



CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

Changing your charity's governing document



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1. Introduction

1.1 What is this guidance about?

This guidance is aimed at trustees who are considering amending their charity's governing document. It summarises how such changes can be made.

1.2 'Must' and 'should': definition

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

The Charity Commission also offers less formal advice and recommendations which trustees may find helpful in the management of their charity.

1.3 Previous guidance

This guidance replaces 'Amending charities' governing documents: Orders and schemes (CC36)' to take into account the provisions of the Charities Act 2011 and to present the guidance in a new and accessible format. In this latest version the commission has made further amendments to section 3 to clarify the position with regard to changes permitting trustee benefits.

1.4 Scope of this guidance

This guidance provides a general introduction and overview to trustees who are considering an amendment to their charity's governing document.

Some of the subjects covered are complex, and covered by different laws and regulations relating to different kinds of charity. You should not rely on this guidance to be an accurate or full description of legal matters affecting your charity.

Nor is the guidance intended to replace advice from a charity's own professional advisers. The trustees should consider whether they need to consult their professional advisers whenever they propose to make an amendment to their governing document.

This guidance is written for trustees of all types of charity, whether they are companies, trusts or associations. There are some differences of approach between these types of charity and the commission has indicated the key ones. 'This guidance is for unincorporated charities and charitable companies - it is not suitable for CIOs, NHS charities or those governed by Royal Charter.

For more information please see **How to change the governing document of CIOs, NHS Charities and Royal Charters**.

Note that this guidance is not about changing the type of legal form that a charity takes. For example, if trustees of an unincorporated charity want to change their charity into a company, that is a separate matter not covered here. The relevant information for such changes is on the GOV.UK website.

1.5 Using this guidance

The key to success when making changes to a governing document is an understanding of the powers available to your charity and how and when they can be used. Reading section 2 (which gives an 'at a glance' summary of the factors) and section 3.2 (which goes into the factors in more detail) will help you to gather the information you need to help you identify what powers apply and how to use them. The rest of section 3 provides more detail on the powers available in the most common situations. There are some situations where the only way to make the change is by applying to the commission for a scheme and section 4 takes you through this process.

The structure of this guidance follows the standard form adopted by the commission. Under each heading, a selection of the relevant questions that trustees may raise are asked. Generally the commission gives a concise summary answer ('The short answer'), and then go on to provide further explanation and background ('In more detail').

The guidance also points readers to sources of further information and forms, most of which are available on the GOV.UK website.

2. Governing document amendments at a glance

When a charity is formed, its purposes and the rules for how it should operate are set down in a governing document.

Founders aim to ensure that a governing document serves the charity well for the foreseeable future, and allows for changing circumstances. However it is likely that, with the passage of time, new needs and unforeseen eventualities will develop and that the governing document may need updating to reflect these changes.

In these circumstances it is the duty of trustees to seek to change the governing document in order to ensure the charity's continuing effectiveness. How they do this depends on the nature of the change, the structure of their charity (company or unincorporated charity), the size and, where the powers provided by statute cannot be used, the terms of their governing document. For example:

- all charitable companies can amend their articles of association; there are certain 'regulated alterations' which require the commission's approval (see 3.6)
- many unincorporated charities with incomes of £10,000 or less can change their governing document, even if there is no power to do so in the governing document (see 3.3 and 3.4); generally speaking the commission's involvement is only needed where the changes involve the charity's purposes or powers which will result in a benefit for the trustees or people connected with them
- trustees of unincorporated charities with incomes of more than £10,000 can change the powers they have to administer the charity and related procedures; if the governing document provides specific powers, the trustees can also change the charity's purposes (see 3.3 and 3.5)

Where none of these options is applicable or available, trustees will need to apply to the commission for a scheme (see section 4). Schemes can also be made by the High Court, although this is likely to be an expensive option.

Whatever the procedure for making the change, trustees of registered charities must keep the commission informed of all changes to a governing document so that the register entry for their charity is up to date. It is also essential that changes are made carefully and after due deliberation: invalid changes, or changes that do not have the desired effect, can create confusion and could potentially harm a charity.

