

Simply Legal

All you need to know about legal forms and organisational types for co-operatives and community owned enterprises.

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1 Introduction

Co-operatives UK is the network for Britain's thousands of co-operatives. It works to promote, develop and unite member-owned businesses across the economy. From high street retailers to community owned pubs, fan owned football clubs to farmer controlled businesses, co-operatives are everywhere and together they are worth £37 billion to the British economy.

We have written this guide for development professionals who are involved in advising and supporting new and existing organisations operating in the social economy sector and individuals who are considering establishing a new organisation or reviewing the structure of their existing one.

Development professionals play a valuable and important role in encouraging good governance. They help organisations choose and use legal structures that meet their particular needs in order to make sure they are run effectively.

This guide explains all the options that are available in terms of legal and organisational structures for co-operatives and community owned enterprises.

Background

This is the third edition of this definitive guide which has been comprehensively updated by Co-operatives UK's Advice Team and provides essential reading for development professionals and for new and existing organisations operating in the social economy sector.

For nearly 30 years our Advice Team has been highly regarded for its considerable expertise in legal structures and corporate governance, not only for co-operatives but also for organisations working in the wider social economy sector.

What the guide does

This guide:

- explains why legal structures are important;
- describes what incorporation is and its advantages and disadvantages;
- provides a summary of the different legal forms available for unincorporated organisations (this term is further explained in chapter 3);
- provides a summary of the different legal forms available for incorporated organisations (this term is further explained in chapter 3);
- explains the different types of organisations within the social economy sector, providing information to help inform and direct organisations;
- describes the terms commonly associated with ownership and control of an organisation, in relation to its members;
- presents an outline of the issues and considerations for any organisation thinking about applying for charitable status; and

- gives a summary of the advantages and disadvantages of charitable status.

Select-a-structure

Along with the guide, you should use the interactive ‘select-a-structure’ questionnaire to help guide you through the process of choosing the most appropriate legal form and organisational type for a new, or existing, organisation. Visit www.thehive.coop and follow the links to use the questionnaire.

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2 Why legal structures are important

Legal structures are a necessary part of the framework of all organisations. Choosing the right legal structure goes a long way towards making an organisation run more effectively.

2.1 What is a legal structure?

A legal structure combines an organisation's:

- legal form – that is, what sort of body it is in the eyes of the law (see chapters 4 and 5); and
- governing document – that is, a statement that lays out how it plans to operate and govern itself.

2.2 What is a legal form?

A legal form is the sort of organisation it is considered to be in the eyes of the law, for example, whether it is a company limited by guarantee or by shares, a society or an association.

It is important that the members of an organisation understand how the law may affect it and them. To do this it is important to clarify the legal form of the organisation.

Legal form should not be confused with organisational type or status (see chapter 6). The organisational type of an organisation may define what type of business or activity it undertakes, or its relationship with its members, how it goes about that business (its ethos and values) or what sector it operates in (such as social enterprise or supporters' trust) but it would not be recognised as such in the eyes of the law.

Any group of people may join together, informally, to achieve common aims, provided those aims are legal. An organisation formed in this way may be motivated by profits (that is, some sort of business) or by social aims, (that is, a voluntary or political organisation), or a combination of the two. Unless an organisation's activities fall into an area which is covered by special rules (such as financial services), for most purposes it does not need to inform anyone (other than HM Revenue & Customs) or get permission – it can just get on and do it.

However, many organisations decide that their structure needs to be more formal and this affects their choice of legal form. One of the main decisions involved in choosing a legal form is whether or not to become incorporated. Chapter 3 deals with the advantages and disadvantages of incorporation in more detail.

The range of legal forms available is covered in chapter 4 for unincorporated forms (such as associations and partnerships) and chapter 5 for incorporated forms (such as companies and societies¹).

2.3 What is a governing document?

The governing document is the written statement that sets out the purpose of the organisation, its structure and describes how the organisation will operate.

The term ‘governing document’ is a general term. Depending on the chosen legal form, this document might be called one of a number of different names, for example:

- for unincorporated associations it is called the constitution;
- for partnerships it is the partnership agreement or deed;
- for societies it is the rules; and
- for companies it is the articles².

The governing document should contain information about all the practical matters related to how an organisation is run, including:

- its aims or objects and how they will be achieved;
- who the members are, how and why they can become members and how they meet and make decisions;
- whether there is a governing body, what is it called, how it is appointed and how it meets and makes decisions;
- what happens to any profit; and
- what happens to assets when the organisation is sold, taken over or broken up.

² Prior to October 2009 the governing document of a company was called the ‘memorandum & articles of association’ often abbreviated to ‘mem & arts’. The Companies Act 2006 refers to the governing document of a company simply as the ‘articles’. Therefore, in this guide, we shall use ‘articles’ to describe a company’s governing document.

3 The advantages and disadvantages of incorporation

When considering the appropriate legal form to adopt, the members of an organisation need to decide if being incorporated is the best option for them, or whether they should stay unincorporated. This section explains incorporation, and the advantages and disadvantages.

Incorporation means creating a legal identity for an organisation that is distinct from its members – a ‘corporate body’. In an unincorporated organisation the law does not recognise any distinction between the organisation and its members; the organisation remains simply a collection of its members. However, a corporate body is considered to have an identity in its own right, which means that it has rights and duties which may differ from those of its members.

3.1 Advantages of incorporation

a *Limited liability*

Members of a governing body of an unincorporated organisation have unlimited, personal liability and usually that liability is joint and several. This means that if the organisation fails to meet its debts, then members may have to meet them, and that burden may fall on those members that are most able to pay rather than on all of the members equally. Liability is to the full extent of each member’s personal assets, meaning that, in the worst case, members may face bankruptcy if a claim is made and the organisation does not have enough assets to meet the liability. In the first instance claims may be made against members of the governing body.

On the other hand, all members of a corporate body are protected by limited liability. When they agree to become a member of the corporate body they commit themselves to paying a fixed amount if the organisation is wound up with outstanding debts. In a company limited by guarantee this amount is usually only £1, but where liability is limited by shares members can lose the value of all of their shares.

There are times when members of the governing body of a corporate body can be held personally liable for some, or all, of the debts of their organisation, for example, where one or more members of the governing body have acted fraudulently or irresponsibly. Generally, incorporation provides adequate protection. Whatever the organisation’s status, if individual members personally guarantee debts of the organisation (for example, a bank loan, overdraft or lease), their limited liability cannot protect them from having to pay off this debt if their guarantee is called in. Personal guarantees are separate, private contracts between the individual and the lender and have nothing directly to do with the organisation that will benefit from borrowing the money.

It is important to note that if an existing unincorporated organisation is insolvent, incorporating will not protect the members from previous liabilities.

b Owning property and entering into contracts

As an unincorporated organisation does not technically exist in law, it cannot own property or enter into contracts. All property will be owned by one or more of the members of the organisation and one or more members will be personally responsible for any contracts the organisation may hold (generally this is the person who actually signed the contract). Unfortunately, some contracts are often entered into without it being made clear who is responsible for them.

The ownership of property in an unincorporated organisation can become quite confusing. Over the years, people have applied to the courts to decide whether there is a legal relationship between the individual who has signed the contract and the members of the organisation.

If a contract is signed by one member acting with authority (for example, authority given to the members of a governing body in the organisation's governing document), all members may be liable under that contract and, as mentioned previously, the liability is unlimited. Authority can be shown in a variety of ways, such as specific wording in the governing document itself or by the members approving the contract (for example, at a meeting of the members). Clearly it is important for people who enter into contracts on behalf of an unincorporated organisation to make sure that they have authority to do so. It is best practice to make sure that the governing document protects the members as they will not be protected in law.

Not being able to hold property collectively can cause problems if someone wants to leave the organisation or dies, and especially if there is a dispute between the members.

As a legal entity in its own right, a corporate body may own property and enter into contracts and members joining or leaving does not affect matters.

c Equality of risk

All members of a democratic organisation will have equal rights and one aspect of this is equality of personal risk. This is quite easy to achieve in a corporate body but, due to risk being distributed unequally amongst members, it is almost impossible in an unincorporated organisation. Internal contracts can aim to share liability equally, but they are unlikely to produce a positive result as members may have to go through the courts to enforce them.

3.2 Disadvantages of incorporation

a Cost

There are extra costs involved with being a corporate body rather than an unincorporated organisation. There is the cost of becoming registered (which may be hundreds of pounds). Most corporate bodies will have to pay recurring

annual fees whilst they remain registered and will have ongoing administration costs.

b Administration

There are strict rules about the records that a corporate body must keep and those that must be presented to the appropriate registry. These are important as an organisation can incur liabilities and expense if it fails to keep its records up to date, although the administration requirements for a corporate body are not particularly burdensome.

c Privacy

The ‘price’ paid for limited liability is loss of privacy, or to put it another way an obligation to disclose certain information. You must inform the registry about governing body members’ (providing information about name, address and date of birth), the organisation’s finances and so on; this information is available to the public, although information for some legal forms (for example companies) is more readily accessible than for others (such as societies).

3.3 Deciding whether to incorporate

You must consider a number of factors when deciding whether to incorporate. Different factors will be more important in some organisations than in others, depending on the organisation in question and the individuals involved. One of the principal factors for members in deciding whether to incorporate is the level of risk the organisation will take on.

For example, you will need to consider whether the organisation employs staff, enters into contracts and/or has a considerable financial turnover – all of these have a risk factor. The risk may be smaller if the organisation uses volunteers only, in which case incorporation may not be considered necessary. On the other hand, having a team of two or more employees and managing a budget in line with that level of staffing means the risks will be greater and incorporation may be advisable.

Entering into regular or major contracts will also affect the decision whether to incorporate – some funders will only enter into funding contracts with incorporated organisations. The potential risk of failure to deliver on a contract and the possible financial consequences (including when funders ‘claw back’ funds from an organisation) may support a decision to incorporate.

It is also worth considering the expected lifetime of the organisation. Incorporation may not be considered worthwhile for an organisation set up to manage a one-off event, although incorporation may be appropriate if it is a major event.

It is important that once an organisation has decided that incorporation is not required, that this decision is reviewed regularly to assess changes in the activities of the organisation and any new levels of risk.

Summary of the advantages and disadvantages of incorporation

| | Unincorporated | Incorporated |
|----------------|---|---|
| Liability | Individuals may have to meet any outstanding debts personally. | Individual liability is limited to a guarantee amount or unpaid share capital. |
| Ownership | It is not possible to enter into contracts in an organisation's name and there are difficulties with members' authority to do so. | A corporate body may own property and enter into contracts in its own right. |
| Risk | Risk can be unequally distributed among members. | Risk is more equal. All members are treated the same unless there is some other agreement in place. |
| Cost | There are generally no or limited start-up costs but may be subject to ongoing running costs | There will be start-up costs plus annual fees (although a relatively small amount). |
| Administration | None needed by law (unless a charity). | Ongoing records need to be kept and filed with the appropriate registry. |
| Privacy | Complete (unless a charity). | Certain details, such as governing body members' names are on public record. |

4 A summary of unincorporated legal forms

There are several options for unincorporated organisations when it comes to choosing a legal form. This chapter contains details of the main unincorporated forms.

4.1 Partnerships

The main attraction of a partnership to people setting up a new organisation is that there is little or no cost involved in developing a partnership and related administration is less burdensome. Partners are treated as self-employed for tax purposes so there is no employer's National Insurance to pay and people's income tax is not collected until the end of the financial year.

However, creating a partnership does not provide limited liability so all of the partners have 'joint and several' personal liability for any debts. As a partnership is no more than a voluntary agreement between the individuals involved, which can be fairly easily withdrawn or varied, any value-led principles set by the founders cannot be protected as well as in a corporate body.

In some cases a partnership may be a suitable starting point for very small organisations or ones that want to have a 'trial run' with their business idea before committing themselves fully.

Partnerships are governed by the Partnership Act 1890 (amended by case law since then). A partnership is a contractual arrangement between two or more people that is set up with a view to profit and to share the profits amongst the partners. Partnerships are designed to share profits among their partners and are generally not considered as suitable for a voluntary or charitable organisation because of this. If there are no arrangements to share profits then there probably is not a partnership in law. A partnership may be 'express' (two or more people have deliberately set up a partnership) or 'implied' (two or more people have started managing a business jointly and have created a partnership, probably without realising it). There are many examples of case law showing when a partnership does or does not exist; the whole area can be complex.

The exact nature of the partnership will depend on the contractual arrangements set out in the partnership agreement drawn up between the partners. In default, the Partnership Act 1890 sets out what will happen if there has been no specific agreement – such as in an implied partnership. Most general texts on partnership law will also include this information. For example, a partnership is an agreement between specific individuals. If any of these people leave or die, or if someone else joins the partnership, the partnership will no longer exist and a new one must be created. Also, each partner may be held liable for the debts of any other partner.

4.2 Associations

The most common form of unincorporated organisation within the social economy sector is the unincorporated association. There is no Act of Parliament defining or specifically governing these associations, but there is a large amount of case law.

A judge defined an unincorporated association as:

"Two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rests and on what terms and which can be joined or left at will."

(Conservative and Unionist Central Office v Burrell [1982] 1 WLR 522).

The practical differences between a partnership and an association can be minimal (particularly where an association does actually trade). There is a possibility that unless the relationship between those involved in an association is set out, a partnership could be found to exist. This is not necessarily a bad thing, but those involved must be clear about what they are agreeing to take on rather than finding that they default into a partnership relationship with all that entails (for example unlimited liability for the actions of your partners).

The relationship between the members of an association is contractual; the governing document of the organisation (often called the 'constitution') provides the terms of the contract. If a member or members break this contract (for example, if the governing body acts in a way which conflicts with the governing document), members can apply to a court to force them to keep to the contract. The terms of this contract should be written down to avoid dispute over its content.

All the details of an association's objects and management should be set out in the governing document. There are a number of default positions, if the governing document is silent or ambiguous, but these can be difficult to find out about because they are not gathered together in a single Act of Parliament (which they are for corporate bodies). An 'implied power' is one which exists whether or not the governing document mentions it, so if there is no implied power you have to write it into the governing document if you want to include it.

Some of the major default positions are as follows:

- Objects

It is a good idea to have more than one, or to keep your objects widely drawn, because you cannot change a sole object, if that is the only one you have. If the organisation no longer wants to achieve its sole object it should be wound up.

- Amendments

Unless the governing document sets out a procedure for amending it, this can only be done with the agreement of every single member (unless the association is a registered charity in which case the Charity Commission has certain powers to act).

