

Changing your charity's purposes - seeking consent

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1. Introduction

This document has been written to help you with your application to change the purposes of your charity entered in the Scottish Charity Register.

To be entered and stay entered in the Scottish Charity Register, and therefore to have charitable status in Scotland, a charity must meet the charity test. The charity test is set out in section 7 and 8 of the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act').

One of the main requirements of the charity test is that a charity must have **only charitable purposes**. A charity's purposes say what it has been set up to achieve and reflect its broad aims.

If you want to change your charity's purposes, this change must not result in the charity no longer having charitable purposes. That would cause it to fail the charity test.

To make sure that this does not happen, the law requires that if you want to change your charity's constitution as it relates to its purposes you must have our consent to do so.

1.1 How to use this guidance

This guidance is divided into three key sections:

- What we look for – explains what we look for before we give our consent to change the purposes of a 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.

If you do not have our consent before changing your charity's purposes, 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.

1.2 Changing your charity's purposes – timeline

- Not less than 42 days before you intend to make the change you must give us notice of your charity's proposal to amend its purposes (see section 4).
- We check whether or not we can give our consent to the change you propose (see section 2).
- We will either notify you that consent has been granted OR notify you that consent is refused (we will try to do this within 28 days of receiving your application) (see section 3).
- If consent is granted, you can make the change, once the 42 day notice period is over (see section 4).
- Within three months of making the change you must notify us that you have done so (see section 4).

1.3 Contact us

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

In writing:
Scottish Charity Regulator(OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

E-mail:
info@oscr.org.uk

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 tells you that you need to have our consent in order to change the purposes of a charity 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 change their purposes:

- 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. Are the purposes that you want to adopt exclusively charitable?**
Do they all reflect one or more of the 15 charitable purposes found in the 2005 Act?
- 3. Are you, as charity trustees, adhering to the requirements of the 2005 Act?**
In other words, have you sought our 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.

These questions 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.

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.

2.1 Can you, as charity trustees, change the purposes of your charity?

When a charity applies to us for consent to change the purposes in its constitution, the first thing that we check is whether you, as the charity trustees, have the power to change the charity's purposes.

We check to see if you have this power because we cannot give you consent to do something that would involve you acting beyond your powers (*ultra vires*) as charity trustees.

We check first of all **whether** your charity's constitution contains wording which gives you the power to change its purposes.

What is a constitution?

By a constitution we mean the document or set of documents that sets up an organisation and says 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.

We also look at **how** your constitution says you may go about making changes to it, specifically changes to the purposes.

If your charity's constitution neither gives you the power to change your charity's purposes nor prohibits you from doing so, you may still be able to make such a change. It may be that you are given the power to do so by legislation. For example, the Companies Act 2006 permits companies to change their purposes as long as their constitutions do not expressly

prohibit this, and also sets out how they should go about doing so.

Alternatively, you may need to change your constitution to give you the power.

If you do something that you do not have the power to do, you are said to be acting beyond your powers (*ultra vires*). If you do so, this could mean that we will treat the change to your charity's purposes as if it never happened. If you are not sure if you have the power to change your charity's purposes, you should seek appropriate professional advice.

In some circumstances you may wish to apply to Court in order to change your charity's purposes. However, you must seek consent from us to do so. In these situations, the process and our considerations will be much the same as those described in this guidance.

This means that you must seek our consent at least 42 days in advance of the proposed change taking place (and not ahead of the date that you go to Court).

We have not developed a separate application form for you to complete if you wish to apply to Court. Please use the application form for **consent to amend the constitution of a charity** 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 Are the purposes that you want to adopt exclusively charitable?

Your charity's purposes are usually set out in the objects, aims, purposes or objectives section of its constitution. In this guidance 'purposes' includes 'objects', 'aims' or 'objectives'.

The purposes say what your charity has been set up to achieve, and should reflect its broad aims, not the detailed individual activities it carries out on a day to day basis. They should set out your charity's aims accurately and specifically so that it is clear what it is trying to achieve.

For us to be able to give consent for you to change your charity's purposes, the revised purposes that you want to adopt must be charitable. Whether they are or not depends on whether we can link them clearly to the charitable purposes that are set out in the 2005 Act.

You do not have to use the wording from the purposes in the 2005 Act, as long as it is easy to see from the way you describe your purposes how they relate to the charitable purposes. Where your proposed new purposes do not do this we may contact you to ask you to change the wording to make sure that the relationship to a charitable purpose is made clear.

