

Requesting a scheme

Guidance for charity trustees on requesting a scheme to update charitable purposes or transfer charitable gifts



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

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 guidance 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 which 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

Sometimes charities need to adapt the way they operate to reflect changes in society or the context in which they work. Some charities may have the power in their **governing document** to make changes. Others may be able to use provisions set out in the **Charities Act (Northern Ireland) 2008** (as amended) ('the Charities Act') and in our guidance *New powers for unincorporated organisations* or *Consents for charitable companies*.

This guidance on *Requesting a scheme* provides information on what to do if you do not have the powers within your governing document or cannot use the provisions under 'the Charities Act' but need to:

- change your **charitable purposes** or
- transfer a charitable gift in order to ensure that your charity remains effective.

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.

Section 2: About this guidance

What does this guidance cover?

This guidance has two main sections. It is intended to support charities to understand the processes for requesting and making a scheme.

Section 3: Requesting a **scheme**, which details the kind of circumstances where **charity trustees** may require a scheme.

Section 4: Making a scheme, which outlines the key steps required in order to make a scheme.

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, **charitable companies** also have to be mindful of the requirements of company law. More information on this can be accessed from [Companies House](#).

What is our approach to decision making?

The Commission adopts a risk based approach when making any decisions on whether or not to grant a scheme. 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 about schemes in line with its *Publishing our decisions* policy.

We will usually publish our intention to make a scheme as well as the final scheme, unless we consider on an individual case that there is a clear reason why we should not. This is because we believe this type of decision can affect public trust and confidence in charities.

Who does this guidance apply to?

This guidance is aimed at charity trustees, members of management committees, directors of charitable companies or someone acting on behalf of a charity, for example, a solicitor, accountant, agent or adviser. It applies to all types of charity, whether they are companies, trusts, unincorporated or associations, where they do not have the powers in their own governing document to make changes or cannot use the provisions in the Charities Act.

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.

Please check our website www.charitycommissionni.org.uk to make sure you are using the latest versions of forms and guidance.

Section 3: Requesting a scheme

3.1 When does this apply?

With very few exceptions, we can only use our power to make a **scheme** where **charity trustees** ask us to.

We can make a scheme to:

1. Change the **purposes** of a charity when the current purposes:
 - can no longer be carried out
 - have been fulfilled or adequately provided for in other ways
 - do not provide a use for all of the charity's income or **property**
 - use outdated definitions of areas, places or classes of people or
 - have ceased to be charitable in law.
2. Transfer a charitable gift which has stopped being a useful way of using the funds or property.

Case study examples:

1. A site was held on trust for the erection and maintenance of an intermediate school, no school was ever built on the site and the **charity trustees** therefore surrendered the site. A scheme was then made to transfer the net profits from surrender of the lease to the charity trustees of an existing school.
2. A health and social care board was the trustee of a number of charitable gifts and bequests for the benefit of a hospital which closed. The trust fund could no longer be applied and a scheme was made to allow the board to apply the fund for the benefit of patients in another hospital.
3. The will of a university graduate established a trust fund. The income of the trust fund was to be invested and spent on a prize awarded each year to the most promising graduate of the deceased's subject at his university. When that subject was no longer offered, the income from the trust was unable to be applied as per the trust's original purposes. A scheme would allow for the income to fund a prize awarded to the most promising graduate in a similar subject.

In agreeing a scheme, we must apply the principle of **cy-près**. This is a legal principle which translates to 'as near as possible'. This is used to ensure that we take account of the **spirit** or underlying intention of the existing purposes or gift and of current social and economic circumstances.

There is no limit to the value of the charitable trust involved, or the income of the organisation.

3.2 How do you request a scheme?

The Commission has developed a form in order to help you request a scheme - *Application form to request a scheme*. You must provide evidence to support the proposed action. This may vary depending on the situation. You must explain in your own words why a scheme is necessary and attach all information you are asked for, for example:

- a copy of the will, if the charity is founded on a bequest, or of its Deed of Trust, Constitution, or other governing instrument
- a written statement from the charity trustees giving details of the charity's history and method of operation
- any previous schemes.

