



September 2009

Is Your Club Considering Charitable Status?*

Background

Charities in England and Wales operate in a highly regulated environment, being governed by various Acts of Parliament and also monitored by an independent regulator, the Charity Commission.

A key Act of Parliament is the Charities Act 2006. This received Royal Assent in November 2006 and has been brought into force over several years. It makes many amendments to the Charities Acts 1992 and 1993 and needs to be read closely with them. A consolidated Act may be produced in the future but at present it is not a reality.

A plain English guide to the Act and an outline of implementation is available from www.cabinetofficer.gov.uk/third_sector/law_and_regulation.aspx

A summary of the Act is also available from http://charitycommission.custhelp.com/cgi-bin/charitycommission.cfg/php/enduser/std_adp.php?p_faqid=371

Alternatively, detailed commentary has been produced by the Charity Commission at www.charity-commission.gov.uk/spr/corcom1.asp

What is a Charity?

A charitable organisation is precisely defined in law. It must:

- (i) Not be for profit;
- (ii) Have exclusively charitable purposes (see below); and
- (iii) Operate for the public benefit (see below).

All charitable organisations with a gross annual income exceeding £5,000 and which are not exempted in law from registration, MUST register with the Charity Commission whatever their legal status. Further information is available on the Charity Commission website: <http://www.charity-commission.gov.uk/>

Charities with an annual income of less than £20,000 are known as “small charities”. The Charity Commission has produced a number of information sheets aimed specifically at small charities, which may be of interest.

*This information leaflet aims to provide background information on charitable status for clubs. It is not, however, a substitute for proper, informed legal advice on the on the area.



(i) Charitable Purposes

To be a charity, the organisation must have exclusively charitable purposes. To be a “charitable purpose”, the activity must fall within the 13 areas recognised by the Charities Act 2006. These are:

1. The prevention or relief of poverty;
2. The advancement of education;
3. The advancement of religion;
4. The advancement of health or the saving of lives;
5. The advancement of citizenship or community development;
6. The advancement of the arts, culture, heritage or science;
7. The advancement of amateur sport;
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality or diversity;
9. The advancement of environmental protection or improvement;
10. The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
11. The advancement of animal welfare;
12. The promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services; and
13. Other purposes recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

Taking the most relevant purpose, “the advancement of amateur sport”, the following are examples of the types of activity that fall within it:

- Amateur sports clubs
- Multi-sports centres
- Promoting a particular amateur sport or game

“Sport” is specifically defined in the Act as “sports or games which promote health by involving physical or mental skill or exertion”. For further information, see the Charity Commission website: www.charity-commission.gov.uk/spr/corcom1.asp and www.charity-commission.gov.uk/publications/rr11.asp

(ii) Public Benefit

As well as being established for one or more of the above purposes to be charitable the organisation must be able to show that its purposes are for the public benefit. The Charities Act 2006 does not define what this means, but instead requires the Charity Commission to issue guidance promoting awareness and understanding of the meaning of the term.

The Charity Commission’s guidance states that an organisation must show that it meets two key principles:



Principles1: There must be an identifiable benefit or benefits

- It must be clear what these benefits are.
- The benefits must be related to the aims.
- The benefits must be balanced against any detriment or harm.

Principle 2: Benefit must be to the public or a section of the public

- The beneficiaries must be appropriate to the aims.
- Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by geographical or other restrictions or by the ability to pay any fees charged.
- People in poverty must not be excluded from the opportunity to benefit.
- Any private benefits must be incidental.

A charitable organisation is also required by law to include a statement of how the charity has delivered public benefit to be included in the trustee's annual report.

At the time of writing the Charity Commission was in the process of working on specific guidance. Of particular relevance is the proposed guidance for charities charging fees. For further information, please consult the Charity Commission website: www.charity-commission.gov.uk/publicbenefit/

Before deciding to set up a new charity, it is important that the club understands as a very minimum the basic requirements about how a charity must operate. For example, there are reporting obligations upon charities and restrictions upon their activities.

What are the Advantages and Disadvantages of Charitable Status?

There are a lot of very good reasons why clubs decide to set themselves up as a charity. However, setting up a charity is not always the best way to proceed and, in some cases, it may not even be legally possible.

(i) Advantages:

- The main advantage of charitable status relates to taxation, since charities have various tax advantages. Clubs wishing to find out more information about the tax benefit of charitable status should consult HMRC's website for further information: <http://www.hmrc.gov.uk/charities/tax/basics.htm>
- Charities are entitled to an 80% reduction on the non-domestic rate on any building it uses wholly or mainly for charitable purposes. The local authority has the discretion to waive the remaining 20%.



- Some fundraisers have a policy of granting aid only to registered charities. Further, it may be argued that being a registered charity gives credibility when undertaking fundraising activities.

(ii) Disadvantages

- Charities must not have directly political aims and are therefore restricted in the nature and extent of their campaigning. The law does allow some political activity by charities as long as it is directly related to their work and does not involve party politics. In reality, this restriction may be of little bearing to most clubs.
- There are some restrictions on a charity's trading activities. The charitable organisation must ensure that it has power under its constitution and under charity law to carry out the trading activity.
- Further, charities are required to make certain information public on the Register of Charities. This information must be regularly updated.

