

Setting up a Charity

Business Information Factsheet

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Introduction

A charity is an organisation that operates exclusively for a 'charitable purpose' which benefits the public, or a specific section of the public. Most charities must be registered with one of the UK's three national charity regulators.

Charity status is not in itself a legal structure. Anyone who is setting up a charity will need to choose a suitable legal structure for their organisation.

This factsheet explains the requirements that must be met before applying to register a charity, which include defining its charitable purpose, drawing up a governing document and appointing trustees. It also summarises the different types of legal structure that are suitable for charities and briefly outlines the charity registration process and annual reporting requirements.

The factsheet is a starting point only. Setting up as a charity may not always be the best option for an organisation to choose and it is important to take appropriate professional advice when necessary.

Defining the charity's purpose

In order to be registered as a charity, an organisation must pass the 'charity test', which means demonstrating that it operates for charitable purposes and for the benefit of the public or a sufficient proportion of the public.

The charitable purposes that are recognised by the three charity regulators across the UK include, for example, education, health, community development, the arts, amateur sport, the environment, animal welfare and the relief of poverty.

For a complete list of charitable purposes, go to:

- **England and Wales:** www.gov.uk/setting-up-charity/charitable-purposes.
- **Scotland:** www.oscr.org.uk/guidance-and-forms/meeting-the-charity-test-guidance.
- **Northern Ireland:** www.charitycommissionni.org.uk/manage-your-charity/register-your-charity/the-public-benefit-requirement.

Choosing a legal structure

Legal structures suitable for a charity are either 'incorporated' or 'unincorporated'.

An incorporated charity has its own legal identity, which means that the liability of trustees is limited and the charity can enter into contracts in its own name.

Incorporated charity structures include:

- **Charitable incorporated organisation (CIO).** Some CIOs (known as foundation CIOs) are run solely by trustees. Others are 'association CIOs', which are run by a wider membership.
- **Charitable company (limited by guarantee).** This is similar to other limited companies, except it is not limited by shares, cannot distribute profits to members and can only operate for its charitable purposes.

A charity with an unincorporated structure cannot enter into contracts in its own name, and its trustees are personally liable for its debts.

Unincorporated charity structures include:

- **Unincorporated association.** This has a wider membership, including members who can vote at meetings.
- **Trust.** This does not have a wider membership and is run solely by trustees.

For information about choosing a legal structure for a charity, go to www.gov.uk/guidance/charity-types-how-to-choose-a-structure#types-of-charity-structure.

Governing document

A charity's governing document is a legal document that sets out the charity's purpose and how it will operate. Depending on what legal structure a charity has, the governing document may be a trust deed, constitution, memorandum and articles of association, or other formal document.

In general, the charity's governing document should include information such as its charitable purposes, how it will be run, how many trustees it will have and rules about payments, such as expenses, made to trustees.

For model documents provided by the Charity Commission for England and Wales, go to www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents.

Appointing trustees

A charity's trustees (who may also be known as directors, governors, committee members or board members) are responsible for managing the charity and making decisions about its operation. They require a range of relevant skills such as financial management, fundraising or specific knowledge of the purpose of the charity.

Trustees must be aged over 18 (or over 16 for charitable incorporated organisations and charitable companies). They are legally bound to follow the requirements of the charity's governing document and of relevant legislation, and to act responsibly and with reasonable care and skill in the best interests of the charity.

Registering the charity

Most charities must be registered with one of the UK's three national charity regulators: the Charity Commission for England and Wales, the OSCR (Scottish Charity Regulator) or the Charity Commission for Northern Ireland.

However, there are some exceptions to the requirement to register. These include, for example, some charities with an annual income under £5,000, as well as Academy Trusts and certain other educational organisations.

The registration process differs slightly in England and Wales, Scotland, and Northern Ireland:

- In **England and Wales**, organisations can apply online to register with the Charity Commission for England and Wales at www.gov.uk/guidance/how-to-register-your-charity-cc21b.
- In **Scotland**, organisations can apply online to register with the OSCR at www.oscr.org.uk/becoming-a-charity/thinking-about-becoming-a-charity/step-5-how-to-apply.
- In **Northern Ireland**, organisations must complete an expression of intent form online and then wait for around six weeks before receiving a password that allows them to begin the application process. For more information, go to www.charitycommissionni.org.uk/manage-your-charity/registration-support.

Although the requirements are slightly different for each regulator, in general, applications submitted to charity regulators must provide information such as bank details, a copy of the governing document and a list of trustees, with signed declarations from each trustee stating they are willing and eligible to act as trustees.

In order to be eligible for tax relief, charities also need to register with HM Revenue & Customs (HMRC). This can be done online. Go to www.gov.uk/charity-recognition-hmrc for more information.

Annual reporting requirements

Registered charities must submit an annual return to the relevant national regulator each year. Detailed guidance about the information that must be submitted is available from the charity regulators, as follows:

- Charity Commission for England and Wales: www.gov.uk/guidance/prepare-a-charity-annual-return.
- OSCR (Scottish Charity Regulator): www.oscr.org.uk/managing-a-charity/annual-monitoring/.

- Charity Commission for Northern Ireland: www.charitycommissionni.org.uk/manage-your-charity/annual-reporting.

The responsibility for submitting returns and reports is jointly held by all trustees.

Enforcement

The three charity regulators in the UK have powers to investigate charity mismanagement and misconduct and ensure that trustees comply with their legal obligations.

Enforcement actions that regulators can take include freezing a charity's bank account, removing trustees, appointing additional trustees and removing charities from the register.

Key legislation

Charity registration is governed by the Charities Act 2011 and the Charities (Protection and Social Investment) Act 2016 in England and Wales, by the Charities and Trustee Investment (Scotland) Act 2005 in Scotland, and by the Charities Act (Northern Ireland) 2008 and the Charities (Accounts and Reports) Regulations (Northern Ireland) 2015 in Northern Ireland.

Useful resources

'Set up a Charity' (England and Wales)

www.gov.uk/setting-up-charity

'Becoming a Charity in Scotland'

OSCR (Scottish Charity Regulator)

www.oscr.org.uk/becoming-a-charity

'Start up a Charity'

Charity Commission for Northern Ireland

www.charitycommissionni.org.uk/start-up-a-charity

'Finding New Trustees'

Charity Commission for England and Wales

www.gov.uk/government/publications/finding-new-trustees-cc30/finding-new-trustees

Related factsheets

BIF066 Setting up in Business as a Co-operative

BIF349 Legal Structures for Not-for-Profit Organisations

BIF445 Community Interest Companies

BIF501 Community Amateur Sports Clubs

BIF526 Forming a Company Limited by Guarantee

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