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| Names of Charities |
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| OG330 |
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**OG 330 Names of Charities**

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# Policy Statement/Overview

Names are very important to charities as they are the key means by which the public identify them and may have particular personal meaning to the trustees who established the charity.

**Policy for considering charity names**

This guidance:

* sets out how we consider charities' main and working names before we enter them in the Register of Charities
* sets out how and when we intervene where there is a complaint or dispute involving a name of a charity on the Register of Charities
* explains the risk-based approach to applying the law, primarily s.42(2) of the Charities Act 2011, but also the relevant provision of the Companies Act 2006 and some case law.

We use this approach to avoid serious risk of charity names confusion, complaints or disputes (either between charities or involving the public or other organisations).

We enter charities' main names and working names in the Register of Charities after checking that the provisions of s.42(2) of the Charities Act do not apply. Most charity names are outside all of those provisions and therefore present no, or minimal, risk of causing problems. We therefore enter such names in the Register straight away.

Names fitting one or more of the s.42(2) provisions carry a risk that they will be one (or more) of the following:

* the same as or very similar to another charity's name (and may therefore confuse people or cause disputes between charities)
* misleading
* offensive.

When a charity's main or working name fits a s.42(2) provision but doesn't present serious risk we enter it in the Register of Charities, but we advise the trustees of the potential risks of problems which might arise if it carries on using it.

High risk of name causing problems

When a charity uses a name which is similar to another charity’s name or is offensive, it can lead to the public being misled, donations mistakenly being made to the wrong institution, and reputational damage to individual charities and to charities generally.  We therefore have powers we can use in those rare cases where a charity adopts an inappropriate name.  We can require a charity to:

* change its formal name, and
* stop using a working name (the charity could still use one or more different working names instead).

If a charity refuses after we have advised that it should, we can direct them using the discretionary power in s.42(1)(a) (change main name) and s42(1)(b) (no longer use working name) of the Charities Act; in practice this is very rarely necessary.  We must specify a period in the direction within which compliance is to be achieved.

Once a section 42 direction has been issued, we can delay the registration of a charity or the registration of a charity’s proposed change of name.  This is intended to give us sufficient time to take action against the charity without having to register an inappropriate name during the process.

# Summary of the guidance

This guidance helps caseworkers to:

* determine whether a main or working name falls within one or more of the provisions of s.42(2) of the Charities Act
* assess the degree of risk arising as a consequence of a name falling within one or more of the s.42(2) provisions
* decide when they should alert trustees to a names issue but enter it in the Register of Charities, or advise that they must change it
* maintain the integrity of the Register of Charities by ensuring that the names they enter in the Register of Charities do not present a high risk of confusing or offending the public

* understand when it is appropriate for us to intervene in matters involving charity names, e.g. complaints and disputes caused by a charity's name

* identify when it might be appropriate for us to direct trustees to change a charity's main or working name and how we do this.

For the purposes of simplicity in this operational guidance we use the following terms to mean the provisions of s.42(2) of the Charities Act 2011:

|  |  |  |
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| Ground (a) | The main or working name is the same as or too like the main or working name of another charity | 42(a) |
| Ground (b) | The main or working name is misleading: purposes or activities | 42(b)(i) & (ii) |
| Ground (c) | Misleading main or working name: status | 42(c) |
| Ground (d) | Misleading main or working name: impression of a connection | 42(d) |
| Ground (e) | Offensive main or working name | 43(e) |

Full details of how we consider each of these provisions of s.42(2) of the Charities Act are in the Casework Guidance section of this OG.

# Casework Guidance

## B1 How can Casework Guidance help us to consider charity names?

This Casework Guidance section sets out what we do whenever we consider charities' main and working names before entering them in the Register of Charities. It therefore helps to:

* identify whether a main or working name fits a provision of s.42(2) of the Charities Act 2011 (and if it does, why that might be a cause for concern, e.g. because it clashes with another charity's name or because it may mislead the public)

and

* assess the level of risk associated with a name which fits a provision of s.42(2)

and

* decide what follow-up action we should take, based on the level of risk that we have identified (i.e. whether we should advise the trustees of the issues associated with the name, require them to change a main name or no longer use a working name or delay the registration of a charity).

For a summary of our process for checking charity names see Chart [C1](#_C1_Main_name).

This Casework Guidance section also sets out how and when we intervene where there is a complaint or dispute involving a name and the action we must take when we direct trustees to change a main name or stop using a working name.

**If you just need a quick answer to a common question then you should find what you need in section B2 Top things to know about charity names and in the Q & A at F below**.

## B2 Top things to know about charity names

The key points about charity names are:

|  |  |  |
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| 1. | Main name | Most charities have a main (formal) name, which will usually be set out in their governing document. |
| 2. | Working name | Some charities also have one or more working names.  A working name is a name which is used to label the charity itself and not the name of specific projects, events and campaigns carried out by the charity. We can enter working names in the Register of Charities at our discretion. Working names are not register particulars and therefore charities do not have to tell us about any working names that they use. |
| 3. | A name should not be misleading | A name does not have to say anything about the type of charity, its legal structure or what it does. Anything it does say should not be misleading. |
| 4. | Right to a name | We cannot guarantee, reserve or suggest a main or a working name for trustees. Also, entry of a name in the Register of Charities does not create any right for the charity to use that name to the exclusion of any other charity. |
| 5. | Our legal powers | Our legal powers in respect of the main and working names of charities are set out in s.42 of the Charities Act 2011. These powers apply in respect of registered, unregistered and exempt charities.  Our systems check both main names and working names against the provisions of s.42(2) when:   * a charity applies for registration, before we enter it in the Register; and * a registered charity changes its name or adds a working name before we register the name in the Register.   Our systems make these checks to assess the risk of them confusing the public and to help prevent complaints or disputes.  We can issue directions under s.42 to excepted and (after consultation with their Principal Regulator, if any) exempt charities. |
| 6. | Cases involving names | In practice, charities' main and working names rarely cause problems because in most cases they are sufficiently  different from other charities' names (so there is no risk of them confusing or misleading the public) and are inoffensive.  Occasionally though, there are circumstances in which we need to object to a main or working name. |
| 7. | The five situations in which we can object to a name | There are five situations set out in s.42(2) in which we can object to the main or working name of a registered, unregistered or (after consulting the principal regulator, if any) exempt charity. These are where the name or working name:     * is the same as, or in our opinion, too like the name or working name of another charity; * is likely to mislead the public as to (i) the purposes of the charity, or (ii) its activities; * includes any word or expression specified in regulations made by the Secretary of State and is likely to mislead the public in any respect as to the status of the charity; * is likely to give the impression that the charity is connected in some way with the Government or any local authority, or with any other body of persons or any individual, when it is not so connected; or * is offensive.  1. In most cases we will usually address this by advising the trustees and they will change the main name or no longer use the working name and no further action will be necessary. |
| 8. | The power to direct a charity to change a name or no longer use a working name | In high-risk cases, if a charity refuses to change the main name or to no longer use the working name, we usually formally direct them to do so. We must specify a period in the direction within which trustees must comply with the direction.  Charities have a right of appeal to the Tribunal against our direction to change a main name or no longer use a working name.  Our objection to a name has no bearing on charitable status, and we cannot refuse to register a charity based only on an objection to its name. Where we have issued a direction under s.42 before registration of the charity, we can consider whether to delay registration (see point 9 below).  Where we are dealing with a registered, unregistered or exempt charity which has amended its main name or working name to one which we object to, and has not responded to our engagement, we would also usually use a direction under s.42 in response to a refusal to change the main name or no longer use the working name. In the case of a registered charity in particular the Commission can delay recording the change of name (s45A). |
| 9. | When we can delay registration | If we have issued a direction to a charity under s.42 to change its name, we have discretion while the process runs its course to delay (but not refuse):   * registering a charity; or * allowing a change to the name of a registered charity.   Both are subject to a maximum postponement period.  The delay lasts:   * during the period for compliance specified in our s.42 direction; and * for 60 days after that date for compliance.   Therefore, following expiry of the deadline set out in our s.42 direction, we have 60 days to take enforcement action to compel the charity to change its name.  If enforcement action is not taken (or does not result in the charity’s name being changed) within that 60-day period, we must:     * registration application - register the charity; or * name change of registered charity - register the new main name.   Note: The power to delay registration does not apply to directions to stop using a working name as we have discretion about whether we enter a working name onto the Register. |
| 10. | When the 60-day period is suspended | The 60-day period stops running during any period that certain legal proceedings are ongoing, such as if we take proceedings for contempt of court in respect of the s.42 direction or the charity appeals against the direction or challenges any other regulatory action we take in relation to the direction. |
| 11. | How a charity changes its name | Trustees can usually change their charity's name themselves, using a power of amendment in their governing document.  A s.42 direction confers on charity trustees the power to make the change required by the direction regardless of any restrictions on making such changes contained in the charity’s governing documents (for example, naming rights of members or third parties).  When a s.42 direction has been issued to a charitable company, the name of the company can be changed by a resolution of the directors (rather than requiring a resolution of the members, as is usually the case for a change of name by a company). |
| 12. | Complaints & Disputes | We expect trustees and other parties to make reasonable efforts to resolve any matters of dispute regarding charity names between themselves before we will intervene. We will only intervene if a main name or working name is within one or more of the s.42(2) provisions and we have evidence that the name is causing a high risk of confusion, detriment or harm (e.g. financial loss to another charity which has a very similar name and the confusion impacts on donations). |

## B3 What types of name do we enter in the Register of Charities?

Many charities have a main name, and some have a working name as well. We must enter a main name in the Register of Charities and will also register a working name provided that it is not likely to cause complaints, disputes, offence or public confusion.

A **main name** is the full official name of the charity which appears in its governing document, or which the charity has otherwise formally adopted. (A charity can only have one main name.) We have a duty to enter a charity's main name in the Register of Charities so long as the charity has validly adopted it. We have a legal power to direct trustees to change a main name in certain circumstances. (If a charity lacks a formally adopted main name and is known by a name recognised through common or historical use only, then it has a working name rather than a main name. However, it would be shown as a main name on the Register.)

A **working name** is the name a charity may use for its convenience when it carries out its business, e.g. in fundraising, publicity, advertising and trading. (A charity can have any number of working names.) Our policy is to record working names in the Register of Charities unless they are likely to cause complaints, disputes, offence or public confusion. We have a legal power to direct trustees to no longer use a working name in certain circumstances. We can also refuse to enter them in, and can remove them from, the Register of Charities. For more information about checking working names go to section [B18](#_B18_Working_names) Working Names.

## B4 Main name changes: how can a charity change its main name & what evidence do we need?

### B4.1 Do we need to authorise charities to change their names?

Charities can usually change their names themselves, so there’s no need for us to authorise them to do so. There are different ways a charity can change its name, as set out below.

**An unincorporated charity** can change its main name using either a power of amendment in its governing document or the statutory power to make amendments in s.280 of the Charities Act. See OG519: Changes to Governing Documents of Unincorporated Charities and Transfer of Property.

**A charitable company** can change its name by passing a resolution under s.78 of the Companies Act 2006, or by other means which may be set out in its articles of association, i.e. its governing document. (Some companies’ governing documents dated before 1982 state that we must approve any amendment to the document, i.e. including the name clause. If such a charitable company asks us to approve its change of name, we should authorise it to pass a resolution to remove this requirement for our consent from its governing document. See OG518 Alterations to Governing Documents: Charitable Companies

**A CIO** can change its name by using:

* a power of amendment in its constitution (following any procedures and conditions attached to its use); or
* the statutory power in s.224 of the Charities Act, which requires a resolution to be passed by the CIO members – see OG715-4: Amendments to a CIO constitution

For charities governed by **Royal Charter** - see INTOG37 Charities incorporated by Royal Charter.

For **charities governed by statute**, speak to Legal.

### B4.2 When a s.42 direction has been given

When we give a section 42 direction, this confers on trustees the power to make the change required by the direction regardless of any restrictions on making such changes contained in the charity’s governing documents (for example, naming rights of members or third parties).

When a section 42 direction has been issued to a charitable company, the name of the company can be changed by a resolution of the directors (rather than requiring a resolution of the members, as is usually the case for a change of name by a company).

### B4.3 More about charitable company name changes

Before passing a resolution to adopt a new main name, it is good practice for a charitable company’s directors to check both the Register of Companies and the Register of Charities to minimise the risk of the name being confused, not only with other charities but also with non-charitable companies. The criteria we use to check names differs from those of Companies House and we can require a company to change its main name even if Companies House has already stated it on the company’s Certificate of Incorporation (e.g. we must form our own opinion about whether the name is likely to mislead the public or whether it is offensive). For example, Companies House may accept the name ‘Poverty Matters To Us All’ but we may still object to that name if we form the view that it is likely to mislead the public because it does not reflect the charity’s purposes which do not include the relief of poverty.

**Charitable company name to include the word ‘charity’ or ‘charitable’** **at incorporation**

If a proposed charitable company wishes to incorporate with a name including the word ‘charity’ or ‘charitable’ then Companies House may need us to confirm that we do not object. We should do this in accordance with our policy covering charitable companies’ use of these words as detailed in section [E6.2](#_E6.2_Sensitive_words:)of this guidance and using standard text at section [G10](#_G10_Proposed_charitable).

If directors ask us for advice about business names, we should refer them to Companies House.

### B4.4 What evidence of a main name change do we need?

Trustees should use our digital services to tell us about names changes, since it is the quickest and easiest method for them and it helps us to process the amendment quickly. We do not expect trustees to send us minutes, resolutions or amended governing documents as evidence of a name change. The charity’s current governing document is automatically filed in the ‘Governing Documents and Accounts’ folder in CeRIS.

If the trustees cannot use our digital services, they should contact us for advice about what to send us as evidence to confirm the validity of the name change.

## B5 Name checks: key principles

### B5.1 When do we check names?

We check names when:

* A name is changed - an existing registered charity tells us about its new main or working name
* At registration stage – we look at the main and working names of an organisation applying for registration as a charity
* As a result of a complaint or other casework - we can become aware of issues relating to a charity’s main or working name in casework, such as due to a complaint, our own intelligence work or a referral from the principal regulator of an exempt charity. The charity may be registered, unregistered or exempt.

### B5.2 What do we check?

We check whether the main and any working name is likely to cause confusion, dispute, harm or offence. This is in line with the provisions of s.42(2) of the Charities Act.