- **Regulations or Secondary Rules**
There is no implied power to make them.
- **Quorum**
More than 50% of members must be at the general meeting and all governing body members must be at the governing body meetings, unless the governing document says otherwise.
- **Casting vote**
There is no implied power for the chair to have a casting, or second, vote.
- **Subscriptions**
A member must pay any agreed subscription until she or he resigns.
- **Borrowing**
There is no implied power to borrow and the governing body is not permitted to bind the members to repay the amount borrowed without their express permission.
- **Property**
Ownership of property can be a complex subject. Specific items may be held by named holding trustees (common for buildings and land), but the default position for other property is that it will be held by all the members in line with the rights and liabilities set out in the governing document.
- **Admitting members**
All current members must agree to a new member joining, unless the governing document says otherwise.
- **Resignation**
There is an implied power for a member to be able to resign.
- **Expulsion**
There is no implied power to expel members. Where the governing document allows for it, the rules of natural justice must be applied.
- **Indemnity**
There is no implied right for members of the governing body to be indemnified by the members. If any member of the governing body signs a contract on behalf of the association they can be held personally liable. If the governing document requires members to

contribute to any liability then the members of the governing body will be able to claim against them rather than pay the liability personally.

- Liability for employment

If the governing document does not say that the governing body will be the employer of any staff, whoever actually confirmed the appointment of the employee may be held personally liable for outstanding tax, National Insurance and so on.

- Winding up

An unincorporated association may break up at any time. If there are no arrangements for this in the governing document, all members must agree to it (unless the association is a registered charity in which case the Charity Commission has the authority to be involved in the decision making process).

4.3 Friendly societies

Friendly societies tend to cause confusion. They are often confused with societies (which are much more common) as both were administered by the Registrar of Friendly Societies until 2001. Originating in the 18th century, friendly societies are mutual insurance organisations which have traditionally provided for their members in the case of sickness, retirement, childbirth, death and so on. Many of the inequities they were established to relieve are now covered by the Government and commercial insurance companies.

The other types of society which may be registered under the Friendly Societies Acts³ are:

- cattle insurance societies;
- benevolent societies (for any benevolent or charitable purpose);
- old people's home societies; and
- specially authorised societies 'for any purpose which the Treasury may authorise'.

Each can be identified by a suffix attached to the society's registration number, for example, 'BEN' shows a benevolent society and 'SA' shows a specially authorised society.

It has not been possible to register a new friendly society (other than an insurance society) under the Friendly Societies Acts since February 1993. Existing friendly societies can convert to societies relatively easily.

4.4 Trusts

A trust exists where one or more individuals or a single corporate trustee (the trustees) administer funds or resources which have been donated by others

³ Friendly Societies are registered under the Friendly Societies Acts 1974 and 1992.

(the donors) for the benefit of another group of people (the beneficiaries). A trust is an unincorporated organisation with a trust deed as its governing document. A trust that is also a charity may only be created where there is a specific asset, such as a fund of money, for the trustees to administer (although this can be a small amount for the purposes of creating the trust).

A common way in which a trust may be established is in a will, where a testator (the person who has died) leaves money, for example for the benefit of their children. Where those children are under the age of 18 the money will be held on trust by trustees appointed in the will. As the benefit of the trust is for defined family members, the trust will not be charitable (see Chapter 8 for further details).

Common claims, such as ‘trustees serve until they die and cannot be removed’, are only true in so far as that is what most traditional trust deeds say. There is no reason why a trust deed should not say something else, although there are certain restrictions on trustees’ activities set out in the Trustee Investments Act 1961, the Trustee Act 1925 and the Trustee Act 2000.

A trust may be an appropriate legal form where there is a specific task to be achieved and there is no requirement, or need, to involve a broader membership. This legal form is commonly considered suitable for organisations that will only be giving out grants and not carrying out charitable or other activities themselves.

The term ‘trust’ causes confusion as a number of companies and societies describe themselves as trusts and will include the word trust in their registered name (such as development trusts). The term ‘trustee’ is also generally used for directors of charitable companies and societies.

5 A summary of incorporated legal forms

This chapter contains details of the main legal forms available to organisations considering incorporation.

5.1 Limited company

Limited companies are corporate bodies registered under the Companies Act 2006. This Act sets out what companies can, cannot and must do. There are three main types of company:

- A public limited company (PLC) may issue shares to the public, for example, BT, British Gas and high street banks. This is generally used by large capital-based ventures which, if they become listed on a stock exchange, will have to follow the relevant listing rules as well as the Companies Acts. A PLC does not have to list its shares on a stock market; the purpose of doing so is to make it easier for shareholders to buy and sell shares. For the PLC it means they have access to extra funding in terms of the capital it can raise from investments made by the general public.
- A private company limited by shares also issues shares, but it is prohibited from issuing shares to the public. This is the most common legal form for smaller commercial businesses and some organisations operating in the social economy sector. Some co-operatives choose this legal form as an alternative to the society legal form.
- A private company limited by guarantee cannot issue shares. Instead each member guarantees a certain amount (usually £1) in the event of the company being wound up with outstanding debts. To date, this is the most common form for organisations operating in the social economy sector. Some co-operatives choose this legal form as an alternative to the society legal form.

As readers of this guide are unlikely to consider forming a PLC – and if they do, they will need considerably more guidance than could be provided here – we will deal only with private companies (see www.companieshouse.gov.uk for more information on PLCs).

Companies are administered by the Registrar of Companies (Companies House), an agency of the Department for Business, Innovation & Skills (BIS).

The governing document of companies is the articles.

The aim of the Companies Act 2006 was to make running a business easier and reduce the administrative burden on smaller companies. In the main, company law is designed to regulate the widest range of business enterprise and to protect shareholders in companies set up and run as straightforward trading businesses. As such some of its provisions might be considered excessive and inappropriate to socially motivated organisations which would

not operate in the same way as a conventional business. Private limited company status is commonly used by co-operatives and other third sector organisations and they have to follow fairly strict regulations, mainly related to:

- the number and type of records that have to be kept;
- the number of rules and regulations applying;
- the number of events which Companies House must be told about; and
- the large penalties for not keeping to the regulations.

However, company law is also extremely flexible, and can be used for almost any type of constitutional arrangement.

It is fairly reasonable, easy and quick to register a private limited company. Using 'model rules' (standardised articles) for a company has no particular significance except that it can save the costs and time involved in having tailored articles drawn up for the organisation – it does not alter the actual cost of registration.

An important point to note is that the Registrar of Companies (unlike the Financial Conduct Authority) does not examine paperwork it receives apart from the name of the proposed company and the forms. So, Companies House accepting a set of articles does not mean that they comply with company law. It is possible to register using a set of articles that actually defy the law. This means that if the matter ever came to light and the articles were considered invalid, those involved in running the company could be liable for its debts because, if the articles are invalid, the company could not exist.

Apart from the annual filing fee, which must accompany the annual return, there are currently no extra annual charges payable to Companies House. There will be individual charges if the company creates and registers a mortgage or other charge on the assets of the company and where the name of the company is changed.

All companies must present annual accounts and there are automatic penalties of up to £1,500 for private companies who fail to present them on time. Companies with an annual turnover below certain limits (the audit threshold) do not have to have their accounts audited (but they must still present them). These limits have been increased several times over recent years – check the Companies House website for the latest details (www.companieshouse.gov.uk).

The minimum age of governing body members of companies (usually called directors) is 16. Since 1992, it has been possible to form companies with just one member. Under the Companies Act 2006, a private company does not have to have a company secretary; therefore it is possible to have just one person (a sole member and sole director, provided that this director is a natural person (ie not another incorporated organisation) involved in a company. The single-member company can be a useful legal form for subsidiary companies (see chapter 10 of this guide for more information on subsidiaries generally).

Shares versus guarantee

Currently, voluntary and community organisations setting up a limited company generally choose the company limited by guarantee route as it tends to be preferred by grant funders. It is also a preferred option, alongside the charitable incorporated organisation (CIO) (or Scottish charitable incorporated organisation (SCIO) in Scotland) if charitable status is being considered.

Co-operatives registering under the Companies Act can use both guarantee and share versions. Traditionally the guarantee model has been used, rather than the share capital model, by worker co-operatives as this was thought to be better suited to protecting the principles of common ownership and ‘one member, one vote’. However, the guarantee model does not permit share capital which is often necessary. Companies which are also registered charities will tend to be companies limited by guarantee, although charities have been registered as companies limited by shares.

5.2 Community interest company (CIC)

The Companies (Audit, Investigations and Community Enterprise) Act came into force in 2005 and created a new type of legal form - the community interest company (CIC). This legal form is specifically designed for organisations wishing to further social objectives as a social enterprise and use their profits for the public good, but which do not require, or are not eligible for, charitable status. Currently (2014), there are over 9,000 CICs registered in England, Wales, Scotland and Northern Ireland. CICs are limited companies so are subject to company law.

There are two main features that distinguish the community interest company from other corporate forms. Firstly, all CICs will have a compulsory asset lock. The assets of a CIC may only be used for the benefit of the community and may only be distributed to a specific community interest company or charity, not to members or investors (please see chapter 7 of this guide for more details about asset locks).

Secondly, in order to register as a CIC a community interest test must be passed. An organisation will be required to demonstrate, via a community interest statement, that its purposes could be regarded by a reasonable person as being in the community or wider public interest. A community need not be defined geographically but may be a community of interest. However, the regulations do set out certain purposes that would not be acceptable, such as support for a political party or political campaigning.

CICs are registered with Companies House as companies but it is the CIC Regulator who decides whether an organisation passes the community interest test.

CICs can either be a private company limited by shares, a private company limited by guarantee or a public limited company (PLC).

A CIC limited by shares has the option of issuing shares to its members that may pay a dividend. In most instances such dividends are subject to a cap which is designed to strike a balance between encouraging people to invest in a CIC and the principle of community benefit. The rate of the dividend cap is set by the CIC Regulator subject to approval by the Secretary of State for Business, Innovation & Skills.

A CIC limited by guarantee would have no share capital and therefore would not be eligible to issue shares.

As with ordinary companies, the governing document of a CIC is the articles. The Act and its associated regulations outline what information should be included in the articles of a CIC, the following are compulsory items:

- name - followed by "Community Interest Company" or "CIC"⁴;
- objects - these must clearly define the activities of the CIC and the community it is set up to benefit; and
- asset lock provisions - these should specify the name of the organisation(s) that the assets of the CIC shall be transferred to upon dissolution. If this is omitted, the CIC Regulator has the power to choose such a body.

The CIC form is reasonably flexible and can accommodate most forms of constitutional arrangement provided it does not have a negative impact on the community benefit.

A CIC is not eligible for charitable status and as a result does not enjoy any special tax exemptions. CICs may apply for such exemptions (such as business rate relief) but have no mandatory right to them.

As with companies, CICs are required to file annual accounts and an annual return. In addition, CICs must produce a community interest report which is filed on the public record. There are two versions of this report, simplified and detailed. The latter is reserved for those CICs that have more complex arrangements. In the main, a report must provide details of the following:

- remuneration of directors;
- dividends paid on any shares;
- interest paid on capped loans;
- details of community benefit; and
- details of how it has involved its stakeholders.

The regulation of CICs is designed to be light touch, although the CIC Regulator is able to investigate complaints made by members of CICs and has powers to act if a CIC is found not to be operating in the best interests of

⁴ If the company's registered office is located in Wales, the name of the CIC may include the Welsh equivalents to "Community Interest Company" - "cwmni buddiant cymunedol cyhoeddus cyfyngedig" or "CIC" - "cwmni buddiant cymunedol c.c.c." respectively.

the community. Such powers include the ability to change the directors of a CIC or wind it up.

The minimum age of governing body members of CICs (usually called directors) is 16.

There is no requirement for the stakeholders to be directly involved in governing a CIC, so it can effectively be owned and controlled by one or more individuals; although CICs are encouraged to involve their stakeholders and are expected to report to the Regulator how they have done so. To ensure good governance and member participation, clauses should be included in the governing document.

5.3 (Scottish) Charitable Incorporated Organisation

To date, most charities that require corporate status register as companies limited by guarantee (although some are societies). This means that such charities are regulated by both the Registrar of Companies and the Charity Commission (or if registered in Scotland, the Office of the Scottish Charity Regulator (OSCR) or if registered in Northern Ireland, the Charity Commission for Northern Ireland) and as a result are required to file documents with both bodies.

A change in charity law created 2 new legal forms, the Charitable Incorporated Organisation (CIO) which is available for charities registering in England & Wales or Northern Ireland and the Scottish Charitable Incorporated Organisation (SCIO) which is only available for charities registered in Scotland.

(Scottish) Charitable Incorporated Organisation

The legislation governing a CIO or SCIO is dependent on the jurisdiction in which it is registered. However, the characteristics of this legal form are very similar regardless of where the charity is registered.

The CIO/SCIO provides all of the benefits of incorporation (that is limited liability and a separate legal identity) but it is only required to register and report to one regulatory body - the Charity Commission for England & Wales/OSCR.⁵

The legislation sets out a series of provisions that must be included in the governing document of a CIO/SCIO, but broadly it may have a single-tier structure (a governing body with no separate membership base) or a two-tier structure (a governing body with a separate membership base which has certain powers and duties).

Currently, it is possible to register a completely new organisation as a CIO/SCIO, to set up a new CIO/SCIO to replace an existing unincorporated

⁵ It is currently not possible to register a CIO in Northern Ireland.

association or trust and to convert a charitable company or charitable society into a SCIO. However, although the Charities Act 2006 provides for it, it is not yet possible to convert a charitable company or a charitable society into a CIO.

The CIO/SCIO is most suitable for small to medium sized organisations which need protection of limited liability because they employ staff and/or enter into contracts. Other features of CIOs/SCIOs include:

- CIOs only exist when they are registered so there is no requirement for an organisation to evidence a minimum income;
- simpler accounting requirements - accounts need only comply with charity law, company law will not apply;
- one annual return - charitable companies are required to file two, one to each regulator;
- lower costs - there will be no statutory fee to register as a CIO, and no ongoing costs for filing information;
- Mergers and wind-up – simple process for CIO/SCIO mergers which directly transfers all property, rights and liabilities.
- Duties of charity trustees (governing body members). The legislation includes a very specific statement of the duties of CIO/SCIO trustees, which are in addition to the duties that arise under charity and trust law;
- Duties of members, unlike charitable companies members of CIO/SCIOs are also subject to some of the statutory duties of charity trustees (governing body members), for example to ensure that the charity operates in accordance with its charitable purposes.

However, there is no public register of charges for CIO/SCIOs which may make lenders, who are unable to check whether a CIO/SCIO has any existing charges, more cautious when advancing sums to a CIO/SCIO. Therefore, if the charity is intending to take a charge over its assets, it may be more suitable to consider a company limited by guarantee, in that company law requires charges to be registered with Companies House which also maintains an online register of charges searchable by potential lenders.

5.4 Incorporation of charity trustees

As noted in chapter 3.1.b, for an unincorporated organisation to hold property, such as a building, individuals or organisations ('holding trustees') must be the actual owners of that property, holding it on behalf of the charity. If, for any reason, a holding trustee resigns that position or dies, the property must be transferred to someone else.

