

Mergers and closures

Guidance for charities on merging or closing their charity



The Charity Commission for Northern Ireland

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Communities.

Our vision

To deliver in partnership with other key stakeholders in the charitable sector “a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission’s effective delivery of its regulatory role.”

Further information about our aims and activities is available on our website www.charitycommissionni.org.uk

Equality

The Charity Commission for Northern Ireland is committed to equality and diversity in all that we do.

Accessibility

If you have any accessibility requirements please contact us.

Online or in print

If you are viewing this document online, you will be able to navigate your way around by clicking on links either within the contents page or text.

We have produced a glossary that provides further information, definitions and descriptions of some key terms. The words in **bold green type** indicate words that are found in the glossary towards the end of this document. If you are reading the document online you can click on the word and it will link you to the definition in the glossary. The words in *pink italics* indicate links to other guidance or databases.

Please check our website www.charitycommissionni.org.uk to make sure you’re using the latest versions of forms and guidance.

Contents

| | | |
|-------------------|--|----|
| Section 1: | Overview | 5 |
| Section 2: | About this guidance | 6 |
| Section 3: | Carrying out a charity merger | 9 |
| | 3.1 What is a charity merger? | |
| | 3.2 Why would charities wish to merge? | |
| | 3.3 What are important considerations for charity trustees considering a merger? | |
| | 3.4 Case study: Age NI | |
| Section 4: | Notifying the Commission of a charity merger | 20 |
| | 4.1 Who can register a charity merger? | |
| | 4.2 When can a charity merger be registered? | |
| | 4.3 What is the process? | |
| | 4.4 What other documentation needs to be submitted? | |
| | 4.5 What will the Commission do? | |
| | 4.6 Do the trustees need to do anything else? | |
| | 4.7 How long will it take to update the <i>register of mergers</i> ? | |
| | 4.8 Flowcharts | |
| Section 5: | Closing your charity | 24 |
| | 5.1 Why would a charity need to close? | |
| | 5.2 What are important considerations for trustees of a charity that is closing? | |
| Section 6: | Notifying the Commission of the closure of a registered charity | 28 |
| | 6.1 Who can notify the Commission of a charity closure? | |
| | 6.2 When can a charity closure be notified to the Commission? | |
| | 6.3 What is the process? | |
| | 6.4 What other documentation needs to be submitted? | |
| | 6.5 What will the Commission do? | |
| | 6.6 Do the trustees need to do anything else? | |
| | 6.7 How long will it take to update the <i>register of charities</i> ? | |
| | 6.8 Flowcharts | |

| | |
|---|----|
| Appendix 1: Glossary | 32 |
| Useful information | 38 |
| Useful contacts | 39 |
| If you disagree with our decision | 40 |
| If you are dissatisfied with our service | 40 |
| Freedom of information and data protection | 41 |
| Contact details | 41 |

Section 1: Overview

This guidance is for charities considering a merger and for charities that are considering closure.

It is important that charity trustees regularly review their charity's effectiveness and how the charity is meeting the needs of beneficiaries. Some charities may identify that a merger would be a helpful way of meeting those needs more effectively. This may result in the closure of one or more charities as they merge into another. Other charities may close as a result of factors unrelated to a merger, including loss of funds or a lack of members.

Mergers and closures are major changes for a charity, requiring careful planning. This guidance sets out the charity law requirements and explains the processes that charities should use to notify the Charity Commission for Northern Ireland (the Commission) of a merger of any charity or, where the charity is registered with the Commission, its closure.

The Commission, as the independent regulator of charities in Northern Ireland, is tasked with promoting public trust and confidence in charities and ensuring that charities meet their obligations under charity law. This guidance is an important tool in helping to achieve that. It also signposts to other relevant guidance and provides a list of helpful contacts for more information.

Section 2: About this guidance

What does this guidance cover?

This guidance is for charities considering a merger and for charities that are considering closure.

We have combined guidance on mergers and closures into one document as it is sometimes the case that undertaking one leads to the other. For example, two charities may decide to merge by setting up a new organisation into which they transfer all of their property, resulting in the closure of the two original charities.

We recognise, however, that there will be circumstances when they do not go hand in hand, and that not all sections of this guidance may be relevant to each charity's situation.

The guidance sets out the processes for notifying the Commission of a merger or a closure, where this is required. Notification of a charity merger can involve any charity, whether it is registered with the Commission or not. Notifying the Commission of a closure is only relevant for charities registered with the Commission.

The main part of the guidance is set out in four sections:

[Section 3](#): carrying out a charity merger

[Section 4](#): notifying the Commission of a **relevant charity merger**

[Section 5](#): closing a charity

[Section 6](#): notifying the Commission of the closure of a **registered charity**.

What does this guidance not cover?

This guidance sets out the requirements for charities under charity law. It is not a comprehensive guide for carrying out a merger or planning the closure of a charity.

You should not rely on this guidance to provide a full description of legal matters affecting your charity and it does not replace advice from a charity's own professional advisers. It can harm a charity if changes are made that are legally invalid, or do not have the required effect, and

charity trustees may be held personally responsible for any liabilities incurred by the charity.

Charitable companies also have to be mindful of the requirements of company law. More information on this can be accessed from [Companies House](#).

Charities may also be subject to other legislation or regulation, for example, employment legislation or legislation relating to industrial and provident societies.

Additionally, where a merger includes charities from different jurisdictions, for example, England and Wales, Scotland, or the Republic of Ireland, you should be aware of the requirements of other charity regulators and may need to seek advice.

Will the Commission publish where there is a merger or closure?

The Commission has considered the publication of these notifications in line with its *Publishing our decisions* policy:

Mergers: We will usually publish a notification of a merger by listing the details on the public *register of mergers* which is available on our website.

Closures: We will usually publish the closure of a registered charity by updating the charity's status on the *register of charities*.

Who does this guidance apply to?

This guidance is aimed at **charity trustees**, who may also be known as members of management committees or directors of charitable companies as well as anyone acting on behalf of a charity, for example a solicitor, accountant, company secretary, agent or adviser.

What are legal requirements and best practice?

In this guidance, where we use the word 'must' we are referring to a specific legal or regulatory requirement. We use the word 'should' for what we regard as best practice, but where there is no specific legal requirement. **Charity trustees** should follow the good practice guidance unless there is good reason not to do so.

Charity legislation

References in this document to 'the Charities Act' are to the **Charities Act (Northern Ireland) 2008** as amended by the **Charities Act (Northern Ireland) 2013**.

Section 3: Carrying out a charity merger

3.1 What is a charity merger?

A merger may take one of the following forms:

- **New charity:** two or more charities combine their assets and resources by transferring them to a new charity. The original charities usually **dissolve** and cease to exist. The new charity must have **charitable purposes** similar to those of the original charities.
- **Incorporation:** an **unincorporated charity** dissolves in order to incorporate as a **charitable company**. This is a merger because the existing unincorporated charity must create a new charitable company into which its assets and liabilities are transferred.
- **Existing charity:** one or more charities dissolve and transfer all of their assets to an existing charity which has purposes similar to their own.
- **Amalgamation:** two or more charitable registered industrial and provident societies amalgamate as one society.