### B5.3 How do we check the name?

We check new main and working names using the Register of Charities, Register Plus, our records of unregistered charities and charities that we have removed from the Register (usually in the past five years).

The process we should use when checking any new main name is summarised in Chart [C1](#_C1_Main_name).

The next sections of this Casework Guidance explain:

* the scope of each of the above provisions of s.42(2) against which we should check main and working names

and

* how we should assess the risks associated with a charity's use of a main or working name which falls within any of the s.42(2) provisions.

### B5.4 When can we accept a main and working name and enter it in the Register of Charities?

If we have checked the main and any working name as set out above and decide that there are no grounds to object or direct the trustees to change it under s.42, we must enter the main name and should enter the working name in the Register of Charities and update our records.

### B5.5 What if we have possible reasons to object to a main or working name?

We may object to a main or working name if it fits one or more of the s.42(2) provisions, but this will depend on our assessment of the risks of harm and/or public confusion. Our risk assessment should help us to decide on the action to take, as in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Risk** | **Issue with main name:**  **Action** | **Issue with working name:**  **Action** | **Model paragraph number**  **(See below)** |
| **Low Risk** | | | |
| There is little or no risk of the public being misled or confused or offended. | We enter the main name in the Register and do not raise the issue with the charity unless it would assist the trustees to be aware of it. | We enter the working name in the Register and do not raise the issue with the charity unless it would assist the trustees to be aware of it. | N/A |
| **Examples** (the charities referred to in the examples are fictitious.)   * An unincorporated charity is incorporating as a company or CIO - an ‘incorporation case’. * A local charity has the same name as a charity in another geographical area, such as St Peter’s church hall in Southampton and St Peter’s church hall in Durham. * A branch charity has the same name as its national parent, but also includes the name of the town in which it works. * Two charities would have identical names but for the inclusion of their activity, such as ‘The Angela Henderson Charity for the Homeless’ and ‘The Angela Henderson Charity for Children’. | | | |
| **Medium Risk** | | | |
| There is some possible risk of the public being misled or confused or offended. | We enter the main name in the Register and either:   * advise the trustees of the issues, or * suggest that they consider changing the name, and/or * advise them of the risks of not changing it, e.g. the risks of public confusion and the risk of us being asked to direct them to change it in the future under s.42(1)(a). | We enter the working name in the Register and either:   * advise the trustees of the issues, or * suggest that they consider stopping the use of the working the name, and/or * advise them of the risks of continuing to use it, e.g. the risks of public confusion and the risk of us being asked to direct them to no longer use the name in the future under s.42(1)(b). | Names same or too like - [G1](#_G1_Same_or)  Misleading name - purposes or activities – [G3](#_G3_Misleading_name:)  Misleading name – status – [G5](#_G5_Misleading_name:)  Misleading name – impression of a connection – [G7](#_G7_Misleading_name:) |
| **Examples** (the charities referred to in the examples are fictitious.)   * The names of two charities are similar, or suggest a connection, but there is little risk of public confusion, as opposed to confusion amongst a relatively small number of individuals, and there is little likelihood of problems arising. For instance ‘Trenington Playing Field’ and ‘Trenington Sports Field’ where local people would be aware of the difference between the two charities and their respective recreation grounds. * The name of a charity implies that it operates nationwide when it currently only works locally until such time as funding is available for its expansion. * The name gives the impression that the charity is connected to another body, but there is unlikely to be confusion between the two. | | | |
| **High Risk** | | | |
| There is a high risk of the public being misled or confused or offended. | We advise that the trustees change the name and say that if they refuse to do so then we will direct them to change it using our discretionary legal power in s.42(1)(a) of the Charities Act (as detailed in section B13).  We follow up to ensure they have changed the name or can provide good reasons why they should not change it.  If the situation is not resolved, we issue a s42 direction to change the name (see section B13). | We advise that the trustees no longer use the name as a working name and say that if they refuse to do so then we will direct them to stop using it using our discretionary legal power in s.42(1)(b) of the Charities Act (as detailed in section B13).  We do not enter the working name on the register.  We follow up to ensure they have stopped using the working name or can provide good reasons why they should not have to stop using it.  If the situation is not resolved, we issue a s42 direction to no longer use the working name (see section B.13). | Names same or too like – [G2](#_G2_Same_or)  Misleading name - purposes or activities – [G4](#_G4_Misleading_name:)  Misleading name – status – [G6](#_G6_Misleading_name:)  Misleading name – impression of a connection – [G8](#_G8_Misleading_name:)  Offensive name – [G9](#_G9_Offensive_name) |
| **Examples** (the charities referred to in the examples are fictitious.)   * We consider the name to be offensive (see B12.1). * We have actual evidence of significant public confusion about a name and/or damage or loss to another body/charity.      * There is a dispute over the use of a name and the charities or parties concerned cannot, or refuse to, resolve matters themselves. * The name of a new charity operating in a local area is the same as that of a highly prominent national charity with which it has no connection, with the potential to confuse the public. * The name suggests that the charity is connected to another charity or body when it is not and appears designed to confuse donors. * The name suggests to the public that the charity does something when either it does not, or it is only a minor purpose. For example, a charity called ‘Educating Children in Ethiopia’ spends the majority of its income (as permitted by its objects) in Kenya, whereas its name suggests to the public that the focus of its work would be in Ethiopia. * The name includes the name of a celebrity but has no connection with them. | | | |

### B5.7 What happens once we have reached a decision that the trustees must change a main or no longer use a working name?

### 

If we decide that a charity must change its main name or no longer use a working name for any of the five grounds in s.42(2), we will notify the charity that they should change the main name or stop using the working name:

* whether or not it is, or will be, entered in the Register of Charities
* if it is an exempt charity, but only if we have consulted with its principal regulator (if it has one)

and

* at any time, we choose.

If we decide that the trustees must change a main or no longer use a working name, but they refuse to do so voluntarily once we have pointed out the issues, we should in most cases then direct them to change it (main name) or no longer use it (working name). (We should, however, first consider any arguments that the trustees raise as to why we should not give a direction.)

When we consider whether to give a direction, we must be satisfied that we have given the trustees a reasonable opportunity to resolve the matter voluntarily and must be satisfied that giving a direction would be a proportionate use of our s.42(1) legal power (refer to section [E5](#_E5_Human_rights) Human Rights consideration).

For more detailed guidance about directing trustees to change a main or no longer use a working name and the issues we must consider, please refer to section B13 Direction requiring trustees to change a main or working name.

We should advise trustees of the issues using the relevant text in section [G Model Letters and Orders.](#_G_Model_Letters)

### B5.8 New name clashes with another charity’s name: do we consult the other charity?

In the context of checking new main or working names using s.42(2), a clash can occur where the new main or working name is:

* the same as any other charity's main or working name or
* in our opinion, too like any other charity's main or working name or
* likely to mislead the public because it gives the impression of a connection with another where there is no connection.

If the clash of names presents a high risk of causing confusion, complaint or dispute, then we will require the trustees to change it (main name) or stop using it (working name). In such cases we do not generally ask the other charity for its views on the matter unless there are exceptional circumstances. For instance, although the name is unlikely to cause difficulties, we consider it expedient to consider the other charity's views.

### B5.9 How do we judge risk of names causing confusion?

* When we consider the risk of a main or working name causing confusion we should think about: Whether there is a risk of public confusion, as opposed to only confusion amongst a relatively small number of individuals. Confusion amongst a small number of individuals may also indicate the potential for wider public confusion and so each case will depend on its facts.

* Context: For example, if we are looking at a new name which the charity has just adopted, we should consider the likelihood of problems arising. However, if a dispute has already arisen and we are asked to consider the issues then we expect the parties involved to send us evidence of the problems caused by the name, the efforts they have made to resolve matters themselves and explanations of why they cannot resolve matters themselves. Only then should we consider whether we should be involved in the matter. (For more about this go to section [B19](#_B19_Complaints_&) Complaints & disputes about names.)

### B5.10 Human rights considerations

We should only advise that trustees must change a main or no longer use a working name (indicating that we would direct them to do so were they to refuse) if we are satisfied that our action would be a proportionate way of pursuing a legitimate policy objective (such as promoting public trust and confidence in charities) by reducing the risk of confusion and/or disputes caused by charities' names. This is because directing a charity to change its main or no longer use a working name interferes with its rights to use it (a name is treated as part of a charity's property). We must always consider human rights issues when considering whether to give a change of name direction, in accordance with our policy at section [E5](#_E5_Human_rights).   

In light of this, our practice should therefore be to only direct charities to change their main name or no longer use a working name in very exceptional cases where there is a high risk, or actual evidence, of public confusion, of harm and/or public confusion, and where, in the context of a dispute, the charities and/or other organisations or parties concerned cannot resolve matters themselves and we judge that we need to intervene.

### B5.11 Registration cases: what do we do if we object to the main or working name of a new charity?

Objecting to the main name of an organisation applying for registration is not, in itself, reason to refuse registration, but the Commission does have power to delay registration in some circumstances.

Objecting to the working name of an organisation applying for registration is not, in itself, a reason to either refuse or delay registration.

Experience has shown that in the vast majority of cases where we raise a concern about a main or working name the organisation will agree straight away to our request and either:

* change the main name – in which case we can then register the organisation with the new main name; or
* stop using the working name – in which case we can then register the organisation without the working name.

We should therefore explain the issues with the main or working name to the trustees and ask them to change the main name or stop using the working name as soon as they can.

If they refuse, we should then direct them (depending on the issue) to change the main name or stop using the working name. (See [Risk Table](#_B5.5_What_if) above for further information.)

### B5.12 Why do we check new main names against working names?

We should check new main names against existing registered charities' working names. This is because if a charity is primarily or widely known by its working name (e.g. the RSPCA is a working name of The Royal Society for the Prevention of Cruelty to Animals), it is possible that a new main name of another charity may create the impression of a connection between the two charities. If that impression of a connection is unwarranted, the main name may fall within the provisions of s.42(2)(d). For guidance about working names go to section [B18](#_B18_Working_names).

## B6 Same main name or working name: s.42(2)(a)(i) definition and risk assessment

### B6.1 Same main or working name: definition

**IMPORTANT NOTE:** Main names or working names are the same when they are spelt in exactly the same way and use exactly the same characters (whether letters, numbers, symbols or the same mix of these).

### B6.2 What do we check?

We should use Register Plus to check whether the name is the same as the main name or working name of another registered or unregistered charity.

Our check covers the main names of charities removed from the Register (generally speaking within the past five years) because:

* of the potential confusion that may be caused (e.g. if bequests are still made to the removed charity's name)

and

* there may be legal rights or other restrictions on the use of a former charity's name (e.g. intellectual property rights or trademarking) which we may not know about because they are outside of our area of regulatory activity.

After five years the risks will generally be much lower because the public's association of the name with the removed charity will have diminished.

### B6.3 Risk assessing same names

Once we have identified that a main or working name is the same as any other charity's main or working name, we assess the benefits of allowing the charity to use the name against the possible risks before deciding what action may be appropriate.

**IMPORTANT NOTE:** Key risks presented by names being the same are:

* The public mistaking one charity for another.

The risk of the public mixing up two identically named small charities which have different objects and which operate on a very localised basis in separate geographic areas (and any consequent harm, loss or damage) will be lower than where the same name is being used by both a national charity and a regional charity, or by two national charities, or by two smaller charities that operate in the same geographical area or which have very similar objects.

For instance, if a national and regional charity were to have the same name there is a risk that people living in the geographic area covered by the regional charity may mistakenly donate or leave money in a will to the national charity, whereas they intended to support the regional one. Clearly if a charity's new main or working name is the same as the name of a highly prominent charity then there will be a high risk of public confusion. (For details about how we can find out about prominence, please see section [B6.5](#_B6.5_Using_charities')below.)

* The other charity's current and potential future beneficiaries being disadvantaged by having to use a different name. (For example, beneficiaries may struggle to find the charity which can best address their needs.)
* A dispute arising over the use of the name (e.g. the other charity with the same main or working name already in the Register of Charities disputing the newer charity's use of the same name).

**Balancing risks against benefits**

We should balance these risks against any factors in favour of allowing the two same names to remain and must take human rights and equality issues into account. Factors in favour would be the importance of the name to the charity's ability to operate effectively, attract funds or to identify itself to its intended beneficiaries. (For instance, a different name may reduce opportunities for the potential beneficiaries to find out about the charity which can best meet their needs.)

If we decide that the benefits of the name outweigh the risks then it would be reasonable for us to advise the trustees of the potential risks involved, rather than advising that they must change it. (We can do this using the model text in section [G1](#_G1_Same_or).) Whenever we advise that the trustees must change a main name or no longer use a working name, we interfere with the charity's rights to the name which are protected under human rights legislation. (For more about human rights issues, see sections [B21](#_B21_Human_rights) and [E5](#_F5_Working_names:).)

If the trustees must change a main name or no longer use a working name, we should use model text of section [G2](#_G2_Same_or).

### ****B6.4 Successor charities and 'incorporation cases'****

The risk of a same name causing confusion is low when a new charity is established to either substantially or totally replace another and it will take over its work but has the same name as its predecessor. In these circumstances, we should therefore not raise any issue about the name with the trustees.

However, there may be some incorporation cases where the risk of use of the same name will be higher. This is especially likely to be so where the new company's objects are significantly wider than those of the charity it was established to replace, since the public might be unclear about the purposes for which the new charity applies its income. The risk will also be higher where there is a dispute amongst the charity's trustees and/or members about incorporating the charity, such as where some of them wish the charity to incorporate but others do not.

### B6.5 Using charities' relative 'prominence' to help risk assess same names

Information about the relative prominence of two or more charities with the same name can help us to assess the level of risk of the public becoming confused, or of disputes arising between the charities concerned, or of complaint.

A'prominent' charity is one with a high public profile. It is very well known to the general public beyond the scope of what it specialises in doing. If another charity's main or working name is the same as that of a prominent charity, then there is likely to be a higher risk of widespread public confusion.

To help us assess a charity's prominence we can use a variety of sources of information, e.g. annual reports, annual returns and accounts. This information will tell us about a charity's income, expenditure, assets, any branch network it might have, its fundraising activities, campaigns, any conferences it might organise and grants it makes (e.g. to hospitals and universities).