This can be avoided by having the board of trustees (governing body) become a corporate body, but without forming a company or a society - this is known as the incorporation of charity trustees. The Charity Commission has the power to grant corporate status, but please note that this form of incorporation does not provide limited liability for the trustees and does not incorporate the whole organisation, only its governing body. It has two main advantages:

- firstly, property can be held by the corporate body, which avoids having to appoint holding trustees and the need to transfer the paperwork every time a holding trustee changes; and
- secondly, it allows trustees to enter into contracts, sue and be sued in the name of the corporate body.

This option is not available to non-charitable organisations.

5.5 Limited liability partnership (LLP)

LLP are subject to the Limited Liability Partnership Act 2000 and subsequent secondary legislation predominately to update the legislation in line with developments in company law. The LLP form provides limited liability for its members with the flexible structure and tax advantages associated with a partnership (- see chapter 4.1 of this guide for details). LLPs must be engaged in profit-making activities.

Registration is fairly straightforward and relatively inexpensive. The partners fill in a form and send it to Companies House. The governing document of a LLP is called a members' agreement or LLP agreement. There is no legal requirement for a LLP to have a governing document (although it would always be recommended) and, as a result, there is no requirement to file it at Companies House. If a LLP does have a governing document it can be a private document that is confidential to its members.

Membership of a LLP can be made up of individuals and/or corporate bodies. Whilst there is no maximum number required there must, at all times, be at least two members. If numbers fall below two for a period of six months or more then the LLP will lose its limited liability and the sole member will become responsible for any debts incurred. A LLP must have at least two designated members - a member who has additional administrative responsibilities (such as the signing and delivery of the accounts and the appointing of an auditor). Designated members must be at least 16 years of age.

The LLP owns the business and is liable for its own debts. Each member acts as an agent for the LLP which will be responsible for all its members' actions. As agents, members will not be liable beyond the amount they have contributed to the LLP, except for debts arising from their own negligence.

The main advantages of forming a LLP are:

- the creation of a corporate body;
- limited liability for the members;
- similar accounting and filing requirements to private companies; and

- provided that it is evident that a member is not in fact a 'salaried member'⁶ it is taxed as a partnership - individual income tax, rather than corporation tax, applies to profits and tax is only payable when profits are distributed.

The LLP has many of the advantages of a private company limited by shares without the restrictions of share capital. The LLP should be considered as an alternative to a private company, particularly where there may be stakeholders who may need to withdraw a capital contribution. In recent years the LLP has become a more popular legal form for use by worker co-operatives and also as a vehicle for a number of organisations working together to further a common aim eg tendering together for a contract, but is not suitable for many third sector organisations due to its requirement to undertake profit making activity.

5.6 Society

Societies are corporate bodies registered under the Co-operative and Community Benefit Societies Act 2014 (CCBSA 2014) in England & Wales or Scotland or if registered in Northern Ireland under the Industrial and Provident Societies Act (Northern Ireland) 1969 (IPSA(NI)1969)⁷ Societies registered in England & Wales or Scotland are administered by the Financial Conduct Authority (FCA) and Societies registering in Northern Ireland are administered by the Registry Credit Unions and Industrial and Provident Societies which is a function of the Department of Enterprise, Trade and Investment (DETINI). Both these bodies are referred to as the 'registrar' for those societies registering in that particular country.

CCBSA 2014 came into force on 1 August 2014 and is applicable to societies registered or seeking registration in England, Wales or Scotland. It replaces the industrial and provident society legal form with two new legal forms, a co-operative society; and a community benefit society. CCBSA 2014 refers to any society registered under the previous Act (the Industrial and Provident Societies Act 1965) as a registered society or a pre-commencement society. Unless the context requires otherwise, in this guide we use the term 'societies' to refer to all societies registered prior to or after the 1st August 2014.

To qualify for registration under CCBSA 2014 and IPSA(NI) 1969, an organisation should be carrying on 'an industry, business or trade and meet the condition of registration as either a 'co-operative society' or a 'community benefit society'.

⁶ The Finance Bill 2014 introduced legislation that treats LLP members who are, in effect, providing services on terms similar to employment as "employees" for tax purposes. The new rules will treat an individual member of an LLP as an "employee" for tax purposes, if certain conditions are met. For more information see: www.hmrc.gov.uk/ir35/limited-liability-partnerships-legislation.htm

⁷ At the time of writing, the Northern Ireland Assembly is in the process of reforming co-operative and community benefit society law in Northern Ireland to bring it in line with CCBSA 2014. The Credit Unions and Co-operative and Community Benefit Societies Bill is expected to become law towards the end of 2016.

- The co-operative society legal form is mainly used by consumer co-operatives, housing co-operatives and credit unions.⁸ It is often used by agricultural, worker and community co-operatives. Its basic characteristics are:
 - member benefit;
 - one member, one vote;
 - return on capital must be limited;
 - if profits are to be shared out among the members, this must be done using an equitable formula; and
 - no artificial restrictions on membership.

In order to meet the condition for registration as a co-operative the registrar, will consider whether a society is “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned enterprise.”⁹

The registrar will also look to whether a society operates (or intends to operate) in accordance with the ICA Statement of Co-operative Identity (see appendix 1 of this guide), and will look to the rules and governance arrangements of a co-operative society to ensure that Principles 1-4 will be met, along with the co-operative society’s statement about how it intends to operate.¹⁰

- The community benefit society legal form is common among forms of voluntary and community enterprises where the emphasis is to benefit a wider community rather than the society’s membership. The society may be the community at large or a defined community, provided that this defined community does not inhibit benefit to the community at large.¹¹ Community benefit societies are popular among organisations seeking to galvanise local communities through ownership of community assets, such as pubs, renewable energy and piers via a community share offer through the use of withdrawable share capital. For more information on the use of withdrawable share capital see: <http://communityshares.org.uk/>

Currently, community benefit societies can apply to HM Revenue & Customs for exempt charity status (or if registered in Scotland directly with Office of the Scottish Charity Regulator or in Northern Ireland directly with the Charity Commission for Northern Ireland) (see chapter 8.1(d) of this guide for details of how this may change in the future).

⁸ For registration of a Credit Union, special rules apply under the Credit Unions Act 1979 – see section 2(4) of the CCBSA 2014.

⁹ This is the internally agreed definition of a co-operative as set out in the statement of the International Co-operative Alliance - <http://ica.coop/en/what-co-operative>

¹⁰ Page 27-29 Guidance on the FCA’s registration function under the Co-operative and Community Benefit Societies 2014, (November 2015)

¹¹ Page 31, Guidance on the FCA’s registration function under the Co-operative and Community Benefit Societies 2014, (November 2015)

The governing document of a society is known simply as the ‘rules’. Societies pay an annual fee to the FCA (called the ‘periodic fee’), the amount of which varies depending on the assets held by the society and currently (2015) ranges from £55 - £425. There is no equivalent fee to pay to DETINI in the case of a Northern Irish Society.

The society legal form is generally more suited to socially motivated and co-operative organisations in that there are fewer administrative and legal requirements compared to those for private companies, although societies are required to file an annual return and their accounts with the registrar. This legislation is generally less complicated, putting more trust in the directors to act ‘in good faith.’ Similar to companies, provided certain requirements are met, societies may not be required to have an audit. .

Registering a society using a free draft (bespoke rules) can be fairly expensive and it also tends to be slower than registering a company, as the registrar examines the rules carefully in the light of the Act and makes the final decision about which societies may be registered. Using ‘model rules’ (standardised governing documents which have been previously approved by the registrar) can reduce the registration cost and timescale. These must be presented through a sponsoring body but can sometimes be too restrictive. You can obtain a list of sponsoring bodies from the FCA (Co-operatives UK is a sponsoring body and has several sets of model rules available.

For more information see: www.uk.coop/developing-co-ops/model-governing-documents).

A positive aspect of the registrar’s role in checking the rules is that any future amendments must also be approved by them. They may refuse any planned amendment that they believe goes against the founders’ original aims, potentially giving greater protection to the principles upon which an organisation has been set up.

At least three members are needed to register and maintain a society (unless all members are societies in which case only two are needed). The minimum age limit for governing body members of societies has been recently reduced from 18 to 16. However, if a society’s rules still refer to the age limit of 18, the rules will prevail.

The society form is less well known than the private company and it is not uncommon for accountants, banks and funders not to recognise or fail to understand its corporate status.

The society form is particularly appropriate for organisations wishing to raise capital from the public as it has several special attributes that make it different to companies in this regard, these are:

- enshrined democracy and protection of members' rights - whilst it is possible to state a company should be one member, one vote this can be overturned by the members. A society (unless a secondary co-

operative) has to be one member, one vote regardless of the number of shares owned. In a society, members have the right to appoint and dismiss directors and determine the affairs and rules of the society;

- withdrawable share capital - societies have the option of issuing withdrawable share capital. This type of share is withdrawable by the member, subject to any conditions stated in the society's rules. There is no requirement to specify an amount of share capital upon registration. Societies have some exemptions from the Financial Services and Markets Act (FSMA 2000), including exemptions covering the approval of financial promotions, which can reduce the cost of a share issue. Withdrawable share capital is nevertheless risk capital and, despite the exemptions, the registrar will expect a society to provide appropriate information regarding this risk to potential investors. For more information on the use of withdrawable share capital see: <http://communityshares.org.uk/>;
- limits on shareholding - all members must hold at least one share in the society. Currently shareholding for individuals is limited to £100,000, but there is no limit to the size of shareholding held by another society;
- limits on share interest - the interest payable on shares must be limited to what is "necessary to obtain and retain enough capital to run the business". Those people investing in societies usually do so for socially motivated or philanthropic reasons rather than for the prospect of a financial return; and
- asset lock - under CCBSA 2014 a community benefit society can 'lock' its assets. This means that upon dissolution the assets cannot be shared amongst the members, rather they must go to another asset locked organisation(s) with similar objects (please see chapter 7.2 of this guide for further details).

Summary of the key features of the different legal forms

| Legal Form | Does its members have limited liability? | What is its governing document called? | Can it issue shares? | Can it pay a return on shareholdings? | Does it have to register with a regulatory body? | Is it suitable for charitable status? | Does it have an asset lock? |
|--|--|--|----------------------|---------------------------------------|--|---------------------------------------|-----------------------------|
| Partnerships | No | Deed | No | No | No | No | No |
| Associations | No | Constitution | No | No | No (unless a charity) | Yes | No (unless a charity) |
| Trusts | No | Deed | No | No | No (unless a charity) | Yes | No (unless a charity) |
| Limited Liability Partnership (LLP) | Yes | Agreement or Deed | No | No | Companies House | No | No |
| Company Limited by Guarantee | Yes | Articles | No | No | Companies House | Yes | No (unless a charity) |
| Company Limited by Shares | Yes | Articles | Yes | Yes | Companies House | No* | No (unless a charity) |
| Community Interest Company (limited by guarantee) | Yes | Articles | No | No | Companies House & CIC Regulator | No | Yes |
| Community Interest Company (limited by shares) | Yes | Articles | Yes | Yes – although it is subject to a cap | Companies House & CIC Regulator | No | Yes |
| Charitable Incorporated Organisation | Yes | Constitution | No | No | Charity Commission | Yes | Yes |
| Industrial & Provident Society (bona fide co-operative) | Yes | Rules | Yes | Yes | Financial Services Authority | No | No |
| Industrial & Provident Society (society for the benefit of the community) | Yes | Rules | Yes | Yes | Financial Services Authority | Yes | Yes (optional) |

* In the past some charities were registered as companies limited by shares.

6 Organisational types

Many organisations may want to be known as a particular type of organisation, in addition to their legal form. There are many different types of organisation that are recognised in the UK, although it is important to realise that in the eyes of the law an organisation is identified purely by its legal form. A summary of the main organisational types and their characteristics is provided below.

6.1 Co-operative

In the UK there is no separate co-operatives act, so there is no precise definition of a co-operative. Generally, co-operatives are defined as organisations which meet co-operative principles set out by the International Co-operative Alliance (ICA - the global federation of co-operative enterprises).

The general definition the ICA applies is as follows:

"A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise."

As well as this general definition, a set of values and principles are applied (please see Appendix 1 for the full list).

The co-operative sector is constantly developing as people develop innovative ways of applying co-operative principles to meet new social and economic needs. Many of the recognised types of co-operative are variations on the same basic structure, but the following list contains the major forms of co-operative which may be found in the UK today.

a *Worker co-operative*

Owned and controlled by its employees. Members are involved in the co-operative by working for it.

b *Consumer co-operative*

Owned and controlled by its customers members. Members are individuals who purchase goods or services from the co-operative. In the larger consumer co-operatives in the UK, members can be involved at many levels in the democratic process.

c *Co-operative consortium (also known as service or marketing co-operative)*

Owned and controlled by people who use the services provided. Members are involved by 'paying for' the services, although this transaction may not always take the form of a simple cash sale. A co-operative consortium is often used for marketing co-operatives (selling the services and products of its members)

and agencies (for example, actors and doctors). In mainland Europe these are sometimes known as 'small enterprise co-operatives'.

d Agricultural co-operative

The members tend to be farmers using the co-operative in three main areas:

- marketing co-operatives, sometimes known as the 'agency model' because the co-operative acts on behalf of its members to market their produce; or
- requisite co-operatives which are mainly concerned with supplying agricultural products and services; or
- service co-operatives which provide services to support a farmer's business, such as sharing machinery.

e Co-operative Council

This type of co-operative is a relatively new organisational type. The membership consists of a particular local authority, which with local people aim to shape their community through collective action, co-operation, empowerment and enterprise.

For further details see: the Co-operative Councils Innovation Network - <http://www.coopinnovation.co.uk/>

f. Co-operative School

A form of educational co-operative that is owned and controlled by staff, parents and the community in which the school operates. There are 3 types of co-operative school:

- existing schools that adapt their structure to adopt the co-operative values and principles and develop them to suit their own needs and locality;
- co-operative trust schools that are owned by a charitable body which appoints some of the school's governors that provide expertise and experience in order raise standards within a particular school. This governance structure of a co-operative trust school incorporates the values and principles of co-operation.
- co-operative academies are a co-operative form of a state-funded academy school in England. The governance structure of a co-operative academy incorporates the values and principles of co-operation.

For further details see: the Co-operative College website - <http://www.co-op.ac.uk/schools-and-young-people/co-operative-trusts-academies/#.VrtLnbiLTIU>

e. Credit union

A form of financial co-operative owned and controlled by people who use the services provided. Members are involved by saving with and borrowing from the credit union.

f Housing co-operative

A number of co-operatives are involved in owning or renting housing for their members. Housing co-operatives can be either fully mutual (where all tenants are members of the co-operative and vice versa) or non-fully mutual (which can have a wider membership base). There are several different types of housing co-operative:

- **Ownership housing co-operatives**

Ownership housing co-operatives are owned, managed and controlled democratically by their members and tenants, and usually all tenants are members of the co-operative. The majority of ownership housing co-operatives are partially funded by the Homes and Communities Agency but it is possible to set them up without public funding, using mortgages and loan stock. Ownership housing co-operatives are usually quite small, but they offer the greatest amount of member control.

