

Registering as a Charity

Contents	Page
Starting and registering a charity	2
Meaning of words or phrases used in this guidance	2
PART I - STARTING A CHARITY	4
Why start a charity?	4
Which charities need to register	6
Charitable purposes	7
Purposes which are not for the public benefit	7
First Group charitable purposes	8
The relief of financial hardship	8
The advancement of education	9
The advancement of religion	9
Second Group charitable purposes	9
Other charitable purposes for the benefit of the community	9
Some non-charitable purposes which are often presumed to be charitable	10
Appeals for funds	10
Disaster appeals	11
Charity trustees	11
Considerations for potential trustees	12
Can anyone act as a trustee?	12
What are the qualities needed to be a trustee?	12
What principles are needed to guide trustees when administering their charity?	12
What are the liabilities of trustees?	13
How often should meetings take place?	13
Types of governing document	14
Choice of governing document	14
Model governing documents	14
Standard governing documents	14
Speeding up your application	15
What kind of organisation does a constitution create?	16
What kind of organisation does a trust deed create?	18
What kind of organisation does a memorandum and articles of association create?	20

Choosing a name	22
The charity's name	22
The Register of Charities	22
Companies using the word charity or charitable in their title	22
PART II - THE REGISTRATION PROCESS	23
How to apply	23
Declaration by the trustees or promoters	23
Supporting information	23
What happens when we receive your application?	23
Will we consider an application where the governing document is in draft form, that is, the organisation does not yet exist?	24
What happens if your application is unsuccessful?	24
Date of registration	25
What happens after registration?	25
Annex A	26
Charities that do not need to register	26
Useful addresses and telephone numbers	27

Starting and registering a charity

1. We are delighted that you want to play an active part in a charity. This guidance is about some of the issues that you may want to consider if the charity is in England or Wales. It covers:

- a) do you need to start a new charity;
- b) which charities need to register;
- c) the registration process, etc.

The guidance is available in English and Welsh, and in summary in Arabic, Bengali, Cantonese, Gujerati, Kurdish, Somali, Urdu and Vietnamese. It is also on our internet site www.charity-commission.gov.uk.

Meaning of words or phrases used in this guidance

2. In this guidance we have used words or phrases which have a specific meaning. We explain what we mean by these words and phrases below:

Beneficiaries means the people (or in some cases, organisations) which the charity is set up to help. The charity's governing document usually explains who the beneficiaries are.

Breach of trust means acting in a way which is inconsistent with the powers and duties of the trustee, whether those powers and duties are set out in the charity's governing document, or are part of general law.

Central Register means the place, at our offices, where you can view the Register.

Governing document means any document that sets out the charity's purposes and, usually, how it is to be run. It may be a trust deed, constitution, memorandum and articles of association, Scheme of the Commissioners, conveyance or will.

The **1993 Act** means the Charities Act 1993.

Paying includes not only payment in money, but also such things as free (or subsidised) accommodation or the provision of a car.

Property means land, buildings, cash, investments or any other possession, which are owned by the charity.

Promoters are people intending to set up (establish) a charity - if the charity is registered then they may become its first trustees.

The Register means the computerised Register of Charities in England and Wales. Some of the particulars on the Register can be found on our internet site (www.charity-commission.gov.uk)

Trustees. You are a charity trustee if you are:

- the trustee of a charitable trust (charitable trusts can be created by a declaration of trust or by someone's Will);
- the director of a charitable company (a charity that is a company with a memorandum and articles of association as the document which sets out how the charity is to be run); or
- a member of the committee which is responsible for running a charitable group such as a community association or a parent teacher association.

As a charity trustee you are responsible for the general control and management of the charity. Because of this you may be known as a "managing trustee". There are two other types of trustees that you may hear about or wish to have: "holding" trustees and "custodian" trustees. These types of trustees have particular functions, which are described below, and they must always act on the lawful instructions of the managing trustees.

Custodian trustee means a corporation (not individuals) whose main function is to hold the legal title to investments and property on behalf of the charity. Custodian trustees can act only on the lawful instruction of the charity or managing trustees. A custodian trustee is a form of holding trustee but it has specific responsibilities as set out in section 4 of the **Public Trustee Act 1906**: it does not have any powers of management.

Holding trustee: This is a person, corporation or individual who holds legal title to a charity's property on its behalf. The person's name is the one shown on the land register or company stock register as holding the legal title to land or shares belonging to the charity. The charity's governing document may confer additional powers and responsibilities on the holding trustee(s), but holding the legal title to the charity's property is usually all they do. Provided that holding trustees act only on the lawful instructions of the managing trustees they will not be held responsible for any action (or lack of action) of the managing trustees.

Must is used to refer to actions that trustees, or their agents or employees, have to take by law.

Recommend or **advise** are used where we are suggesting to the trustees actions which we consider to be good practice but which are not legal requirements.

PART I - STARTING A CHARITY

Why start a charity?

3. Many people assume that they must set up a new charity if they want to carry out voluntary work. However, this is not always correct. You should consider the following points to decide whether a new charity is the best way to proceed:

Is there another charity already doing similar work?

- There are more than 180,000 registered charities, working throughout the UK and overseas, which undertake an extremely wide range of work. It is very likely that a charity already exists which is doing the kind of work which you would like to carry out, and there may be one working in your area of the country. We suggest that you think about whether it would be better to offer your services to, or combine with, an existing charity. It is usually less effective to have several organisations trying to carry out the same work in the same place, and it duplicates running costs.
- If you wish to commemorate someone close to you, it may be possible to create a separate named fund within an existing charity: this may be just as effective as creating a new charity.
- If you would like to look for charities in your area, you can find basic details from the Register on our internet site: www.charity-commission.gov.uk. Or you can telephone our Central Register on the number listed on page 27 of this booklet.

What are the prospects for raising funds?

- The funding available to the charitable sector is limited. Any new charity may find it more difficult to get funding because local authorities, the public and organisations who give money to charities may prefer to continue to give money to charities with a proven track record, rather

than a new charity. Our guidance **Charities and Fund-raising (CC20)**, which is available in English and Welsh, gives more information about this aspect.