A charity merger may involve charities that are registered with the Charity Commission for Northern Ireland, those that are on the **deemed list** of charities, and those that are not yet registered or on the deemed list. Additionally, a merger may involve charities in other jurisdictions, for example, a charity registered in England and Wales.

Only **relevant charity mergers** will be entered on the online *register of mergers*. A relevant charity merger is a specific term used in Section 161 of the Charities Act. It means:

- a) a merger of two or more charities where one of them (the transferee) has transferred to it all of the property of the other charities (the transferors), each of which ceases to exist, or is to cease to exist, on or after the property transfer; or
- b) a merger of two or more charities (transferors) where both or all cease to exist, or are to cease to exist, on or after the transfer of all of their property to a new charity (the transferee).

Where a charity has both **permanent endowment** and unrestricted funds there may be an exception to the need for merging charities to cease to exist in order to be relevant charity merger. This is set out in Section 161 of the Charities Act. If this applies to your charity you should consider whether you need further advice.

3.2 What are important considerations for charity trustees considering a merger?

A charity merger must be carried out in accordance with legal requirements, and should involve careful planning, consideration of risk and principles of good governance. This section of the guidance sets out a number of key considerations for charity trustees considering a charity merger:

- What are the drivers for merging?
- How can a charity find a potential merger partner?
- Are the purposes of each charity compatible?
- Does each charity have the power to merge?
- What is the possible impact on the charity?
- Does any provision have to be made for special funds?
- What planning or due diligence is required?
- Should the merger be registered with the Commission?

3.2.1 What are the drivers for merging?

There are a range of reasons that would motivate charities to merge. These include, but are not limited to:

- meeting the needs of beneficiaries more effectively
- making best use of charitable funds and property
- increasing the reach of services to beneficiaries
- reducing costs and duplication of services

- improving access to funding
- overcoming financial challenges or uncertainty
- enhancing the profile or status of the charities involved
- improving public trust and confidence through effective collaboration
- sharing specialist knowledge, experience and ways of working
- conferring legal personality on the charity or gaining the protection of limited liability for the charity trustees/members through incorporating an unincorporated charity.

Trustees of each charity involved should be clear about the factors that influence their decision to merge and ensure that these are communicated with all parties to the merger.

A merger may or may not be the best answer, depending on the specific circumstances of the charities involved, and charity trustees should also consider alternatives such as collaborative working.

3.2.2 How can a charity find a potential merger partner?

Many charities that merge will know or have worked with their merger partner before. Other charities may identify a desire to merge without having a potential partner. The *register of charities* is a good starting point to identify other charities with the same or similar purposes. Additionally, local umbrella bodies such as the Northern Ireland Council for Voluntary Action (NICVA) and websites such as [CollaborationNI](#) may be good sources of information.

3.2.3 Are the purposes of each charity compatible?

The purposes of merging charities do not have to be identical. They must, however, be similar and compatible. This is to ensure that the merger is in the best interests of the charity.

It is usually straightforward to identify whether the purposes of merging charities are similar and compatible. For example, if two charities have purposes for the general relief of poverty overseas, then it is likely that their purposes are compatible and would not prevent a merger from taking place.

Where charities have broadly similar purposes, but one specifies an area of benefit or section of the public as beneficiaries, then there are restrictions

as to how the merger can be effected and how assets or funds can be transferred. For example:

- If one of the charities' purposes indicated a specific overseas location to relieve poverty, while the other charity's purposes were for general relief overseas, the charity whose purposes specified a particular location could merge into the charity with wider purposes, provided its funds were applied as a **restricted fund**.
- The charity with wider purposes could not merge into, and transfer its funds to, the charity with purposes limited to a specific location, as this would restrict the use of its assets and could exclude beneficiaries.

If charities have completely different purposes, it is not normally possible for them to merge. For example, a charity established to advance religion would not be able to merge with a charity established to advance amateur sport.

3.2.4 Does each charity have the power to merge?

The majority of charities have the power to merge, usually contained within their **governing document**. If they do not, they may be able to use other powers, depending on the structure of the charity. Where a charity does not have the power to merge, or where its governing document requires it, it may have to request the advance authorisation of the Commission.

Examples of typical powers to merge, found within a governing document, include:

- a **dissolution clause** which allows the charity to pass its assets to another charity with the same or similar purposes
- an express power to merge with, or enter into any partnership or joint venture arrangement, with any other charity formed for the same or similar purposes.

Small **unincorporated charities**, which do not have the power to merge in their governing document, may be able to use Sections 123 and 125 of the Charities Act to merge. These sections make specific provision for certain small charities to transfer property or permanent endowment. The

Commission has produced guidance on use of these powers which is available on our website www.charitycommission.org.uk

Where a charity has a membership, then the trustees may require the consent of the **members** before exercising its powers. This may be set out in the governing document of the charity, which requires trustees to ask its members to vote on any merger proposals, before a decision can be made. A governing document may also require that members vote on proposals to dissolve the charity and transfer its assets. Even where there is no specific requirement, it is best practice to consult members as part of the merger process.

The legal responsibility for ensuring a charity merger is carried out properly, using the appropriate powers and meeting the law, rests with the charity trustees.

3.2.5 What is the possible impact on the charity?

Charity trustees should be clear from the outset about the potential impact of the proposed merger on the charity and its beneficiaries. Charities considering a merger should consult with stakeholders to ensure a full assessment of the likely benefits and risks.

When engaging with stakeholders, it is important that charities are aware of the range of groups and individuals that may need or wish to be involved in the process, and which may have different communication and engagement needs. For example, funders may have to approve the transfer of contracts or grants, beneficiaries may have questions regarding the future location of service provisions, while political stakeholders may simply wish to be informed.

Additionally, charities should not underestimate the potential cost of a merger and should set aside adequate funding to resource the merger process. Costs can include integrating technology and IT systems, advertising and rebranding, staff time and relocation expenses.

Other impacts may include losing out on new opportunities or income sources in the short term because of time spent on the merger, disruption to services, disruption to staff or staff redundancies, or the loss of existing funding, for example, where a funder is currently donating an amount to both charities but the merged charity does not meet the same criteria.

3.2.6 Does any provision have to be made for special funds?

Some funds must be treated differently from general funds, and be accounted for separately. These include **permanent endowment, restricted funds, special trusts** and **designated funds**. Dealing with these funds can be complicated and may require professional advice.

Permanent endowment, restricted funds and special trusts must be identified separately from the general funds of the charity. In some cases, they may have separate trustees from the rest of the charity's property, whose consent would be required for any merger proposals to go ahead. These funds must be accounted for separately by the charity to which they are transferred. If the charity does not have the power within its governing document to make the transfer, or if it cannot use the unincorporated powers in Sections 123 and 125 of the Charities Act, then consent may be required from the Commission for a scheme to transfer these assets. Further guidance on these provisions of the Charities Act can be found in the Commission's *Requesting a scheme* guidance.