3.3 What do you need to consider in advance?

There are a number of things to think about before submitting your request.

- Do you have the power to make the change yourself?
- Have you consulted with people who might be affected?
- Are there likely to be objections to the proposed scheme?
- Have you included all relevant information requested in the form?
- Is there likely to be a financial cost to the charity and, if so, is it in the charity's best interests?
- Are the new purposes as close as possible to the original purposes - are they **substantially similar**?
- What is the geographical area concerned?
- What is the spirit or intention of the existing purposes?
- What are the current social and economic circumstances?

We will decide on the terms of the scheme in consultation with you and, where appropriate, other people who may be affected by it.

3.4 Failed appeals regulations

A failed appeal occurs when an attempt to raise funds does not achieve the target amount required, for example, to complete a particular project or to purchase a piece of equipment.

The Charity (Failed Appeals and Disclaimers) Regulations (Northern Ireland) 2013 came into operation on 1 July 2013. In the case of a failed appeal, the regulations state that one of two outcomes can occur.

1. Charity trustees return all donations to their original donor and explain that the appeal has failed.
2. Charity trustees apply to the Commission for a scheme to be made to amend the original purpose(s) of the appeal to allow the funds raised to be used. A scheme may also be needed when an excess of funds are donated, to allow the remainder to be used for another purpose.

Donors should be informed at the outset that if the original appeal fails, their donation will be used for something similar.

You can access a full copy of the 2013 regulations via our website www.charitycommissionni.org.uk

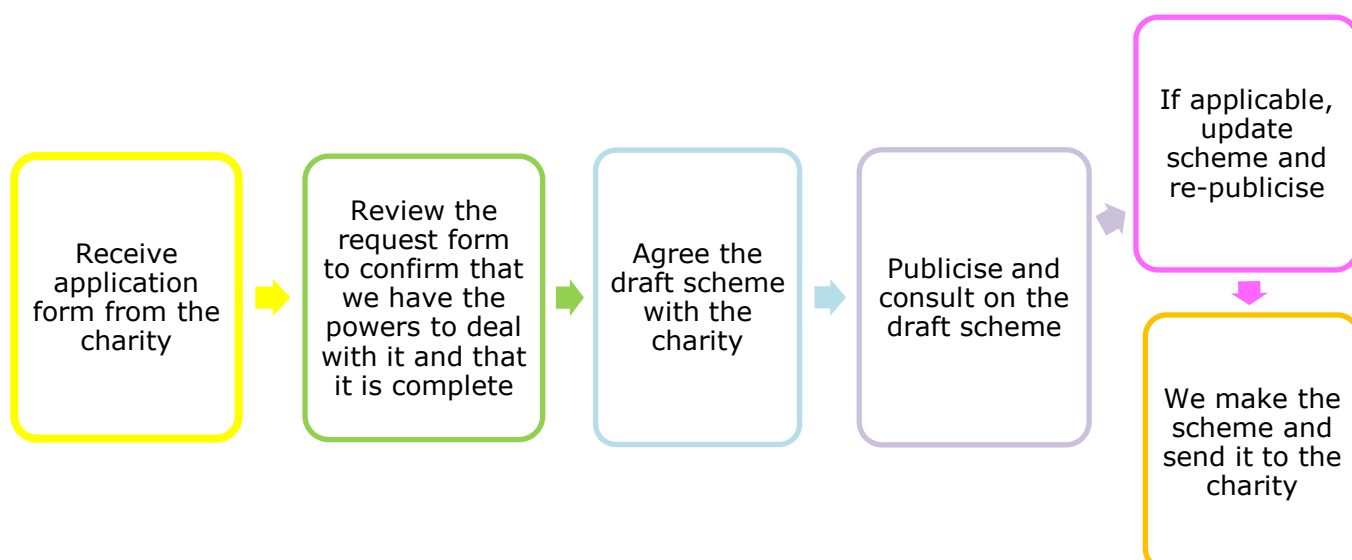
If you require the Commission to make a scheme for a failed appeal, please contact us.