The effect of prominence may be increased if the charity is also 'pre-eminent', i.e. one which is regarded as being a leader in its field of work. We can assesspre-eminence by considering the charity's 'representativeness', 'professional standing' and its degree of influence within its chosen field of business.   

## B7 'Too like' main or working names: s.42(2)(a)(ii) - definition and risk assessment

### B7.1 'Too like': definition

In our opinion a **main or working name is 'too like' another charity's main or working** name if there is only a small difference between the two names.

We must exercise our discretion when we assess whether names are 'too like' because s.42(2)(a) states that it is 'in the opinion of the Commission' whether they are. However, we also have regard to evidence of public confusion which has arisen as a consequence of names' similarity when we decide whether names are too like. For guidance about how we may form this opinion, please refer to section [B7.3](#_B7.3_Key_ways) Key ways in which main names are 'too like'.

### B7.2 What do we check?

We should use Register Plus to check other charities' **main and working names. Our search should cover both registered and unregistered charities' main and working** names because s.42(2)(a) of the Charities Act states that the 'too like' consideration applies to ‘another charity’. We should also check the names of charities we have removed from the Register in the last five years.

### B7.3 Key ways in which names are 'too like'

**IMPORTANT NOTE:** Here are some key ways in which names are, in our opinion, 'too like':

* at a glance they look so similar that it would be easy for one name to be mistaken for another
* they sound the same and at a glance look very similar, so that it would be easy for one name to be mistaken for another

Examples (the charities referred to in the examples are fictitious):

* Welcome News Foundation (spelt with one 'l') is too like Wellcome News Foundation (spelt with two 'l's).
* Welkome News Foundation (spelt with a 'k') is too like Welcome News Foundation (spelt with a 'c').
* The only difference between two names is that they use certain words or phrases which are commonly used in charity names, for example:

* + Association
  + Charity
  + Foundation
  + limited (or Ltd)
  + society
  + The
  + trust

Example (the charities referred to in the example are fictitious): The Lilac Bush Trust is too like The Lilac Bush Association.

The following do not make a big enough difference when used anywhere in names which are otherwise identical:

* @
* The
* www
* .com / dot com
* .co.uk
* the letter 's'
* plural and possessive forms

Other words or terms which do not make a big enough difference - Company legislation

There are other terms which, on their own, do not make a difference between otherwise identical company names; these are listed in [The Company and Business Names (Miscellaneous Provisions) Regulations 2009, Schedules 2 and 3](http://www.legislation.gov.uk/uksi/2009/1085/schedule/2/made). We do not usually need to consider these for company names because Companies House will already have done so before issuing a certificate of incorporation. However, we may, as a matter of policy, take them into account for both unincorporated and incorporated charities when considering whether names are 'too like'.

We should take advice from our lawyers if we intend to rely on these Regulations in assessing whether a main or working name is too similar to that of another charity.

### B7.4 Terms that help avoid names being 'too like'

**IMPORTANT NOTE:** Otherwise identical names are likely to be sufficiently different (i.e. cannot be described as 'too like') if they contain:

* Local geographical descriptions of where the charity works (e.g. a town name)

Example (the charities referred to in the example are fictitious):

The London Lilac Bush Trust is sufficiently different from The Liverpool Lilac Bush Association.

* Specific details about what the charity does, or how it operates, e.g. the following terms sufficiently distinguish otherwise identical names:

* + 'relief in need'
  + 'poor's charity'
  + 'almshouse charity'
  + 'housing association'
  + 'blind charity'
  + 'cancer relief'

Example:

The only difference between two charities' names is that one includes the words 'Research Trust' and the other includes the words 'Support Group'. There is minimal risk of the public being misled by these names because they refer to two separate charities with different ways of working (even if they both have the same broader aim, e.g. to address issues connected with the same disease).

**Main or working** **name not 'too like' but might still be misleading**

If we form the view that a name does not fit the 'too like' description, we should still consider whether its similarity to another name is likely to give the impression that the charity is in some way connected with that other charity (or to any other organisation, group or person) when it is not, i.e. the provision of s.42(2)(d) of the Charities Act. For details about this go to [B11](#_B11_Misleading_main) Misleading Main or Working Name: impression of a connection.

### B7.5 Branch charities and 'too like' names

Charities with large branch networks often use standard ways of naming their individual branches.

A branch charity's name often includes the name of the place where it works (e.g. a town name or geographic region) at the start or end of its parent charity's main or working name. We accept that this is a suitable way of distinguishing one branch charity from another (i.e. the names will fall outside of the 'too like' description). However, we should also check that the charity claiming to be a branch really is a branch because the public might otherwise be misled into thinking that the charities are in some way connected when they are not (in which case we should also consider the name under s.42(2)(d) of the Charities Act, which is covered in section B11 Misleading main name: impression of a connection).

We can usually tell if a charity is a branch because it will have adopted an agreed model governing document. For an example of how this can work in practice and how we can consider branch names go to Case Studies [D1](#_D1_Branch_charities') Branch charities' names: are they 'too like'?

### B7.6 Risk assessing names which are 'too like'

We should use the same risk assessment process as we do for 'same' names, as set out in section [B6.3](#_B6.3_Risk_assessing) above.

In addition, we must assess the risk of names which are 'too like' causing a member of the public to:

* believe that two or more very similar names are used by just one charity, when they are in fact the names of more than one charity

or

* think that the charities with names which are 'too like' are connected with each other when they are not.

Once we have assessed the risks, we must decide whether to:

* enter the 'too like' name on the Register of Charities but advise the trustees to the potential issues using the modeltext of section [G1](#_G1_Same_or)

or

* Issue with main name - advise that the trustees must change the name because of the high level of risk involved. Tell them that if they do not change it then we will direct them to change it using our legal power in s.42(1)(a) of the Charities Act.
* Issue with working name - advise that the trustees must stop using the working name because of the high level of risk involved. Tell them that if they do not change it then we will direct them to no longer use the name as a working name using our legal power in s.42(1)(b) of the Charities Act.

If we advise that the trustees must change the main name or stop using a working name, we should tell them using the [modeltext of section G2](#_G2_Same_or).

## B8 Misleading main or working names: s.42(2)(b) of the Act - how can a name mislead?

Main and working names can mislead in a number of ways, as set out in the provisions of s.42(2)(b)(i) and (ii), 42(2)(c) and 42(2)(d) of the Charities Act, which are detailed in sections [B9](#_B9_Misleading_main), [B10](#_B10_Misleading_main) and [B11](#_B11_Misleading_main) below, i.e. misleading with regard to:

* the charity's purposes or activities - section [B9](#_B9_Misleading_main)
* the charity's status - section [B10](#_B10_Misleading_main)
* giving an impression of a connection - section [B11](#_B11_Misleading_main).

When we assess whether a name is likely to mislead, we should consider what a member of the public (irrespective of how familiar they may be with charities or charity law) would think about it were they to come across it in their everyday life (e.g. through the charity's promotional campaign or in the media).

## B9 Misleading main or working name names: s.42(2)(b)(i) and (ii) - purposes or activities

### B9.1 Misleading main or working name - purposes or activities: definition

We must exercise our discretion when assessing whether a name is likely to mislead the public in this way because s.42(2)(b)(i) and (ii) of the Charities Act state that this is a matter for our opinion. However, we also have regard to evidence that the public has been misled as a consequence of a name's reference to purposes or activities.

A name is likely to mislead in respect of a charity's purposes or its activities if, in our opinion, it would be likely to cause the public to think that the charity:

* has purposes other than its actual purposes

or

* pursues some of its purposes in preference to others, when it does not

or

* has main purposes which are actually only its minor purposes

or

* carries out, or has a particular focus on, certain activities when it does not.

A charity's name does not have to say anything about the purposes or the activities it carries out under its governing document in pursuit of those purposes. Therefore, just because a name says nothing about purposes or activities does not mean that we will form an opinion that it is misleading in this regard.

### B9.2 What do we check?

We can check what the charity's governing document says about its purposes or activities. (Information about purposes and/or activities will usually be in the objects clause. There may also be information about activities in a clause setting out the 'powers' that the charity may exercise to carry out its objects.) For a new charity applying for registration we can also look at the information in the Registration application form if it is unclear what its purposes are. (This can help us because sometimes when we assess an application for registration as a charity, we find that the wording of the objects clause does not accurately reflect the organisation's purposes.)

We can also see what the charity's website says about purposes or activities and also look at its promotional and publicity material, e.g. its fundraising or campaigning literature.   For an existing charity, we can look at the trustees’ annual report (in the charity’s accounts), which should explain what the charity does.

### B9.3 Risk assessing names which might mislead as to purposes or activities

If we form an opinion that a name is likely to mislead the public as to its purposes or activities then we should consider the level of risk, and the likelihood of detriment or harm. For instance, if it is clear to us that the name gives a false impression about what the charity is established for, what it does, or who it is established to benefit then the risk will be high. This may result in people donating to a charity which does different things from what they might reasonably expect it to, or in beneficiaries approaching a charity which does not address their needs in the way they might reasonably expect it to.

Once we've assessed the risks, we should decide whether to:

* advise the trustees of the potential issues arising from the name (and what it implies with regard to the charity's purposes or activities) using the model text of section [G3.](#_G3_Misleading_name:)

or

* Issue with main name: advise that the trustees must change the name and say that if they do not change it then we will direct them to change it using our legal power in s.42(1)(a) of the Charities Act.
* Issue with working name: advise that the trustees must stop using the working name and say that if they do not do this then we will direct them to no longer use the working name using our legal power in s.42(1)(b) of the Charities Act.

If we advise that the trustees must change the main name or stop using the working name, we should tell the trustees using the model text of section [G4](#_G4_Misleading_name:).

### B9.4 Is reference to people's protected characteristics in a name likely to mislead the public?

Under the Equality Act 2010, a charity can be legitimately established for the benefit of people who have 'protected characteristics', where this either tackles specific disadvantage or is a proportionate means of achieving a legitimate aim. (For more about this, refer to our [Equality Act guidance for charities, section A2](https://www.gov.uk/government/publications/equality-act-guidance-for-charities) of which lists the 'protected characteristics'.)

This means that a charity which is legitimately established for the benefit of people with protected characteristics may properly refer to the beneficiary class in its name since that is unlikely to mislead the public.

Reference to protected characteristics in a name is likely to mislead the public if the charity is not established for the specific benefit of a narrower section of the public than it actually is or suggests that its main intended beneficiaries are people with those characteristics when that is not the case.

We can find out about who the charity is established to benefit by looking at the objects clause in its governing document (and if necessary other background information about the charity) to see if there is a mismatch between the intended beneficiaries and the beneficiaries with the characteristics referred to in the name.

**IMPORTANT NOTE**: It is unlawful for a charity to limit its beneficiaries to those of a particular skin colour.  Such a name may also be offensive – see section [B12](#_B12_Offensive_main) Offensive names.

However, there may be cases where the reference to skin colour in the name does not indicate a limitation on the beneficial class and is not offensive.  In such cases we can accept its use in the name.

For example: a charity exists to combat discrimination suffered by a particular section of the community, which is evidenced to be as a result of their skin colour.  That section of the community is clearly defined in the objects clause in terms other than skin colour (for example ethnicity).  The reference to skin colour in the name is acceptable because it does not limit the beneficial class and is not considered offensive.

## B10 Misleading main name or working name: s.42(2)(c) - status

### B10.1 Misleading name - status: definition

A name which is likely to mislead as to a charity's status means that it is likely to give a false impression of the charity's attributes, standing or position in society or in relation to other types of organisation, or the area of its authority. It does not necessarily mean charitable status.

We must exercise our discretion when assessing whether a name is likely to mislead the public in this way because s.42(2)(c) of the Charities Act states that it is a matter for our opinion. However, we also have regard to evidence that the public has been misled as to the charity's status.

### B10.2 What do we check?

We check whether the name contains certain words or expressions which, if used in a name, carry a risk of misleading the public as to a charity's status. These are specified in [The Charities (Misleading Names) Regulations 1992](http://www.legislation.gov.uk/uksi/1992/1901/contents/made) and they might mislead the public. For convenience these are listed below in this sub-section. They include (where appropriate) plural, possessive and abbreviated forms.

**IMPORTANT NOTE:** The words and terms specified in The Charities (Misleading Names) Regulations 1992 (Regulation 2) which might mislead as to status are:

* Assurance
* Authority
* Bank
* Benevolent
* British
* Building Society
* Church
* Co-operative
* England
* English
* Europe
* European
* Friendly Society
* Grant maintained
* Great Britain
* Great British
* Her Majesty
* Industrial & Provident Society
* International
* Ireland
* Irish
* King
* National
* Nationwide
* Northern Ireland
* Northern Irish
* Official
* Polytechnic
* Prince
* Princess
* Queen
* Registered
* Royal
* Royale
* Royalty
* School
* Scotland
* Trade Union
* United Kingdom
* University
* Wales
* Welsh
* Windsor

### B10.3 Risk assessing names which might mislead as to status

We should not assume that a name containing one of these words or expressions is automatically likely to mislead the public: we should consider such a name in the context of the charity concerned. We can assess the likelihood of the public being misled by looking at whether there is a rational link between the specified word or expression and the nature of what the charity does, where it operates, or its status. If there is a rational link between these elements, then there will be no risk that the public will be misled. However, the risk will be high if there is no such link, e.g. if the name includes the word 'Royal' but the charity is unconnected with the Royal family or the Crown.

**IMPORTANT NOTE**: Appropriate consent must be obtained and submitted by any organisation making an application which includes a Royal name in its title. The use of Royal names is dealt with by the Cabinet Office. Enquiries should be directed to [royalnames@cabinetoffice.gov.uk](mailto:royalnames@cabinetoffice.gov.uk) We expect charities to apply for such consent and tell us if they have obtained it.

If we have formed a view that the name might mislead the public, but we need further information we should use model text of section [G5](#_G5_Misleading_name:).

If we have formed a view that the trustees must change a main name or no longer use a working name because we consider that it will mislead as to the charity's status, we should tell them using the modeltext of section [G6](#_G6_Misleading_name:).