A charitable company is not able to hold permanent endowment as part of its general property. Therefore, if the charity to which property is transferred is a company, it must hold any permanent endowment as a special trust. The company would be the trustee of the special trust. The same applies to industrial and provident societies.

There is no legal restriction on spending designated funds, that is, funds designated for a specific purpose. A charity transferring designated funds may wish to negotiate for them to remain designated for specific purposes if this would be in the best interests of the charity's beneficiaries.

3.2.7 What planning or due diligence is required?

Mergers are substantial processes which require effective planning. They have the potential to expose charities to financial and reputational risks and the taking on of additional liabilities. Trustees should ensure that they have identified and considered all significant risks, are aware of the associated costs and likely timescales for the merger, and have planned for as smooth a transition as possible.

Depending on the scale of the merger, and the size of the charities involved, planning for a merger may include some or all of the following:

- Joint exploration of the key issues between all parties including the reasons for the merger, potential benefits and potential barriers.
- A formal **due diligence** exercise.
- A feasibility study, cost-benefit analysis and comprehensive risk assessments.
- Having a dedicated resource, for example a project manager, to manage the process.
- Securing specialist legal and / or accountancy advice.
- Consideration of the composition of the new board and the role of trustees.
- Consideration of staffing issues, such as managing staff reductions and addressing staff morale in the transition period, compliance with employment law and addressing pension liabilities.
- Data protection and the transfer of data to a new organisation.
- Identifying office locations and resolving property issues such as the surrender of a lease.
- Deciding on an appropriate name, culture and identity for any new charity.
- Having a communications strategy, involving beneficiaries, service users, funders and other key stakeholders at an early stage.
- Holding a full public consultation, for example, publishing a proposal document and inviting comments, or holding information events.
- Providing for member opt out, for example, where members of a merging charity do not become full members of the new charity.
- Sourcing and setting aside adequate funding for the merger, and continuing to plan for and review associated costs.

When planning a proposed merger, charity trustees of each charity should carry out **due diligence** and may wish to engage in a formal due diligence exercise to assure themselves that the merger is in the best interests of their charity. This may be particularly helpful where there are potential complexities such as:

- high profile or sensitive work undertaken by one or more charities
- operations across a number of geographical locations and jurisdictions
- one or more charities have a trading subsidiary
- one or more charities hold extensive property and assets

- one or more charities hold restricted funds or permanent endowment
- one or more charities have potentially significant liabilities, for example, pension liabilities.

Trustees may require professional advice to ensure that an appropriate level of due diligence is undertaken.

3.2.8 Should the merger be registered with the Commission?

Charity trustees may choose to notify the Commission of a charity merger so that it can be entered onto the public *register of mergers*. This is voluntary, unless a **vesting declaration** is used, in which case the Commission must be notified.

Registered charities also have a duty to keep the *register of charities* up-to-date if there is any change in their details. Where a registered charity closes as a result of a merger, the closing charity must notify the Commission. Further information on the process for doing so is available in [Section 6](#) of this guidance.

Only **relevant charity mergers**, where all necessary information is provided to the Commission, will be entered onto the *register of mergers*. [Section 4](#) of this guidance sets out the process for notifying the Commission and explains the possible outcomes of the notification.

There are a number of reasons why it can be useful for trustees to notify the Commission of a merger for it to be entered onto the *register of mergers*, for example:

- to raise awareness of the merger amongst stakeholders
- to ensure that any **legacies** and other gifts, left to any charities which cease to exist following a merger, can be automatically transferred to the newly merged charity and are not lost.

There is an exception, however, where some legacies specify that they should be passed to another recipient if the original charity ceases to exist. In these cases, the gift would not automatically transfer to the new charity. Additionally, there may be circumstances where a gift to a charity in a will is conditional on the charity being in existence at the date of death. Where the named charity has ceased to exist by reason of merger, before the testator's death, the gift lapses rather than being directed to another

charity. For this reason, some charity trustees may choose to retain the 'old' charity to receive legacies and pass them on, rather than dissolving them. In this instance, the merger may not be a relevant charity merger, and would not be entered onto the register of mergers.

It is up to the charity trustees to consider the benefits and risks of entry onto the register of mergers and the option of retaining the 'old' charities to, for example, receive legacies and transfer them to the new organisation.

Where trustees do wish to register a merger, it is important that they do so promptly, to ensure that gifts are not lost. The Charities Act states that only gifts received "on or after the date of registration of the merger" will be automatically transferred to the merged charity.

If a gift is received in the period between the closure of a charity through merger, and the registration of that merger, the gift will not be automatically transferred and may be lost, or it may have to be applied by a **scheme of the Commission** which may or may not result in it transferring to the merged charity.

A gift received by a charitable company which is in liquidation may have to be used to satisfy any outstanding debts of the closed charitable company even though it is no longer operating.

3.3 Case study: Age NI

In April 2009, Age Concern Northern Ireland and Help the Aged merged to create a new, independent charitable company for older people in Northern Ireland: [Age NI](#).

Prior to the merger, the two charities had already worked together effectively and a merger enabled the creation of a strong and more united voice for the age sector in Northern Ireland.

The merging charities engaged in two years of planning, prior to the merger taking place, producing a merger process plan and working with legal and other professional advisers. A working group was established to take forward delivery of the plan and implement a programme of work to establish the new charity. Initially known as Age Concern Help the Aged NI, the new organisation had to establish a transitional board which

required some trustees from each organisation involved in the merger, to come off the existing boards, and act solely in the interests of the new charity. They were responsible for negotiating with the trustees of Age Concern Northern Ireland and Help the Aged, and had final say in whether or not to accept the transfer of assets and liabilities of the two existing charities. This required careful planning and co-ordination as, for example, they had to ensure that trustees moving to the new transitional board did not leave skills gaps in the existing boards or, by decreasing the number on each of the existing boards, make it difficult for them to make quorate decisions.

A range of benefits were identified, including:

- being better able to address the needs of older people in the 21st century
- a stronger, joined-up organisation, fit for the challenges of the 21st century
- making the most of complementary strengths in terms of positioning, activity, income, trading and retail
- eliminating unhelpful duplication and competition between the two organisations
- maximising on opportunities to add value to beneficiaries.

Age NI have shared their learning from the experience, with key learning points including:

- the importance of agreeing desired benefits
- early agreement of a project management structure
- necessity for a merger plan, with clear tasks and a timeline for completion
- having an agreed strategy for the transfer and receipt of assets
- careful planning and co-ordination of the transition of board members
- need for effective communication and strong working relationships within and across merging organisations
- importance of an agreed external communications strategy
- having a strong awareness of the legal framework.

