



CHARITY COMMISSION  
FOR ENGLAND AND WALES



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# Changes to governing documents

Webinar: The Almshouse Association

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## This webinar will cover:

- **Amending the trustee body**
  - what is an administrative amendment
  - how to make administrative amendments
  - how to register changes
- **Grant making**
  - how this may be possible for an almshouse charity
- **Amending a charity's objects**
  - what to consider
  - the legal tests – cy prés
  - how to apply
  - the application process
  - the Equality Act and the charities exception



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## Amending the trustee body

Changing how many trustees a charity may have, how they are appointed and who the trustees should be are all examples of administrative amendments to a charity's governing document.

An administrative amendment is a change to a charity's governing document which does not:

- change the charity's objects, including who the beneficiaries are
- change or introduce benefits trustees can receive
- change or introduce how a charity's assets must be distributed on winding up (a dissolution clause)
- give a power to spend money or dispose of land held as permanent endowment

Administrative amendments do not require the Commission's consent.

Before making amendments, trustees must consider the structure of their charity. Is it incorporated or unincorporated?



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## Incorporated Charities

In order to amend the make up of a charity's trustee body (an administrative amendment) trustees must identify what power is available to them to make a change.

Trustees must always check the charity's governing document for a power to make amendments:

**CIOs** have a power within their constitution, usually in the clause titled: "Amendment of constitution".

**Charitable companies** almost always have a power of amendment in their articles of association.

- If there is no express power, companies can use the power in the Companies Act 2006, section 288.
- The members, who may also be the trustees, must pass the resolution.



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## Unincorporated Charities

Trustees of all unincorporated charities have a power to make changes to their administrative powers and procedures.

Trustees may use a power in the charity's governing document or:

- section 280 of the Charities Act 2011 to pass a resolution making the amendments
- section 280 also sets out *how* the power should be used





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## Other charity structures

If your charity's governing document is an Act of Parliament or a Royal Charter, we recommend the trustees carefully review the document to establish if there is a power of amendment.

If there is no power of amendment within the governing document, then charities governed by:

- an Act of Parliament must ask the Charity Commission to draft a 'scheme' to be approved by Parliament under section 73 of the Charities Act, which can be a lengthy process.
- a Royal Charter must ask the Privy Council to approve amendments or to grant a supplemental Charter, the processes can be lengthy and expensive for the charity, particularly if the amendment is by way of a supplemental Charter that must be printed on vellum.

The requirement for Parliamentary and Privy Council oversight is the same regardless of the substance of the proposed amendment.



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## Other considerations

When changing the trustee body trustees must consider the rights of any third parties.

If the charity's governing document gives a person or body a right to nominate a trustee, then the trustees cannot remove this right as an administrative amendment unless:

- the person or body has formally waved their right to nominate
- the relevant body or person has ceased to exist

Often, for almshouses, this may be the ecclesiastical parish's, original donor or heirs' or the local council's right to appoint a trustee.

Sometimes the local vicar, priest or headmaster may automatically be a trustee.



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## Notifying the Commission of the changes

All charities must inform the Commission of any changes to their governing document.

Charitable companies must also inform Companies House of changes.

The Commission should be informed via our website.





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## Grant Making

Understanding the scope of a charity's objects is as important as establishing a power. The use of a charity's funds must advance the charity's objects.

Trustees must review the charity's governing document to establish if there is a prohibition preventing, or a power allowing grant making. If a grant is not in furtherance of a charity's objects, even if there is a power, the trustees will be unable to make the grant.

Many almshouses have a separate 'application of income' clause in their governing document which may contain a power to spend any surplus funds.

Before making any grants, we recommend the trustees:

- review the governing document
- review our guidance on;
  - working with other charities
  - grant funding organisations
  - decision making
- create a grant giving policy with appropriate safeguards
- document what power they are using, or how the grant directly furthers the charity's object and is an effective way of using the charity's resources.



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## Grant Making

Administrative amendments may include powers exercisable by the charity's trustees in the administration of the charity.

If there is a prohibition to grant making it could be removed as an administrative amendment.

A power to make grants can be added by administrative amendment.

Before doing so the trustees should consider how the ability to make grants is in the charity's best interests and would further the charity's existing object.

**If trustees wish to advance a charitable aim outside of the current objects, then the objects would have to be widened to allow this. This would include anything for the benefit of people who do not fall inside the current beneficiary qualifications.**



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## Grant Making – Examples:

An almshouse charity, with no power or prohibition to grant making in their governing document has the object:

*‘Upkeep of the almshouses for poor persons of good character, who have resided in the area of the parish for not less than two years next preceding the time of appointment.’*

This object is very narrow, and it is unlikely the trustees will be able to make grants within the objects.

However in the case of this charity the governing document also had an ‘Application of income’ clause.



