

Guidance Notes

Becoming a registered charity

1. What is a charity?

Any voluntary organisation or community group is a **charity** and has **charitable status** if:

- it is a not-for-profit organisation (this means that the organisation's constitution includes a clause preventing profits from being distributed to members or management committee, i.e. the organisation can accumulate profits but these must be used for the purposes of the organisation only).
- it is for the benefit of the public, and
- all its purposes (or objects) are charitable (as they are set out in the governing document/constitution).

For an organisation to be charitable its aims and objectives must fall under what the Charity Commission considers charitable. Under the new Charities Act 2006 there are 13 charitable purposes/aims:

1. the prevention or relief of poverty
2. the advancement of education
3. the advancement of religion
4. the advancement of health or the saving of lives
5. the advancement of citizenship or community development
6. the advancement of the arts, culture, heritage or science
7. the advancement of amateur sport
8. the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
9. the advancement of environmental protection or improvement
10. the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
11. the advancement of animal welfare
12. 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;
13. any other purposes charitable in law

The public benefit requirement:

The charities Act 2006 requires that all charities must be able to demonstrate that their aims are for the public benefit. Charities must meet two key principle to show that they are for the benefit of the public:

- There must be an identifiable benefit or benefits
- Benefit must be to the public, or a section of the public

The Charity Commission also requires that the Trustees Annual report includes a statement showing how the charity has complied to the public benefit duty.

For more information about the charitable purposes and public benefit duty, check the Charities Commission website, www.charitycommission.gov.uk/ or call the advice line 0845 3000218.

There is often a disparity between what is the general view on what is charitable and what the law considers it to be. For instance there are restrictions concerning charities engaging in political activities, on the other hand charities are allowed to charge for their services.



Note the following:

- 1) An organisation does not become a charity by registering with the Charity Commission – by definition it is a charity if it fulfils the three criteria above.
- 2) Charitable status is different from the organisation's legal structure (i.e. unincorporated association, company limited by guarantee, trust, industrial and provident society, community interest company).

2. Who needs to register with the Charity Commission?

A charity becomes a **registered charity** when it registers with the Charity Commission.

Under the Charities Act, any voluntary or community organisation with charitable purposes and an annual income above £5,0000 should register with the Charity Commission. Charities under the threshold can apply for register voluntary registration.

Some charities, called excepted charities, were not required to register. These charities include very small organisations that do not fulfil the minimum requirements above, as well as some churches and other places of worship. Charities that are subject to the supervisory powers of other bodies are considered exempt charities, and not required to register with the Charity Commission. Examples, are Industrial and Provident Societies, many state schools and most Universities. The new 2006 Charities Act requires Charities that were 'excepted' and some that were 'exempt' to register if their gross income is above £ 100,000.

3. Advantages and disadvantages of becoming a registered charity

The main advantages of becoming a registered charity are in terms of taxation:

- Charities do not normally have to pay income or corporation tax, capital gains tax, stamp duty, and gifts to charities are free of inheritance tax.
- Charities pay no more than 20% of normal business rates on buildings which they use and occupy to further their charitable purposes;
- They can get special VAT treatment in some circumstances;

Other advantages are:

- Some funders only give grants to registered charities.
- A registered charity is a more formal structure that can represent and help to meet the needs of the community;
- Registered charities are able to give the public the assurance that they are being monitored and advised by the Charity Commission;

Some of the disadvantages (limitations) are:

- Under Charity law, there are restrictions on what charities can do, both in terms of the types of work they do, and the ways in which they can operate.
- A charity must have exclusively charitable purposes, this means that they have to stop its non-charitable activities. Therefore, you should consider carefully if becoming a charity will severely restrict the planned activities of your organisation.
- The degree and level of political or campaigning activities which a charity can take on are limited under Charity law.
- There are rules applying to trading by charities.
- Trustees are not allowed to receive financial benefits from the charity which they manage, unless this is specifically authorised by the governing document of the charity or by the Charity Commission.
- Trustees need to avoid any situation where charitable and personal interests conflict.
- Charity law imposes certain financial reporting obligations, which vary with the size of the charity.