Further detailed information is available through the website [AmalgaMate – a toolkit of ideas and practice for mergers in the third sector](#). The information in the toolkit was developed by CO3, a membership

organisation for third sector leaders in Northern Ireland and is based on the merger to form Age NI. It contains a wealth of information on the various stages of the merger, from preparation through the process itself onto post-merger culture and operations. There are also a range of templates that organisations considering a merger can use and adapt.

Section 4: Notifying the Commission of a relevant charity merger

This section of the guidance sets out the process for notifying the Commission of a **relevant charity merger** so that it can be placed on the *register of mergers*. The notification is voluntary, unless the merger involved a **vesting declaration**, but we would strongly recommend that charity trustees consider notifying the Commission.

4.1 Who can register a relevant charity merger?

A relevant charity merger can be registered by any person chosen by the charities involved in the merger. This will usually be a trustee or staff member of the newly merged charity, or a legal representative. The individual must be authorised by the trustees to submit the notification and sign the relevant declarations.

4.2 When can a relevant charity merger be registered?

A relevant charity merger can only be registered once the merger has actually taken place all property has been transferred by each of the merging charities, to the newly merged charity, and each merging charity has ceased to exist or will cease to exist. It is best practice for the merger to be notified to the Commission promptly.

We can receive notification prior to the merger taking effect, however it will not be entered onto the *register of mergers* until the merger has actually taken place. This may be beneficial in allowing the merger to be entered onto the *register of mergers* on the same day that it was completed. Contact the Commission if you wish to make a pre-merger notification.

4.3 What is the process?

Use the *register of mergers notification form* to notify the Commission of the merger. It is important that the notification form is fully completed as the *register of mergers* cannot be updated unless all necessary information is received.

The notification form requests the following information:

- contact details for the individual submitting the notification
- contact details for the newly merged charity (this may be a new charity created by the merger or an existing charity into which other charities have merged)
- contact details for each merging charity at which a trustee or contact person can be reached post-closure (trustees remain responsible for any decisions made during the period they were in office)
- details of all property that has been transferred including a description of the property, assets or **permanent endowment** and the date it was transferred
- details of any **vesting declaration**, including the date made, and the date the vesting order took place
- in the instance of a pre-merger notification, the date on which the merger should be placed on the register of mergers (we recommend setting a date at least one month after the notification of the merger otherwise we may not be able to guarantee that the date of transfer and date of registration will be the same)
- a declaration all **liabilities** have been **discharged** or taken care of
- the reason for the merger (this is helpful to us in identifying whether any further input is required from the Commission and in understanding issues affecting charities in Northern Ireland)
- trustee declaration, signed by one trustee acting on behalf of all trustees, declaring that the information contained in the form is correct.

4.4 What other documentation needs to be submitted?

No other documentation needs to be submitted with the notification form. Once the notification form is received, the Commission may request further information or a copy of the charity's accounts.

4.5 What will the Commission do?

The Commission will consider the notification form to identify:

- whether a relevant charity merger has taken place
- that all transfers have been made
- whether all necessary information has been provided
- whether there are any reasons to request a copy of the charities' accounts.

We will take one or more of the following possible actions:

- request further information
- signpost the charities involved to another process of the Commission, for example, to request a scheme or consent for a charitable company or notify us of a closure
- update the *register of mergers* with the information provided
- update the *register of charities*
- refuse to update the register of mergers and inform the charities involved of our reasons for doing so.

4.6 Do the trustees need to do anything else?

If any of the charities involved in the merger is registered with Her Majesty's Revenue and Customs (HMRC) for charitable tax purposes, then it is important that the charity notify HMRC of any changes.

If any of the charities involved in the merger is registered with the Charity Commission for Northern Ireland, they must ensure that their details on the *register of charities* are up to date. Do this by making any necessary changes to your entry using the Commission's *Online services* and notify the Commission where there is a closure. Details of this process can be found at [section 6](#) of this guidance.

If the merger results in a new charity being formed, that charity must come forward to apply to register with the Commission.

Company law places certain requirements on charitable companies which have made alterations to their **articles of association**. For further information on company requirements contact Companies House www.companieshouse.gov.uk.

Additionally, there are specific requirements for industrial and provident societies involved in a merger. For further information contact the Department for the Economy www.economy-ni.gov.uk. If the industrial and provident society is a registered housing association, you should also refer to the Department for Communities for information www.communities-ni.gov.uk.

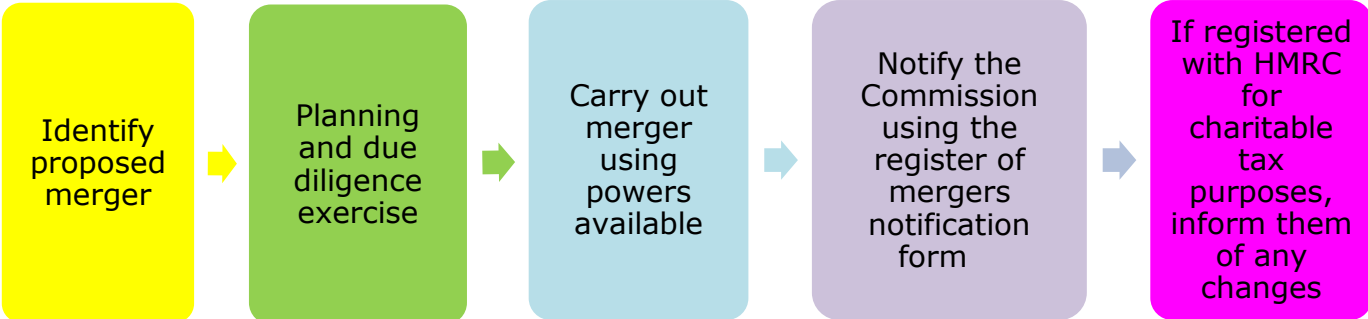
4.7 How long will it take to update the register of mergers?

We aim to complete this process within one month of having received a notification, however, this will depend on whether we need to request more information or refer the charity to another part of the Commission.

