

Consents for charitable companies

Guidance for directors of charitable companies on obtaining consent to alter objects, dissolution or benefit provisions contained in their articles of association and transactions with directors

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 Social Development.

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 and advisory 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.

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Section 1: Overview

Charities need to adapt the way they operate to reflect changes in society and the context in which they work. Charitable companies must seek the prior consent of the Charity Commission for Northern Ireland (the Commission) for changes to their **articles of association**.

This guidance is intended to support **charitable companies** to seek consent to alter:

- their **objects**
- **dissolution** provisions in relation to property
- provisions relating to benefits to **charity directors, members** of the company or people connected to them.

These are known as regulated alterations.

In order to ensure the charity's continuing effectiveness, directors of a charitable company should change the company's articles of association if necessary, or take other relevant action.

This guidance also intends to support charitable companies to seek the prior consent of the Commission where the charitable company seeks to undertake a transaction involving directors, as required by company law.

Charitable companies have their own separate legal identity and the liability of charity directors is limited. They will not incur any liability if they have acted diligently and complied with statutory obligations, but may be held personally responsible for any liabilities incurred by the charity if they have acted recklessly or fraudulently.

Section 2: About this guidance

What does this guidance cover?

The guidance is divided into four sections. Within each section we have detailed the provisions available within the **Charities Act** and how and when you should seek to use those provisions.

This guidance is intended to support **charitable companies** to seek prior consent to alter:

Section 3: objects, dissolution or benefits provisions contained in a charitable company's articles of association

Section 4: transactions which benefit directors.

What does this guidance not cover?

You should not rely on this guidance to provide a full description of legal matters affecting your charity and the guidance 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**.

The Commission is not in a position to give informal advice or reassurances on specific changes or amendments. Charities may also be subject to other legislation or regulation, for example, equality legislation.

What is our approach to decision making?

The Commission adopts a risk based approach when making any decisions; this includes schemes, consents and objections. This means that we look at a range of factors when assessing and analysing information provided and in identifying any further information we might require. These factors may include, but are not limited to:

- extent of changes to objects
- public interest in the organisation
- complexity of the change.

Will the Commission publish its decisions?

The Commission has considered the publication of decisions under sections 96, 98 and 99 of the Charities Act in line with its *Publishing our decisions* policy:

Section 96: We will not usually publish our decision, unless we consider there is a strong reason why we should. However, a company's articles of association are available through Companies House and companies are required to lodge updated articles with Companies House once amendments have been made.

Section 98: We will usually publish our decisions, unless we consider there is a strong reason why we should not. This is because we believe this type of resolution and our decision can affect public trust and confidence in charities.

Section 99: We will usually publish our decisions, unless we consider there is a strong reason why we should not. This is because we believe this type of resolution and our decision can affect public trust and confidence in charities.

Who does this guidance apply to?

This guidance is aimed at **charity directors** of charitable companies or someone acting on behalf of a charity, for example a solicitor, accountant, company secretary, agent or adviser. It also is aimed at **charitable corporate bodies**.

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.

Where can you find definitions of key terms?

You will find definitions of key terms in the glossary towards the end of this guidance. If you are viewing the guidance online, you can click on a word highlighted in **green and bold** and you will be brought straight to the definition in the glossary.

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

Section 3: Alteration of objects, dissolution or benefits provisions

3.1 When would we use this?

Sometimes a **charitable company** may find that in order to remain effective it needs to alter its **articles of association**. You can do this by seeking a **regulated alteration** which must have prior written consent from the Commission before being applied.

You must seek the Commission's consent to:

- add, remove or alter your company's **objects**
- alter the **dissolution** clause
- alter any provision which would result in a charity director, member or connected person benefiting.
or
- if the charitable company's governing document specifically states that our prior consent is needed for all changes.

3.2 When do we not need to use this?

Even in cases where we do not have to give consent to the alterations made to the articles of association, under section 17(3) of the Charities Act the charity

trustees must notify us of any changes that have been made to the governing document of the charity and provide us with an up-to-date copy of the governing document.

You do not need to seek our consent to alter provisions which relate to payment for services provided to or on behalf of a charity by:

- a person who is a **charity director** or
- is connected with a charity director, which might ultimately result in a charity director obtaining a benefit.

Provided that:

- the maximum amount is set out in a written agreement
- it is reasonable in the circumstances
- it is in the best interests of the charity
- the number of people receiving this remuneration are in the minority
- the articles of association do not include any express prohibition on charity directors receiving remuneration.