Examples of how a name is likely to mislead as to status:

* The name includes a term denoting national status (e.g. the word 'National') but the charity works in only one county. It might be reasonable for us to take the view that the name is likely to mislead the public into thinking that the charity operates nationwide. (However, staff in Registration Division should be careful if this appears to be an issue because an applicant charity might lack the initial resources to work nationally but it intends to do so. If we were to require the trustees to change the name it could impede the charity's ability to grow.)
* The name includes the word 'Welsh', causing the public to think that the charity operates in Wales, or is established for Welsh beneficiaries. However, if the charity has no particular focus on Wales, or on helping Welsh beneficiaries, then there will be a high risk that the name will mislead the public and it is likely that the trustees will have to change it.

## B11 Misleading main or working name: s.42(2)(d) - impression of a connection

### B11.1 Misleading by giving the impression of a connection: definition

A charity's main or working name may mislead by giving the impression that it is in some way connected with the government, a local authority, any other body of persons or an individual when it isn't.

We interpret 'any other body of persons' as including other institutions, both charities and non-charities.

We must exercise our discretion when assessing whether a name is likely to mislead by giving the impression of a connection because s.42(2)(d) of the Charities Act states that it is a matter for our opinion. However, we should also have regard to evidence that it has misled the public in this way.

### B11.2 What do we check?

**IMPORTANT NOTE:** We should use the following as a checklist to help us decide whether a name is likely to mislead by giving a false impression of a connection:

Does the name contain a word, words or unusually distinctive expressions readily or specifically associated with:

* another charity or group of charities?
* other charities' working names? (See note below this list)
* a well-known individual (e.g. an actor, a sportsperson, celebrity or an academic)
* a body of persons (e.g. people identified with a particular occupation or skills)?
* another institution, organisation or authority?
* the Government:
  + Her Majesty's Government, i.e. the British Government?
  + any other government, including the Scottish Parliament or Senedd Cymru (Welsh Parliament)?
  + a local authority?

It is important to check the name against other charities' working names since the public recognise some charities primarily by their working names, e.g. RSPCA is the highly prominent working name of the Royal Society for the Prevention of Cruelty to Animals. For specific guidance on working names go to section [B18](#_B18_Working_names).

### B11.3 Risk assessing names which give the impression of a connection

The risks here are that the charity name might mislead the public about the charity's connections, potentially causing loss to, or disputes between, one or more charities, or between a charity and another organisation. Potential beneficiaries and grant making bodies might also be misled about who or what the charity is connected with. There is also a risk to public trust and confidence in charities, since the public may be misled into thinking that someone or some organisation is connected with a charitable cause when they or it are not.

**IMPORTANT NOTE:** We should use the following key points to us assess the risks of a name misleading the public:

* Is the risk obvious because the name includes a word, term or name that the public will clearly associate with someone else or another organisation?
* Has any confusion already arisen? In what circumstances did it arise? What evidence do we have of confusion (e.g. from a complainant charity or other organisation)?

* Who was confused? Was it the general public or just a few individuals who were confused, e.g. those who have work contracts with the charity? (We are usually only concerned about the risk of wider public confusion when we look at whether the risks mean that we have a regulatory interest in the matter, e.g. whether we will require the trustees to change the name.)
* What steps have the trustees taken to address confusion which has already arisen, or to deal with complaints of confusion? (We expect them to have taken reasonable steps to resolve matters before asking us to consider intervening.)

* What damage or loss has been caused to the other body (e.g. to a charity which has complained that the name in question has caused the public to think that there is a connection) and is this situation likely to persist?
* What is the significance of the charity's name to its supporters or potential beneficiaries?
* Is it the case that the name gives the impression that one charity is connected with a prominent charity? If so, then the risk is likely to be higher because more people are likely to be given that impression. (For more about how we can use information about prominence to help us assess risk, refer to the end of section [B6.5.](#_B6.5_Using_charities'))

For an example of how we can assess information about a name being potentially misleading under s.42(2)(d) of the Charities Act, see Case Studies section [D2](#_D2_Misleading_names:) and section [D3](#_D3_Similar_names:).

If we have formed a view that the name might be misleading but wish to give the trustees the opportunity to tell us if their charity is actually connected in some way, we should use the model text of section [G7](#_G7_Misleading_name:).

If we think that the trustees must change a main name or no longer use a working name because of the high risk that it will mislead the public (because it gives the impression that the charity is in some way connected when it is not connected), use the model text of section [G8](#_G8_Misleading_name:).

**When is there no risk from a charity main or working name containing a famous name?**

There is no risk that a charity name, containing the name of someone or something famous, will mislead the public if:

* the charity is connected with it or them, e.g. where the charity was founded by (or is in memory of) someone famous and its name includes their name

* in the case of a famous institution, the charity has license to use the famous name from the owner of the intellectual rights and there is in fact some connection between the charity and that institution
* in the case of a famous person, the charity has been given permission to use that person's name and there is some connection between that person and the charity (but see next paragraph).

The fact that an existing registered charity has the famous name of a person or an organisation within its main name does not necessarily mean that it has the right to monopolise the use of that name amongst charities. For instance, the name of a new charity applying for registration may also include that famous name because it is legitimately linked with that person or organisation. In such a circumstance, it would be unreasonable to expect the new charity to change its name just because it contains the famous name. However, in exceptional cases, it may be appropriate for the use of a famous name to be restricted to just one charity because the publicity and general public interest surrounding the use of that name may be so great that other charities using the famous name could seriously confuse the public and potential donors. We should consider each case based on the facts of the matter.

## B12 Offensive main or working names: s.42(2)(e) - definition and risk assessment

### B12.1 Offensive name: definition

We must exercise our discretion when assessing whether a name is offensive because s.42(2)(d) of the Charities Act states that it is a matter for our opinion. However, we should also be prepared to consider evidence presented to us that a charity's name has caused offence to the public or a section of it.

**IMPORTANT NOTE:** We consider a name to be offensive if it:

* is vulgar or includes words or phrases that are widely held to be offensive
* uses initial letters which form a vulgar word or words (i.e. a vulgar acronym) or abbreviations which look like offensive words
* uses symbols which appear to be in substitution for offensive words or phrases
* shows contempt for a religion or a deity or for any individual, class or group within society
* indicates contempt for, or unlawful discrimination against, persons on account of their ethnic or racial origin, gender, physical or mental impairment or other disadvantage, or any other characteristic protected under the Equality Act 2010
* indicates contempt for, or unlawful discrimination against, persons by reason of their skin colour
* shows irrational or capricious discrimination against any other individual, class or group within society
* indicates that the charity supports or carries out immoral, criminal or illegal activity
* contains non-English words or symbols which, whether in their original language or (if translated) in English, would fall within any of the points above.

Please note that in some cases it is acceptable for a charity name to show discrimination if this is related to the charity's legitimate purposes, e.g. 'The XYZ Refuge Home for Women' could be a valid name for a charity working with (female) victims of domestic abuse. In this example, the name accurately reflects the reasonable restriction on who can benefit from the charity's aims and those aims comply with the Equality Act 2010.

In most cases it should be clear whether or not a name is offensive. However, if caseworkers are unsure, they should take advice from a mentor or technical adviser.

### B12.2 Risk assessing offensive names

**BEWARE:** It is likely that a name that we consider offensive will always be high risk because it could damage public trust and confidence in charity as well as our reputation as a regulator if we enter it in the Register of Charities. Accordingly, if we consider that the name is offensive, we must refuse to enter it in the Register of Charities and ask the trustees to immediately (main name) change it or (working name) no longer use it using model text of section [G9](#_G9_Offensive_name). (If we are considering the name of a charity applying for registration and we decide that it is offensive then we must ask the trustees to change it before we enter it in the Register.)

## B13 Direction requiring trustees to change a main name or no longer use a working name: when do we give a direction?

### B13.1 What is a direction to change a main name or no longer use a working name and when is it needed?

A direction is our instruction to the trustees requiring them to take the action specified in the direction:

* in the case of main names, requiring the name of the charity to be changed to a name determined by the charity trustees with our approval; and
* in the case of working names, requiring that a working name of the charity no longer be used as a working name.

In practice we only direct trustees to change a main name or no longer use a working name in exceptional circumstances since:

* we can only issue a direction, as set out in the sub-sections above, about each provision of s.42(2) of the Charities Act

and

* they usually agree to change the main name or no longer use a working name themselves once we have explained to them why they must

and

* in the context of disputes about names, we expect the parties involved to take all reasonable steps to resolve the dispute (including, for example, mediation) before we will be prepared to exercise our powers under s.42.

**IMPORTANT NOTE:** We should only give trustees a direction requiring them to change a main name or no longer use a working name if all of the following factors apply:

* The main name or working name fits one or more of the provisions of s.42(2) of the Charities Act (as described in earlier sections of this Casework Guidance)

and

* either:
  + we have evidence that the name is causing loss, detriment or harm to one or more other charities and/or their beneficiaries, or
  + the name is causing significant public confusion, or
  + we are satisfied that, if the charity continues to use the name, there is significant potential for it to cause these negative effects.

*and*

* The trustees have refused to change the main name or no longer use the working name voluntarily following our explanation of the issues and warning that we may issue a s.42 direction. In the case of a complaint or a dispute about the main name or working name the parties' reasonable efforts to resolve the matter themselves have not succeeded.

*and*

* Having considered all of the factors relevant to the matter (including our obligations under the Human Rights Act 1998 and the Equality Act 2010 - see section [E5](#_E5_Human_rights) Human Rights consideration) we are satisfied that our formal intervention by giving a direction is a proportionate way of pursuing a legitimate policy objective, such as encouraging public trust and confidence in charity.

For a summary about giving a direction requiring the trustees to change a main name or no longer use a working name see Chart [C2](#_C2_Directing_a).

**IMPORTANT NOTE:** We should always take advice from a lawyer before directing trustees to change a main name or no longer use a working name to ensure that we have complied with all of the necessary legal formalities.

**Charitable companies**

Before we direct a charitable company to change its name, we must contact The Sensitive Names Section of Companies House to:

* say that we intend to give a direction

and

* ask it to confirm that it accepts the new charity name (if we know it at this stage) under s.53 of the Companies Act 2006.

**Exempt charities**

We can issue a section 42 direction to an exempt charity. Before doing so, we are required by s.28 to consult with the exempt charity’s principal regulator (if it has one).

**IMPORTANT NOTE:** If the principal regulator indicates that it does not wish us to issue a direction, we should take advice from a lawyer before deciding whether or not to proceed with it.

### B13.2 Same name or 'too like' names: using prominence & pre-eminence

In some cases we must consider directing one charity to change its main name or no longer use a working name in favour of another charity's main name or working name which is identical to it, or 'too like' it, under the provision of s.42(2)(a). We should only do this as a last resort, if the charities' trustees fail to resolve matters themselves (e.g. one of the charities refuses to change its main name or no longer use its working name in favour of the other).

If caseworkers have considered these guidelines but are still uncertain, they should take advice from a technical adviser or a lawyer.

## B14 Direction requiring main name to be changed or working name no longer be used: how do we give a direction?

### B14.1 If the charity is applying to register, do we register it even though we are giving a direction under s42?

Charitable status is not dependent on an institution’s name. Therefore, when we issue a s42 direction, we cannot refuse to register the charity on this basis, but have discretion to decide whether to delay the registration of the charity.

In the case of an unsuitable working name, it is open to the Commission to register a charity without including the working name on the register.

Delay registering the charity

We can delay registering the charity for the duration of the section 42 direction (which will specify the date by which the charity must change its name) and then for a further period of 60 days to allow us to take action to prevent the inappropriate name from being entered on the register. This period will be stayed (suspended) for:

* the duration of any appeal to the Tribunal against the section 42 direction;
* proceedings commenced by us for contempt of court or to enforce the section 42 direction; and
* any challenge to any other regulatory action taken by us in relation to the section 42 direction.

If the charity does not change the name and we decide not to take any regulatory action, we must then register the charity.

### B14.2 If a registered charity has changed its main name or has changed or adopted a working name, do we change the register even though we are giving a direction under s42?

### Change to main name

When we issue a s42 direction, we have power to delay the registration of a change of name, pending the resolution of the s42 issue. The intention is to give us sufficient time to take action against the charity without requiring us to enter an inappropriate name in the register during this period. However, if the charity does not change the name and we decide not to take any regulatory action, we must then register the new name.

In the case of a change to a main name, we can annotate the register to state that the charity has changed its name but that the new name is the subject of a direction to change its name. The charity would be identifiable both by its registered charity number, its previous name and any working name that we have no objection to.

The charity's main name entry in the Register of Charities would contain the following statement after the existing main name (i.e. not the new name):

'Direction given on [dd/mm/year] to change proposed new [main] [working] name under s.42 Charities Act 2011.'

We are only likely to do this if the charity is high profile and we think it would not be in the public interest or it would be misleading for the register to be out of date, even for a relatively short period.

We can delay registering the new name for the duration of the section 42 direction (which will specify the date by which the charity must change its name) and then for a further period of 60 days to allow us to take action to prevent the inappropriate name from being entered on the register. This period will be stayed (suspended) for:

* the duration of any appeal to the Tribunal against the section 42 direction;
* proceedings commenced by us for contempt of court or to enforce the section 42 direction; and
* any challenge to any other regulatory action taken by us in relation to the section 42 direction.

**Change to working name**

In the case of a change to a working name, or the adoption of a new working name, the new name would not be entered onto the register pending resolution of the section 42 action – it would not be necessary to add a statement to the working names field of the register. If the new working name replaces a previous working name that is no longer being used, this name could be removed.

We have discretion to decide whether we enter a working name onto the register. Therefore, if the charity does not stop using the working name despite the section 42 direction and we decide not to take any regulatory action, we do not have to enter the working name onto the register.

### B14.3 Content of direction

To comply with s.42 of the Charities Act 2011, we must give our direction to the trustees of the charity to which the direction relates (in the case of a charitable company, this will be the directors) and must specify the period within which they must change the name or no longer use a working name.

**IMPORTANT NOTE:** A direction should also do all of the following:

* state that we are giving it under s.42(1)(a) (main name) or s.42(1)(b) (working name) of the Charities Act 2011
* specify the period within which the charity is to comply with the direction as required by s.42(1A) (see [B.14.5](#_B14.5_How_long) below)
* refer to the exact provisions of s.42(2) under which we are giving it
* state that the trustees must act on the direction, regardless of anything in the charity's governing document, as required by s43(1) of the Charities Act 2011
* make it clear that we are giving it to the charity trustees (in the case of a charitable company, the directors)
* in the case of an issue with a main name, make it clear that we will have to approve the new main name, if we have not already done so
* warn the trustees that if they fail to comply with our direction, they may be subject to legal action as if they had disobeyed a High Court Order. In such cases we may consider making an application to the High Court against the defaulting trustees for contempt of Court (an offence which is punishable by imprisonment).

