

Setting up a group: Charitable status

What is a Charity?

A group with wholly charitable aims has charitable status whether or not it is registered with the charity commission. In its strict legal sense, a charity is an organisation established for charitable purposes, and will generally be registered under the *Charities Act 1993*.

Charitable Purposes

A group is charitable if all of its aims and objectives as stated in its constitution are charitable (the *Four Heads of Charity*):

- The relief of poverty
 - The advancement of religion
 - The advancement of education
 - Other purposes beneficial to the community
- N.B. Public benefit is assumed under the first 3 heads but has to be demonstrated under the fourth.

As long as a group can demonstrate that its activities are beneficial to the community (or a substantial part of it) there is scope for extending the traditional charitable frontiers. The following activities could fall into this category:

- Protecting lives or property of the community
- Resettlement and rehabilitation of ex-offenders and drug misusers
- Promoting industry, commerce or art
- Promoting moral welfare
- Providing public recreation and leisure facilities
- Conserving the national heritage

However this is a complex area, and not all apparently charitable activities are in fact charitable in law. This is currently under review, which will result in legislative changes aimed at clarifying and extending the categories of charitable activity.

All money, property and other assets held by a charity are held in *trust* for the charity's beneficiaries. The trust is between:

- The people who have provided the money or property to the charity;
- The governing body of the charity, who control the assets (trustees);
- The beneficiaries (users, clients, members etc), who receive or use the charities benefits or services.

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This is why charities are subject to trust law and why the members of the governing body have the responsibilities of charity trustees, even if they are called committee members, directors, or any other title. Being a charitable trustee brings with it additional duties specific to the role. The Charity Commission can provide information on the duties and liabilities of trustees.

Advantages of Charitable Status

An organisation, which has charitable status, will be entitled to the following,

Tax advantages

- Exemption from income tax, corporation tax and capital gains tax, provided that the charities income is applied only too charitable purposes.
- Exemption from inheritance tax.
- Receipt from the Inland Revenue of the income tax paid on a deed of covenant from an individual donor.
- Zero rating on certain supplies made by a charity, which is registered for VAT, and zero rating of certain supplies made to any charity.
- Exemptions on having to pay stamp duty.

Rate Relief

- Relief of 80% (and often 100%) on rates for property which is wholly or mainly used for charitable purposes and where the ratepayer is a charity.

Advice

- Advice from the Charity Commission on aspects of running the charity.

Fundraising

- Some funders particularly trusts, have a policy of grant aiding only registered charities. Having charitable status and in particular having a registered charity number also provides credibility when raising money from the public.

Disadvantages of Charitable Status

Charities activities are restricted in the following ways:

- The charity's assets can only be used for purposes set out in the governing document. This may restrict the charity's involvement in certain activities, e.g. trading.
- A Charity has limited powers to trade, it may sell its services as part of its charitable work, e.g. providing educational or community care services. It can trade if it is ancillary to the charity's primary purpose. If the charity wishes to undertake non-primary purpose trading it can set up a separate non charitable trading arm but this will tax and rated in the normal way.
- Any investment made by a trustee on behalf of a charity must be made in the best interests of the charity, must suit the requirements of the charity (e.g. with regard to access to funds).

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Charities activities are restricted in the following ways (Cont...):

- The Charity Commission has the power and authority to investigate charities where it thinks it appropriate.
- Charities must not have directly political aims.
- Members of the governing body cannot profit or benefit from the charity.

Other disadvantages:

- Charities are public bodies, open to public scrutiny
- All registered charities (unless excepted by law) must submit accounts to the Charity Commission and may be required by the Commissioners to have an audit carried out.
- The Charity Commissioners have considerable powers to investigate complaints, and if there is serious mismanagement to step in and even bring legal action against the charity, the members of its governing bodies and its employees.

How to register with the Charity Commission

Any organisation wanting to become a charity should obtain a copy of the Charity Commission's publication 'Registering as a Charity' (CC21). This is available on the charity commission website www.charitycommission.gov.uk or a copy can be requested via the Charity Commission helpline 0845 333 888. This publication explains the nature of charities, their advantages as well as their limitations, the different legal structures available to charities and the registration process.

A group will need to have agreed on the most appropriate legal structure, developed aims that are solely charitable by law, developed and adopted a governing document, a trust must execute and stamp its trust deed and a company must have registered with companies House and set up a bank account in the name of the organisation.

There are minimum requirements for charity registration. They are as follows:

- That the association's aims or objects, as stated in its governing document, are solely charitable (see the 4 heads of charity)
- That the association has one of the following:
 - A minimum annual income of £1,000 per year
 - Use or occupation of rateable land or buildings
 - A permanent endowment

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A charity registration pack should then be requested. The committee members (known to the Charity Commission as the Charity Trustees) must fill the Charity Commission's application form and each Trustee must complete a declaration (form DEC1) in which they certify that they are willing to act as Charity trustees and that they understand what it means to be a charity trustee (this information is supplied within the application pack).

It is difficult to say how long the registration process takes. It depends on how straightforward the case is. If the answers on the application and/ or the supporting documents are unclear, the Commission may ask for additional information or may ask to meet with the Trustees. This may not be because something is wrong, but because the commission does not have enough information to be certain that the organisation is indeed charitable in law.

For further information contact:

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