



# Permanent Endowment:

## What is it and when can it be spent?

CSD-1347A

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#### Part A Introduction

##### A1 About this guidance

##### A1.1 Who is this guidance for?

This guidance is intended primarily for the trustees and professional advisers of charities based in England and Wales that hold property on permanent endowment trusts.

##### A1.2 What is the purpose of this guidance?

In managing their charity's funds, trustees must take care not to spend any funds held as permanent endowment without authority. While it will usually be clear whether funds are held as permanent endowment, it is not always straightforward.

This guidance therefore has two purposes:

- to explain what permanent endowment is and to outline some of the most common circumstances in which a charity may hold such property (see part B);
- to explain when charities can spend permanent endowment. Part C describes:
  - when and how trustees of charities that have permanent endowment can use their legal powers to remove the restriction that prevents them from spending permanent endowment (referred to in this guidance as the **statutory power**); and

- how, in cases where charities either cannot, or choose not to, use the statutory power, we may be able to authorise trustees to spend permanent endowment. It also describes when we will require trustees to replace out of the charity's future income any permanent endowment that we authorise them to spend.

A1.3 All the publications referred to in this guidance, along with all our other publications, are available on our website at [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk); or can be obtained by telephoning our Contact Centre.

A1.4 Please see part D for the telephone numbers for our Contact Centre and the postal and e-mail addresses you should use.

## A2 Some terms used in this guidance

In this guidance:

- we use '**must**' where we mean it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements;
- we use '**should**' for items we regard as minimum good practice, but for which there is no specific legal requirement. Trustees should follow the good practice guidance unless there is a good reason not to;
- we also offer less formal advice and recommendations that trustees may find helpful in managing their charity.

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

Where we refer to a charity's permanent endowment as being "**entirely given**" we are referring to a condition in the statutory power. That condition enables all charities whose permanent endowment 'consists entirely of property given by a particular individual person (including a bequest made in a will), or by a particular institution (by way of a grant, gift or other means), or by two or more individuals or institutions for the same purpose' to use the statutory power. In practice this condition covers virtually all charities with permanent endowment – the main group of charities not within its scope are those that have created their own permanent endowment by using a power in their governing document that allows the trustees to do this.

**Governing document** means any document that sets out a charity's purposes and, usually, how it is to be run. For a non-company charity it may be a trust deed, constitution, Scheme of the Commission, conveyance or will. We also use it in this guidance to mean any other document by which property is given to a charity.

**Gross income** means the charity's total income from all sources, including special trusts, as recorded in its accounts.

**Institution** means a trust or other type of undertaking<sup>1</sup>. This is a very wide term and can include private trusts, charities and other organisations including limited companies, local authorities, professional partnerships such as legal firms, trade unions and industrial and provident societies.

**Market value** means the market value of a charity's permanent endowment (see part B) as recorded in the accounts for its last full financial year, or if no such value was recorded, the current market value of the fund as decided by a valuation carried out for the purpose.

A **quorum** is the minimum number of trustees who must be present for a meeting of the trustees to be properly constituted. The charity's governing document may specify this.

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<sup>1</sup> S.97 of the 1993 Act

**Trustees** means charity trustees. You are a charity trustee if you are responsible, either alone or with other people, for the general control or management of the administration of a charity. Examples of charity trustees of non-company charities include:

- the members of the committee that is responsible for running a charitable group such as a community association or a parent teacher association; or
- the trustees of a charitable trust (charitable trusts are usually created by a declaration of trust or will).

If you are unsure about whether you are a charity trustee, please see our publication **The Essential Trustee: What you need to know (CC3)**.

A **special trust**<sup>2</sup> is charitable property held on distinct trusts that are linked to a main charity, but as the result of a direction made by us is to be treated as a separate charity. The link usually exists if the trust is administered by or on behalf of a main charity for any special purposes of that charity. It follows that the objects of a special trust must be narrower than those of the main charity. Examples of special trusts that may have permanent endowment include:

- funds donated to a school to provide prizes or bursaries;
- a fund belonging to a charity that advances a religion to help fund the maintenance of its place of worship;
- a fund donated to a charity for the general relief of the poor to provide an income to be used to help specific beneficiaries, such as the elderly.

