



GUIDANCE ON MAKING AN APPLICATION TO THE ATTORNEY GENERAL UNDER THE CHARITIES ACT 1986

Introduction

1. In cases where the criteria set out in sections 1 and 2 of the [Charities Act 1986](#) ("the 1986 Act") apply, those provisions enable the Attorney General to consent to the passing by the charity trustees of the following resolutions:

- Section 1 – to free the charity from any restrictions imposed by law with respect to the expenditure of capital; and
- Section 2 – to transfer the whole of the charity's property to another charity to be held and applied by, and as property of, the recipient charity.

In what circumstances would the charity trustees consider passing a resolution under section 1 or section 2?

2. Some charities are established with a permanent endowment, i.e. funds or assets which have been provided to it which it is intended that the charity will make use of in order to deliver the charity's objectives. Examples of a permanent endowment include a building gifted to be used as public meeting room, a collection of paintings or other decorative objects which are to be displayed to the public or a sum of money which it is intended will provide an income which will fund the charity's activities. In such a case, the governing instrument should make clear the intention that the assets or funds are to be retained by the charity.

3. If the charity does not have a governing instrument, the charity trustees should review the decisions of their predecessors in case it was decided to treat certain property as a permanent endowment. Whilst it is unlikely that donations received as a matter of routine fundraising would be subject to a requirement to be treated as a permanent endowment, the charity trustees should consider whether any individual gifts made to the charity are subject to any limitations on their use imposed by the donor.

4. In earlier times, it was quite common for a sum of money to be provided to a charity, with the stipulation that the income be used for a particular purpose, for example, to provide for winter coal for impoverished residents of the parish. During periods of low inflation and good rates of return to be had on savings and investments, it was entirely feasible that the funds gifted would provide sufficient income to achieve the donor's objective for many years to come.

5. Successive economic downturns have both eroded capital values and reduced the rate of return to the extent that, currently, in many cases the income yielded is too small for the charity to be able to carry out any activities.

6. If the funds are held as permanent endowment, unless the charity's governing instrument expressly permitted it, the charity trustees are not able to spend the funds or transfer them to another charity, for example to enable them to be pooled with other funds and thereby generate sufficient income to deliver the intended benefit. Further, the charity trustees would not be able to transfer its assets to another charity, even if the charity trustees felt that it would be a more effective way of achieving the objectives for which their charity was established. This would also prevent the charity trustees from winding up the charity even in circumstances where it was no longer feasible for the charity to continue.

7. In circumstances where the provisions of the governing instrument are effectively preventing the charity trustees from making effective use of charity's funds or assets, including by transferring them to another charity, or where, in the absence of a written governing instrument, there is uncertainty as to whether some, or all, of the charity's property is held subject to restrictions as to its use, an application can be made to the High Court for an order under section 2 of the [Charities Act 1962](#). As an alternative, however, a charity which meets the criteria in section 1 or section 2 of the 1986 Act, as applicable, may instead seek approval from the Attorney General for the passing of the relevant resolution.

In what circumstances could a resolution be passed under section 1 of the 1986 Act?

8. Section 1 of the 1986 Act provides as follows:

1 Power for small charity to spend capital

(1) This section applies to any charity in respect of which —

(a) the endowment is of a value of £100,000¹ or less and does not include any land; and

(b) the gross income in the last preceding accounting year was £10,000² or less.

(2) Where the trustees of a charity to which this section applies are satisfied that the property of the charity is too small, in relation to its objects, for any useful purpose to be achieved by the expenditure of income alone, the trustees may resolve that the charity ought to be freed from any restrictions imposed by law with respect to the expenditure of capital.

(3) A resolution under this section may not be passed without the prior consent in writing of the Attorney General, and shall be in such form as he may direct.

(4) Where the trustees of a charity have passed a resolution under this section, they may expend any property of the charity without regard to any restriction imposed by law and applying to the expenditure of capital and not to the expenditure of income.

What is the process for the charity trustees to pass a resolution under section 1?

