



Amending Governing Documents: CSD-1342A Unincorporated Charities

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Annex A: Flowchart: Amending an unincorporated charity's governing document

1. Using this guidance

- 1.1 This guidance is intended for the trustees of **unincorporated charities** who want to amend the governing document of their charity. For registered charities, this guidance also covers the duty to tell us about the amendments.
- 1.2 It does not apply to charitable companies, that have to comply with the requirements of company law, or other types of incorporated charities (such as those incorporated by Royal Charter). Our Operational Guidance on amendments to the governing documents of charitable companies (**OG 47**) is available on our website.
- 1.3 All the other publications and the forms referred to in this guidance are available on our website at **www.charitycommission.gov.uk** or can be obtained by contacting us using the contact details in section 11.
- 1.4 We strongly recommend that trustees regularly review the effectiveness of their charity's governing document (both the charitable purposes and the administrative provisions).
- 1.5 When trustees use any of the procedures referred to in this guidance to amend their charity's governing document, as with all other decisions, they must do so in the best interests of the charity and use their skills and experience to make sure that the amendment:
 - is appropriate to the needs of the charity; and
 - has been carried out correctly.

Our guidance **The Essential Trustee (CC3)** contains more information about the duty of care and prudent decision making.

- 1.6 There are some basic considerations that apply to making any change to a charity's governing document. These are illustrated by the flowchart at Annex A and can be summarised as:
 - What is the nature of the proposed changes? Do they affect the charity's purposes or how it is administered? Sections 5 to 10 of this guidance provide advice on these matters.
 - Does the charity have the power to make this change? See section 3.

- What procedure must be followed? See section 3.
- Does any information have to be sent to the Charity Commission? See section 11.

2. Some terms used in this guidance

In this guidance, where we use **must**, we mean it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements.

Where we use terms such as the trustees **should** or **we recommend** we are referring to actions that the trustees (or their agents or employees) can take and we consider to be good practice, but are not legal requirements.

The **1993 Act** means the Charities Act 1993 as amended by the Charities Act 2006.

Charitable company means a charity formed as a company and registered at Companies House with a memorandum and articles of association as its governing document.

An organisation is a **charity** if it is established for exclusively charitable purposes.

This guidance only applies to charities established under the law of England and Wales. It does not apply to charities established under the laws of a foreign country, or in the Channel Islands, the Isle of Man, Northern Ireland or Scotland.

A **dissolution clause** is the part of a charity's governing document that enables the trustees to bring the charity to an end. The clause will often be found towards the end of the governing document. It will set out how and by whom the charity can be wound up and what is to happen to any remaining assets. In some cases our approval will be necessary before the remaining assets can be applied.

Ex gratia payment is a term that does not have a precise legal meaning, but is used in this guidance as a convenient way of describing a payment made by a charity in particular circumstances. These circumstances are where the trustees:

- believe that they are under a moral obligation to make the payment; but
- are not under any legal obligation to make the payment; and
- have no power under the governing document of the charity to make the payment; and
- cannot justify the payment as being in the interests of the charity.

An **ex officio trustee** is a person who is a trustee for as long as they hold a particular office, for example the Mayor of a local town or the head teacher of a particular school or college.

Governing document means any legal document that sets out a charity's purposes and, usually, how it is to be run.

Gross income means the charity's total income as recorded in its accounts, including any income from property held for specific purposes different from the charity's general purposes.

An **Order** is a legal document made by us that authorises trustees to take an action that otherwise they have no power to do.

Permanent endowment is the property of a charity (eg land, buildings, investments or cash) that the trustees cannot spend as if it were income. It must be held permanently, sometimes to be used in furthering the charity's purposes, sometimes to produce an income for the charity. Our information sheet **Permanent endowment: What is it and when can it be spent? (CSD 1347A)** explains when property may be permanent endowment in more detail.

A **quorum** is the minimum number of trustees who must be present for a meeting of the trustees to be properly constituted. The governing document may specify this. We recommend that the quorum for a trustees' meeting is a minimum of one-third of the total number of charity trustees plus one, for example, a body of six charity trustees will have a quorum of three, ie $6 \div 3 = 2 + 1 = 3$.

A **Scheme** is a legal document by which we may amend, replace or add to a charity's governing document. In practice, we will only make a Scheme where a case is made for us to change the purposes of a charity or make other constitutional arrangements that go beyond the scope of the statutory power and our Order making powers.