## **Part B Identifying Permanent Endowment**

### **B1 What is permanent endowment?**

B1.1 This part of the guidance is intended to help trustees identify whether property belonging to a charity, most often referred to as capital, is permanent endowment. This can be difficult and, if trustees have any doubts about whether property of their charity is permanent endowment, they should seek professional legal advice or contact us. Whoever is consulted will need to see the documents that indicate how the property is held. We have included a number of common examples at section B4 to help identify whether or not a charity's property is permanent endowment.

B1.2 In general terms, the term "permanent endowment" covers any land, investment or other asset which trustees cannot spend because of a restriction in the charity's governing document. Charity law<sup>3</sup> says that a charity has permanent endowment unless all its property can be spent on its charitable purposes without having to distinguish between capital and income.

B1.3 Sometimes a permanent endowment restriction exists until a particular situation occurs that enables the trustees to sell it and use the proceeds without distinguishing between capital and income. A common example is where land and buildings are held for a particular purpose, with a proviso that if it is no longer needed for that purpose it can be sold and the proceeds spent on other charitable purposes. But more commonly the restriction will apply permanently – for example, a trust might be established with capital which is to be held for ever and invested in order to produce income to be used for a charitable purpose.

B1.4 If there is nothing to indicate that there is a restriction on spending capital we will usually agree that it can be spent on the charity's purposes. On the other hand, it is not necessary for there to be a clear power to spend capital in order to support the view that the charity's assets are all expendable and consequently not subject to a permanent endowment restriction. However, if a power is given to spend income but the governing document does not mention capital, that is an indication that the charity has permanent endowment.

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<sup>2</sup> As defined in section 97(1) of the 1993 Act

<sup>3</sup> Section 96(3) of the 1993 Act

B1.5 The governing document is not, however, the only indicator of whether property is permanent endowment or not. A decision that an asset is permanent endowment needs to be based on all the available evidence and, as far as possible, not rely on a single fact like, for example, only the income of a particular fund had ever been used in the past.

## **B2 What types of permanent endowment are there?**

B2.1 There are two main types of permanent endowment:

- **“Investment” permanent endowment:** This is capital which is to be used to provide an income for the charity and which cannot itself be spent as income. The document that directs how the property should be held will probably specify that the capital should be invested and the income from the investments spent on specific charitable purposes.
- **“Functional” permanent endowment:** This is capital to be used for a specific purpose or purposes of the charity. Other guidance we provide also refers to land held on functional trusts as designated or specie land. Common examples of functional permanent endowment include village halls, recreation grounds, housing, museums and historic buildings. With this type of permanent endowment, the distinction between capital and income often does not apply as there may be no income.

B2.2 There is an important legal distinction between investment permanent endowment and functional permanent endowment which (as described in B2.3) affects how any authority to spend it can be obtained. In the case of:

- investment permanent endowment, the restriction on expending the capital is an administrative restriction<sup>4</sup>;
- functional permanent endowment, the sale of the endowment and the use of the proceeds for a purpose other than the replacement of the endowment in question may involve a change of purpose.

B2.3 The distinction between an administrative restriction and a change of purpose is the key to any decision we make about how permanent endowment can be used. If we are satisfied that it is in the best interests of the charity, we can remove an administrative restriction by making an Order<sup>5</sup>. However, where there is a change of purpose, and there is no power that allows the property to be used for the new purpose, the change can only be made by a Scheme. The Scheme is usually made by us or, on extremely rare occasions, the Courts (see our guidance **Changing your Charity’s Governing Document (CC36)**).

B2.4 Although the restriction on spending investment permanent endowment is administrative, trustees cannot use the statutory power to modify the administrative powers or procedures in their charity’s governing document referred to in paragraphs 3.7 to 3.14 of our guidance *Amending Governing Documents: Unincorporated Charities (CSD 1342A)*<sup>6</sup>. The reason the power cannot be used is because there is a more specific statutory power available to remove a restriction on spending permanent endowment.

## **B3 How can permanent endowment be created and used?**

B3.1 Permanent endowment can be created in the governing document of a charity or in a separate document, such as a conveyance or deed of gift that gives the property to the charity. Such documents may also set out circumstances in which:

- in the case of investment permanent endowment, the capital can be liquidated and spent in the same way as income; or

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<sup>4</sup> *Re Laing Trust* [1983] 3 Weekly Law Reports p.886

<sup>5</sup> Under section 26 of the 1993 Act

<sup>6</sup> Section 74D of the Charities Act 1993 as amended by the Charities Act 2006

- in the case of functional permanent endowment, the land or assets can be sold and the proceeds either held as investment permanent endowment or spent on other charitable purposes.