9. The first step is to make an application to the Attorney General to consent to the passing of a resolution by the charity trustees. This should be made by letter signed by the Chair of the charity, or by another charity trustee as agreed at a meeting of the charity trustees, which is addressed to Charities Administration and sent, or delivered, to the address given below. The letter should confirm that the charity meets the criteria set out in section 1(1)(a) and (b) and that the charity trustees are satisfied that the circumstances referred to in section 1(2) apply. Model wording for the letter of application is set out in the Annex to this guidance.

10. If the Attorney General decides to give the necessary consent, the charity trustees will be notified of this in writing and provided with a form of resolution to be passed by them, which should be done either at a meeting of the charity trustees or by any other process provided by the governing instrument or applicable law, e.g. by written resolution.

11. Under section 3 of the 1986 Act, the charity trustees must send a copy of the resolution to the Attorney General within one month of its being passed. Again, this copy should be sent, or delivered, to Charities Administration. Failure to comply with this requirement is an

¹ With effect from 1 June 2021 – per the Charities Act 1986 (Specified Sums) Order 2021

² With effect from 1 June 2021

offence in respect of which each of the charity trustees may be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale, currently £2,000³.

12. The copy of the resolution will be filed with the charity's annual accounts, which means that it will be a publically available document

13. Having passed the resolution, the charity trustees would be able to spend the funds previously held as the charity's capital, or endowment, exactly as they would the monies comprising the charity's income. Once those funds were exhausted, the charity trustees would be able to wind up the charity unless they had the power to raise further funds and so desired.

14. If you are not certain whether a resolution can be passed under section 1 in relation to your charity, or if you have any other queries concerning the process, please contact Charities Administration by sending an e-mail to charities@gov.im. If your charity does not meet the criteria set out in section 1(1)(a) and (b), you should take legal advice concerning the making of an application to the High Court under the Charities Act 1962.

In what circumstances could a resolution be passed under section 2 of the 1986 Act?

15. Section 2 of the 1986 Act provides as follows:

2 Transfer of charity endowment to another charity

(1) This section applies to any charity in respect of which —

(a) the endowment does not include any land; and

(b) the gross income in the last preceding accounting year was £10,000⁴ or less.

(2) Where the trustees of a charity to which this section applies (“the transferor charity”) are satisfied that the objects of another charity (“the transferee charity”) are not so different from those of the transferor charity that the proposed transfer would constitute an unjustifiable departure from the intentions of the donor or frustrate the spirit of the gift, they may resolve that the whole of the property of the transferor charity be transferred to the trustees of the transferee charity to be held and applied by, and as property of, the transferee charity.

(3) A resolution under this section —

(a) may not be passed without the prior consent in writing of the Attorney General and of the trustees of the transferee charity; and

(b) shall be in such form as the Attorney General may direct.

(4) Where the trustees of a charity have passed a resolution under this section they may transfer the whole property of the charity to the transferee charity to be held on the following terms —

(a) all property which fell to be treated as income or capital of the transferor charity shall be treated as income or capital respectively of the transferee charity; and

(b) the whole property shall be held and applied for the objects of the transferee charity.

What is the process for the charity trustees to pass a resolution under section 2?

16. Firstly, as the effect of passing a resolution under section 2 is that the entire property of the charity will be transferred to one or more charities, the charity trustees should only consider passing such a resolution if they consider that it is in the best interests of the charity that it be wound up. This may be because the charity trustees consider that the objectives of the charity would be more effectively achieved by their charity merging with

³ See section 55 of the [Interpretation Act 2015](#)

⁴ With effect from 1 June 2021

another charity or it is no longer feasible for their charity to continue, perhaps due to difficulties in finding replacement trustees.

17. The next step is for the charity trustees to identify a suitable recipient charity, or charities. Although section 2 refers to “another charity”, section 34 of the [Interpretation Act 2015](#) provides that references in Manx legislation to the singular are to be interpreted as including the plural. If the charity trustees are considering transferring the property to a number of other charities, they can do so in equal shares or in such other proportions as they consider appropriate.

