



Department
of Health &
Social Care

**NHS CHARITIES
TOGETHER**

NHS Charities- Conversion to Independent Status

Updated February 2020

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1. Introduction

This guide has been prepared by the NHS Charities Together at the request of the Department of Health and Social Care.

It is intended to be outline guidance for NHS bodies in their capacity as corporate trustees of NHS Charities to assist them in understanding the issues and process relating to the possible transfer of the undertaking of an NHS Charity to a new charity independent of the Department of Health and Social Care and unaffected by the National Health Service Act 2006 (referred to below as the 'New Charity').

This guidance is not intended for transfers of charitable funds from an NHS body as corporate trustee to a different NHS body as corporate trustee.

Within the document are hyperlinks to other useful sources of information, with full references also given for those reading this guidance in hard copy.

The background to this position is set out in the Department's paper [Review of the regulation and governance of NHS Charities](#)¹, which is the Government response, issued in March 2014, to the consultation run in 2012/3, based on the [Department's October 2012 report](#)².

All NHS Charities are currently structured as charitable trusts, with their charitable purposes deriving from the National Health Service Act 2006. This guidance is now aimed at those which have an NHS body (either an NHS Trust or Foundation Trust) as corporate trustee.

The guide has had input from the Department of Health and Social Care and the Charity Commission; it indicates when contact will need to be made with them. Contact details for these organisations, and others which may be relevant, are set out in [Appendix A](#).

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291848/Response_to_the_review_of_the_regulation_and_governance_of_NHS_Charities.pdf

2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291846/Review_report.pdf

It is recommended that the NHS bodies in their capacity as corporate trustees seek external advice and assistance from professional advisers (lawyers and accountants) if they decide to proceed with conversion. This guidance is not a substitute for professional advice. Care has been taken in preparing this guidance, but no responsibility or liability is accepted for the information provided.

2. Stage 1 – Investigation

2.1 ‘Conversion to independent status’ in this context involves:

- the creation of a new charity³ suggested to be corporate in form – either a company limited by guarantee (CLG) or a charitable incorporated organisation (CIO) - in relation to which the Secretary of State for Health / Department of Health and Social Care has no formal powers;
- the transfer to the New Charity of the whole undertaking of the NHS Charity; and
- the winding up of the NHS Charity or the appointing of the New Charity as sole corporate trustee of the NHS Charity or linked charities.

A basic flowchart describing this process of conversion is [Appendix B](#).

Note: If the NHS Charity contains endowment (permanent or expendable), there are additional considerations⁴. In particular, if the New Charity is to be a CLG, a slightly different process will need to be followed. In that case, see the variations on the process described in [Appendix C](#), including variations on the flowchart at [\(b\)](#) and [\(c\)](#).

An overview of the possible conversion sequences is set out in [Appendix D](#).

2.2 The NHS bodies will need to consider the principles of conversion to independent status, including its advantages and disadvantages. The [Department’s October 2012 report](#)⁵ referred to above is a good source of these (see paragraphs 81–121). See also the comparative analysis of the present and proposed arrangements at Appendix J.

³ If there is already in existence an independent charity operating to support the same hospital(s), it may be possible to adapt this to be the recipient entity – i.e. the New Charity. It will however have to be reviewed and almost certainly have its objects and probably its governance processes revised so as to satisfy the criteria outlined by the Department and Charity Commission. As the New Charity it will also have to enter into the agreements with the NHS body referred to in this guidance.

⁴ Similar considerations may arise in relation to other special purpose trusts associated with the NHS Charity – e.g. those which are registered as ‘linked charities’ of the NHS Charity, where the New Charity, if it is to be a CLG, will need to be appointed as trustee. Professional advice is likely to be required on this aspect.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291846/Review_report.pdf

2.3 Possible advantages of conversion:

- If set up as either a CLG or a CIO, the New Charity's contractual liability will be limited.
- NHS Charities are within the public procurement regime; the New Charity will not be.
- NHS Charities where the NHS body is corporate trustee will be subject to the Freedom of Information Act 2000. The New Charity will not be subject to the Act and will not have the consequent administrative burden.
- There will be no risk of consolidation of the New Charity's accounts with either the NHS body or the Department of Health and Social Care (provided no NHS body has 'control' over the New Charity - e.g. power to appoint a majority of the board).
- The New Charity will not have to provide data to the Office of National Statistics (because it will not be classified as a public-sector organisation).
- The New Charity can choose its own trustees and advisers (including auditors).
- Where there is the prospect of NHS re-organisation affecting the related NHS body, the New Charity will not be directly affected by the process (although it may subsequently wish to adjust its grant-making to reflect the change), whereas the NHS Charity would be caught up in it.
- The New Charity will be able to adopt wider charitable purposes (for new money) and to enter into more innovative fund-raising initiatives, collaborations and mergers.
- The New Charity will be able to demonstrate to donors and the Charity Commission its independence of decision-making. This is especially important for NHS bodies which are at present corporate trustees of an NHS Charity.

2.4 Possible disadvantages of conversion:

- The process of effecting the conversion will require some expenditure and application of staff resource, and will be potentially disruptive during the transition.
- The New Charity will be an independent entity responsible for its own management and operations and will have to employ its own staff; this may give

rise to additional administration and cost; accordingly, it may not be the right route for a small-scale NHS Charity.

- The New Charity will have a new charity number (but may use the old NHS Charity's name).
- The New Charity's entry on the Charity Commission's register of charities will not show historic financial information or historic accounts for the NHS Charity as this is not possible on the present register. The Charity Commission will, however, allow the New Charity to include in its entry on the register in the 'Activities' section free text which refers to the NHS Charity as the predecessor of the New Charity and to provide a link to historic accounts on the charity website.
- The NHS body may fear loss of influence over 'its' NHS Charity.
- Use of the NHS Logo is no longer automatic but subject to rules and guidelines⁶.

2.5 In this context, the NHS Charity trustee will need to assess how they see the NHS Charity's future and analyse why it might be appropriate to convert or not.

2.6 If the NHS Charity trustee wishes to proceed to conversion, it should notify the Department of Health and Social Care of their intention in principle by a letter signed by the Chair of the NHS body confirming the matter has been considered by the board; and to notify the Charity Commission. It is also helpful if the NHS body can notify the NHS Charities Together.

The next section of this guide deals in more detail with the implementation phase.

⁶ <https://www.england.nhs.uk/nhsidentity/fag/how-can-we-use-the-nhs-identity-on-charity-branded-materials/>

3. Stage 2 – Implementation

3.1 Future relationship between NHS body and the New Charity

As described above, conversion will involve the creation of an independent charity outside the NHS; the future relationship between the NHS body and the New Charity will therefore be of great importance. The [Review of the regulation and governance of NHS Charities](#)⁷ (see paragraph 4.9.4 on page 21) requires a formal agreement or ‘memorandum of understanding’ to be put in place.

It will be the NHS body's responsibility to decide on the principles of this agreement and then formalise it when the New Charity is in existence.

Items which might be addressed and recorded in the memorandum of understanding / agreement(s) are set out in **Error! Reference source not found.** This is not a prescribed form; other than the binding obligation on the NHS body to transfer charitable donations (gifts and bequests) to the New Charity, which is a requirement of the Department's consent, the items are suggestions only.

The Department is, however, of the view that there are good governance reasons why the NHS body should have some continuing means of input into decisions on the use of the New Charity's resources - to ensure that there is shared understanding of how the New Charity is meeting its charitable objects in the use of those resources. This arises both because of the requirement (referred to above) for the NHS body to commit itself to transfer all future charitable donations (gifts and bequests) to the New Charity, and because the New Charity's objects will continue to relate to the NHS body's purposes.