The **small charities powers** means the powers set out sections 74, 74A, 74B and 74C of the 1993 Act, that enable certain small unincorporated charities to:

- transfer their property to another charity or charities; or
- change their purposes.

The **statutory power** means the power set out in section 74D of the 1993 Act. This statutory power enables the trustees of all unincorporated charities to 'modify the powers or procedures' in their governing document. Paragraphs 3.7 to 3.14 explain the effect of this power.

Trustees mean **charity trustees**. **Charity trustees** are the people who are legally responsible for the general control and management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, or governors, or they may be referred to by some other title. Our publication **The Essential Trustee (CC 3)** contains further information about the legal responsibilities of trustees.

An **unincorporated charity** is a charity that will usually have a constitution, rules, trust deed, Scheme or will as its governing document. The term excludes charitable companies and other charities that have a similar legal status as a corporate entity in law.

3. How can the governing document be altered?

3.1 As illustrated in the flowchart at Annex A, governing documents of unincorporated charities can usually be amended in one of three ways, as follows:

- By using a power of amendment in the governing document;
- By using the small charities powers or the statutory power;
- By means of a Scheme made by us.

The circumstances in which each of these options applies and where to look for further guidance are outlined below.

Using a power of amendment in the governing document

3.2 The first place to look is the charity's governing document to see if it gives the trustees a power of amendment that enables them to make the exact changes they want. If it does, and they decide to use it, they must follow the procedure it sets out. Depending on the governing document of the charity and the terms of the power, amendment will usually be by:

- a decision of the trustees (the governing document may require that to be legally valid the amendment must be set out in a formal legal document, such as a deed); or
- a resolution of the members of the charity, which may require a specified majority of members in favour, for example two thirds of the members present and voting.

3.3 The power may indicate:

- which provisions may be amended; for example, the power of amendment in many governing documents specifies that the charitable purposes cannot be changed; and
- whether or not our approval or the approval of another organisation is needed.

3.4 If the power of amendment indicates that approval to an amendment is required, this should be obtained in good time **before** it is voted on by the trustees or the members even if the wording of the power of amendment does not specify this.

3.5 Where the approval of an organisation or individual (a third party) is required to **all** amendments, that does not prevent the trustees using the statutory power to amend the governing document.

3.6 Sections 5 (Changes to charity names), 6 (Changing purposes), 7 (Amending trustee provisions), 9 (Amending administrative provisions) and 10 (Dissolution clauses) of this guidance explain in more detail how a power of amendment may be used to change various parts of a governing document.

Using the statutory power

3.7 Trustees may use the statutory power to alter any of the provisions of the trusts of their charity that relate to how it is run. However the general law does impose limits on what the statutory power can be used for. It **cannot** be used to amend provisions in the governing document that include:

- the charitable purposes of the charity;
- the charitable purposes the charity's property is to be used for when it dissolves;
- changing a power of amendment to include power to change parts of a governing document that the statutory power itself cannot be used to change, for example the purposes/objects or the application of the charity's property on dissolution;
- the right of third parties to appoint trustees;
- a power, eg a power of investment, the exercise of which by the trustees requires the consent of a third party may not be amended so as to remove the requirement for that consent unless the agreement of the third party is obtained (preferably in writing) or the third party has ceased to exist;
- the payment of the trustees, other than out of pocket expenses;
- to make property of the charity permanent endowment; or
- to include a power to make ex gratia payments.

3.8 They may amend, vary or add to any existing powers that they have under the charity's governing document or that are available to them under general law and which they believe it is in the charity's best interests to change. Examples of the sort of powers that the trustees may want to alter are:

- the power to change the charity's name;
- their power of investment;
- their power to buy and sell land and property – the statutory power does not allow changes to be made to the provisions for land to be used for some or all of the charity's purposes; or
- their power to borrow money.

3.9 The power can also be used to alter any of the parts of the charity's governing document that regulate the procedures by which the charity is administered. They may amend the existing procedures, or they may introduce new ones. The sort of procedures that the trustee may want to modify are those for:

- holding trustees' and/or members' meetings;
- the quorum needed for meetings;
- how the chair should be appointed;
- whether the chair can use a second or casting vote when the votes on a resolution are equal;
- how the trustees' officers, such as the secretary or treasurer should be appointed; or
- accepting people into membership of the charity.