18. When considering whether a charity may be a suitable recipient of their charity’s funds, the charity trustees must look at its objects so that they can consider the extent to which they are similar to those of their charity. The Attorney General always considers this point very carefully when determining whether to give the necessary consent. It is not necessary that the objects of a proposed recipient be identical to those of their charity, but they should be sufficiently similar to them, or to some of them, that the objectives of the original donors in giving the funds or other assets to their charity would be met.

19. For example, a charity which was established to provide relief to individuals suffering from breast cancer would be able to transfer its property to one which was established to support individuals suffering from any form of cancer, provided that the recipient charity agreed to use the property to benefit breast cancer sufferers only, or a charity established at the end of the 19th century to provide winter coal to impoverished residents in the north of the Island would be able to transfer its property to one which helped impoverished people resident in that area with meeting their domestic heating costs, reflecting the fact that homes are now usually heated by means other than open coal fires. But a charity established to provide housing for impoverished widows of the parish would not be able to give its property to a charity established to promote the history and heritage of the area concerned, even though that may include providing information about the lives of former local residents who were beneficiaries of the charity.

20. Having identified one or more suitable recipient charities, the charity trustees should contact the charity trustees of the proposed recipient(s) to seek confirmation in writing that they consent to the property being transferred to them, subject to any restrictions on its use which may be necessary to reflect the intentions of the original donor(s).

21. It must be noted that any property forming part of a permanent endowment or otherwise subject to restrictions as to its application retains those restrictions on its transfer. Thus, if the charity the funds of which are to be transferred is prohibited from spending its capital, the recipient charity will not be able to spend the monies following transfer even if its governing instrument enables it to spend its capital as if it were income. If the result of the transfer would still be that the property could not be put to effective use, at the same time as considering the transfer of the property, the charity trustees should consider passing a resolution to free the charity from any restrictions imposed by law with respect to the expenditure of capital, as referred to in paragraphs 8 to 14 above.

22. The application for the Attorney General to consent to the passing of a resolution by the charity trustees should be made by letter signed by the Chair of the charity or by another charity trustee as agreed at a meeting of the charity trustees, which is addressed to Charities Administration and sent, or delivered, to the address given below. The letter should confirm that the charity meets the criteria set out in section 2(1)(a) and (b) and that the charity trustees are satisfied that the circumstances referred to in section 2(2) apply. The written confirmation obtained from the charity trustees of the proposed recipient

charity/ies should be enclosed. Example wording for the letter of application is set out in the Annex to this guidance.

23. If the Attorney General decides to give the necessary consent, the charity trustees will be notified of this in writing and provided with a form of resolution to be passed by them, which should be done either at a meeting of the charity trustees or by any other process provided by the governing instrument or applicable law, e.g. by written resolution.

24. Under section 3 of the 1986 Act, the charity trustees must send a copy of the resolution to the Attorney General within one month of its being passed. Again, this copy should be sent, or delivered, to Charities Administration. Failure to comply with this requirement is an offence in respect of which each of the charity trustees may be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale, currently £2000⁵.

25. The copy of the resolution will be filed with the charity's annual accounts, which means that it will be a publically available document

26. Having passed the resolution, the charity trustees would be able to transfer the property to the recipient charity or charities in the proportions decided upon and then take steps to wind up their charity, including preparing accounts and a report for the period from the beginning of the accounting year to the date on which the transfer of the charity's property occurs or (if more than one transfer of property is involved) the date of the last of the transfers. The accounts and report would have to be sent to Charities Administration within one month of the end of the period, together with a completed notification form (including Annex F) which is available on the [Publications page](#). The charity would then be removed from the register.

27. If the entirety of the property is being transferred to a single recipient, the charity trustees may be able to take advantage of the charity mergers provisions in Part 7 of the [Charities Registration and Regulation Act 2019](#).

28. More information about the process of winding up a charity, and registering a charities merger, can be found on the [Winding up/dissolving a charity and removing a charity from the register page](#) available on www.gov.im/charities.

29. If you are not certain whether a resolution can be passed under section 2 in relation to your charity, or if you have any other queries concerning the process, please contact Charities Administration by sending an e-mail to charities@gov.im. If your charity does not meet the criteria set out in section 2(1)(a) and (b), you should take legal advice concerning the making of an application to the High Court under the Charities Act 1962.