The flow chart may assist you in following the required procedure:

What is the process you should follow?



What is the process the Commission will follow?



Section 4: Making a scheme

4.1 What are the steps?

The process by which a **scheme** is made can be complex. The key steps involved are outlined below.

Step 1: We receive your application form

When we receive your application form, we will review it to ensure that we have the powers to deal with it and that it is complete. We may write to you if we need further information.

Step 2: We review the application form

We will review in detail the application form and all supporting documents. We will also refer to any relevant schemes made previously. We will contact you if we require any further information.

Depending on the nature of your request, we may need to refer it to another party, for example, if a gift was made to a charity which never actually existed. If this is the case, we will advise you of the referral and whether there are likely to be any delays in processing your application.

We may examine the **purposes** of the proposed recipient (where appropriate) to ensure that they are sufficiently similar, taking account of the intended area of benefit, the type of beneficiaries, social and economic environment and the nature of the charitable purposes.

Step 3: Consultation and publication

When we have sufficient information to consider your request, we will consult with you to agree and produce a draft scheme. This draft scheme will be published on our website.

The Commission may require a notice to be published in the media, for example, in newspapers, on other websites or in a community centre or local hall. It is the responsibility of the charity to post the **public notice** and we will require evidence of this, for example, a photograph of the notice.

The publication period will last for a minimum of one calendar month. In some cases we may decide that this timeframe should be extended.

Any objections to the scheme must be received by the Commission in writing and within the time period specified in the public notice. Anyone may object to a proposed scheme, whether they are beneficiaries, funders

or members of the public. If objections are received, this does not mean that the scheme will automatically be amended, however, we will take them into consideration.

Step 4: We make a scheme

Once all consultation and feedback has been considered, we will agree the scheme with you. Three copies will be sealed and signed and a copy will be held by:

- the charity trustees
- the Commission
- the Public Records Office for Northern Ireland (PRONI).

We will publish a copy of the scheme on our website.

4.1 What are the possible outcomes?

We can make a scheme where we receive the necessary evidence, the application form has been correctly completed and we have the power to deal with it. Where the application reveals that either the applicant is not eligible or a different type of consent is required, we will advise the applicant why and point them in the direction they need to follow.

4.2 What about objections?

An objection to a proposed scheme can be made at any time during the publication period. Objections received after this time will not be considered except in **exceptional circumstances**. An objection must be received by the Commission in writing and include:

- the objector's name and address
- the nature of their interest in the charity (if any)
- the nature of their objection and the reasons for it.

In some cases, objections will bring new information to light, for example matters that may affect the charity's beneficiaries or be of interest to the public. We will consult with the original applicants on any objections received. This is not a forum for making a complaint about a charity and should only refer to the proposed scheme.

Ultimately, a decision will take into consideration information provided by both the applicant and any objectors. If the proposed scheme is amended, we will republish the amended scheme for comment on our website and may require the charity to give additional public notice. Once authorised, a scheme can only be reviewed on application to the Court of Appeal.

4.3 What are the costs involved with making a scheme?

The Commission does not charge a fee for making a scheme. However, there may be associated costs incurred such as:

- any professional advice you seek
- the cost of publishing notices (if necessary)
- land valuation services
- your own staff time
- making copies of the scheme to give to each trustee.

The Commission may recover costs, for example land valuation fees, if incurred. These costs will be recouped from the fund in question.

4.4 How long will the process take?

It is difficult to say how long it takes to make a scheme because every case is different.

We normally aim to complete a scheme within six months of receiving a fully completed application form and all necessary evidence. However complicated schemes can take much longer. We will keep you up to date at all stages of the process.

The timescale will depend on a number of factors including, but not limited to:

- how complicated the scheme is
- liaison with independent advisers
- whether public notice is required
- whether any objections are received
- consultation with charity trustees.

Step 5: You apply your scheme

You will receive an original sealed and signed scheme which will allow them to carry out the required action.

The sealed and signed scheme should be kept safely. You must give a copy of the scheme to every trustee. If it changes your governing document, you must send a copy of the revised governing document to us.

