



East Riding Voluntary Action Services (ERVAS) Limited

Community Accountancy Service

Delivering quality accounting services and training to the voluntary sector

Good Practice Guide:

17 – Charity Registration



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Introduction

What is a charity?

A body is a charity if it is set up under the law of England and Wales and is established for exclusively charitable purposes only. There are several classes of charity as follows:

Exempt Charity

An exempt charity is one that is not regulated by, and cannot register with, the Charity Commission. Under the Charities Act an exempt charity is:

- Any institution established for charitable purposes which is included in Schedule 3 to the Charities Act; or
- A common investment fund or a common deposit fund established by a Scheme of the Commission which permits only exempt charities to participate.

These charities are supervised by, or accountable to, another body or authority known as a principal regulator. An exempt charity is still subject to the legal rules generally applicable to charities and the provisions of the Charities Act (unless specifically excluded).

The following is a list of some exempt charities and their regulators:

- The Royal Botanic Gardens, Kew (Kew Gardens)
Principal regulator: The Department for the Environment, Food and Rural Affairs (DEFRA)
- Sponsored national museums and galleries
Principal regulator: The Department for Culture, Media and Sport (DCMS)
- Most universities in England
Principal regulator: the Higher Education Funding Council for England (HEFCE)
- Academy proprietors (otherwise known as academy trusts or academy companies)
Principal regulator: the Department for Education (DfE), assisted by the Education Funding Agency (EFA)
- The governing bodies of foundation, voluntary aided, voluntary controlled and foundation special schools
Principal regulators: DfE (for charities in England); Welsh Government (for charities in Wales)
- Sixth Form College Corporations
Principal regulator: DfE

Excepted Charity

An excepted charity is under the supervision of the Charity Commission which means that the Charity Commission can require them to provide information about their activities and investigate them if there is a cause for concern. They are called excepted charities as they are excepted from the requirement to register by legislation or an order made by the Charity Commission.

These include:

- Charitable organisations with an income less than £5,000 per annum.
- Charities connected with churches and chapels belonging to various Christian denominations (with an income less than £100,000)
- charitable service funds of the armed forces (with an income less than £100,000)
- Scout and guide groups with an (income less than £100,000)

These thresholds are subject to change.

Registered Charity

There are four main legal forms of registered charity as follows:

- Trust - the governing document is a trust deed or a will. There is no protection from liability for the trustees.
- Unincorporated association - the governing document is a constitution or rules and there is usually a membership. The trustees are often referred to as the management committee. Again, there is no protection from liability for the trustees.
- Company limited by guarantee - the governing document is a memorandum and articles of association for a company formed before September 2009 and articles of association for a company formed since then. The trustees (or directors) are protected in most circumstances against contractual liabilities. Charitable companies must register with Companies House and with the Charity Commission and abide by both sets of legislative requirements.
- Charitable Incorporated Organisation (CIO) – a new legal form for charities from the 2nd January 2013, the governing document is a constitution. The trustees are protected in most circumstances against contractual liabilities. CIOs only register with the Charity Commission (see GPG18 – Charitable Incorporated Organisation).

What are Charitable Purposes?

'Charitable purposes' are those that fall within the descriptions of purposes capable of being charitable set out in the Charities Act 2011 and that are for the **public benefit**. It sets out the following charitable purposes:

- ⊗ the prevention or relief of poverty
- ⊗ the advancement of education
- ⊗ the advancement of religion
- ⊗ the advancement of health or the saving of lives
- ⊗ the advancement of citizenship or community development
- ⊗ the advancement of the arts, culture, heritage or science
- ⊗ the advancement of amateur sport
- ⊗ the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- ⊗ the advancement of environmental protection or improvement;
- ⊗ the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantages
- ⊗ the advancement of animal welfare;
- ⊗ the promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or ambulance services
- ⊗ other purposes recognised as charitable under the existing law and any new purposes which are similar to another prescribed purpose.

The tricky bit is determining whether you have charitable objectives. You might think that you have a charitable purpose but it might not be very clear in your governing document (usually your constitution). Also, it is sometimes the case that most of your organisation is charitable but bits of it aren't. It is best to get advice and help in this process. At the end of the guide there are suggestions on where to look for help.

What is meant by 'public benefit'?

All voluntary groups/organisations must by law demonstrate that their aims are for the public benefit in order to be recognised, and registered, as a charity in England and Wales. This is known as 'the public benefit requirement'.

The public benefit requirement means that, to be a charity, an organisation must be able to demonstrate that it is set up for aims that are capable of being charitable, and that its aims are, and will be, carried out for the public benefit. It is a requirement that applies to each of an organisation's aims. A charity cannot have some aims that are for the public benefit and some that are not.