The charitable purposes set out in the 2005 Act are as follows (with further comments on some of them):

a. The prevention or relief of poverty

The prevention of poverty includes preventing those who are poor from becoming poorer as well as preventing those who are at risk of being poor from becoming poor.

b. The advancement of education

This covers both formal education such as that provided through schools and universities, and less formal education, such as that provided in the community.

c. The advancement of religion

Religion encompasses the worship of one or many gods.

d. The advancement of health (including the prevention or relief of sickness, disease or human suffering)

This can mean both physical and mental health, and advancing health can include the prevention or relief of sickness, disease or human suffering.

e. The saving of lives

f. The advancement of citizenship or community development (including rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities)

g. The advancement of the arts, heritage, culture or science

h. The advancement of public participation in sport (and 'sport' means sport

which involves physical skill and exertion)

i. The provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended, and only in relation to recreational facilities or activities which are:

(i) primarily intended for persons who have need of them by reason of their age, illhealth, disability, financial hardship or other disadvantage, or

(ii) available to members of the public at large or to male or female members of the public at large

Charities that meet this purpose might provide a community centre or a youth club or facilities for the public to participate in sports or other leisure pursuits

j. The advancement of human rights, conflict resolution or reconciliation

k. The promotion of religious or racial harmony

l. The promotion of equality and diversity

This includes the elimination of discrimination

m. The advancement of environmental protection or improvement

This includes the preservation or conservation of the natural environment or particular parts of it, and the promotion of sustainable development.

n. The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage (including relief given by the provision of accommodation or care)

This purpose may be furthered by the provision of care to those in need in a variety of settings, provision of housing for those in need (for instance by housing associations), and by relieving the effects of ill-health.

o. The advancement of animal welfare

p. Any other purpose that may reasonably be regarded as analogous to any of the preceding purposes (and the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in (c) above)

This allows some flexibility for us to recognise evolving purposes as charitable in the light of changes in society.

existing purposes in some ways but has new aspects. As well as 'advancing any philosophical belief' some other purposes we have recognised on this basis are:

- the relief of unemployment
- increasing or improving the efficiency of the emergency services.

Please see our **Meeting the Charity Test Guidance** for further information.

3. The nature of our decision

3.1 How quickly we will decide

You cannot go ahead and change your charity's purposes unless you have our consent. Although there is no statutory deadline by which we must have made our decision, we will try to issue our decision to you within 28 days of receipt.

3.2 Possible outcomes

There are two possible outcomes to your request for prior consent to change the purposes of your charity:

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

If we believe that your charity's constitution gives you the power to change the purposes of your charity, and we believe the proposed new purposes are exclusively charitable in terms of the 2005 Act, we are likely to give you consent to act on your proposal.

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 the proposed new purposes are exclusively charitable in terms of the 2005 Act, we will most probably refuse consent. For further details, please see section 4.2.

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

Please note that if we give your our consent, this only covers the changes you propose to make to your charity's purposes. It does not necessarily mean that we have considered whether your charity meets the other parts of the charity test. For more information on meeting the charity test and providing public benefit, please refer to our guidance, **Meeting the Charity Test**.

- **Giving our consent to change the purposes of a charity**

If we give you our consent to change the purposes of your charity, this does not mean that the purposes are then changed. All it means is that you can now take action to do so.

As charity trustees you must still take the necessary steps to change your charity's purposes. For example, you may need to hold a meeting of the charity trustees, get the agreement of your charity's members, perhaps through a general meeting, and/or make the desired change to the charity's constitution. You are responsible for doing all of this. You must follow any procedures set out in your charity's constitution.

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

Our consent to change your charity's purposes is conditional. By this we mean that it is conditional upon the precise wording of the draft (revised) purposes that we have agreed to being adopted.

When you write to tell us that the process of changing the charity's purposes is complete (see section 4.3), we will check that the revised purposes are the same as those that we have given our consent to.

If you make a change to the purposes that are different from what we gave our consent for, we will treat this as having been made without our consent.

Therefore, if you wish to make any alteration to the draft (revised) purposes that we have agreed to, a fresh application must be made.

Our decision letter will ask you to send us supporting documentation once you have made this change. Please see section 4.3 for more information.

- **Refusing consent to change the purposes of a charity**

If we refuse to consent to change the purposes of 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 4.2 for more information.

4. What you need to do

The following general steps need to be taken into account when you want to get our consent to change the purposes of 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 make the change, but only give consent for you to do so
- **Remember** to notify us when the process of making the change has been completed.

If our consent is given, you can go ahead and change your charity's purposes. 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.

4.1 Plan ahead – the importance of timing

Our consent to your charity's purposes must be sought **at least 42 days in advance of the proposed date of change**.

So, make sure that you leave plenty of time to contact us. We suggest that you apply for our consent to change your charity's purposes at least two months in advance. This is because the application process can sometimes take longer than expected.

An application form for **consent to amend the constitution of 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. Please enclose the following supporting documentation with your application:

- a copy of your charity's current constitution
- a copy of your charity's draft (new) constitution.

4.2 Act on our decision letter

If we give you consent to change your charity's purposes, as charity trustees you are responsible for making this change according to the terms of your charity's constitution.

