

Dissolving your charity – seeking consent

What this guide covers

Guidance on dissolving or winding up your charity and how to apply for OSCR's consent.



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1. Introduction

This document has been written to help you with your application to **dissolve a charity entered in the Scottish Charity Register**.

To dissolve a charity basically means causing the charity to cease to exist. In practice this means that the charity trustees (the people in general management and control of the charity) need to do a number of things, after having agreed that they want to dissolve the charity, before the charity ceases to exist. Seeking consent from OSCR is only one of these.

Whatever legal form your charity takes, you must always seek our consent **before** dissolving a charity that is entered in the Scottish Charity Register. This is required under section 16 of the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act'). You must seek our consent **at least 42 days in advance** of the proposed date of dissolution.

What is the date of dissolution?

The date on which dissolution finally and formally takes place depends on the legal form of the charity:

- for Unincorporated Associations, it is the date that you, as charity trustees, formally agree to dissolve the body
- for Companies, it is the date the charity is dissolved by Companies House
- for Trusts, it is the date that the charity's capital is expended.

These are the most common legal forms for charities. There are others (and if your charity takes one of these other forms, you may wish to seek appropriate professional advice).

If you do not seek our consent before dissolving your charity, you will be in breach of the charity trustees' duties found in section 66 of the 2005 Act. We regard this as misconduct. Evidence of misconduct may result in intervention or sanction by OSCR.

1.1 Using this guidance

This guidance is divided into three key sections:

- What we look for – explains what OSCR looks for before we give our consent to dissolve the charity.
- What our decision looks like – describes the possible outcomes of the process and the basis for conditional decision-making.
- What you need to do – gives a breakdown of the application process and the timescales attached.

What exactly you need to do depends on:

- the legal form of the charity (is it an unincorporated association, a company, a trust?)
- what it says in the constitution of your charity (about what should be done with any remaining property and assets, or about how the decision to dissolve should be taken by the charity trustees)
- the situation the charity is in (for example, you may have leases or other contracts that need to be brought to an end).

In the context of seeking consent from OSCR the most important things you need to do are:

- assess what property and assets your charity still has
- decide what should be done with this property
- ask us for consent to dissolve your charity.

This guidance explains how we consider these requirements.

1.2 Dissolving your charity – timeline

- Not less than 42 days before the date on which you intend to dissolve your charity you must give us notice of your proposal to dissolve by submitting a complete application to us (see section 4).
- We check whether or not we can give our consent to your proposal to dissolve (see section 2).
- Within 28 days of receiving your complete application, we will either notify you that we grant our consent OR issue a direction not to take the action for a period of not more than six months OR refuse our consent (see section 3).
- If we grant consent, you can make the change once the 42 day notice period is over (see section 4).
- Within three months of the date when you dissolve the charity you must notify us that you have done so (see section 4).

1.3 Contact us

When our prior consent has been given, and the charity has been dissolved, you **must notify** us. This is required under section 17 of the 2005 Act. This must be done within three months of the dissolution of the charity taking place. This may be done by letter, fax or email, but must be in writing.

If you have any questions regarding the dissolution of a charity or about how to apply, please contact us. You can get in touch by email, in writing or by telephone:

E-mail

info@oscr.org.uk

In writing

Please write to us at:

Office of the Scottish Charity Regulator
(OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

We will respond to your letter or email within 15 working days of receipt.

Telephone

01382 220446

2. What we look for

Section 16 of the 2005 Act states that you need to seek our consent in order to dissolve a charity that is entered in the Scottish Charity Register.

As the Regulator of charities in Scotland we are concerned with three main things when dealing with charities that want to dissolve:

1. **Can you, as charity trustees, take the action you propose to take?** In other words, does the charity's constitution give you the power to do this?
2. **What will you do with any property that remains after dissolution?** Will it be distributed in accordance with what the constitution says? Will it continue to be used for charitable purposes?
3. **Are you, as charity trustees, adhering to the requirements of the 2005 Act?** In other words, have you applied for consent in good time? You must seek our consent **at least 42 days in advance** of the proposed date of change taking place. This is set out in section 16(4) of the 2005 Act.

Who are charity trustees?