The Commission's *Running your charity* guidance provides further information on a director's duty in respect of these kinds of payment for services.

Other non regulated alterations include:

- renumbering the clause
- adding, removing or amending provisions located in the objects clause which do not form part of the statement of objects
- reclassifying the clause as an article where previously it was located in the memorandum
- reflecting any changes to the numbering, but not the wording, of other clauses referred to in the objects or dissolution clause.

3.3 Who can use this?

All charitable companies must comply with the provisions of section 96 of the **Charities Act**.

3.4 What is the process?

Charity directors must ensure that:

- the changes in objects do not affect the charitable nature of the company and all its objects remain exclusively charitable
- the changes are in the best interests of the charity.

If the charity directors are not satisfied they should reconsider the proposed change in objects or provisions.

Charity directors must send the Commission:

- a copy of the existing governing document
- the proposed new articles of association

You should use the *Consents form* to request an alteration and provide the required supporting documentation.

Once you have received our consent you must pass a **special resolution** in line with the articles of association and **company law**.

3.5 What will the Commission do?

The Commission will consider the proposed alteration, including whether:

- the new or amended objects are exclusively charitable
- the proposed special resolution and statement of reasons has merit, for example, there is a justifiable reason for the new or amended objects or provisions and they are in the best interests of the charity.

The Commission may request further information. Ultimately the Commission can withhold consent

if it is not satisfied with the changes.

If we do any of the above we will tell you.

3.6 What about best practice?

It is best practice for the special resolution to state the section of the Charities Act under which the special resolution has been enacted.

3.7 When will the resolution take effect?

The resolution will become effective only when the Commission has given its prior written consent and the company's members have approved it. We cannot give our consent retrospectively and no alteration made before we give our consent will be valid. The only exception to this is where the company's members pass a resolution that is conditional upon our giving the required consent. In these cases, the clear intention is that our consent brings the resolution into

effect. We aim to process applications within three months of receipt.

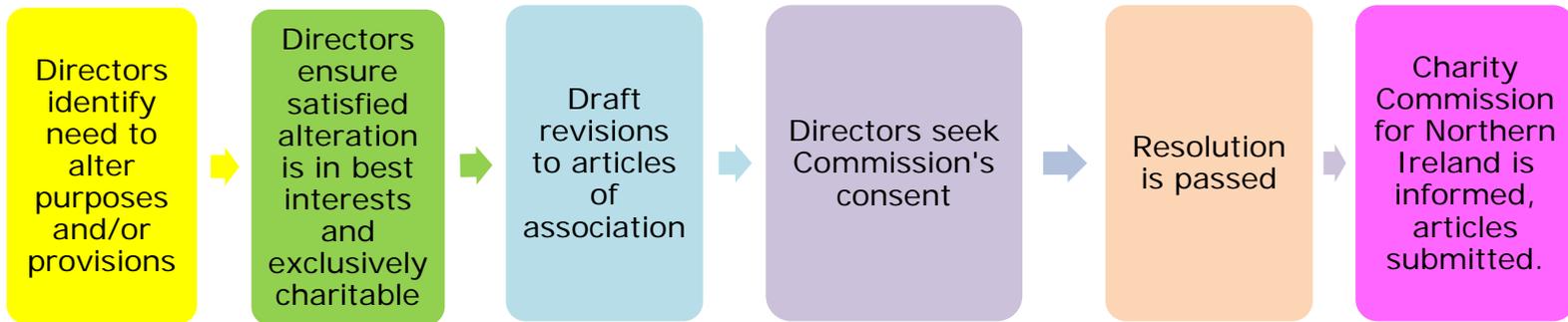
3.8 Do we need to do anything else?

Company law places certain requirements on charitable companies which have made regulated alterations to their articles of association, which include forwarding a copy of its memorandum and/or articles of association to Companies House following alteration and the special resolution effecting the alteration. Both must be accompanied by a copy of the Commission's written consent.

