

# Simply **LEGAL**

All you need to know about legal forms and organisational types for community enterprises.

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Co-operatives<sup>UK</sup> is the UK member-owned and led organisation that promotes co-operative solutions, works to increase awareness and understanding of co-operative values and principles, and supports the development and growth of new and existing co-operatives.

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# Foreword

The need for a clear, simple and understandable guide to the legal and governance processes required to support the third sector, be it co-operatives, social enterprises or the voluntary and community sector, is ever present, especially in the current economic climate. Our Legal Team at Co-operatives<sup>UK</sup> have once again responded to this need by revising the highly regarded Simply Legal guide.

As the jazz musician Charles Mingus said: "Making the simple complicated is commonplace; making the complicated simple, awesomely simple, that's creativity". This guide does just this by allowing people to feel that they can access the tools they need to set up their own enterprise and not be overwhelmed by legal and governance requirements.

Clear, logical legal structures and supporting governance arrangements provide a sound starting block for organisations to thrive and for long term success and sustainability. You cannot have one without the other and succeed.

The authors have a wealth of experience in the legal field which shines through throughout this guide, turning Simply Legal into an authoritative publication on how legal structures can be accessible to all.



## **Dame Pauline Green**

Dame Pauline Green was Chief Executive of Co-operatives<sup>UK</sup> from 2000 to 2009. Previous to this she was a Member of the European Parliament. During her time at Co-operatives<sup>UK</sup> Dame Pauline was also President of Co-operatives Europe, Vice-President of the International Co-operative Alliance and sat on the governing bodies of the Co-operative College, the National Co-operative Heritage Trust and Mutuo.



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# 1

## Introduction

We, Co-operatives<sup>UK</sup>, are the apex organisation for co-operative enterprise that:

- provides a strategic voice for co-operation;
- works to safeguard and increase awareness and understanding of co-operative values and principles;
- supports the development and growth of new co-operatives; and
- is the centre of excellence for the provision of services to co-operatives.

We have written this guide for development professionals who are involved in advising and supporting new and existing organisations in the third 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 in the third sector.

### Background

The first edition of this guide was produced in 2005 as part of the Governance and Participation project, funded by the Active Communities Unit. The guide has been comprehensively updated as part of the Making Local Food Work project which is funded by the Big Lottery Fund, visit [www.makinglocalfoodwork.co.uk](http://www.makinglocalfoodwork.co.uk) for further details.

For over 20 years our legal services team (previously called ICOM legal services) has been highly regarded for its considerable expertise in legal structures and corporate governance, not only for co-operatives but also for organisations across the voluntary, community, charitable and social enterprise sectors. In that time, we have registered over 3,500 third sector organisations.

### 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);

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

- 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 third 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
- describes the registration process and the legal requirements of charitable status, while the 'Benefits of charitable status' and 'Restrictions of charitable status' chapters give 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.selectastructure.uk.coop](http://www.selectastructure.uk.coop) and follow the links to use the questionnaire.

### Acknowledgements

This guide is the product of many long hours of writing and rewriting, editing, consultation and discussion. The two authors, Helen Barber and Emma Laycock, are part of our legal services team, and were previously with ICOM legal services. Both would like to thank everyone who helped to develop this publication.

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*This second edition has been updated and revised by Emma Laycock.*



# 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, an industrial and provident 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, how it goes about that business (its ethos and values) or what sector it operates in (such as social enterprise or food co-operative) 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 or a doctor's surgery), 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 industrial and provident societies).

Social enterprise  
- please see Chapter  
6.14

Food co-operative  
- please see Chapter  
6.1.i



## 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 industrial and provident societies it is the rules; and
- for companies it is the articles<sup>1</sup>.

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 surplus; and
- what happens to assets when the organisation is sold, taken over or broken up.

*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).*

<sup>1</sup> Prior to October 2009 the governing document of a company was called the 'memorandum & articles of association' often abbreviated to 'mem & arts'. As a result of the final implementation of the Companies Act on 1 October 2009 the governing document of a company will simply be known as the 'articles', the memorandum will become an historical document purely showing the subscribers' desire to form a company, the memorandum will be of no relevance after formation. Companies registered prior to October 2009 will not be required to amend their governing document rather their memorandum will be deemed to form part of their articles. For the purposes of this Guide, any references to 'memorandum & articles' and 'mem & arts' post October 2009 should be deemed to read as 'articles'.

# 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

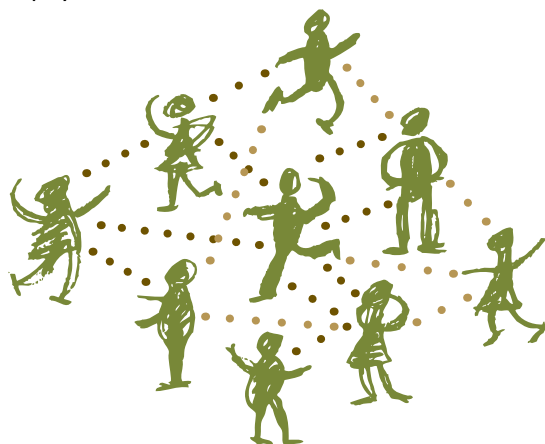
equally. Liability is to the full extent of each member's personal assets, meaning that, in the worst case, members may face bankruptcy if a claim is made and the organisation does not have enough assets to meet the liability. In the first instance claims may be made against members of the governing 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. The member's liability is limited to what they have agreed to contribute or have put in.

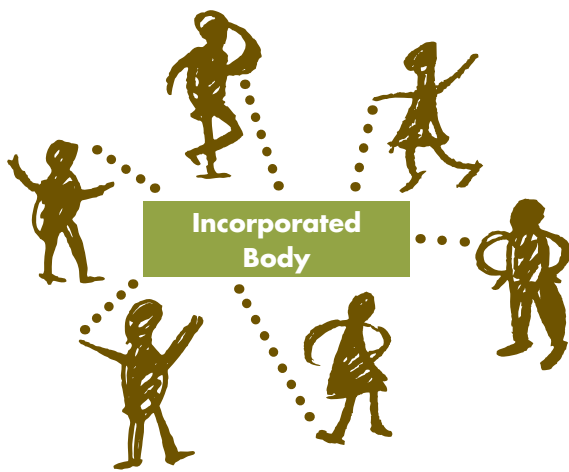
There may be times when members of the governing body of a corporate body can be held personally liable for some,

### Unincorporated body

As the group does not exist as a separate unit (it is seen simply as a group of people), the relationships between these people are joint and several, in that they are seen as being jointly responsible for the body and its activities, but can also be held responsible individually.



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



An incorporated body has a separate legal identity from its members. The relationship between the people involved is direct with the body and focused, because there are clear guidelines and guidance as to how this should operate.

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.