## ***“Application of income***

### ***1. Expenses of management***

*The Trustees shall first defray out of the income of the Charity all the proper costs, charges and expenses of and incidental to the administration and management of the Charity.*

### ***2. Income of the charity***

*Subject as aforesaid the Trustees shall apply the income of the Charity in insuring, repairing and maintaining the Almshouses belonging thereto and paying all other charges and outgoings payable in respect of the said Almshouses.*

### ***3. Surplus income***

*Subject as aforesaid the Trustees shall apply the income of the Charity for the benefit of poor persons residing in the area of the Parish.”*

It is open to the trustees of this charity to consider, after 1 and 2 have been fulfilled, if making a grant:

- will further the charity’s object
- is in the charity’s best interests
- is a suitable and effective use of the charity’s funds



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## Grant Making – Examples:

An almshouse charity, with no power or prohibition to grant making in their governing document has the object:

*‘The provision of almshouses for fallen women of the parish’.*

The charity does not have a separate application of income clause.

As the objects are very narrow it is unlikely the trustees will be able to make grants.



## Amending a charity's objects

Almost all charities require the Commission's consent or involvement to amend their objects. This is especially true of almshouse charities.

Trustees should review their governing document to establish if there is a power to amend the objects – although this would be very rare.

Trustees should consider if the charity holds designated land or if the charity is a trustee over designated land - perhaps as the result of a conversion to a CIO.

After determining the charity holds designated land (as almost all almshouse charities do) the only mechanism for changing the charity's objects will be with a scheme from the Charity Commission.





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## Cy Prés Schemes

A scheme which amends a charity's objects is called a cy prés scheme.

'*Cy prés*' is a Norman French expression meaning '*as close as possible*'.

To allow the Commission to authorise a cy prés scheme the relevant legal tests must be met. It is the duty of the trustees to demonstrate to the Commission these tests have been met.

No matter how deserving or needy a cause may be the Commission can only authorise a scheme in set circumstances called *cy prés occasions*. These are set out in section 62 of the Charities Act 2011.

Before applying for a scheme trustees must identify the circumstances making it necessary to alter the objects and ensure they meet the criteria for making a scheme.

We expect trustees to consult with stakeholders before approaching the Commission, this is an important step in the trustees' decision-making process.



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## Cy Prés Occasions

Section 62(1) of the 2011 Charities Act sets out the circumstances (occasions) in which the purposes of a charitable gift can be altered so that it may be applied cy prés.

Multiple circumstances (occasions) may apply and we recommend trustees demonstrate all circumstances which apply.

The Commission can make a scheme to change the objects of an almshouse charity when the current objects:

- can no longer be carried out, or not in the way laid down in the governing document
- do not provide a use for all of the charity's income or property
- use outdated definitions of areas, places, or classes of people
- have stopped being a useful way of using the property
- where two or more charities with similar objects want to merge but do not have the legal power to do so



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## Cy Prés Occasions - Examples

### **The current objects can no longer be carried out, or not in the way laid down in the governing document:**

1. The charity's building is no longer fit for purpose and the charity has no funds to renovate or replace the accommodation. It is therefore not possible to provide suitable accommodation for beneficiaries.

Before applying for a scheme, we expect trustees to consider all other options such as, contacting the Almshouse Association, looking for loans, exploring other funding sources and contacting nearby almshouse charities for assistance.

2. The charity's governing document requires beneficiaries to be identified by the sharing of details of those in need by the Local Authority. The Local Authority can no longer share this information due to data protection legislation.

### **The current objects do not provide a use for all of the charity's income or: property**

The charity has, after advertising, been able to fill only 8 out of its 10 units.

In this situation the trustees may consider widening the beneficiary class by changing the qualification of residents, possibly by extending the geographical area of benefit as one example.



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## Cy Prés Occasions - Examples

### **The current objects use outdated definitions of areas, places, or classes of people:**

When referring to the beneficiaries the objects include out of date wording such as ‘the handicapped’ or ‘fallen women’.

or

The geographical area is defied by a church’s parish or village boundary which may have been absorbed, replaced or no longer exist.

This occasion is often accompanied by difficulties in filling all the almshouse units.

### **The current objects have stopped being a useful way of using the property:**

Trustees may find it difficult to find qualifying residents and may have to use exhaustive advertising to fill any vacancy.

The charity may have sufficient reserves to build additional units but, after gauging interest, there may not be a need within the current beneficiary class.

An almshouse does not always need to have empty units to demonstrate an occasion. This occasion is usually used by trustees to back up other occasions and strengthen their decision making.



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## Cy Prés Occasions - Examples

### **Two or more charities with similar objects want to merge but do not have the legal power to do so:**

Small almshouse charities often carry the same administrative burdens as larger almshouse charities.

Two or more charities may decide the best option would be to combine their assets and resources as one almshouse charity.

Often the smaller almshouse is in need of refurbishment or additional trustees and the larger almshouse has better access to funding or revenue.

The trustees (of both charities) may decide to make an application for a scheme to align the charities' objects and merge the almshouses. The trustees would set out a case as to why it would be advantageous, to the charities and beneficiaries, to merge.