However, in many cases there are no such directions. Trustees cannot convert assets that can be spent into permanent endowment unless the charity's governing document specifically allows this or the circumstances of the gift authorise it<sup>7</sup>.

B3.2 Where the property is investment permanent endowment, the investments can usually be sold and the proceeds used to buy alternative investments provided the capital is not spent and continues to provide an income for the charity.

B3.3 Where the property is functional permanent endowment, it may be possible to sell the land or assets if the intention is to buy replacement land or assets to be used for the same purpose. However there is some permanent endowment of this kind which by its very nature cannot be sold and replaced by other property, for example, property where its interest derives from its connection with a particular historical figure. There is detailed guidance on selling charity land, including when it represents permanent endowment, in our publication **Disposing of Charity Land (CC28)**.

#### B4 **Examples**

B4.1 The following are examples of circumstances that may help trustees, decide whether property of their charity is or is not permanent endowment:

B4.2 **The land and buildings are to be held to be used for a specific charitable purpose, for example, to provide homes for elderly people, with no power for them to be sold**

This is likely to functional permanent endowment because the property has to be used for the purpose of the charity. The fact that it cannot be sold might indicate that the founder's intention was that the property should be retained forever.

B4.3 **The money donated is to be invested and the income received from the investment is to be used for the charity's purposes**

This is investment permanent endowment. This is common for charities that need to provide a regular income, such as school prize funds or educational bursaries. It is also common for many old local charities to be endowed in this way to provide an income that can be used for a range of purposes, such as the relief of those in need or the maintenance of a parish church.

B4.4 **The property is to be held 'forever' or 'in perpetuity'**

The property is likely to be permanent endowment. It may be land or investments or some other kind of property such as a work of art or documents of historic importance. Depending on the circumstances the property may be either investment or functional permanent endowment.

B4.5 **The land and buildings are to be used for a specific purpose and can only be sold in certain specified circumstances**

This is functional permanent endowment. Sometimes the power to sell can only be used if the land and buildings cannot be used for the purpose for which they were given. There will almost certainly be a direction about how the proceeds of sale can be used, at which time the property may cease to be permanent endowment.

B4.6 **The money donated is to be invested but can be spent on the charity's purposes if the trustees so decide**

This is not permanent endowment and is expendable endowment or capital.

<sup>7</sup> Attorney-General v Matthieson [1907] 2 Chancery Law Reports p.383

B4.7	<p><b>A house has been bought as an investment to be let to produce an income for the charity</b></p> <p>If the money used to buy the property is investment permanent endowment, the house represents investment permanent endowment and, if sold, the proceeds of sale continue to be permanent endowment. If the money used to buy the property is not investment permanent endowment, the house will not be permanent endowment and proceeds of sale can be spent on the charity's purposes.</p> <p>If the house was bought with a combination of permanent endowment and expendable money, the trustees need to keep a record of the proportions of each that were used to provide the purchase money. If the property is sold, the trustees must divide the proceeds, after all the expenses of the sale have been met, in those proportions.</p> <p>In all cases all the income from the letting can be spent.</p>
B4.8	<p><b>The charity's governing document directs that the charity's assets can be used to provide land and buildings to be used for the charity's purposes, for example a village hall</b></p> <p>The land and buildings will probably be functional permanent endowment, unless the governing document directs otherwise.</p>
B4.9	<p><b>The charity's governing document allows the trustees to set aside surplus income to be invested as permanent endowment to increase the annual income of the charity</b></p> <p>This is investment permanent endowment. However, this will be a type 2 charity (see C2) as its property is not 'entirely given'.</p>

## **Part C Spending Permanent Endowment**

### **C1 What is the statutory power and when can charities use it?**

C1.1 The statutory power is the power in the Charities Act 1993, as amended by the Charities Act 2006, that allows many charities to spend some or all of their permanent endowment. The power can only be used if the trustees decide that by using their charity's permanent endowment as well as any income it will be able to carry out its purposes more effectively.