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

*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.*

As a legal identity in its own right, an incorporated organisation 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. Complicated 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 run into problems 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 industrial and provident 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 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, recruiting 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
<b>Liability</b>	Individuals may have to meet any outstanding debts personally.	Individual liability is limited to guarantee or unpaid share capital.
<b>Ownership</b>	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.
<b>Risk</b>	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.
<b>Cost</b>	There are generally no or limited start-up costs.	There will be start-up costs plus annual fees (although a relatively small amount).
<b>Administration</b>	None needed by law (unless a charity).	Ongoing records need to be kept and filed with the appropriate registry.
<b>Privacy</b>	Complete (unless a charity).	Certain details, such as governing body members' addresses are on public record.



# 4

## A summary of unincorporated legal forms

There are several options for unincorporated organisations when it comes to the different legal forms. 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 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 third sector is the unincorporated association. There is no Act of Parliament defining or specifically

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

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

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 difference between a partnership and an association can be very fine (particularly where an association does actually trade). There is a danger 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).

■ **Bye-laws (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 industrial and provident societies (which are much more common) as both were administered by the Registrar of Friendly Societies until 2001. Originating in the 18th century,

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

Bye-laws (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.

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 Act are:

- **cattle insurance societies;**
- **benevolent societies (for any benevolent or charitable purpose);**
- **old people's home societies; and**
- **specialty 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 Act since February 1993. Existing societies can convert to industrial and provident 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 (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 8.2 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.

*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.*

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

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

# 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 replaced the Companies Acts 1985 and 1989, its full implementation was completed on 1 October 2009). 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.
- A private company limited by guarantee can not issue shares. Instead each member guarantees a certain amount (usually £1) in the event of the company being wound up with outstanding debts. Currently

this is the most common form for voluntary, community and charitable organisations opting for company status.

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](http://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 (previously known as the memorandum and articles of association).

Whilst the Companies Act 2006 was designed to make running a business easier and reduce the administrative burden, the Companies Acts are 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, the Companies Acts are 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 Services 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](http://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. Following changes brought in by 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) involved in a company. The Companies Act 2006 has also brought in a new rule that at least one

*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.).*

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

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

director must be a natural person (ie not another incorporated organisation). The single-member company can be a useful legal form for subsidiary companies (see chapter 11 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 would definitely be the preferred option if charitable status was being considered. This situation may change once the charitable incorporated organisation form is available (see 5.3 below for further details).

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 and use their profits for the public good, but

which do not require, or are not eligible for, charitable status. Currently (2009), there are over 2,500 CICs registered in England, Wales, Scotland and Northern Ireland. CICs are limited companies so are subject to company law.

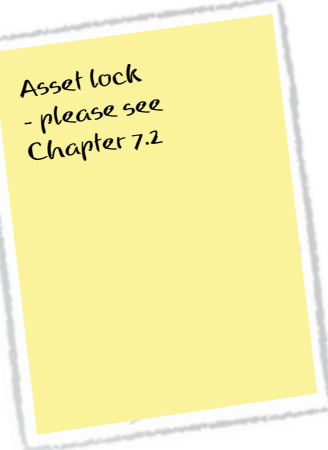
There are two main features that distinguish the community interest company from other corporate forms. Firstly, all CICs will have a compulsory asset lock. The assets of a CIC may only be used for the benefit of the community and may only be distributed to a specific community interest company or charity, 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 be either a private company limited by shares, a private company limited by guarantee or a public limited company (PLC).

A CIC limited by shares will have 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



Asset lock  
- please see  
Chapter 7.2

encouraging people to invest in a CIC and the principle of community benefit. The rate of the dividend cap is set 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";
- 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. The report must include 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 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.

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



### 5.3 Charitable incorporated organisation (CIO)

The Charities Act 2006 provided for a new legal form - the charitable incorporated organisation. This form will only be available for charities which fall under the jurisdiction of the law of England and Wales.

The CIO will provide all of the benefits of incorporation (that is limited liability and a separate legal identity) but will only be required to register and report to one regulatory body - the Charity Commission. At the time of writing, the associated draft regulations providing the detail of a CIO are still being drawn up and it is not expected that the new form will be available to use until Summer 2010 at the earliest.

Currently, most charities that require corporate status register as companies limited by guarantee (although some register as industrial & provident societies). This means that such charities are regulated by both the Registrar of Companies and the Charity Commission, and as a result are required to file documents with both bodies.

It is anticipated, although the final form of the regulations are still awaited, that existing charitable companies will be eligible to convert to a CIO relatively simply without the need to wind up the existing corporate body and re-register as a CIO. Existing unincorporated charities, that wish to enjoy the benefits of incorporation, will be required to register as a CIO, then transfer the assets and wind up the existing charity. Charitable industrial & provident societies (exempt charities) and those set up by Royal Charter will also be able to convert.

The Office of the Third Sector (which has overall responsibility for the legislation) consulted on the detailed requirements for CIOs and on the draft model governing documents (which will be known as constitutions) and is revising the regulations and models as a result of the responses. The revised documents are due to be completed by the end of 2009.

In addition to the benefits of limited liability and a sole regulator, the Charity Commission states the following are the other advantages of a CIO:

- simpler accounting requirements - company law will no longer apply and the CIO Regulations aim to make the regime for smaller and medium sized charities easier;
- simpler reporting requirements - CIOs will only prepare one annual report unlike charitable companies which also have to prepare a directors' report (if applicable);
- one annual return - charitable companies are required to file two, one to each regulator;
- fewer filing requirements generally - CIOs will not be subject to the same number of filing requirements relating to constitutional changes as charitable companies;
- lower costs - there will be no statutory fee to register as a CIO, and no ongoing costs for filing information;
- simpler constitutional form - the governing document of a CIO will require fewer fixed governance provisions than is the case with companies; this will make the governing documents more flexible and appropriate;



- more straightforward arrangements for merger and reconstruction - the Charities Act 2006 includes provisions designed to facilitate mergers and reconstruction that will not be available to charitable companies; and
- codified duties of trustees (governing body members) and members - these duties will be in line with charitable objectives rather than company ones.

Until the regulations are finalised and the legal form is available for registration, it is difficult to assess the impact it will have. Although the hope is that it will create a new, flexible and appropriate form for charities that wish to be incorporated.

#### 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 an industrial and provident 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.

#### 5.5 Limited liability partnership (LLP)

The Limited Liability Partnerships Act 2000 (and Regulations 2001) came into force on 6 April 2001, and created a new kind of legal form – the limited liability partnership (LLP). The LLP form provides limited liability for its members with the flexible structure and tax advantages associated with a partnership (please 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.

Bona fide co-operative - the term used in the Industrial and Provident Societies Act to describe one type of organisation that can register under this legislation.

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

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. Formed in 2005 by a merger of the Inland Revenue and Her Majesty's Customs & Excise.

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
- 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 Industrial and provident society (IPS)

Industrial and provident societies (IPSs) are corporate bodies registered under the Industrial and Provident Societies Acts 1965-2002. To qualify for registration, an organisation must either be a 'bona fide co-operative' or a 'society for the benefit of the community'.

- The IPS co-operative format is mainly used by consumer co-operatives, housing co-operatives and credit unions. It is often used by agricultural, worker and community co-operatives. Its basic characteristics are:
  - 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 other words, this structure is representative of the international co-operative principles (*see appendix 1 of this guide*).