What are the main advantages of being a charity?

The main advantages are that charities:

- do not normally have to pay income/corporation tax (in the case of some types of income), capital gains tax, stamp duty, and gifts to charities are free of inheritance tax;
- pay no more than 20% of normal business rates on the buildings which they use and occupy to further their charitable purposes;
- can get special VAT treatment in some circumstances;
- are often able to raise funds from the public, grant-making trusts and local government more easily than non-charitable bodies;
- can formally represent and help to meet the needs of the community;
- are able to give the public the assurance that they are being monitored and advised by us;
- can seek advice from us; and
- can get information from us, for example, our range of free publications.

What are the limitations of being a charity?

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. Some organisations may have a range of activities, some of them charitable, some of them not. To become a charity that organisation would have to stop its non-charitable activities. Promoters will need to consider carefully if becoming a charity will severely restrict their planned activities. If so, charitable status may not be right for your organisation.
- The extent of political or campaigning activities which a charity can take on are limited (guidelines can be found in our booklets **Political Activities and Campaigning by Charities (CC9)** and **Political Activities and Campaigning by Local Community Charities (CC9(a))** which are available in English and Welsh).
- Strict rules apply to trading by charities. Guidance can be found in our booklet **Charities and Trading (CC35)** available in English and Welsh.

- 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 us. Financial benefits include salaries, services, or the awarding of business contracts to a trustee's own business from the charity. Benefits which are incompatible with the establishment of an organisation for **exclusively** charitable purposes cannot be authorised at all (further guidance can be found in our booklet **Payment of Charity Trustees (CC11)**, available in English and Welsh). Trustees are, however, entitled to be reimbursed for their reasonable out-of-pocket expenses, for example, train fares to trustee meetings.
- Trustees need to avoid any situation where charitable and personal interests conflict.
- Charity law imposes certain financial reporting obligations; these vary with the size of the charity.

Which charities need to register?

4. Generally, if an organisation is a charity then it must apply to the Commission for registration, and the Commission must register it. The only exceptions are set out in Annex A.

5. A body is a charity if it is:

- set up under the law of England and Wales (para 6); and
- is established for exclusively charitable purposes (paras 7-22).

6. We are the Charity Commission for England and Wales. We cannot register organisations set up under the laws of a foreign country, or in Scotland, Northern Ireland, the Isle of Man, or the Channel Islands. Whether we can register the organisation therefore depends on whether the law which applies to the organisation is that of England and Wales. For companies this normally means that they must themselves be registered in England and Wales. In other cases if the governing document itself does not make this clear, the law which applies will be that of the country with which the organisation has its closest connection. This will depend on the extent to which:

- the organisation's centre of administration is in England and Wales;
- most of the trustees live in England and Wales;
- most of the organisation's property is in England and Wales.

We will give advice where there is any doubt about the registration of such an organisation.

Charitable purposes

7. To be a charity an organisation must have purposes which are exclusively charitable. A charity's purposes are its objects or aims which are usually set out in its governing document. The meaning of "charitable purposes" is largely based upon the decisions of the Court and ourselves over the years.

8. Charitable purposes can be grouped under four broad headings:

First Group -

- the relief of financial hardship;
- the advancement of education; and
- the advancement of religion.

Second Group - certain other purposes for the benefit of the community.

9. For both groups it is essential that the purposes are also for the public benefit. This means it is for the benefit of the community (or a significant section of it).

10. Where the purposes of an organisation come within the First Group of charitable purposes, we assume they are for the benefit of the public unless we have real doubts about them. In general, if we have doubts, we may ask you to show us how the pursuit of the organisation's objects will definitely benefit the public in a way that is recognised as charitable. Where an organisation is set up for Second Group purposes (other charitable purposes for the benefit of the community) we do not necessarily assume that it will be for the public benefit. Again, there must be clear evidence that there is a definite benefit for the public in a way that is recognised as charitable. In some cases, if an organisation is registered as a charity, we will refer the charity to our monitoring staff so that we can help the charity make sure that its activities do, in fact, benefit the public in this way.

Purposes which are not for the public benefit

11. In general, a purpose is not charitable if it is mainly for the benefit of a named person or specific individuals. It will also not be charitable if the people who will benefit from it are defined by a personal or contractual relationship with each other. For example, if the beneficiaries are related or connected to the person who is setting up the charity, or where they are defined by common employment or by membership of a non-charitable body, for example, members of a professional institute.

12. An exception to this general rule exists in the case of the relief of financial hardship, where the people to benefit can come from a more restricted group, such as people having the same employer.

13. The extent of public benefit may vary between different types of charity, and although it may not be possible to define exactly what amounts to actual benefit, or what forms a sufficient section of the public, no organisation can be charitable if:

- its purposes are illegal or could be said to further illegal purposes;
- it is set up for the personal benefit of
 - its trustees;
 - its employees (other than in the case of relieving need, for example, there is no reason why a charity should not operate a benevolent fund for its staff); or
 - other specific individuals;
- it is created for the specific purpose of carrying out political or propagandist activities; or
- its purposes are against the public interest.

First Group charitable purposes

The relief of financial hardship

14. Financial hardship is not defined by a specified amount of money which the beneficiaries have, although the person must be in genuine financial need. Relief of financial hardship also includes, for example, help to people who are suffering from the effects of old age, sickness or from a disability, where, in each case, there is also financial need. The hardship being suffered does not have to be long-term. Temporary hardship caused by job loss or sickness, for example, may qualify for help.

15. Charities may relieve hardship in many different ways, for instance:

- by giving money to beneficiaries;
- by providing food, clothing or housing;
- by giving advisory or other services to those in need; or
- by providing support for other organisations which give help to people suffering hardship.

16. Further guidance can be found in our booklets **Charities for the Relief of the Poor (CC4)** and **Charities for the Relief of Sickness (CC6)** which are available in English and Welsh.

The advancement of education

17. The advancement of education is not limited to formal education at schools, colleges or universities. It can also include:

- playgroups;
- organisations providing work-related training (for example, nursing or engineering); and
- research institutions.