C1.2 Examples of situations when trustees may need to make such a decision are:

- The value of the income of very small charities may fall to a level where the trustees cannot achieve its purposes and bringing the charity to an end by using the permanent endowment as well as the rest of its assets is the most effective action they can take.
- A larger charity may need to use permanent endowment for an expensive, but necessary project. For example, a charity may have to improve or refurbish its buildings and it may be necessary to spend some of its permanent endowment in order to pay for the work.

### **C2 Which charities can use the statutory power?**

C2.1 The power applies to many charities that hold permanent endowment, the exceptions are explained in paragraph 2.6. How they are able to use it depends on the characteristics of the permanent endowment and the size of the charity. The law identifies two categories that we refer to in this guidance as "type 1" and "type 2" charities.

C2.2 For type 1 charities, the conditions for using the power are more demanding than for type 2 charities. A type 1 charity must have all the following characteristics:

- an annual gross income of more than £1,000; and
- permanent endowment consisting entirely of property that:

- (a) was entirely given, and
- (b) has a market value of more than £10,000.

C2.3 If **any** of the characteristics described at C2.2 do **not** apply, then the charity will be a type 2 charity. A type 2 charity is generally (but not always) small and has:

- gross income of less than £1,000; **or**
- permanent endowment with a value of less than £10,000; **or**
- endowment that was **not** entirely given.

C2.4 The requirements for special trusts are slightly different as the income requirement does not apply. Consequently:

- a type 1 special trust must have permanent endowment that has a market value of more than £10,000 **and** is entirely given;
- a type 2 special trust must have permanent endowment that has a market value of not more than £10,000 **or** is not entirely given.

C2.5 The differences between type 1 and type 2 charities are summarised in the following chart.

Type 1 charities	Type 2 charities
<p>'Ordinary' type 1 charities must have an annual gross income of more than £1,000;</p> <p><b>and</b></p> <p>the market value of their permanent endowment must be more than £10,000;</p> <p><b>and</b></p> <p>the permanent endowment must be entirely given.</p>	<p>'Ordinary' type 2 charities must satisfy any of the following conditions:</p> <p>they have an annual gross income of not more than £1,000</p> <p><b>or</b></p> <p>the market value of their permanent endowment is not more than £10,000;</p> <p><b>or</b></p> <p>the permanent endowment is not entirely given.</p>
<p>If the charity is a special trust:</p> <p>(i) the market value of the permanent endowment must be more than £10,000;</p> <p><b>and</b></p> <p>(ii) the permanent endowment must be entirely given.</p> <p>The charity's income is not relevant.</p>	<p>If the charity is a special trust, it must satisfy either of the following conditions:</p> <p>(i) the market value of the permanent endowment is not more than £10,000;</p> <p><b>or</b></p> <p>(ii) the permanent endowment is not entirely given.</p> <p>The charity's income is not relevant.</p>

C2.6 In our view:

- it is unlikely that trustees will be able to use the statutory power for functional permanent endowment held on functional trusts (see paragraph B3.3). This is because it is unlikely that they will be able to meet the first condition described in paragraph C3.1 below;
- because trustees have to be able to use the capital of the fund as well as the income, rather than the income on its own, we consider that the power does not apply to assets, **which (due to the trusts on which they are held) could not be sold and the proceeds invested to generate an income.**

C2.7 The only circumstances in which (in our view) the trustees of functional permanent endowment could meet the first condition in paragraph C3.1 is where they propose to sell part of the functional property and this will not involve a change in the purposes for which the property was held. In these circumstances, proceeds of such a sale might be regarded as investment permanent endowment to generate an income for use in furtherance of the purpose for which the remainder of the land is retained. Consequently there is no change of purpose.

### C3 How to use the statutory power

#### *Paragraphs*

C3.1 to 3.4 *All cases – Passing a resolution*

C3.5 to 3.12 *Type 1 charities – Getting our approval*

C3.13 to 3.17 *Type 1 Charities – When we require further information and/or public notice*

C3.18 to 3.23 *Type 1 charities – When our approval has been given*

C3.24 to 3.27 *Type 2 charities – No approval required*

#### *All cases – Passing a resolution*

C3.1 In all cases, the statutory power can only be used if the trustees:

- are satisfied that the purposes of the charity could be carried out more effectively if they use some or all of the charity's permanent endowment as well as its income, rather than income on its own; and
- pass a formal resolution that the permanent endowment restrictions should be removed from all or part of the fund concerned.

