

Bridgend Association of Voluntary Organisations

Your local county voluntary council



1. Getting started

1.6 Charitable status

What is a charity?

A charity is an organisation that exists for exclusively charitable purposes. Currently these are defined as:

- the relief of financial hardship
- the advancement of education
- the advancement of religion
- other charitable purposes for the benefit of a significant section of the community.

A charity must pursue its activities for public benefit, not for private gain. Public benefit is assumed in the first three categories above, and has to be specifically demonstrated in the fourth.

NB The Charities Act 2006 will change this regime in the early part of 2008, explicitly defining a charity as a body or trust which:

- is for a charitable purpose, and
- is for the public benefit.

It will introduce 13 charitable purposes:

- the prevention or relief of poverty
- the advancement of education
- the advancement of religion
- the advancement of health or the saving of lives
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science

- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- the advancement of environmental protection or improvement
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- the advancement of animal welfare
- the promotion of the efficiency of the armed forces of the Crown; or the efficiency of the police, fire and rescue services or ambulance services, and;
- any other purposes charitable in law.

This list covers the majority of purposes which are already charitable; the last category means that everything which is currently considered charitable is included.

In addition to showing that the organisation will pursue one of more of these charitable purposes every charity will have to demonstrate how it is going to deliver public benefit, and the Charity Commission will be consulting on the exact parameters of this test over the coming year.

NB the 13 new heads of charity and the public benefit test above will not come into force until early 2008, and until then the existing four categories of charitable activity apply.

What other conditions are there?

- All the aims and objectives set out in a charity's governing document must be exclusively charitable. These are the primary purposes of the charity.
- A charity must only pursue activities that further its primary purposes.
- A charity can only pursue campaigning and political activities in a limited way, and only if it directly furthers its charitable purposes.
- A charity cannot trade on a substantial or regular basis simply for the purpose of raising funds - but it may trade in the course of the actual carrying out of a primary purpose of the charity. A charity's governing document must have a dissolution clause to ensure that if the charity closes down its remaining assets will be passed to another organisation devoted to similar charitable purposes.
- The charity can only apply its assets in the furtherance of its purposes and cannot otherwise distribute them for the personal benefit of trustees (unless authorised under the governing document or by the Charity Commission), or private profit of third parties.

Must a charity register with the Charity Commission?

A charity is required by law to register with the Charity Commission if it:

- has an annual income of £5000 or more.

Small charities below this threshold are not required to register, but they can register voluntarily if they wish.

Just because a small charity isn't registered, doesn't make it any less of a charity, it still has to abide by charity law and falls under the jurisdiction of the Charity Commission.

Currently, certain 'excepted' or 'exempt' charities are not required to register

- *Exempt charities* – charities that are overseen by a Regulator other than the Charity Commission (e.g. the Financial Services Authority or Housing Corporation)
- *Excepted charities* – over the years certain groups of charities were excepted from registering (e.g. some religious charities, Boy Scout and Girl Guide charities and some armed forces charities)

However, the Charities Act 2006 will introduce a phased programme requiring exempt charities that do not have an existing Regulator, and many of the excepted charities to register. This regime will be introduced from the latter part of 2008 and initially cover all eligible charities with an income of £100,000 or above (although those below that sum are still subject to charity law and the jurisdiction of the Charity Commission).

NB the new regime for exempt and excepted charities will not come into force until late 2008 and until then the existing arrangements apply.

What are the benefits of being a registered charity?

It's good for public relations — being registered is seen as a sign of trustworthiness and that you are benefiting the public.

- Some funding bodies and private donors only give to registered charities.
- Mandatory 80% relief on business rates - some local authorities may give as much as 100%.
- Tax relief - e.g. income tax, corporation tax, capital gains tax, stamp duty and VAT concessions.
- It may be easier to attract volunteers.
- Being able to recover tax already paid by donors who contribute through Gift Aid, covenants, or payroll deductions.

Why do charities have to register?

