



# Alterations to Governing Documents: Charitable Companies

CSD-1388A

A summary of the law and our policy on regulated alterations to the Memorandum and Articles of Association of charitable companies

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### 1. Who should read this summary guidance?

This summary is primarily intended for directors and members of companies who are considering making changes to the Memorandum and Articles of Association of their company.

### 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;
- 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.

A body is a **charity** if it is:

- set up under the law of England and Wales; and
- established for exclusively charitable purposes.

This guidance does not apply to organisations set up under the laws of a foreign country, or in the Channel Islands, the Isle of Man, Northern Ireland or Scotland.

**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.

**Governing document** means any document that sets out a charity's purposes and, usually, how it is to be run. It may be a trust deed, constitution, memorandum and articles of association, Scheme of the Commission, conveyance or will.

**Purposes** means the aims and activities that a charity has to carry out and for which its assets must be used. They must be exclusively charitable in English and Welsh law and will be set out in a charity's governing document. They will usually be found in a specific clause or paragraph near the beginning of the document, but may also be found elsewhere, for example, in a clause or paragraph that says how

specific property must be used or that directs how the charity's assets are to be used when it is dissolved.

### 3. When is our consent needed?

There are three situations in which our consent is needed to a change to a charitable company's memorandum and articles of association.

- The first is where the change is a 'regulated alteration' as defined by section 64 of the Charities Act 1993. Regulated alterations are:
  - any alteration of the objects clause;
  - any alteration of any provision directing the application of property of the company on its dissolution;
  - any alteration which would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them where this goes beyond payment for goods and services allowed by section 73A of the Charities Act 1993.
- The second situation arises in the case of some companies incorporated before 1982; their memorandum and articles of association may include a requirement to obtain our consent to all changes and such a requirement must still be complied with until the company removes it.
- The third situation concerns an alteration to remove an express prohibition to pay trustees. Although this is not a regulated alteration, it may require the authority of our Order under section 26 of the Charities Act 1993. This will depend on how the charitable company is constituted – see section E of CC11 Trustee expenses and payments.

In all other cases, our consent is not needed to changes.

### 4. What is our policy on giving consent?

#### 4.1 Regulated alterations

#### 4.2 Changes which are not regulated alterations

#### 4.1 Regulated alterations

Where our consent is needed, we will require the company to make a case showing:

- exactly what changes are being proposed; and
- why the charity wishes to make them.

The criteria that we would use in our consideration will vary according to the type of change being proposed.

Where a change to the objects is being proposed, we will be looking at whether:

- the new wording expresses exclusively charitable objects; and
- the proposed change is not something which no reasonable body of trustees could make; and
- the new objects do not undermine or work against the previous objects.

Where the proposed change would affect the application of property on dissolution, we will consider whether the change:

- would seem to be to the detriment of the existing beneficial class;

- is unworkable for some reason – for instance if the newly named charity does not exist, or is not operating satisfactorily, or there is reason to think it would not accept the gift.

Where the proposed change would positively provide benefit to directors, members or connected persons:

- Firstly, we would consider whether the proposals exceed the statutory provision now conferred by section 73A of the 1993 Act as amended by the 2006 Act. If it does not, our approval is not required.
- If the proposal is to provide power wider than that conferred by section 73A but always conditional on our consent before it is exercised, we would readily consent to the amendment.
- If the proposals do exceed the statutory power and can be exercised each time without our consent, then we will apply the principles which we normally apply to giving consent to an extension to trustee benefit provisions. These are set out in our operational guidance, **OG 100 Trustee Indemnity Insurance** and **OG 92 Payment of Trustees**.

#### 4.2 Changes that are not regulated alterations

Where a change which is not a regulated alteration requires our approval because the memorandum and articles require it, we will approve changes as a matter of routine. However, we may suggest that the trustees also make an amendment to remove the requirement for our consent for such changes in the future.

### 5. **How to apply for our consent**

Where our consent is required, the directors will normally need to agree the proposed changes with us before they are incorporated into a special resolution to be passed by the members of the company.

While a resolution can be passed by the members without agreeing it with us first, as long as its effect is expressed as conditional on our consent being given, there is a risk that we may not give our consent or will require changes, which will mean that the process will have to start again.

We recommend that charities apply to us using the application form **CSD 1388B**. Not only does this direct the company to the specific questions which we need to consider before giving our consent, but it makes it easier for us to trace all the paperwork, especially in cases where we are notified that amendments have been passed many months after our consent was given. This means that the Register of Charities can be updated quickly, so that we can meet our obligation to keep it up-to-date.

### 6. **What to do when our consent is not needed**

Apart from the alterations noted in section 3 above, you do not need our consent for other changes to your memorandum and articles of association. However, there are other requirements under company law that you must follow, and you must also inform us of any changes. For example, if you wish to change the name of your charity, you will need to contact Companies House and us to ensure you do not choose a name already in use or, in our case, that is the same or too similar to one already in use – see OG18 A2 on our website for more information about this. The best way to notify us of any changes following the resolution is to use form **CSD 1388B**.

**7. Where can I find out more?**

More detailed information about the law and our policy on consent to be regulated alterations can be found in our operational guidance **OG 47 Alterations to Governing Documents: Charitable Companies**.

**8. Contacting us**

If you have a query about this guidance or need further advice about using the power to change purposes, or some of the other publications or forms referred to in this guidance, please e-mail us, telephone our Contact Centre on **0845 3000 218** (minicom **0845 3000 219**) or write to us. Our addresses are below:

**E-mail address:**

enquiries@charitycommission.gsi.gov.uk

**Postal address:**

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