The Department is clear that the NHS body must not have majority control on the board of the New Charity, but suggests (without there being any binding obligation to do so) that the constitution of the New Charity could provide for at least one trustee on the New Charity board to be appointed by, or from, the NHS body. In practice there may be more than one appointed trustee but the appointed trustees should

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291848/Response_to_the_review_of_the_regulation_and_governance_of_NHS_Charteries.pdf

never be a majority on the New Charity board it is recommended that and no appointed trustee should be Chair of the New Charity.

Prior to completion of the conversion, the Department asks to see the following:

- a copy of the memorandum of understanding / agreement(s) in final form;
- evidence of its due consideration and approval by the NHS body's board; and
- a copy of the New Charity's governing instrument (CLG's articles of association or CIO constitution – see 3.2 below).

3.2 New Charity's governing instrument

As the New Charity will be a new entity⁸, it will require a new governing document.

Assuming the advantages of corporate status (including limitation of contractual liability) are sought, that governing instrument will be

- articles of association, if the New Charity is to be a CLG; or
- a constitution, if it is to be a CIO.

For further information about the forms of governing documents, see how to choose a structure⁹ and model governing documents¹⁰ on the Charity Commission's webpages. The Charity Law Association¹¹ also has model forms approved by the Charity Commission which are available to its members. The NHS Charity's legal advisers may also have their own precedents; using one of these may cause the registration process with the Charity Commission (see 3.3) to take slightly longer, but the possibility of tailoring it to the NHS Charity's / New Charity's particular circumstances may justify this. In all cases the Charity Commission should be engaged at the earliest possible opportunity,

⁸ Subject to the comment made in footnote 3 on page 2

⁹ <https://www.gov.uk/charity-types-how-to-choose-a-structure>

¹⁰ <https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents>

¹¹ <http://www.charitylawassociation.org.uk/en/default.aspx>

Aspects to consider include:

- the charitable objects: it will be essential for these to include the existing terms of the NHS Charity (to enable the transfer of the NHS Charity's assets to the New Charity), but it will be possible to include in addition wider objects for new money, if appropriate;
- which other provisions (if any) from the NHS Charity's existing governing document will be included;
- the New Charity's name - this can be the same as the NHS Charity;
- the composition and mechanism for the appointment of the board of the New Charity;
- the extent of the involvement of the NHS body in the New Charity's governance arrangements; (this may involve the NHS body having a specific place on the board to which it appoints - see paragraph [3.1](#) above); and
- who the members of the New Charity will be; (it is possible for the trustees and the members of the New Charity to be the same people).

The Department of Health and Social Care appreciates some transitional arrangements may be needed in relation to independence. However, where the Chair of the New Charity's board is appointed from the linked NHS body, this should be a transitional arrangement for a maximum of one year from the date of independence. Best practice for the New Charity would be to avoid such an arrangement because it raises many issues in relation to conflicts of interest and also can create practical issues where for example the Memorandum of Understanding provides for dispute resolution between Chairs of the New Charity and the NHS body. It would be strongly preferable to avoid any trustee appointed from the linked NHS body serving as Chair of the New Charity even on a transitional basis.

Note: The Department stipulates that the final form and content of the New Charity's governing instrument must be approved by the NHS body.

When the governing instrument's terms have been decided upon, the New Charity can be created (so that it is ready to receive the transfer from the NHS Charity):

- If it is a CLG, this will require incorporation by application to Companies House and subsequent registration as a charity with the Charity Commission (although as set out at 0 below if the New Charity's name is to contain the word 'Charity' or 'Charitable' the Charity Commission will need to approve the registration form

and draft articles before the charitable company can be incorporated at Companies House).

- If it is a CIO, only application to the Charity Commission is required.

Whether it is a CLG or CIO, the New Charity will need subsequently to apply to HM Revenue and Customs for recognition as a charity for tax purposes. The New Charity cannot apply to HM Revenue and Customs until it has a bank account open. Usually this will require opening a new account in the name of the New Charity. It is advisable to begin discussions with the bank early on in the conversion process, as the bank formalities can take some time.

3.3 Engagement with regulators

The NHS body in its capacity as charity trustee of the NHS Charity will need to contact the regulators on the following occasions:

Department of Health and Social Care:

Having decided in principle to start the conversion process, to notify the Department that it is proposing to re-structure and to give an estimate of the likely timescale for the transfer. Many NHS Charities will choose to undertake the conversion at their year end but it can be done at any point in the year. The notification to the Department can be done by email or letter.

At least 6 weeks before the projected transfer date, to provide:

- a copy of the memorandum of understanding / agreement(s) between the NHS body and the New Charity and evidence of their due consideration by the NHS body's board (this can be a letter signed by the Chair of the NHS body confirming the board's approval of the relevant document/s); and
- a copy of the governing document (articles of association or CIO constitution) of the New Charity

Charity Commission

At the earliest possible opportunity:

- To notify the Charity Commission that it is proposing to re-structure
- To give an estimate of the likely timescale for registration with the Commission and for the transfer.

- To advise the Commission whether the re-structure may require any Orders or Schemes (as outlined below), so the process can be planned more efficiently. This will be especially relevant if the NHS Charity holds any assets as endowment.

Note: NHS Charities should allow plenty of time for planning and for the application process, and highlight any deadlines in the application form.

Subsequently:

- To register the New Charity, using the [Apply to Register your charity](#)¹² link on the Commission's website and providing the information requested and a brief summary of the re-structuring arrangements (either in the on-line application form at the 'Special Circumstances' section or in a separate supporting document).

Note:

- If the New Charity is to be a CLG and the name of the New Charity includes the word 'charity' or 'charitable', the Commission will need to receive the registration application form and draft Articles before incorporation, so as to give consent for the use of that term.
- It will assist if the New Charity sends the NHS Charity's last accounts with the registration application (to explain the scope of the charitable work which the New Charity will be taking on).
- To obtain any enabling Orders or Schemes which may be required; these might be necessary in the following circumstances:
 - if the NHS Charity is unable to transfer its assets to the New Charity by way of charitable application (a grant) or (if the New Charity is to be a CIO) a pre-merger declaration¹³, it may require a scheme to vest property in the New Charity¹⁴;

¹² <https://www.gov.uk/how-to-register-your-charity-cc21b#how-to-apply-to-register-your-charity>

¹³ s.310 Charities Act 2011; this can be used both for real property and assets such as private company shareholdings, but this will need to be discussed specifically with the Charity Commission

¹⁴ under s. 69 Charities Act 2011

- If the New Charity is to be a CLG and the NHS Charity has endowment (permanent or expendable)¹⁵.
- The Commission requires three months' notice of any operational involvement in the transfer i.e. the making of an Order or Scheme.

Note: if the last point applies, this will, as already mentioned, cause a number of aspects of the conversion process to be different: see Appendix C.

Charities that need to request permission from the Charity Commission should use the [Contact Charity Commission](#)¹⁶link. (see also [Appendix A](#))

Note: The Commission will usually exercise its powers to make schemes and orders only where there is no other suitable power available to the trustees, either explicit or implied, and the NHS Charity cannot use a power of amendment to adopt the necessary power. Where feasible the Commission will seek to consolidate the authorities, it gives into a single scheme or order, to simplify the paperwork for itself and the NHS Charity.