- The IPS society for the benefit of the community format is common among housing associations and other forms of voluntary and community sector activity and can be appropriate for democratic, non-profit-distributing organisations. Its characteristics are similar to those of a co-operative, but includes a requirement to primarily benefit people other than its members.

Currently, IPSs that are registered as societies for the benefit of the community can apply to HM Revenue & Customs for

exempt charity status (see chapter 9.1 of this guide for details of how this is soon to change).

IPSs are administered by the Mutual Societies Registration Section of the Financial Services Authority (FSA) (this function was previously carried out by the Registrar of Friendly Societies, which merged with the FSA in December 2001). The governing document of IPSs is known simply as the 'rules'. IPSs pay an annual fee to the FSA (called the 'periodic fee'), the amount of which varies depending on the assets held by the society and currently (2009) ranges from £55 - £415.

To qualify for registration under the Industrial and Provident Societies Acts, an organisation should be carrying on 'an industry, business or trade, whether retail or wholesale' (Industrial and Provident Societies Act 1965, section 1.1).

The Industrial and Provident Societies Acts are generally more sympathetic 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 to the FSA. Similarly to companies, provided certain requirements are met, IPSs may not be required to have an audit. IPS legislation is generally less complicated, putting more trust in the directors to act 'in good faith'.

Registering an IPS using a free draft (bespoke rules) can be fairly expensive and it also tends to be slower than registering a company, as the FSA examines the rules carefully in the light of the acts and makes the final decision about which societies may be registered. Using

'model rules' (standardised governing documents which have been previously approved by the FSA) can reduce the registration cost and timescale. These must be presented through a sponsoring body but can sometimes be too restrictive. You can get a list of sponsoring bodies from the FSA (Co-operatives<sup>UK</sup> is a sponsoring body and has several sets of model rules available).

A positive aspect of the regulator'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 an IPS (unless all members are IPSs in which case only two are needed). The minimum age limit for governing body members of IPSs is currently 18 but it is likely that this will be reduced to 16 in the near future.

The IPS 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 IPS 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**

*Periodic fee - the annual fee paid to the Financial Services Authority by industrial and provident societies.*

*Financial Services Authority (FSA) - an independent, non-governmental body given statutory powers by the Financial Services and Markets Act 2000. Its four statutory objectives are i) market confidence; ii) public awareness; iii) consumer protection and iv) reduction of financial crime.*

*Society for the benefit of the community - the term used in the Industrial and Provident Societies Act to describe one type of organisation that can register under this legislation.*

*Sponsoring body - an organisation which has registered a set of rules with the FSA as a model, and provides a service to those organisations that work to register using the model.*

overturned by the members. An IPS (unless a secondary co-operative) has to be one member, one vote regardless of the number of shares owned. In an IPS, 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), 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 FSA will expect a society to provide appropriate information regarding this risk to potential investors;
- limits on shareholding - all members must hold at least one share in the society. Currently shareholding for individuals is limited to £20,000, 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 any financial return; and
- asset lock - under the Co-operative and Community Benefit Societies Act 2003 a society for the benefit

of the community 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).

Organisations wishing to issue withdrawable share capital are advised to take appropriate financial and legal advice. It is widely acknowledged that IPS legislation is relatively outdated and in need of modernisation. In 2006 the Treasury announced a review of Industrial and Provident Society and Credit Union legislation and issued a consultation on the areas most in need of change. The review is ongoing and, although it is unlikely it will result in a new Act, a variety of legal mechanisms are being used to modernise the legislation and make it fit for purpose. Areas that are currently being looked at with a view to reform include an increase in the maximum share holding limit in line with inflation (for withdrawable share capital) and abolishing the limit for transferable shares altogether.

## 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?
<b>Partnerships</b>	No	Deed	No	No	No	No	No
<b>Associations</b>	No	Constitution	No	No	No (unless a charity)	Yes	No (unless a charity)
<b>Trusts</b>	No	Deed	No	No	No (unless a charity)	Yes	No (unless a charity)
<b>Limited Liability Partnership (LLP)</b>	Yes	Agreement or Deed	No	No	Companies House	No	No
<b>Company Limited by Guarantee</b>	Yes	Articles	No	No	Companies House	Yes	No (unless a charity)
<b>Company Limited by Shares</b>	Yes	Articles	Yes	Yes	Companies House	No*	No (unless a charity)
<b>Community Interest Company</b> (limited by guarantee)	Yes	Articles	No	No	Companies House & CIC Regulator	No	Yes
<b>Community Interest Company</b> (limited by shares)	Yes	Articles	Yes	Yes – although it is subject to a cap	Companies House & CIC Regulator	No	Yes
<b>Charitable Incorporated Organisation</b>	Yes	Constitution	No	No	Charity Commission	Yes	Yes
<b>Industrial &amp; Provident Society</b> (bona fide co-operative)	Yes	Rules	Yes	Yes	Financial Services Authority	No	No
<b>Industrial &amp; Provident Society</b> (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 new 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 some of its customers. Members are involved in the co-operative by buying from it. 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 concerned with marketing members' produce;
- 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 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 Tenant Services Authority (TSA previously the Housing Corporation), 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.

Tenant Services Authority (TSA)  
- the regulator of housing associations and providers of social housing in the United Kingdom. The TSA has taken over the regulatory work of the Housing Corporation.

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.



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.

#### ■ 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.

#### g Community co-operative

Owned and controlled by members of a geographical community or community of interest who take part in a business that involves the whole community or a large part of it.

#### h 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.

#### i Food co-operative (buying group)

A form of co-operative consortium whereby organisations and individuals come together to purchase food in bulk direct from suppliers resulting in more affordable prices for its members.

As mentioned above, as there is no co-operatives act, co-operatives in the UK may register using a variety of legal forms, including the company and industrial and provident society forms.

For further details on co-operatives see [www.cooperatives-uk.coop](http://www.cooperatives-uk.coop) and for housing co-operatives see [www.cch.coop](http://www.cch.coop)

Maximum voting strength - the maximum number of votes any one member can have within an industrial and provident society.

## 6.2 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;
- provide facilities for eligible sports and encourage people to take part in them as its main purpose; and
- be organised on an amateur basis.

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 industrial and provident societies or companies.

For further details see [www.cascinfo.co.uk](http://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 industrial and provident societies, although it is possible to register a club as a company.

## 6.4 Community enterprise (community business)

A democratic membership organisation where membership is open to everyone who lives (and sometimes those who work) in the area served. The aims of a community enterprise are to provide local services or create employment for local people or a combination of the two. Control is normally exercised on a 'one member, one vote' basis and the governing body is elected by and from the members.

A community enterprise is owned by its members who come from the community served by the organisation. However, members do not personally have any access to the enterprise's income or assets and do not benefit financially. A community enterprise will not normally be eligible for charitable status, although some may achieve this if their trading activity falls within legally charitable purposes (for example, care for elderly people). Most are either companies limited by guarantee, industrial and provident societies (society for the benefit of the community) or community interest companies.

