

# Torfaen Voluntary Alliance

Your local county voluntary council



## 1. Getting started

### 1.6 Charitable status

#### What is a charity?

The Charities Act 2011 defines a charity as an organisation that exists:

- for exclusively charitable purposes, and
- is for the public benefit (i.e. not for private gain).

The Act also defines a 'charitable purpose' as one that falls within the following list of descriptions of 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.

Each item listed is a description or 'head' of charity rather than a fully-stated charitable purpose in itself. 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.

In addition to showing that the organisation will pursue one of more 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 (the 'objects') 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 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 objects 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, and
- is based in England or Wales.

Small charities below this threshold are not required to register, and there are separate charity regulators for those based in Scotland and Northern Ireland.

Just because a small charity isn't registered doesn't make it any less of a charity, it simply means it can only be referred to as a charity rather than a registered charity. It still has to abide by general charity law though, and falls under the jurisdiction of the Charity Commission.

Some charities are not required to register with the Charity Commission, as they are classed as being 'exempt' or 'excepted'.

- *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* – some charities of certain types are excepted from registering if their income is below a particular threshold (e.g. some religious charities, Boy Scout and Girl Guide charities and some charitable funds of the armed forces)

The Charity Commission has more detailed information about both exempt and excepted charities on their website if you would like to find out more.

## **What are the benefits of being a registered charity?**

- It is good for public confidence in the organisation, as being registered with the Charity Commission is often 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, with a discretionary further 20% so that some local authorities may give as much as 100% relief to charities.
- 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 are 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 (as above).

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

If the organisation wants charitable status, it must cease its non-charitable activities as a charity can only be registered if its purposes are wholly charitable. In such a situation the organisation would need to decide whether the benefits of charitable status are worth doing this, or alternatively it could set up a separate/subsidiary 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. 'Charitable status' refers to whether an organisation is a registered charity or not, but that organisation could have one of a number of legal structures. Voluntary organisations will most commonly have chosen to adopt one of the following legal structures: an unincorporated association, a company limited by guarantee, or a trust.

The Charities Act 2006 also introduced a new legal structure, the Charitable Incorporated Organisation ('CIO'), which (after numerous delays) became available in December 2012. This is a company structure designed specifically for charities which is solely regulated by the Charity Commission, thus doing away with the need for dual reporting to both the Commission and Companies House. There has been a phased implementation, however, for new organisations choosing a legal structure for the first time, or existing ones looking to change from their existing legal structure to a CIO. If you are considering the CIO as a legal structure for your organisation, please check the Charity Commission's website for details of whether you are able to proceed with this yet, depending on your situation.

Further details of a variety of legal structures, including those mentioned above, can be found in [1.5 Choosing legal structures](#).

## **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](#), which include:

- Memorandum and Articles of Association for a charitable company (GD1)
- Model trust deed for a charitable trust (GD2)
- Constitution for an unincorporated association (GD3)
- Association or foundation model constitution for a CIO
- Constitution for a small charity

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 provide [a list of these organisations](#) on their website.

## **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 cannot register an organisation that does not 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 before doing so (such as one of their models)*.

**NB.** If you are looking to set up an organisation as a CIO, you will only have to register with the Charity Commission rather than with them and Companies House (see above).

## When you are ready to register:

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

## Getting to grips with the jargon

*Charitable objects* - this is another term for your charity's purposes, or aims and objectives, within which you must operate.

*Trustees* - section 97 of the Charities Act 1993 defines trustees as '*persons having the general control and management of the administration of a charity*' (). 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. NB: if someone is on the governing body of an organisation that is also a company, they will be classed legally as a director of that company (under company law) as well as being a trustee in charity law.

*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. The type of governing document used to set up an organisation is usually dictated by the legal structure chosen for that organisation.

*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. This will include the paid up amount of the members' guarantee payments (see below). More information on limited liability is given in [5.7 Liability of trustees and governing body members](#).

*Company limited by guarantee* - the members of a company guarantee to pay a fixed amount in the event that 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 third sector.

*Charitable Incorporated Organisation (CIO)* - A CIO is a company structure that was designed specifically for charities, and it has a Constitution rather than a Memorandum and Articles of Association (which is used by other company structures). Its principal office must be in England or in Wales, and it must have one or more members. Limited liability applies to CIOs in the same way that it applies to companies limited by guarantee (see above).

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 are available on the [Charity Commission website](#).

*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 as incorporated organisations do.

*Trust* - A trust is a legal structure 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 as incorporated organisations do.

## Further advice

Charity Commission for England & Wales

Tel: 0845 3000 218

<https://www.gov.uk/government/organisations/charity-commission>

Companies House

Tel: 0303 1234 500

<https://www.gov.uk/government/organisations/companies-house>

## 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

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