



Governance

Section two Charities

This section is relevant to organisations that are, or plan to become, registered charities.

Not all voluntary and community organisations are registered charities but being one provides a distinctive legal form and a special tax status.

Legal requirement – please note!

! The Charities Act 2006 made significant changes to charity law. These changes are being introduced in stages over the next few years. The most significant changes which affect charity registration are highlighted below with a red exclamation mark.

There are a number of terms used to describe a 'charity'. We have produced a summary of the key terms and definitions that are used below.

In this toolkit, we will use the term voluntary and community organisations (VCOs) when referring to both charities and voluntary and community organisations.

Here's a brief guide to some of the terms used for organisations:

Voluntary organisations

Organisations that are not-for-profit and neither public (for example, schools and hospitals) nor government-run; they tend to have been set up to benefit a specific community, or some part of society. Voluntary organisations tend to be larger and more formally structured than community organisations. Whether the organisation employs staff or not is often seen as a key 'dividing line' between the two. Many voluntary organisations are registered charities.

Community organisations

Organisations that are not-for-profit and neither public nor government-run; they tend to have been set up by a community to benefit the community, or some part of it. Community organisations tend to be smaller and less formally structured than voluntary organisations. They can become voluntary organisations. Whether the organisation employs staff or not is often seen as a key 'dividing line' between the

two. Swindon Borough Council has produced some guidance on their view of the difference.

Voluntary and Community Sector

All voluntary and community organisations (VCOs). It is sometimes known as the third sector (with the first sector being private companies and the second sector being government and public organisations).

Not-for-profit

Whereas the aim of private sector companies is to make profits for their owners, not-for-profit organisations have social aims. All charities and most community organisations are not-for-profit but some run private trading companies whose profits come back to the charity.

There are registered charities and unincorporated associations (see Section three).

2.1 What are charities?

The information below is adapted from the Resource Centre at www.resourcecentre.org.uk:

Charities are organisations which are set up for the benefit of the community as defined by the law.

A charity is therefore an organisation that has a formal legal existence and is established exclusively for charitable purposes, that is, if its objects* are exclusively charitable. The aims (or objects), of an organisation are set out in its constitution or other governing document.

! Since April 2008 every charity has to be able to show that it exists for the public benefit as well as for a charitable purpose.

A charity is governed by charity law and falls within the jurisdiction (administration) of the High Court for England and Wales. Charities are monitored and supported by a government department [strictly speaking it is a “non-governmental department” because it does not answer to a minister] called the Charity Commission (see useful contacts, Section seven). Some organisations may not realise they are charities - if your organisation has charitable aims, it must comply with charity law.

As well as being governed by charity law, a charity must also comply with other UK laws such as those covering employment, taxation and health and safety.

When your organisation has a gross annual income of £5,000 or more, you must register with the Charity Commission. Registering with the Charity Commission does not make a group into a charity; registering simply turns an existing charity into a registered charity. (See **2.3** for more information on registering a charity).

*Please note that the Charity Commission uses the term, ‘purpose’ or “objects” to describe a charity’s aims. In this toolkit, we use the word, ‘aim’.

2.2 Charitable purposes and public benefit

! Since April 2008 every charity now has to prove that it exists for the public benefit as well as for a charitable purpose. This is known as the 'public benefit requirement' (see *Charities and Public Benefit* at www.charitycommission.gov.uk/publicbenefit).

Charitable purposes

! From April 2008, an organisation will qualify as a charity if any of its purposes (aims) fall within the following 13 descriptions of charitable aims. This list includes 12 specific headings and one general heading.

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 improvement or protection;
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;
13. Any other purposes charitable in law.

Public benefit

! Another key change from April 2008 is that all organisations wishing to be recognised as charities must demonstrate that their aims are for the public benefit. This means that a charity must work for the benefit of either the whole community or a significant part of it.

MC members are required to report on how their charity benefits the public in their annual report.