**IMPORTANT NOTE:** The direction should also state that the trustees can ask us to review our decision to direct the main name change or requiring a working name no longer be used and that our decision can also be considered by the Tribunal, under s.319 of the Charities Act 2011. (Refer to our publication [Dissatisfied with one of the Commission's decisions](http://www.charitycommission.gov.uk/media/92205/dissatisfied_with_our_decision.pdf) for details of the review process.)

Where we are directing a main name change, the direction:

* should state the main name the charity must change; and
* should not propose or seem to direct or mention the charity's new main name because under s.42(1) of the Charities Act the choice of new name is specifically reserved to the charity trustees (but the name itself is subject to our approval).

Even when the trustees have chosen a main name and we have approved it, we should not set it out in the direction because of the risk that at some point in the future we may decide to issue a direction in respect of the new main name. This could be problematic if the name is set out in the direction.

We should be prepared to clarify any points about the direction which the trustees may raise; this may require legal advice.

For a summary of the process for giving trustees a direction requiring them to change their charity's main name or to stop using a working name go to [Chart 2](#_C2_Directing_a).

### B14.~~4~~ Who do we give the direction to?

We must give any s.42(1) direction 'to the charity trustees' - see s.42(5) of the Charities Act.

**IMPORTANT NOTE:** We should take legal advice before we give the direction to determine whether we should serve it on each and every trustee personally or only to certain trustees and if so who. Serving the direction on each trustee may make it easier to enforce should the charity fail to comply with it.

### B14.5 How long do we give the trustees to respond?

We have discretion to decide how long we give the trustees to respond to the direction. At the expiry of this period, if the trustees do not comply with the direction, a further period of 60 days will start to allow us time to take action to prevent the inappropriate name from being entered on the register.

We will tell the trustees that we want a response in four weeks, which can be increased if needed to make suitable allowance for holidays or other significant events. This will be the relevant date for starting the 60-day period.

### B14.6 After we've given a direction: follow-up action

**IMPORTANT NOTE:** Once we have given a direction to the trustees, the following steps apply:

**Direction requiring a name to be changed**

* The trustees must:

* + choose a new main name for their charity by the date specified in the direction; and
  + tell us the new main name and the date on which it was formally adopted, as required by s.42(5) of the Charities Act.
* We must consider the trustees' proposed new name in accordance with this operational guidance.
* If there are no issues with the new main name, we should approve it. (If the charity is a company and Companies House objects to the new name then it will refuse to issue a certificate of change of name. If so, we must not enter the new name in the Register of Charities. The directors should therefore check the name with us before they adopt it and should also contact Companies House to see if it can accept their chosen name.)
* The trustees can confirm that they have complied with the direction using our digital services. We should keep a copy of the information with the charity's records.
* When we update the Register of Charities to show the date of the name change, we must use the date of the trustees' resolution to adopt it. (For a company we must use the date on the certificate of change of name issued by Companies House.) We must also delete reference to the direction from the charity's 'main name' entry in the Register of Charities.

**Direction requiring a working name no longer be used**

If the charity is already registered and we have recorded the working name, we should remove the working name entry from the Register of Charities. (If the trustees subsequently successfully challenge the direction, the working name can be reinstated.)

We require the trustees to give us an undertaking that they will no longer use the working name. This must be given in writing and will normally take the form of a resolution passed by the trustees at a duly constituted meeting to the effect that the working name will no longer be used. This should be filed in the key document folder in CeRIS for future reference should the charity subsequently use the name.

If the trustees decide to adopt a new working name in place of the name subject to the s.42 direction, this will be dealt with in the same way as any register change to record a new working name.

### B14.7 Failure to comply with a direction to no longer use a working name: what we do

If we do not receive an undertaking to no longer use a working name within four weeks of the date on which we issued the direction, we should:

* email the trustees on whom we served the direction; and
* tell them that if they are found guilty of disobeying the direction then they may be dealt with as if they had disobeyed an Order of the High Court, i.e. contempt of court, which is punishable by imprisonment.

If the trustees do not provide us with an undertaking not to use a working name at the expiry of the four week period, we must decide whether to:

* take enforcement action in order to compel the charity to stop using the working name;
* take other regulatory action; or
* take no further action (other than not entering the working name on the register).

When might we decide not to take action in respect of a working name?

Given that we have given a direction, the presumption is that we will consider taking enforcement action, unless there is a clear reason not to.

Circumstances in which we may decide not to take action include:

* In response to the direction, the trustees have provided us with new information or evidence in support of the name, such that we now consider that the working name can be entered on the register;
* The direction was issued because the working name was too like the main or working name of another charity, but the main or working name of that charity has since changed or the charity has been (or is in the process of being) closed;
* The direction was given because the working name would be likely to mislead the public about the charity’s activities and the charity’s activities have since changed (such as a result of a significant injection of funds);
* The trustees have asked for an extension of time to stop using the working name, such as because of the effort required in achieving this, and the request appears reasonable in the circumstances. (There is no additional 60-day period for stopping the use of a working name - this only applies to main names - so we can agree a time extension where it would be reasonable to do so.)

If we decide to take no action, we will need to consider whether to vary or revoke our s.42(1) direction by giving a further direction under the power in s338 of the Charities Act.

1. What action might we take?

If the trustees do not comply with the direction, the action that we can take includes:

* issuing the charity and/or trustees or the charity with an official warning if we think there has been a breach of trust or duty, or other misconduct or mismanagement and we think that issuing the warning will have the effect of resolving the issue and it would not be proportionate in the circumstances to either take legal proceedings for contempt of court or use protective powers;
* opening a statutory inquiry under s46 Charities Act;
* if an inquiry is opened, directing the trustees to take action to stop the working name from being used under s84 of the Charities Act;
* taking proceedings for contempt of court under s336 of the Charities Act; or
* the use of other compliance powers relevant to the case, such as if the working name issue is only one of a number of regulatory issues.

### B14.8 Failure to comply with a direction to change a main name: what we do

If we do not receive confirmation of the date of the charity's change of main name within four weeks (see [B14.5](#_B14.5_How_long)) of the date on which we issued the direction, we should:

* email the trustees on whom we served the direction; and

* tell them that if they are found guilty of disobeying the direction then they may be dealt with as if they had disobeyed an Order of the High Court, i.e. contempt of court, which is punishable by imprisonment.

When we have directed a change of name, we have a further maximum postponement period of 60 days from the expiry of the four-week period (subject to suspension for the duration of any legal challenge) to allow us to take action to prevent the inappropriate name from being entered on the register. This period is intended to strike a balance between (a) giving us sufficient time to take action, if we are going to (and keeping the inappropriate name off the register in the meantime), and (b) the right of a registrable charity to be registered or have its new name recorded on the register.

We must therefore decide whether to:

* take enforcement action in order to compel the charity to change the inappropriate name; or
* take other regulatory action; or
* register the new name and take no further action.

When might we decide not to take action in respect of a main name?

Given that we have given a direction, the presumption is that we will consider taking enforcement action, unless there is a clear reason not to.

Circumstances in which we may decide not to take action include:

* In response to the direction, the trustees have provided us with new information or evidence in support of the change, such that we now consider that the main name can be entered on the register;
* The direction was issued because the name was too like the main or working name of another charity, but the main or working name of that charity has since changed or the charity has been (or is in the process of being) closed;
* The direction was given because the name would be likely to mislead the public about the charity’s activities and the charity’s activities have since changed (such as a result of a significant injection of funds).

If we decided to take no further action, we will need to consider whether to vary or revoke our s.42(1) direction by giving a further direction under the power in s338 of the Charities Act.

**Taking action**

Deciding whether to annotate the register

In the case of a name change, if we decide to take action, and have not already done so, we need first to decide whether in the meantime we annotate the register to state that the charity’s proposed name is the subject to a direction to change its name (see [B.14.2](#_B14.2_If_a) above).

What action we can take

Since we only have a maximum postponement period of 60 days before we must register the inappropriate name, we need to give urgent consideration to the action to take.

The action that we can take includes:

* taking proceedings for contempt of court under s336 of the Charities Act;
* opening a statutory inquiry under s46 Charities Act;
* if an inquiry is opened, directing the trustees to change the name under s84 of the Charities Act;
* the use of other compliance powers relevant to the case, such as if the name issue is one of a number of regulatory issues.

How long can we delay registering a charity or changing a name?

The delay lasts until the earlier of:

* the charity trustees complying with the section 42 direction and notifying us that they have done so;

* the “maximum postponement period” (which is the period of 60-days beginning at the end of the period specified in the section 42 direction for giving effect to the direction); or
* such earlier date as we may decide (such as if we think the direction is no longer necessary due to changed circumstances).

When can the 60-day period be suspended?

The 60-day clock stops running if “relevant proceedings” have been started and are ongoing. Relevant proceedings are defined in s.45A(5) and include:

* an appeal brought to the tribunal against our s.42 direction, or any steps taken by us with a view to securing compliance with the s.42 direction;
* an application made to the Tribunal for the review of our decision to institute an inquiry under section 46 in respect of matters connected with the section 42 direction;
* proceedings on an application for judicial review of our decision to give the section 42 direction or to take any steps with a view to securing compliance with it;
* proceedings by us for contempt of court to enforce the section 42 direction (under s.336 Charities Act).

Relevant proceedings are commenced when a notice, claim form or other document is sent or delivered to, or filed with, the Tribunal or court for the purpose of commencing the proceedings. They are ongoing until:

* the proceedings (including any proceedings on appeal or further appeal) have been concluded; and
* any period during which an appeal (or further appeal) may ordinarily be made has passed.

The maximum postponement period is suspended during this period since we have no control over the timescale for such proceedings. The duration of the proceedings will depend on the timetable set by the Tribunal or court (and, in the case of challenges to the section 42 direction or other enforcement action, will also depend on the actions of the parties).

The 60-day clock starts running again once the relevant proceedings have been concluded and the time limit for any appeal has passed.

When the 60-day period expires

When the 60-day period expires, and if the trustees are still refusing to change the name and relevant proceedings have not already been commenced, we must register the inappropriate name unless:

* In the case of an existing charity, evidence has come to light that the name change was not properly made by the trustees in accordance with the governing document and/or the law;
* In the case of an application for registration which has been delayed, other issues have come to light that would prevent us from registering the charity.

## B15 Non-English main names: can we accept them and what do we check?

A charity's main name can be non-English or can include non-English words. However, we must always:

* ask the trustees to translate any non-English words and to confirm that their translation is correct

and

* check the English translation of the name against the provisions of s.42(2)(b) and (d) of the Charities Act, i.e. to determine whether it is likely to mislead the public as to its purposes or the activities it carries out in pursuit of its purposes or gives the impression that it is connected with the Government, any local authority, other body of persons or any individual when it is not so connected.

If the English translation of the name is the same as, or too like, a registered charity's main name, we should inform the trustees of the charity with the non-English name. However, in most cases, the risks arising from this position will be minimal so long as the charity concerned uses only the non-English name to identify itself, so it is unlikely that the trustees will need to consider changing the name. One exception to this will be where the English translation is the same as, or too like, a particularly prominent charity known by its English name, e.g. if the non-English name translates as 'Red Cross Society' but the charity has no connection with 'The British Red Cross Society' then we should let the trustees know that we consider the name to be misleading under s.42(2)(d) and ask them to consider choosing a different name.

## B16 Symbols and numbers in names: can we accept them?

When we consider recording a name with symbols in it we should as a matter of policy use [The Company and Business Names (Miscellaneous Provisions) Regulations 2009 (Part 2, Schedule 1)](http://www.legislation.gov.uk/uksi/2009/1085/schedule/1/made) as our guide for all charities, even if they aren't companies. The Regulations set out a number of characters and symbols which can be used in a company's name.

**IMPORTANT NOTE:** We should therefore not object to a name just because it includes:

* ['&'](mailto:'@') in place of 'and'
* £, €, $
* symbols relating to a particular word or figure (e.g. the ['@'](mailto:'@') symbol can replace the word 'at', and '#' can replace 'number)
* numerical figures 0 - 9 inclusive
* The following (which include their regular forms, but refer to the Regulations and if necessary, a lawyer if you are uncertain about the forms used):
  + full stop, comma, colon, semi-colon or hyphen
  + apostrophe and speech marks
  + various forms of brackets
  + exclamation mark
  + question mark
  + solidus (i.e. forward or back slash)
* The following signs and symbols, so long as they are not used as the first three characters of the name:
  + \*
  + =
  + #
  + %
  + +

The Regulations state that the name must not consist of more than 160 permitted characters.

If the charity is a company, we must refuse the use of any character which the Regulations do not permit. (This is rarely an issue for us, since Companies House has primary responsibility for checking that company names comply with these Regulations.) We must not accept a charity name which contains symbols which we think are being used in place of offensive words or phrases.

## B17 Re-instatements to the Register: can a charity use its original main name?

Our policy on reinstatement is explained in section 1.7 of OG531-1 Dissolutions and Voluntary Removals from the Register. We will only reinstate a charity to the Register in the limited circumstances outlined in that guidance.

If (in accordance with our policy) we propose to reinstate a charity to the Register, we generally allow it to use its former main and/or working name(s) within five years of when we removed it. However, this might not always be possible if another charity has started to use that name (or a similar name) in the meantime. In such cases we can consider re-registering the 'old' charity with its original name but immediately asking its trustees to change it. 

## B18 Working names

### B18.1 Adopting and changing working names and evidence we need

How a charity changes or adopts a working name is a matter for each charity's discretion, subject to what its governing document may say about that. Trustees should use our digital services to tell us about a new working name.

### B18.2 How should we check working names?

We use the provisions of s.42(2) of the Charities Act to check working names against other registered charities' main and working names to help ensure that the working names we enter in the Register of Charities will not confuse or mislead the public, or cause complaints, disputes or offence. (We also check working names against the main names we have removed from the Register of Charities within the last five years.) These checks are carried out automatically by our systems.

### B18.3 Main name vs. working name

For guidance about checking main names against working names go to section [B5.12](#_B5.12_Why_do).

