

1. Getting started

1.6 Charitable status

What is a charity?

The Charities Act 2006 defines a charity as an organisation that exists:

- for exclusively charitable purposes, and
- is for the public benefit.

The Act consolidated the existing case law and introduced 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, and it allows the Courts to introduce new charitable purposes as they arise.

A charity must pursue its activities for public benefit, not for private gain.

In addition to showing that the organisation will pursue one of more of these charitable purposes, every charity must have regard to the Charity Commission's guidance and demonstrate how it is going to deliver public benefit.

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.

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

The regime in relation to 'excepted' or 'exempt' charities is changing.

- *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 has introduced a phased programme requiring exempt charities that do not have an existing Regulator, and many of the excepted charities, to register. This regime will 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).

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 take many forms, the most common being: an unincorporated association, a company limited by guarantee, or a trust.

The Charities Act 2006 introduced a new legal structure, the Charitable Incorporated Organisation ('CIO'), which should be available from mid 2010. This is a company structure designed specifically for charities and solely regulated by the Charity

Commission, thus doing away with the need for dual reporting to both the Commission and Companies House.

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?

Currently 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 acceptable to the Charity Commission (such as one of their models).*

NB. When the CIO becomes available, you will only have to register with the Charity Commission if you choose this structure.

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 to third parties (but can still be held personally liable to the company/charity for breaches of trust and company law), 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.

Charitable Incorporated Organisation - A CIO will be a body corporate that will have a Constitution rather than Memorandum and Articles of Association used by other company structures. Its principal office must be in England or in Wales, and it must have one or more members. A CIO's members will either be liable to contribute up to a specified amount to the assets of the CIO if it is wound up (like a company limited by guarantee), or not liable to make any such contribution.

A CIO may have a body of members distinct from its charity trustees (an "association CIO") or its charity trustees and members may be the same people (a "foundation CIO"). Model constitutions for both of these forms will be made available on the Charity Commission website when the CIO is formally launched from Spring 2012.

Unincorporated association - a group of people who come together for a common purpose and agree to be bound by a set of rules typically 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: 0303 1234 500

www.companies-house.gov.uk

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