- **Leasehold housing co-operatives**

A housing co-operative where members have bought a leasehold interest in their home, and the freehold of the property is owned by a housing co-operative.

- **Tenant management co-operatives**

A co-operative formed by tenants to take on the democratic management of their homes. Through the 'right to manage' initiative, tenants have the right to establish this type of co-operative and can access specific funding to do so. A tenant management co-operative has a management agreement with its landlord (the local authority or housing association, or a combination of the two) and receives a management allowance to run the co-operative.

- **Short-life housing co-operatives**

Co-operatives that take over properties that are in some way unlettable, for a fixed period of time, which can be extended over several years. Short-life co-operatives do not own the properties rather they have a lease with the landlord.

- **Self-build co-operatives**

A co-operative where the members are tenants who have been involved in the building of the properties. The labour they put into building the properties gives them a 'sweat equity' - meaning they own a percentage of the property based on the amount of labour put in. The tenant then rents the remainder of the property.

- Community Gateway
A new model of housing provision that provides for a wide range of tenant and community empowerment opportunities.
Community Gateway encourages tenants and communities to become involved in decisions about homes and neighbourhoods. Tenants are encouraged to become members and owners of the organisation and be directly involved in decision making, although engagement can be more informal.
- Tenant controlled housing associations
Tenant controlled housing associations (sometimes called community based housing associations) are tenant led housing associations registered with the TSA. Tenants make up the majority of the governing body and some hold democratic elections for the tenant representatives of the association.
- Cohousing
Cohousing is a way of living which brings individuals and families together in groups to share common aims and activities while also enjoying their own self-contained accommodation and personal space.
The main features of cohousing communities are:
 - They are set up and run by their members for mutual benefit
 - Members are consciously committed to living as a community
 - Developments are designed to encourage social contact and a sense of neighbourhood among members.
 - Common space facilitates shared activities like community meals and other amenities like laundries, heating systems, guest rooms, transport etc. may be shared

g Multi-stakeholder co-operative

Members are individuals or organisations who may have different relationship with the co-operative, employee, user, consumer but who share a common interest in supporting a particular geographical community or community of interest.

h Community co-operative

Members are individuals or organisations who share a common interest in supporting a particular geographical community, community asset or community of interest, an example of a community co-operative is a pub that is owned by its members.

Secondary co-operative

Owned and controlled by other co-operatives and often used by co-operative societies to carry out joint activity. The major difference with a secondary co-operative compared to other co-operatives is that voting can be based on the contribution or trade of the members, allowing a move away from the principle of 'one member, one vote'. However, certain restrictions do apply as the regulator is likely to order that a maximum voting strength is introduced to make sure that no member has an overall majority vote.

For further details on co-operatives see www.uk.coop and for housing co-operatives see Confederation of Co-operative Housing www.cch.coop and Radical Routes www.radicalroutes.org.uk/

6.2 BCorp

BCorps are for-profit companies certified by the non-profit B Lab, a global non-profit organisation, to meet rigorous standards of social and environmental performance, accountability, and transparency In order to be accepted as a BCorp an organisation must:

- Complete an impact assessment which assesses the overall impact of the organisation on its stakeholders;;
- Adopt or amend an existing governing document to include specific provisions that demonstrate a commitment to the consideration of all stakeholder interests in the operation of the organisation
- Sign the BCorp Declaration.

For further details see: <https://www.bcorporation.net/>

6.3 Community amateur sports club (CASC)

An amateur sports club that has applied to HM Revenue & Customs to be registered as a CASC, instead of applying to become a registered charity. In order to be considered as a CASC the club must:

- be open to the whole community;
- be organised on an amateur basis;
- have as its main purpose providing facilities for, and promoting participation in one or more eligible sports;
- meet the location requirements, (ie) that it is open to qualifying sports clubs in the UK or other European Community Member States or relevant territories; and
- meet the management condition, which means that the club managers (those who have general control and manage the club) are fit and proper persons. A person is deemed to be 'fit and proper' if they meet the statutory test in that s/he can ensure, or are likely to ensure, that club funds and tax reliefs are

used only for charitable purposes. A declaration of the fact must be signed by the club managers and submitted with the application for CASC status to HMRC.

The particular benefits of registering as a CASC include:

- 80% mandatory business rate relief;
- exemption from corporation tax on trading income up to £30,000 and income from property up to £20,000; and
- benefits from Gift Aid donations.

CASCs can register as associations but most are societies or companies.

For further details see www.cascinfo.co.uk

6.3 Club

The term 'club' can be used in a wide range of circumstances, including describing what might otherwise be an association, but a members' club will generally be run following the co-operative principles. People join a club because they want to use the services offered and will usually pay a subscription every year plus the price of any food and drink purchased. A members' club would not normally be eligible for charitable status unless all the members are considered charitable beneficiaries (such as some youth clubs). Most are registered as friendly societies, or as societies, although it is possible to register a club as a company.

6.4 Community enterprise/community business

A community business is locally rooted and driven by a philosophy of community benefit, enterprise, inclusiveness and community control. They give people from all corners of their local community the power to change their spaces and places, improving the social and economic prospects of their community into the long-term.

It has four key elements:

1. Place-based - the organisation should operate in a defined, geographical community;
2. Community control – the organisation should be able to demonstrate that it is controlled by the geographical community it operates in. Control may be through community holding an equity stake in the organisation, community representation at Board level or through community consultation.
3. Community Benefit – the organisation must operate for the benefit for the geographical community in which it is based and any private benefit must be incidental.

4. Trading – the organisation must trade and be able to evidence potential of becoming sustainable by reducing reliance on grant income.¹²

Some community benefit societies and co-operatives may meet the definition of a community enterprise/business, with many opting to undertake a community share offer in order to encourage community ownership, become sustainable and less reliant on grant funding.

For more information see: www.communityshares.org.uk

6.5 Community development finance institution (CDFI)

CDFIs provide a financial tool for social, economic and physical renewal in under-invested communities. They lend and invest in deprived areas and markets that cannot easily access mainstream finance. They serve different types of customers including individuals, small and medium sized enterprises (SME) and social businesses. CDFIs can operate under a variety of structures including companies and societies. Some have individual and organisational members who invest in the schemes, while others receive grant funding.

For further details see www.cdfa.org.uk

6.7 Community land trust

The following is the official definition of a Community Land Trust, as found in the Housing and Regeneration Act 2008, Part 2, Chapter 1, Clause 79:

A Community Land Trust is a corporate body which:

1) is established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order to:

- provide a benefit to the local community
- ensure that the assets are not sold or developed except in a manner which the trust's members think benefits the local community.

2) is established under arrangements which are expressly designed to ensure that:

- any profits from its activities will be used to benefit the local community (otherwise than by being paid directly to members)
- individuals who live or work in the specified area have the opportunity to become members of the trust (whether or not others can also become members)
- the members of a trust control it.

¹² Definition based on information from Power to Change - <http://www.thepowertochange.org.uk/>

For further details see www.communitylandtrust.org.uk

6.8 Community supported agriculture (CSA)

CSAs may be community or farmer-led, and operates as a partnership approach between farmers and consumers where the responsibilities and rewards are shared. The consumers give a commitment to their local farm in return for a share in the produce. The partnership reconnects people with the land and local food and provides a secure income for farmers.

Many are registered as societies - both as co-operatives and community benefit societies, but CSAs can take a variety of legal forms.

For further details see www.soilassociation.org/csa

6.9 Development trust

Development trusts are community organisations which are owned and managed by the local community, aim to achieve the sustainable regeneration of a community or address a range of economic, social, environmental and cultural issues within a community, are independent but seek to work in partnership with other private, public and third sector organisations, aim to reduce dependency on grant support by generating income through enterprise and the ownership of assets. All trading surpluses are principally reinvested in the organisation or the community.

Most are registered as companies limited by guarantee. Some have chosen to register as community benefit societies and the majority have charitable status. Smaller and new-start development trusts may be formed as associations.

For further details see www.locality.org.uk and www.dtascot.org.uk/

6.10 Employee-owned business

These organisations come in a variety of forms, from a worker co-operative to a company with an employee benefit trust with some form of a share incentive scheme, which itself can take a number of forms. While worker co-operatives are completely owned by the employees, in an employee-owned business this is not always the case. However, employee owners should be in the majority for the business to be classed as 'employee-owned'. Many employee-owned businesses are set up as a result of an employee buy-out, when a previous owner/manager retires.

For further details see www.employeeownership.co.uk or the Employee Buyouts section (via Growing your business) on www.thehive.coop

6.11 Leisure Trust

An organisation that operates public leisure facilities which is owned and controlled by its stakeholders.

Most are registered as companies limited by guarantee or community benefit societies and some have charitable status.

Typically, they will have a ‘stakeholder board’ drawn from partners, funders, staff and users. However, some trusts are co-operatives and are wholly operated by their staff whereas others have varying degrees of staff influence on their governing bodies.

For further details see www.sporta.org

6.12 Mutual

Mutuals are organisations majority owned and controlled by their members on a fair and equitable basis. Co-operatives are part of this family of businesses alongside other forms of member ownership. It is accepted that all co-operatives are mutual, however not all mutuals are co-operative as there is no requirement for them to abide by the Co-operative values and principles.

Common mutual organisations include building societies, health mutual and mutual insurers.

Some mutuals are fully mutual, where only members can benefit from the services provided by the mutual.

Housing co-operatives are mutual organisations and many are fully mutual (all tenants are members and all members are tenants or future tenants). Credit unions are fully mutual (only savers may be members and all savers must be members). Consumer co-operatives which run retail outlets (for example the larger co-operative societies) and worker co-operatives are mutual organisations, but generally cannot be fully mutual as that would involve them refusing to serve customers who were not members.

In recent years new forms of mutuals have emerged (such as community owned shops and leisure trusts) where in addition to member benefit there is also an element of community benefit which has seen benefits being felt and shared out across whole communities.

Public Service Mutuals are currently favoured by government to manage and run services that have been carried out by government and/or associated bodies. Public Service Mutuals are organisations which:

- have left the public sector (also known as ‘spinning out’), and
- continue to deliver public services, and
- in which employee control plays a significant role in their operation.

For further details see: <http://mutuals.cabinetoffice.gov.uk/>

Mutuality is sometimes needed by law (for example, credit unions and some housing co-operatives). Sometimes mutuality is favoured for tax reasons. If mutuals meet all the conditions, they can apply to be recognised as having mutual trading status (MTS), which is particularly appropriate to agricultural co-operatives and co-operative consortia. MTS gives exemption from corporation tax and is sometimes adopted as a matter of principle by people or organisations who believe in working in a mutual way.

6.13 Producer Organisation

An organisational type that is specific to the agricultural sector and enables farmers (usually those that produce the same agricultural product) to join together to negotiate contract terms collectively with other parties in the supply chain, for example the price of raw milk as part of the European Commission's 'Milk Package' set up in 2012 -
http://ec.europa.eu/agriculture/milk/milk-package/index_en.htm

6.14 Social enterprise

A social enterprise is a business that trades for a social and/or environmental purpose. It will have a clear sense of its 'social mission' which means it will know what difference it is trying to make, who it aims to help, and how it plans to do it. It will bring in most or all of its income through selling goods or services. And it will also have clear rules about what it does with its profits, reinvesting these to further the 'social mission'.

Social enterprises come in many shapes and sizes from large national and international businesses to small community based enterprises, and register using many different types of legal form, but they all:

- Are businesses that aim to generate their income by selling goods and services, rather than through grants and donations
- Are set up to specifically make a difference
- Reinvest the profits they make in their social mission.¹³

The term social enterprise is used to describe organisations that exist for a social purpose. You can't register your business legally as a social enterprise but there are various legal forms that are used to incorporate social enterprises. Please see chapter 5 of this guide which covers this subject in more detail.

For further details see www.socialenterprise.org.uk

6.15 Social firm

¹³ Definition taken from Social Enterprise UK - www.socialenterprise.org.uk

A social firm is a market-led enterprise set up specifically to create good employment opportunities for people disadvantaged in the labour market. Social firms work around three main values – enterprise, employment and empowerment.

Social firms may use a range of legal forms. The company limited by guarantee, community interest company and co-operative society are promoted as suitable models.

For further details see www.socialfirms.co.uk

6.16 Supporters' trust

A Supporters' Trust is a democratic, not-for-profit organisation of supporters, committed to strengthening the voice for supporters in the decision making process at a club, and strengthening the links between the club and the community it serves.¹⁴

A supporters' trust is owned by its members, although the club to which it is attached may not be – at least to start with. Members are not beneficial owners and do not personally have any access to the organisation's income or assets.

The majority are registered as community benefit societies using the model rules promoted by Supporters Direct – the national body set up to promote supporters' trusts. Since providing capital and revenue support to their associated sports clubs is not a charitable purpose, supporters' trusts are not eligible for charitable status.

For further details see www.supporters-direct.org

6.17 Tenants' (and residents') association

An organisation open to all tenants (and residents) within a particular geographical area, to promote their common interests and provide a unified voice. The association is owned by its members, although their homes will often be owned by a local authority, a housing association or a private landlord. Tenants' and residents' associations will not be eligible for charitable status, but some may have associated charities to carry out educational or welfare activities. Small ones tend to be unincorporated associations, more established ones will register as companies limited by guarantee or, less commonly, as societies.

For further details see www.taroe.org and

6.18 Charity

¹⁴ Definition taken from Supporters Direct - www.supporters-direct.org/

An organisation that exists to benefit the public, or a section of it, by promoting certain purposes that the law recognises as charitable. Being a charity offers a status recognised in law that is in addition to an organisation's legal form and organisational type. An organisation cannot simply be a charity, it must first establish itself using an appropriate legal form before the status can be applied for.

Please see chapters 8 and 9 of this guide which cover this subject in more detail.

7 Ownership

Every organisation must have members who are often considered to be the owners. Although it is possible to incorporate a company with a single member, usually co-operatives and community owned enterprises have at least two members. Generally, members will be those people or organisations identified in the governing document as having a vote. Having a vote is important as it allows members to be involved in decision making, rather than a non-voting associate membership which is more likely to be a list of supporters who have no particular involvement in the way the organisation is governed.

The governing document will go into detail about who is involved and at what level. In particular, it is very common to have a governing body such as a board of directors or a management committee that manages the organisation on a day-to-day basis.

There are several terms associated with ownership.