HM Revenue & Customs

After registration of the New Charity with the Charity Commission, to register it with HMRC for tax purposes.

Note: The New Charity will need to have its new bank account details for inclusion on this application.

3.4 Due diligence

An essential part of the transfer exercise will be for the NHS body as charity trustee to carry out 'due diligence' on its current position:

- to identify all the NHS Charity's assets and liabilities (in particular contracts, investments and properties) and how these will transfer to the New Charity

¹⁵ See also footnote 4 on page 2.

¹⁶ <http://forms.charitycommission.gov.uk/contact-us/>

(assignment / novation), and then to have discussions with any lead contractors, if necessary;

- to open new bank accounts for the New Charity; and
- to prepare a list of related tasks (e.g. charity re-branding, internal and external briefings, website re-development etc) and to allocate responsibility and include in the timetable.

3.5 Employees and pensions

The NHS body as the NHS Charity trustee will need to consider employment issues relating to its staff and the New Charity.

The NHS body as the NHS Charity trustee will need to consider the status of current staff who may be assigned (as all, or part, of their duties) to the NHS Charity, or independent contractors – in order to ascertain whether all or any of them will automatically transfer (by operation of the Transfer of Undertaking Regulations, known as ‘TUPE’) to the New Charity, and what needs to be done in relation to their pension rights and related benefits.

If staff will transfer automatically under TUPE then the NHS body will need to ensure it complies with the regulations as set out further below. The NHS body will need to consider the position of the New Charity acting as employer after independence, the employment framework required and the related costs to the New Charity.

If the staff do not transfer automatically to the New Charity, the NHS body and the New Charity will need to consider how the New Charity will operate and whether, for instance:

- to have staff remain employed by the NHS body and enter into a service level agreement for the provision of services e.g. finance/HR/IT; or
- to recruit its own staff, after the transfer to it of the NHS Charity’s assets.

The Department expects that, after the transfer of the NHS Charity’s assets to the New Charity is complete, any new permanent staff will be recruited directly by the New Charity. It may however still be possible for the NHS Body to provide services to the New Charity under a contract for services.

It is not advisable however to put in place any form of secondment arrangements from the NHS body to the New Charity as recent changes to the NHS pensions regulations can operate to prevent continued participation in the NHS pension scheme (see below for more on NHS pensions).

Note: in this context, there is an important distinction between (a) the secondment of specific staff; and (b) the provision of services (e.g. finance, payroll and HR assistance from relevant departments in NHS body). The potential VAT implications of service level agreements will need to be addressed.

If there are staff who will transfer to the New Charity pursuant to TUPE, the NHS body as trustee of the NHS Charity will need to develop appropriate materials for employee information briefing and consultation (potentially through employee representatives) and identify the related timetable. The terms of the staff's existing contracts of employment will continue to apply.

So far as pension rights are concerned, if the staff transferring to the New Charity are members of (or are eligible for membership of) the NHS pension scheme, their continued membership of the pension scheme should be possible, by the New Charity acquiring "direction employer" status. The NHS Business Services Agency usually advises 12 weeks for the whole process, but earlier contact is encouraged, and further information is available from them¹⁷:

Employees who are members of the NHS pension scheme are usually entitled to other benefits of scheme membership including life insurance, dependants' pensions, ill health early retirement and voluntary early retirement with actuarially reduced benefits; such payments are funded by the scheme. As a result of the application of TUPE, eligible employees will remain entitled to enhanced benefits in the event of redundancy/ early retirement following the transfer to the New Charity, but the cost of these payments will not be met by the scheme and will therefore need to be funded by the New Charity. Similarly, a contractual entitlement to injury allowance may also transfer by reason of TUPE for the benefit of employees who meet the eligibility requirements. These payments are entirely separate from the NHS pension scheme; if an entitlement arises they will also need to be funded by the New Charity.

Access to the NHS pension scheme will not be available for new staff of the New Charity (that is, staff other than those who transfer direct from the NHS Charity when it becomes independent). Until such time as the New Charity reaches the date at which it becomes subject to the obligation to auto-enrol all eligible employees into a

¹⁷See <http://www.nhsbsa.nhs.uk/Pensions/4327.aspx>; http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262490/PU1571_Fair_Deal_for_staff_pensions.pdf.

qualifying pension scheme, it may decide to make no pension provision for new employees. However, all employers will be subject to auto-enrolment. The New Charity will therefore also need to consider the application of the pension auto-enrolment regime.

The next section of this guide deals in more detail with the completion of the re-organisation.

4. Stage 3 – Completion

Completion of the conversion will include the following:

- The NHS body in its capacity as charity trustee resolving to transfer, and the New Charity resolving to accept, the assets and liabilities of NHS Charity.
- The related transfer agreement being made effective.
- The Charity Commission order/scheme – referred to at paragraph 3.3 above, if required – being made.
- Documentation being completed to affect the transfer or novation of contracts to the New Charity.
- Confirmation being given to the Charity Commission that the NHS Charity is to be wound up and registration of the NHS Charity on the Charity Commission [Register of Merged Charities](#)¹⁸. See also paragraph 0 in relation to the treatment of the NHS Charity on the Charity Commission register of charities.
- Notification being given to the Department of Health and Social Care that the transfer is complete and the NHS Charity has ceased to be an NHS Charity.

Note: Variations on the process outlined above will apply where the NHS Charity includes endowment (permanent or expendable)¹⁹; especially where the New Charity is to be a CLG – see Appendix C.

Additional steps which the New Charity is likely to need to take include the following:

- notifying relevant third parties of the transfer (e.g. grant recipients, donors with direct debits, contracting parties);
- notifying employees of the change of the employer's identity;

¹⁸ <https://www.gov.uk/government/publications/register-of-merged-charities>

¹⁹ See also footnote 4 on page 2.

- changing the charity's website - including references to the New Charity's new charity number;
- paying a data protection fee to the Information Commissioner's Office as the New Charity will not be covered by the NHS body;
- amending the charity's literature to use the New Charity's charity number and include the statutory information required for a charitable company or charitable incorporated organisation.

NHS Charities Together is also very keen that it should be notified by NHS Charities which convert, whether or not they are members: see [Appendix A](#) for contact details.

5. Conclusion

The [Review of the regulation and governance of NHS Charities](#)²⁰ (para 4.3, page 19) stresses that “the proposals do not constitute a one size fits all approach and are based on the local circumstances and wishes”.

There is no imperative for NHS bodies which are corporate trustees of NHS Charities to convert. The Secretary of State's powers to appoint trustees for NHS bodies will be revoked on 1 April 2018 but NHS bodies will be able to remain as corporate trustees of NHS Charities and continue to accept and hold charitable gifts.

The Department's overall conclusion in [Review of the regulation and governance of NHS Charities](#)²¹ was that it is appropriate to allow those NHS Charities which wish to move to independent status to do so and to facilitate this, subject to suitable safeguards being adopted and a suitable process followed – as described in this guide.

Please see Appendix G for discussion of various financial management, reporting and control considerations, Appendix H for a key activity chart (in relation to the basic process) and Appendix I Frequently Asked Questions for Frequently Asked Questions about a move to independent status.

For further information and assistance, please refer to the organisations whose contact details are set out in [Appendix A](#).

