

Guidance Note: What is a Charity in Law?

1. General

This guidance note provides general information but does not contain detailed legal advice. You should seek legal advice and guidance when planning to set up a "charity". Further guidance is available from the Charity Commission on its website.

In this note, "organisation" means any unincorporated organisation and "charity" means any organisation that is a "charity" in law.

2. Advantages of charitable status

The following benefits arise from charitable status:

- availability of certain tax reliefs, including the right to reclaim tax on gifts
- donors will generally not be liable for capital gains tax on gifts to a charity
- business rates relief.
- access to funding where the government encourages donations to charities, or decide that charities are the best way to fund a particular activity.
- public recognition, financial and other benefits.

3. What is a charity?

Although the meaning of "charity" in law is different from its everyday meaning. It includes some activities that are not considered to be charitable, but it also includes some activities that are not considered to be charitable.

An organisation will attain charitable status if it meets the following certain requirements:

4. Legal requirements

The requirements determining whether an organisation is a "charity" in law are contained in the Charities Act 2006. A "charity" is defined by the Act as an institution that is:

- established for "charitable purposes"
- subject to the control of the Charity Commission

This means that *all* of its purposes must be "charitable" (see "What are charitable purposes?" for more information on regulation by a foreign jurisdiction).

Before we summarise what "charitable purposes" are, it may be helpful to bear in mind that not all activities are "charitable". Whether an organisation has "charitable purposes" is a matter of fact and degree.

What counts as a "charity" in law. Since it is a legal term, you should seek legal advice and guidance to ensure that what you intend to do will in law be a "charity". Further guidance is available from the Charity Commission on its website.

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not relevant to determine the

- whether or not it is registered
- whether or not it is required to register (but note that an organisation is not required to register unless it is “charitable”).
- its particular legal structure. If it is defined by law as a charity, even if its purposes are not charitable, it is a charity (e.g. a community development finance institution (“CDFI”) or a community development financial institution (“CDFI”)).
- whether or not any individuals are called by any other name, such as “charity trustees”, “directors”, “managers” or “trustees”.

If an organisation is, according to the Act, a charity, then it and its trustees must comply with charity law.

5. What are “charitable purposes”?

As explained above, an organisation must be established for “charitable purposes”. The Act defines “charitable purposes” as follows:

- falls within one or more of the “heads” of charity; *and*
- is for the public benefit.

6. “Heads” of charitable purposes

The “heads” of charitable purposes (“a” to “m”) as follows:

- (a) The prevention or relief of poverty.
- (b) The advancement of education.
- (c) The advancement of religion, which includes a religion which is not a religion, but which does not involve belief in a god or gods.
- (d) The advancement of health, which includes the prevention or relief of sickness, disease or disability.
- (e) The advancement of citizenship or urban regeneration; or the advancement of the voluntary sector or the environment.
- (f) The advancement of the arts, sciences, or sports or games.
- (g) The advancement of the promotion of health by involving physical activity.
- (h) The advancement of the promotion of religious or spiritual life.
- (i) The advancement of the environment.

the Charity Commission

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An informal organisation may be a charity, but if it is not a “charitable”, then it will not be a charity. For example, a community interest company (“CIC”) or a community development financial institution (“CDFI”) will not be a charity.

Individuals who are called “trustees”, “directors”, “managers” or “trustees” must act as its governing body, and it is the status and responsibility of “charity trustees”.

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the Act, and they comprise 13

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s. This includes the prevention or relief of sickness, disease or disability.

development, which includes rural or urban regeneration; or the advancement of the voluntary sector or the environment.

science.

means sports or games which involve physical activity or skill or exertion.

resolution or reconciliation, or the promotion of religious or spiritual life and diversity.

improvement.

(j) The relief of those in need from hardship or other disadvantage by the provision of accommodation or care

(k) The advancement of any

(l) The promotion of the efficiency of rescue services; or ambulance

(m) Any other purposes

(1) that do not fall not within the law relating to charities in England and Wales in force before 1 April 2008 or by virtue of Section 5 of the Act (which provides that facilities for recreational or sporting purposes in the interests of social

(2) that may reasonably be regarded as being in the interests of any of the above 12 specified purposes; or

(3) that may reasonably be regarded as being in the interests of any of the above 12 specified purposes which has been recognised as charitable under the law relating to charities in England and Wales as charitable under

7. Public benefit requirement

In order for an organisation to be a charity, it must be capable of benefiting the community at large.

"Public benefit" is not specified in the Act, but the Act does state that in determining whether a purpose is charitable, the purpose must be for the public benefit (and is therefore charitable):

- it is not presumed that a purpose is for the public benefit merely because it is more of the 13 charitable purposes listed in the Act;
- "public benefit" means that the purpose must be for the benefit of the community at large.

For an organisation to be a charity, its charitable purposes must be for the public benefit. "Public benefit" is based on the nature of the organisation's purposes, not its activities. The purposes are stated in the organisation's objects.

Their nature must be capable of benefiting the community at large. For this purpose, the interpretation of the objects does not take into account:

- the activities it has carried out (but it should be noted that a charity's trustees have a duty to ensure that its activities are for the public benefit); or
- the motives or intentions of the charity.

Nevertheless, where there is doubt about what the organisation's purposes actually are and whether they are for the public benefit, the court may look at its activities to see whether implementing them will have a charitable end result.

age, ill-health, disability, financial hardship or other disadvantage by the provision of accommodation or care

ences of the Crown, police, fire and

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s to, or within the spirit of, either the purpose covered by "(1)" or the purpose covered by "(2)"

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8. Guidance as to what amounts to public benefit

The Charity Commission has published guidance on the public benefit requirement. We recommend that charities follow the PB1 guidance in full.

The Act imposes a duty on charity trustees when exercising their powers or duties to be able to show that they have taken the guidance into account when making decisions, and that if they decide to depart from the guidance they have good reasons for doing so (which should be documented).

The PB1 document explains the objects of the statutory requirement that, to be charitable, an organisation must be for the public benefit:

The “public benefit” test has two aspects (which expand on what these tests are and how they are applied):

- (1) the “benefit” aspect, which asks whether the purpose is “of benefit to the community”;
- (2) the “public” aspect, which asks whether the purpose is for the public in general, or a sufficient section of the public, both in the United Kingdom and elsewhere.

For a purpose to be “of benefit to the community” it must not outweigh its benefits by any harm that results from the purpose or by any “personal benefits” if they are incidental to carrying out the purpose.

Where a purpose is to prevent or relieve suffering, there is only a requirement for it to be for the public benefit as well.

9. Other key features of a charitable purpose

In addition to fulfilling the public benefit requirement, an organisation *is* a charity in law if it also has the following key features:

- all of its assets must be for charitable purposes;
- any profit must be applied to charitable purposes;
- it has charity trustees;
- its charity trustees can only exercise their powers for charitable purposes in limited circumstances; and
- it must not exist for political purposes.

10. Statement of charitable purposes

An organisation intending to set up a charity should set out the rules that govern its operation in its governing document. The type of legal structure adopted will affect the content of the governing document.

The governing document sets out the charitable purposes for which the organisation exists. The statement is usually referred to as the statement of charitable purposes. The governing document must nevertheless all fall within one or more of the categories set out above.

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