18. Education in the charitable sense cannot include propagandist or political activities nor the study of subjects which have no educational value. If research is being done, it needs to be carried out in an objective and impartial way and the useful results must be made available, or accessible, to the public.

The advancement of religion

19. In general, no distinction is made between one religion and another. There is a general assumption that the advancement of religion is for the public benefit. For the advancement of religion to be charitable, a religion has to:

- be founded on a belief in a supreme being or beings; and
- involve expression of that belief through worship.

20. The advancement of religion can include the provision and upkeep of places of worship, paying ministers or priests, and holding services.

21. In some cases the advancement of religion is **not charitable**. This is where public benefit is clearly lacking. Examples of this include:

- organisations where the benefit is wholly private (such as an entirely enclosed religious order where the activities consist only of private prayer); and
- where an organisation is set up to promote the beliefs of a particular religion which undermine the accepted foundations of religion and morality, or are otherwise contrary to the public interest.

Second Group charitable purposes

Other charitable purposes for the benefit of the community

22. Purposes which benefit the community and are considered to be charitable include:

- the relief of old age, sickness or disability, **where there is no financial need**;

- promoting racial harmony;
- the resettlement and rehabilitation of offenders and drug abusers;
- providing help for victims of natural or civil disasters;
- the provision of recreational facilities which are open to everyone (for example, a sports centre);
- the provision of recreational facilities for particular beneficiary groups such as people with disabilities or the elderly;
- promoting industry and business for the public benefit.

Some non-charitable purposes which are often presumed to be charitable

23. The following are examples of organisations or purposes which are often assumed to be charitable, but in fact are not:

- sports clubs set up to benefit their members (as distinct from sports facilities open for everyone or specifically provided for special groups of people, such as elderly people);
- the promotion of political or propagandist purposes, or the promotion of a particular point of view;
- purposes which include arrangements where people running the organisation get significant personal benefit;
- raising funds for other charities where the organisers do not have any say over how the funds are spent;
- purposes which promote friendship or international friendship, for example, town twinning associations.

Appeals for funds

24. Fund-raising is not a charitable object in itself: it is simply an activity which can be undertaken to help achieve a charitable purpose. If a charity wants to raise money to carry out work which is not covered by the existing objects of the charity, it can create a new charity with specific purposes. Please contact us if you have any doubts about whether your proposed fund-raising purposes are authorised by the objects of your charity.

25. There are complex rules about fund-raising and we offer advice in our guidance **CC20 - Charities and Fund-raising** (available in English and Welsh). We recommend you read this and consider the following points of good practice.

- Great care should be taken over the wording of a written appeal when asking for money from the public. We recommend that you make sure the purposes for which the charity intends to use the money are accurately described.

- The record of a speech or broadcast may be regarded as evidence of the purposes of an appeal. The organisers of that appeal cannot alter the purposes of the appeal to something which is not consistent with the terms under which donors were invited to contribute. We recommend that care be given to the wording of any spoken appeal.
- If you want to raise money for the general purposes of an existing charity, you must make this clear and avoid any suggestion that the money will be used for a more specific purpose.
- If an appeal is for a specific purpose, such as paying for or restoring a building, we recommend that it states what will happen to the money if either not enough, or too much, is raised.

Disaster appeals

26. We advise that particular care is taken over an appeal to help the victims of a disaster (or their families) where the beneficiaries may be a relatively small number of people. Disaster appeals are not always charitable. A charity cannot be created if it is intended that specific people will have the right to assistance whether or not they are in actual need, or that the benefits are only for particular private individuals. Where a charitable disaster appeal fund is set up, people will only be allowed to benefit on the basis of their proven need.

27. We appreciate that decisions on disaster appeals normally need to be taken very quickly. We suggest that promoters should consult us at an early stage before launching such an appeal. The Attorney General’s guidelines about Disaster Appeals are set out in our booklet **CC40** which is available in English and Welsh. The Inland Revenue and Customs and Excise also jointly issue a booklet called Guidelines on the Tax Treatment of Disaster Funds, and free copies are available from the Inland Revenue at the address given at the end of this booklet.

Charity trustees

28. The term “charity trustee” is defined in section 97 of the 1993 Act as “the persons having the general control and management of the administration of a charity”. This is a legal definition of those people who will run and be responsible for the charity. This term is explained in paragraph 2 of this booklet.

29. All charities must have a clearly identifiable body of trustees, but they are often called various names depending upon what type of governing document the charity has. Some examples are in the following table:

Type of governing document	Charity trustees will usually be called
Constitution or rules	Executive or management committee members
Trust deed	Trustees
Memorandum & articles of association	Board, council of management or directors

Considerations for potential trustees

30. Whatever the trustees are actually called, their responsibilities as trustees are the same. The directors of charitable companies also have responsibilities under company law. The duties and responsibilities of a charity trustee are wide ranging and need to be taken seriously. Anyone who wants to be a trustee needs to be prepared to give the necessary time and effort to understanding and carrying out those responsibilities. Our guidance **Responsibilities of Charity Trustees (CC3)** sets these out.

31. It is a general legal principle that those who run the charity (the trustees) should not financially benefit from it, unless they are specifically authorised to do so, by the charity's governing document or by us. However, this legal principle does not prevent the charity trustees of a temple, or some other community charity, from enjoying the benefits of that charity as a member of their community. Trustees must avoid being placed in a position where their duties as a trustee conflict with their own personal interests.

Can anyone act as a trustee?

32. No-one under the age of 18 can be appointed as a trustee unless the charity is a registered company. Some people are disqualified by law from acting as charity trustees, including anyone described in section 72(1) of the Charities Act 1993. Broadly that covers:

- anyone who has been convicted of an offence involving deception or dishonesty, unless the conviction is spent;
- anyone who is an undischarged bankrupt;
- anyone who has previously been removed from trusteeship of a charity by the Court or the Commissioners;
- anyone who is subject to a disqualification order under the Company Directors Disqualification Act 1986.

It is an offence to act as a charity trustee while disqualified unless we have given a waiver.

What are the qualities needed to be a trustee?