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291848/Response_to_the_review_of_the_regulation_and_governance_of_NHS_Charteries.pdf

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291848/Response_to_the_review_of_the_regulation_and_governance_of_NHS_Charteries.pdf

Appendix A - Contact details

In all cases, please try contact by email first

NHS Charities Together

Email: info@anhsc.org.uk

Website: www.nhscharitiestogether.co.uk

Telephone: 08454 635328

Postal address: NHS Charities Together, Lake View House, Wilton Drive,
Tournament Fields, Warwick CV34 6RG

Charity Commission

Online contact form: <http://forms.charitycommission.gov.uk/contact-us/general-enquiries/make-a-general-enquiry/contacting-us-online/contacting-us/>

Website: <https://www.gov.uk/government/organisations/charity-commission>

Department of Health and Social Care

Email: NHSCharityQueries@dhsc.gov.uk

Website: <https://www.gov.uk/government/organisations/department-of-health-and-social-care>

Telephone: 0207 210 6336

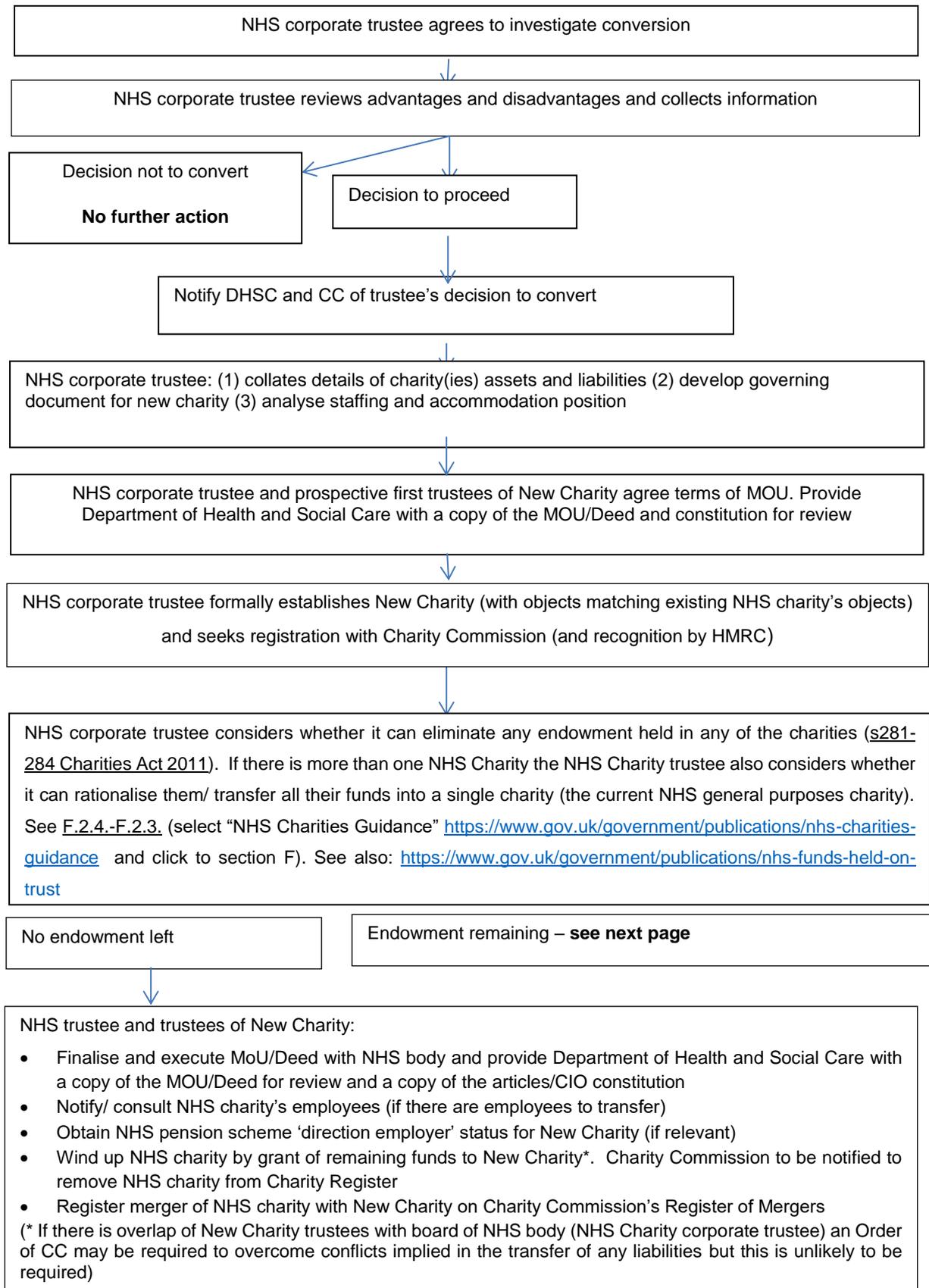
NHS Business Services Agency

Telephone: 0191 232 5371

Postal address: NHS Business Services Authority, Stella House, Goldcrest Way,
Newburn Riverside, Newcastle upon Tyne, NE15 8NY

Appendix B – Basic process flowchart – corporate trustee

Corporate Trustee, NHS Charity Including endowment



If there is endowment to be transferred and the new charity is a CLG or CIO, the following additional steps will be required.



NHS body and trustees of New Charity:

- Finalise and execute MoU/Deed with NHS body and provide Department of Health and Social Care with a copy of the MOU/Deed for review and a copy of the articles/CIO constitution
- Notify/ consult NHS Charity's employees (if there are employees to transfer)
- Obtain NHS pension scheme 'direction employer' status for New Charity (if relevant)
- If New Charity is CLG, by grant transfers from NHS Charity non-permanent endowment funds to New Charity*
- If New Charity is CIO, transfer of NHS Charity funds (including endowment) to New Charity by vesting declaration*

(* If there is overlap of new trustees with Board of NHS body (NHS corporate trustee) **an Order of CC** may be required to overcome conflicts implied in the transfer of any liabilities but this is unlikely to be required)



If New Charity is a CLG, endowment remains in residual NHS charity, but under control of New Charity, not NHS body. This is achieved by the following:

- A short **scheme of the Commission** to appoint the New Charity as trustee of the endowment
- **A linking direction** (s12 Charities Act 2011) to link endowment deriving from the NHS Charity to the New Charity (serving as reporting charity) for purposes of Registration and Accounting; the old NHS charity registration can then be removed.

Description of the flowchart on page 20-21

A flowchart describing the conversion process for corporate trustees, including endowment funds.

Detailed description

Title: Appendix B – Basic process flow chart (variation on Appendix B) – corporate trustee

1. NHS corporate trustee agrees to investigate conversion
2. NHS corporate trustee reviews advantages and disadvantages and collects information.
3. If corporate trustees decide NOT to convert no further action is needed.
4. If corporate trustees decide to proceed they must notify the DHSC and CC of the decision to proceed.
5. Then NHS corporate trustee takes the following actions:
 - Collates details of charity (ies) assets and liabilities
 - Develops governing document for new charity
 - Analyses staffing and accommodation position.
6. NHS corporate trustee and prospective trustees of New Charity develop and agree terms of a Memorandum of Understanding (MoU)
7. Provide DHSC with a copy of the MOU/Deed for DHSC review and a copy of the articles of association/constitution
8. NHS corporate trustee formally establishes New Charity (with objects matching existing NHS charity's objects) and seeks registration with Charity Commission (and recognition by HMRC)
9. NHS corporate trustee considers whether it can eliminate any endowment held in any of the charities (s281-284 Charities Act 2011). If there is more than one NHS Charity the NHS Charity trustee also considers whether it can rationalise them/ transfer all their funds into a single charity (the current NHS general purposes charity). For further details on please go to section F.2.4.-F.2.3. (select "NHS Charities Guidance"
<https://www.gov.uk/government/publications/nhs-charities-guidance> and click to

section F). See also: <https://www.gov.uk/government/publications/nhs-funds-held-on-trust>

10. If there is no endowment left the NHS trustee and trustees of New Charity will take the following actions:

- Finalise and execute MoU with NHS body and Provide DHSC with a copy of the MOU/Deed for DHSC review and a copy of the articles of association/constitution
- Notify/ consult NHS charity's employees (if there are employees to transfer)
- Obtain NHS pension scheme 'direction employer' status for New Charity (if relevant)
- Wind up NHS charity by grant of remaining funds to New Charity*. Charity Commission to be notified to remove NHS charity from Charity Register
- Register merger of NHS charity with New Charity on Charity Commission's Register of Mergers

(* If there is overlap of New Charity trustees with board of NHS body (NHS Charity corporate trustee) an Order of CC may be required to overcome conflicts implied in the transfer of any liabilities but this is unlikely to be required).

