<b>Correct procedure</b>	<p>All unincorporated charities must follow a certain procedure when passing a resolution under sections 123-130 of the Charities Act.</p> <ul style="list-style-type: none"> <li>• The charity trustees must have been properly appointed in accordance with the governing document of the charity</li> <li>• They must have passed the resolution by the required majority as set out in this guidance and</li> </ul> <p>The meeting must have had sufficient numbers in attendance where specific provisions are set out in the governing document on this point.</p>
<b>Designated land</b>	<p>This is land held on trusts that require it to be used for any or all purposes of the charity, for example a village hall or a recreation ground.</p>
<b>Entirely given</b>	<p>This refers to charities whose permanent endowment consists entirely of property given by:</p> <ul style="list-style-type: none"> <li>• a particular individual (including a bequest made in a will) or</li> <li>• a particular institution (by way of a grant or otherwise) or</li> <li>• two or more individuals or institutions for the same purpose.</li> </ul> <p>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.</p>



Glossary	Definition
<b>Governing document</b>	A charity's governing document is any document which sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, conveyance, will, Royal Charter, scheme of the Commission or other formal document.
<b>Gross income</b>	<p>Annual gross income differs from total incoming resources / total receipts in a charity's accounts.</p> <p>For accounts prepared on a receipts and payments basis gross income is simply the total receipts recorded excluding the receipt of any endowment loans and proceeds from sale of investments or fixed assets.</p> <p>For accounts prepared on an accruals basis the charity's gross income should be calculated as:</p> <ul style="list-style-type: none"> <li>• the total incoming resources as shown on the Statement of Financial Activities (SoFA) (prepared in accordance with the Statement of Recommended Practice, SORP) for all funds but excluding the receipt of endowment</li> <li>• including any amount transferred to income funds during the year from endowment funds in order to be available for expenditure.</li> </ul>
<b>Harm</b>	Something that causes damage, injury or loss – physical, mental, environmental or social.
<b>Market value</b>	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.
<b>Permanent endowment</b>	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. Charity trustees can only spend or dispose of permanent endowment if they use the powers in the Charities Act that allow this or if they obtain our authority.
<b>Public notice</b>	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

Glossary	Definition
	<p>sector representatives; local authorities; those owed money by the charity; donors and employees.</p> <p>Circumstances where we may require public notice include, but are not limited to, where:</p> <ul style="list-style-type: none"> <li>• the charity has been recently founded</li> <li>• large amounts of permanent endowment funds will be expended and the charity trustees have provided no evidence that they have consulted with interested parties</li> <li>• we are aware the proposal has created a lot of public interest.</li> </ul> <p>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.</p>
<b>Purposes</b>	<p>The purposes of a charity will usually be defined by what its governing document says that it is set up to do. According to the Charities Act, all the organisation's purposes must:</p> <ul style="list-style-type: none"> <li>• fall under one or more of the list of 12 descriptions of charitable purposes in the Charities Act and</li> <li>• be for the public benefit.</li> </ul>
<b>Resolution</b>	<p>A written motion adopted by a deliberative body. The substance of the resolution can be anything that can normally be proposed as a motion. For long or important motions, though, it is often better to have them written out so that discussion is easier or so that it can be distributed outside of the body after its adoption.</p>
<b>Scheme</b>	<p>In this document the term 'scheme' refers to a scheme made by the Commission under the Charities Act. It is a legal document that changes, replaces or extends the trusts of a charity.</p> <p>It may be a fully regulating scheme, covering all aspects of a charity's administration and purposes and replacing the previous governing document, or it may be a scheme that adds to or alters some part of the governing document.</p>
<b>Special trust</b>	<p>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</p>

<b>Glossary</b>	<b>Definition</b>
	than those of the main charity. Sometimes these funds are separate charities, run and administered by its own trustees, and at other times the funds are part of a main charity.
<b>Spirit</b>	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?
<b>Substantially similar</b>	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.
<b>Statement of reasons</b>	The justification provided by the charity for its decision.
<b>Unincorporated charity</b>	An unincorporated charity is one which is not a company or corporate body. Unincorporated charities may be a trust or association and have a trust deed, constitution, or will as its governing document. Unlike a charitable company, unincorporated charities do not have their own separate legal identity. Charity trustees of unincorporated charities are liable for what the charity does. You may need to take legal advice if you are uncertain of your liabilities.
<b>Undischarged bankrupt</b>	This is someone who has been declared bankrupt, and is not yet discharged from bankruptcy.