33. Trustees need to be able and willing to give time to the efficient administration of the charity and the fulfilment of its trusts. We recommend that they be selected on the basis of their relevant experience and skills and need to be prepared to take an active part in the running of the charity. They ought not to be appointed for their status or position in the community alone; this is the function of patrons.

What principles are needed to guide trustees when administering their charity?

34. Trustees need to follow certain guiding principles:

- The income and property of the charity must be used or applied for the purposes set out in the governing document and for no other purpose.

- It must be applied with complete fairness between persons who are properly qualified to benefit from it.
- The trustees should not allow the charity's income to accumulate unless they have a specific future use for it in mind or they have a specific power to accumulate it. If the trustees are allowed a discretion about the use of the charity property, but are in some doubt about the proper exercise of that discretion, they should ask us for advice. Our guidance **Charities' Reserves (CC19)** explains more about this.
- Trustees are required to act reasonably and prudently in all matters relating to the charity and need always to bear in mind the interests of the charity. They cannot let their personal views or prejudices affect their conduct as trustees.
- They need to exercise the same degree of care in dealing with the administration of their charity as a prudent business person would exercise in managing their own affairs or those of someone else for whom they are responsible.
- It is good practice that where trustees are required to make a decision which affects the personal interests of one of their number, that person should not be present at any discussion or vote on the matter.

In matters of doubt, trustees should seek their own professional advice.

What are the liabilities of trustees?

35. If trustees act prudently, lawfully and in accordance with their governing document then any liabilities they incur as trustees can be met out of the charity's resources. But if they act otherwise they may be in breach of trust and liable to meet any liabilities of the charity which are a consequence of their own actions, or to make good any loss to the charity. Since trustees must act jointly in administering a charity, they will also be responsible jointly to meet any liability incurred by them or on their behalf. We are able to take proceedings in court for the recovery, from trustees personally, of funds lost to a charity as a result of a breach of trust by the trustees.

36. If trustees enter into contracts in the course of administering the charity, and as a result incur liabilities or debts which amount in total to more than the value of the charity's assets they may be sued personally for the difference by the charity's creditors. We strongly recommend that trustees be particularly careful when entering into substantial contracts or borrowings to ensure that the charity has the means to meet its obligations.

How often should meetings take place?

37. The charity's governing document should set out the way in which the business of the charity is to be conducted, in particular (if appropriate) the way in which meetings should be called and conducted, and will often say how often meetings should take place. Our advice on good practice is given in our guidance **Charities and Meetings (CC48)** but this cannot take precedence over the governing document.

More detailed information about the role and responsibilities of trustees is given in our booklet **CC3**.

Types of governing document

Choice of governing document

38. There are three main types of governing document, and the type you choose will determine the type of organisation the charity will be. The three main types of governing document are:

- Constitution or rules;
- Trust Deed;
- Memorandum and Articles of Association.

Brief guidance is given below on these types of governing document. If you require information in greater detail, please refer to our booklet **Choosing and Preparing a Governing Document (CC22)**.

Model governing documents

39. We produce model forms of these types of governing document:

- Model memorandum and articles of association - **GD1**
- Model trust deed - **GD2**
- Model constitution - **GD3**

40. The Charity Law Association (CLA) also produce suitable model governing documents for which a charge is made. To order copies of the CLA governing documents please e-mail Eileen Tyler, the CLA administrator, on Charitylaw@aol.com. For all other enquiries relating to the CLA governing documents please contact the Secretary, Ros Harwood, at Rollits Solicitors, Rowntree Wharf, Navigation Road, York YO1 9WE. Tel: 01904 625790, fax 01904 625807, e-mail ros.harwood@rollits.com.

41. Our models contain administrative provisions that are suitable for each of these types of organisation. However, it is still necessary for anyone using those models to insert the objects of the organisation, complete blank spaces left in certain clauses and select some clauses where options are available. Copies of these models are available from each of our offices, free of charge.

Standard governing documents

42. Some large national charities produce a standard governing document that can be used by organisations associated with that charity. These standard governing documents contain both agreed objects and administrative provisions that are specific to a particular type of organisation. A list of organisations for which a standard governing document has been agreed can be found on our website: www.charity-commission.gov.uk.

Speeding up your application

43. Adopting an appropriate model or standard governing document will speed up your application for registration. Organisations using a standard governing document will be required to confirm that they have approached the appropriate national body with regard to use of that document and that they will operate within the guidelines issued by that body.

44. Organisations which adopt one of our model governing documents will, similarly, be easier to consider because the administrative provisions have already been agreed, but some consideration will have to be given to the organisation's objects declared in that document and to its activities.

45. Before using either a standard governing document or one of our model governing documents, you will need to consider whether it is appropriate for your organisation.

46. The analysis overleaf may help you decide what is right for your organisation.

What kind of organisation does a constitution create?

Type of organisation:	Unincorporated Association
Trustees are usually called:	Executive or Management Committee members
Also known as:	Rules

The 'association' part of the description means that it is an organisation consisting of a group of people who have decided to co-operate in furthering what the organisation is set up to do, and who have certain parts to play in its administration.

The 'unincorporated' part of the description tells you that the organisation is not a company. This means that the association will not:

- (Unlike a company), have limited liability and a legal personality of its own (ie the charity trustees may be liable for the repayments of any debts which they have incurred on behalf of the charity, such debts can be met from the charity's own funds unless the charity trustees had not acted prudently, lawfully, and in accordance with the charity's governing document); or
- Be able to own land (and usually investments) in its own name.

It may be appropriate to establish an unincorporated association where any one or more of the following applies:

- The organisation is to be relatively small in terms of assets;
- The organisation is to be a local branch of a national charity, and a standard constitution exists for branches;
- It has a membership;
- The charity trustees are elected or appointed to hold office for a fixed period, usually 1 year;
- The charity trustees are to be elected by members;
- The views of local residents and organisations need to be represented through membership or as users of the facilities; and
- The objects of the organisation are to be carried out wholly or partly by, or through, its members (ie where the members undertake office or voluntary work on behalf of the organisation).

Professional Legal Advice

Generally, you do not need this. As a constitution is a simpler document than a trust deed or a memorandum and articles of association, you may not need the help of a professional legal adviser to set it up. We recommend standard provisions for a constitution, which are set out in our booklet **Choosing and Preparing a Governing Document (CC22)**.