7.1 Common ownership

In this context, the term 'common ownership' comes from the Industrial Common Ownership Act 1976 that sets out a number of conditions relating to ownership, in particular in the event of the winding up of the business, the members may not distribute residual assets amongst themselves but must pass them on to another common ownership enterprise or otherwise retain them within the sector or, failing either of these, donate them to charity.

Enterprises set up under this act have to be owned and controlled by employees. The act was an attempt to avoid historical mistakes when previously successful businesses were wound up on the vote of non-employee members to distribute often quite considerable assets to the members.

The term 'common ownership' has been extended to apply to a range of structures where the assets are held jointly and cannot be shared out among the members.

7.2 Asset lock

It has always been possible to include the principle of common ownership in the governing document of an organisation which required it, but it was always possible for the members to remove the provision in their favour. The Co-operative and Community Benefit Societies Act 2014 permits a community benefit society to incorporate an "asset lock" into its rules which is designed to ensure that the assets of the society (including any profits or other surpluses generated by its activities) are used for the benefit of the must be given to another asset locked organisation, usually with similar objectives. Once introduced a society cannot remove an asset lock from its rules and so a

society should consider carefully any advantages or disadvantages it may bring before including it.

Probably the most well-known legal form to include a compulsory asset lock is the community interest company (see chapter 5.2 of this guide for further details). Charitable bodies have always had a form of asset lock in that upon dissolution their assets could only be given to another charitable organisation.

The Companies Act 2006 introduced a process which permits a company to 'entrench' certain provisions of its articles. An article may be entrenched at the point of the company's formation or by a unanimous vote in favour by all the company's members. Similarly, an entrenched provision may only be removed by a unanimous vote in favour by all the company's members. Entrenchment may be used similarly to an asset lock in that companies may choose to entrench the provision in its articles which sets out that remaining assets must be used for purposes similar to those of the company on wind-up or dissolution of the company.

Those organisations whose governing documents include an asset lock may be looked at more favourably by funders and also potential investors as they can be sure of the motivation of the organisation and the desire to benefit a community other than the members or shareholders.

7.3 Beneficial ownership

A person's motivations for becoming a member of a community enterprise can vary. Members are owners of the enterprise and membership entitles the member to certain rights, for example to attend general meetings, voting rights, and, in some cases, to receive modest interest in capital invested in the enterprise. However, their ownership is said to be 'non-beneficial' in that they have no rights to the assets of the enterprise on winding-up or dissolution of the enterprise. All members of societies that have conducted a community share offer are said to have beneficial ownership in that they may receive a modest amount of interest on their share capital, but should the society wind-up, only the value of their shareholding may be returned to them.

7.4 Co-ownership and joint ownership

Co-ownership, which is sometimes referred to as joint ownership are terms used to describe a form of ownership that enables members of an enterprise to benefit from the underlying assets of an enterprise on winding-up or dissolution. The governing document of an enterprise will set out who is entitled to any underlying assets, in some cases this may be the members and those persons who were members in the immediate years prior to the winding-up. Some agricultural co-operatives choose to operate on co-ownership principles as it is a requirement of mutual trading status (MTS).

Co-ownership or co-housing can also refer to some housing co-operatives where individual members own equity in their homes. See chapter 6 of this guide which cover this subject in more detail.

8 Charitable status

Being a charity grants an organisation a legal status in addition to its legal form. An unincorporated charity would also be an association or a trust and an incorporated charity would be a company (but not a community interest company), a charitable society or a (Scottish) charitable incorporated organisation. In practice it is not possible to become a charity without a governing document or a legal form.

Charitable status brings with it many advantages, including tax relief, wider access to grant funding and a positive public image. An organisation's legal form and the country in which it is registered will have an impact on how it becomes a recognised charity and the process it will need to follow to register. This section of this guide sets out the main requirements in order to become a recognised charity in England & Wales, Scotland & Northern Ireland.

8.1 English and Welsh Charities

(a) The Role of the Charity Commission for England & Wales

The Charity Commission's role is to "register and regulate charities in England and Wales, to ensure that the public can support charities with confidence."¹⁵ Although charity trustees are independent and responsible for the management of their own charities, the Charity Commission make take enforcement action against charities where trustees have failed to comply with their legal requirements and obligations. They include removal or replacement of trustees and ordering trustees to repay funds that have been used in a non-charitable way. If trustees are not sure about whether a particular act is legal and/or in the best interests of their charity they should make use of the Charity Commission's online services and guidance and, if necessary take professional advice.

(b) Registration with the Charity Commission for England & Wales

(i) Registration requirements

Income Requirements

Unless it is an exempt or excepted charity (see section 8.1(d) of this guide), an organisation that meets the statutory definition of charity and has an annual income of £5,000 or more must register with the Charity Commission. Those registered charities with an annual income above £1,000 but below £5,000 may ask to be removed from the Central Register of Charities. The Charity Commission does not generally register a new charity with an income under the £5,000 limit, but does provide a model governing document for small charities to adopt which can be downloaded for free from its website. In exceptional circumstances, for example, where the organisation can provide specific evidence that significant grant funding rests upon it being a registered

¹⁵ Charity Commission: www.gov.uk/government/organisations/charity-commission/about

charity, the Charity Commission may exercise its discretion and agree to register a small charity. Such charities will be able to seek voluntary registration when the part of the Charities Act that permits this comes into effect.

Governance requirements

Organisations wishing to register with the Charity Commission must also ensure that their governing document complies with charity law requirements, such as:

- it must be in a form that enables registration with the Charity Commission, for example a constitution, trust deed or articles of association. Currently, societies are exempt charities for the purposes of the Charities Act 2011 and are not able to register directly with the Charity Commission. (see section 8.1(d) of this guide)
- limitations on the extent of any private benefit, for example through restrictions on the remuneration of trustees and (usually) no employees of the charity on its governing body; and
- preservation of the charitable assets, such as a requirement that upon dissolution assets may only be transferred for charitable purposes.

A Charitable Incorporated Organisation does not have to meet the income requirements for registration as it do not come into existence until registered with the Charity Commission, it does however have to adopt a governing document that complies with charity law.

(ii) Registration Process

Charities that meet the registration requirements can register using an approved governing document which can make registration more straightforward but may not address the specific requirements of how a charity may wish to be structured. Bespoke governing documents, whilst they can make the registration process longer, can accommodate a charity's specific requirements.

The Charity Commission encourages applicants to apply online for charitable status and aims to register complete applications that meet all the requirements within 5 working days of receipt. But the process may take longer if the Charity Commission asks for more information or clarification if, for example, an application is not clear how the charity's purposes will be carried out for the public benefit.

Unincorporated charities that have made the decision to incorporate can create a new charitable company and register it with the Charity Commission. This charitable company will receive a new charity number and steps should then be taken to transfer the assets and liabilities of the unincorporated charity to the new charitable company. Alternatively, unincorporated charities may choose to incorporate as a charitable incorporated organisation (CIO). As a CIO is registered with the Charity Commission only, there is no

requirement to register a new limited company before applying to the Charity Commission. However, as the CIO is a new legal entity it will receive a new charity number and the assets and liabilities of the unincorporated charity should be transferred to the new CIO.

It is an offence for an organisation to promote itself as a ‘registered charity’ if it is not registered with the Charity Commission. A registered charity should refer to itself as such (or if a CIO, the fact that it is a CIO) at its registered office, place(s) of business all business stationery, fundraising literature and financial documents (whether in hard copy or electronic form).

Under the Charities and Trustee Investment (Scotland) Act 2005, charities established in England & Wales and which represent themselves as charities in Scotland must register with OSCR (see Chapter 8.2). Details of the registration requirements and exceptions for these charities can be found on OSCR’s website - <http://www.oscr.org.uk/charities/english-welsh-charities>

(c) What is charitable under the Charities Act 2011?

To be recognised as charitable, an organisation must be able to demonstrate that it operates for the benefit of the public and that its activities fall wholly within one or more of the charitable purposes set out in section 3(1) of the Charities Act 2011.

(i) The public benefit requirement

Under previous English & Welsh charity law, there was a presumption that charities established to relieve poverty, advance education and advance religion benefited the public – other types of charity had to show that they existed for the public benefit. The 2011 Act created a level playing field by ending this presumption and requiring all charities to demonstrate that their aims are for the public benefit.

For an organisation to be a charity, each of its purposes must be for the public benefit, the ‘public benefit requirement.’

The public benefit requirement has 2 aspects. The ‘benefit aspect’ and the ‘public aspect.’

The ‘benefit aspect’

To satisfy this aspect:

- A purpose must be beneficial in a way that is easily identifiable and must be capable of being proved by evidence, where necessary, and which is not based on personal views.

This means that a charity's reason(s) for existing must provide benefit and be carried out in a way in which it is clear how it is benefiting the public.

and

- Any detriment or harm that results from the purpose (to people, property or the environment) must not outweigh the benefit. This is also based on evidence and not on personal views.

This means that it must be clear that the overall benefit, of a charity carrying out its purposes, outweighs any harm that might arise as a minor consequence of doing so.

The 'public aspect'

To satisfy this aspect, a purpose:

- must benefit the public in general, or a sufficient section of the public. What is a sufficient section of the public varies from charitable purpose to charitable purpose; and
- must not result in more than incidental personal benefit. Personal benefit is deemed to be 'incidental' where it is a necessary result or by-product of carrying out the charitable purpose.

In general, for a purpose to be a charitable purpose it must satisfy both the benefit and the public aspects. However, charities for the relief (and in some cases the prevention) of poverty need only satisfy the benefit aspect.

Public benefit will be assessed at the point of application for registration for new charities and trustees of existing charities will need to ensure that they are clear about their charity's aims and that they carry them out for the public benefit. Charities are required to report annually on how they have carried out their charitable purposes for the public benefit and that they have followed the Charity Commission's guidance on public benefit, where relevant. The Charity Commission has published some guidance and examples of how to do this. The level of detail required depends on the income and size of the charity.

(ii) Charitable purposes

There are 13 charitable purposes and these are:

The prevention or relief of poverty

"Poverty" is interpreted widely and as a result a person does not have to be destitute to be regarded as poor. It may also include people unable to satisfy a basic necessity (according to society's standards) without assistance. This purpose includes assisting those in financial hardship who may not necessarily be living in poverty; this may be a short or long term change in circumstances. Organisations established to prevent the poor from becoming poorer and preventing people who are not poor from becoming poor will also be eligible for registration under this purpose.

Examples of the types of activities that would qualify under this purpose:

- provision of debt or money management advice; or
- provision of grants of money to meet a particular need (such as energy costs); or
- provision of services (such as meals on wheels).

For further information, see Charity Commission publication "The Prevention or Relief of Poverty for the Public Benefit".

The advancement of education

"Education" covers both formal education such as schools and universities but also more informal events such as that carried out in the community (such as pre-schools and homework clubs). Activities are deemed educational provided that the education provided is a deliberate act. Education also covers activities that promote understanding in specific areas, such as museums and galleries. In order to "advance" education the activities provided must promote, sustain and increase individual or collective knowledge and understanding of specific areas of study, skills and expertise.

Examples of the types of activities that would qualify under this purpose:

- providing after-school clubs in specific subjects;
- undertaking research and publishing the useful results of that research; and
- training (including vocational training) and lifelong learning.

For further information please see Charity Commission publication "The Advancement of Education for the Public Benefit".

The advancement of religion

"Religion" is defined as a system of beliefs that include certain characteristics that have been identified through case law was clarified in the Charities Act 2006. Section 3(1) of the Charities Act states that a religion includes a belief in more than one god, and a religion which does not involve a belief in a god.

When considering whether an organisation is able to register under this purpose, the Charity Commission will look for the following characteristics:

- the belief system involves belief in a god (or gods) or goddess (or goddesses), or supreme being, or divine or transcendental being or entity or spiritual principle, which is the object or focus of the religion;
- involves a relationship between the believer and the supreme being or entity by showing worship of, reverence for or veneration of the supreme being or entity;
- has a degree of cogency, cohesion, seriousness and importance; and
- promotes an identifiable positive, beneficial, moral or ethical framework.

In order to "advance" religion, an organisation must be promoting, maintaining or practising it and increase belief in the supreme being or entity that is the focus of the religion for the public benefit.

Examples of the types of activities that would qualify under this purpose:

- the provision of sacred spaces, churches and worship services;
- the provision of religious instruction and supervision;
- the provision of property for the purposes of a retreat; and
- the provision of prison, hospital, university and industrial chaplaincy.

Some religious charities are excepted from charity registration. This means that they don't have to register with, or submit annual returns to the Charity Commission.

If the religious charity is a church or chapel belonging to particular Christian denominations and has an income of less than £100,000 it is excepted. This exception is expected to remain in place until March 2021 after which time it is expected that such charities will cease to be excepted and will be required to register with the Charity Commission.

Apart from that, the Charity Commission regulate these charities just like registered charities and can use its powers if it needs to.

See section 8.1(d) of this guide for more details.

For further information please see Charity Commission publication "The Advancement of Religion for the Public Benefit".

The advancement of health or the saving of lives

This purpose includes the prevention or relief of sickness, disease or human suffering, in addition to the promotion of health. It includes conventional methods of relieving sickness and also complementary, alternative or holistic methods designed to heal mind, body and spirit by alleviating symptoms and curing illness. In order to be considered charitable there needs to be enough evidence to prove the effectiveness of the method to be used.

The purpose of saving lives includes activities that are designed to save people whose lives are in danger and also the protection of life and property.

Examples of the types of activities that would qualify under this purpose:

- provision of conventional and/or complementary, alternative or holistic medical treatment, care and healing, such as hospitals and healing centres and charities supporting their work (eg) Hospital League of Friends;
- provision of comforts to those who are sick, convalescing or infirm (such as hospital radio);

- provision of rescue services (such as lifeboats and mountain rescue); and
- provision of life-saving or self-defence classes.

The advancement of citizenship or community development

This purpose includes a wide range of activities that focus on supporting and meeting the needs of the community as a whole rather than the individual. Organisations involved in improving social and community infrastructure will fall under this purpose. Examples of the types of charities and charitable purposes falling within this description include: urban and rural regeneration, promotion of community capacity building and promotion of the voluntary sector.

Examples of the types of activities that would qualify under this purpose:

- promotion of public safety;
- promotion of civic responsibility and good citizenship (such as scouts and guides); and
- promotion of the efficiency and effectiveness of charities and the effective use of charitable resources.

The advancement of the arts, culture, heritage or science

This purpose covers a wide range of activities including promoting various forms of art at a national/professional and local/amateur level, the provision of arts facilities and encouraging high standards of art.

Activities focused on preserving historic land and buildings that are part of local or national history, and traditions which have been passed down through generations would also be included provided that in doing so a benefit to the public can be demonstrated.

Organisations undertaking scientific research are also included under this purpose.