## Useful contacts

### **The Charity Tribunal**

Tribunals Hearing Centre  
2nd Floor, Royal Courts of Justice  
Chichester Street  
Belfast  
BT1 3FJ

**Telephone:** 0300 0200 7812

**Website:** [www.courtsni.gov.uk/en-GB/Tribunals/CharityTribunal](http://www.courtsni.gov.uk/en-GB/Tribunals/CharityTribunal)

### **Charity Commission for England and Wales (CCEW)**

PO Box 211  
Bootle  
L20 7VX

**Telephone:** 0300 066 9197

**Website:** [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)

### **Department for Communities**

Lighthouse Building  
1 Cromac Place  
Gasworks Business Park  
Ormeau Road  
Belfast  
BT7 2JB

**Telephone:** 028 9082 9000

**Website:** [www.communities-ni.gov.uk](http://www.communities-ni.gov.uk)

### **HM Revenue and Customs (HMRC)**

HM Revenue & Customs  
Charities, Savings and International 2  
HM Revenue and Customs  
BX9 1BU  
United Kingdom

**Telephone:** 0300 123 1073

**Website:** [www.hmrc.gov.uk/charities](http://www.hmrc.gov.uk/charities)

**The Fundraising  
Regulator**

1st Floor  
10 St Bride Street  
London  
ECA 4AD

**Telephone:** 0300 999 3404

**Website:** [www.fundraisingregulator.org.uk](http://www.fundraisingregulator.org.uk)

**The Law Society of  
Northern Ireland**

96 Victoria Street  
Belfast  
BT1 3GN

**Telephone:** 028 9023 1614

**Website:** [www.lawsoc-ni.org.uk](http://www.lawsoc-ni.org.uk)

**Northern Ireland  
Council for Voluntary  
Action (NICVA)**

61 Duncairn Gardens  
Belfast  
BT15 2GB

**Telephone:** 028 9087 7777

**Website:** [www.nicva.org](http://www.nicva.org)

**Office of the Scottish  
Charity Regulator  
(OSCR)**

2<sup>nd</sup> Floor  
Quadrant House  
9 Riverside Drive  
Dundee  
DD1 4NY

**Telephone:** 01382 220 446

**Website:** [www.oscr.org.uk](http://www.oscr.org.uk)

## If you are unhappy with our decision

If you disagree with a decision made by the Commission, we would like to reconsider it ourselves in the first instance. 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 we will refer the matter to someone who did not make the original decision. You can also seek to appeal our decision at the Charity Tribunal.

## If you are dissatisfied with our service

The Commission is committed to delivering a quality service at all times. However, we know 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](http://www.charitycommissionni.org.uk)

# Freedom of information and data protection

## Data Protection

Any information you give us will be held securely and in accordance with the rules on data protection. Your personal details will be treated as private and confidential and safeguarded, and will not be disclosed to anyone not connected to the Charity Commission for Northern Ireland unless you have agreed to its release, or in certain circumstances where:

- we are legally obliged to do so;
- it is necessary for the proper discharge of our statutory functions;
- it is necessary to disclose this information in compliance with our function as regulator of charities where it is in the public interest to do so.

We will ensure that any disclosure made for this purpose is proportionate, considers your right to privacy and is dealt with fairly and lawfully in accordance with the Data Protection Principles of the Data Protection Act.

The Data Protection Act 1998 regulates the use of “personal data”, which is essentially any information, whether kept in computer or paper files, about identifiable individuals. As a “data controller” under the Act, the Charity Commission for Northern Ireland must comply with its requirements.

## Freedom of Information

The Freedom of Information Act 2000 gives members of the public the right to know about and request information that we hold. This includes information received from third parties.

If information is requested under the Freedom of Information Act we will release it, unless there are relevant exemptions. We may choose to consult with you first if this relates to your consultation or application. If you think that information you are providing may be exempt from release if requested, please let us know.

**Further information on our activities is available from:**

**Charity Commission for Northern Ireland  
257 Lough Road  
Lurgan  
BT66 6NQ**

**[www.charitycommissionni.org.uk](http://www.charitycommissionni.org.uk)**

**Email: [admin@charitycommissionni.org.uk](mailto:admin@charitycommissionni.org.uk)  
Tel: 028 3832 0220  
Fax: 028 3834 5943  
Text Phone: 028 3834 7639**



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