Depending on the individual charity and its legal form, the charity trustees may be called board members, directors, management committee members, trustees or whatever is relevant to the charity. Whatever the terminology used by the charity, the people in 'general management and control' of the charity are defined by the 2005 Act as being its charity trustees.

The issues underlying these questions are not only relevant to dissolution. They are important throughout the life of a charity; charity trustees must always act in accordance with the terms of their charity's constitution, and the charity's property must be applied at all times for exclusively charitable purposes.

2.1 Can you, as charity trustees, dissolve the charity?

When an application is received, the first thing we look for is whether the constitution of the charity gives you, as charity trustees, the power to dissolve the charity. We do this because as charity trustees, you must always act within the terms of your charity's constitution.

Under this section 16 process, we cannot give you consent to take an action that the constitution does not permit. This is because if you do something that your charity's constitution does not permit, you are acting outwith your powers (*ultra vires*).

So, if the constitution does not give you, as charity trustees, the power to do something that you want to do (in this case dissolve the charity), you cannot take this action. There can be certain exceptions to this.

What is a constitution?

By a constitution we mean the document or set of documents that sets up an organisation and tells us what its purposes are. It will also usually deal with other matters, including who manages and controls the organisation, what their powers are, what they can do with the organisation's property (money and other assets) and membership of the organisation.

What your charity's constitution is called and how it is put together will depend on what kind of organisation it is (what its **legal form** is). If it is a company, its constitution will be its memorandum and articles of association (or just its articles if incorporated from 1 October 2009). If it is a trust, its constitution will be a trust deed or similar document. If your organisation is an unincorporated association, it may simply be called your constitution.

If your charity's constitution neither gives you the power to dissolve your charity nor prohibits you from doing so, you may nevertheless still be able to take this action. It may be that you are given the power to do so by legislation. For example, the Companies Act 2006 permits companies to dissolve as long as their constitutions do not expressly prohibit this. Alternatively, you may need to change your constitution to give you this power.

If you do something that you do not have the power to do, you are said to be acting *ultra vires*. This could mean that we will treat the apparent dissolution of your charity as if it never happened.

If you are not sure if you have the power to dissolve your charity, you should seek appropriate professional advice.

In some circumstances you may wish to apply to Court in order to dissolve your charity. However, you must first seek consent from us to do so. If you do so, the process and our considerations will be similar to those described below.

This means that you must seek our consent at least 42 days in advance of the date that you apply to Court.

We do not have a separate application form for you to complete if you wish to apply to Court. Please use the application form for [consent to change constitutional purposes](#) for this. This can be downloaded from the OSCR website (www.oscr.org.uk). Alternatively, we will post a copy out to you, on request. Please complete this application form and send it to us. We will make our decision based on the information provided.

2.2 What does the constitution say about remaining property?

The second thing that we look for is the set of instructions that the constitution gives that refer to how any property remaining at the time of dissolution is to be given away. 'Property' includes all property and assets belonging to your charity, including heritable property. Different constitutions say different things. We will look closely at what your charity's constitution says, and whether what you propose to do (especially with the remaining property and liabilities of the charity) is in accordance with what your constitution says should happen.

Examples of what constitutions can say about the power to dissolve and how any remaining property must be dealt with:

Example for an Unincorporated Association

- *If the management committee determines that it is necessary or appropriate that the association be dissolved, it shall convene a meeting of the members; not less than 21 days' notice of the meeting (stating the terms of the proposed resolution) shall be given.*
- *If a proposal by the management committee to dissolve the association is confirmed by a two-thirds majority of those present and voting at the general meeting, the management committee shall have power to dispose of any assets held by or on behalf of the association – and any assets remaining after satisfaction of the debts and liabilities of the association shall be transferred to some other charitable body or bodies having objects similar to those of the association; the identity of the body or bodies to which such assets are transferred shall be determined by the members of the association at, or prior to, the time of dissolution.*

Example for a Company:

- *If on the winding-up of the company, any property remains after satisfaction of all the company's debts and liabilities, such property shall be transferred to such body or bodies (whether incorporated or unincorporated) as may be determined by the members of the company at or before the time of dissolution (or, failing such determination, by such court as may have or acquire jurisdiction), to be used solely for a charitable purpose or charitable purposes. To the extent that effect cannot be given to this requirement, the relevant property shall be applied to some charitable purpose or purposes.*

Example for a Trust:

- *If in the opinion of the Trustees any change in circumstances has made or is likely to make execution of the Trust Purposes impossible or impracticable, the Trustees may wind up the Trust and transfer the Trust Property (after settlement of all debts and liabilities) to some other charity or charities having similar objects to those of the Trust.*

These are only examples; you must look at what your charity's constitution has to say.