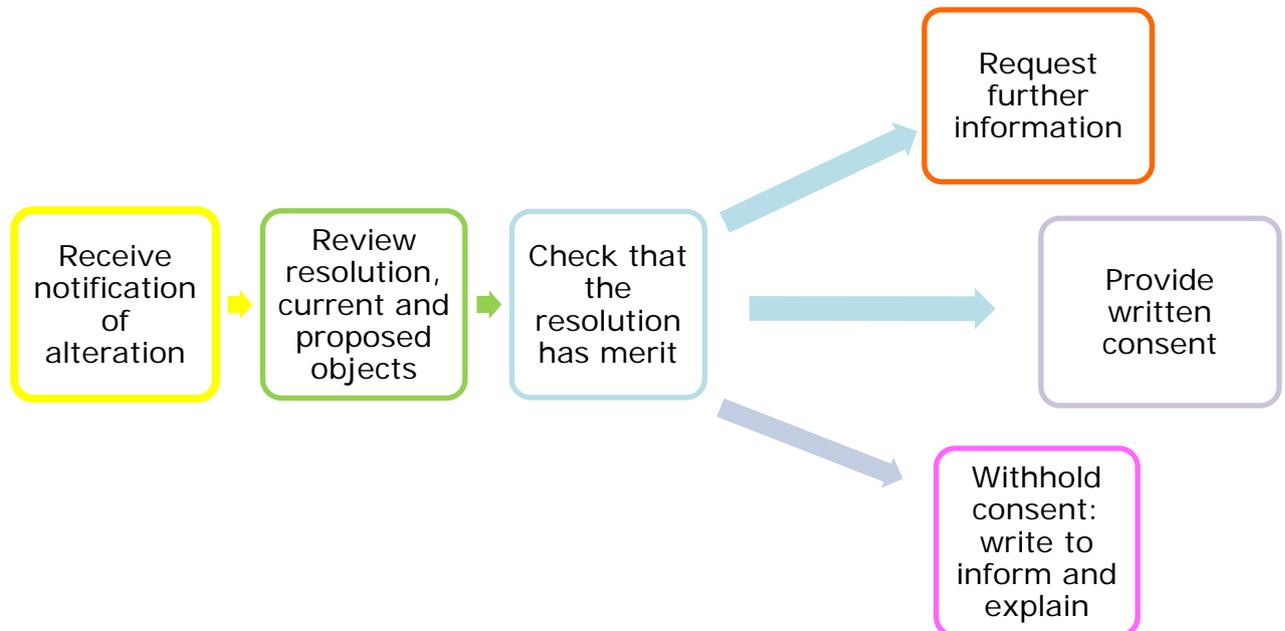
For further information on company requirements you should contact Companies House, www.companieshouse.gov.uk.

The following flow chart may assist you in following the required procedure.

What process should you follow?



What process will the Commission follow?



Section 4: Transactions with directors

4.1 When would we use this?

Certain transactions with **charity directors** of a **charitable company** require approval from the **members** of the charitable company before they become effective.

Transactions which require members' approval are set out in **company law**.

You must seek the Commission's prior consent where transactions relate to:

- directors' long term service contracts
- substantial property transactions when:
 - the asset which is the subject of the transaction exceeds 10 per cent of the company's asset value and is more than £5,000 or
 - the asset exceeds £100,000
- loans and quasi-loans to directors
- credit transactions for the benefit of directors
- related arrangements, for example, transactions with directors of holding companies
- payments to directors for their loss of office.

Where approval of the transactions listed above do not require members' approval because of an exemption in the company law provisions the directors of a charitable company must still seek the consent of the Commission.

4.2 Who can use this?

All charitable companies must comply with the provisions of section 98 and 99 of the **Charities Act**.

4.3 What is the process?

Charity directors must send the Commission:

- a copy of the governing document, sections 98,99
- a copy of the proposed **resolution** unless company's **articles of association** require a higher approval level (such as a **special resolution**), section 98.

You should use the *Consents form* to request approval and provide the required supporting documentation.

4.4 What will the Commission do?

The Commission will consider if:

- the proposed resolution and statement of reasons has merit, for example that the transaction is in the best interests of the charity
- check no harm to the charity will result from carrying out the transaction.

The Commission may request further information, object to the proposed wording and/or object on merit grounds.

If we do any of the above we will tell you.

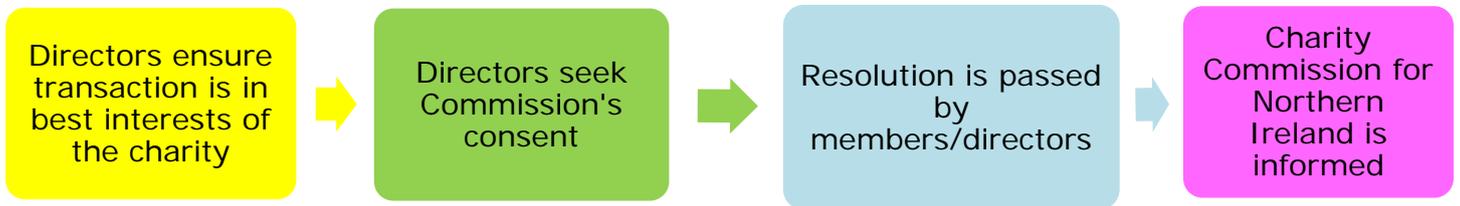
4.5 What about best practice?