## 6.5 Community development finance institution (CDFI)

CDFIs are a relatively new financial tool for social, economic and physical renewal in under-invested communities, although there are a few which have been in

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

existence for a number of years. 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 industrial and provident 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](http://www.cdfa.org.uk)

### 6.6 Community finance society

A democratic organisation owned and controlled by the members that works to further a social business venture by encouraging its members to invest in it; this is known as community investment. Community investment invites people to invest some of their money in community ventures in the form of share capital. The shareholding of each member does not determine their level of ownership and control over the business rather it is run using the concept of one member, one vote. Whilst a return may be paid on the investment, this is not the primary reason for investing and generally there is a desire by the member to invest in the social purpose and mission of the organisation.

The industrial and provident society (society for the benefit of the community) is the most common legal form used by such organisations as it offers several special attributes that make raising share capital from the public different to companies (see chapter 5.6 of this guide for further details).

For further details see [www.communityshares.org.uk](http://www.communityshares.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.

For further details see [www.communitylandtrust.org.uk](http://www.communitylandtrust.org.uk)

### 6.8 Community supported agriculture (CSA)

A community-based organisation operating a partnership approach between farmers

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

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.

CSAs may be community or farmer-led. Generally, they are membership organisations but the level of membership involvement can vary depending on the model used and the size of the operation.

Many are registered as industrial and provident societies - both as co-operatives and societies for the benefit of the community, but as CSAs can take many different guises examples can be found using a range of legal forms.

For further details see [www.soilassociation.org/csa](http://www.soilassociation.org/csa)

## 6.9 Development trust

A community owned and managed, not-for-profit organisation that works towards the long-term social, economic and environmental regeneration of a defined geographical area (often a deprived area). Development trusts work towards long-term sustainability through a commitment to an enterprise model. A development trust is owned by its members, who can be both individuals and organisations who support the work of the trust. But, as many will be charities, their main responsibility will be to donors and beneficiaries. Members are not beneficial owners and do not personally have any access to the organisation's income or assets.

Most are registered as companies limited by guarantee. Some have chosen to register as industrial and provident societies (society for the benefit of the community) and the majority have

charitable status. Smaller and new-start development trusts may be formed as associations.

For further details see [www.dta.org.uk](http://www.dta.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](http://www.employeeownership.co.uk) or [www.cooperatives-uk.coop](http://www.cooperatives-uk.coop)

## 6.11 Leisure & Cultural Trust

An organisation that operates public leisure facilities in a not-for-profit or charitable environment. Most are registered as companies limited by guarantee or industrial and provident societies (society for the benefit of the community) and many 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](http://www.sporta.org)

## 6.12 Mutual

A mutual is an organisation established primarily to provide a service to its members and is usually owned by its members. Some mutuals generate vast sums of money and share this wealth out amongst their members or for the benefit of their members. Mutuals may abide by the co-operative values and principles but are not required to. 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.

Most agricultural co-operatives are mutual, but not all.

Mutuality is sometimes needed by law (for example, credit unions and some housing co-operatives). In recent years new forms of mutuals have emerged (such as community owned shops and leisure and cultural 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.

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 Partnership

This should not be confused with the legal form of partnership (as defined in chapter 4.1). The term is used for any arrangement that brings together a range of different interests to achieve a common goal. Working in partnership is generally concerned with managing resources. Whilst an arrangement may often be referred to as a partnership, the legal form can be implied if the conditions are met, possibly without those involved realising or intending such a situation. Otherwise, the partnership may be an association.

Some partnerships are not separate organisations so will not have a legal form, but just a set of standing orders.

## 6.14 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."

The above description is from the Office of the Third Sector (OTS) web-site (OTS is part of the Cabinet Office). As the term 'social enterprise' covers such a range of organisations, examples will be found using all available legal forms and can be eligible for charitable status.

For further details see [www.socialenterprise.org.uk](http://www.socialenterprise.org.uk)

Standing orders  
- procedures for  
the maintenance  
and management  
of meetings of  
organisations.

## 6.15 Social Firm

A social firm is a business set up specifically to create employment opportunities for people severely 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 industrial and provident society (co-operative) are promoted as suitable models.

For further details see [www.socialfirms.co.uk](http://www.socialfirms.co.uk)

## 6.16 Supporters' trust

A democratic, not-for-profit organisation that draws its members from the community of supporters of a spectator sports team, and which aims to strengthen links between that club and the local community.

Although the strategy for achieving this can vary depending on the club concerned, it is most commonly achieved through securing shares and voting rights in the company that runs the club. This is with a view to strengthening the voice for supporters, influencing the decision making process at a club and ultimately taking a majority ownership.

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 overwhelming majority are registered as industrial and provident societies (societies for the benefit of the community) 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](http://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 industrial and provident societies.

For further details see [www.taroe.org](http://www.taroe.org)

## 6.18 Charity

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. 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 2003 and The Companies (Audit, Investigations and Community Enterprise) Act 2005 introduced the concept of an "asset lock" which prevents an organisation being sold and the assets being distributed amongst the members. Instead assets must be given to another asset locked organisation, usually with similar objectives.

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). It is also possible for industrial and provident societies that are registered as societies

for the benefit of the community to choose to install an asset lock. 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 introduces a process which allows companies to 'entrench' certain provisions of its articles. In this way the company can create its own asset lock as once entrenched the articles will set specific rules about how the provision can be changed.

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

Even though members of a voluntary organisation or charity have certain powers in terms of voting, their ownership is 'non-beneficial' in that they cannot sell their share and will not usually benefit materially from being a member.

### 7.4 Co-ownership and joint ownership

Co-ownership or joint ownership are terms used to describe a form of ownership sometimes used by smaller worker co-operatives. It allows assets to be shared out. However, if the organisation is wound up, the current members must contact all people who have been members in the past six years and make sure they get their fair share of any assets.

Co-ownership or co-housing can also refer to some housing co-operatives where individual members own equity in their homes.



# 8

## Charitable status

Being a charity grants an organisation a legal status on top of 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) or an industrial and provident society (in time they may also be a charitable incorporated organisation).

In practice it is not possible to become a charity without a governing document or a separate legal form.

Many organisations may want to apply to register with the Charity Commission for the advantages that it brings in terms of tax relief, fundraising and public image. Charity law can be a complicated subject and cannot be dealt with in detail in this guide. We have provided an introduction to charitable status here and further sources of guidance and information are given at the end of this guide.

Organisations that meet the minimum requirements for registration (see Chapter 9.2 of this guide) must apply for registration under the provisions of the Charities Acts 1993 and 2006.

Associations, trusts and companies limited by guarantee which meet these minimum requirements have to apply for registration as a charity with the Charity Commission. Industrial and provident societies can apply for exempt charity status with HM Revenue & Customs (see chapter 9 of this guide for more details of how this will soon change).

The Charities Act 2006 defines a charity as a “body or trust which is for a charitable purpose that provides benefit to the public”. An organisation may be recognised as a charity in law if:

- it has exclusively charitable objects and its activities fall within the list of charitable purposes specified in the Charities Act 2006 (see 8.1 below); and
- its objects benefit the public (see 8.2 below).