11. If there is endowment to be transferred and the new charity is a CLG or CIO, the following additional steps will be required:

NHS body and trustees of New Charity:

- Provide DHSC with a copy of the MOU/Deed for DHSC review and a copy of the articles of association/constitution
- Notify/ consult NHS Charity's employees (if there are employees to transfer)
- Obtain NHS pension scheme 'direction employer' status for New Charity (if relevant)
- If New Charity is CLG, by grant transfers from NHS Charity non-permanent endowment funds to New Charity*

- If New Charity is CIO, transfer of NHS Charity funds (including endowment) to New Charity by vesting declaration*

(* If there is overlap of new trustees with Board of NHS body (NHS corporate trustee) an Order of CC may be required to overcome conflicts implied in the transfer of any liabilities but this is unlikely to be required)

12. If New Charity is a CLG, endowment remains in residual NHS charity, but under control of New Charity, not NHS body. This is achieved by the following:

- A short scheme of the Commission to appoint the New Charity as trustee of the endowment
- A linking direction (s12 Charities Act 2011) to link endowment deriving from the NHS Charity to the New Charity (serving as reporting charity) for purposes of Registration and Accounting; the old NHS charity registration can then be removed.

Appendix C - If the NHS Charity has endowment

(a) Guidance

1 Permanent endowment

'Permanent endowment' is a fund held on restricted trusts that prevent it being spent as income; it must be retained and invested, but the income from the investment can be spent.

Unlike unrestricted assets, permanent endowment cannot simply be transferred from the NHS Charity to the New Charity. It will need special treatment. The trustees of the NHS Charity must choose from the following options, depending on the circumstances:

(a) Remove the restriction on the permanent endowment

If the value of the endowment is less than £10,000, it is straightforward for the trustees to pass a resolution under s.281 of the Charities Act 2011 to remove the restriction on the endowment.

If the value of the endowment is greater than £10,000, it may be possible for the trustees to pass a resolution to remove the restriction on the endowment, subject to the conditions in s.282 Charities Act 2011. These include giving notice to the Charity Commission. See: <https://www.gov.uk/permanent-endowment-rules-for-charities>²²

Once the restriction is removed, the endowments can be spent or transferred as unrestricted funds.

If therefore all permanent endowment is de-restricted prior to transfer, the process of conversion of the NHS Charity to independent status will be as described in the body of this guidance. If, however, any permanent endowment remains, that process will be modified as set out below.

(b) Transfer if the New Charity is a CIO

If the New Charity is a CIO, the NHS body as trustee of the NHS Charity can transfer permanent endowment using a pre-merger vesting declaration²³. The vesting declaration will:

- transfer property which has no restrictions to the CIO to be held as part of its corporate property

²² <https://www.gov.uk/permanent-endowment-rules-for-charities>

²³ under s.310 and s.312 of the Charities Act 2011 (as amended by the CIO General Regulations)

- vest legal title to the permanently endowed property in the CIO, to be held on its original trusts (and managed and accounted for a “special trust” restricted fund).
- appoint the CIO as trustee of the permanent endowment and give it the powers of a trust corporation for that trust
- mean that the CIO and the permanent endowment are treated as a single charity for registration and accounting purposes, so they will not need to register separately or produce separate accounts. This will enable the former NHS charity to be regarded as fully wound up, and therefore removed from the register of charities.

Further explanation of the vesting declaration process can be seen in the Commission’s published Operational Guidance [OG715-04](#) at B.4.4.

If a vesting declaration is used, the merger must then be recorded in [Register of Merged Charities](#)²⁴. Legacies to the former NHS Charity should then automatically pass to the New Charity.

Note: A vesting declaration does not, however, transfer: land held by the NHS Charity as security for money subject to the trusts of the NHS Charity, any land held under a lease which contains any covenant against assignment without consent (unless the consent has been obtained before the date on which the property will vest) and any shares etc which are only transferable in books held by a company. A vesting declaration also cannot deal with any ongoing liabilities of the NHS Charity (and so in most cases separate documentation will be needed to deal with this - such as a formal transfer agreement); nor will it address the need to assign / novate important contracts (e.g. intellectual property licences).

(c) Transfer if the New Charity is a CLG

Charitable companies cannot hold permanent endowment as part of their corporate property.

Once the NHS Charity has transferred all its unrestricted funds to the New Charity, the NHS body as NHS Charity trustee will need to apply to the Charity Commission to make a Scheme to:

- appoint the New Charity as sole corporate trustee of the permanent endowment and any other remaining special purpose trusts, in place of the existing NHS Charity Trustee; and
- confer trust corporation status on the New Charity as trustee.

In addition, the Commission will make a linking direction (under s12 Charities Act 2011) enabling permanent endowment²⁵ that has remained in the old NHS Charity to be treated by the new trustee as

²⁴ <https://www.gov.uk/government/publications/register-of-merged-charities>

²⁵ And, potentially, special purpose trusts – see footnote 4 on page 2.

forming part of the New Charity (which will be the Reporting Charity) for registration and accounting purposes: this does not mean that it is merged into the New Charity. If the permanent endowment generates income >£5,000 (the threshold for mandatory registration), the former NHS Charity containing the permanent endowment will be shown as a linked charity of the New Charity. It may usefully be renamed to include the word “Endowed” (e.g. “X Hospital Endowed Charity”) to avoid confusion with the New Charity (in particular if this has inherited the name of the former NHS Charity).

If the income from the endowment is below the mandatory registration threshold (currently £5,000) it can be managed and reported as a “special trust”, and will not need to appear within the New Charity’s registration; (the former NHS Charity will be removed entirely from the Register in this case, rather than being linked to the New Charity’s registration).

The old NHS charity registration will be removed when there are no charities linked to its number.

2 Expendable endowment

An ‘**expendable endowment**’ fund is subject to restriction on expending the capital (and may also have restrictions affecting the expenditure of income). Unlike permanent endowment, however, the trusts themselves enable the trustees to expend capital, provided certain circumstances arise or conditions can be fulfilled. Depending on the conditions attached to the endowment, the trustee will have a legal power to convert all or part of it into a fund which can then be spent as if it is income. In some cases, where the conditions are particularly restrictive, and are binding, the trustee may require authority from the Charity Commission, if the trustee is to be able to convert the endowment to an income fund. There is no actual requirement to spend the capital for the purposes of the charity unless or until the trustee decides to do so. Income generated from expendable endowment, however, is similar to income generated from permanent endowment, and should be spent for the purposes of the charity within a reasonable time of receipt.