3. Choosing the right option for changing your charity's governing document

This section sets out the main factors which apply to changing a governing document, including the circumstances in which trustees can change it themselves, and when they will need to ask for the commission's help or approval.

3.1 Why is it important to review and update a charity's governing document?

The short answer

Keeping the governing document under review helps to ensure that it is up to date and properly reflects what the charity does and how it operates. Trustees are accountable for administering their charity in accordance with its governing document and this becomes difficult where its provisions are out of date.

In more detail

If the charity's purposes or administrative procedures become outdated or inadequate, the trustees should amend them. Otherwise:

- it can become difficult to be sure who are the correctly appointed trustees
- disputes can be harder to settle if the governing document is inadequate
- trustees might find that their plans go beyond what is allowed by the governing document, with the result that they risk being in breach of trust

3.2 Can a governing document be amended?

The short answer

A charity can amend its governing document if there is a clear power allowing this. Certain powers are available in the Charities Act and the Companies Acts and many charities also have specific powers of amendment in their governing documents. Whatever the source of the power, there will almost certainly be conditions that must be met when using it. Where the change which the trustees wish to make is not covered by these powers, trustees can apply to the commission for a scheme.

In more detail

If trustees think that a change to the charity's governing document is needed, they should consider whether they can introduce the change themselves.

Many governing documents contain a power of amendment. Trustees should check whether their governing document contains such a power, whether the amendment that they want to make is allowed by that power, and whether consent to the amendment is required from the commission or from another third party.

If the trustees cannot make the amendment under a power in the governing document, they may be able to use one of the powers that are available in law. Different powers are available to unincorporated charities and to charitable companies. The first step is to check which of these structures applies to your charity. For unincorporated charities, there are further distinctions which depend on whether their income is more than £10,000 and whether the charity holds designated land.

Having established this, the following are the most common options for change:

- trustees of unincorporated charities with an income of £10,000 or less that do not have designated land have the power to change both their administrative provisions and their purposes (see 3.3 and 3.4) themselves, although changes to purposes must be referred to the commission before they can take effect; this power does not enable trustees to make changes which would have the effect of benefiting themselves or connected persons
- for those unincorporated charities with an income of more than £10,000, trustees can also change the administrative provisions themselves (see 3.3), but changes to the charity's purposes will require either a suitable power in the existing governing document (see 3.5) or a scheme from the commission (see 4.1); changes which would have the effect of benefiting the trustees or connected persons will either require the commission's approval or a scheme
- in the case of charitable companies (see 3.6), the company members have the power to change the articles themselves, but 'regulated alterations' will need the commission's prior consent

Further information: look on the GOV.UK website for the **online form** which the commission recommends trustees use to tell it about the governing document amendments they have made using the powers available them, or to apply to the commission for its authority to make amendments. For guidance relating to benefits to trustees and connected persons see **Trustee expenses and payments (CC11)**.

3.3 Unincorporated charities : can trustees change administrative provisions?

The short answer

Yes. Trustees of all unincorporated charities have the freedom to make changes to their administrative powers and procedures to improve how their charity is run. Certain limits and conditions apply when using the power.

In more detail

Trustees of unincorporated charities have a 'statutory power' - the power granted to them by the Charities Act - to change the administrative powers and procedures of their charity. Some charities will already have this power in their governing document but this does not prevent them from using the statutory power if that provides greater flexibility.

What the power allows. In broad terms, it allows trustees to make changes to the powers and procedures in their charity's governing document relating to the administration of their charity. This includes, for example, powers to change a charity's name, to borrow or invest money and to co-operate with other charities, as well as procedures relating to membership, the appointment of officers and the management of meetings.

Limits: Whilst the statutory power allows changes to many aspects of a governing document, trustees cannot use it to alter their charity's purposes (or to give themselves a power to change the purposes), to spend capital held as permanent endowment or to authorise payment to themselves or related parties. The power cannot be used to change provisions giving third parties rights to nominate trustees (unless the third party has ceased to exist or given consent to the change). The power can be used in certain circumstances to amend other powers which the governing document states the trustees can only exercise with the consent of a third party but the charity trustees must have the agreement of the third party to that amendment or the third party must have ceased to exist. Where the third party is not willing or is unable to consent to such a change to the powers where they have rights, the commission is willing, if satisfied that the change is expedient in the interests of the charity, to make a scheme to effect the change.