It is best practice for the resolution to state the section of the Charities Act under which the resolution has been enacted.

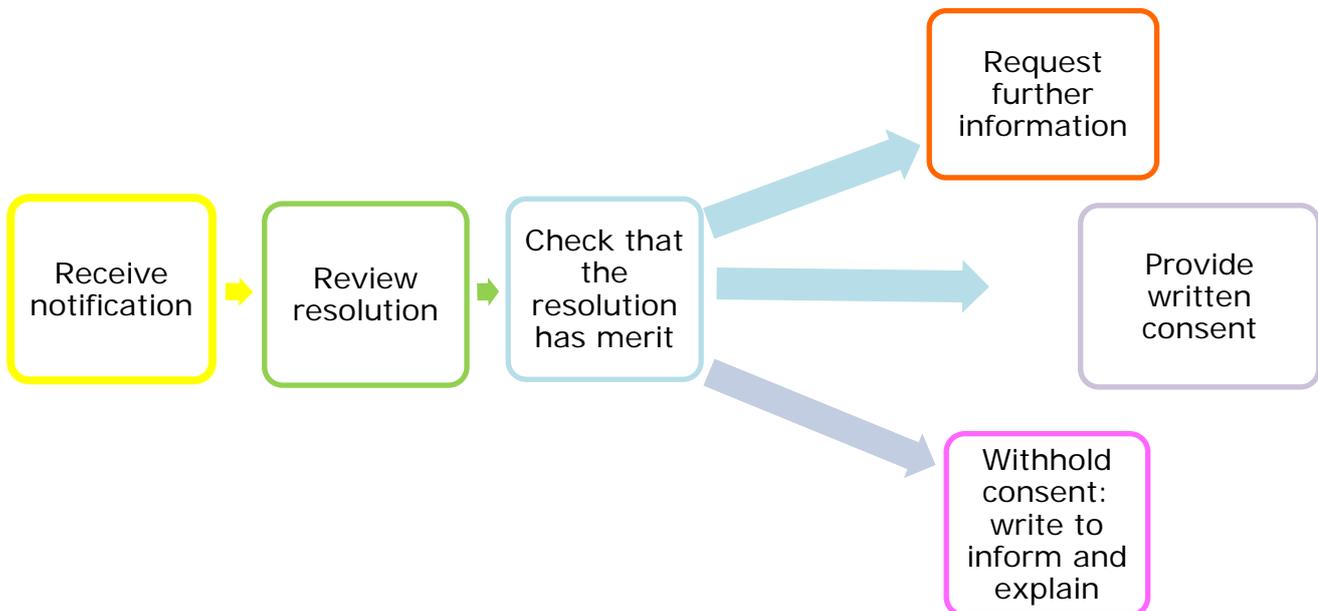
4.6 When will the resolution take effect?

The resolution will become effective only when the Commission has given its prior written consent and the company's members have approved it. We cannot give our consent retrospectively and no alteration made before we give our consent will be valid. The only exception to this is where the company's members pass a resolution that is conditional upon our giving the required consent. In these cases, the clear intention is that our consent brings the resolution into effect. We aim to process applications within three months of receipt.

What process should you follow?



What process will the Commission follow?



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 purposes.
Objects	<p>This term is sometimes used to describe and identify the purpose for which the charity has been set up. They do not say what the organisation will do on a daily basis. Sometimes the word purposes is used instead.</p> <p>A charity's purposes must be exclusively charitable. They are usually set out in a clause or paragraph of the charity's governing document. If the purposes allow the organisation to do something which the law does not recognise as charitable the organisation is not a charity and could not be registered with us.</p>
Charities Act (Northern Ireland) 2008	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
Charities Act (Northern Ireland) 2013	<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>The Charities Act (Northern Ireland) 2013 is a much shorter</p>

Term	Definition
	<p>Act and was primarily brought in to amend the definition of a charity in the Charities Act (Northern Ireland) 2008.</p> <p>The full content of the 2013 Act can be found at www.legislation.gov.uk</p>
Charity directors	<p>In the context of a charitable company, charity trustees are referred to as directors.</p> <p>Some people are disqualified by law from acting as charity trustees. These disqualifications are set out in the 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 an arrangement with creditors • has previously been removed as a trustee by the Commission or by the Court • is subject to disqualification under company legislation.
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