If an NHS Charity contains an expendable endowment fund, its trustee's options are:

(a) Remove the restriction on the expendable endowment

The trustee can review the specific circumstances applicable to each such fund and decide whether it is appropriate in all the circumstances (and allowed by the conditions contained in the original trusts) to resolve that in future it will be treated as if it were an income fund of the NHS Charity (and so be capable of transferring to the New Charity to form part of its corporate property). Where the conditions cannot be fulfilled, but the trustee regards it as in the interests of the charity to release the capital for expenditure, the trustee should contact the Charity Commission; or

(b) Transfer if the New Charity is a CIO or CLG

The trustee can adopt the route outlined in paragraph 1(b) or 1(c) above, depending on whether the New Charity is to be a CIO or CLG

Appendix D - Overview of possible conversion sequences

Starting point	Step 1	Step 2	Step 3	Step 4	Outcome
Corporate trustee with no endowment property aiming for a CLG mainstream charity	Order of CC if required	Transfer of funds of the NHS charity to CLG by grant (with a formal written agreement to cover transfer of rights and liabilities)	Department see Deed/MOU and articles of association in advance	Scheme if necessary to vest real property in CLG under s69; a schedule to the scheme will set out the property being transferred to CLG outright. Separate linking direction	CLG inherits unrestricted funds of (former) NHS charity as own beneficial property CLG is single charity left with NHS charity placed on register of mergers.
Corporate trustee with endowment property aiming for a CLG mainstream charity	Order of CC if required	Transfer of unrestricted funds of the NHS charity to CLG by grant (with a formal written agreement to cover transfer of rights and liabilities)	Department see Deed/MOU and articles of association in advance	'Back to back' scheme to appoint CLG as trustee of (former) NHS charity and as trust corporation, and (if necessary) to vest property in CLG under s69; a schedule to the scheme will identify which property is being transferred to CLG outright and any endowment property which is staying in the old charity or linked charities with	CLG inherits unrestricted funds of (former) NHS charity as own beneficial property CLG is sole corporate trustee of (former) NHS charity or any linked charities which are held as endowment. Single registration/ accounts

				endowment for which New Charity appointed as trustee ²⁶ . Separate linking direction	
Corporate trustee aiming for a CIO mainstream charity with or without endowment	Order of CC if required	Transfer of funds of the NHS charity to CIO by vesting declaration ²⁷ Formal written agreement to cover transfer of rights and liabilities	Department see Deed/MOU and CIO constitution in advance	No scheme needed	CIO inherits unrestricted funds of (former) NHS charity, and is sole corporate trustee of endowment of (former) NHS charity. CIO is single charity left with NHS charity placed on register of mergers.

²⁶ i.e. any permanent endowment of the former NHS charity (and special purpose trusts, e.g. existing linked charities).

²⁷ A vesting declaration under section 310 Charities Act 2011 will have the effect of vesting legal title to the NHS Charity's property in the New Charity (if it is a CIO), including endowment or any other property held on special trusts as specified in the declaration. The vesting declaration does not, however, transfer: land held by the NHS Charity as security for money subject to the trusts of the NHS Charity, any land held under a lease which contains any covenant against assignment without consent (unless the consent has been obtained before the date on which the property will vest) and any shares etc which are only transferable in books held by a company. The vesting declaration also cannot deal with any ongoing liabilities of the NHS Charity (and so in most cases separate documentation will be needed to deal with this - such as a formal transfer agreement), nor will it address the need to assign / novate important contracts (e.g. intellectual property licences)

Appendix E – Constitutional form

Constitutional form	
Range of options – in particular:	
<p>Unincorporated trusts</p> <p>No legal personality</p> <p>Unlimited contractual liability for trustees</p>	<p>Charitable Incorporated Organisation ‘CIO’</p> <p>Charitable Company limited by guarantee (‘CLG’)</p> <p>If CIO or CLG, limitation of contractual liability</p>
Accounting implications	
<p>Same accounting responsibilities as mainstream charities, but from 2012/13 the accounts of all NHS Charities will need to be consolidated into DHSC’s Resource Account (because of ONS classification of NHS Charities to public sector)</p> <p>From 2013/14 the accounts of an NHS Charity with a corporate trustee may need to be consolidated into NHS body’s accounts.</p>	<p>Same accounting responsibilities as mainstream charities.</p> <p>Accounts highly unlikely to need to be consolidated into DHSC’s Resource Account or into the accounts of an NHS body.</p> <p>Financial information will no longer need to be provided to the ONS.</p> <p>Charity can select and appoint own choice of auditor (separate from NHS body)</p>
Corporate trustee	
<p>Corporate trustee model the norm, and presents governance challenges</p>	<p>Charity will itself be corporate entity (if CLG or CIO)</p> <p>Will act as corporate trustee in relation to trust assets (e.g. endowment) but will not face governance / conflict of interest issues which NHS body has in relation to NHS Charity</p>
Transfer of funds	

<p>Transfer of funds only possible between NHS Charities and by Order. Where effect of transfer would be to change the trusteeship, this is considered contrary to NHS legislation. DHSC must be consulted and may only exceptionally agree.</p>	<p>Able to transfer funds to other charitable and non-charitable bodies by way of grant provided this is in furtherance of objects, and provided there are safeguards to protect the funds for the purposes intended.</p>
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Appendix F - Memorandum of understanding – possible items

13. Details of the parties:

1.1 New Charity

1.2 NHS body (NHS Trust or NHS Foundation Trust).

14. Background explanation as to what is being done and why

15. Transfer of future gifts: Binding legal commitment by NHS body to transfer of all future gifts (from live donors or by will) to New Charity.

16. NHS body's formal agreement to the transfer of current NHS Charity assets to New Charity.

17. Any relevant statements as to aspects of future relationship between NHS body and New Charity²⁸, such as:

5.1 scope of New Charity's objects – confirmation that they at minimum replicate existing objects and that funds transferred will be used for those objects

5.2 confirmation in relation to the New Charity's use of gifts received via the NHS body in accordance with the deed.

5.3 future consultation between parties (and, if relevant, dispute resolution mechanism);

5.4 any ongoing involvement of NHS body in New Charity's governance procedures (e.g. power to nominate trustee/s to New Charity's board);

5.5 set out employment position post-transfer

²⁸ Note: it will be important to avoid 'control' by the NHS body; otherwise International Accounting Standard 27 might cause consolidation of New Charity's accounts with the NHS body and the New Charity's independence might be compromised; on the latter point see Charity Commission guidance available at <http://www.charitycommission.gov.uk/media/95209/r7text.pdf>.

5.6 arrangements as to use of NHS body's premises / staff by New Charity;

5.7 related intellectual property issues (e.g. New Charity's use of NHS body's name).

Note: The Department of Health and Social Care will expect to review:

a copy of the agreed memorandum of understanding / agreement(s) with NHS body;

a copy of the articles of association/CIO constitution of the New Charity; and

evidence of due approval of its terms by the NHS body (e.g. letter of confirmation from NHS body's Chair).

Appendix G - Financial management, reporting and control considerations

Accounting services provided by the NHS Body

In many cases the NHS body will be providing financial support in the form of bookkeeping and accountancy services (as part of the wider NHS finance function). If you wish these services to continue then a sharing arrangement or service level agreement needs to be agreed (see section 3.5). There may be other financial services such as procurement, payroll, cashiering, etc. It is essential that you agree a plan and specify the elements that are to transfer and the ongoing financial management (whether or not the NHS body continues to provide this service) and ensure they are covered either in the agreement or are replaced by new financial management arrangements.