How is a constitution put into operation?

A constitution is a less formal document than either a trust deed or a memorandum and articles of association. In practice, it is normally put into operation by being **adopted** (accepted for use) at a formal meeting of those people who are, or will be, the charity trustees and the general membership.

You will require a final typed version of the constitution which should therefore be signed by all the charity trustees:

- Dated the day of the meeting at which it was agreed; and
- A note that the constitution was formally adopted should be made in the minutes of that meeting.

What documents are needed for registration?

As well as the application form (**APP 1**) and the trustees' declaration (**DEC 1**), the following must be provided:

- A certified copy of the constitution;
- A certified copy of the minutes of the general meeting at which it was adopted; and
- A certified copy of the minutes of the general or special meetings where any subsequent amendments were approved by the general membership.

What kind of organisation does a trust deed create?

Type of organisation:	Trust
Trustees are called:	Trustees

Trust deeds may also be known by other names, such as a declaration or deed of trust, or deed of settlement.

A trust deed will create a **trust**. A trust cannot own land or sign documents in its own name.

It may be appropriate to establish a trust where some or all of the following apply:

- The organisation is to be run by a fairly small group of people;
- There is no time limit on how long the charity trustees will be in office (although they can be appointed for a specific period of time if necessary);
- New charity trustees are going to be appointed by the continuing charity trustees;
- The organisation is not going to rely on a membership for any part of its administration;
- The administration of the organisation is going to be simple;
- The organisation is to be a grant-making body only;
- Land and buildings are to be held on trust for permanent use for the purposes of the charity; and
- There is to be a restriction on spending capital.

Professional Legal Advice

A trust deed is a formal document, so you may need the help of a professional legal adviser to complete and execute it. We recommend standard provisions for this type of governing document, and these can be found in our booklet **Choosing and Preparing a Governing Document (CC22)**.

How is a trust deed put into operation?

It is **executed**: this means that it needs to be signed and dated, in the presence of an independent witness, by those who are setting up the trust. The witnesses must then sign their name against each of those signatures and give their address. The purpose of this is to verify the identity of those signing.

The trust deed should refer to a specific amount of money or some other asset that will belong to the trust at the time that the trust deed is executed. It is acceptable for a nominal sum of money to be declared, say £5-£10.

If the trust deed declares charitable trusts but does not refer to any actual assets which are held on those trusts at the time the deed is executed, then we cannot register the charity unless and until there is independent evidence that some property has actually been settled on the trusts of the deed.

As soon as the trust deed declares that the charity trustees hold at least a nominal sum or other specific property (not subject to any other trusts) we can register.

Does it need to be stamped?

Once a trust deed has been executed, it should be sent to the Inland Revenue, Office of the Controller of Stamps, in case it attracts stamp duty. All trust deeds should be presented to the local stamp office to determine whether stamping is required.

Your local telephone directory usually gives the address of the nearest office under 'Inland Revenue (Stamp Office)'. If it does not, telephone the Stamp Office in London on 020 7438 7452. *It is advisable to telephone the appropriate Stamp Office and ask what the procedure is before sending the trust deed.*

What documents are necessary for registration?

In addition to the application form (**APP 1**) and the declaration form (**DEC 1**) the following must be provided:

- A certified copy of the dated trust deed showing the names of the first charity trustees and the witnesses to their signatures;
- Evidence of adjudication by the local Stamp Office or a valid exemption certificate; and
- Certified copies of any supplemental deeds or deeds of variation showing subsequent amendments, duly signed and witnessed, showing evidence of stamping, if necessary.

What kind of organisation does a memorandum and articles of association create?

Type of organisation:

Company limited by guarantee or occasionally by shares

Trustees are called:

Board, council of management or directors

Memorandum and articles of association create a company. A company has an advantage over a trust and an unincorporated association in that it is "incorporated". This means that the law considers it to be a person, in the same way as an individual. Therefore a company, like an individual, can own land.

A company is a legal person quite separate from its members and directors (who, in the case of charitable companies are usually called members of the council of management). The directors are agents of the company and as such are not normally liable personally for its debts. A person who acts as a director whilst disqualified from being one may be personally liable.

A director may be liable to make payments *to* the company:

- if he or she acts in breach of trust or duty to the company; or
- if he or she is responsible for fraudulent or wrongful trading by the company (sections 213/214 Insolvency Act 1986).

The company will also have "limited liability" which means, in the case of a typical charitable company, that its members are normally only liable for the debts of the company to the extent which they have undertaken to guarantee them (usually the limit of liability stated in the memorandum of association is a nominal amount like £5) or, as the case may be, to the extent of the nominal value of the shares which they have subscribed.

A company is subject to company law, as well as to charity law, and there are certain duties which must be observed, such as the annual filing of accounts with the Registrar of Companies.

However, charitable companies can never be the same as commercial companies. The main purpose of commercial companies is to make profits for distribution to their members. The composition of a charitable company *always* precludes the distribution of profits to members. All the property of a charitable company is applicable for charitable purposes.

Which organisations use this type of structure?

It may be appropriate to establish a company where some or all of the following apply:

- the organisation is quite large;
- it will employ a lot of staff;
- it will deliver charitable services under contractual agreements;
- it will regularly enter into commercial contracts; and
- it will be a substantial owner of freehold or leasehold land or other property.

Professional Legal Advice

Because a company is subject to company law (which can be quite complex) you will need the help of a professional legal adviser to set it up.

We recommend standard provisions for this type of document which can be found in **Choosing and Preparing a Governing Document (CC22)**.

How is a memorandum and articles of association put into operation?

It is put into operation by being subscribed by one or more people in accordance with the provisions of Part I of the Companies Act 1985, and by registration with the Registrar of Companies at Companies House who will issue a **Certificate of Incorporation**. There is a fee for registering companies with the Registrar of Companies. (You can contact Companies House at Cardiff CF4 3UZ, telephone 02920 380801 or on their internet site at www.companies-house.gov.uk).

What documents are needed for registration?