### 8.1 Charitable objects and activities

The Charities Act 2006 specifies 13 charitable purposes (this part of the Act was not implemented until 2008). Prior to this the preamble to the Charitable Uses Act of 1601 provided the framework of English charity law and set out those activities considered to be charitable. Charitable purposes were defined as:

- The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities; the repair of bridges, ports, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; the marriages of poor maids; the supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners and captives; and the aid or ease of any poor

inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes.

Up until the implementation of this part of the Act in 2008 all charitable purposes were either based on the preamble or were considered by the Courts to be like them in light of modern social and economic circumstances. Generally, there were four recognised charitable heads:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- other purposes beneficial to the community.

All purposes that were previously charitable will continue to be recognised as such. The new Act recognises how the provision of charity has developed over the centuries due to the changing needs of society and offers a modern framework of what is considered capable of being charitable. The 13 charitable purposes are:

### **1 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 those persons 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 please see Charity Commission publication “The Prevention or Relief of Poverty for the Public Benefit”.

### **2 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 by an organisation must promote, sustain and increase individual or collective knowledge in a given area(s).

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

- providing after-school clubs;
- undertaking research and publishing the results; and
- running courses in computer literacy.

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

### 3 the advancement of religion

“Religion” is defined as a system of beliefs that include certain characteristics that have been identified through case law and the Charities Act 2006. A religion must believe in a supreme being, this may be in the form of one god, many gods or no god at all.

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

- 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;

- a relationship between the believer and the supreme being by showing worship of, reverence for or veneration of the supreme being;
- a degree of cogency, cohesion, seriousness and importance; and
- 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 its supreme being for the public benefit.

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

- the provision and maintenance of a building used for religious practices;
- the provision of religious instruction and supervision;
- the provision of property for the purposes of a retreat; and
- the provision of prison and hospital chaplaincy.

In general religious charities with an income of less than £100,000 are exempted from the requirement to register with the Charity Commission until 2012. However, from 31 January 2009 the Charities Act 2006 has required such exempted charities with an income over £100,000 to register with the Charity Commission (*see chapter 9 of this guide for more details*).

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

#### **4 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 the 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 the saving of 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 hospitals and healing centres;
- provision of services for victims of abuse or those addicted to alcohol or drugs;
- provision of comforts to those who are sick, convalescing or infirm (such as hospital radio);
- medical research;
- provision of rescue services (such as lifeboats and mountain rescue); and
- provision of self-defence classes.

#### **5 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. This purpose includes organisations undertaking urban and rural regeneration, 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 good citizenship and civic responsibility (such as scouts and guides); and
- promotion of the efficiency and effectiveness of charities.

#### **6 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. Organisations that are established to advance a form of artistic expression may be required to prove its merit using criteria established by the Charity Commission.

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 and eisteddfods.

## **7 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), such as football, rugby and tennis clubs; and
- provision of kits and equipment for a junior team.

## **8 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 element;
- apply to everyone; and
- set out what the Government 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;
- relief of suffering, poverty and distress arising from conflict;
- identification of the causes of conflict and trying to resolve them;
- promotion of restorative justice; and
- mediation, conciliation and reconciliation between those involved in dispute.

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, with the aim of lessening

discrimination and promoting society's diversities.

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

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

## **9 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 management schemes; and
- research projects into the use of renewable energy sources.

## **10 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
- running lunch clubs and drop-in centres for elderly people.

## **11 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.

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

## 12 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.

## 13 other purposes that are currently recognised as charitable or are in the spirit of any purposes currently recognised as charitable.

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 utilities and the provision of amenities, such as repairing bridges and providing libraries.

For more information on the Charities Act 2006 and the new list of charitable purposes, please see [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk).

## 8.2 Public benefit

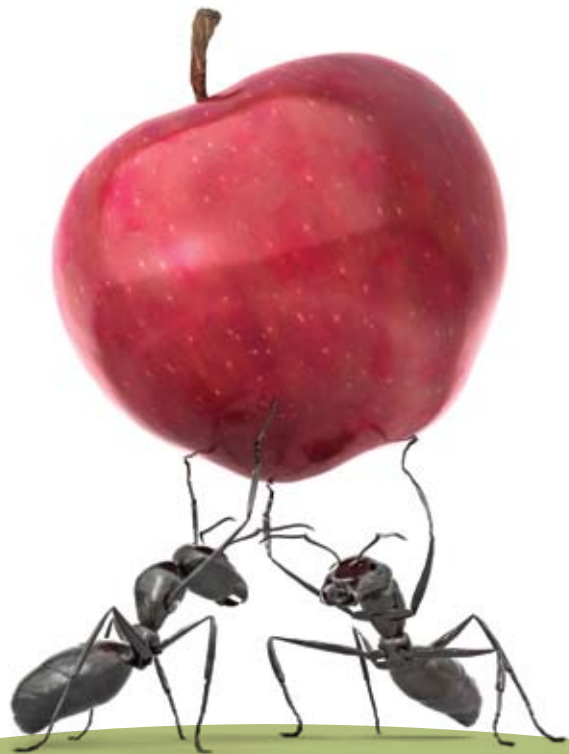
Prior to the implementation of the Charities Act 2006, there was a presumption in law that charities established to relieve poverty, advance education and advance religion benefited the public – other types of charity had to show that they were for the public benefit. The new Act created a level playing field by ending this presumption and requiring all charities to demonstrate that their aims are for the public benefit.

The Charity Commission has published guidance about what public benefit means. All charity trustees have to “have regard” to this guidance, which is derived from relevant case law. It states that there are two key principles of public benefit:

- Principle 1, there must be an identifiable benefit(s)
  - it must be clear what the benefits are;
  - the benefit must be related to the aims; and
  - benefits must be balanced against any detriment or harm.

- Principle 2, benefit must be to the public, or section of the public
  - the beneficiaries must be appropriate to the aims;
  - where benefit is to a section of the public, the opportunity to benefit must not be restricted by:
    - geographical or other restrictions; or
    - ability to pay any fees charged
  - people in poverty must not be excluded from the opportunity to benefit; and
  - any private benefits must be incidental.

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 what their charity's aims are and that they carry them out for the public benefit. Charities are required to report and to confirm that the trustees have had regard to the Charity Commission's guidance on public benefit. The Charity Commission has published some guidance and examples of how to do this. The level of detail required depends on the income of the charity and ranges from a brief summary for small charities to a significant explanation for larger charities – again the Charity Commission's examples include small and large charities.



# 9

## Becoming a charity

If an organisation considers that it meets the statutory definition of a charity and meets the minimum requirements (see 9.2 below for details) it must apply to be registered as a charity.

In England and Wales, the Charity Commission and HM Revenue & Customs (which grant tax relief and so have to be consulted) decide whether or not an organisation is charitable. In Scotland, it is the Office of the Scottish Charity Regulator (OSCR) which makes this judgement.