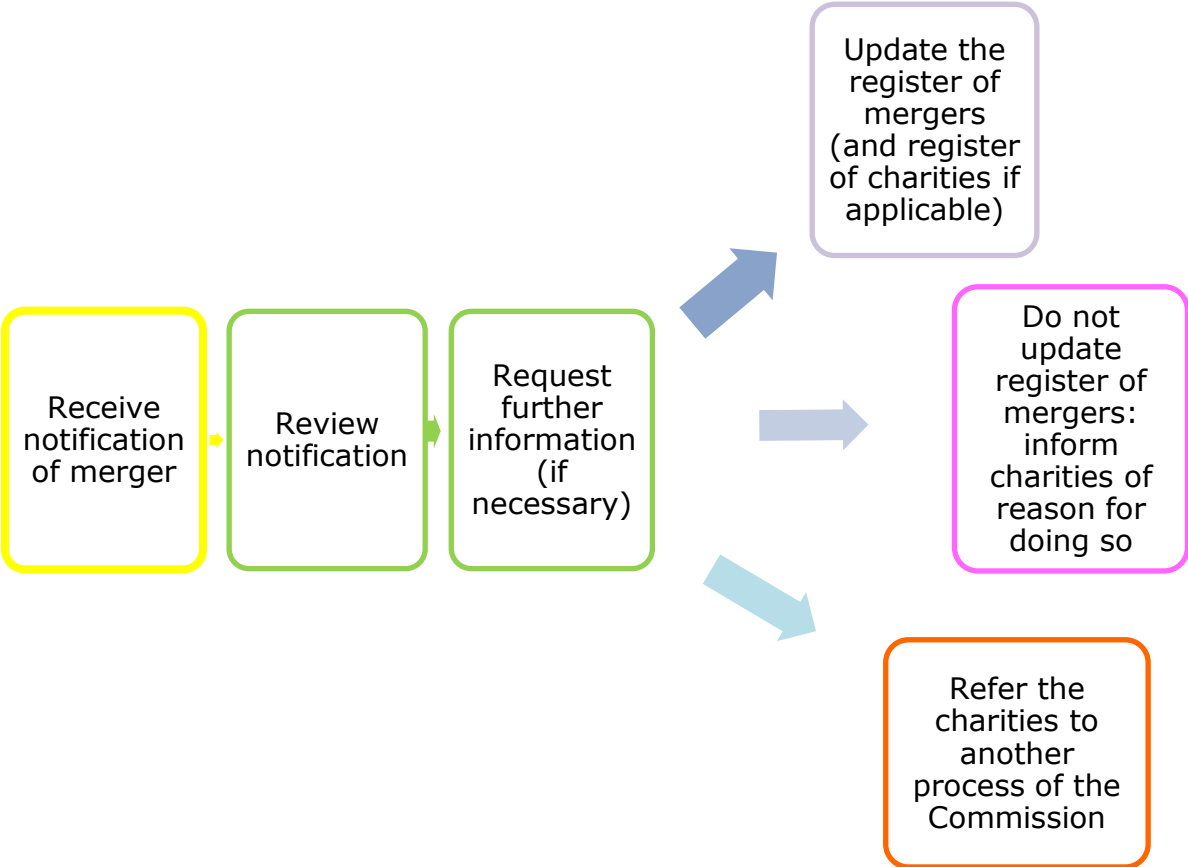
4.8 Flowcharts

The following flowcharts may assist you in following the required procedure and in understanding what the Commission will do with the information you provide.

What process should you follow?



What process will the Commission follow?



Section 5: Closing your charity

Charities registered with the Charity Commission for Northern Ireland must inform us if they are closing. This is to ensure that the *register of charities* is kept up to date. This section of the guidance sets out important considerations for trustees of a charity that is closing or has closed. It may be useful to all charities, including those on the deemed list, and those that are not on the *register of charities* or the deemed list. [Section 6](#) of the guidance sets out the process which registered charities must use to notify us of their closure, and will only be relevant to registered charities.

5.1 Why would a charity need to close?

There are a range of reasons why a charity would close. These include, but are not limited to:

- where the purposes of the charity have been met, or are no longer relevant, for example, treating a disease that has been eradicated
- where the charity has experienced a loss or reduction in funds to the extent that it can no longer operate
- where the charity has a lack of members
- where an unincorporated charity wishes to dissolve to incorporate as a charitable company
- closure as the result of a merger between charities.

The trustees of the charity should be clear about why they are closing and have considered alternatives, for example recruiting new trustees or investigating other avenues for funding.

5.2 What are important considerations for trustees of a charity that is closing?

Charity trustees remain liable for decisions made by them while in office. The decision to close a charity is not one that can be made lightly. This section of the guidance sets out a number of key considerations for charity trustees when closing their charity:

- Does the charity have the power to close?
- Have debts and liabilities been settled?
- Has all property been dealt with?

- Are all trustees aware of their current and ongoing responsibilities?
- Does the Commission have to be notified where a charity closes?

5.2.1 Does the charity have the power to close?

Most charities have the power to close in their governing document. This is usually found as a **dissolution clause** which sets out how the charity can close and what must be done with the remaining assets of the charity. Where this is the case, trustees must follow the procedure set out.

In some cases, the governing document may state that the members of the charity (if applicable) will also have to approve the decision, made by the trustees, to close the charity.

If your governing document indicates that the consent of the Commission is required, or if it does not include a dissolution clause or power to spend all assets, then you may need to get the advance consent of the Commission. Particular care should be taken with **permanent endowments** to ensure that any consent for transfer is sought from the Commission.

Unincorporated charities may be able to use the powers set out in Sections 123-130 of the Charities Act. Guidance on using these powers can be found on the [New powers for unincorporated charities](#) page of our website www.charitycommissionni.org.uk

5.2.2 Have debts and liabilities been settled?

All of the charity's **debts** and **liabilities** must be cleared before the remaining assets can be transferred or spent to close the charity. These include loans, utilities, staff salaries, outstanding bills and potentially redundancy payments.

If there is not enough money to pay all debts and liabilities trustees should consider seeking professional legal or accountancy advice without delay.

5.2.3 Has all property been dealt with?

Trustees may need to sell land or property prior to closing. Alternatively, you may be able to transfer these and any other assets to another charity with the same or similar purposes.

The power to do so may be found in the governing document of the charity. There may be other powers available, for example to small, unincorporated charities using sections 123-130 of the Charities Act. If your organisation does not have the power to make a transfer, consent may be required. Currently this consent must be obtained from the Department for Communities (Charities Branch). Refer to the Commission's website for further information www.charitycommissionni.org.uk

Grants or donations given for a specific purpose must be either:

- used for the specific purpose for which they were given
- used for a different purpose, with the donor's consent
- returned to the donor.

You may wish to consider seeking additional advice for complex situations regarding assets, for example, where gifts made by will are subject to a prior life interest.

Where trustees wish to wind up a charitable trust, they may wish to consider transferring the trust to a **community foundation** which may offer to continue to run the trust in line with its original purposes. For further information refer to the website of the Community Foundation for Northern Ireland, Community Foundation NI.

5.2.4 Are all trustees aware of their current and ongoing responsibilities?

Charity trustees remain legally responsible for the decisions they made when in office. The closing trustees are responsible for meeting all legal requirements associated with the closure of the charity.

These include informing the Commission of the closure, if the organisation is a registered charity, and arranging for accounting books and records to be kept for the appropriate time. This is currently seven years, as set out in the Charities Act (Northern Ireland) 1964.

Additionally, trustees are responsible for ensuring that the logistics of closure are planned for, including but not limited to:

- closing any relevant bank accounts
- shutting down the organisation's website and email accounts and other social media
- cleaning and reformatting computer hard drives
- meeting any data protection requirements
- arranging retention or shredding of key documents (most formal records should be retained for a minimum of seven years)
- preparing final accounts for the charity for submission with the annual monitoring return which must be submitted to the Commission within 10 months of the date of closure
- consulting with and informing stakeholders, for example, employees, staff unions, professional advisers, funders, immediate past trustees, all creditors and service users.