There are two key principles both of which must be met in order to show that an organisation's aims are for the public benefit. Within each principle there are some important factors that must be considered in all cases. These are:

- ⚙ **Principle 1: There must be an identifiable benefit or benefits**
 - It must be clear what the benefits are
 - The benefits must be related to the aims
 - Benefits must be balanced against any detriment or harm

- ⚙ **Principle 2: Benefit must be to the public, or a section of the public**
 - The beneficiaries must be appropriate to the aims
 - Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
 - by geographical or other restrictions
 - People in poverty must not be excluded from the opportunity to benefit
 - Any private benefits must be incidental

Why Should Your Organisation Register as a Charity

1. Because you have to!

If your annual income is over £5,000 (previously £1,000) and you have charitable objectives then you are legally obliged to apply to the Charity Commission for charitable status unless your organisation is exempt or excepted.

2. The benefits of Charitable status

There are many benefits in obtaining charitable status which are broadly summarised below:

- ⚙ **Opens up new funding streams** - Some funders, particularly trusts, will only give money to registered charities which increases the scope of potential funding sources for registered charities. Charitable status also provides credibility when raising money from the public.

- ⚙ **Provides a framework for the organisation** - The Charity Commission provides advice on how charities should run and the responsibilities and roles of trustees (management committee members). This information is provided in the form of booklets, leaflets, audio cassettes and videos. They also provide an advice line and a web site. See the last section of this guide for details. There is a framework for the accounts of charities - a Statement of Recommended Practice (SORP).

- ⊗ **Corporation Tax and Income Tax** - Charities are generally exempt from corporation tax and income tax (although charities might be liable for tax on "trading profits" if they are above a certain level). Corporation tax is liable on income streams that are taxable (for example, fee income) for organisations that are not registered charities. It is sometimes possible for unregistered organisations to get an exemption from Her Majesty's Revenue and Customs (HMRC).

- ⊗ **Value Added Tax** - Charities can save VAT when buying certain goods and services. There is a very significant saving to charities if the goods that they are buying can be zero rated (standard rate is 20%). Some areas where this applies are shown below:
 - Advertising – Charities can buy advertising and closely related services at zero VAT. Initially, the scope of this relief was restricted to newspaper advertising and to the actual cost of the advertisement. The zero-rating has since been extended to include advertisements in all media and all preparation work, such as design and artwork. The zero rating applies to all types of advertising by charities, including recruitment advertising, attracting new members, pupils or students, advertising events, raising awareness or fundraising.
 - Collecting tins and Badges – HMRC introduced a concession from 1st April 2000 to enable charities to buy many forms of collecting tins at the zero rate.
 - Construction of New Buildings – The construction of new buildings for residential use or relevant charitable use will be zero rated. This is a complex area and you are advised to get specialist advice when looking at VAT relief when constructing a new building.
 - Aids for Disabled People, Disabled Access, Emergency Alarm Systems, Hearing Aids, Medical Equipment and Supplies, Talking Books for the Blind and Vehicles (in certain circumstances) – These are some of the areas where zero rating may apply for charities.
 - Fuel and Power – Charities can pay the reduced rate of 5% on fuel and power supplies (same as domestic rate) used for residential or charitable purposes. This can be a significant saving for charities especially as the lower rate will mean they are not liable for the Climate Charge Levy.

- ⊗ **Capital Gains Tax** – Charities do not pay as long as the gain is used for charitable purposes.

- ⊗ **Gift Aid** – Under Gift Aid charities can recover tax on donations from individuals. Tax relief also applies to covenanted payments.

- ⊗ **Rate Relief** – A charity pays a maximum of 20% of the non-domestic rate of any building it uses wholly or partly for its charitable purpose. A charity can also apply for "Discretionary Rate Relief" whereby the Local Authority can waive all or some of the remaining 20% so that the charity pays no rates at all. However, the Local Authority will sometimes give this relief to non-registered charities.

3. Where can I get further help?

- ☼ **Charity Commission** – for advice, information and publications etc.
For specific information on Charity registration see Charity Commission publication CC21

Contact Details:

Advice line: 0870 3330123.

Publications line: 01823 345427.

Website: www.charity-commission.gov.uk.

- ☼ **HMRC Charities**

- advice on applying for recognition as a charity for tax and Gift Aid purposes
- advice on VAT reliefs for charities
- advice on VAT reliefs for disabled and older people
- registering as a CASC
- help completing a Company or trust tax return
- advice about Gift Aid, Payroll Giving and making a repayment claim
- any other charity or CASC tax enquiries

Contact Details:

Helpline: 0845 302 0203

Post: HM Revenue & Customs

Charities Correspondence S0708

PO Box 205

Bootle

L69 9AZ

Website: www.hmrc.gov.uk

- ☼ **East Riding Voluntary Action Services**

Contact details shown below.

For further information please contact:



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