3.10 Using the statutory power, the change can be made by a resolution of the trustees passed either:

- at a properly constituted meeting. If the governing document sets a quorum for trustees' meetings then at least that number of trustees must be present at the meeting; or
- in such other way as the charity's governing document allows for their proposals to be voted on, for example postal votes.

3.11 If the charity has a membership that is separate to the trustees (which is most likely to occur if the charity is an unincorporated association governed by rules or a constitution), the resolution must also be approved by the membership by a further resolution passed at a general meeting either:

- by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting and who vote on the resolution; or
- by a decision taken at a meeting without a vote and without any disagreement with the resolution being expressed at that meeting.

3.12 We strongly recommend that the wording of the resolution states that it has been passed using the power provided by section 74D of the Charities Act 1993, as amended by the Charities Act 2006, so that the charity's records clearly show that the statutory power has been used.

3.13 The resolution should state the date on which it comes into effect. If the decision to make the change only has to be made by the trustees, we expect that the date usually be the date on which the resolution is passed unless a later date is specified in the resolution. If the charity has a membership that is separate to the trustee body, the resolution will come into effect either on the date on which the resolution is approved by them, or a later date that is specified in the resolution.

3.14 Sections 5 (Changes to charity names), 7 (Amending trustee provisions), and 9 (Amending administrative provisions) of this guidance explain in more detail how this power may be used to change various specific provisions in a governing document.

Using the small charities powers

3.15 The small charities powers are wider than those that apply to all unincorporated charities and allow small charities to:

- transfer their assets to other charities with similar purposes (see our information note **Transfer of property for smaller charities (CSD 1348A1)**); or
- amend their purposes (see our information note **New purposes for smaller charities (CSD 1346A)**).

3.16 The small charities powers can be used if there is no power of amendment in the charity's governing document and:

- the charity's gross income was £10,000 or less in its last financial year; and

- it owns no land that the governing document requires must be used for some of all of the charity's purposes.

3.17 Resolutions using the small charities powers have to be sent to us to consider whether we should object to them. We anticipate that such objections will be rare.

Schemes

3.18 If the charity has:

- no power of amendment in its governing document; and
- wants to make an amendment not allowed by the small charities or the statutory amendment powers;

the trustees do not have the power to make the changes. They should, therefore, contact us with details of the changes they want to make so that we can consider whether a Scheme should be made.

3.19 The circumstances in which we can make a Scheme and the procedure involved are explained in detail in our publication **Changing your charity's governing document (CC36)**.

4. Adopting a replacement governing document

- 4.1 If the power of amendment is wide enough it can be used to adopt a revised governing document, for example, one that might be proposed by an organisation to which the charity is affiliated or is a member.
- 4.2. If a charity does not have a power of amendment in its governing document, the trustees can still use the statutory power to update its administrative provisions but no alterations to the provisions mentioned in paragraph 3.7 may be made, they must just be restated.

5. Changes to charity names

5.1 Where the governing document of an unincorporated charity gives it a specific name, that name may be altered by using:

- a suitable power of amendment in the governing document; or
- the statutory power.

5.2 We recommend that before changing the name of their charity the trustees carry out their own checks regarding the availability of names.

5.3 When considering a new name, trustees should be aware of the need to avoid creating confusion for either beneficiaries, funders or donors about the identity of the charity in relation to other charities or organisations with the same, or similar names. They can do this either by viewing the Register on our website or by telephoning our Contact Centre (see section 11 for the telephone numbers). We cannot suggest names for charities.

5.4 Before placing the new name on the Register we will compare it to those already there to see if there are any identical or similar names. If the new name is the same as, or too similar to, a name that has already been registered, we will decide whether the proposed name is acceptable for use again. Where it is not, we will tell you why it is not acceptable and ask you to change the name. In these circumstances, we have power to order a charity to change its name.

5.5 The trustees may also want to check the Companies House Register (available at www.companieshouse.gov.uk) and other registers including the Trademarks Register (www.patent.gov.uk) to see if there is a company with a similar name that may take legal action against the charity to protect its right to use that name.