Because charity law requires charities to be established for the public benefit and thus charity trustees (i.e. the governing body) must be seen to be publicly accountable. They're responsible for money and property donated by others for specific charitable purposes, and charities enjoy fiscal benefits which impact on public funds such as tax reliefs etc.

What about organisations whose purposes are partly but not wholly charitable?

If the organisation wants charitable status, it must cease its non-charitable activities. So, it must decide whether the benefits of charitable status are worth it, or alternatively it could set up a separate organisation to carry out any non-charitable activities (e.g. trading). What if a charity wants to trade to raise funds for its work?

A charity can trade if the trade is in furtherance of or ancillary to its objects. Any non-charitable substantial trading (there is an exemption for small scale trading) should be carried out via a separate non-charitable trading company. The profits of the trade can be passed back to the charity in a tax-efficient way.

What kind of legal structure should a charity have?

A charity's legal structure is quite separate from its charitable status. A charity can be an unincorporated association, a company limited by guarantee, or a trust.

How can we make sure that our governing document will be acceptable to the Charity Commission?

For guidance, see the Charity Commission's model governing documents:

- Memorandum and Articles of Association for a Charitable Company (GD1)
- Declaration of Trust for a Charitable Trust (GD2)
- Constitution for a Charitable Unincorporated Association (GD3)

The Charity Law Association also produces plain English model governing documents and these are acceptable to the Charity Commission.

Some large national charities produce a standard governing document approved by the Charity Commission that can be used by organisations associated with that charity. The Charity Commission can give you a list of these organisations.

We want to become a company limited by guarantee and a registered charity, which should we do first?

All companies must register with Companies House, whereas charities must register with the Charity Commission. However the Charity Commission can't register an organisation that doesn't formally exist so you must register as a company limited by guarantee first—but *make sure your governing document is suitable for charitable status.*

When you're ready to register:

Contact the Charity Commission and ask for their Registration Pack (available in Welsh or English), or download it from the website.

Getting to grips with the jargon

Charitable objects - is another word for your purposes or aims & objectives within which you must operate.

Trustees - 'persons having the general control and management of the administration of a charity' (section 97 of the Charities Act 1993). These are typically full voting member of the governing body who may be called a variety of names including: *managing trustees, committee members, governors or directors.*

Governing document - any document that sets out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, and less typically a will, conveyance, Royal Charter, or Scheme of the Charity Commissioners.

Limited liability - in most cases the Directors (governing body members) of a charitable company are protected from personal liability, and the company is only liable for debts to the amount of its available assets, which include the paid up amount of the members' guarantee payments (see below).

Company limited by guarantee - the members of the company guarantee to pay a fixed amount in the event the company calls up the guarantee or winds up, and this is usually a nominal sum between £1 and £10 pounds. Unlike a company limited by shares, no profits are distributed to the members but they can vote at general meetings. This is the normal company structure used in the voluntary and charity sector.

Unincorporated association - a group of people who come together for a common purpose and agree to be bound by a set of rules most commonly known as a Constitution. Such organisations are not considered a distinct legal entity in their own right and thus do not enjoy limited liability.

Trust - A trust is a legal relationship that arises where property is vested in a person or persons called the trustees, and which those trustees are obliged to hold for the benefit of other persons called beneficiaries. The interests of the beneficiaries will usually be laid down in a Trust Deed which creates the trust.

Trusts are not considered a distinct legal entity in their own right and thus do not enjoy limited liability.

Further advice

Charity Commission for England & Wales

Tel: 0845 3000 218

www.charity-commission.gov.uk

Companies House

Tel: 0870 3333 636

www.companies-house.gov.uk

Disclaimer

The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.

For further information contact

Bridgend Association of Voluntary Organisations

112-113 Commercial Street, Bridgend, CF34 9DL

Registered Charity 1062850

Tel: 01656 810400

bavo@bavo.org.uk

Fax: 01656 812151

www.bavo.org.uk



Tel: 0800 2888 329

www.wcva.org.uk

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