- **Use of the words 'charity' or 'charitable body'**

If your charity was established after the introduction of the 2005 Act and its constitution refers to any remaining property being distributed to a 'charity or charities' this means that it must be given only to an organisation, or organisations, entered in the Scottish Charity Register (please see the Trust example). This is because under Scots law the word 'charity' means a body entered in the Scottish Charity Register (section 106 of the 2005 Act).

In the same way, if your charity's constitution refers to any remaining property being distributed to 'some other charitable body or bodies' this means that any remaining property belonging to your

charity must be given only to an organisation or organisations entered in the Scottish Charity Register (please see the Unincorporated Association example).

Where a constitution predates the 2005 Act, the meaning of 'charity', 'charities' or 'charitable' would not be confined to the 2005 Act definition and it would include bodies recognised as such by the HMRC and by the Charity Commission at the time. In such cases, the charity might therefore be entitled to distribute its assets to charities registered in, for example, England provided the assets could be applied for charitable purposes within the 2005 Act.

Most of the charities registered in Scotland are established under Scots law. If your charity is established under English and Welsh law the words 'charity', 'charities', or 'charitable body/institution' do not mean organisations entered in the Scottish Charity Register. This is because English and Welsh charity law defines the word 'charity' in a different way. Your charity's constitution will be interpreted according to the law that established it.

- **Use of the phrase 'having objects similar to...'**

Sometimes your charity's constitution may say that any property remaining must be distributed to an organisation or organisations 'with objects similar' to your own charity.

When this happens, we will look at your charity's purposes as they appear in the constitution. We then compare these to the purposes of the organisation (or organisations) to which you want to give any remaining property. As far as possible, we do this by looking at the proposed recipient's purposes, as they appear in its constitution.

There must be a reasonable similarity in the purposes, but they do not need to be exactly the same. For example, the purposes of your charity might be:

- *To promote any charitable purposes for the benefit of the inhabitants of Aberdeenshire and in particular the promotion of social welfare, the*

advancement of education, the furtherance of health and relief of poverty, distress and sickness.

- A possible recipient charity could have the following charitable purposes:
- *To promote any charitable purpose for the benefit of the inhabitants of Aberdeenshire without distinction of race, politics or other opinions by assisting the work of voluntary organisations and statutory authorities engaged in the relief of poverty, distress or sickness, the advancement of education and the furtherance of health.*

2.3 Protecting charitable property

We will always look to be satisfied that your charity's property will continue to be expended for charitable purposes only. This means that the proposed recipient organisation must have purposes that meet this requirement.

Where the property is going to be handed over to another charity (that is, a body entered in the Scottish Charity Register), we will assume that the property will continue to be used for charitable purposes only.

If you propose to give any property that might remain to an organisation that is **not** entered in the Scottish Charity Register, we will look for reassurance that your charity's property will only be used for a purpose that is 'charitable' in terms of the 2005 Act.

In considering your application, we will take the following into account:

- the purposes of the proposed recipient body and the degree of constraint or regulation in how these can be amended (if these can be changed easily and radically then we may consider that there is not enough reassurance)
- the planned use of the property by the proposed recipient organisation and the nature of any restriction on its use (this is particularly relevant where the proposed recipient body is, for example, a local authority and does not itself have exclusively charitable purposes)
- whether or not the proposed recipient organisation is regulated by another regulator and, if so, the nature of that regulation
- any past relationship between your charity and the proposed recipient organisation
- the type and value of the property remaining
- the type and value of any liabilities remaining.

3. The nature of our decision

3.1 How quickly we need to decide

The 2005 Act says that we need to give you our decision on your application for consent to dissolve within 28 days of you having 'given us notice' of your intention to dissolve the charity.