5.2.5 Do you need to notify the Commission?

Charity trustees of **registered charities** must inform the Commission that their charity has closed. The legal requirement is found at section 17(3) of the Charities Act. This is so that the *register of charities* can be kept up to date. Once a registered charity has informed us of their closure, we will update its register entry to record that it does not operate.

The charity must submit its final annual monitoring return and accounts and reports within 10 months of the date of its closure. This is a legal requirement, and the trustees of the charity remain liable for ensuring this is done. Once the final annual monitoring return, accounts and reports have been submitted and reviewed, the charity's entry on the *register of charities* will be updated to record that it has ceased to exist.

Charities that are not yet registered with the Commission are not required to inform us of their closure. If your charity is on the **deemed list** then it is best practice to notify the Commission so that we know not to call your organisation forward to apply to register as a charity in Northern Ireland.

Charitable companies must also inform [Companies House](#) of their closure, while Industrial and Provident Societies are required to inform the Department for the Economy. For further information contact the Department for the Economy www.economy-ni.gov.uk.

Section 6: Notifying the Commission of the closure of a registered charity

This section of the guidance sets out the process for notifying the Commission of the closure of a **registered charity**.

6.1 Who can notify the Commission of a charity closure?

The closure of a registered charity can be notified by a trustee of the charity or by another individual or organisation nominated by the charity trustees, for example a professional adviser. It is important that the person whose details are provided on the notification form can be contacted to discuss the notification, even when the charity is no longer operating.

6.2 When can a charity closure be notified to the Commission?

There is no specific timescale for notification set out in the Charities Act, however, it is best practice to notify the Commission as soon as the charity has ceased to operate. Notification of a closure is not required in advance, however the charity may require consent from the Commission to close, or a scheme to transfer assets. From the date on which it ceases to operate, the charity has 10 months within which to prepare and submit its final accounts to the Commission with its annual monitoring return.

6.3 What is the process?

Use the *closure notification form* to notify the Commission of the closure of the registered charity. It is important that the notification form is fully completed otherwise we may have to contact you to request further information.

The notification form requests the following information:

- contact details for the individual submitting the notification
- details for the registered charity (name, NI charity number, HMRC number and company number if applicable)
- date of the closure

- reason for closure
- details of any assets transferred as a result of the closure
- details of any assets still to be transferred
- trustee declaration.

If you require the consent of the Commission or a scheme to transfer assets, refer to the relevant guidance on our website www.charitycommissionni.org.uk

Log in to the Commission's *online services* to change your financial year end date to the date on which your charity ceased to operate. This will automatically trigger the 10 month window within which you must submit your charity's annual monitoring return and final accounts and reports.

6.4 What other documentation needs to be submitted?

No other documentation needs to be submitted with the notification form. Once the notification form is received, the Commission may request further information, or a copy of the charity's accounts.

6.5 What will the Commission do?

The Commission will consider the notification form to identify:

- whether the charity's financial year end date has been updated on the *register of charities*
- whether there are any transfers to be made that require the consent or a scheme of the Commission or consent from the Department for Communities
- whether all necessary information has been provided
- whether there are any reasons to request a copy of the charity's accounts.

We will take one or more of the following possible actions:

- request further information
- signpost the charity involved to another process of the Commission, for example, to request a scheme or consent for a charitable company
- update the *register of charities* with the new financial year end date (if necessary)

- update the *register of charities* with the changed status of the organisation
- ensure that the charity has informed HMRC of its change of status
- refer the charity to another part of the Commission, for example, monitoring and compliance.

6.6 Do the trustees need to do anything else?

If the charity is registered with Her Majesty's Revenue and Customs (HMRC) for charitable tax purposes, then it is important that the charity notifies HMRC of any changes.

Charitable companies that are closing have particular obligations under company law and must inform Companies House of their closure. For further information on company requirements contact Companies House www.companieshouse.gov.uk. Industrial and provident societies have particular obligations under industrial and provident society law and must inform the Department for the Economy. For further information contact the Department for the Economy www.economy-ni.gov.uk.

6.7 How long will it take to update the register of charities?

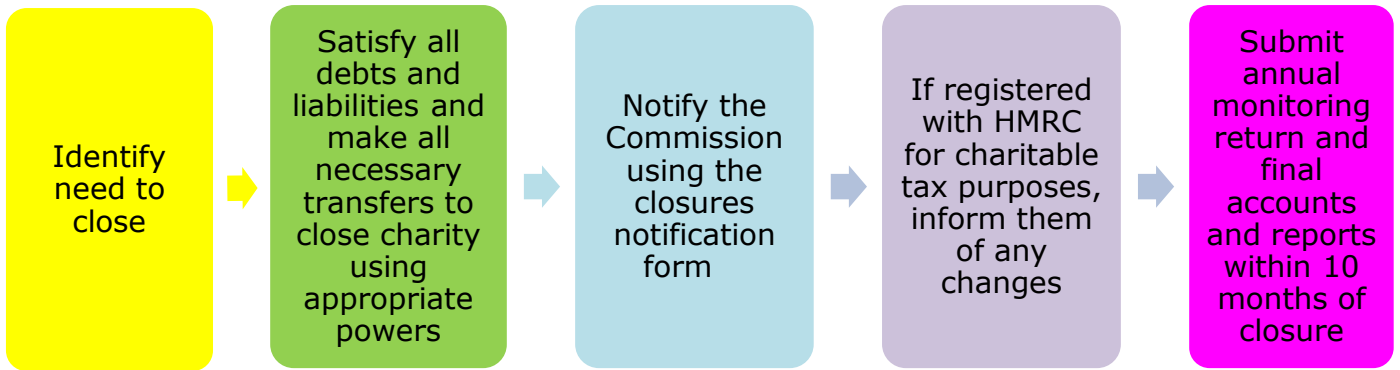
We aim to update the *register of charities* within one month of having received a notification of closure, however, this will depend on whether we need to request more information or refer the charity to another part of the Commission.

Once the final annual monitoring return and annual accounts and reports are received, we will update the *register of charities* again. How long this takes will depend on whether we need to request more information.