In addition to the application form (**APP 1**), and the declaration form (**DEC 1**), the following must be provided:

- Certified copies of the memorandum and articles of association;
- A certified copy of the certificate of incorporation; and
- Certified copies of any special resolution showing subsequent amendments.

Choosing a name

The charity's name

47. The name of a charity is important. It is the name, rather than the charity registration number, that members of the public remember most about a charity. It is the charity's name that appears on its appeal literature and collecting tins. It is therefore important that charity names are sufficiently different to avoid confusion, and do not mislead members of the public in any way. Section 6 of the Charities Act 1993 gives us powers to make a charity change its name in certain circumstances.

48. A charity name should not include a word or expression which might cause offence. This would not be in the interests of a charity or the charitable sector as a whole. In some cases, such names might not be allowed by law.

The Register of Charities

49. Before we register a new charity, we will compare the proposed name with those already on the Register to see if there are any identical or similar names. If the proposed name is the same as, or too similar to, a name which has already been registered, we will decide whether the proposed name is acceptable for use again. Where it is not acceptable we will ask you to change the name. Whilst we cannot insist that a name is changed before registration takes place, we do have a power to order a name change once a charity is registered.

50. We strongly advise that, before setting up a new charity and executing a governing document, you carry out your own checks regarding the availability of names. You can do this either by viewing the Register on our internet site, www.charity-commission.gov.uk, or by telephoning us and asking for the Central Register.

51. Entering a name on the Register does not give the charity which uses it any rights to the name under general law. Nor can we guarantee the use of a particular name, even if at the time of enquiry, there appeared to us to be no objection to the use of that name. This is because we may not know of all names used by unregistered charities, or of names which may be legally protected by another charitable or non-charitable body.

52. Please note that the entering of a name on the Register does not prevent us from subsequently directing that the name to be changed. **We will not be responsible** for any costs incurred directly or indirectly by the charity as a result of any subsequent direction to change a name.

53. We cannot suggest names for charities.

Companies using the word charity or charitable in their title

54. If a company wants to use the words "charity", "charitable", "charities", "charity's" or "charities" in its title or any compound word which includes these, it requires approval from the Secretary of State for Trade and Industry before a Certificate of Incorporation can be issued. Prior to giving approval, Companies House will need to see confirmation from the Charity Commission that we have no objection to the use of these words in that organisation's title.

PART II - THE REGISTRATION PROCESS

How to apply

55. To register a charity, you will need to use the pack containing the application form for registration (which is available in English and Welsh). This can be obtained by returning the coupon at the back inside cover of this publication. **Only** ask for the pack if, having read this booklet, you believe that:

- your organisation is charitable; and
- it is required to register.

56. You will need to complete an application form (**APP 1**). A declaration form (**DEC 1**) will need to be completed by all trustees. These are enclosed in the Registration Application Pack. We also ask that you submit any relevant supporting information, which may help our understanding of exactly how your organisation will meet its charitable aims. The information provided in the Application and Declaration forms will be checked for accuracy. In addition, where the applicants propose to work directly with vulnerable beneficiaries (eg children and young people), the Commission may carry out checks with other Government Departments and statutory bodies as well as to organisations mentioned in the application.

Declaration by the trustees or promoters

57. We ask that each of the trustees sign the declaration form. We will not refuse to register an organisation simply on the grounds that the declaration form has not been completed, but we will ask why the trustees feel unable to sign. Whilst this may not be a legal obligation we think it reasonable that potential trustees acknowledge formally their responsibilities.

Supporting information

58. The type of supporting information we need to see will depend on the type of organisation. Examples may include promotional literature, independent assessments from experts, lottery grant applications if applicable, newspaper articles and so on. **We need as much information as you can give about how the organisation will operate, so a full narrative description of its proposed activities should be given, not simply a reiteration of the objects and powers from the governing document.** Evidence that the minimum income requirement for compulsory registration is likely to be achieved will also help to expedite your application, whether in the form of accounts, bank statements or written pledges of funding. At this stage, we are not simply looking for information to determine charitable status - we need to know as much as possible about what the proposed charity expects to do, so that we can advise the trustees, and prepare the ground for our ongoing relationship with the charity, as helper and regulator.

What happens when we receive your application?

59. We will provide a reply to your application within fifteen working days of receipt. This letter will either approve your application, ask for additional information so that it can be considered in greater depth, or reject the application setting out our reasons for doing so. You will be given the name and contact number for the person dealing with your application along with

a reference number to quote in future correspondence. In certain circumstances your application may be returned to you if information or documentation requested with your application has not been included. We may ask some questions which you feel do not have a direct bearing on whether or not the organisation should be registered as a charity. We ask such questions, not purely for consideration of charitable status, but because registration can be seen as the first step in a continuing relationship between the charity and the Commission, and the more information we have about the charity, the better able we will be to offer relevant support and advice to the charity in its later years.

Will we consider an application where the governing document is in draft form, that is, the organisation does not yet exist?

60. **In general the answer to this is “NO”.** The reason for this is that, in our experience, organisations which already exist have a clear idea of the ways in which they will carry out their objects. In the past we have found that, where an organisation submits a draft governing document, this often leads to lengthy correspondence because the promoters have no clear understanding of what they want to do. In many of these cases the organisation is never actually set up.

61. However, we may (in exceptional circumstances) consider a request from an organisation which has not yet formally adopted a governing document. Each request will be considered on its own merits but an example of the circumstances where we may consider a draft governing document is where a disaster appeal is due to be launched and time is short, or if the proposed charity is operating in a field which is on the fringes of charity law, and the views of our legal staff may need to be sought.

62. Where we do consider a draft governing document, we will look at it **only** to find out:

- whether the proposed purposes (objects) are likely to be charitable, based upon the information provided to us;
- whether the proposed activities are exclusively charitable; and
- whether any of the administrative provisions prevent charitable status being granted if they were to remain in the governing document.

63. Where the objects and activities appear to be charitable you will be asked to submit a formal application, but this is no guarantee that registration will be granted.

What happens if your application is unsuccessful?