⁵ See section 55 of the [Interpretation Act 2015](#)

Contact details

Charities Administration

Attorney General's Chambers
Belgravia House
Circular Road
Douglas
Isle of Man
IM1 1AE

Telephone: +44 1624 687318

Email: charities@gov.im

ANNEX

1 Example letter of application for consent to pass a resolution under section 1

Dear Sirs

re: [name and registered number of charity]

At a meeting of the charity trustees held on [date], it was agreed that the charity would seek the consent of the Attorney General to the passing of a resolution under section 1 of the Charities Act 1986.

The charity was established on [date] with the objectives of [brief outline]. The charity's governing instrument provides that the charity may only apply its income in the furtherance of its objective and, so, it is unable to spend its capital *[OR The charity does not have a written governing instrument but its property has always been treated as a permanent endowment]*. The endowment of the charity comprises [description of assets]. The charity does not hold any land.

Previously, the charity enjoyed an income of up to £[amount], which was spend on [brief description]. Recently, the charity's income has declined and, in the most recent accounting year, which ended on [date], its gross income was £[amount], which is too small an amount to achieve any useful purpose because [give brief reasons].

In the present financial climate, the charity trustees consider it unlikely that the charity's income will increase significantly, if at all, in the foreseeable future Accordingly, the charity trustees are satisfied that the property of the charity is too small, in relation to its objects, for any useful purpose to be achieved by the expenditure of income alone.

In the circumstances, the charity trustees now seek the consent of the Attorney General to the passing of a resolution that the charity be freed from any restrictions imposed by law with respect to the expenditure of capital. This will enable the charity to apply its funds to achieve the objectives for which it was established. It is the intention of the charity trustees to wind up the charity once the funds have been exhausted.

Yours faithfully, etc

II Example letter of application for consent to pass a resolution under section 2

Dear Sirs

re: [name and registered number of charity]

At a meeting of the charity trustees held on [date], it was agreed that the charity would seek the consent of the Attorney General to the passing of a resolution under section 2 of the Charities Act 1986.

The charity was established on [date] with the objectives of [brief outline]. The charity does not hold any land, its endowment comprising [description of assets]. Its gross income in the last preceding accounting year was £[amount].

[Set out the reasons why the charity trustees consider that the charity should now be wound up]. The charity does not have a written governing instrument *OR The charity's governing instrument does not provide for it to apply its endowment in the achievement of its objective or to transfer it to another charity OR Although the charity's governing instrument does enable it to apply its endowment in the achievement of its objective, the charity trustees have been unable to identify an appropriate use to which the funds can be put because [give reasons].*

In the circumstances, the charity trustees have identified [name of charity and number (or names of charities and numbers, if more than one)] as a suitable recipient [*OR suitable recipients*] of the charity's property. [If more than one, set out the relevant proportions, eg equal shares, 2/3 to charity A and 1/3 to charity B, etc]. [Name of proposed recipient charity] is established for the objectives [give brief description] [*If more than one, give description of the objectives of each of the proposed recipient charities*].

Accordingly, the charity trustees are satisfied that the objects of [name of proposed recipient charity *OR names of proposed recipient charities*] are not so different from those of [name of the charity the property of which is to be transferred] that the proposed transfer would constitute an unjustifiable departure from the intentions of the donor or frustrate the spirit of the gift.

The charity trustees of [name of proposed recipient charity *OR names of proposed recipient charities*] have confirmed that they consent to the proposed transfer [set out any conditions to which the transfer will be subject e.g. to ring fence the property for use for certain purposes, if the recipient charity is established for purposes which are wider than those of the charity the property of which is to be transferred]. A copy of [*OR Copies of*] the letter(s) of consent received from the charity trustees is [*OR are*] enclosed.

In the circumstances, the charity trustees now seek the consent of the Attorney General to the passing of a resolution that the whole of the property of [name of the charity the property of which is to be transferred] be transferred to the trustees of the [name of proposed recipient charity *OR names of proposed recipient charities*] to be held and applied by, and as property of, that charity [*OR charities*].

Yours faithfully, etc