### B18.4 Risk assessing working names

If a working name fits a s.42(2) provision we should not enter it in the Register and should take up its use by the charity with the trustees. In high-risk cases, we will issue a direction to the trustees to no longer use the name.

## B19 Complaints & disputes about names: how can they arise & do we have a regulatory interest?

### B19.1 How can they arise?

A charity's main or working name may cause a complaint or a dispute involving another charity or organisation, or a body of persons or an individual because it falls within a provision of s.42(2) of the Charities Act, particularly if the consequent risks associated with that are high. Therefore, a complaint may arise because the name may be confused with their organisation's name (e.g. because it is the same as or too like it or is in some way misleading) or because it is offensive. This can result in disputes over a name which trustees or other parties may ask us to help resolve.

Complaints or disputes about a charity name can also arise because another organisation or person claims that it infringes the legal rights they have established over their name, e.g. trademark protection or intellectual property rights. For more about rights established over a name refer to section [B22](#_B22_Intellectual_property) Intellectual property rights & trademarking: issues to be aware of).

Once we have received a complaint about a name, we should decide whether it is appropriate for us to be involved as set out below.

### B19.2 Do we have a regulatory interest in the complaint or dispute?

We only have a limited jurisdiction in respect of charity names and should only consider intervening in complaints or disputes about them where we would have the authority to do so and other steps to resolve matters have proved unsuccessful. The trustees are responsible for acting in their charity's interests, using its resources in a way which best furthers its charitable aims for the public benefit. An ongoing, acrimonious or costly dispute over a name is unlikely to achieve this, will not be an effective use of its resources and may potentially damage its reputation.

The test we must apply when considering whether a complainant about a name is within our jurisdiction is whether the name fits any of the provisions of s.42(2) of the Charities Act, as set out in earlier sections of this Casework Guidance. If not, we have no direct powers in respect of the name.

**IMPORTANT NOTE:** Where we do have jurisdiction, we should only consider taking regulatory action over a names issue once we are satisfied that:

* the trustees and other parties involved have taken all reasonable steps to try and resolve matters themselves

and

* the risks (e.g. the relevant confusion the name may be causing) are such that the name requires us to direct the trustees to change it using our s.42(1) power.

Before we consider whether to exercise our powers under s.42, we:

* should ask the complainant to put their concerns to the charity (i.e. their perspective, evidence of confusion, detriment or loss caused by the name)
* should give the trustees the opportunity to approach or respond to whoever is complaining about their name to discuss any relevant confusion it is causing
* should give the charity the opportunity to tell us why they should retain the name
* expect the complainant and the trustees to have supplied us with evidence of the reasonable steps they have taken to resolve the matter themselves (e.g. what they have done to reach a negotiated or mediated settlement)
* expect those concerned to explain why their steps to resolve the matter have failed.

If the complainant fails to provide us with evidence that they have attempted to resolve the matter with the charity, then it is unlikely that we will intervene.

Once we have considered the points in this sub-section, we must decide whether it is appropriate for us to act. To help us make this decision, we should use the sections of this guidance which are relevant to the issues and the level of risk involved. If we decide that it is appropriate for us to act, we should let the complainant know what action we have taken and keep them informed of the progress made to resolve the issue. In respect of main name, there is no need for us to consult the complainant about the suitability of the new name.

## B20 Schemes including new main name

If we make a Scheme which contains a new main name, we should check the name in accordance with the procedures set out in this guidance both before agreeing the name with charity and again immediately before the Scheme is authorised. This will help to minimise the possibility of the name causing subsequent complications.

## B21 Human rights issues

Under the Human Rights Act 1998, there is a right to 'protection of property'. In our view a natural or a legal person's name is part of their property. (By 'natural person' we mean an individual and by a 'legal person' we mean a person or organisation - including a company, unincorporated association, partnership or sole trader as recognised by the courts.)

The human rights issues applicable to charity names are explained in section E5 Human Rights consideration. In summary, we must ensure that any action we take (or decline to take) over a names issue does not interfere with another person's right to protect their property. In practice, if we have carefully checked the name using the provisions of s.42(2) of the Charities Act as set out in the previous sections of this guidance, we are unlikely to engage property rights. However, we should be mindful that any formal intervention in a names issue (e.g. when we direct the trustees to change a main name) engages property rights and that any action we take (or decline to take) is a proportionate way of dealing with the issue in accordance with our policies in section [E5](#_E5_Human_rights).

**Discrimination**

We should be alert to potential discrimination issues attached to names which refer to particular groups' characteristics (usually the beneficiaries, e.g. their race, ethnicity, religion, sex, sexual orientation or gender reassignment) to help ensure that any regulatory action we take is fair and consistent. This will help to minimise any complaints that we have treated one type of characteristic more favourably than another. The legal basis for this is Article 14 of the First Protocol of the European Convention on Human Rights, which is about prohibiting discrimination.

## B22 Intellectual property rights & trademarking: issues to be aware of

There is a possibility that a charity name we are considering (or the form of words used within it) is subject to legal protection, e.g. another organisation's intellectual property rights. As a general rule, however, we should consider the name solely in accordance with this guidance and caseworkers are not expected to make wider checks to ascertain whether it is subject to legal protection, since that is the trustees' responsibility. For instance, if the trustees are concerned that a proposed name might infringe an existing trade mark then they should consult the [Trade Marks Register of the UK Intellectual Property Office](http://www.ipo.gov.uk/tm.htm). An exception to this general rule may be where we have clear grounds for thinking that a charity's name (or part of it) is legally protected by another organisation and that there is a strong possibility that it will therefore clash with that protection.

If we receive evidence that a charity name, we have entered in the Register of Charities clashes with another organisation's legal rights to that name, we should decide whether it is appropriate for us to take action. In the case of a charity's main name, we should consider whether the charity's use of that name conflicts with any legal protection and whether we would direct the trustees to change it were they to refuse to change it themselves. (If we were to decide that they must change the name, we must also consider the human rights factors in accordance with our policies as explained at section [E5](#_E5_Human_rights).) If it is a charity's working name which clashes with someone else's legal rights, we should remove it from the Register of Charities.

If legal action over a name which is protected by a trademark or intellectual property rights is in progress when a names issue comes to our attention, then we should not intervene (e.g. by directing a main name change or directing a working name no longer be used) until that is complete.

# C Charts

## C1 Main name or working name checks

## C2 Directing a main name change or to stop using a working name

# D Case Studies

## D1 Branch charities' names: are they 'too like'?

This fictitious example shows how we consider the names of branch charities and whether they are sufficiently different, i.e. whether they are outside of the ‘too like’ provision of s.42(2)(a)(ii) of the Charities Act.

1. A national charity's name is *Heart Health Research Fund*.
2. Its branches are named using in the following way: *(Name of town) Heart Health Research Fund*.
3. We receive a registration application from *Seaport Heart Health Research Fund*.
4. We consider the name and whether it falls within s.42(2) of the Charities Act and, if it does, whether we need to take any action.
5. We consider whether the name is 'too like' that of the umbrella charity and of other branches, i.e. under s.42(2)(a)(ii). If it is, then there is a risk of a branch being confused with its national parent charity, with the result (for example) that someone may leave money to the wrong charity.
6. Using the guidance in section [B7.4](#_B7.4_Terms_that) of the Casework Guidance, we conclude that the branch charity’s name is not ‘too like’ its national parent charity's name (or other branches’ names) because the name of the town where it works provides sufficient distinction.

## D2 Misleading names: are they 'too like' or misleading?

This Case Study leads on from Case Study [D1](#_D1_Branch_charities') above.

A charity with no connection to either *Heart Health Research Fund* or its branches changes its name to *Seaport City Hospital NHS Trust Heart Health Research*.

Is this new name likely to be confused with *Heart Health Research Fund* or its branches?

As set out in Casework Guidance section [B7.4](#_B7.4_Terms_that), the new charity’s name falls outside of the ‘too like’ provision of s.42(2)(a)(ii) - and it is unlikely to confuse the public - because it is clear *Seaport City Hospital NHS Trust Heart Health Research*:

* works in Seaport
* carries out a specific type of charitable activity in connection with a specific hospital
* is a localised NHS fund connected with Seaport Hospital.

On the other hand, if the independent charity in Seaport were to use a name based on the same naming convention used by Heart Health Research Fund's branches (i.e., Seaport Heart Health Research Fund) then we could not accept it. This is because the name would give the impression that it is connected with Heart Health Research Fund or one of its branches when it is not, i.e. the provision of s.42(2)(d) of the Charities Act.

## D3 Similar names: are they 'too like' or do they give the impression of a connection?

**Case example**

This fictitious case study looks at whether the names of two charities are:

* ‘too like’ under s.42(2)(a) of the Charities Act or
* likely to give the impression of a connection when there is no connection, under s.42(2)(d) of the Charities Act.

We received a complaint about the City Literary Foundation and The City Literary (Dickens) Foundation. The complainant alleged that the names of the charities were too like each other and a connection was implied between them.

We looked into the matter and initially concluded that the names were not ‘too like’ each other because one of them used the distinctive word ‘Dickens’, which suggested that this Charity focused only on the literary works of Charles Dickens.

However, we were concerned that the names’ similarity might be misleading by giving the impression that the charities were in some way connected with each other when they were not. As a result, there was a risk that the names might confuse supporters and beneficiaries.

We were reluctant to use our discretionary s.42(1) power to direct a charity to change its main name, since that interferes with a charity’s proprietary or other human rights (see Casework Guidance section [B13](#_B13_Direction_requiring) and section [E5](#_E5_Human_rights) Human rights consideration). We therefore said that we expected the two charities concerned to engage in mediation to agree a way forward that would avoid or minimise the risk of public confusion before considering regulatory action (as explained in Casework Guidance section [B13](#_B13_Direction_requiring)).

The charities resolved the position between themselves and agreed arrangements to ensure there was no risk of the public being misled about a connection between them. We were satisfied and decided we had no grounds to require either charity to change its main name under s.42(2)(d) of the Charities Act.

## D4 Dispute over use of a name: new working name vs. existing main name

This example of a dispute illustrates the importance of checking new working names against existing main names, as detailed in Casework Guidance section [B18](#_B18_Working_names) and the action we can take as explained in section [B19.](#_B19_Complaints_&)

* Charity A has adopted a working name that is very similar to Charity B's main name. Charity A and Charity B are not connected.
* The two names’ similarity misled donors by giving them the impression that Charity A was connected in some way with Charity B, i.e. under the provision of s.42(2)(d) of the Charities Act.
* It appears that Charity A adopted its working name to attract funds at the expense of charity B.
* Charity B is aggrieved and claims that Charity A's working name has caused it to lose funds. If Charity A's working name is in the Register of Charities, we can remove it to help reduce public confusion and if necessary direct that it no longer be used.

Depending on the circumstances, Charity A might have committed a criminal offence: Charity B might be able to apply to the Court for an injunction against Charity A's use of its name. If we consider 'offending' Charity A's adoption of the working name to be maladministration then we should consider whether it is appropriate for us to use any of our compliance powers, including opening an inquiry under s.46 of the Charities Act.

In a case like this (and in other extreme cases of a charity adopting a name in 'bad faith') the appropriate compliance team would consider the matter and decide what action to take, taking legal advice as necessary.

# E Legal / Policy / Accountancy Framework

## E1 Overview of Legal / Policy / Accountancy Framework

This Legal / Policy / Accountancy Framework section sets out:

* the legal test in s.42 of the Charities Act 2011 for considering whether it is appropriate for us to exercise our discretionary legal power at s.42(1) to give trustees a direction requiring them to change a charity's main name or to no longer use a working name because it falls within the provisions of s.42(2)(a) - (e)

* our policies for raising names issues with charity trustees

Full details of our interpretation of the scope of each of the name provisions of s.42(2)(a) - (e) of the Charities Act 2011 are in the [Casework Guidance section](#_Casework_Guidance).

**Purpose of legislation: a summary**

**IMPORTANT NOTE:** The purposes of s.42 are to help:

* minimise the risk of public confusion and possible harm by reason of a charity's main or working name

* minimise the risk of public confusion and possible harm to beneficiaries through the use of a particular main or working name by more than one charity
* ensure that the public are not misled about the nature, purposes or status of a charity by reason of its main or working name
* prevent public confusion arising from a main or working name which suggests the charity is connected with another body, a person or persons when it is not

* prevent the use of main or working names which are offensive to the public.

The charity can be registered, excepted, exempt or otherwise unregistered.

## E2 Names and the Register of Charities: s.29 of the Charities Act

### E2.1 Register of Charities

S.29 of the Charities Act requires the Charity Commission for England and Wales to keep a Register of Charities.

**IMPORTANT NOTE:** S.29(2) states that the Register of Charities shall contain:

* 'the name of every registered charity'

and

* 'such other particulars of, and such information relating to, every such charity as the Commission thinks fit'.

1. S.35(3) requires the trustees of a registered charity to notify us if there is change in its particulars entered in the Register.

'Other particulars' we enter in the Register of Charities may include the following, at our discretion:

* working names
* acronyms or abbreviated forms of names which come to our attention and which we consider it expedient to enter (e.g. to enhance transparency or public awareness of a charity)
* names of any special trusts (as defined by s.353(4) of the Charities Act) which are distinct charities, linked to a registered charity for registration purposes by a linking direction made under s.12 of the Charities Act (See OG 555 Linking Directions for more information).

### E2.2 Register does not create legal rights

Entering a main or working name in the Register of Charities neither confers exclusive legal rights to its use nor protects it from any of the following:

* a valid objection from a registered or unregistered charity with a better claim to it
* legal action by a charitable or non-charitable body which has protected the name in some legal way, e.g. as a trademark, or other legal action to protect the use of the name
* a valid objection from any source on the grounds that the name is misleading or offensive
* our direction requiring the trustees to change it under s.42 of the Charities Act.

## E3 Legal test for considering main charity names: s.42 of the Charities Act

### E3.1 Main or working name test: s.42 of the Charities Act

Our jurisdiction in respect of charities' names is limited. We do not have an overarching power to object to a charity's main or working name. S.42 of the Charities Act 2011 sets out a two-stage legal test that we must use when considering whether it is appropriate for us to give a direction requiring charity trustees to change their charity's main name or no longer use a working name using the discretionary power at s.42(1) if it is within one or more of the provisions of s.42(2).