Other service providers

There are a number of service providers, essential to the operation of the charity which will need to be informed. These typically include:

Auditor - An audit is required for all charities with gross income of over £1,000,000 or charities with assets over £3.26m and income of more than £250,000 (as at 31.12.2016). An 'Independent examination' will be a cheaper option for smaller charities below the audit threshold (Charity Commission Accounting: the essentials CC15b29). The new independent charity will no longer need to use the NHS body's auditor but may still choose to do so. Costs may be reduced by carrying out a competitive tender for audit services which can be undertaken once transfer has taken place.

Banker - You should talk to your bankers about the arrangements necessary for your bank accounts. You will need a new bank mandate and you may find it easier to open a new account. Leave plenty of time to put new banking arrangements in place as compliance with anti-money laundering arrangements may take time. You will need to have the bank account for the New Charity sorted out by the time you make your application to HMRC for recognition as a charity for tax purposes. You will also require a separate credit card clearing service provider if not already in place. It is advisable to consider charity-focused organisations.

Investment managers/custodian - As with bankers, plan and leave plenty of time to put in place new agreements as they will usually have stringent anti-money laundering compliance procedures.

Insurers – You will need to review your insurance arrangements as you will not benefit from the NHS cover. You should seek a policy designed for the charity sector which should be able to provide the full range of cover provided including Trustee Indemnity insurance.

²⁹ <https://www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-cc15b>

Payroll agencies - Some charities employ third party agencies to run their payroll. Others use their NHS body and some will process their own payroll. Payroll Agencies will support you with updating PAYE registration with HMRC (but not other areas of taxation).

On line giving services – In most instances current online giving agreements can be switched to the new charity registration by contacting the service provider. These changes can only occur after you have obtained the new HMRC charity reference number.

Other suppliers - In some cases other legal agreements will need to be reviewed and or/updated.

HMRC

HMRC have detailed guidance on their website about reporting changes. It is anticipated that you will need to create a new HMRC charity registration (by which time you will also need to have the New Charity's bank account details). At the point of registration, the initial "Authorised personnel" for the new charity will have to be identified. After that, set up will be required for Corporation Tax, Income tax, Gift Aid, VAT and PAYE. It is likely that you will need to register the New Charity and subsequently deregister the NHS Charity in each tax area. For further information see <http://www.hmrc.gov.uk/report-changes/business.htm>

VAT

Corporate trustees may wish to consider the VAT implications of their transfer. The New Charity will not be able to continue under a group registration with the NHS body (if this was previously in place). The structure of future service level agreements may mean that VAT will have to be charged to the New Charity by the Trust. This should not affect grant payments from the New Charity to the Trust.

Financial Controls

It may be that the charity is taking direct financial control of its affairs for the first time - whereas in the past it has relied on the NHS body to meet its obligations. In any event, the Charity Commission provide an excellent self-assessment checklist. (Internal financial controls for charities CC830).

Timing

Think carefully about the timing of the transfer. It might be easiest to set the formal transfer date as 31 March. That way the transfer will correspond with the year end when statutory accounts will be prepared. These can be used as the basis for the statement of assets being transferred.

Reporting

Details of the transfer will need to be set out in the accounts of both the transferring NHS Charity and the New Charity.

The exact reporting will depend on the date of transfer but it will be advisable to speak to the auditors of the NHS body and the proposed auditors of the NHS Charity early in the process to establish the reporting which will be required after conversion.

³⁰ <https://www.gov.uk/government/publications/internal-financial-controls-for-charities-cc8>

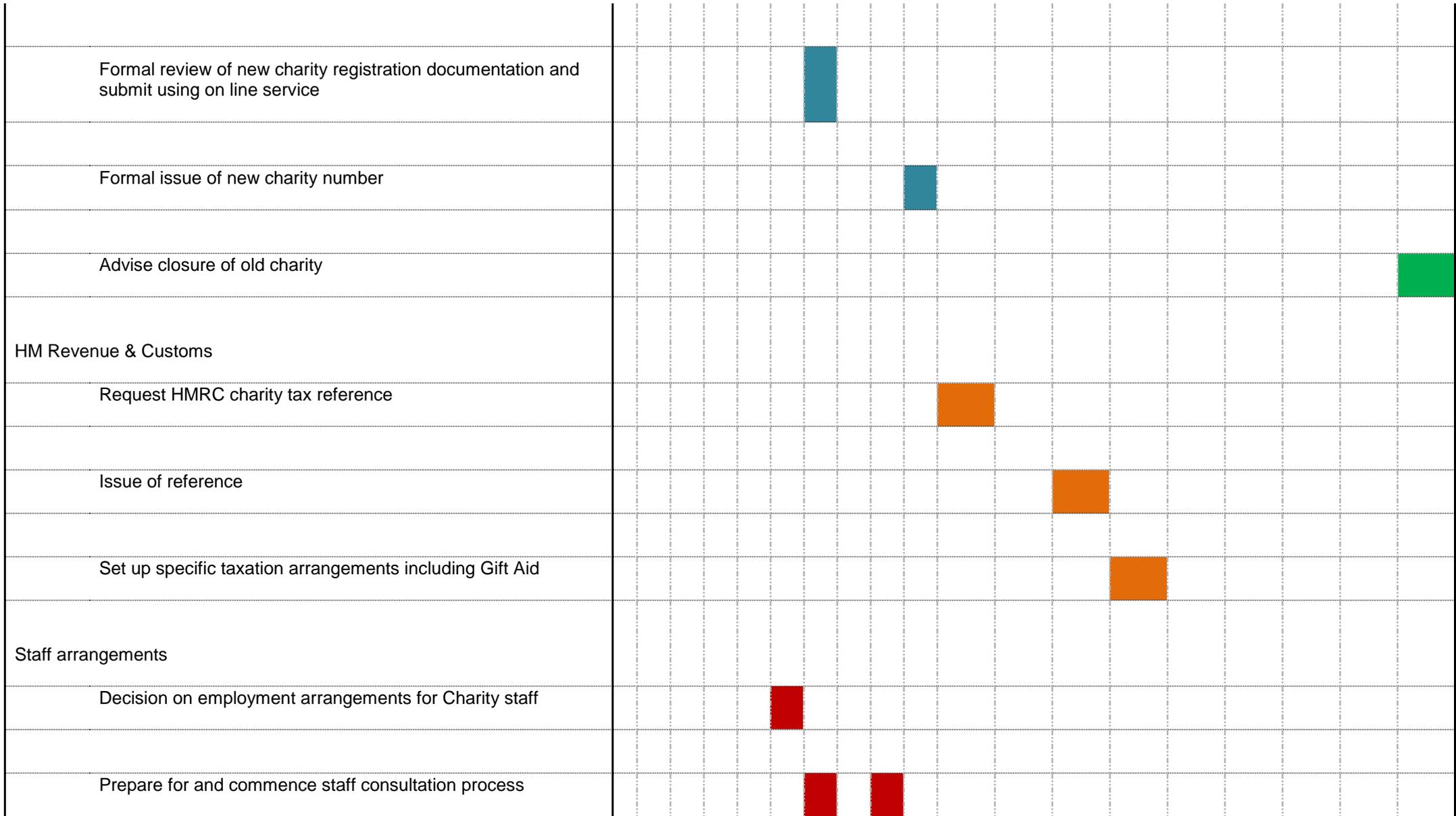
If the New Charity is a company limited by guarantee then accounts will also need to be filed with Companies House. In both the case of a CIO and company limited by guarantee, accruals accounts will need to be prepared (rather than receipts and payments accounts)

Trading Subsidiaries

The transfer of shareholdings in trading subsidiaries from the old entity to the New Charity will need to be registered with Companies House in the trading company's Annual Return.