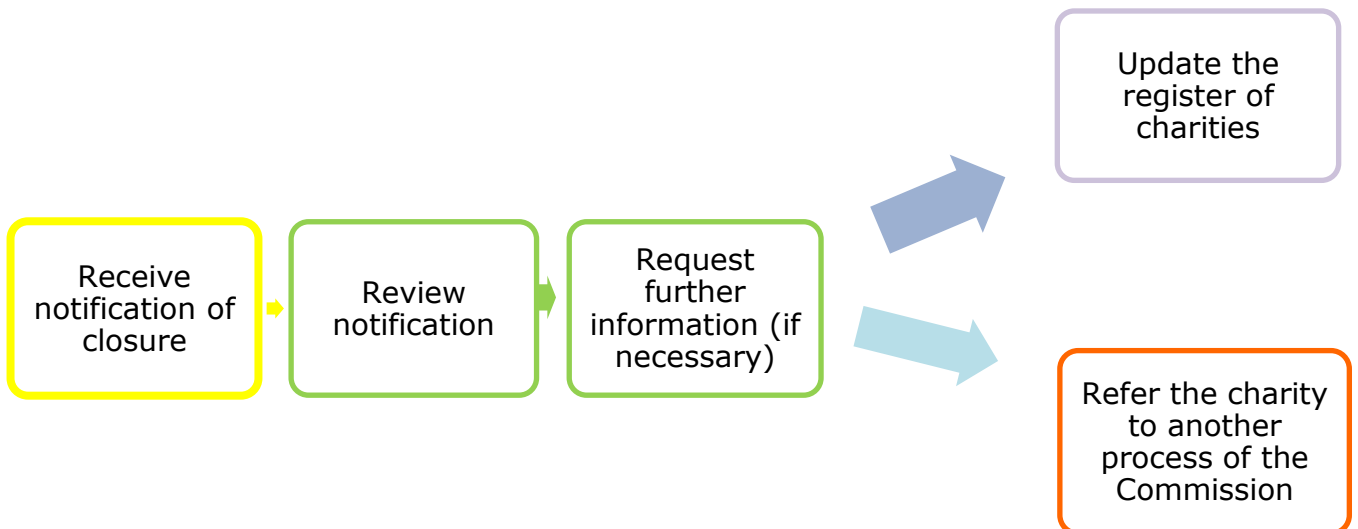
6.8 Flowcharts

The following flowcharts may assist you in following the required procedure and in understanding what the Commission will do with the information you provide.

What process should you follow?



What process will the Commission follow?



Appendix 1: Glossary

| Term | Definition |
|--|---|
| Articles of association | A document that specifies the regulations for a company's operations. The articles of association define the company's purpose and lay out how tasks are to be accomplished within the organisation, including the process for appointing directors and how financial records will be handled. |
| Charitable company | This is a charity which is formed and registered under the Companies Act 2006, or any companies that were already established under previous legislation. Charitable companies are registered with Companies House. It will usually have memorandum and articles of association as its governing document and it has its own legal identity. It must be established for exclusively charitable objects. |
| Charitable purposes | <p>This is defined by section 2 of the Charities Act (Northern Ireland) 2008 (as amended) as one that:</p> <ul style="list-style-type: none"> • falls under one or more of the list of 12 descriptions of purposes set out in section 2(2) of the Charities Act and • is for the public benefit. <p>To be a charity, an organisation must have purposes which are exclusively charitable in law.</p> |
| Charities Act (Northern Ireland) 2008 | <p>The Charities Act (Northern Ireland) 2008 is the main piece of legislation establishing the Charity Commission for Northern Ireland and setting out its functions and powers.</p> <p>References to 'the Charities Act' are to the Charities Act (Northern Ireland) 2008, as amended. The full content of the 2008 Charities Act can be found at www.legislation.gov.uk Not all of the sections of the Charities Act are in force yet. Details of the sections that are in force are available on the Commission's website www.charitycommissionni.org.uk</p> |
| Charities Act (Northern Ireland) 2013 | The Charities Act (Northern Ireland) 2013 is a much shorter Act and was primarily brought in to amend the definition of a charity in the Charities Act (Northern Ireland) 2008. |

| | |
|-----------------------------|--|
| | The full content of the 2013 Act can be found at www.legislation.gov.uk |
| Charity directors | In the context of a charitable company, charity trustees are referred to as directors. |
| Charity trustees | <p>These are the people who are legally responsible for the control and management of the administration of a charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors or directors or they may be referred to by some other title.</p> <p>Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the Charities Act and broadly include but are not limited to anyone who:</p> <ul style="list-style-type: none"> • has been convicted of an offence involving deception or dishonesty, unless the conviction is a spent conviction under the Rehabilitation of Offenders (NI) Order 1978 • is an undischarged bankrupt or has made arrangement with creditors • has previously been removed as a trustee by the Commission or by the Courts • is subject to disqualification under company legislation. |
| Community foundation | A community foundation is a vehicle for charitable giving. They are designed to pool donations into a co-ordinated investment and grant making facility working with individuals, families and companies to design grant making strategies that target particular issues or focus on particular geographical areas. There are 46 accredited community foundations in the UK. |
| Company law | Throughout this guidance, references to "company law" are to the Company Act 2006. The full content of the 2006 Act can be found at www.legislation.gov.uk |
| Debts | An amount of money borrowed by one party from another. |
| Deemed list | <p>This is a list of organisations registered with Her Majesty's Revenue and Customs (HMRC) for charitable tax purposes as at 18 August 2013 and, as a consequence of this, are treated as if they are charities in law.</p> <p>This deemed list can be viewed on our website www.charitycommissionni.org.uk</p> |

| | |
|---------------------------|--|
| Designated funds | Designated funds are part of the unrestricted funds which trustees have earmarked for a particular project or use, without restricting or committing the funds legally. The designation may be cancelled by the trustees if they later decide that the charity should not proceed or continue with the use or project for which the funds were designated. |
| Discharged | To do all that which is required to perform a duty or fulfill a responsibility. |
| Dissolution | Termination of an organisation following the cessation of operation, discharge of liabilities and distribution of assets. |
| Due diligence | <p>Due diligence is an investigation of an organisation or individual, prior to entering into a contract or process with them. For the purposes of this guidance, due diligence describes the investigation of another charity or charities in advance of completion of a merger. There are typically three main elements:</p> <ul style="list-style-type: none"> • commercial due diligence • financial due diligence • legal due diligence. <p>The Charity Commission for England and Wales provides a checklist for due diligence which may be useful to charity trustees.</p> |
| Duty of care | All trustees have a duty of care towards their charity. A trustee is expected to use his or her knowledge and experience reasonably and in the interests of the charity. If they do so, they are unlikely to breach charity law. Where a trustee has professional or business expertise then he or she is expected to make use of this in running the charity. |
| Governing document | A charity's governing document is any document which sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, conveyance, Will, Royal Charter, scheme of the Commission or other formal document. |
| Legacies | When a person has left all or part of their estate (money or property) to another in their Will. |
| Liabilities | Legal debts or obligations that arise during the course of operations. |