Term	Definition
Charities Act (Northern Ireland) 2008	<p>References to 'the Charities Act' are to the Charities Act (Northern Ireland) 2008, as amended. The full content of the 2008 Charities Act can be found at www.legislation.gov.uk</p> <p>Not all of the sections of the Charities Act are in force yet. Details of the sections that are in force are available on the Commission's website www.charitycommissionni.org.uk</p>
Charities Act (Northern Ireland) 2013	<p>The Charities Act (Northern Ireland) 2008 is the main piece of legislation establishing the Charity Commission for Northern Ireland and setting out its functions and powers.</p> <p>The Charities Act (Northern Ireland) 2013 is a much shorter Act and was primarily brought in to amend the definition of a charity in the Charities Act (Northern Ireland) 2008.</p> <p>The full content of the 2013 Act can be found at www.legislation.gov.uk</p>
Charitable company	<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>
Charity trustees	<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.</p> <p>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"> • 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

Term	Definition
	<ul style="list-style-type: none"> is an undischarged bankrupt or has made an arrangement with creditors has previously been removed as a trustee by the Commission or by the Courts is subject to disqualification under company legislation.
Cy-près	<p>Cy-près is a term drawn from Norman French and means "as near as possible." Cy-près is used in charity law because sometimes the circumstances of charities change so that it is impossible or impracticable for their original purposes to be met.</p> <p>A cy-près scheme is the legal document which provides for the transfer of an asset intended for one charitable object to another. Section 26 of the Charities Act (Northern Ireland) 2008 sets out the circumstances in which the purposes of a charitable gift can be altered so that it may be applied cy-près.</p>
Exceptional circumstances	This might include challenges relating to accessibility, unforeseen major postal disruption, religious holidays, ill health or bereavement.
Governing document	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.
Property	This can refer to cash, investments, stocks and shares as well as buildings and land.
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:

Term	Definition
	<ul style="list-style-type: none"> • 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. <p>Public notice could take the form of 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>
Purposes	<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"> • fall under one or more of the list of 12 descriptions of charitable purposes in the Charities Act and • be for the public benefit.
Scheme	<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. 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>
Section 26	<p>Section 26 of the Charities Act sets out the circumstances in which the purposes of a charitable gift can be altered so that it may be applied cy-près. They include:</p> <ul style="list-style-type: none"> • when winding up or dissolving your charity • when your charity's purposes can no longer be carried out, or not in the way laid down in the governing document • when the current purposes have been fulfilled, or adequately provided for in other ways, for example, out of public funds • when the current purposes do not provide a use for all of the charity's income or property

Term	Definition
	<ul style="list-style-type: none"> • When the current purposes use outdated definitions of areas, places or classes of people • when the current purposes have ceased to be charitable in law • when the current purposes have stopped being a useful way of using the funds or property • Where two or more charities with similar purposes want to merge but do not have the legal power to do so.
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?
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.
Trust	A charitable trust is where property is held by charity trustees for the benefit of the public or a section of the public.
Undischarged bankrupt	This is someone who has been declared bankrupt and is not yet discharged from bankruptcy.
Unincorporated charity	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 legally responsible, jointly and as individuals, for any liabilities incurred by the charity.

Useful contacts

There are many resources that charity trustees can use to help them carry out their duties. This is not a definitive list of all the sources of information available, but it offers a good overview and a useful starting point.

The Charity Tribunal

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

Telephone: 0300 0200 7812

Website: 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

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

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

**The Fundraising
Regulator**

1st Floor
10 St Bride Street
London
ECA 4AD

Telephone: 0300 999 3404

Website: 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

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

61 Duncairn Gardens
Belfast
BT15 2GB

Telephone: 028 9087 7777

Website: www.nicva.org

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

2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

Telephone: 01382 220 446

Website: www.oscr.org.uk

If you are unhappy with our decision

An appeal against a scheme would normally be heard by the Court of Appeal. Should you wish to appeal a scheme, you should seek legal advice.

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

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

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Tel: 028 3832 0220
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