If you do not give us all the information that we need to make a decision and we need to ask for more, then we may have to direct the charity not to wind up or dissolve and ask you to provide OSCR with the additional information we require. Please see section 3.3 for more information.

We will let you know our decision by letter. If we do not issue either our decision or a direction not to wind up or dissolve within 28 days of having received notice of the charity's intention wind up or dissolve, you can assume that our consent has been given.

3.2 Possible outcomes

There are two possible outcomes to your request for our consent to dissolve the charity:

- we give you our consent
- we refuse to give you our consent.

Whatever the outcome of the application process, a letter will be sent to you confirming this.

- **Giving you our consent to dissolve the charity**

If we believe that your charity's constitution gives you the power to dissolve your charity, your proposal reflects what is set out in your charity's constitution, and we believe that any remaining property will continue to be used for charitable purposes, we will most probably give consent to your proposal.

If we give you our consent to dissolve your charity, this does not mean that the charity is then dissolved. All it means is that you can now take the action. As charity

trustees you must still take the necessary steps to dissolve your charity.

For example, you may need to distribute any remaining property, close the charity's bank account, hold a final meeting of the charity trustees and/or ensure that the charity (if it is a company) is dissolved or struck off the Register of Companies at Companies House. You are responsible for doing all of this.

- **The condition(s) attached to this decision**

Our consent to dissolve your charity is conditional. By this we mean that it is **conditional** upon any remaining property being distributed according to the terms that we have agreed with you. If you wish to make any alteration to the proposal that we have agreed to, a fresh application to dissolve your charity must be made.

We may, in specific circumstances, also attach other conditions (for example, a condition that the dissolution is publicised, to make supporters aware). If we are minded to attach such conditions, we will discuss this with you.

Our decision letter will ask you to send us supporting documentation when you have dissolved your charity. Please see section 4.4 for more information.

- **Refusing consent to dissolve the charity**

If we believe that your charity's constitution does not give you the power to make the proposed change, and/or we do not believe that your proposal meets the terms regarding dissolution as set out in your charity's constitution, and/or we do not believe that any remaining property will be used for charitable purposes, we will most probably refuse consent.

If we refuse consent to dissolve your charity, we will give you our reasons for doing so. If you disagree with our decision, you have the right to ask us to review it. Please see section 4.3 for more information.

3.3 Issuing a Direction not to dissolve the charity

In some circumstances we may need to direct you **not** to proceed with your plans to dissolve the charity. Such a Direction can last for no more than six months.

We may issue a Direction not to dissolve if:

(i) we are happy that your charity's constitution gives you the power to dissolve **but** we do not have enough information to make our final decision. For example, if you do not submit a copy of your charity's constitution, we may not be able to determine if the proposed distribution of assets is in line with the dissolution clause. Similarly, we may not be able to make a decision if you do not tell us who you propose to give any remaining assets to.

(ii) we are happy that your charity's constitution gives you the power to dissolve **but** a complaint from a member of the public has been received in relation to your charity and we are looking into this. In such circumstances we need to be able to have the time to do so.

We will issue a Direction to you in a letter. Our letter will make clear that you must not dissolve your charity until we have made our final decision (giving or refusing to give you prior consent to dissolve your charity).

Before the six month period ends, we will make our final decision. During this time, we will write to you confirming our decision either to give you, or refuse to give you, consent to dissolve your charity.

4. What you need to do

The following general steps need to be taken into account when you want to seek our consent to dissolve a charity in the Scottish Charity Register:

- **Plan ahead** – think about timing, prepare your application form and think about the supporting evidence that you need to send us
- **Respond** if we ask you for further information – the sooner you get back to us, the sooner we will be able to make our decision
- **Act** on our decision letter when it is issued to you – remember, we do not dissolve your charity, but only give consent for you to do so
- **Remember** to notify us when the process of dissolving your charity is complete. The charity will not be taken off the Scottish Charity Register unless you notify us.

If our consent is given, you can go ahead and dissolve the charity. Make sure that you comply with our conditions.

If our consent is refused, you will need to decide if you want to seek a review. You may also like to explore whether you can apply to reorganise the charity (see section 4.3).

4.1 Plan ahead – the importance of timing

The introduction to this guidance describes the way in which most charities formally cease to exist (dissolve). This depends on the legal form that your charity takes.