| | |
|---------------------------------------|---|
| <p>Members</p> | <p>A member is defined as a person who has agreed to become a member and whose name is entered on the organisation's register of members. They are not involved in the day-to-day management of an organisation but are usually entitled to do the following things:</p> <ul style="list-style-type: none"> • attend and vote at general meetings; receive the annual accounts of the organisation • elect and remove trustees by voting at the meeting • vote on any fundamental changes to the nature of the organisation, its name, its purposes or what happens to its profits. <p>Normally there will be one meeting per year, called the Annual General Meeting (AGM), and members will be given at least three weeks' notice of the place and time of the meeting. Other general meetings may be called in exceptional circumstances. An AGM is best practice but not compulsory.</p> <p>They are not entitled to receive dividends or other income from their organisation. If the organisation makes a profit this will be retained to help pay for the organisation's activities in the following years. If the organisation is wound up members will not receive any money from the organisation because its constitution usually requires that it should be paid to another similar organisation or to a charity. If it is not in the governing document, charity law would require that the monies be transferred in this manner by use of a scheme or other power.</p> |
| <p>Permanent endowment</p> | <p>The property of the charity, for example land, buildings, investments or cash which the charity trustees may not 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. Charity trustees can only spend or dispose of permanent endowment if they use the powers in the Charities Act that allow this or if they obtain our authority.</p> |
| <p>Relevant charity merger</p> | <p>A relevant charity merger, defined in section 161 of the Charities Act, means:</p> <ul style="list-style-type: none"> c) a merger of two or more charities where one of them (the transferee) has transferred to it all of the property of the other charities (the transferors), each of which ceases to exist, or is to cease to exist, on or after the |

| | |
|---|--|
| | <p>property transfer; or</p> <p>d) a merger of two or more charities (transferors) where both or all cease to exist, or are to cease to exist, on or after the transfer of all of their property to a new charity (the transferee).</p> <p>Where the merger involves the transfer of property of any charity which has both a permanent endowment and other property and whose trusts do not contain provision for the termination of the charity, then all of its property is to be treated as unrestricted property and the reference to its ceasing to exist is not relevant.</p> |
| Registered charity | <p>This is a charity that has been registered by the Charity Commission for Northern Ireland and appears on the online register of charities. Compulsory charity registration launched in December 2013. This is not the same as registration with HMRC for charitable tax purposes.</p> |
| Restricted fund | <p>A fund which is used in a specific way or for a specific purpose in accordance with the donor's express wish.</p> |
| Scheme | <p>The term 'scheme' refers to a scheme made by the Commission under the Charities Act. It is a legal document that changes, replaces or extends the trusts of a charity. It may be a fully regulating scheme, covering all aspects of a charity's administration and purposes and replacing the previous governing document, or it may be a scheme that adds to or alters some part of the governing document.</p> |
| Special trusts or restricted funds | <p>A special trust means funds or property held and administered on its own separate trusts 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. Sometimes these funds are separate charities, run and administered by its own trustees, and at other times the funds are part of a main charity.</p> |
| Undischarged bankrupt | <p>This is someone who has been declared bankrupt, and is not yet discharged from bankruptcy.</p> |
| Unincorporated charity | <p>An unincorporated charity is one which is not a company or corporate body. Unincorporated charities may be a trust or association and have a trust deed, constitution, or will as its governing document. Unlike a charitable company, unincorporated charities do not have their own separate legal identity. Charity trustees of unincorporated charities are</p> |

**Vesting
declaration**

liable for what the charity does. You may need to take legal advice if you are uncertain of your liabilities.

Where one charity is transferring property to another charity, it may use a vesting declaration. This is a deed which transfers the legal title of one charity's property to another on a specified date.

In the case of industrial and provident societies, certain special resolutions made in respect of transfers of engagements, or amalgamations of societies, may be considered vesting declarations for the purposes of the Charities Act.

Where vesting declarations are used, the merger must be registered with the Commission.

Trustees may wish to seek professional advice in relation to this.

Useful information

Public benefit requirement statutory guidance

Registering as a charity guidance

Running your charity guidance

A toolkit of ideas and practice for mergers in the third sector (AmalgaMate CO3)

Requesting a scheme guidance

New powers for unincorporated charities guidance

Consents for charitable companies guidance

Collaboration NI

Useful contacts

| | |
|---|---|
| Charity Commission for England and Wales (CCEW) | PO Box 211 Bootle L20 7VX Telephone: 0300 066 9197 Website: www.gov.uk/government/organisations/charity-commission |
| Community Foundation for Northern Ireland | Community House Citylink Business Park Albert Street Belfast BT12 4HQ Telephone: 028 9024 5927 Website: www.communityfoundationni.org |
| Equality Commission for Northern Ireland | Equality House 7-9 Shaftesbury Square Belfast BT2 7DP Telephone: 028 9050 0600 Website: www.equalityni.org |
| HM Revenue and Customs (HMRC) | Charities, Savings and International 2 HM Revenue and Customs BX9 1BU United Kingdom Telephone: 0300 123 1073 Website: www.hmrc.gov.uk/charities |
| Department for Communities | Lighthouse Building 1 Cromac Place Gasworks Business Park Ormeau Road Belfast BT7 2JB Telephone: 028 9082 9000 Website: www.communities-ni.gov.uk |
| Northern Ireland Council for Voluntary Action | 61 Duncairn Gardens Belfast BT15 2GB Telephone: 028 9087 7777 Website: www.nicva.org |

If you disagree with our decision

If you disagree with one of our decisions, we would like to reconsider it ourselves in the first instance. Our decision review procedure offers a genuine opportunity for our decisions to be looked at afresh. If you ask us to review a decision, where possible we will refer the matter to someone who did not make the original decision. You can also seek a review from the Charity Tribunal.

If you are dissatisfied with our service

The Commission is committed to delivering a quality service at all times. However, we know that sometimes things can go wrong. If you are dissatisfied with the service you have received, we would like to hear from you, and have a procedure that you can use. You will find further information on these processes in our guidance, *Making a complaint about our services*, which is on our website www.charitycommissionni.org.uk

Freedom of information and data protection

Data Protection

Any information you give us will be held securely and in accordance with the rules on data protection. Your personal details will be treated as private and confidential and safeguarded, and will not be disclosed to anyone not connected to the Charity Commission for Northern Ireland unless you have agreed to its release, or in certain circumstances where:

- we are legally obliged to do so
- it is necessary for the proper discharge of our statutory functions
- it is necessary to disclose this information in compliance with our function as regulator of charities where it is in the public interest to do so.

We will ensure that any disclosure made for this purpose is proportionate, considers your right to privacy and is dealt with fairly and lawfully in accordance with the Data Protection Principles of the Data Protection Act.

The Data Protection Act 1998 regulates the use of “personal data”, which is essentially any information, whether kept in computer or paper files, about identifiable individuals. As a “data controller” under the Act, the Charity Commission for Northern Ireland must comply with its requirements.

Freedom of Information

The Freedom of Information Act 2000 gives members of the public the right to know about and request information that we hold. This includes information received from third parties.

If information is requested under the Freedom of Information Act we will release it, unless there are relevant exemptions. We may choose to consult with you first if this relates to your consultation or application. If you think that information you are providing may be exempt from release if requested, please let us know.

Further information on our activities is available from:

**Charity Commission for
Northern Ireland
257 Lough Road
Lurgan
Craigavon
BT66 6NQ**



www.charitycommissionni.org.uk

Email: admin@charitycommissionni.org.uk

Tel: 028 3832 0220

Fax: 028 3832 5943

Textphone: 028 3834 7639

 Follow us on Twitter @CharityCommNI

This document is available in large print or other formats on request