Examples of the types of activities that would qualify under this purpose:

- art galleries;
- preservation of ancient sites or buildings; and
- preservation of historical traditions, such as folk dancing.

The advancement of amateur sport

This purpose includes the advancement of any sports or games which promote health by involving physical or mental skill or exertion, provided they are undertaken on an amateur basis. Organisations wishing to register under this purpose must be able to demonstrate open membership, encourage community participation and be affordable to the public.

Examples of the types of activities that would qualify under this purpose:

- provision of multi-sports centres;
- community amateur sports clubs (CASC)¹⁶, such as football, rugby and tennis clubs; and
- provision of kits and equipment.

The advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity

The Charity Commission has defined human rights as rights which:

- are essential to our humanity or to our functioning as human beings;
- have a moral dimension;
- apply to everyone; and
- set out what the State must do for us, and what it must not do (or allow others to do) to us.

Different activities may promote human rights in different countries, so the objects of the charity should state as precisely as possible which country or countries it intends to promote human rights and what code of human rights it plans to promote. Those organisations wishing to advance human rights through political means, such as campaigning for changes in the law of a country may not be considered charitable unless such political activity is incidental to their charitable purpose.

The advancement of conflict resolution or reconciliation includes the following areas:

- resolution of international conflicts and relieving the suffering of poverty and distress arising through conflict on a national scale by identifying the causes of conflict and seeking to resolve such conflict promotion of restorative justice; and
- mediation, conciliation and reconciliation between those involved in dispute or inter-personal conflict.

The promotion of religious or racial harmony or equality and diversity includes a range of activity concerned with promoting harmony and reducing conflict between people from different races or religions, or belief systems and eliminating discrimination and promoting diversity in society.

Examples of the types of activities that would qualify under this purpose:

¹⁶ An organisation advancing amateur sport can be a charity or a CASC, it cannot be both. An organisation registered as a CASC cannot apply to register as a charity.

- raising awareness of human rights issues;
- providing mediation to families involved in a marriage breakdown; and
- provision of a youth group which encourages interaction between young people of different faiths.

The advancement of environmental protection or improvement

This purpose includes activities that seek to preserve and conserve the natural environment and seek to promote sustainable development. Activities can include the conservation of a specific species or can be wider and conserve wildlife in general. It can also include the preservation of a particular habitat or area of natural beauty. Organisations wishing to register under this purpose may be expected to prove that the particular species or habitat is indeed worthy of conserving.

Examples of the types of activities that would qualify under this purpose:

- zoos;
- recycling and sustainable waste management schemes; and
- research projects into the use of renewable energy sources.

The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage

Organisations undertaking activities falling under this purpose have long been recognised as charitable and are wide ranging in their scope. Organisations registering under this purpose may find overlap with some of the other purposes, such as the relief of poverty and advancement of health.

Examples of the types of activities that would qualify under this purpose:

- provision of specialist equipment for disabled people, such as wheelchairs;
- care homes and youth centres; and
- provision of specialist advice, equipment or accommodation, drop-in sessions for elderly people.

The advancement of animal welfare

This purpose includes any activity aimed to prevent or suppress cruelty to animals and to prevent or relieve suffering by animals.

Examples of the types of activities that would qualify under this purpose:

- provision of veterinary care and treatment; and
- animal sanctuaries and re-homing organisations.

The promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services.

It is deemed charitable to promote the efficiency of the armed forces as a means of defending the country. Similarly it is also charitable under this purpose to promote the efficiency of the police, fire, rescue and ambulance services in order to ensure the prevention of crime, the preservation of public order and the protection of the public.

Examples of the types of activities that would qualify under this purpose:

- provision of educational resources to increase the technical knowledge of members of the services;
- provision of an emergency air or sea rescue service; and
- provision of lasting memorials to the fallen.

Any other purposes currently recognised as charitable which can be recognised by analogy to, or within the spirit of, purposes falling within the other 12 charitable purposes or any other purposes recognised as charitable under the law of England Wales.

This includes all charitable purposes not covered under the other 12 purposes and any new purposes which may be recognised in the future. Organisations registering under this purpose will undertake a wide range of activities which may include the following:

- provision of facilities for recreation and leisure-time occupation in the interest of social welfare, such as women's' institutes and community centres;
- relief of unemployment, such as training in writing CVs and interview skills; and
- provision of public works and services and the provision of public amenities, such as repairing bridges and providing libraries.

For detailed information on the charitable purposes, please see www.charity-commission.gov.uk.

(d) Exempt and excepted charities

There are also certain types of charity in England and Wales that have been 'exempt' or 'excepted' from registering with the Charity Commission.

(i) Exempt charities

An exempt charity is not regulated by and cannot register with the Charity Commission. A charity is exempt if it is:

- listed in Schedule 3 to the Charities Act which includes educational charities for example Academy Trusts, museums and galleries, for

- example the Tate Gallery, some Church Investment Funds, charitable community benefit societies and friendly societies.
- a common investment fund or a common deposit fund which permits only exempt charities to participate in; or
- made exempt by some other legislation.

The Charities Act 2006 improved the way exempt charities are regulated in that they must have a ‘principal regulator’ to regulate them as charities, or be no longer exempt and have the Commission as regulator.

As a result, some charities have lost their exemption because no suitable ‘principal regulator’ has been found. However, such charities are only required to register with the Charity Commission if their annual income exceeds £100,000.

No firm decision has been made on the future regulation of many exempt charities. Currently, community benefit societies that register in England and Wales that want to be recognised as charitable should first register with the FCA as a society and then apply to HMRC to be recognised as charitable for tax purposes.¹⁷

Under the Co-operative and Community Benefit Societies Act 2014, all charitable community benefit societies must state that they are a charity on all business stationery, fundraising literature and financial documents (whether in hard copy or electronic form) and the society’s websites.

(ii) Excepted Charities

A charity is excepted if its income is more than £5,000 but less than £100,000 and is in one of the following groups:

- churches and chapels belonging to some Christian denominations, for example the Church of England;
- charities that provide premises for some types of school, for example a charity that principally holds land and buildings on trust for a foundation school;
- Scout and guides (with some exclusions); and
- Charitable service funds for the armed forces (with exclusions).

Most exceptions are permanent but the exception for church charities has been extended to 31 March 2021 to give the denominational bodies and the Charity Commission time to help these charities to prepare for registration.

Any organisation considering charitable status should consider what benefits it will bring and any restrictions it will place on the organisation (please see chapters 9 and 10 of this guide) as once registered, a charity may only cease to be such by converting to a community interest company (CIC) (with the

¹⁷ More details on how charities can apply to HMRC for tax reliefs can be found at: www.gov.uk/charities-and-tax/get-recognition

permission of the Charity Commission which often places restrictions on how the CIC can use any charitable assets) or by winding-up or merging with another charity.

8.2 Scottish Charities

(a) The Role of the Office of the Scottish Charity Regulator (OSCR)

OSCR is the independent regulator and registrar of Scottish charities. Although charity trustees are independent and responsible for the management of their own charities, OSCR make take enforcement action against charities where trustees have failed to comply with their legal requirements and obligations. They include removal or replacement of trustees and ordering trustees to repay funds that have been used in a non-charitable way.

(b) Registration with OSCR

(i) Registration requirements

Organisations seeking to register as a charity in Scotland must meet the charity test. This means that:

- (a) it must have wholly charitable purposes;
- (b) its activities must provide public benefit in Scotland or elsewhere; and
- (c) it must have a governing document in a form that enables registration with OSCR, for example a constitution, trust deed, articles of association or rules. Unlike the situation in England & Wales, societies seeking charitable status may apply directly with OSCR.

(ii) Registration Process

Charities that meet the registration requirements can register using an approved governing document which can make registration more straightforward but may not address the specific requirements of how a charity may wish to be structured.¹⁸ Bespoke governing documents, whilst they can make the registration process longer, can accommodate a charity's specific requirements.

At the time of writing, applications for charitable status may only be made by post and OSCR aims to acknowledge applications within 10 days and to assess them within 90 days of receipt. Some applications take longer if they are complex, or if more information is required, for example, an application is incomplete or if it is not clear how the charity's purposes are for the public benefit and how they will be carried out for the public benefit.

¹⁸ Unlike the Charity Commission for England & Wales, OSCR does not hold charitable model governing documents but does signpost to organisations that do so.

Unincorporated charities that have made the decision to incorporate can create a new charitable company or community benefit society and register it with OSCR. This charitable company or community benefit society will receive a new charity number and steps should then be taken to transfer the assets and liabilities of the unincorporated charity to the new charitable company or community benefit society. Alternatively, unincorporated charities may choose to incorporate as a Scottish charitable incorporated organisation (SCIO). As a SCIO is registered with OSCR only, there is no requirement to register a new limited company before applying to OSCR. However, as the SCIO is a new legal entity it will receive a new charity number and the assets and liabilities of the unincorporated charity should be transferred to the new CIO.

Unlike the situation in England & Wales, charitable companies and charitable societies may convert to a SCIO. Scottish charities considering this option should consult the guidance on OSCR's website -

<http://www.oscr.org.uk/charities/managing-your-charity/making-changes-to-your-charity/#changing-to-a-scio-from-an-unincorporated-association-or-a-trust>

A Scottish charity should refer to itself as such (or if a SCIO, the fact that it is a SCIO) at its registered office, place(s) of business all business stationery, fundraising literature and financial documents (whether in hard copy or electronic form).

(c) What is charitable under the Charities and Trustee Investment (Scotland) Act 2005?

To be recognised as charitable, an organisation must be able to demonstrate that it operates for the benefit of the public, in Scotland or elsewhere and that its activities fall wholly within one or more the charitable purposes set out in section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005.

(i) The public benefit requirement

OSCR has published guidance about what elements it will consider when assessing whether an organisation is for public benefit. These include:

- (a) what the organisation does, or intends to do, to achieve its charitable purposes and that these activities will make a positive difference to the public.
- (b) whether the organisation will provide private benefit and if so, to what extent. For example, providing benefits to an organisation's members is seen as private benefit.
- (c) whether the organisation will cause any disadvantages to the public by carrying out its activities. For example, if the activities of the organisation cause detriment or harm that would seriously outweigh any benefit the organisation provides, it would fail the charity test;

(d) if the organisation provides benefit to only a section of the public, whether access to these benefits are unduly restrictive. It is permissible to restrict the organisation's activities, provided that this is not unreasonable or unjustified. For example, it is justified for an organisation operating in a remote community to only cater for the small number of people living there.

(ii) *Charitable purposes*

(ii) *There are 15 charitable purposes. These are broadly similar to those set out in the Charities Act 2011, but there are some differences, most notably:*

- There are 2 distinct purposes for the advancement of health and saving of lives, which are:

(a) The advancement of health (including the prevention or relief of sickness, disease or human suffering).

and

(b) The saving of lives.

- There is a specific purpose to promote public participation in sport, which is:

The advancement of public participation in sport (and 'sport' means sport which involves physical skill and exertion).

Sport may, but need not be amateur sport provided that is advanced public participation in a sport that involves physical skill and exertion.

- There is a specific purpose dedicated to provision of facilities for recreation and leisure-time use, which is:

The provision of recreation facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended, and only in relation to recreational facilities or activities which are:

(i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantages; or
(ii) available to members of the public at large or to male or female members of the public at large.

- There are 3 distinct purposes dealing with:

○ The advancement of human rights, conflict resolution or reconciliation.

- The promotion of religious or racial harmony.
 - The promotion of equality and diversity.
- It is specifically recognised, under the charitable purpose of the provision of relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage, that it is permissible to provide this relief through “the provision of accommodation or care.” For example, housing associations.
- Any other purpose that may reasonably be regarded as analogous to any of the preceding purposes. This includes all charitable purposes not covered under the other 15 purposes and any new purposes which may be recognised in the future. Examples of analogous purposes include:
 - The advancement of a philosophical belief (whether or not involving belief in a god) is analogous to the advancement of religion.
 - The relief of unemployment is analogous to the relief of poverty.
 - Increasing or improving the efficiency of the armed forces is analogous to the advancement of citizenship.

Any organisation considering charitable status should consider what benefits it will bring and any restrictions it will place on the organisation (please see chapters 9 and 10 of this guide) as once registered, a charity may only cease to be such by converting to a community interest company (CIC) (with the permission of OSCR which often places restrictions on how the CIC can use any charitable assets), a community benefit society with an asset lock or by winding-up or merging with another charity.

8.3 Northern Irish Charities

(a) The Role of the Charity Commission for Northern Ireland (CCNI)

CCNI's role is “the independent regulator of charities in Northern Ireland, responsible for ensuring Northern Ireland has a dynamic and well governed charities sector in which the public can have confidence.” Although charity trustees are independent and responsible for the management of their own charities, CCNI make take enforcement action against charities where trustees have failed to comply with their legal requirements and obligations. They include removal or replacement of trustees and ordering trustees to repay funds that have been used in a non-charitable way.

(b) Registration with CCNI

(i) Registration requirements

Organisations seeking to register as a charity in Northern Ireland must meet the charity test. This means that:

- (a) it must have purposes which fall under one of the 12 descriptions of purposes that are listed in the CA(NI)2008;
- (b) its purposes must be for public benefit;
- (c) it's governed by the law of Northern Ireland;
- (d) it has control and direction over its governance and resources

In addition, it must have a governing document in a form that enables registration with CCNI, for example a constitution, trust deed, articles of association or rules. Unlike the situation in England & Wales, societies seeking charitable status may apply directly to CCNI.

(ii) Registration Process

Charities that meet the registration requirements can register using an approved governing document which can make registration more straightforward but may not address the specific requirements of how a charity may wish to be structured. Bespoke governing documents, whilst they can make the registration process longer, can accommodate a charity's specific requirements.

All charities operating in Northern Ireland must apply for registration with CCNI. CCNI is aware of some of these charities whose details are contained in a list. A charity seeking to register should check this list to see on what date it will be called forward to register. Charities not on this list should complete and submit an expression of interest form to CCNI in order to be added to the list and called forward to register at the appropriate time.¹⁹

On receipt of an application, CCNI will acknowledge the application via email and aims to complete the assessment of the application within three to four months of receipt. Some applications take longer if they are complex, or if more information is required, for example, an application is not clear how the charity's purposes will be carried out for the public benefit.

Unincorporated charities that have made the decision to incorporate can create a new charitable company or community benefit society and register it with CCNI. This charitable company or community benefit society will receive a new charity number and steps should then be taken to transfer the assets and liabilities of the unincorporated charity to the new charitable company or community benefit society. At the time of writing there are no plans to introduce the equivalent of the charitable incorporated organisation in Northern Ireland.

¹⁹ <https://www.charitycommissionni.org.uk/manage-your-charity/register-your-charity/registration-list-and-expression-of-intent-form/>

A Northern Irish charity should refer to itself as such at its registered office, place(s) of business on all business stationery, fundraising literature and financial documents (whether in hard copy or electronic form).