Information below summarised from the Charity Commission extract in VS magazine February 2008:

The Charity Commission has defined two key principles in the table below:

<p>1. There must be one or more identifiable benefits to the public.</p>	<ul style="list-style-type: none">• Identifiable does not mean that the benefit has to be counted. For example, a women's refuge providing shelter for victims of domestic violence could quantify their benefits. However, the benefits of improving women's self esteem cannot be quantified. As long your organisation clarifies what the benefits are, the Charity Commission will consider them.
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	<ul style="list-style-type: none"> • Each of a charity's aims must be beneficial and be balanced against any detriment or harm taking place. For example, weighing up the health benefits of participating in a dangerous sport against the risk of injury. The Charity Commission would need to see real evidence and not make assumptions.
<p>2. The benefits must be provided to the public or a section of the public.</p>	<ul style="list-style-type: none"> • It is not the number of people benefiting that matters, but who has the opportunity to benefit? For example, a charity service that helped people to give up smoking might only be able to offer a limited number of places, but anyone who qualified, must be able to apply for a place. • People on low incomes should be able to benefit. For example, if a charity provided training but charged at a level that meant many people could not afford the training that would breach the rule.
<p>For more information about public benefit, go to <i>Charities and Public Benefit</i> at www.charitycommission.gov.uk/publicbenefit.</p>	

Please note: There is useful guidance about public benefits requirement for charities on the Charity Commission website.

Practical examples of public benefits for RCOs are:

1. Adding value/complementing services of mainstream voluntary organisations and statutory bodies. By showing evidence of this work RCOs can identify their benefits to a section of the public – that is members of their community who have access to services provided by these organisations. To show this evidence they need to monitor and record how they are complementing services of these organisations.
2. Delivering training and educational courses to refugees and asylum seekers. This is a quantifiable benefit to a specific number of people who are qualified; it's also an unquantifiable benefit to a wider public if these individuals contribute to the society later on. Again, evidence of these benefits should be produced.
3. Any activities which encourage integration of individuals/communities can be identified as benefits to the public including giving advice and support, providing information, and so on.

Campaigning and political activity

An issue that often arises for RCOs in relation to charitable purposes and public benefit is what is meant by campaigning and political activity. Some of the key points around this subject are highlighted below:

- Any charity can become involved in campaigning and in political activity which furthers or supports its charitable purposes, unless its governing document prohibits it.
- Charities can campaign for a change in the law, policy or decisions where such change would support the charity's purposes. Charities can also campaign to ensure that existing laws are observed.
- A charity cannot have political activity as any of its charitable purposes. This is because a charitable purpose must fall within the description of purposes set out in the Charities Act 2006.
- Charities **cannot** give their support to a political party or politician.

Examples of permitted campaigning might include:

- a health charity promoting the benefits of a balanced diet in reducing heart problems
- a refugee charity, emphasising the positive contribution that refugees have made to society and calling for Government to improve or enforce existing legislation that supports the rights of refugees
- a human rights charity calling on a government to observe certain fundamental human rights, and put them into practice.

Political activity might include some or all of:

- raising public support for such a change.
- seeking to influence political parties or independent candidates, decision-makers, politicians or public servants on the charity's position in various ways in support of the desired change; and responding to consultations carried out by political parties.

To check whether a planned political or campaigning activity is accepted by the Charity Commission, please call its advice line on 0845 3000 218.

Please see 'CC9 - Speaking Out - Guidance on Campaigning and Political Activity by Charities' on the Charity Commission website <http://www.charity-commission.gov.uk/publications/cc9.asp#2> for further information and guidance.

2.3 Which charities need to register with the Charity Commission?

Most organisations in England and Wales are required by law to register with the Charity Commission if all their aims and their activities are charitable under charity law.

Every charity with a gross annual income of £5,000 or more is required by law to register with the Charity Commission. Once a charity reaches this threshold, it should register.

A charity below the £5,000 threshold may register voluntarily. Registered charities whose income falls below the £5,000 threshold will generally be allowed to remain on the register.