We apply this legal test as follows:

* we consider whether a main or working name falls within one or more of the s.42(2) provisions

and if it does

* we assess whether the risks are such that it is proportionate to require the trustees to change a main name or to no longer use a working name and that we would direct them to do so using our s.42(1) power were they to refuse.

The [Casework Guidance section](#_Casework_Guidance)explains how we do this in respect of each s.42(2) provision.

### E3.2 Legal framework for considering main or working names: s.42(2) of the Charities Act

**IMPORTANT NOTE:** S.42(2) of the Charities Act 2011 is our legal framework for considering a charity's name. The provisions of s.42(2)(a) - (e) describe various categories of main and working charity name, i.e. whether a main or working name:

* of a charity is the same as or, in the Commission’s opinion, too like the main or working name of another charity (whether that other charity is registered or not) - s.42(2)(a)
* is in our opinion likely to mislead the public as to the true nature –

* + of the purposes of the charity as set out in its trusts - s.42(2)(b)(i); or

* + of the activities which the charity carries on under its trusts in pursuit of those purposes - s.42(2)(b)(ii);
* includes any word or expression for the time being specified in regulations made by the Secretary of State and the inclusion in its name of that word or expression is in our opinion likely to mislead the public as to its status of the charity - s.42(2)(b)(c);
* is in our opinion likely to give the impression that the charity is connected in some way with Her Majesty's Government or any local authority, or with any other body of persons or any individual, when it is not so connected - s.42(2)(d);
* is in our opinion offensive - s.42(2)(e).

If a main or working name is outside of these s.42(2) provisions, we have no jurisdiction over it or right to object to it.

### E3.3 Direction requiring trustees to change a main name or stop using a working name: s.42, s.45 and s.45A & B of the Charities Act

S.42(1) of the Charities Act 2011 is our discretionary legal power to give charity trustees a direction requiring them to change their charity's main name or no longer use a working name if it falls within one or more of the provisions of s.42(2). It does not apply to any name associated with a charity that is not its main name or a working name.  A direction can be given to a registered, unregistered or exempt charity.

**Time limits for giving our direction**

S.45A of the Charities Act confers on us a discretion to delay the registration of a charity if we have issued a direction under section 42 requiring the charity’s name to be changed. The power is a discretionary one to delay registration while the section 42 process runs its course.

S.45B of the Charities Act permits us to delay the registration of a change of name by a charity if we have issued a direction under section 42 requiring the charity’s new name to be changed.

Following expiry of the deadline for compliance set out in our section 42 direction, we have 60 days to take enforcement action in order to compel the charity to change its name. If enforcement action is not taken (or does not result in the charity’s name being changed) within that 60-day period, the stay expires and we must (in the case of an application for registration) register the charity or (in the case of a change of name) register the name change. But the 60-day period is suspended for the duration of any legal challenges to the section 42 direction or to any associated enforcement action.

Charitable companies

S.45 of the Charities Act describes the processes involved when we direct a charitable company to change its main name:

* S.45(3) of the Charities Act requires the directors to pass a company resolution to change the name following a s.42(1) direction requiring them to do so.

* S.45(5) requires that the company must comply with the requirements of the Companies Act 2006 when implementing a change of name pursuant to a direction under s.42 of the Charities Act.
* S.45(5) provides that once the company directors have taken action to change the name as required by s.45(3) and (4), the Registrar of Companies will enter the new name in the Register of Companies and issue a certificate of change of name. The change of name has effect from the date of this certificate.

For more details about our policy and procedures for directing names changes see section [E4](#_E4_Directions_to) below.

## E4 Directions to change main names or no longer use working names: giving them and their effects

Any direction we give:

* overrides anything in a charity's governing document about procedures for changing the name (e.g. a membership vote), as specified at s.43(1) of the Charities Act;
* has no effect on any rights or obligations incurred by the charity under its old name;
* allows any legal proceedings that could have been commenced or continued by or against the charity in its new name.

S.338 of the Charities Act provides that we can vary or revoke a s.42(1) by giving a further direction.

If we exercise our s.42(1) legal power to direct a charity to change its main name or no longer use a working name, or decide not to exercise that power, we must consider whether that engages the human rights considerations set out in section E5 below.

## E5 Human rights consideration

### E5.1 How we consider rights under the Human Rights Act 1998

We have a responsibility under s.6 of the Human Rights Act 1998 ('HRA') not to use our powers in a way that is incompatible with 'Convention Rights', i.e. those rights and freedoms of the European Convention on Human Rights which are specified at s.1 of the HRA. Determining whether an act or a particular decision is compatible with convention rights requires us to:

* identify the Convention rights that may be affected
* identify the person(s) whose rights may be engaged
* in the case of qualified rights, consider whether any interference with those rights is a proportionate means of achieving a legitimate aim.

### E5.2 Rights most likely to apply to charity names

In terms of the Convention rights that may be affected, this will depend on the facts of the case and it is important that we consider all of the Convention rights and whether any of them will or may be engaged by the action or decision we propose. However, in the context of our work with charity names, there are three particular rights that are likely to apply and which we should accordingly always consider:

* the right to 'protection of property' (Article 1 Protocol 1) - in our view the name of either a natural or legal person may constitute 'property' and may accordingly fall within the scope of this Article
* the 'right to a fair trial' (Article 6) - in giving, or refusing to give, a s.42 direction we may be exercising a quasi-judicial function and accordingly need to ensure that we do this fairly and in accordance with Article 6
* the 'prohibition of discrimination' (Article 14) - the protection of Convention rights must be secured without discrimination on any grounds.

Our consideration of human rights issues may lead us to conclude that:

* no human rights have been engaged by the charity's use of a name (e.g. the name does not infringe another organisation's intellectual property rights)

or

* human rights are engaged, but any intervention must be lawful on the grounds of its legitimacy and proportionality (e.g. because it is legitimate for us to direct that a charity changes its main name or no longer uses its working name because that name infringes another organisation's intellectual property rights owing to its similarity)

or

* any proposed action would be an unlawful interference of human rights, in which case we must not act and instead consider other options.

### E5.3 Whose rights will be affected?

In terms of the persons(s) whose rights will or may be engaged, the most obvious interference with protected rights will arise if we decide to issue a direction requiring a change of name under s.42(1) of the Charities Act. In such cases, we would be preventing the charity concerned from continuing to use a particular name - and accordingly would be depriving it of part of its property (their name being part of its property). However, it is also possible that a refusal to give a direction might engage protected rights, for example if a person can demonstrate the exclusive right to a particular name, we may be treated as interfering with their property (i.e. the name) if we have the power to give a direction but choose not to. Accordingly, it is important to consider each of the persons whose rights may be engaged, not just the charity whose name we are considering.

### E5.4 Proportionate interference with rights to achieve a legitimate aim

Finally, in terms of qualified Convention rights, we must consider whether any interference with those rights is a proportionate means of achieving a legitimate aim. The right to protection of property is a qualified right and accordingly it can be acceptable to deprive a charity of its main or working name by way of a s.42 direction in the appropriate circumstances.

The 'legitimate aim(s)' in giving a direction will depend on the facts but are likely to include one or more of the purposes of s.42 of the Charities Act set out in section E1 above. To ensure that giving a direction is proportionate, we need to assess the risks or evidence that the name will mislead the public or will harm or be detrimental to another charity or organisation, or body of people or a person. We also need to consider whether there are any other 'more proportionate' means of dealing with the issue. For example, in the context of a dispute, have the parties discussed the issue and/or attempted mediation or taken steps to mitigate any risks or difficulties that have been identified?

Article 6 (right to a fair trial) is an unqualified right. This means that we must always ensure that when considering whether to give a s.42 direction we act fairly and in a manner that is consistent with Article 6, for example giving all parties involved a fair and reasonable opportunity to explain their position.

When assessing whether we are acting fairly, we must consider that a CIO is not constituted until it is registered. This means that delaying registration deprives the trustees of the ability to constitute their organisation and operate.

For more about the Human Rights Act 1998 go to OG71 Human Rights Act 1998. (There is specific information about property rights in OG 71 C3 Article 1 Protocol 1 - Protection of Property.)

## E6 Charitable companies' names and company law

### E6.1 Companies House consideration of companies' names

Under s.66(1) of the Companies Act 2006 a charitable company cannot use a name which is identical to one on the Company Registrar's index of names. [The Company and Business Names (Miscellaneous Provisions) Regulations 2009, Schedule 3](http://www.legislation.gov.uk/uksi/2009/1085/schedule/3/made), made pursuant to the Companies Act 2006, list terms which Companies House must either disregard or treat as being the same when it assesses whether two company names are the same.

Companies House is responsible for ensuring that any charitable company's main name (i.e. its registered name to appear in its Certificate of Incorporation) complies with Part 5 of the Companies Act 2006.

### E6.2 Sensitive words: 'charity' and 'charitable' in company name

[The Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014](http://www.legislation.gov.uk/uksi/2014/3140/pdfs/uksi_20143140_en.pdf), Schedule 2, Part 2 list words which are 'sensitive' and a Government department or other relevant body is required to offer its view about their inclusion in a company or business name. 'Charity' and 'charitable' are listed in Part 2 of Schedule 2 of these Regulations and the Charity Commission is the department responsible for offering a view about their use in a company name. How we offer this view depends on whether the case involves a company applying for charity registration or an existing charitable company changing its name, as set out below. However, where the company or business is not (and does not intend to be) a charity, or is a charity's trading company, our position is detailed at section [E13](#_E13_Non-charitable_companies) below.

**'Charity' and 'charitable': company applying for registration as charity**

If an organisation applying for registration as a charitable company wishes to include the word ‘charity’ or ‘charitable’ in its name, it should apply to us for registration before it is incorporated at Companies House. If we decide that the organisation is a charity we will not object to either word being in the name or should email the directors using the model text of section [G10](#_G10_Proposed_charitable). The directors can then send this confirmation to Companies House with their application to register a company. If Companies House accepts the name, it will issue the company a certificate of incorporation. (If we decide that the proposed company is not a charity, but it still wishes to pursue company registration and use either word in its name, the policy at section [E13](#_E13_Non-charitable_companies) applies.)

**'Charity' and 'charitable': existing charitable company**

If an existing charitable company wishes to change its name so that it will include either the word 'charity' or 'charitable' we are required to notify Companies House that we do not object. Companies House accepts that this can be done by the company confirming to it that it really is a charity. The company can do this by sending Companies House a copy of its letterhead bearing its registered charity number when it applies for a certificate of change of name.

**Other sensitive words listed in the Regulations**

The directors are responsible for seeking the view of any relevant Government body or department which may be responsible for offering its view on the use of specified words other than 'charity' or 'charitable' and we do not need evidence that the relevant body does not object. (As good practice, we recommend that directors retain confirmation of the relevant body's non-objection as this may assist should a future names issue arise.)

## E7 Unincorporated charities' legal powers to change their names

A charitable trust or an unincorporated association can change its main name in either of the following ways:

* A suitable power of amendment in its governing document. When using this power, the trustees must follow the procedures and conditions in their governing document.
* The statutory power at s.280 of the Charities Act. If the charity is a trust, the trustees can pass a resolution using s.280 (2). If it is an unincorporated association, the trustees must firstly pass a resolution which must then be approved by a members' resolution passed at a general meeting in accordance with s.280(4)(a) or (b), i.e. it must be passed by either:
  + a majority of not less than two-thirds of the members passing a resolution to change the name – s.280(4)(a)
  + a decision taken without a vote and without any expression of dissent - s.280(4)(b).

The change of name takes effect from the date the resolution was passed. If the charity is an unincorporated association, the effective date is the date the members passed the resolution under s.280(4).

Some charitable trusts are governed by trust deeds which require the trustees to execute a supplemental deed.

## E8 Charitable companies' name changes

The process by which a charitable company can change its name is governed by Chapter 5, Part 5 of the Companies Act 2006. Within this s.77 states that a company may change its name by:

* passing a special resolution - s.78 of the Companies Act 2006

or

* other means provided for by its articles of association - s.79 of the Companies Act 2006.

When a charitable company passes a resolution to change its name it must lodge the resolution with the Registrar of Companies within 15 days after it is passed (s.30 of the Companies Act 2006). The name change is effective on the date the Registrar issues a certificate of change of name to the company. (There is more about this on the Companies House website guidance [Incorporation and Names - GP1](http://www.companieshouse.gov.uk/about/gbhtml/gp1.shtml#ch6).)

## E9 CIOs: legal requirements

### E9.1 Statement of name in constitution

A CIO must state its name in its constitution using legible letters, as required by s.206(1)(a) of the Charities Act.

S.211(1) of the Charities Act requires the name of the CIO to appear in legible characters in its official business documents and publications.

**IMPORTANT NOTE: For** more about the CIO requirements see OG715-1, section E8.

### E9.2 Name changes

A CIO can change its main name using either of the following:

* The power of amendment in its constitution. When using this power, the trustees must follow the procedures and conditions in their constitution.
* The statutory power at s.224 of the Charities Act. This requires a resolution to change a name to be approved either:
* by a 75% majority of those voting at a general meeting; or
* unanimously by the CIO members, if not at a general meeting.

### E9.3 - Use of sensitive words in the name

All CIOs appear on the Business names register at Companies House.  This means that any CIO using a sensitive word as set out in [The Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014](http://www.legislation.gov.uk/uksi/2014/3140/pdfs/uksi_20143140_en.pdf) must obtain consent from Companies House before applying to register as a charity or applying to change its main name (we have agreed with Companies House that consent is not required for working names which is the same approach for charitable companies).

The regulations prevent the Commission from accepting the name of a CIO which uses a sensitive word unless the proposed trustees have the relevant consent to use the word. This is the case even where an existing charity has used a particular word and is changing to a CIO structure, e.g. use of society by an existing unincorporated charity; or where a CIO proposes to use a word that appears to the Commission to have another meaning from that in the list, e.g. uses the word ‘bank’ but is a food bank/riverbank not a financial institution.

The full list of sensitive words is set out in the annexes to the ‘Incorporation and names’ guidance at Companies House here: <https://www.gov.uk/government/publications/incorporation-and-names>.

The online application for registration and application to change charity names should pick up sensitive words used by CIOs and flag them up to the customer and us. We have agreed with Companies House that approval is not required for the use of the following words where they are the **only** sensitive words in the CIOs name: charity; charitable, association, foundation, trust.