Our operational guidance on almshouses contains detailed information to assist trustees.



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## Cy prés Examples

When the Commission decides not to make a cy prés Scheme this will be because the legal tests have not been met, it is not a reflection on how deserving potential beneficiaries may be.

### **Example:**

The charity's objects are: *'The provision of an almshouse for pauper women of the town.'*

The trustees wanted to allow male residents as they were worried about complying with the Equality Act. However when reviewed it was clear the charities' exception could be applied correctly, it could be demonstrated women were at a disadvantage economically.

The application was refused. No cy prés occasion could be demonstrated and the charity could correctly apply the charities exception, within the Equality Act 2010, to allow women only beneficiaries as this was a way to tackle a disadvantage.





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## Example:

An almshouse with the object: *'The provision of a home for impoverished old people in the parish'* sought a cy prés scheme as there was need for affordable accommodation to house families and young people in the local area.

A cy prés occasion could not be demonstrated, all the charity's units were filled.

The trustees were also unable to evidence the strength of their decision making.

The trustees had not considered other options, such as widening the geographical area of benefit or defining the age limit. The trustees should have considered if these were closer to the spirit of the original gift than affordable housing for families or young people.

When deciding on a new object, trustees must consider:

- The spirit of the original gift
- The desirability of providing new purposes that are close to the original
- The necessity for the new purposes to be suitable and effective in light of current social and economic circumstances



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An almshouse with the object: *‘the provision and maintenance of cottages for poor ex-servicemen of the village’* sought a cy prés scheme.

A cy prés occasion was demonstrated by the trustees. Despite their attempts to fill the empty units by advertisement, contacting local housing authorities and other charities, the units remained empty.

The trustees wished to amend the object to: *‘the provision and maintenance of cottages for poor ex-servicepeople in the village and surrounding area.’*

The trustees were able to clearly demonstrate their decision making when deciding what the new objects should be. They evidenced the village was now in an affluent area, 100 years after the original gift, and no beneficiaries, either servicemen or women could be found in the existing area of benefit.

In doing so the trustees demonstrated how the new object was as close as possible to the spirit of the original gift in light of the modern social and economic make up of the village.

The trustees also considered and demonstrated as, at the time of the original gift, only men were able to serve. Therefore their view was the spirit of the gift was aimed at those who had served rather than males.



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## Equality Act – The Charities’ Exception

The charities’ exception in the Equality Act 2010 allows charities to restrict benefits to people with a particular protected characteristic, so long as the restriction appears in its governing document.

To follow a restriction the trustees must be satisfied the restriction is intended to:

- tackle needs or disadvantages linked to a protected characteristic, or;
- meet a legitimate objective in a fair, balanced and reasonable way

The protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

It is lawful for a charity’s beneficiaries to be limited to any group at a disadvantage.

Most commonly amongst almshouses this is based on age and gender.

Section 193 of the Equality Act 2010 contains the Charities’ exception.



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## Guidance

Trustee decision making:

<https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making>

Changing a governing document:

<https://www.gov.uk/guidance/how-to-make-changes-to-your-charitys-governing-document>

<https://www.gov.uk/government/publications/changing-your-charitys-governing-document-cc36>

<http://ogs.charityCommission.gov.uk/g518a001.aspx> - Incorporated Charities

<http://ogs.charityCommission.gov.uk/g519a001.aspx> - Unincorporated Charities

<https://www.gov.uk/change-your-charitys-details>

Law Commission:

<https://www.lawcom.gov.uk/project/charity-law-technical-issues-in-charity-law/> - See section 5 of the full report linked on this page.

Grant making:

<https://www.gov.uk/guidance/work-with-other-charities>

<https://www.gov.uk/guidance/draft-guidance-grant-funding-an-organisation-that-isnt-a-charity>

Cy prés schemes:

<http://ogs.charityCommission.gov.uk/g002a001.aspx>

Equality:

<https://www.gov.uk/government/publications/equality-act-guidance-for-charities>



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## Guidance

Almshouse guidance:

<http://ogs.charityCommission.gov.uk/OG065.docx>

Relevant Acts:

<https://www.legislation.gov.uk/ukpga/2011/25/contents> - Charities Act 2011

<https://www.legislation.gov.uk/ukpga/2010/15/section/193> - Equality Act 2010

Relief of Poverty:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/358535/prevention-or-relief-of-poverty-for-the-public-benefit.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/358535/prevention-or-relief-of-poverty-for-the-public-benefit.pdf)

How to merge charities:

<https://www.gov.uk/guidance/how-to-merge-charities>

Borrowing:

<https://ogs.charityCommission.gov.uk/g022a001.aspx>

<https://www.gov.uk/government/publications/managing-charity-assets-and-resources-cc25/managing-charity-assets-and-resources>

Model Governing Documents:

<https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents>

Finding new trustees:

<https://www.gov.uk/government/publications/finding-new-trustees-cc30/finding-new-trustees>



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# Questions