64. If, having considered all the information provided with the application, we decide that your organisation is not exclusively charitable we will write to you and let you know why. The letter will also explain that if you disagree with our decision or if you feel we have misunderstood your application, you will need to write to us setting out the reasons why you think your organisation is charitable. This will allow us to review our decision. You have a right of appeal to the Court where, despite a review of the decision, we are unable to register your organisation.

Date of registration

65. If your application is successful, the date of registration is the date on which we enter your organisation on the Register of Charities. However, charitable status does not depend on registration but on the date that the organisation was set up as a charity. The Inland Revenue may backdate tax exemption to the date on which your organisation started to carry out exclusively charitable purposes, even if this was before the date of registration.

What happens after registration?

66. Registration is not the end of the process. You will have a number of ongoing duties and responsibilities, some of which may involve regular contact with us. This contact will not only provide you with advice and help when you need it, but provides the general public with confidence that charities are being effectively monitored and checked to make sure they are doing what they should. The following is a list of some of the things you will have to do if you are the trustee of a registered charity:

- keep your charity's accounts;
- submit an Annual Return to us, where relevant (further information can be found in guidance **Charity Accounts 2001: The Framework (CC61)** which will be sent to you if your application is successful - it is available in English and Welsh);
- tell us about any changes to your governing document (for example, changing the specified date of an Annual General Meeting or changing the number of trustee meetings);
- tell us about any changes to the details of your charity shown on the Register of Charities (for example the correspondent's address); and
- tell us if your charity no longer exists or operates.

67. If your application for registration is successful, we will send each trustee a letter reminding them of these duties, and we will also write to the nominated correspondent confirming your charity's entry on the Register of Charities.

Annex A

Charities that do not need to register

A1. In general all charities must register. However some charities, called **exempt** charities cannot register, and are not subject to our supervisory powers. These charities include:

- charities which are also Industrial and Provident Societies, within the meaning of the Industrial and Provident Societies Act 1965;
- charities which are also registered societies, within the meaning of the Friendly Societies Act 1974; and
- most universities.

A2. Some other charities are excepted from the need to register. These are charities with:

- an income of £1000 or less a year; and
- who do not own or occupy any land or buildings; and
- who have no permanent endowment.

In addition some other charities have been specifically excepted from the requirement to register by legislation or Commission order. All these charities are still subject to the other provisions of the 1993 Act, and our supervision.

In exceptional circumstances, we will consider registering, on a voluntary basis, a charity which is excepted from the need to register. The applicant will need to persuade us that there is some compelling reason to do this.

Useful addresses and telephone numbers

A. Charity Commission

Charity Commission Internet address:
www.charity-commission.gov.uk

Copies of most of our publications can be found at that address together with further advice on registration, duties of trustees, commonly asked questions about the accounts regulations and the Annual Return forms etc.

All general telephone enquiries: 0870 3330123

London

Harmsworth House
13-15 Bouverie Street
London EC4Y 8DP

Open 9am to 5pm weekdays.

Liverpool

2nd Floor
20 Kings Parade
Queens Dock
Liverpool L3 4DQ

Open 9am to 5pm weekdays.

Taunton

Woodfield House
Tangier
Taunton
Somerset TA1 4BL

Open 9am to 4pm weekdays

B. Other Useful addresses and telephone numbers

National Council for Voluntary Organisations (NCVO)

Regents Wharf
8 All Saints Street
London N1 9RL
Tel: 0800 2798 798

The NCVO offers advice on a wide range of subjects (eg registration, personnel, IT, EU policy, fund-raising, etc. It runs seminars and produces various publications (eg “The Good Trustee Guide”).

To join the NCVO your organisation must be national or have the potential to become national. However, the Trustees Services Unit Advice Line can offer direct advice to local groups.

Wales Council for Voluntary Action (WCVA)

Baltic House
Mount Stuart Square
Cardiff CF10 5FH
Tel: 029 2043 1700

WCVA is the voice of the voluntary sector in Wales. It represents the interest of and campaigns for voluntary organisations, volunteers and communities in Wales. It provides a comprehensive range of information, consultancy, funding, management and training services.

Wales Association of County Voluntary Councils (WACVC)

c/o G Benfield
WCVA
(Address as above)
Tel: 029 2043 1700

Directory of Social Change

24 Stephenson Way
London NW1 2DP
Tel: 020 7209 4949

The organisation offers a wide range of courses and training events on many subjects including volunteer management, communications and fund-raising. A wide range of publications is also produced (eg Fund-raising Handbook, Guide to the Major Trusts). Services are available to any voluntary sector group.

Charities Aid Foundation

25 Kingshill Avenue
Kings Hill
West Malling
Kent ME19 4TA
Tel: 01732 520000

The Foundation provides services to facilitate tax-efficient giving, and offers covenant administration services. It carries out research and publishes information on all aspects of funding concerning the voluntary sector. Its services are available to the voluntary sector in general.

Association of Charitable Foundations

2 Plough Yard
Shoreditch High Street
London EC2A 3LP
Tel: 020 7422 8600

E-mail: www.acf@acf.org.uk

The Association assists grant-making trusts and foundations, including new ones at the early stages of formation. It provides a variety of courses, seminars and publications on good practice in grant-making and on relevant aspects of charity law, and represents grant-making charities in the public arena. The Association is a membership organisation open to all grant-making charities, and welcome enquiries from non-members without obligation to join.

Institute of Charity Fund-raising Managers

Central Offices
Market Towers
Nine Elms Lane
London SW8 5NQ
Tel: 020 7627 3436

The ICFM Trust is a registered charity offering education and training courses in charity fund-raising with the aim of improving standards of performance and ethical practice in charity fund-raising.

The Institute is a professional one, and membership is open only to individuals who must abide by a strict code of practice.

Action with Communities in Rural England (ACRE)

Somerford Court
Somerford Road
Cirencester
Gloucestershire GL7 1TW
Tel: 01285 653477

The organisation offers advice and support on a wide range of issues from registration to maintaining buildings. It also provides training and publishes books and leaflets and has a special service for the managing trustees of village halls called "The National Village Halls Advisory Service."

Local ACREs assist charities and voluntary organisations in their area. The National Association offers advice direct, or can put charities in touch with their local ACRE.