## E10 Main name to identify the charity: what are the legal requirements?

### E10.1 Requirements for registered charities with gross income over £10,000

S.39(2) of the Charities Act requires a registered charity with a gross income over £10,000 to confirm its charitable status on its official documents and publications, primarily those which it uses to solicit funds or other assets, or certain financial documents. (For instance, its notices, advertisements, cheques, invoices, receipts, letters of credit and written instructions to a bank.)

The charity can comply with s.39(2) of the Charities Act by stating the fact that it is a registered charity in English in legible characters. We interpret s.39(2) as requiring the charity concerned to allow the recipient of its official document covered by s.39(2)(a), (b) or (c) of the Charities Act to make a clear link between the statement that it is a registered charity and its entry in the Register. A registered charity can do this by stating that the fact that it is a registered charity in conjunction with any of the following:

* its main registered name
* its registered charity number
* its working name combined with its registered charity number.

For further information about use of a working name as the main identifier please see section [E11](#_E11_Working_name) below.

### E10.2 Charitable company specifics

A charitable company's business documents must include its full registered corporate name, as required by The Companies (Trading Disclosures) Regulations 2008 made under s.82(1) and (2) of the Companies Act 2006. There are further details about disclosure of the company name in the Companies House website guidance [Incorporation and Names](http://www.companieshouse.gov.uk/about/gbhtml/gp1.shtml).

A charitable company name which does not include the word 'charity' or 'charitable' must state that it is a charity on all of its business documents such as letters, notices and other official publications, orders, invoices, receipts, cheques, written demands for payment of debts and conveyances. This is required by s.194 of the Charities Act.

## E11 Working name to identify the charity: how can a charity do this?

A charity can identify itself by its working name in its official documents and publications, rather than by its main name. If it does this, it can allow a recipient of the document to link the statement that it is a registered charity and its entry in the Register by also stating its registered charity number. (However, as good practice, we recommend that it also includes its main name, if only as a footnote.)

For example: a charity’s working name is ‘ABC Trust’. If its letterhead states ‘ABC Trust is a registered charity’ it should also quote its registered charity number in the same document.

## E12 Working names: our policies for considering them and entering them in the Register of Charities

### E12.1 Considering and recording working names

In our view, the duty of the Charity Commission under s.29 of the Charities Act to enter the name of every registered charity in the Register of Charities applies only to charities' main names. Where we enter the working name of a charity in the Register this is at our discretion as one of the 'other particulars' that we can choose to record. Accordingly, we have greater freedom in respect of working names than we do in respect of main names. We should consider working names against the provisions of s.42(2) of the Charities Act in the same way as we do for main names.

### E12.2 Treatment of working names within s.42(2)

If a working name falls within one of the provisions of s.42(2) of the Charities Act, we should issue a s.42(1) direction if it is reasonable and proportionate to do so. This is because, regardless of whether we enter a working name on the register, we do not want the charity to use it.

We should not enter a working name in the Register if it falls within one of the s.42(2) provisions whether or not we issue a direction. This will minimise the risk of any confusion, damage and/or dispute arising because of a working name we have entered in the Register. However, if we do not issue a direction, this will not prevent the charity from continuing to use that working name.

### E12.3 What we do if a working name causes problems

If we receive a complaint about a working name and the complaint is valid (i.e. one of the five grounds in section 42(2) applies) we should consider removing it from the register. We should also consider directing the trustees to no longer use the name, since removal of a working name will not affect the ability of the charity to continue using it.

In very exceptional high-risk cases, where we have evidence that a charity has adopted a working name in bad faith (e.g. to attract funds at the expense of another charity), we might need to consider opening an inquiry into the issue under s.46 of the Charities Act instead of, or as well as, issuing a direction under s42(1). We can then determine whether it is necessary for us to act for the protection of the aggrieved charity using the appropriate investigative, protective or remedial powers.

## E13 Non-charitable companies and businesses: ‘charity’ or ‘charitable’ in their names

### E13.1 'Charity' or 'charitable' in company or business name: our policy

The policy set out here covers the use of the words 'charity' and 'charitable' in the names of non-charitable companies (including community interest companies) and businesses. (For the use of the terms 'charity' or 'charitable' by companies which are, or intend to register as, charities, see section [E6.2](#_E6.2_Sensitive_words:) above.)

Companies and businesses wanting to use the words 'charity' or 'charitable' in their main name or business name must have obtained the consent of the Secretary of State for Business and Trade before doing so. In this policy we describe these words as 'relevant' words. Applicants are required to seek our view before submitting an application to Companies House. We either object (giving reasons) or do not object.

Our approach to the decision whether or not to object is based on our statutory public confidence objective. Any decision made by us to consent to the use of the relevant words may impact adversely on the public trust and confidence in charities.

### E13.2 Potential damage to charities

A non-charitable company or business that has the words 'charity' or 'charitable' in its name could suggest to a reasonable member of the public that the organisation may be a charity - but it will not be. This is likely to have the effect of reducing public trust and confidence in charities. Trust and confidence rest on there being a clear distinction between a charity and other organisations, including not-for-profit organisations. Charitable status brings with it tax benefits. It also carries reputational value both in attracting money from the public and in delivering services. The public have the assurance of the regulatory regime. It is of central importance that the public is not misled as to whether or not an organisation is a charity.

There is an increased risk of exploitation of the public if a non-charitable company or business has the relevant words in its name. The public may be induced to donate money or otherwise support an organisation with a relevant word in its name on the basis that it is a charity because of their trust in charities or their knowledge of the legal and regulatory framework for charities. This risk may be increased where the company or business is a professional fundraiser or commercial participator actively seeking money from the public on the basis that some of it will go to charity.

### E13.3 Policy to object unless there are exceptional reasons

Our policy is, as a general rule, to object to any proposal to use relevant words in the names of non-charitable companies or businesses. However, we recognise that there are likely to be exceptions to this general rule.

Our objective is a positive objective to increase public trust and confidence in charities. In view of the potential damage to the brand of charities and the risk of exploitation of the public, our policy is aimed at promoting public trust and confidence by protecting the circumstances in which the relevant words can be used.

### E13.4 Exceptional reasons for acceptance

The key policy aim is increasing public trust and confidence in charities with the result being that the public should not be misled into thinking that an organisation which is not a charity is a charity. Any applicant arguing that there are exceptional reasons why in its case it should be allowed to use a relevant word, will need to show clearly that there is no risk that the organisation could reasonably be mistaken for a charity by a member of the public. The issue is therefore whether the inclusion of the relevant words is likely to mislead the public into thinking that the organisation is a charity or to give the public the wrong impression about the true nature of:

* the company’s or business’s purpose
* the activities it carries out
* its connection in some way to a charity when in fact it is not so connected.

Each case will be assessed on its own facts in considering whether there is a risk to public trust and confidence and other factors may be relevant on a case-by-case basis. For instance, in many cases it will be relevant to consider why the organisation wants to use a relevant word in its name and whether, exceptionally, there are strong arguments as a result to not object. We have identified two particular potentially exceptional situations from our experience of considering applications to use relevant words in names. These are set out below as examples of the operation of our policy for information only. They do not set out the only possible situations.

### E13.5 Names which are descriptive of the business function

Exceptional circumstances may exist where the name is descriptive of the activities of the company or business and it is clear on the face of it that it is not a charity. For instance, a formulation such as 'Typing FOR Charities' might be exceptionally agreed where the organisation provides a typing service for charities. The extent to which the service is tailored for and provided exclusively for charities will be very relevant in considering the impact on public trust and confidence in such a case.

We will also consider whether there are any restrictions in the governing document of the organisation which limit the provision of the services to charities; or whether, if restrictions are written in, they would have the impact of protecting trust and confidence in charities. We are mindful that currently the members of a company can act unanimously to change a provision.

### E13.6 Benefit to the charitable sector

There may be other exceptional cases where the name is not descriptive of the business function but there is a clear benefit to the sector, e.g. a charity's trading company which is legally required to pass its profits to its 'parent' charity. We will look for evidence:

* to demonstrate that the public will not be misled that the organisation is a charity
* of the clear benefit to the charitable sector
* that there are provisions in place to protect the public from exploitation

and

* that it is clear that the name describes the nature of the organisation’s activities and not its legal status.

### E13.7 Law underpinning this policy on non-charitable company and non-charitable business names

* This policy replaces our policy set out in Decisions of the Charity Commissioners Volume 5, page 4 – November 1997.
* The requirement that the Secretary of State consents to the use of the words is contained in ss. 55(1) and 1194(1) Companies Act 2006 & Schedule 2, Part 2 of the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2014. See [Companies House website](https://www.gov.uk/government/organisations/companies-house) for guidance. The Regulations define the relevant words as 'sensitive' words.
* Our statutory objectives are set out in the Charities Act 2011 and the public trust and confidence objective is in s.14 of the Charities Act 2011.
* 'Professional fundraiser' and 'commercial participator' are defined terms in the Charities Act 1992 describing particular fundraising businesses. See Office for Civil Society website for guidance.
* The provisions in company law concerning the entrenchment of provisions are in s.22 Companies Act 2006.

# F. Q & A

This section summarises the names issues we are most frequently asked about names. Further details on the issues in this section are in the [Casework Guidance section.](#_Casework_Guidance)

## F1 Suggesting names: can we do this?

No

We must never suggest names for trustees. They are responsible for choosing and validly adopting their charity's main or working name.

## F2 If we can't suggest names then how can we help trustees?

If trustees ask for our advice because they are worried about objections to their chosen name - e.g. because it might fit a provision of s.42(2) of the Charities Act - we should refer them to guidance available on our website, particularly [How to choose a charity name](https://www.gov.uk/guidance/how-to-choose-a-charity-name). They should also check the Register of Charities to try to ensure that their chosen name does not clash with another name – the guidance contains a link to the Register to enable them to check this.

## F3 Reserving names: can we do this?

No

If the trustees have chosen a name, we cannot reserve it for them. This applies to both an existing charity wishing to change its name and an organisation applying to register as a charity.

## F4 Main names: how do we check them?

Use the provisions of s.42(2) of the Charities Act to check whether they are the same as, or too like, the main and working names of:

* registered charities

and

* unregistered charities on our records.

Check also that they are neither misleading nor offensive.

See Risk Table at [B5.5](#_B5.5_What_if) above.

## F5 Working names: how do we check them?

As for main names in [F4](#_F4_Main_names:) above.

See Risk Table at [B5.5](#_B5.5_What_if) above.

## F6 Charities applying for registration: how do we check their names?

Check whether the main and any working names are identical to, or too like, the main or working names of all the following:

* registered charities' main and working names
* other applicant charities' main and working names (which we check both when we receive the Registration application and again immediately before we register).

Check also that they are neither misleading nor offensive.

## F7 Same names: do we object to them?

We generally discourage charities from sharing a main or working name because of the clear risk of confusion amongst the public, donors, potential beneficiaries, and funding organisations.

If we think that there is a high risk of a same main or working name causing public confusion or loss, detriment or harm to another charity or organisation then we should:

* explain that risk to the trustees

and

* ask them to choose a different main name or no longer use a working name (and suggest they read this guidance and check the new name against the Register of Charities before adopting it).

It is usually acceptable for a new charitable company established to replace an existing unincorporated charity to use its predecessor's name.

## F8 'Too like' names: what do we do?

See [F7](#_F7_Same_names:) above because the issues are the same.

For full details about how we consider names to be 'too like' go to Casework Guidance section [B7](#_B7_'Too_like').

## F9 Changing a name change: what evidence do we need?

The charity should tell us about their new main or working name using our digital services. This is the only documentation we need.

## F10 Membership charities: do we check that the full membership agreed the name?

No, we just need the trustees to confirm that the charity has validly adopted the new name using our digital services.

## F11 Company name changes: do we contact Companies House when a charitable company changes its name?

No

We just need the directors to use our digital services. (We do not need a copy of the certificate of incorporation on change of name.)

## F12 Company name changes: must directors contact Companies House?

Yes

Directors of a charitable company must contact Companies House before they change their company's name. This is because:

* Companies House's name checks differ from ours

and

* Companies House must issue a certificate of incorporation of change of name to the directors.

## F13 Working names: do we enter them in the Register of Charities?

Yes

Some charities are just as well known by their working name(s) as by they are by their main name, so it's useful for clarity and public awareness that we enter them in the Register.

## F14 Non-English names: can we enter them in the Register of Charities?

Yes

Before we enter a non-English name in the Register of Charities we should:

* ensure that the trustees have translated it into English (but note that some words will not necessarily translate into English, e.g. a non-English person's name) and that they have confirmed that their translation is correct

* check the original language version of the name in the same way as we check English names
* check the English translation to see if it is likely to mislead the public about the charity's purposes or activities or give the impression that the charity is connected with someone or another organisation when it is not.

## F15 Symbols and numbers: can a name include them?

Yes.

Any symbols in a name should be clearly associated with a particular word, letter or numerical figure, e.g. symbols such as '&', '£' would be acceptable.

For more about using symbols and numbers in a name go to Casework Guidance section [B16](#_B16_Symbols_and).

## F16 Can a working name be an acronym of a main name?

Yes

Working names are often acronyms or shortened forms of main names. Charities commonly use shorter working names to help provide a more immediate impact, e.g. to help to publicise fundraising, and in campaigning and trading activities.

## F17 When do we direct trustees to change their charity's main name or no longer use a working name?

Only as a last resort if all the following apply:

* It is a name which fits one or more of the provisions of s.42(2) of the Charities Act
* the risks of using that name are high
* it is proportionate for us to require the trustees to change the main name, or no longer use the working name, but they refuse to do so.

## F18 Complaints and disputes about a name: what should we do?

If we receive a complaint about a name, or if use of the name is being disputed, we expect the parties concerned to resolve matters themselves.

If the parties cannot resolve matters, we should only consider becoming involved if we have evidence that the name is causing problems. (For more about this go to Casework Guidance section B19 Complaints & disputes about main names.)

## F19 Schemes and Orders: do we make them for name changes?

No

There is no need for us to make a Scheme or an Order because trustees can change a name using either the power of amendment in their governing document or the power in s.280 Charities Act. If we decide that a charity must change its main name then we can require, and if necessary direct, the trustees to change it; this does not involve making a Scheme or an Order.

## F20 CIOs: Does company law apply to their names?

No