Appendix H – Key activity chart (basic process)

		Month																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Initial planning																			
	Initial consideration of status change	■	■																
	Identify team to progress new charity and agree terms of reference		■	■															
	Determine form of New charity			■															
	Identify any specific issues for inclusion in memorandum				■														
	Prepare memorandum					■	■												



Appendix I Frequently Asked Questions

1. Once the New Charity is set up and the transfers have been made, how long can the NHS Charity exist in tandem?

Where the NHS Charity will continue to hold endowment (see Appendix C) and where the New Charity is a CLG, the NHS Charity will continue in existence for as long as this is the case but it will be linked with the New Charity for registration and accounting purposes (under the New Charity's registration number), and so will not appear to the public to be a separate entity.

2. What will happen to legacies left to the NHS Charity in the future?

Assuming the transfer of the assets of the NHS Charity to the New Charity has been registered on the Charity Commission [Register of Merged Charities](#)³¹, legacies to the NHS Charity will almost always be payable to the New Charity. For details of how to register the 'Merger' please click on the link in the previous sentence.

Where an NHS Charity has endowment, the procedure is likely to be different if the New Charity is a company limited by guarantee – see [Appendix C](#). If the existence of the endowment causes the old NHS Charity to be treated by the Charity Commission as continuing to exist, legacies left to the NHS Charity will continue to be paid to it and then, depending on their terms, paid across to the New Charity.

Legacies left to the hospital or NHS body will be payable to the New Charity by virtue of the binding commitment on the NHS body's part to transfer all charitable legacies and gifts to the New Charity – which is one of the Department's requirements.

3. What is the position of liabilities incurred by the NHS Charity's trustees before the transfer to the New Charity?

The NHS body as corporate trustee may reasonably seek an indemnity covering liabilities properly incurred in related to the funds transferred to the New Charity (up to a maximum value of the funds transferred).

It is not appropriate for the New Charity to provide trustee indemnity insurance covering the board members of the NHS body. Board members of the NHS body can rely on the protections they have in that capacity. Section 265 of the Public Health Act 1875, together

³¹ <https://www.gov.uk/government/publications/register-of-merged-charities>

with section 69 of the NHS Act 2006, protects both NHS bodies and the board members of such bodies against liability provided that the NHS body is acting in the proper exercise of its functions under the NHS Act 2006 in relation to property held on trust.

This is a complex issue on which it would be advisable for the trustees to seek external legal advice.

4. How would actions for breach of trust against trustees of the NHS Charity be treated following a transfer?

In the case of a corporate trustee, if an individual member of the corporate trustee board were to have acted prior to the transfer to the New Charity in breach of his fiduciary duty to the corporate trustee and so put the corporate trustee in breach of trust and cause loss to the NHS Charity, the New Charity would have the right of action (described above) against the corporate trustee (NHS body). A fiduciary breach by a director individually is not however a breach of trust (because, where there is a corporate trustee, only the corporate trustee entity can commit a breach of trust) but it may contribute to a breach of trust committed by the corporate trustee. The director at fault remains liable for his breach of fiduciary duty and the corporate trustee would itself be able to bring a claim against that individual director. This would continue, in principle, to apply even after the transfer to the New Charity.

This is a complex issue on which it would be advisable for the trustees to seek external legal advice.

5. Approximately how long is the process likely to take from when the decision to convert is taken by the trustees of the NHS Charity? Is there a recommended time/date to aim for?

The length of time which the transfer process will take will be determined principally by the complexity of the NHS Charity's assets and operations and the speed of its negotiations over future working arrangements with its NHS body. There are no set dates, but aligning with the financial year or a quarter date will probably make practical sense. The process is likely to take 6 to 9 months as a minimum; it will be advisable to allow up to 12 months for a complex transaction (for instance where there are employees, real property and significant assets to be transferred). The key activity chart at [Appendix H](#) assumes the process will take 12 months.

6. Is the Memorandum of understanding a legally binding document?

There are aspects of what needs to be agreed between the NHS body and the New Charity which need to be legally binding – such as the commitment on the part of the NHS body to transfer to the New Charity charitable legacies and other gifts. But not all aspects which the parties might want to record in the MoU have to be. It is however important for it to be clear what is intended to be legally binding and what is not.

7. Can the NHS body set up another NHS Charity in the future and, if so, then can it then channel legacies and donations into that one instead of the New Charity?

The Department at present has no intention of removing from NHS legislation the power for NHS bodies to raise charitable funds and hold them as trustee. However, besides the practical complications of having two charities effectively raising funds for the same purpose, the scope for the NHS body to raise funds in future will be affected by the commitment on its part to transfer all charitable legacies and gifts to the New Charity.

8. What exactly does the Department need to see before we can complete the transfer across to the New Charity and do we need to have their written consent before proceeding with this final stage?

See [paragraph 3](#) of this Guidance.

9. Should the NHS body seek independent legal advice?

Where the NHS body is the corporate trustee of the NHS Charity, it is likely to need legal advice to guide it through the process in that capacity. It may then make sense for the New Charity, once formed, to have its own legal advice on the terms of the memorandum of understanding / agreements with the NHS body and its future operations.

10. When the New Charity is registered, can existing fundraising materials which contain the old charity number still be used?

The NHS Charity can keep the same name after the conversion process.

Once the NHS Charity has been wound up, the New Charity cannot fundraise under the NHS Charity's charity number. If the wording of the fundraising materials is compatible with the New Charity's legal structure, then old fundraising materials could perhaps be used with a sticker adding the relevant new information including the New Charity's number, but materials should be reviewed to ensure they are not misleading.

If the NHS Charity has been kept in existence in order to hold endowment (see Appendix C and FAQ 2 above), it would be possible in theory to continue to fundraise using the NHS Charity, but the charity number to be used would be that of the New Charity (assuming a linking direction to have been obtained from the Charity Commission), so, again, a sticker, or similar, would be required to show the New Charity's number, and there might be a question as to whether this made sense administratively.

Appendix J - Comparison analysis.

This is an expanded version of the table shown on page 41 of the Department's October 2012 report

Current system of NHS Charities	Independent 'NHS-focused' charities
Basis of existence	
Established under NHS legislation; written governing document may enhance but must be compatible with NHS legislation	Established under standalone written governing document, specific to charity
Secretary of State transfer power	
Secretary of State for Health has statutory power to transfer funds away from current trustees to other 'relevant NHS bodies'	No power for Secretary of State for Health to transfer funds away
Charitable objects/purposes	
Objects of charity prescribed by statute; cannot be modified by trustees	<p>Trustees are able to review their activities and purposes.</p> <p>Objects of new charity must include / encompass present NHS Charity objects, to enable transfer of existing NHS Charity assets, but can also include wider objects (for new fundraising and possibilities of merger / collaboration with other charities.</p> <p>Possibility subsequently of updating objects (provided Charity Commission consent obtained)</p>
Trustees	
Cannot change corporate trustee arrangements as established in NHS legislation.	<p>Variety of trustee appointment models available, including self-appointing, membership, and ex-officio.</p> <p>SofS has no role in appointing and removing trustees.</p> <p>NHS employees can be appointed as trustees. (but this should not form the majority for the reasons stated earlier).</p>

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