Important safeguards: Trustees must pass a resolution to approve a change under the statutory power. This may be at a properly constituted meeting, or by any other method allowed by the governing document for such resolutions. If the charity has a membership that is separate to the trustees, a further resolution must be approved by the members of the charity. Where trustees use an amendment power contained in their charity's governing document, they must comply with any conditions and limitations that it imposes. Trustees of registered charities must notify the commission of any amendments they have made and when they made them and send the commission a copy of their updated governing document. The commission recommends that they do this using the **online form**, to which they can attach a copy of their updated governing document. The commission can then update the charity's entry in the register.

Seek advice and guidance: Governing documents exist for as long as the charity does, so trustees should take care in drafting changes. It can be helpful to look at the model governing documents on the GOV.UK website to see if any of the clauses they contain can be used, at least as a starting point, in drafting the changes for the charity's governing document. It is also important that trustees do not act beyond their legal powers. It can harm a charity if changes are made that are legally invalid, or do not have the required effect.

3.4 Small unincorporated charities: can trustees change their purposes?

The short answer

Yes, trustees of unincorporated charities with an income of £10,000 or less that do not hold designated land can change their charity's purposes. They do this by resolution which takes effect 60 days after the commission receives a copy of it, unless the commission objects, requests further information or requires publicity to be given. This should be a considered step that trustees take to ensure the effectiveness of their charity. The power to do this is in the Charities Act: if the charity's governing document contains a power that is easier to use (because, for example, it can take effect without having to wait for 60 days) then the trustees are free to use that power instead.

In more detail

The Charities Act enables smaller charities to change their governing documents more easily. This includes a power that allows trustees of charities with an income of £10,000 or less that do not hold designated land to change their charity's purposes themselves.

This is a power that should be exercised carefully, since a charity's purposes communicate the true character of the charity and are intended to endure: it is only when this ceases to be the case, perhaps because society has changed, that trustees might consider the appeal or relevance of their charity's purposes. For example, a charity set up to assist victims of a disaster that happened fifty years ago would need to re-examine its purposes when the number of people still needing help reduces. The charity could (for instance) consider extending its work to cover people affected by other disasters in the same area or country or to relieve need and suffering regardless of the cause.

Any new purposes should serve the charity's interests well and must be as similar in character to the old ones as is practical in the circumstances. They must also be exclusively charitable in their wording.

To amend the purposes, trustees must pass a resolution by at least two-thirds of those who vote. They should use the **online form** to tell the commission about the amended purposes, what they will do to achieve them and when they agreed the change. Unless the commission objects or requests further information or publicity, the resolution will automatically take effect 60 days after it has been received.

3.5 Larger unincorporated charities: can trustees change their purposes?

The short answer

Trustees of unincorporated charities with incomes of more than £10,000 can change their charity's purposes themselves only if the governing document provides them with that power. Trustees of unincorporated charities without such a power will need to ask the commission for a scheme (see section 4).

In more detail

Trustees of these charities will need to check whether the charity's governing document gives them the power to make the desired changes and, if so, the procedure they must use.

Such amendments usually require a decision of the trustees and/or a resolution of the members of the charity, but the governing document itself will set out these requirements.

Even a wide power to amend will usually provide, either expressly or implicitly, that any amended object has to be exclusively charitable. The terms of such a power must be strictly observed.

The governing document may indicate that approval to a proposed amendment is required, whether from members or from another organisation, such as the commission or a local authority or founder. Where the commission's consent is required, the commission will apply a similar test to that applied in considering whether to give consent to a change of purpose by a charitable company. In all cases, the trustees of a registered charity must send a copy of the resolution making the change and a copy of the revised governing document to the commission, alongside notification of the date of the change so that the charity's register can be kept up to date.

3.6 Charitable companies: how can the articles of association be changed?

The short answer

The company members need to agree any changes to the articles of association. The commission's prior consent will usually also be required if the articles say that changes of any kind demand it, or if the change is a 'regulated alteration'.

In more detail

Unless the articles of association say that the commission's consent is required for all proposed changes, charitable companies are free, in most cases, to make any changes which are not regulated alterations.