Term	Definition
	<ul style="list-style-type: none"> • 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.
Charitable corporate body	A legal entity (such as an association, company or institution) identified by a particular name. Also called corporation, body corporate or corporate entity.
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
Dissolution	Termination of a corporate body, either a) voluntarily by resolution, paying debts, distributing assets and filing dissolution documents with Companies House or b) by state suspension for not paying corporate taxes or some other action of the government.
Members	<p>A company member is defined as a person who has agreed to become a member and whose name is entered on the company's register of members. It is a body of guarantors which give an undertaking to contribute a nominal amount (typically very small) in the event of the winding up of the company. They are not involved in the day-to-day management of a charitable company but are entitled to do the following things:</p> <ul style="list-style-type: none"> • attend and vote at general meetings; 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 • receive the annual accounts of the company • elect directors by voting at the meeting • vote on any fundamental changes to the nature of the company, its name, its purposes or what happens to its profits.

Term	Definition
	<p>They are not entitled to receive dividends or other income from the company. If the company makes a profit this will be retained to help pay for the company's activities in the following years. If the company is wound up members will not receive any money from the company because its constitution requires that it should be paid to another similar organisation or to a charity.</p>
Regulated alteration	<p>A regulated alteration is any amendment of the company's articles to add, remove or alter a statement of the company's objects, any alteration of any provision of its articles which direct the application of property of the company on its dissolution, or any alteration of any provision of its articles where the alteration would provide authorisation for any benefit to be obtained by charity directors or members of the company or people connected to them.</p>
Resolution	<p>A written motion adopted by a deliberative body. The substance of the resolution can be anything that can normally be proposed as a motion. For long or important motions, though, it is often better to have them written out so that discussion is easier or so that it can be distributed outside of the body after its adoption.</p>
Special resolution	<p>This is a resolution passed by the vote of a majority of 75 per cent or over of all the members of a company eligible to vote (section 283 of the Companies Act 2006). Those eligible to vote will usually be all the members of the charitable company.</p> <p>The resolution can be passed as a written resolution or at a meeting by a show of hands. In the event of a meeting, the notice of the meeting must include the text of the resolution and specify the intention to pass it as a special resolution.</p>

Term	Definition
Statement of reasons	The justification provided by the charity for its decision.
Undischarged bankrupt	This is someone who has been declared bankrupt, and is not yet discharged from bankruptcy.

Useful contacts

The Charity Tribunal

Tribunals Hearing Centre
3rd Floor, Bedford House
16-22 Bedford Street
Belfast
BT2 7FD

Tel: 028 9072 4892

Website: www.courtsni.gov.uk/en-GB/Tribunals/CharityTribunal

Charity Commission for England and Wales (CCEW)

Tel: 0845 300 0218

Website: www.charity-commission.gov.uk

Department for Social Development

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road

Belfast
BT7 2JB

Tel: 028 9082 9428

Website: www.dsdni.gov.uk

Department for Social Development

Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB

Telephone 028 9082 9000

**HM Revenue and
Customs (HMRC)**

www.hmrc.gov.uk/charities

HM Revenue & Customs
Charities Correspondence S0708
PO Box 205
Bootle
L69 9AZ

Telephone: 0845 302 0203

**Institute of
Fundraising**

www.institute-of-fundraising.org.uk/groups/national-northern-ireland/

northernireland@institute-of-fundraising.org.uk

**The Law Society of
Northern Ireland**

96 Victoria Street
Belfast

BT1 3GN

Tel: 028 9023 1614

Website: www.lawsoc-ni.org.uk

**Northern Ireland
Council for Voluntary
Action (NICVA)**

www.nicva.org

61 Duncairn Gardens
Belfast
BT15 2GB

Telephone: 028 9087 7777

**Office of the Scottish
Charity Regulator
(OSCR)**

2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

Tel: 01382 220 446

Website: www.oscr.org.uk

If you are unhappy 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 to appeal our decision at the Charity Tribunal.

Where we do not provide consent under section 99 of the Charities Act, this can only be reviewed by a Judicial Review process of the High Court.

If you are unhappy with our service

The Charity Commission for Northern Ireland is committed to delivering a quality service at all times. However, we know that sometimes things can go wrong. If you are unhappy about any aspect of our service we would like to hear from you, and have a procedure that you can use. You will find further information on these processes on our website.

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**



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