C3.2 To pass such a resolution they must call a meeting or otherwise act in the way required by the charity's governing document for their proposals to be voted on. If the governing document sets a quorum for trustees' meetings then at least that number of trustees must be present at the meeting.

C3.3 A resolution made using the statutory power must be passed in accordance with the directions in the charity's governing document for passing trustees' resolutions. In most cases this will be a simple majority of the trustees present and voting on the resolution. A postal vote of the trustees may be used if the governing document allows it.

C3.4 From this point the procedure for type 1 charities differs from that for type 2 charities.

#### *Type 1 charities – Getting our approval*

C3.5 The trustees of these charities must get our approval before spending the permanent endowment.

C3.6 To get this approval the trustees must send us a copy of the resolution described in paragraphs C3.1 to C3.3 together with a statement of their reasons for passing it. They can do this either by completing our form CSD 1347B or by including this information in a letter or e-mail.

C3.7 When we receive the copy of the resolution and statement of reasons we have three months, from the date they are received, to tell the trustees whether or not we approve the resolution. This is

unless we require the trustees to publish a notice, in which case the three month period starts on the day the notice is first published.

C3.8 In order to give approval, we must be satisfied that:

- the funds in question are permanent endowment;
- all the legal requirements for passing the resolution (described in paragraphs C3.1 to C3.3) have been met;
- the trustees' statement of reasons supports their decision; and
- what is proposed is in keeping with the spirit of the gift.

C3.9 In satisfying ourselves that the proposal is in keeping with the spirit of the gift, we take account of the wishes of the donor and any changes in the charity's circumstances – this includes, for example, its finances, the needs of its beneficiaries and the social, economic and legal environment in which it operates.

C3.10 Because of this requirement we are more likely to refuse to concur with a resolution from the trustees of a charity that has been established comparatively recently than an older charity, founded say, more than 100 years ago. The reason for this is that the value of the endowment of the older charity may have declined in real terms to the point where the income from the permanent endowment alone is no longer sufficient to enable it to properly achieve its objects. Also with permanent endowment created comparatively recently it is:

- more likely that the donor or donors, or people who knew them and were aware of their wishes when they gave the property, will still be alive and be able to object to the resolution;
- less likely that the circumstances in which the charity is operating will have changed in a way that justifies departing from the wishes of the donor.

C3.11 However it is still possible that we may be able to concur with a resolution passed by the trustees of a charity of relatively recent origin. For example, the trustees of a charity to benefit veterans of World War II may decide that the needs of its beneficiaries can best be met if they are able to spend its permanent endowment now to prevent the trusts from failing and having to find an alternative purpose when there are no longer any surviving beneficiaries. This would probably be both acceptable to the donors and reflect the changed circumstances in which the charity is operating.

C3.12 On the other hand, it is unlikely that a large endowment to provide prizes at a school will be suitable for a resolution using the statutory power. This is because the removal of the bar on spending permanent endowment is unlikely to reflect the intention of the donors but could adversely affect the interests of future beneficiaries. In this situation we will expect the trustees to clearly demonstrate that the circumstances in which the charity is operating have changed in a way that will lead to a more effective use of the assets if the permanent endowment can be spent.

*Type 1 Charities – Where we require further information and/or public notice*

C3.13 Although in most cases we expect to be able to reach a decision without further information from the charity, we can if necessary require the trustees to:

- provide us with more information or an explanation about the circumstances in which they have decided to act and how they have met any of the requirements connected with the resolution; and/or
- give public notice of the resolution in a way that we decide.

C3.14 Circumstances where we might ask for more information include:

- where we are not sure the procedural requirements have been followed, for example it is not clear that the resolution was passed at a meeting where a quorum of the trustees was present;

- if it is not clear to us that the charity's property is permanent endowment to which the statutory power applies;
- where we have not received all the documents we need to properly consider the resolution, such as documents that confirm that the property is permanent endowment or the most recent accounts;
- where we are not satisfied that the proposal accords with the spirit of the gift, for example, there is evidence that the donor may not have wanted the endowment to be spent, there would generally need to be changed circumstances which mean that the wishes of the donor would be different to that indicated by the evidence.