(An exception to this is where the effect of the alteration is to remove an express prohibition for paying a trustee so that the charity can use the statutory powers in the Charities Act. Although such a change is not a regulated alteration, it will in certain circumstances need separate authority from the commission.)

'Regulated alterations' refers to changes to the articles of association in areas of fundamental importance which require the commission's prior consent. These fall into three broad categories:

1. Any change to the statement of the objects of the charity.
2. Any change to what happens to the charity's property on winding up.
3. Any change which authorises the charity's funds or property to be used to benefit the directors or members, or people or organisations connected with them.

Regulated alterations require the consent in writing of the commission before the resolution making the alteration is passed by the charity.

Alterations generally require a special resolution in order to come into effect: in practice, this normally means obtaining members' consent at a General Meeting. Where any change is approved, the company must send a signed copy of the resolution giving effect to the change and a copy of the articles as altered to the Registrar of Companies at Companies House within 15 working days of it being made. The company should also notify the commission of the change at the same time by using the **online form** (to which it can attach an updated copy of its articles) so that the commission can update its entry in the register of charities.

Except in the case of changes to the statement of objects, an amendment will take effect from the date the special resolution is passed. Where a charitable company amends its statement of objects, these amendments only come into effect once they are registered at Companies House. A charitable company can only start acting under the new objects after this registration date.

3.7 Must trustees inform the commission of changes to the governing document?

The short answer (legal requirement)

Yes, trustees must keep the commission informed of such changes if their charity is registered.

In more detail

The law requires trustees of registered charities to tell the commission about changes to their charity's governing document so that the **register of charities** can be kept up to date.

Trustees must send details of changes to the commission, and include:

- what the changes were
- evidence that changes were properly made
- the date that the special resolution was passed
- where the charity's statement of objects has changed, the date these changes were registered at Companies House

Charities may find it helpful to consult the GOV.UK website, where forms and guidance to assist with this process are provided.

4. Amending a governing document by scheme

This section describes how changes can be made where no power is available in the governing document or in law. It involves seeking a scheme from the commission under the Charities Act.

4.1 What is a scheme?

The short answer

A scheme is a legal document, in this context made by the commission. It can add to, replace or amend any or all of the provisions in a charity's governing document.

In more detail

There are simpler ways to make changes to a governing document than using a scheme (see section 3). The commission only offers to make a scheme where no other simpler and quicker method of changing a charity's trusts is available.

In practice a scheme is most likely to be used where the trustees have no power to make the changes themselves. This would largely cover changes which involve updating the purposes of an unincorporated charity with an income of more than £10,000, or where it holds designated land or to introduce changes for any unincorporated charity which might benefit the trustees or connected businesses or individuals.

With very few exceptions the commission can only use its power to make schemes where trustees ask to. In making a scheme the commission will always work closely with the trustees and their advisers to agree its scope and wording.

The Charities Act sets out the key procedural requirements for making a scheme and these are described in 4.3 - 4.5.

Schemes can also be made by the High Court but this is usually an expensive option.

4.2 When might the commission change the purposes of a charity by scheme?

The short answer

The Charities Act sets out the circumstances in which the commission can change a charity's objects by scheme.

In more detail

The commission can make a scheme to change the objects of a charity when the current objects:

- can no longer be carried out, or not in the way laid down in the governing document
- have been fulfilled, or adequately provided for in other ways (for example, out of public funds)
- do not provide a use for all of the charity's income or property
- use outdated definitions of areas, places, or classes of people
- have ceased to be charitable in law
- have stopped being a useful way of using the funds or property (for example, providing for very small payments or gifts of food or fuel to beneficiaries)
- where two or more charities with similar objects want to merge but do not have the legal power to do so

In agreeing new purposes, the commission must apply the legal doctrine of 'cy-près' – Norman French for 'close to' - to ensure that they take account of the spirit (or underlying intention) of the existing objects and of current social and economic circumstances.

4.3 What is the procedure for applying for a scheme?

The short answer

Trustees should discuss their needs with the commission and request a scheme once it is agreed that this is the best approach. Formal application for a scheme is normally made by trustees acting as a body. The commission will decide on the terms of the scheme in consultation with the trustees and, where appropriate, other people who may be affected by it.