6. Changing purposes

- 6.1 This section only applies to charities that have a power in their governing document to change their purposes. Those charities that do not have such a power and want to change their purposes should consider the other possibilities that are described in section 3, using the small charities power to change purposes or, if their income is too large or they have land that must be used for some or all of the charity's purposes, applying to us for a Scheme. The statutory power cannot be used to change a charity's purposes.
- 6.2 The extent to which the trustees of an unincorporated charity may change its purposes depends on the wording of the power of amendment clause in its governing document.
- 6.3 Where an unincorporated charity has a general power that simply sets out a procedure for amending the governing document without specifically saying how the purposes may be amended, we expect that any change will be "within and not outside the reasonable contemplation" of the people who have given to the charity in the past. Put simply, this means that no changes should be made that are so far-reaching that they are inconsistent with the purposes for which people gave money to support the charity in the past.
- 6.4 Normally when a charity changes its purposes it can use the property it held prior to the change for the new purpose. However if property has been donated for a specific purpose that is narrower than the charity's main purpose it can still only be used for that narrower purpose unless the donor agrees to it being used for the new purpose.
- 6.5 When changing the purposes of their charity, trustees should note that they should consider whether other people and bodies with an interest in the charity, such as donors, grant-makers, umbrella organisations and beneficiaries should be consulted about the changes.
- 6.6 The wording of any new purposes must be exclusively charitable, as an organisation can only legally be a charity if all its purposes are charitable. The trustees may find the **Example Objects** in the Registering a Charity area of our website helpful when deciding on the new wording.
- 6.7 The trustees should always ensure that the purposes of the charity are distinct from the powers they need to carry them out. For example, if the purposes of a charity are to relieve the needs of elderly sick people, the trustees may need the power to raise funds from the public towards the cost of buying and equipping a property for use as a nursing home.

7. Amending trustee provisions

- 7.1 A charity's governing document should make it clear how many trustees the charity should have and how they are to be appointed. The governing document may also allow the number of trustees and how they are appointed to be amended.
- 7.2 The number and types of trustee a charity will need to ensure it is properly administered will vary according to its size and activities. Where the provisions in the governing document relating to trustee appointments and proceedings need updating, the following points should be borne in mind.
- 7.3 We suggest that there are not so many trustees that meetings are likely to be unwieldy and decision-making difficult, nor that there are so few that they have an unfair workload placed on them. As a general guide, charities usually have at least three trustees and most charities find that they do not need more than nine.
- 7.4 Trustees may be appointed in different ways depending on what the governing document says:
 - if the charity has a membership, they may be appointed by the members (probably at an annual general meeting);
 - they may be nominated by organisations that are closely connected with the work of the charity (such as a local authority or another charity);

- they may be co-opted by the other trustees in office by a resolution passed by those trustees at a meeting;
- they may be an ex-officio trustee.

7.5 It is common for charities to have trustee bodies that have a mix of trustees that are appointed in two or more of these different ways.

7.6 If the amendment will appoint a company as sole trustee of the charity the trustees may need an Order from us to give the company Trust Corporation status. This is important if the charity owns land. Our Operational Guidance on corporate trustees (**OG 38**) provides more information on this subject.

8. Payment of trustees

8.1 Charities must not add a clause to their governing document that will allow some or all of their trustees to be paid more than reasonable out-of-pocket expense for carrying out their duties unless the power of amendment in the governing document permits them to do so. There are circumstances where such payments may be made and charities considering them should consult our publication **Trustee expenses and payments (CC11)** or our **Guidance note: Seeking authority for payment (not exceeding £50,000 per annum) for contracted employment of a trustee, ex-trustee or connected person (CSD 1381B)**.

8.2 Charities can pay trustees or connected persons for goods or services provided to the charity so long as certain conditions are met (section 73A of the Charities Act 1993). Any requirement in a governing document for our authority to any trustee payment can be disregarded if it is proposed to use this power to pay for goods and services – no amendment removing the requirement for our authority is needed.

8.3 If there is an express prohibition against paying trustees in the charity's governing document, this must be removed before the statutory power can be used. This cannot be achieved by use of section 74D and will usually require a scheme from us to remove the prohibition. The exception is where there is a suitable power of amendment in the governing document which can only be used with our prior consent. In such cases, the trustees will need to apply to us for authority to the resolution removing the express prohibition. If we decide it is in the interests of the charity to remove the express prohibition, we will make the scheme or give consent as appropriate. The trustees can then use the statutory power to pay for goods or services.