### 9.1 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.

- Exempt charities are those that are overseen by a public body other than the Charity Commission and include charities that are registered under the Industrial and Provident Societies Acts which are overseen by the Financial Services Authority. Exempt charities receive the same tax benefits as registered charities but cannot register with the Charity Commission and are not regulated by it.
- Excepted charities, although supervised by the Charity Commission, may also be supervised by the bodies to which they are affiliated, for example, some religious charities, boy scouts and girl guides charities and some armed forces charities.

The Charities Act is intended to ensure that all organisations with charitable status are subject to the same accountability requirements. As a result, the Act introduced new registration requirements for exempt and excepted charities.

As of 1 January 2009, all excepted charities with an income of £100,000 or more must register with the Charity Commission; those with incomes below this threshold will be required to register in due course. It is possible for previously excepted charities to register using an online facility.

As from late 2010, any existing exempt charity will have to register with the Charity Commission, unless they have a principal regulator (an organisation that takes responsibility for ensuring they comply with charity law who will regulate them instead of the Charity Commission). Initially, the requirement to register with the Charity Commission will only apply to exempt charities with an annual income of £100,000 or more.

A number of exempt charities are expected to be regulated by principal regulators by October 2009, for example, Royal Botanical Gardens (Kew) and the Universities of Oxford, Cambridge and

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

Principal regulator - an organisation with the jurisdiction to regulate some forms of exempt charities. Such regulators include the Department for Culture, Media & Sport, the Department for the Environment, Food and Rural Affairs and the Higher Education & Funding Council for England.

Durham. It is also expected that registered social landlords (in England) that are industrial and provident societies are also likely to have principal regulators.

Exempt charities for which there is no principal regulator will have to register with the Charity Commission and will be subject to its monitoring and regulatory powers. In addition to certain educational institutions this will include charitable industrial and provident societies (which are not registered social landlords) in England and Wales.

## 9.2 Minimum requirements for registration

### a Income requirements

Unless it is an exempt or excepted charity, an organisation that meets the statutory definition and has an annual income of £5,000 or more must register with the Charity Commission (prior to April 2007 this income threshold was £1,000). 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 new charities with incomes under the £5,000 limit. However, under current law, the Charity Commission

can exercise discretion in relation to such charities' applications for voluntary registration. Such charities will be able to seek voluntary registration when the part of the Charities Act 2006 that permits this comes into effect.

### b Governance requirements

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

- 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.

## 9.3 Registration process

Charities can register using approved governing documents which can make registration more straightforward but may not address specific governance requirements. Bespoke governing documents, whilst they can make the

Central register of charities - the list kept by the Charity Commission of all registered charities.

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.



registration process longer, can ensure more specific and robust governance arrangements.

The time taken to register a charity varies depending on the activities being carried out, the contents of the governing document and so on. It is also possible to apply for registration online; this can reduce the time the registration process takes.

Currently, unincorporated organisations which are registered charities and who want to incorporate must create a new charitable company and register that as a new charity with the Charity Commission. Since the company will be a new legal entity the pre-existing charity number cannot be transferred across. In future, unincorporated charities may choose to incorporate as a charitable incorporated organisation (CIO). This route will still require the unincorporated charity to formally register as a CIO and gain a new charity number.

## 9.4 Regulation & operation

The Charity Commission is concerned with upholding the law relating to charities, and HM Revenue & Customs is concerned with collecting taxes when they are due. Charity trustees are independent and responsible for the management of their charities, although the Charity Commission has considerable powers over charities where it is clear that there are serious problems of misconduct or mismanagement. These powers can only be used after a formal inquiry has found such problems. They include removal or replacement of trustees and ordering trustees to repay any funds that have been used in a non-charitable way. If they are not sure about whether a particular act is legal, the trustees of any charity can consider taking its own legal advice and look at the publications, guidance and advice on the Charity Commission's website.



It is an offence for an organisation to promote itself as a 'registered charity' if it is not registered with the Charity Commission.

An organisation which is registered with the Charity Commission should refer to itself as a 'registered charity' on all business stationery, fundraising literature and financial documents.

Under the Co-operative and Community Benefit Societies Act 2003, all industrial and provident societies that are exempt charities must provide their status on all of their stationery. These organisations may refer to themselves as charities but should not include the term 'registered' (obviously this requirement will change once exempt charities are required to register with the Charity Commission).

Any organisation considering charitable status should consider what benefits it will bring them before proceeding (please see chapters 10 and 11 of this guide for further details). Once registered, a charity can only cease to be such by converting to a community interest company (CIC) with the permission of the Charity Commission,

or by winding up or merging. (However, any property held by a charitable company immediately prior to its conversion to a CIC will, upon conversion, become subject to a trust for charitable purposes and the CIC will be its trustee).



# 10

## 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.

### 10.1 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.

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

For further details on tax exemptions see [www.hmrc.gov.uk/charities](http://www.hmrc.gov.uk/charities)

### 10.2 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.

### 10.3 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. The Charity Commission has a particular statutory objective to increase public trust and confidence in charities.

### 10.4 Regulation

Some charities find the legal and accountancy frameworks within which they must operate restrictive. However, the Charity Commission, and to some extent HM Revenue & Customs, both offer

a broad range of advice and guidance to charities. The Charity Commission 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

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



# 11

## 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.

### 11.1 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. Employees of the charity are not permitted to be members of its governing body unless sanctioned by its governing document or the Charity Commission.

It is possible to pay a governing body member for providing goods or services to the charity (such as accountancy or legal services) provided that there is a clear benefit to the charity. Charities wishing to pay their governing body members for providing services (a wide-ranging term which includes building, legal and accountancy services) have to show that they have covered the following:

- the terms are set out in a written agreement;
- 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; and
- governing body members who stand to benefit take no part in any decision about the agreement.

Those charities unsure of whether any payment is permitted should refer to guidance produced by the Charity Commission.

Payments to members of the governing body in the context above do not apply to paying reasonable expenses, for example, travel expenses for going on charity business and the reasonable cost of childcare when going to governing body meetings – these can be claimed from the charity without separate authorisation.

### 11.2 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 research reports 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 trading. Any profits made from small trading activities will be considered exempt from tax provided that:

- the total turnover from all of the activities does not exceed the small 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 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.

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.

### Small trading turnover limit

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



### 11.2.1 Trading subsidiaries

A charity that wants to regularly engage 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.

### 11.3 Campaigning

Charities are limited in the amount and type of campaigning work they can carry out. The Charity Commission defines campaigning as:

*"awareness-raising and efforts to educate or involve the public by mobilising their support on a particular issue, or to influence or change public attitudes. .... activity which aims to ensure that existing laws are observed."*

A charity may engage in campaigning as a way of furthering or supporting its main charitable purpose. There is no limit to the extent to which charities may engage in campaigning provided it is supporting its main purpose, so long as there is a reasonable likelihood of it being effective.

Charities can campaign for a change in the law, policy or decisions where such a change would support their main charitable purpose.

Any charity allowed to carry out campaigning work must be independent from any political party or view and must make sure that any information it provides to the public is accurate and able to support any statistics or claims made. Political campaigning is covered in 11.4 below.