In more detail

The need for a scheme will normally emerge from discussions between a charity's trustees, advisers or senior officers and the commission over proposed amendments to a governing document. The commission may be able to provide trustees with an example of the type of scheme that it thinks would be suitable. If that is not possible the commission will explain the most important features of its proposals in a letter, or in more complex cases it may need to meet with trustees to discuss the proposals.

Once the broad outlines have been agreed, the commission will invite the trustees to apply formally for a scheme. The application will normally come from trustees acting together as a body at a properly constituted meeting. Either of these approaches may be adopted:

- all trustees present sign the application
- all trustees present resolve to authorise one or more people, who do not have to be trustees, to sign on their behalf

If trustees are unable to achieve a quorum, the commission may accept an application for a scheme made by such number of the trustees as the commission considers appropriate in the circumstances.

Once the commission receives the formal application it will prepare a detailed draft of the scheme and send copies to the trustees for their comments and agreement. The commission is responsible for making the scheme and for its content.

4.4 How does a scheme come into effect?

The short answer

Generally, once the commission has agreed the contents of the scheme with the trustees it will sign authorise the scheme so that it comes into effect. Where the commission thinks it would be helpful to seek wider views, comments and objections it will require the scheme to be publicised before it decides whether to authorise it.

In more detail

Many draft schemes will be judged by the commission and by trustees to be unlikely to be the source of controversy or challenge, and will therefore be authorised without any requirements for publicity. Trustees are consulted at the beginning of the scheme process about whether they are aware of opposition to it or controversy that is likely to arise. The vast majority of schemes will not be contentious.

In potentially contentious cases, trustees are expected to have carried out a consultation of their own (most likely with supporters, beneficiaries and others with an interest in the charity) before applying for a scheme. In many cases this will avoid the need for publicity at a later stage.

In some instances – where there is an anticipated high level of public controversy, for example - public notice may be necessary or desirable. In the event of publicity being required, the commission can choose the length of notice period and where publicity should be given. When the publicity period is complete, the commission must consider any representations made in response to it. If the commission decides that changes are needed it will tell the trustees and agree a final draft of the scheme. If the commission does not see a need for any changes, the draft scheme will go forward as drafted. The commission will then bring the scheme into effect.

4.5 What happens after a scheme is authorised?

The short answer

The authorised scheme should be kept safely with the charity's other important papers, and copies should be given to every trustee. Trustees must publish any notices received from the commission in accordance with its instructions.

In more detail

Once the scheme is authorised, the commission will send this to the trustees.

The commission must display a copy of the scheme at its offices for a month – in practice, it does this by publishing it on the GOV.UK website. If the charity operates only in a local area, the commission may also direct that the scheme should be displayed publicly at a convenient place but this is likely only if there have been significant objections before the scheme was made.

Depending on the effect of the scheme, an appeal against it may be brought by a broad range of parties, including the Attorney General and any person interested in the charity. With the exception of the Attorney General, any of these parties must bring their appeal within three months, although appeals of this kind are very rare.

Trustees should keep the authorised scheme safely with the charity's other important papers. A copy of the scheme should be given to every trustee.

4.6 How long does it take to make a scheme and what does it cost?

The short answer

A scheme can often be completed within a few weeks of first identifying the need for one. Where it is difficult to reach agreement and/or there are objections, the process can take much longer. The main costs are those incurred by the charity itself, for example in staff time or fees if they choose to use a professional adviser. The commission does not make any charges for a scheme.

In more detail

It is difficult to say how long it takes to make a scheme because every case is different. Much may depend on, for instance:

- how complicated the scheme is
- how quickly the trustees can meet to consider the draft scheme at different stages
- whether any major objections are received in the event of the commission requiring publicity for a draft scheme

The completion of more complicated schemes, and in particular those which attract adverse representations, may take several months.

The commission does not make any charge for its work in creating a scheme. The main costs to the charity, therefore, may be those of:

- its own staff time working on the scheme
- professional advice sought in connection with the scheme
- the cost of publishing notices if they are needed (see 4.4)
- making copies of the scheme to give to each trustee