As charity trustees, you are also responsible for notifying us when the process of changing your charity's purposes is complete. Please see section 4.3 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 change the purposes of 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
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 because you do not have the power to make this change, you might 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 charity 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**.

4.3 Remember to notify us

Once our consent has been given, and the charity's purposes have been amended, **you must notify us**. This is required under section 17 of the 2005 Act.

This must be done within three months of the change to the charity's purposes taking place. This may be done by letter, fax or email, but must be in writing.

There is a **notification of changes made form** to complete. Please fill this out and send it to us along with the supporting documentation that is required. This form can be downloaded from the OSCR website (www.oscr.org.uk) or is available in paper copy, on request.

- **Meeting administrative requirements**

If we give you consent to change your charity's purposes, we will usually ask you to fulfil a number of administrative requirements when you notify us. The following are examples of the type of documents(s) that we might request from you:

We will almost **always** ask you to send us:

- **A copy of the revised or updated constitution showing the charity's 'new' purposes.** We need this to make sure that the purposes have been changed, and in order to update the Scottish Charity Register.

We **may** also ask you to provide:

- **A copy of a minute of the meeting at which the charity trustees or its members decided to make the proposed change(s).** We need this to make sure that the change to the charity's purposes has happened with the right number of people present.

The constitution often says how decisions must be taken. Sometimes, charity trustees cannot complete the change process because too few people have been able to meet. If this situation is likely to affect you, please tell us before we issue our decision to you.

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 are also happy for the charity to change its purposes.** We need this to make sure that everyone has been informed. The consent of other Regulators is required when some types of charity want to change their purposes. For example, if your charity is registered in England and Wales as well, the Charity Commission will need to be contacted before any change to your charity's purposes may go ahead.

We ask for this supporting documentation in order to be sure that the process of changing the purposes of your charity is complete. Please note that your charity's purposes will not be updated in the Scottish Charity Register unless 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.

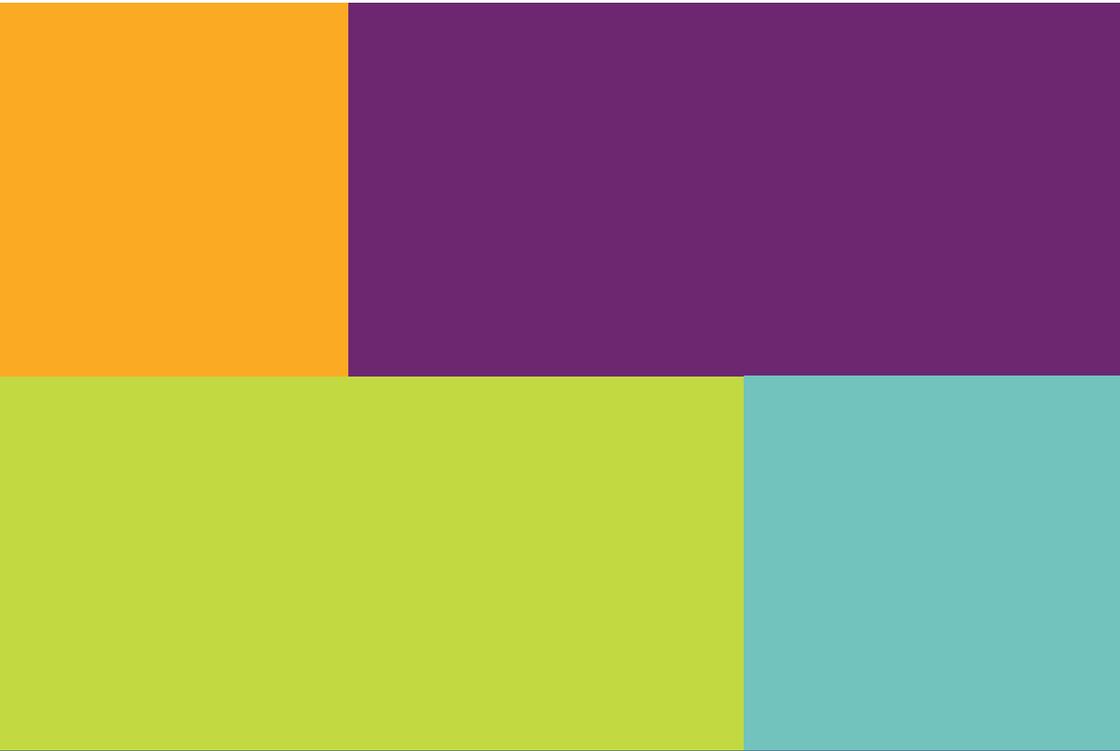
(3) A notice under any of paragraphs (a) to (d) of subsection (1) must be given within 3 months of the date of the change or action to which it relates.

(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.

Notes

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This booklet was first published in March 2010 and put into a new format in August 2017