You should start thinking about when you want to dissolve your charity as soon as possible. We suggest that you apply for our consent to dissolve your charity at least two months in advance. An application form for consent to wind up or dissolve a charity can be downloaded from the OSCR website (www.oscr.org.uk). Alternatively, we will post a copy out to you, on request. Please complete this application form and send it to us along with the following supporting evidence:

- a copy of your charity's current constitution
- a detailed statement of your charity's current assets and liabilities (if there is enough space, you can give us this information in the application form)
- if relevant and possible, a copy of the constitutions of the organisation(s) you want to give the remaining property of the charity to.

The more information you can give us with your application form, the better. The supporting evidence is important too. We may be unable to make our decision without it.

4.2 Respond if we ask for more information

We must give you our decision within 28 days of you providing us with notice of the proposal to wind up or dissolve. We may not be able to make our decision however where you provide us with insufficient information.

We **will** ask for more information if:

- you do not enclose a copy of your charity's constitution with the application form. We cannot make our decision without this
- you do not give the Scottish charity number of the charities that you want to give any remaining property to. We may be unable to identify the charity or charities you are referring to
- you do not include a copy of the constitution of any organisation(s) (that is not a Scottish Charity) that you want to give any remaining property to (*if relevant*).

We need to be assured that a non-charitable organisation will continue to use the property for charitable purposes only. One way of doing this is by checking the constitution of that organisation. If it is not possible to include a copy of their constitution, please explain why and how the organisation will continue to use the property for charitable purposes only.

We **may** ask for more information if:

- You do not explain why you think that the organisation(s) that you want to give any remaining property to has 'similar purposes' to that of your own charity (*if relevant*).

If your constitution says that the remaining property must go to an organisation with similar purposes, we need to know why you think that the purposes of the recipient are 'similar'. The most reliable way to evidence this is to include a copy of the constitution(s) of the organisation(s) that you want to give any remaining property to and send this to us with your application form.

If you cannot do this, please explain why you think that the purposes are 'similar' to your own charity. For example, it may be that your own charity and the organisation(s) that you want to give any remaining property to:

- both advance education
- both work in the same local area
- both work with the same beneficiary group.

Your explanation does not have to be long.

We will only ask you for more information if our decision cannot be made without it.

4.3 Act on our decision letter when it is issued to you

If we give you consent to dissolve your charity, as charity trustees you are responsible for dissolving your charity according to the terms of your charity's constitution.

As charity trustees, you are also responsible for notifying us when the process of dissolving your charity is complete. Please see section 4.4 for examples of the evidence that we ask for as part of the notification process.

- **Requesting a review of our decision**

If we do not give you consent to dissolve your charity, and if you disagree with our decision, you have the right to ask us to review it. To do so you must contact the Review Officer within 21 days of the date on our decision letter.

Your request for review may be by letter, fax or email, but must be in writing. You should send your review request to:

Review Officer
Office of the Scottish Charity Regulator (OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

Alternatively, you can email your review request to: info@oscr.org.uk with 'Review Officer' in the title.

We will always acknowledge receipt of your request.

- **Charity Reorganisation**

Alternatively, if we have refused your application to dissolve because you do not have the power to do so, you may consider whether to look at reorganising your charity.

Sections 39-43 of the 2005 Act enable charities to take certain actions (that they do not have the power to take) once OSCR has approved a reorganisation scheme. Specific reorganisation conditions (set out in the legislation) need to be satisfied before a reorganisation scheme can be approved.

For further details of this process and the criteria which apply, please see our [Charity Reorganisation Guidance](#).

4.4 Remember to notify us

Once our consent has been given, and the charity has been finally and formally dissolved, you must **notify** us. This is required under section 17 of the 2005 Act.

This must be done **within three months** of the dissolution of the charity taking place. It may be done by letter, fax or email, but must be in writing.

There is a 'notification of changes made' form to complete. This can be downloaded from the OSCR website (www.oscr.org.uk). Please fill this out and send it to us along with the supporting evidence that is required. We will also be happy to send a copy to you, on request.