4. What do you need to do to register as a charity?

To register a charity:

- Check that all the purposes of your organisation are charitable and that your organisation meets the other minimum requirements (e.g. income above 5,000 per year).
- Check that the proposed name for your charity does not yet exist, by consulting the Register of Charities (this can be done online at www.charitycommission.org.uk or by calling 0845 300 0218).
- Request a 'Registration Application Pack' from the Charity Commission and complete it (it can also be downloaded) or register on-line.
- In addition, if your organisation plans to or works directly with vulnerable beneficiaries (e.g. children and young people), it needs to enclose a Child or Vulnerable Adult safeguarding policy and an assurance that the organisation has carried out the necessary checks with Criminal Records Bureau or any other relevant agency (e.g. Social Services).
- Include 2 certified copies¹ of the governing document and one certified copy of the minutes of the general meeting of members at which the constitution was adopted.
- If your organisation has been in operation for over 1 year you need to include copies of the financial accounts (covering at least 3 years).
- Submit any supporting information, which may help the commission understand exactly how the organisation will meet its charitable aims. This may include promotional literature, independent assessments from experts, lottery grant applications, newspaper articles, business plans etc. Information about how the organisation will operate; a description of its proposed activities should be given.

During the registration, the Charity Commission, if not satisfied that the purposes of your charity are all exclusively charitable, may propose alterations to the initial objects. This obviously, requires negotiation with your organisation. If you agree to make the proposed changes, your organisation will need to amend its governing document. The Charity Commission may also suggest changes to the way the charity is run.

If registration is refused, your organisation can request a review of the decision.

Once your application is successful your organisation's receives its registration name and a certificate. The name and charity number will be entered into the Register of Charities.

5. Reporting requirements to the Charity Commission and the public

Once your organisation is formally registered as a charity there are a number of ongoing duties and responsibilities with the Charity Commission that need to be fulfilled. The following is a list of some of the things you (or the trustees) will have to do:

- Prepare and keep accounting records, such as cash books, invoices, receipts, etc. –these should be kept for at least 6 years.
- Prepare and keep charity accounts;

¹ A certified copy needs to be signed and dated by a member of the organisation.

- Make the accounts available to the public on request
- Inform the Charity Commission about changes to your governing document;
- Inform the Commission of changes to the contact details of your charity (e.g. address telephones);
- Inform the Commission if your charity no longer exists or operates;
- Return the Register Check Form (RCF) that the Charity Commission sends out each year, to keep the Commission informed of any changes to the Register.
- Charities with an income or expenditure over £10,000 are obliged to send to the Charity Commission an Annual Return (a form sent by the Charity Commission) and the charity's Annual Report and accounts, within 10 months of the end of the charity's financial year. An independent examination or full audit is also required.
- Charities with a gross income or expenditure not above £10,000 are not required to send to the Commission an Annual Return or Annual Report, but need to return an Annual Update form. However, they might need to have an independent examination or full audit if required by the governing document or funders.

Charities with an annual income over 10,000 must include a statement saying it is a registered charity is all its cheques, documents related to financial transactions, fundraising material and other documents.



SORP

The Statement of Recommended Practice for Charities (SORP) provides a basic framework for preparing annual accounts and reports. Charities with a gross income over £100,000 or those that prepare accrual accounts are expected to prepare their accounts using this framework. The revised Statement of Recommended Practice for Charities (SORP 2005) was issued on 04 March 2005. More information is available from the Charity Commission on 0845 300 0218 or its website, www.charitycommission.gov.uk

The members of the management committee, the Trustees, have special responsibilities related with charity law and trust law. For more details refer to the Charity Commission's booklet CC3 'Responsibilities of Charity Trustees' or go to their website.



Trustees responsibilities

Trustees have the legal responsibility for running the organisation. Some of the duties of the trustees are: duty to comply with the governing document, duty to always act in the best interest of the beneficiaries of the organisation and to avoid possible conflict with personal interests, duty to safeguard the assets of the organisation (e.g. grants, equipment, property), duty of care when making decisions regarding the charity and/or its beneficiaries).

If you would like further information or advice on any of the issues in this Guidance Notes, contact the Charity Commission on 0845 300 0218 or email them at http://www.charitycommission.gov.uk/About_us/Contacting_us/default.aspx

The Wandsworth Voluntary Sector Development Agency (WVSDA) provides information, advice and training to voluntary and community groups. Whilst every effort is taken to ensure the information, advice and support we offer is current, relevant and accurate, it does not constitute legal advice.

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