(c) What is charitable under the Charities Act (Northern Ireland) 2008?

To be recognised as charitable, an organisation must be able to demonstrate that it operates for the benefit of the public, and that its activities fall wholly within one or more the charitable purposes set out in section 2(2) of the Charities Act (Northern Ireland) 2008 CA(NI)2008.

(i) The public benefit requirement

The CCNI has published guidance about what public benefit means.

For an organisation to be a charity, each of its purposes must be for the public benefit. CA(NI)2008 calls this the ‘public benefit test.’

The public benefit test has 2 elements. The ‘benefit element’ and the ‘public element.’

Benefit is about the benefit flowing from the charity’s purposes and for the charity’s purposes to satisfy the benefit element, the benefit must have three key features. It must:

- Flow from the charity’s purposes;
- Be capable of being demonstrated;
- Be beneficial, not harmful.

Public is about who may benefit from the charity’s purposes, and for the charity’s purposes to satisfy the public element, the benefit must:

- Be to the public or a section of the public;
- Not provide a private benefit to individuals unless this benefit is incidental.

(ii) Charitable purposes

There are 12 charitable purposes. These are broadly similar to those set out in the Charities Act 2011, but there are some differences, most notably the absence of the charitable purpose:

- The promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services.

9 The benefits of charitable status

In general, the benefits of charitable status are reputational and financial. Before deciding to create a charity it is important to consider the effect it may have on the planned activities and whether or not the supposed benefits will actually be beneficial to an organisation and its beneficiaries.

9.1 Tax

Charities are not entirely exempt from paying tax, but there are several exemptions and percentage reductions as follows:

- exemption from income tax, capital gains tax and corporation tax on profits or gains (these profits may only be used to achieve the charity's purposes);
- charities may also claim back the income tax on public and corporate donations using Gift Aid;
- 80% rate relief for properties that are completely or mainly used for charitable purposes (you can apply for a further discretionary 20% rate relief);
- charities are exempt from paying stamp duty land tax on properties purchased by them or leases purchased when stamp duty land tax would normally be due;
- exemption, for the donor, from inheritance tax on donations to charity; and
- while charities are not exempt from paying VAT (value added tax), certain goods and services provided or bought by a charity may be exempt or considered to be zero-rated.

For further details on tax exemptions see:

www.gov.uk/government/publications/charities-detailed-guidance-notes/annex-i-tax-exemptions-for-charities#trading-income.

Charities and other social enterprises and community owned enterprises can take advantage of certain tax reliefs that are aimed at attracting investment into small and/or organisations with a social purpose. This section broadly outlines some of the most popular forms of tax relief. Organisations interested in any of these tax relief schemes should take advice in relation to their own organisation.

- Social Investment Tax Relief (SITR) – this relief offers 30% tax relief for individual investors providing debt (e.g. loans) and equity finance (e.g. shares) to charities and social enterprises, which may enable these

organisations to raise smaller amounts of investment in a more cost-effective way and attract investors who are interested in supporting the creation of social impact. Eligibility depends on the kind of organisation it is, the amount of money it can raise, how and when that money must be used for the purposes of the trade, and the trading activities carried on.

- Enterprise Investment Scheme (EIS) - this scheme enables 'eligible' private companies limited by shares and registered societies to raise finance by offering a range of tax reliefs to investors who purchase new shares in these organisations. Eligibility depends on the kind of organisation it is, the amount of money it can raise, how and when that money must be used for the purposes of the trade, and the trading activities carried on.

If eligible, the organisation has to observe certain rules, not just at the time of the investment but for at least three years afterwards.

Provided that the rules are observed, eligible organisations can use the scheme to attract up to £5m of equity finance in any 12 month period and enables the investor to access tax relief worth 30% of the cost of the shares which can be set against the investor's income tax liability for the tax year in which the investment is made.

- Seed Enterprise Investment Scheme (SEIS) – this scheme enables small, early-stage private companies limited by shares and registered societies to raise finance by offering tax reliefs to individual investors who purchase new shares in these organisations. It can be used in conjunction with Enterprise Investment Scheme (EIS) and like EIS there are rules on eligibility in order to access SEIS.

Provided that the rules are observed an investor can receive initial income tax relief of 50% on investments up to £100,000 per tax year in qualifying shares issued on or after 6 April 2012

For more comprehensive guidance on each of these schemes see:
www.gov.uk/topic/business-tax/investment-schemes

9.2 Funding

Being a charity means that there are increased options for applying for, and receiving, funding as many funders, particularly charitable trusts, are only allowed to grant funds to charities.

9.3 Public image

Although some charities have carried out fraudulent or other illegal activities, the general public has a strong belief that the work carried out by charities benefits society, and being recognised as a charity does generally receive a positive response from potential donors. As a result of the faith that the public

has in charities, charities must make sure that they live up to these high expectations and build on the good public image. Each of the charity regulators have a particular objective to increase public trust and confidence in charities.

9.4 Regulation

Some charities find the legal and accountancy frameworks within which they must operate restrictive. However, the charity's regulator, and to some extent HM Revenue & Customs, both offer a broad range of advice and guidance to charities. The charity's regulator has the power to check on charitable activities, management, financial affairs and so on, and to protect charities where mismanagement or misconduct has occurred where it believes that, as a result, there is a serious risk of significant harm. This helps charities to run successfully and acts to prevent people from abusing the system.

Types of tax

| | |
|---------------------|--|
| Capital gains tax | A levy charged on the profit made from selling an investment or certain assets |
| Corporation tax | A charge on the profits of an organisation |
| Income tax | A charge on annual income |
| Gift Aid | Allows charities to recover the tax paid by the person who made the donation |
| Stamp duty land tax | A charge on buying property |
| Inheritance tax | A charge on the estate of the person who made the donation |

10 The restrictions of charitable status

There are several regulations concerning what charities may and may not do. Organisations that are deciding whether or not to be a charity should consider the following restrictions.

10.1 Payments to members of the governing body

Generally, the position of member of the governing body of a charity is a voluntary one and they should not benefit financially from their position. However, there are number of permitted exceptions to this default position. In particular:

- Paying expenses to members of the governing body.

The law entitles members of the governing body to receive legitimate out of pocket expenses incurred by carrying out their role. Examples of expenses include reasonable travel to and from meetings or events on charity business and reasonable refunds of the cost of meals paid for while on trustee business. Paying reasonable expenses is important in order to ensure that an individual is not out of pocket as a result of their involvement with the charity and may help encourage people to get involved who, if expenses were not paid, would not be able to afford to.

- Paying trustees for goods and/or services provided to the charity.

The law specifically permits charity trustees and persons connected with them²⁰ to be paid for services they provide to the charity which are over and above normal governing body duties. Examples of services include delivery of a lecture or using the governing body member's business for a building job or maintenance contract. Before making such payments, the charity should check its governing document to ensure that it does not contain more restrictive provisions with regards to payment of trustees, for example, it only allows governing body members to be paid for professional services and not other services.

The decision to pay a governing body member or connected person for services provided to the charity must only be made by those governing body members who will not benefit and they must be content that there is a clear benefit to the charity before making the payment and be able to show that they have covered the following:

- the terms are set out in a written agreement;
- the agreement sets out the exact or maximum amount to be paid;

²⁰ There is a list of individuals and organisations which are deemed to be connected to the governing body member in the law of each jurisdiction of the UK, and includes, (a) a spouse or partner, child, parent, grandchild, grandparent or sibling of the governing body member or any organisation which is controlled by the governing body member or any person who is included in (a).

- the amount is reasonable given the services provided by that person;
 - the governing body members (other than those who will be paid) are satisfied that the arrangement is in the best interests of the charity - this will usually be on the grounds that it will save the charity money or provide a better quality service;
 - those benefiting are a minority of the charity's governing body members;
 - the governing document of the charity does not contain anything that might prohibit the relevant person from receiving that pay;
 - governing body members who stand to benefit take no part in any decision about the agreement;
 - the governing body follows the 'duty of care' set out in the Trustee Act 2000 (or equivalent legislation in the relevant jurisdiction - Trustee Act (Northern Ireland) 2001 and Charities and Trustee Investment (Scotland) Act 2005); and
 - there is no prohibition against payment of a trustee
- Employing a governing body member

A member of the governing body may become an employee of their charity in a variety of circumstances. For example it may be advantageous for the charity's chief executive, or in the case of an educational charity for the headteacher, to sit on the governing body. Charities need to be aware, though, that the employment may need to be approved by the charity's regulator.

Those charities unsure of whether any payment is permitted should refer to guidance produced by their regulator as follows:

For charities registered in England & Wales see:
www.gov.uk/government/publications/trustee-expenses-and-payments-cc11

For charities registered in Scotland see: www.oscr.org.uk/charities/managing-your-charity/trustee-duties/trustee-remuneration

For charities registered in Northern Ireland see:
www.charitycommissionni.org.uk/media/106794/20150828-ccni-eg046-guidance-on-trustee-expenses-and-payments.pdf

10.2 Trading

Charities may engage in certain types of trading. Any amount of trading is allowed in the following circumstances:

either

- a Trade is carried out directly to achieve a charity's objects (for example, charging for admissions to galleries and museums, selling educational publications and so on). This is known as 'primary purpose trading'.

or

- b Trade is carried out mainly by the people who benefit from the charity (for example a restaurant run by students on a catering course).
- or
- c Trade, while not primary purpose trading, is carried out to meet the main purpose of the charity (for example, running a bar at a theatre only for people who watch a performance). This is known as ‘ancillary trading’.

All charities are able to carry out small amounts of non-primary or ancillary trading, as long as they use any profits to further the objects of the charity. This is known as small-scale trading. Any profits made from small-scale trading activities will be considered exempt from tax provided that:

- the total turnover from all of the activities does not exceed the small-scale trading turnover limit (see Table below);
- if it does exceed the turnover limit, the charity had a reasonable expectation that it would not do so (either because the small-scale trading turnover was expected to be lower or because the total annual income was expected to be higher); and
- all of the trading profits are used only for the charitable purposes of the charity.

Small-Scale trading turnover limit

| A charity's total income in a particular year | Maximum small-scale trading turnover in that tax year |
|---|---|
| Under £20,000 | £5,000 |
| £20,001 to £200,000 | 25% of the charity's total incoming resources |
| Over £200,000 | £50,000 |

The general rule for charity shops is that a charity can run shops as long as they mainly deal in donated goods (selling donated goods is not considered as trading and such sales are zero-rated for VAT purposes if sold through charity shops). If a charity starts to buy goods to sell on, this activity would not be acceptable and should be moved to a separate organisation. Also, if donated goods are significantly refurbished or altered, such as turning donated cloth into a new garment, this is likely to be treated as trading.

In recent years, charities have become more enterprising in how they raise funds to support their charitable purposes, for example, via social investment. Broadly social investment is the provision of finance to charities and other community enterprises to generate a social return.

There are several types of social investment, including:

- investment in trading activity in order to increase a charity's earned income, for example investing in a charity shop refurbishment programme
- social impact bonds which is a contract with the public sector in which a commitment is made to pay for improved social outcomes that result in public sector savings.

Social Investment shouldn't replace other sources of income available to charities through grants, donations and contracts, but it can be considered as part of the mix of income available to charities.

Some charities have chosen to change their structure or set up a subsidiary to carry out a community share offer, a type of social investment, through the use of withdrawable share capital, (see section 6 of this guide) which has enabled charities to raise income from its members and its community in order to support their charitable purposes.

Currently, the Charities (Protection and Social Investment) Bill is progressing through Parliament. One of the provisions of the Bill gives charities a power to make "social investments", because although interest in social investment has been growing in recent years, it has been unclear about whether charities have the power to make them and one of the purposes of this Bill is to clarify that.

10.2.1 Trading subsidiaries

A charity that wants to carry out new activity that is non-charitable, or one that intends to undertake a new activity that may hold some risks to the charity or where a charity regularly engages in non-primary purpose trade will usually be advised to set up a non-charitable trading subsidiary company for this purpose.

Trading subsidiaries are either:

- 'wholly-owned', which means that the charity is the single member of the company and holds all of the voting rights; or
- 'partially-owned', which means that the charity must hold at least 51% but less than 100% of the voting rights.

Although 'owned' by the charity, charity law does not apply to the trading subsidiary, so it can carry on any business without the regulations that the charity must consider. However, the relationship between the charity and its trading subsidiary will be governed by charity law as it applies to the charity. The trade carried out by the subsidiary should produce profit, which should be donated back to the charity. Donating the profits in this way means that corporation tax is not payable on them. The subsidiary should keep a small

percentage of its profits to build up a level of reserves. Corporation tax will apply to any profits kept in this way.

It is important that charities are not seen to be financially supporting their subsidiaries. Any financial support must be considered as an investment, and the same considerations should be taken into account as when the charity may be considering investing in any other organisation. Also, if staff, buildings and resources are shared by the charity and the subsidiary, this should be recorded to make sure that the subsidiary pays the charity for any resources used. Payment is usually at cost so that the charity does not make a profit on the provision of resources which could give rise to further issues of non-primary purpose trading activity.

As well as providing an outlet for trading, subsidiaries can also help charities and other types of organisation to separate activities that may be particularly risky or too large to be carried out by one single organisation. By doing this, the assets of the ‘parent’ organisation are safe if the subsidiary fails for whatever reason, but the activities must be separated properly and the charity must not give any guarantees.

10.3 Campaigning

Charities are limited in the amount and type of campaigning work they can carry out. As a general principle, charities may undertake campaigning and political activity provided that:

- It is in furtherance of their charitable purposes
- It is permitted subject to the terms of their governing documents
- They never engage in any form of party political activity; and
- They retain their independence and political neutrality.²¹

A charity may engage in campaigning and political activity aimed at changing the law, policy or decisions where such a change would support their main charitable purpose, provided that, in doing so they don’t support or oppose a political party or candidate.

In some cases, a charity may need to register as a non-party campaigner with the Electoral Commission. The rules on whether a charity may need to register are quite complex and as such if this may affect your charity you are advised to consider the ‘Charities and Campaigning’ guidance produced by the Electoral Commission.

For further information on campaigning and political activity, charities are advised to consult the charity regulator’s guidance relevant to the jurisdiction in which the charity operates:

²¹ The Electoral Commission:

http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/165961/intro-campaigning-charities-npc.pdf

For charities registered in England & Wales see: CC9 - Speaking Out - Guidance on Campaigning and Political Activity by Charities -
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434427/CC9_LowInk.pdf

For charities registered in Scotland see: Frequently Asked Questions: Charities and campaigning on political issues -
https://www.oscr.org.uk/media/1885/faqs-charities-and-campaigning-on-political-issues_final-for-publication.pdf

For charities registered in Northern Ireland see: Charities and politics -
<https://www.charitycommissionni.org.uk/charity-essentials/charities-and-politics/>

10.5 Members' benefits

An organisation is not charitable if it exists mainly to benefit its own members. This explains why credit unions and some co-operatives are not eligible for charitable status. It is acceptable if members benefit but only where such benefit is only an incidental by-product of a charity's activities and as long as there is a greater public benefit, for example, a community partnership set up to regenerate a particular community. A charity can be run by and for the benefit of its beneficiaries, for example disabled people. The charity's activities must benefit other people in addition to the members of the charity.