8.4 For more information about each of these situations, see section E of **Trustee expenses and payments (CC11)**.

9. Amending administrative provisions

9.1 In order to run their charity efficiently, trustees need to ensure that the administrative provisions in the governing document are workable. Either the statutory power or any power of amendment in a charity's governing document will enable these provisions to be amended.

9.2 We suggest that the following list of provisions, all of which can be adapted to the specific needs of a charity, will be helpful for the trustees of all charities. It is not exhaustive, and we recommend that trustees consider whether any additional provisions are needed. The governing document should state:

- the minimum number of meetings that the trustees should have each year in addition to the holding of an annual general meeting (AGM). The trustees of even small charities usually meet at least twice;
- how emergency or special meetings are called to discuss a particular matter;
- how all meetings of the trustees are to be arranged;
- how a chair is to be appointed;

- whether the chair has a right to a second or casting vote when the numbers of trustees voting for and against a resolution are equal; and
- the number of trustees needed for a quorum.

9.3 Further guidance on this subject is available in our publication **Charities and Meetings (CC48)**. Suitable model clauses can also be found in our model governing documents, which are available on our website. If your charity is governed by:

- a trust deed, a declaration of trust or other formal legal document, you should consult our model governing document **Charitable Trusts: Model Trust Deed (GD2)**.
- a constitution or set of rules, you should consult our model governing document **Charitable Associations: Model Constitution (GD3)**.

9.4 If your charity is a member of a parent or national organisation, that organisation may also have a model governing document or documents that contain clauses you may be able to use.

10. Dissolution clauses

10.1 Trustees only have powers to change the purposes for which a charity's remaining assets are to be used when it dissolves, as set out in a dissolution clause, if the scope of the power of amendment in the governing document is wide enough to allow the amendment of the charity's purposes. If the power of amendment does not allow a change to the charity's purposes the trustees may alter the procedure used to dissolve the charity but may not change the purposes for which the assets are to be used.

10.2 If the dissolution clause has ceased to be workable (possibly if a charity designated to receive the assets has itself ceased to exist) the trustees should consider whether it is possible either to use the small charities power to change purposes referred to in paragraphs 3.15 to 3.17, or to apply to us for a Scheme.

11. Contacting us about the change

11.1 Trustees of registered charities must inform us when they have amended their governing document.

Registered charities using either a power of amendment that does not need our approval or the statutory power of amendment

11.2 There are two ways in which the trustees of an unincorporated charity which uses either of these powers may do this. They can either:

- complete declaration form **CSD 1342B** and send it to us together with a copy of the revised governing document; or
- send a copy of the revised governing document together with copies of the relevant resolutions with details of the voting or a copy of the minutes of the relevant meeting to be sent to us.

Where we have to approve the amendment or make a Scheme

11.3 If the governing document contains a power of amendment that can only be used with our approval, the trustees should send us a completed declaration form **CSD 1342C**. The trustees should either not make the amendments until they have received confirmation from us that we have approved them or pass the resolution but subject to our consent. We will do this by endorsing the declaration form and returning it to the trustees. If the amendment is one which could be made using the statutory power, the trustees could use that instead of the one in their governing document.

11.4 If the governing document of the charity does not contain an amendment provision and the trustees cannot use the statutory power, they should outline the proposed amendments, either by completing form **CSD 1342D** or in a letter, and we will consider whether we should make a Scheme. The trustees should not proceed to make the amendments until they have received confirmation from us that they are acceptable and we have given the necessary authority.

11.5 If the charity is not registered with us, but the trustees either need our approval to make the change or, for us to use our powers to make the change, they should ensure that they enclose a copy of its governing document with the other documents they send us. This is not information we are required to hold for unregistered charities and we will be unable to consider their proposals without it.