C3.15 Circumstances where we might require a notice to be published include:

- where the charity has been founded comparatively recently and it is not clear to us that the its circumstances have changed in a way that justifies concurring with the trustees' resolution and comments from people with an interest in the charity will help us make a decision;
- where a large amount of permanent endowment will be made expendable and the trustees have not provided us with evidence that they have consulted people with an interest in the charity, such as the beneficiaries or known descendants of the founder who might be aware of the founder's wishes;
- where there is a history of mismanagement or misappropriation of the charity's assets;
- we are aware that the proposal has created a lot of public interest.

C3.16 If we do require notices to be published, 28 days are allowed from the date of first publication for people with an interest in the charity to contact us with their comments on the resolution. People who might have an interest in a charity include those who benefit, or might benefit, from the charity, donors or someone who is owed money by the charity.

C3.17 Once we have all the information required, we will write to you before the end of the three month period with our decision to give or withhold approval of the resolution.

*Type 1 charities – When our approval has been given*

C3.18 If we approve the resolution, the property referred to in the resolution can be spent by the trustees as soon as they receive our approval. This may involve selling investments or land that is held as an investment.

C3.19 The trustees must dispose of the assets in a way that ensures that the charity gets the best value. If land is being sold the trustees will have to follow the requirements for selling charity land, which are described in detail in our publication **Disposing of Charity Land (CC28)**.

C3.20 If the charity is registered with us, we will also note in its entry on our Register that the resolution has been passed.

C3.21 If the charity's gross income in its last full financial year was not more than £5,000 it is registered voluntarily and the trustees can ask for it to be removed from our Register (they can do this at any time, including when they send the copy of the resolution to us). This will probably be the easiest action for them to take (particularly if they are planning to bring the charity to an end) and will save them from having to keep the charity's entry on our Register up to date.

C3.22 If the trustees of a registered charity are planning to bring it to an end by spending the permanent endowment but choose to let it remain on the Register until all the property has been spent and the charity has ceased to exist they should bear in mind that charity law requires:

- the trustees of registered charities to tell us if their charity ceases to exist;
- us to remove from our Register any charity that has ceased to exist or does not operate.

C3.23 There is more information about our requirements for removing charities from our Register in the following guidance notes:

- if the charity's gross income in its last full financial year is not more than £20,000, 'Guidance for small charities winding up' (CSD 1344A); and
- if the charity's income is larger than that, 'Dissolution, winding up and removal from the Register for medium sized charities' (CSD 1077A).

*Type 2 charities – No approval required*

C3.24 The trustees can spend their permanent endowment which is within the statutory power (but see C2.6) as soon as they have passed the resolution.

C3.25 If the charity is registered with us and its annual income after spending the permanent endowment is not more than £5,000, the trustees may ask us to remove it from the Register, explaining that they have passed a resolution under section 75 (or if it is a special trust, section 75B) of the Charities Act 1993, as amended by the Charities Act 2006.

C3.26 As it is likely that the charity is going to be brought to an end we expect trustees to ask us to remove it from the Register as they will then no longer have the legal duty to keep the entry up to date. See paragraph C3.23 for details of the relevant guidance notes.

#### **C4 Charities that cannot, or do not wish to, use the statutory power**

C4.1 This part of the guidance explains the circumstances in which we can give trustees authority to spend part of the charity's permanent endowment in cases where they cannot, or do not wish to, use the statutory power. We expect that in most cases where we authorise trustees to spend permanent endowment it will be used for repairing, improving or extending buildings belonging to the charity, but we can allow permanent endowment be used for other purposes, if this is in the interests of the charity.

C4.2 Normally, trustees that cannot use the statutory power cannot spend any part of their charity's permanent endowment as:

- it is not allowed by the charity's trusts; and
- it may also reduce its capacity to carry out its work to the potential harm of both existing and future beneficiaries.

C4.3 However, there are circumstances where trustees need to find extra money to pay for essential work, for example, repairs to, or renovation of, a building owned by the charity. In such a case we may be able to consider authorising the trustees to spend part of the charity's permanent endowment, usually subject to the requirement that it will be replaced out of future income.

C4.4 If the trustees consider that there are good reasons why the permanent endowment has to be spent but cannot be replaced, they should explain them when writing to us.

C4.5 Generally, we are unlikely to agree to permanent endowment being spent without replacement if the period the expenditure will deliver value for is relatively short, for example the installation of a new computer system. However if the expenditure will provide long term value, such as new or replacement homes for a charity that provides housing for people who are poor, we may not require the replacement of the permanent endowment.