An unregistered charity is still legally a charity and must follow charity law.

Advantages of registering your charity with the Charity Commission

Some of the key advantages of registering your charity can be seen in the table below.

Charity registration can help with fundraising.	<ul style="list-style-type: none">• Many funders give grants only to registered charities.• Can reassure funders that you are a 'serious' and professional organisation.
Tax relief	<ul style="list-style-type: none">• Your organisation is entitled to tax relief on several taxes and reduced business rates on your premises, and you may reclaim the tax on donations by individuals. Tax relief is also available to unregistered charities who register with HMRC.
Public image	<ul style="list-style-type: none">• Charity registration lets the public know that your organisation is legitimate and is being monitored by the Charity Commission.

How to register with the Charity Commission

Once your organisation has a gross annual income of £5,000, you must register with the Charity Commission. Your organisation has some flexibility to ensure that you register at a time which best fits in with your group's development. It can take some time for a small charity to develop a constitution which will satisfy the Charity Commission.

In order to register, your organisation needs to complete the *Charity Commission Registration Application*. You can download this pack from the Charity Commission website (see useful contacts, Section seven) or you can call them to request a pack.

You will need to have a constitution that sets out what you aim to do, your "objects" and how you will run your organisation. See Section three.

Registration usually takes between one and three months from the time of sending the application, depending on the information supplied.

If the Charity Commission accepts your application, your organisation should be registered within three weeks. However, if they require further information, the process may take a lot longer. If the Commission refuses your application, they will explain in writing why your organisation is not considered charitable and you will have the right to ask for a review of the decision. If it has concerns it may ask for further information and suggest changes to your constitution. If you are unhappy with their suggestions you should get advice. See Section seven for sources of advice.

Obligations of a registered charity

Any charity (whether registered or not) must ensure that it stays strictly within its charitable purposes (aims) and comply with charity law.

A registered charity must follow Charity Commission rules concerning its annual report and accounts. This will depend on your legal organisational structure - see **Section three** for more information. These regulations are currently in the process of being updated following the Charities Act 2006. Please see figure 2 [Charity accounts requirements from 1 April 2008] to understand the current accounting requirements for both registered charities and companies.

MC members have personal legal responsibilities under charity law. (Please see **5.2** for information about MC roles and responsibilities).

Charities must follow special procedures if:

- selling or letting property
- mortgaging property
- seeking to pay an MC member
- fundraising.

Reporting Requirements

Annual Returns and accounts:

Trustees of charities with income exceeding £10,000 in their last financial year are required to complete and submit an Annual Return. For financial years ending before 1 April 2009 they must also submit a copy of the Trustees' Annual Report and accounts.

For financial years ending on or after 1 April 2009, the threshold for submitting a Trustees' Annual Report and accounts has been increased so that only charities with income above £25,000 need submit copies of these. All required submissions must be made within 10 months of the end of the charity's financial year.

For more information about reporting requirements, go to:
www.charity-commission.gov.uk/investigations/reportacc.asp

Annual updates:

Charities with an annual income of £10,000 or less do not have to submit an Annual Return or a copy of their Trustees' Annual Report and accounts but are required to keep their Register details up to date. To ensure that Register details are up to date and to confirm that they are still operating, we ask smaller charities to complete the Annual Return form, this form can be downloaded from Charity Commission website.

What happens to charities failing to file their documents on time?

Charities have 10 months from the end of their financial year to file their documents and the Charity Commission offers advice and guidance to help charities to meet this deadline.

As part of a charity's entry on the Register the Charity Commission will indicate whether latest due documents have been received or are overdue.

The Charity Commission has a statutory duty to maintain an accurate Register of Charities and to remove any charities that have ceased to operate or exist.

Charities failing to provide evidence of their activity and existence by submitting accounts, Annual Returns or Annual Updates will be sent a series of reminders. If the Commission has not received overdue documents, charities may be removed from the Register.

For more information, go to:

<http://www.charity-commission.gov.uk/investigations/ccmo>

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