Community Matters

8/9 Upper Street
Islington
London N1 0PQ
Tel: 020 7226 0189

The organisation provides advice and assistance, a Community Consultancy Service, courses, seminars, conferences and a wide range of publications. Its services are offered to new and established community organisations.

National Association of Councils for Voluntary Services (NACVS)

3rd Floor Arundel Court
177 Arundel Street
Sheffield S1 2NU
Tel: 0114 278 6636

This organisation is the national umbrella body for 250 Councils for Voluntary Service in England. A local Council for Voluntary Service provides advice, support and information to voluntary organisations and charities in their area, including help with registration. If you would like details of your local Council for Voluntary Service please contact NACVS as above.

Similar organisations to the NACVS exist for voluntary organisations and charities based in Wales. Please contact WCVA, details as on page 28.

Interchange Legal Advisory Service

Interchange Studios
Hampstead Town Hall Centre
213 Haverstock Hill
London NW3 4QP
Fax: 020 7813 7493

E-mail: legal@interchange.org.uk

This body gives advice to the whole range of charities, and proposed charities, including national and local groups. The advice covers the preparation of governing documents, advising on trust and charity law, and matters relating to trustees' responsibilities, employment, property, dissolution and insolvency.

Inland Revenue

St John's House
Merton Road
Bootle
Merseyside L69 9BB
Tel: 0151 472 6000 (General switchboard)
0151 472 6036/6037 (General enquiries - charities)
0151 472 6038 (Gift Aid)
0151 472 6043 or 6046 (Charity Trading)

The Inland Revenue are responsible for meeting claims for repayment of tax on charity investment income and covenants. The Inland Revenue has a range of booklets about tax reliefs available to charities.

Customs and Excise

All enquiries relating to VAT should be directed to your local Customs and Excise Office. Details of local offices can be found in the telephone directory.

Gaming Board for Great Britain

Lotteries Section
Berkshire House
168/173 High Holborn
London WC1V 7AA
Tel: 020 7306 6269

The organisation provides information about the regulations concerning lotteries. It is a Government Agency, and any individual may therefore seek information from the Board.

FICO (Scotland)

Trinity Park House
South Trinity Road
Edinburgh EH5 3SD
Tel: 0131 551 8127

Scottish Charities Office

25 Chambers Street
Edinburgh EH1 1LA
Tel: 0131 226 2626

Department of Health and Social Services
Voluntary Activity Unit

Charities Branch

Annex 3
Castle Building
Stormont Estate
Belfast BT4 3RA
Tel: 028 90522 780

Companies House

Cardiff
CF4 3UZ
Tel: 02920 380801

Registrar of Friendly Societies

25 The North Colonnade
Canary Wharf
London E14 5HS
Tel: 020 7676 5284

Housing Corporation

149 Tottenham Court Road
London W1P 6BN
Tel: 020 7393 2000

The London Stamp Office

The Controller of Stamps
Central Information Section
South West Wing
Bush House
London WC2B 4QN
Tel: 020 7438 7452

The addresses of local stamp offices can be found in your telephone directory.

The Charity Law Association

Ros Harwood
Rollit Farrel & Bladon
Rowntree Wharf
Navigation Road
York YO1 9WE
Fax: 01904 625807

E-mail: rjh@rollits.co.uk

Charity Commission Publications

We produce a range of publications, audio-cassettes and information sheets which are relevant to starting and registering a charity. They are listed below with appropriate reference numbers. For a full list of all the Commission's publications, see booklet CC1 (Charity Commission Publications).

Publications

CC2	Charities and the Charity Commission
CC3	Responsibilities of Charity Trustees
CC3(a)	Responsibilities of Charity Trustees: A Summary
CC8	Internal Financial Controls for Charities
CC9	Political Activities and Campaigning by Charities
CC9(a)	Political Activities and Campaigning by Local Community Charities
CC11	Payment of Charity Trustees
CC20	Charities and Fund-raising
CC20(a)	Charities and Fund-raising: A Summary
CC22	Choosing and Preparing a Governing Document
CC23	Exempt Charities
CC29	Charities and Local Authorities
CC37	Charities and Contracts
CC48	Charities and Meetings
CC49	Charities and Insurance
CC60	The Hallmarks of a Well-Run Charity

All the publications above are also available on audio-cassette, with the CC prefix in the reference number replaced by AC.

Also available:

RR1	The Review of the Register of Charities
RR2	Promotion of Urban and Rural Regeneration
RR3	Charities for the Relief of Unemployment
RR4	The Recreational Charities Act 1958
RR5	The Promotion of Community Capacity Building
RR6	Maintenance of an Accurate Register of Charities
RR7	The Independence of Charities from the State
RR8	The Public Character of Charity
RR9	Preservation and Conservation
GD1	Model Memorandum and Articles of Association for a Charitable Company
GD2	Model Declaration of Trust for a Charitable Trust
GD3	Model Constitution for a Charitable Unincorporated Association

Information sheets

- INF 5 Counselling
- INF 6 Charity Names
- INF 8 Promotion of Art
- INF 9 Animal Charities

Other languages

Most of our publications are also available in Welsh, and we also have summary publications in Arabic, Bengali, Cantonese, Gujarati, Kurdish, Somali, Urdu and Vietnamese. Please contact the Publications and Guidance Unit at our Taunton office for the latest details.

Braille

The following publications are also available in the Braille format:

- CC2 Charities and the Charity Commission
- CC3 Responsibilities of Charity Trustees
- CC3(a) Responsibilities of Charity Trustees: A Summary
- CC9 Political Activities and Campaigning by Charities
- CC20 Charities and Fund-raising
- CC24 Users on Board: Beneficiaries who become trustees
- CC44 Small Charities: Transfer of Property, Alteration of Trusts, Expenditure of Capital

The Internet

Our CC and RR ranges of publications are also available on our internet site:

www.charity-commission.gov.uk

The Registration Information Pack

This can be ordered direct from our Registration Helpline by ringing our central number:

0870 333 0123

Ordering other publications listed above

If you wish to receive copies of any of these publications, please complete the coupon on the back page and return it to the address shown.

Notes

Notes