C4.6 Section C5 explains:

- when we will make an Order;
- the information we will need to make the decision; and
- what the Order will include.

## **C5 Making an Order**

### *C5.1 How will authority be given?*

If we accept that the trustees' proposals are in the interests of the charity, we will make an Order<sup>8</sup> that will authorise them to spend permanent endowment. The Order will also direct how the money is to be replaced, unless we have agreed that this is unnecessary.

### *C5.2 What factors will the Commission take into account and what information do we need?*

The Commission will take into account:

- the nature of the expenditure, and the benefits which the charity expects to derive from it;
- what other funds the charity has available;
- the balance between the interests of the present and future beneficiaries of the charity.

The information we need in order to consider what is expedient in the interests of the charity includes:

- sufficient information addressing the above factors to enable us to make the decision;
- if they have not already been sent to us, copies of the charity's accounts for the last three years; and
- how the trustees propose to replace the permanent endowment (see paragraph C5.4) and confirmation that they are satisfied that they can meet the annual payments or, if they do not think they should have to replace the permanent endowment they should explain why not.

### *C5.3 How should this information be provided?*

The easiest way of providing the information is for the trustees to complete the declaration form CSD 1347B and send it to us with the other information requested above. If we need more information after receiving this we will ask for it.

### *C5.4 How is the money to be replaced?*

In considering whether to require replacement of the permanent endowment where it makes an order authorising permanent endowment to be spent, the Commission considers the following factors:

- the period during which the expenditure is likely to deliver value;
- the source of the money – ie what type of permanent endowment;
- the nature of the charity's work and the long-term demands on its resources;
- the impact of replacement on the charity's work.

Replacement is on the basis of a simple pound-for-pound repayment by the investment of annual payments for an agreed number of years out of the charity's income. For example, £10,000 borrowed from permanent endowment will need annual payments of:

- £500 if replaced over 20 years; or
- £1,000 if replaced over 10 years.

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<sup>8</sup> Under section 26 of the 1993 Act

The income from the invested annual payments does not have to be reinvested and can be used for the charity's purposes.

**C5.5** *Can the replacement terms be changed?*

We will be prepared to review the original arrangements if the charity's financial circumstances change. In particular, if the trustees find that they can afford to make larger annual payments, the terms can be adjusted so that the replacement is completed over a shorter time. The Order that authorises the expenditure will usually enable us to agree these changes by letter.

**C5.6** *What is the maximum period over which replacement can take place?*

This will depend upon the charity's circumstances and be open to discussion between the trustees and ourselves. The period of replacement, and therefore the amount of each payment, will normally depend upon the amount that the trustees can afford to pay out of the charity's income each year without unduly restricting the way in which the charity operates. But replacement should take place as quickly as possible and certainly within the expected "life" of any work to be carried out.

**C5.7** *Who decides how the annual payments should be invested?*

This is a matter for the trustees who are responsible for the management and investment of funds entrusted to them. Guidance on this subject is available in our publication **Investment of Charitable Funds: Basic Principles (CC14)** and our web guidance **Investment of Charitable Funds: Detailed guidance**.

When choosing an investment for a charity that will be used to replace permanent endowment, trustees should pay particular attention to the need to protect the charity's capital and the purchasing power of the income it produces against the effects of inflation. This normally involves choosing a form of investment that offers a good prospect of capital growth.

**C5.8** *When will the money be available?*

When the method and period of replacement have been agreed, we will make an Order authorising the trustees to spend the capital up to the specified amount and, if necessary, providing for its replacement. As soon as the trustees receive the Order, they can proceed with the planned work. If the work is being financed from various sources, all other moneys should, where possible, be used before the permanent endowment is spent.

**C5.9** *What if the charity has adopted the total return approach to investments?*

The rules governing repayment of spent permanent endowment differ for charities that have adopted the total return approach to investments. The number of charities using this approach is small and details of the differences when these charities are spending permanent endowment can be found in our **Operational Guidance OG 83 B4 Endowed Charities: A Total Return approach to investment: Replacing expenditure from a charity's investment fund**.

## **Part D** **Contacting us**

If you have a query about the information in this guidance or need some of our other publications or forms please telephone our Contact Centre on **0845 3000 218** (minicom **0845 3000 219**) or write to or e-mail us at the respective addresses given below.

**Postal address:**

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PO Box 1227  
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L69 3UG

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