#### 11.4 Political activity

Political activity refers to activity by a charity which is aimed at securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad. It includes activity to preserve an existing piece of legislation where a charity opposes its being repealed or amended.

Charities may undertake some political activity in order to further and support their main charitable purpose. It is not charitable for a charity to have political purposes, or for any political activity to become the reason for the charity's existence. However, a charity may choose to focus most, or all, of its resources on political activity for a period if it is satisfied that such activity will:

- be the most effective way of achieving its aims;
- bring major benefits to its beneficiaries; and
- have a good chance of success.

Charities may not undertake activities that further the interests of any political party. However, a charity can show decision-makers what the likely effect of a change (or the failure to make a change)

may be on its beneficiaries, provided this will assist the charity to achieve its charitable purposes. The Charity Commission has the power to take action where a charity has engaged in political activities that contravene legal frameworks and guidelines.

For further information on campaigning and political activity see Charity Commission publication "CC9 - Speaking Out - Guidance on Campaigning and Political Activity by Charities", [www.charitycommission.gov.uk/publications/cc9.asp](http://www.charitycommission.gov.uk/publications/cc9.asp)

#### 11.5 Members' benefits

An organisation is not charitable if it exists mainly to benefit its own members. This explains why co-operatives and credit unions 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.



# 12

## 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, standing orders or internal policies. Getting this right for an organisation means they are better equipped to operate and govern themselves with confidence. For more information please contact the Co-operatives<sup>UK</sup> Legal Team on 0161 246 2959/2982 or [legal@cooperatives-uk.coop](mailto:legal@cooperatives-uk.coop).

This edition of the guide has been published using funding from the Big Lottery Fund as part of the 'Making Local Food Work' project. The main aim of this project is to reconnect people and land and promote access to fresh, healthy, local food with a clear provenance.

The project uses the social and community enterprise sector to develop collaborative responses to meeting the needs of all sections of the community in regard to access to local food.

This project will run until 2012 and is comprised of six delivery strands and four supporting themes, each seeking to refine and replicate a form of community enterprise model to reconnect food producers and consumers. Co-operatives<sup>UK</sup> is running the 'Governance and Structures' strand and aims to enhance the confidence and sustainability of organisations addressing local food issues by:

- improving the understanding of the need for good governance and the right legal structure;
- increasing the skills, knowledge and confidence of development workers; and
- developing tools and reference materials.

The strand offers a range of support to development workers including training, a telephone helpline, reference materials and networking opportunities.

For further information visit  
[www.makinglocalfoodwork.co.uk](http://www.makinglocalfoodwork.co.uk)

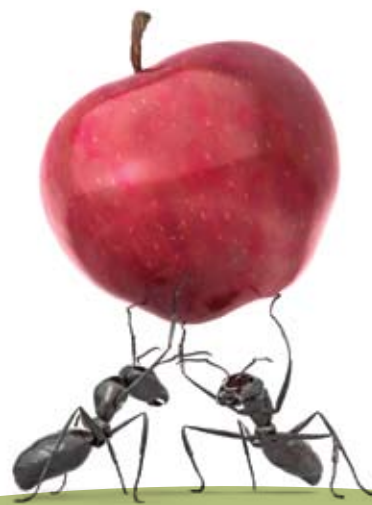
This is the second edition of Simply Legal. Further editions are planned once the legislation for charitable incorporated organisations is finalised and implemented. Details of the next edition of the guide, updates of the legislation affecting third sector organisations and legal structures in general can be found on our website  
[www.cooperatives-uk.coop/legal](http://www.cooperatives-uk.coop/legal).

### Select-a-structure online

To help development professionals support organisations in deciding the most appropriate legal structure, Co-operatives<sup>UK</sup> has developed an interactive 'select-a-structure' questionnaire, online at [www.selectastructure.uk.coop](http://www.selectastructure.uk.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.



# 13

## 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.

**Bona fide co-operative** – the term used in the Industrial and Provident Societies Act to describe one type of organisation that can register under this legislation.

**Bye-laws (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.

**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.

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

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

**Financial Services Authority (FSA)** – an independent, non-governmental body given statutory powers by the Financial Services and Markets Act 2000. Its four statutory objectives are i) market confidence; ii) public awareness; iii) consumer protection and iv) reduction of financial crime.

**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. Formed in 2005 by a merger of the Inland Revenue and Her Majesty's Customs & Excise.

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

**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 an industrial and provident 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 Services Authority by industrial and provident 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 Department for Culture, Media & Sport, the Department for the Environment, Food and Rural Affairs and the Higher Education & Funding Council for England.

**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.

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

**Small and medium sized enterprises** – 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.

**Society for the benefit of the community** – the term used in the Industrial and Provident Societies Act to describe one type of organisation that can register under this legislation.

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

**Standing orders** – procedures for the maintenance and management of meetings of organisations.

**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.

**Tenant Services Authority (TSA)** – the regulator of housing associations and providers of social housing in the United Kingdom. The TSA has taken over the regulatory work of the Housing Corporation.

**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%.



# 14

## Abbreviations

<b>BIS</b>	Department for Business, Innovation & Skills
<b>CASC</b>	Community Amateur Sports Club
<b>CDFI</b>	Community Development Finance Institution
<b>CIC</b>	Community Interest Company
<b>CIO</b>	Charitable Incorporated Organisation
<b>CLG</b>	Company Limited by Guarantee
<b>CLS</b>	Company Limited by Shares
<b>CSA</b>	Community Supported Agriculture
<b>DTA</b>	Development Trusts Association
<b>FSMA</b>	Financial Services & Markets Act
<b>FSA</b>	Financial Services Authority
<b>HMRC</b>	Her Majesty's Revenue & Customs
<b>ICA</b>	International Co-operative Alliance
<b>ICOM</b>	Industrial Common Ownership Movement (now part of Co-operatives <sup>UK</sup> )
<b>IPS</b>	Industrial and Provident Society
<b>LLP</b>	Limited Liability Partnership
<b>MTS</b>	Mutual Trading Status
<b>NI</b>	National Insurance
<b>OSCR</b>	The Office of the Scottish Regulator
<b>OTS</b>	The Office of the Third Sector
<b>PLC</b>	Public Limited Company
<b>SCIO</b>	Scottish Charitable Incorporated Organisation
<b>SME</b>	Small and medium sized enterprises
<b>TSA</b>	Tenant Services Authority
<b>VAT</b>	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:**