- **Meeting administrative requirements**

If we give you consent to dissolve your charity, we will usually ask you to fulfil a number of administrative requirements. The following are examples of the type of document(s) that we might request from you:

A statement detailing how the charity's remaining property has been distributed – perhaps by enclosing a copy of a letter from the named recipients confirming receipt. We need this to be sure that any remaining property has been given away as we agreed.

A copy of a minute of the meeting at which the charity trustees decided to finally dissolve the charity. We may need this to make sure that the final decision to dissolve the charity was taken in the right way. The constitution will often say how a decision to dissolve the charity must be taken, for example, how many people need to take the decision. Sometimes, charity trustees cannot complete the dissolution process because there are not enough people to take the decision. If this happens to you, or you think it might, please tell us before we issue our decision to you.

A copy of your closing bank statement. We need this to make sure that there are no funds remaining in the bank.

A final set of compliant accounts. We need this to make sure that as charity trustees you have managed the affairs of the charity appropriately.

A contact address of where the charity's accounts will be kept after the charity has dissolved. We need this because charity accounts need to be kept for six years, even after the charity has dissolved. This is set out in the legislation.

Depending on the circumstances we may also ask you to send us:

A copy of the letter from another Regulator (for example the Charity Commission for England and Wales) confirming that they also permit the charity's proposed dissolution (if applicable). The consent of other Regulators is sometimes required when some types of single charity want to dissolve. For example, if your charity is registered in England and Wales, the Charity Commission will need to be contacted before you can go ahead and dissolve it.

Evidence that the charity has been removed from the Register of Companies (if applicable). If the charity is a Company, we need this to be sure that the charity has dissolved.

We ask for this supporting documentation in order to be sure that the process of dissolving your charity is complete. You are responsible for meeting these requirements. The charity will not be taken off the Scottish Charity Register unless and until you notify us.

Appendix 1: From the Charities and Trustee Investment (Scotland) Act 2005

Changes

16 Changes which require OSCR's consent

(1) A charity may take any action set out in subsection (2) only with OSCR's consent and in accordance with any conditions attached to any such consent.

(2) Those actions are—

- (a) amending its constitution so far as it relates to its purposes,
- (b) amalgamating with another body,
- (c) winding itself up or dissolving itself,
- (d) applying to the court in relation to any action set out in paragraphs (a) to (c).

(3) Subsection (1) does not apply in relation to any action—

- (a) in pursuance of an approved reorganisation scheme, or
- (b) for which OSCR's consent is required by virtue of any other enactment.

(4) Where a charity proposes to take any action set out in subsection (2) it must, not less than 42 days before the date on which the action is to be taken, give notice to OSCR of the proposal specifying that date.

(5) In the case of an action set out in subsection (2)(a), the charity must not proceed unless and until OSCR has given its consent.

(6) In any other case, unless OSCR, within 28 days of the date on which notice is given under subsection (4)—

- (a) refuses its consent, or
 - (b) directs the charity not to take the action for a period of not more than 6 months specified in the direction,
- OSCR is to be taken as having consented

to it.

(7) A direction under subsection (6)(b)—

- (a) may be revoked at any time,
- (b) may be varied, but not so as to have effect for a period of more than 6 months from the date on which it is given.

(8) Where OSCR gives such a direction it must, after making such inquiries as it thinks fit—

- (a) give its consent, whether or not subject to conditions, or
- (b) refuse its consent.

17 Notification of other changes

(1) A charity must give OSCR notice of—

- (a) any change in—
 - (i) the principal office of the charity, or
 - (ii) where it does not have such an office, the name or address of the charity trustee specified in the Register (or which would, but for section 3(4), be so specified),
- (b) any change in any other details set out in its entry in the Register,
- (c) any change to its constitution,
- (d) any action set out in section 16(2)(b) to (d) which the charity has taken,
- (e) any administration order or an order for winding up made by the court in respect of the charity,
- (f) the appointment of a receiver in respect of any of the charity's property, setting out the date on which the change, action, order or appointment took effect.

(2) Subsection (1) does not apply in relation to any action which requires OSCR's consent under section 16.

(3) A notice under any of paragraphs (a) to (d) of subsection (1) must be given within 3 months of the date of the change or action to which it relates.

(4) A notice under paragraph (e) or (f) of subsection (1) must be given within 1 month of the date of the order or appointment to which it relates.

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