Contact details

11.6 If you need to contact us about amending the governing document of a charity or to send us completed declaration forms, please either:

scan your documents and e-mail them to us at **enquiries@charitycommission.gsi.gov.uk** (we can normally reply to you more quickly if you e-mail us) or,

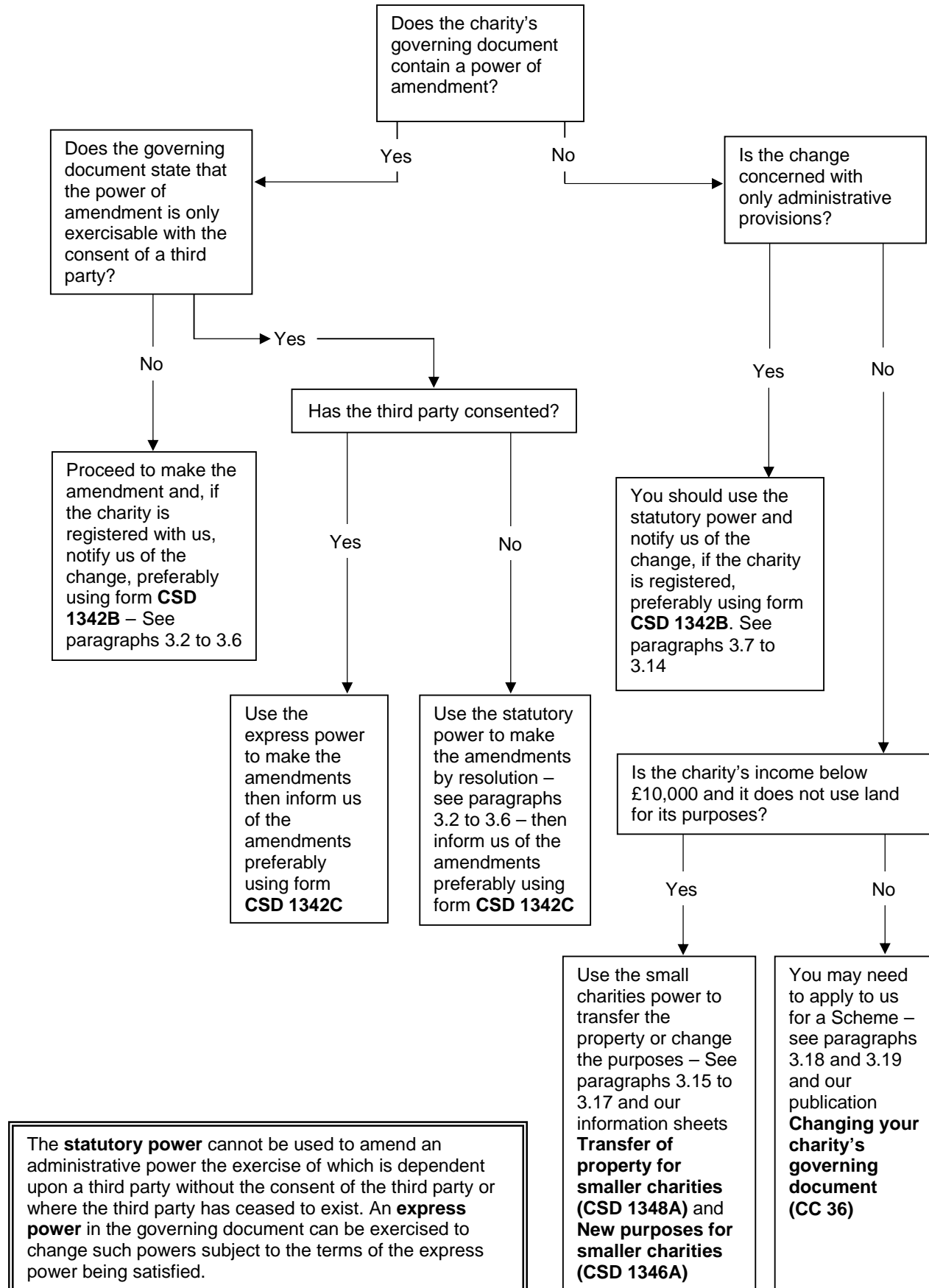
send your correspondence to:

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

11.7 If you have a query about altering or amending the governing document of a charity you can also:

- visit our website at **www.charitycommission.gov.uk** (which allows you to ask questions online);
- e-mail us at **enquiries@charitycommission.gsi.gov.uk**;
- telephone us on either **0845 3000 218** or, if you want to use minicom, **0845 3000 219**.

Flowchart: Amending an unincorporated charity's governing document



The **statutory power** cannot be used to amend an administrative power the exercise of which is dependent upon a third party without the consent of the third party or where the third party has ceased to exist. An **express power** in the governing document can be exercised to change such powers subject to the terms of the express power being satisfied.