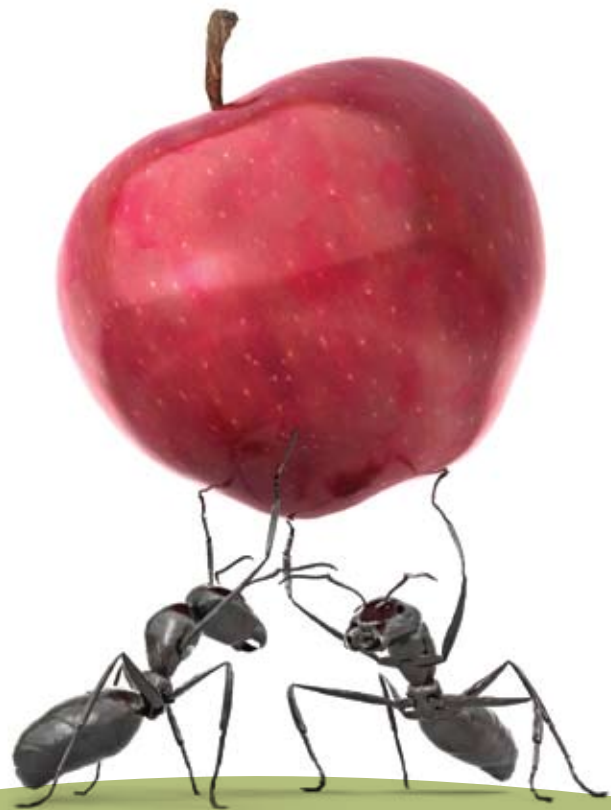
#### **Co-operation among co-operatives**

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 0AS  
0161 832 3694  
[www.abcul.coop](http://www.abcul.coop)

### **Campaign to Protect Rural England (CPRE)**

National Office  
128 Southwark Street  
London  
SE1 0SW  
020 7981 2800  
[www.cpre.org.uk](http://www.cpre.org.uk)

### **Charity Commission**

[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)  
Helpline: 0845 3000 218

### **Liverpool Office**

Charity Commission  
12 Princes Dock  
Princes Parade  
Liverpool  
L3 1DE

### **London Office**

Charity Commission  
Harmsworth House  
13-15 Bouverie Street  
London  
EC4Y 8DP

### **Newport Office**

Charity Commission  
8th Floor, Clarence House  
Clarence Place  
Newport  
South Wales  
NP19 7AA

### **Taunton Office**

Status Division  
Charity Commission  
Woodfield House  
Tangier  
Taunton  
Somerset  
TA1 4BL

### **Companies House**

Registrar of Companies  
Crown Way  
Maindy  
Cardiff  
CF14 3UZ  
0303 1234 500  
[www.companies-house.gov.uk](http://www.companies-house.gov.uk)

### **Community Development Finance Association**

Room 101  
Hatton Square Business Centre  
16/16a Baldwin Gardens  
London  
ECN1 7RJ  
020 7430 0222  
[www.cdfa.org.uk](http://www.cdfa.org.uk)

### **Community Land Trusts**

Community Finance Solutions, Room 214  
University of Salford  
Crescent House  
The Crescent  
M5 4WT  
0161 295 4454  
[www.communitylandtrust.org.uk](http://www.communitylandtrust.org.uk)

### **Confederation of Co-operative Housing (CCH)**

Fairgate House  
205 Kings Road  
Tyseley  
Birmingham  
B11 2AA  
0121 449 9588  
[www.cch.coop](http://www.cch.coop)

### **Co-operatives<sup>UK</sup>**

Holyoake House  
Hanover Street  
Manchester  
M60 0AS  
0161 246 2900  
[www.cooperatives-uk.coop](http://www.cooperatives-uk.coop)

### **Development Trusts Association**

33 Corsham Street  
London  
N1 6DR  
0845 458 8336  
[www.dta.org.uk](http://www.dta.org.uk)

### **Employee Ownership Association**

Mezzanine 2  
Downstream Building  
1 London Bridge  
London  
SE1 9BG  
020 7022 1960  
[www.employeeownership.co.uk](http://www.employeeownership.co.uk)

### **Financial Services Authority**

25 The North Colonnade  
Canary Wharf  
London E14 5HS  
020 7066 1000  
[www.fsa.gov.uk](http://www.fsa.gov.uk)

### **HM Revenue & Customs (Charities)**

St John's House  
Merton Road  
Liverpool  
L75 1BB  
0845 302 0203  
[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

### **International Co-operative Alliance**

15 Route Des Morillons  
1218 Grand Saconnex  
Geneva  
Switzerland  
(+41) 022 929 88 88  
[www.ica.coop](http://www.ica.coop)

### **Land for People**

31 High Street  
Welshpool  
Powys  
SY21 7YD  
01691 680 444  
[www.landforpeople.co.uk](http://www.landforpeople.co.uk)

### **Local Action on Food Network (formerly Local Food Links UK)**

94 White Lion Street  
London  
N19 9PF  
020 7837 1228  
[www.sustainweb.org](http://www.sustainweb.org)

**National Farmers' Retail & Markets Association (FARMA)**

12 Southgate Street  
Winchester  
Hampshire  
SO23 9EF  
0845 4588 420  
[www.farma.org.uk](http://www.farma.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](http://www.oscr.org.uk)

**Office of the Third Sector**

2nd Floor  
Admiralty Arch  
South Side  
The Mall  
London  
SW1A 2WH  
020 7276 6400  
[www.cabinetoffice.gov.uk/third\\_sector](http://www.cabinetoffice.gov.uk/third_sector)

**Plunkett Foundation**

The Quadrangle  
Woodstock  
Oxfordshire  
OX20 1LH  
01993 810 730  
[www.plunkett.co.uk](http://www.plunkett.co.uk)

**Rural Community Shops (formerly ViRSA)**

Plunkett Foundation  
The Quadrangle  
Woodstock  
Oxfordshire  
OX20 1LH  
01993 814 377  
[www.plunkett.co.uk](http://www.plunkett.co.uk)

**Social Firms UK**

1st Floor  
Furness House  
53 Brighton Road  
Redhill  
Surrey  
RH1 6PZ  
01737 764 021  
[www.socialfirms.co.uk](http://www.socialfirms.co.uk)

**Soil Association**

South Plaza  
Marlborough Street  
Bristol  
BS1 3NX  
0117 314 5000  
[www.soilassociation.org.uk](http://www.soilassociation.org.uk)

**SPORTA**

Park Farm  
Morwich Road  
Hethersett  
Norfolk  
NR9 3DL  
01603 814 233  
[www.sporta.org](http://www.sporta.org)

**Supporters Direct**

3rd Floor  
Victoria House  
Bloomsbury Square  
London  
WC1B 4SE  
0207 273 1592  
[www.supporters-direct.org](http://www.supporters-direct.org)

**SUSTAIN**

94 White Lion Street  
London  
N1 9PF  
0207 837 1228  
[www.sustainweb.org](http://www.sustainweb.org)

# Building a firm foundation for your enterprise

Registration, formation and governance  
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- Designing legal structures for all third sector enterprises, including:
  - bespoke structures to meet individual needs
  - a range of model rules
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- Providing a comprehensive and affordable registration service
- Negotiating charitable status (if necessary)
- Providing ongoing support from start to finish

## **Legal Services**

Co-operatives<sup>UK</sup>  
Holyoake House  
Hanover Street  
Manchester  
M60 0AS

Phone: **0161 246 2959/0161 246 2982**

E-mail: [legal@cooperatives-uk.coop](mailto:legal@cooperatives-uk.coop)

Website: [www.cooperatives-uk.coop/legal](http://www.cooperatives-uk.coop/legal)





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Holyoake House  
Hanover Street  
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