11 Moving forward

This guide has provided a summary of the legal considerations when deciding on the most appropriate legal structure for an organisation. As described in chapter 2, the legal structure is made up of the legal form – how the organisation is seen in the eyes of the law – and its governing document - how it plans to work and govern itself.

This guide has set out the main issues when first deciding the legal structure of an organisation: i) whether an organisation should become a corporate body (incorporate) or remain unincorporated; ii) the different types of organisation operating in the third sector; iii) the significance of ownership and membership. These all need to be considered to develop a structure that is fit for purpose and importantly, reflects the organisation's ethos.

The next stage is to consider the organisation's internal structure – that is its governance and operations, which can be reflected in the carefully worded clauses of the governing document and internal policies. Getting this right for an organisation means they are better equipped to operate and govern themselves with confidence. More information can be found in the accompanying guide to the Simply Series, [Simply Governance](#) or contact the Co-operatives UK's Advice Team on 0161 214 1750 or advice@uk.coop

Select-a-structure online

To help development professionals support organisations in deciding the most appropriate legal structure, Co-operatives UK has developed an interactive 'select-a-structure' questionnaire, online at www.thehive.coop

The questionnaire can be used to work through the main issues for deciding on the most appropriate legal form and organisational type for a new venture, or help to review the structure of an existing organisation.

The questionnaire is updated as and when new legislation affecting the sector is introduced, making sure development professionals are working and making informed decisions based on up-to-date information.

12 Glossary of common terms

Annual accounts - an annual report of an organisation's activity during the last financial year.

Annual return – a form giving details of the current information filed on public record (a list of governing body members' details, the registered office address etc.).

Approved governing documents - governing documents that have been agreed between the Charity Commission and national, umbrella or other bodies that can be used by charities associated with them.

Artificial restrictions – unreasonable barriers to membership such as 'no people over six feet tall can become a member'.

Asset lock – a restriction on distributing (or dividing) assets of an organisation to (or between) members (or shareholders), including on winding up, for example, by providing that the assets must be held for charitable purposes or passed on to other organisations with an asset lock.

Audit threshold – the level of income needed for a full audit to be carried out on accounts.

Case law - decisions made by the courts on individual cases and the court's interpretations of statute and regulations.

Central register of charities – the list (kept by the Charity Commission) of all registered charities.

Charity Commission of Northern Ireland (CCNI) – the independent regulator and registrar of Northern Irish charities.

Co-operative – the term used in the Co-operative and Community Benefit Societies Act 2014 to describe one of the legal forms that can register under this legislation, and those organisations operating under the Co-operative Principles.

Co-operative principles – internationally recognised principles which define co-operatives, as laid down by the International Co-operative Alliance (see appendix 1).

Community benefit society – the term used in the Co-operative and Community Benefit Societies Act 2014 to describe one of the legal forms that can register under this legislation.

Corporate body - an organisation with a separate legal identity from its members.

Department of Enterprise, Trade and Investment is a [devolved Northern Ireland](#) government department in the [Northern Ireland Executive](#) and is responsible for Credit Unions and Industrial and Provident Societies registered in Northern Ireland. It does this through the Registry of Credit Unions and Industrial and Provident Societies.

Enterprise Investment Scheme (EIS) is a government tax relief aimed to encourage investment in small enterprises carrying on a qualifying trade in the UK.

Financial Conduct Authority (FCA) – an independent, non-governmental body that regulates the financial services industry in the UK. Its aim is to protect consumers, ensure the industry remains stable and promote healthy competition between financial service providers. It is also the registrar of societies under the Co-operative and Community Benefit Societies Act 2014.

Gift aid donations – donations made to a charity from a UK taxpayer, which allows the charity to claim an extra tax rebate.

Governance – the systems and processes concerned with ensuring the overall direction, supervision and accountability of an organisation.

Governing body – the general term used to describe the individuals appointed to manage the affairs of an organisation (often called the board of directors, the board of trustees or the management committee).

Her Majesty's Revenue & Customs (HMRC) - a non-ministerial department of the Government primarily responsible for the collection of taxes and the payment of some forms of state support. In order to qualify for tax reliefs a charity must be recognised as such by HMRC.

Holding trustee - an individual or organisation who holds legal title to an organisation's property on its behalf.

Homes and Communities Agency is the regulator of social housing in England and exercises its function through the Regulatory Committee which is appointed by the Secretary of State.

Insolvent - being unable to meet debt obligations. The opposite of being solvent.

Loan stock – a term used to describe several loans given to a corporate body on the same terms at the same time. Loan stock may be secured on assets of the corporate body. A person who takes out loan stock is a creditor of the corporate body and does not have any say (by virtue of being a loan stock holder) in the running of the corporate body concerned.

Maximum voting strength – the maximum number of votes any one member can have within a society.

Natural justice – a legal philosophy protecting against arbitrary exercise of power by ensuring fair play.

Office of the Scottish Charity Regulator (OSCR) - the independent regulator and registrar of Scottish charities.

Periodic fee – the annual fee paid to the Financial Conduct Authority by Societies.

Personal guarantees – when an individual signs in their own name to confirm that if another person fails to make a payment or perform a service, he or she will be personally liable to compensate whoever has the benefit of the guarantee.

Principal regulator - an organisation with the jurisdiction to regulate some forms of exempt charities. Such regulators include the Higher Education Funding Council for England, Department of Education (or the Welsh Government) for exempt education charities, Department for Culture, Media & Sport, for Museums & Galleries the Department for the Environment, Food and Rural Affairs for Kew Gardens.

Public utilities – something useful to the public, such as street lighting.

Quorum - the number of persons required to attend a meeting of an organisation in order for that meeting to have the authority to make binding decisions.

Registered charity – an organisation that has been formally recognised as a charity by the Charity Commission.

Registry of Credit Unions and Industrial and Provident Societies is responsible for the registration of Credit Unions and Industrial and Provident Societies and for maintaining the public record including an online search facility on behalf of the Department of Enterprise, Trade and Investment,

Regulations or Secondary Rules - a document or documents used in addition to the governing document of an organisation designed to provide additional information with regard to governance arrangements.

Seed Enterprise Investment Scheme (SEIS) is a government tax relief aimed to encourage investment in new small enterprises carrying on a qualifying trade in the UK.

Self-employed – when someone works for themselves rather than someone else and meets conditions laid down by HMRC, by which they consider someone to be self-employed.

Small and medium sized enterprises (SMEs) - organisations whose headcount or turnover falls below certain limits.

Social enterprise – A business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. Social enterprises tackle a wide range of social and environmental issues and operate in all parts of the economy.

Social Investment Tax relief (SITR) is a government tax relief for social investment which encourages individuals to support social enterprises and helps them access new sources of finance.

Sponsoring body – an organisation which has registered a set of rules with the FCA as a model, and provides a service to those organisations that wish to register using the model.

Sweat equity – the term used to describe the contribution made to an organisation by people who contribute their time and effort. The term is sometimes used to describe the efforts put into a start-up organisation by the founder members in exchange for a higher percentage of the profits within the first couple of years.

Third sector - a diverse sector, encompassing voluntary and community organisations and charities, social enterprises, co-operatives and mutuals both large and small.

Zero-rated – a service which VAT applies to but at a rate of 0%.

13 Abbreviations

| | |
|------|---|
| BIS | Department for Business, Innovation & Skills |
| CASC | Community Amateur Sports Club |
| CCNI | Charity Commission for Northern Ireland |
| CDFI | Community Development Finance Institution |
| CIC | Community Interest Company |
| CIO | Charitable Incorporated Organisation |
| CLG | Company Limited by Guarantee |
| CLS | Company Limited by Shares |
| CSA | Community Supported Agriculture |
| FSMA | Financial Services & Markets Act |
| FCA | Financial Conduct Authority |
| HCA | Homes and Communities Agency |
| HMRC | Her Majesty's Revenue & Customs |
| ICA | International Co-operative Alliance |
| LLP | Limited Liability Partnership |
| MTS | Mutual Trading Status |
| NI | National Insurance |
| OSCR | Office of the Scottish Regulator |
| PLC | Public Limited Company |
| SCIO | Scottish Charitable Incorporated Organisation |
| SME | Small and medium sized enterprises |
| VAT | Value Added Tax |

Appendix 1

International Co-operative Alliance values and principles

The following values and seven characteristics have been established by the ICA as typifying a true co-operative. As noted, these have no legal force, but are the agreed basic principles of the international co-operative movement and provide a series of benchmarks against which to judge an organisation's claim to be "a co-operative".

Values

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility, and caring for others.

Principles

The co-operative principles are guidelines by which co-operatives put their values into practice.

1st Principle:

Voluntary and open membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept responsibilities of membership, without gender, social, racial, political, or religious discrimination.

2nd Principle:

Democratic member control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote), and co-operatives at other levels are also organised in a democratic manner.

3rd Principle:

Member economic participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4th Principle:

Autonomy and independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including

governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5th Principle:

Education, training and information

Co-operatives provide education and training for their members, elected representatives, managers and employees so they can contribute effectively to the development of their co-operatives. They inform the general public – particularly young people and opinion leaders – about the nature and benefits of co-operation.

6th Principle:

Co-operation among co-operatives

Co-operatives serve their members most effectively and strengthen the Co-operative Movement by working together through local, national, regional and international structures.

7th Principle:

Concern for community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

Appendix 2

Support and Information

Association of British Credit Unions Limited (ABCUL)
Holyoake House
Hanover Street
Manchester
M60 OAS
0161 832 3694
www.abcul.org
info@abcul.org

(for enquiries relating to the responsibilities of the Minister for Civil Society)
Cabinet Office
70 Whitehall
London
SW1A 2AS
www.gov.uk/government/organisations/cabinet-office
020 7276 1447

Charity Commission
www.charitycommission.gov.uk
Helpline: 0845 3000 218

For general queries online at www.charitycommission.gov.uk/contact-us

Liverpool Office
Charity Commission
Princes Dock
Princes Parade
Liverpool
L3 1DE

London Office
Charity Commission
2nd Floor, 1 Drummond Gate
Victoria
London
SW1V 2QQ

Newport Office
Charity Commission
Room 1.364
Government Buildings
Cardiff Road
NP10 8XG

Taunton Office

Charity Commission
Woodfield House
Tangier
Taunton
Somerset
TA1 4BL

Charity Commission for Northern Ireland
257 Lough Road
Lurgan
Craigavon
BT66 6NQ
028 3832 0220
admin@charitycommissionni.org.uk

Companies House
Registrar of Companies
Crown Way
Maindy
Cardiff
CF14 3UZ
0303 1234 500
www.companies-house.gov.uk

Community Development Finance Association
Unit 5, Angle Gate
320-328 City Road
London
EC1V 2PT
020 7430 0222
www.cdfa.org.uk
info@cdfa.org.uk

National Community Land Trust Network
c/o National Housing Federation
Lion Court
25 Proctor St
London
WC1V 6NY
www.communitylandtrust.org.uk

Confederation of Co-operative Housing (CCH)
19 Devonshire Road
Liverpool
L8 3TX
0152 726 2228
www.cch.coop

Co-operatives UK (incorporating the Community Shares Unit)
Holyoake House

Hanover Street
Manchester
M60 OAS
0161 214 1750
www.uk.coop

Community Shares Scotland
Online at: <http://communitysharesscotland.org.uk/further-support/contact-us>

Employee Ownership Association
CAN Mezzanine
32-36 Loman St
1 London Bridge
London
SE1 0EH
020 7922 7737
www.employeeownership.co.uk

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
020 7066 1000
www.fca.gov.uk

HM Revenue & Customs
Charities Correspondence S0708
PO Box 205
Bootle
Liverpool
L69 9AZ
0300 123 1073
www.hmrc.gov.uk

International Co-operative Alliance
150 Route de Ferney
PO Box 2100 1211
Geneva 2
Switzerland
(+41) 022 929 88 88
www.ica.coop

Locality
33 Corsham Street
London
N1 6DR

0845 458 8336
www.locality.org.uk

National Farmers' Retail & Markets Association (FARMA)
12 Southgate Street
Winchester
Hampshire
SO23 9EF
0845 4588 420
www.farma.org.uk

National Council for Voluntary Organisations (NCVO)
Society Building
8 All Saints Street
London
N1 9RL
020 7713 6161
ncvo@ncvo.org.uk

Office of the Scottish Charity Regulator (OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY
01382 220 446
www.oscr.org.uk

Plunkett Foundation (& Plunkett Community Shops Online)
The Quadrangle
Woodstock
Oxfordshire
OX20 1LH
01993 810 730
www.plunkett.co.uk
www.communityshops.coop

Registry of Credit Unions and Industrial & Provident Societies
Department of Enterprise, Trade and Investment
Room 53
Netherleigh
Massey Avenue
BELFAST
BT4 2JP
028 9052 9544
www.detini.gov.uk

Social Firms UK
Suite 7
Regal Chambers
49-51 Bancroft
Hitchin
Hertfordshire
SG5 1LL
01737 231360
www.socialfirms.co.uk

Soil Association
South Plaza
Marlborough Street
Bristol
BS1 3NX
0117 314 5000
www.soilassociation.org.uk

SPORTA
CAN Mezzanine
49-51 East Road
London
N1 6AH
020 7250 8263
www.sporta.org

Supporters Direct
1st Floor
CAN Mezzanine
49-51 East Road
London
N1 6AH
020 7250 8138
www.supporters-direct.org

Co-operatives UK has helped co-operatives and community owned enterprises with their governance for more than 20 years. As the national body for the sector, our in-house advice team and partners are expert providers of support to co-operatives and community owned enterprises of all shapes and sizes.

Some of the services provided include:

- Advice on governance structures and practice, reviews of governance and policy documents to ensure that they are fit for purpose, compliant and reflect the needs of your organisation.
- A comprehensive advice service for new co-operatives and community owned organisations, including advice on adopting the right legal form, the provision of model and bespoke governing documents, a complete registration service.
- A range of training courses and workshops to enable your organisation to invest in the development of its people.
- For those organisations considering charitable status, we advise on its appropriateness and the pros and cons and offer a comprehensive application and registration service

Advice Team
Co-operatives UK
Holyoake House
Hanover Street
Manchester
M60 0AS

Phone: 0161 214 1750

E-mail: advice@uk.coop
Website: www.uk.coop