

**CABINET MEMBER WITH THE RESPONSIBILITY FOR EDUCATION
– 20 MAY 2013**

**PROCEDURES FOR MAKING OF RESOLUTIONS WHERE THE
COUNCIL IS ACTING AS A CHARITABLE TRUSTEE**

Report by the Director for Children's Services

Introduction

1. This report requests a decision to set up processes to allow the Council to discharge its powers as a charitable trustee under the provisions of the Charities Act 2011 relating to replacing the purposes of unincorporated charities with smaller funds (section 275), and to spending the capital of unincorporated charities with smaller funds (section 281), where necessary with a view to closing the relevant trust.
2. The Council is trustee of a number of small trusts, many relating to schools' prizes or similar with permanent endowments. The size of the endowments is such that they only generate a small amount of income each year and the funds of some of these trusts have not been used for a number of years. In some cases, the purposes for which the funds are required to be used are out of date (for example, relating to schools which no longer exist).
3. As part of the academy conversion process, the Council has agreed to transfer trusteeship of trusts relating to schools which have converted to academies. This exercise has identified a need to rationalise certain small trusts which are not to be transferred in such a way.

The Council's Obligations as Trustee

4. Where trusts are for certain purposes (which include, amongst other things the advancement of education) and are for the public benefit (as defined in charity law) they are charitable and thus the provisions of the Charities Act 2011 apply.
5. As a trustee, the Council is obliged to ensure that the charity's assets are applied in pursuance of its charitable purposes. In some cases, this may be difficult due to the nature of the purposes (for example, where the stated purposes relate to a school which has closed down or another out-of-date matter which cannot now be fulfilled in the way envisaged) or due to the endowment being too small to generate sufficient income (for example, where the trust is for an annual prize but only a few pounds are generated each year).

6. Where a charitable trust is set up with an endowment, this cannot be spent other than in accordance with the provisions of the deed which set up the trust or charity law. A number of the trusts of which the Council is trustee have permanent endowments where the trust deed does not allow for these to be spent.

The Charities Act 2011

7. The Charities Act 2011 (the “Act”) contains provisions allowing for the trustees of unincorporated charities to replace the purposes and spend the capital of the charities in certain circumstances. These provisions require the making of resolutions.
8. The Act sets out different processes for each action where the funds of the charity are smaller. In the case of replacing purposes, they are that (i) income in the trust’s last financial year did not exceed £10,000 and (ii) no designated land (land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity) is held. In the case of spending capital, the thresholds are that (i) income in the trust’s last financial year did not exceed £1,000 and (ii) the value of the endowment does not exceed £10,000.
9. If the purposes are to be changed, the trustees must be satisfied (a) that it is expedient in the interests of the charity for the purposes in question to be replaced, and (b) that, so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced (section 275(4) of the Act).
10. If capital is to be spent, the trustees must be satisfied that the purposes set out in the trust to which the fund is subject could be carried out more effectively if the capital of the fund, or a portion of it, could be expended as well as income accruing to it, rather than just such income (section 282(3) of the Act).
11. In the event that all the assets of a charitable trust are expended, the trust can be closed.

The Council’s Processes

At present, no formal regime is in place as to how the Council should make a resolution. It is therefore recommended that the Director for Children, Education and Families, in consultation with the Chief Finance Officer, should be able to make such a resolution, including with a view to closing the charitable trust where this is considered appropriate. The Director for Children, Education and Families, in making such a resolution, would need to be satisfied that the relevant provisions of the Charities Act apply. For the avoidance of doubt, this would not govern the making of resolutions where the size or nature of the trust means it does not fall within sections 275 or 281 of the Charities Act.

Financial and Staff Implications

12. This decision is purely procedural and there are no financial or staff implications.

RECOMMENDATION

13. **The Cabinet Member for Education is RECOMMENDED to delegate to the Director for Children, Education and Families, in consultation with the Chief Finance Officer, the power to make resolutions on behalf of the Council pursuant to sections 275 and 281 of the Charities Act 2011 (or any successor provision with the same or substantially similar effect) where the Council is a charitable trustee, including with a view to closing the charitable trust where this is considered appropriate.**

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Background papers: Nil

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