The above are however only the advantages and disadvantages in outline. A club considering charitable status must carefully consider whether it would be able to meet its legal obligations as a charity – not only now, but in the future as the Committee make-up changes. It must also be able to pro-actively keep abreast of the relevant law and any changes to it. The Charity Commission website has a section to help organisations considering the change: www.charity-commission.gov.uk/registration/think.asp#1

Liability of Committee Members of Charitable Organisations

People who run charities are called charity trustees (although the group may be called the management committee, or similar). It is important that the people running the charity understand what will be required of them. We therefore advise clubs thinking of setting up a new charity to read the Charity Commission's publication, "The Essential Trustee: what you need to know": <http://www.charitycommission.gov.uk/publications/cc3.asp>

It should be noted that committee members of a charity who have acted in breach of trust may be personally required to repay the charity for any losses incurred whatever the legal structure underpinning the charitable status. "Breach of trust" can include:

- Fraudulent acts;
- Gaining personal benefit from their role – for example, receiving payment or other benefits not allowed under its constitution and not authorised by the statutory power or by the Charity Commission;
- Allowing the charity to carry out an activity not permitted under its constitution or under charity law if this causes loss to the charity;
- Acting outside the charity's objects, beneficiary group or area of benefit; or
- Been seriously negligent (such as engaging in high-risk ventures without adequate safeguards) and this has resulted in losses for the charity.



However, provided trustees act sensibly and seek professional advice when necessary, there should be no reason to be unduly concerned about liability. This again underlines the importance of the club being fully appraised of the responsibilities and requirements of charity law in advance to registering for charitable status.

Indeed, it is possible for charitable organisations to obtain trustee indemnity insurance against personal liability for an act taken in breach of trust by an honest mistake.

Resources

Each club will need to take into account its unique circumstances (present and future) when considering charitable status and where appropriate, seek independent legal advice.

Further information – including useful resources – can be obtained from the Charity Commission website. Clubs considering becoming charities are strongly advised to consult the website beforehand: <http://www.charity-commission.gov.uk/>

Clubs considering becoming a charity should involve the Regional Membership Officer early on because their constitutions will need to be amended to incorporate the requirements of charity law. Any change to the constitution will need to be approved by the Region, and must also include the mandatory provisions required for affiliation to the Amateur Swimming Association. These requirements can be found on the website together alongside the other constitutional documents: <http://www.britishswimming.org/>

Generic model constitutions/governing documents are available on the Charity Commission's website at www.charity-commission.gov.uk/registration/mgds.asp. The Amateur Swimming Association will also in due course be producing model documents for a club constituted as a company limited by guarantee with charitable status, which will also be placed on its website.



FREQUENTLY ASKED QUESTIONS

Q: “How long does it take to register as a charity?”

A: On average the process takes around 40 days, although this may vary. The Charity Commission’s website contains detailed information about the process of registration. They are also able to support applicant organisations through the process.

Q: “Will our club need to register?”

A: An organisation has a legal duty to apply for registration if:

- it is not excepted or exempt charity; AND
- it is set up in England and/or Wales for exclusively charitable purposes; AND
- it has an income exceeding £5000 per annum; AND either:
 - it is a company incorporated in England and Wales; OR
 - the majority of charity trustees live in England and Wales; AND/OR
 - the majority of assets are in England and Wales.

Q: “Our organisation has an income of less than £5,000 how can we obtain tax relief if we do not have a registered charity number?”

A: A small charitable organisation with an income of £5,000 or below can still enjoy the benefits of charitable status without having to meet the regulatory requirements of registered charities - these organisations simply need to apply directly to HMRC for tax relief. A HMRC charity number is usually accepted by banks and grant funders as evidence of charitable status.

Help is available from the Charities Helpline on 0845 302 0203 (open from 8.00 am to 5.00 pm, Monday to Friday).

Q: “How do I submit an application for registration?”

A: The first step is to draft an appropriate governing document (otherwise known as the club constitution), which must be drafted in such a way so as to be compatible with the requirements of charity law.

Once this has been prepared, the necessary supporting forms can be downloaded from the Charity Commission website (the Registration application form and Trustee declaration form). Guidance Notes are also available on the website.

The following documents must then be sent to the Charity Commission:

- the completed application form;



- the Trustee declaration form signed by all the trustees;
- a copy of the governing document; and
- evidence of income.

Q: “The club wants to register as a charity, but it also want it to be set-up as a company. Is this possible?”

A: “Charitable” is a status rather than a form of legal entity in its own right.

Before trying to register as a charitable company, it is recommended that the club first contact Companies House who will register the club as a company limited by guarantee. There are requirements under company law which must be satisfied in order for the application for registration to be successful.

When the certificate of incorporation is received from Companies House, the necessary paperwork can then be completed for the Charity Commission.

Information regarding the company law requirements and the process of incorporation is available on the Companies House website: www.companies-house.gov.uk

Q: “What is the ‘Register of Charities’?”

A: The Register of Charities is a computerised database containing key information on all registered charities. Details include the charity's name, its purposes, its annual income, what type of governing document it has, and the name and address of the charity's contact person.

The Register helps the public to find information about charities. For example, the public is able to check if an organisation which is raising funds is registered, or to see from a charity's accounts how it is spending its money.

The Register can be viewed on the Charity Commission's website at www.charity-commission.gov.uk/showcharity/registerofcharities/registerhomepage.aspx

Q: “What is meant by the reporting requirements of charities?”

A: Charities have a duty to be transparent and accountable to donors, beneficiaries and the public. Registered charities are required by law to provide certain documents to the Commission and to keep their information on the public Register up to date.

This includes the following information:



- Annual Returns and accounts. Trustees of charities with income exceeding £10,000 in their last financial year are required to complete and submit an Annual Return. For financial years ending on or after 1st April 2009, the threshold for submitting a Trustees' Annual Report and accounts has increased so that only charities with income above £25,000 need submit copies of these.
- Charities with an annual income of £10,000 or less do not have to submit an Annual Return or a copy of their Trustees' Annual Report and accounts but are required to keep their Register details up to date via an Annual Update form.

Q: “What happens if charities fail to file on time?”

A: Charities have 10 months from the end of their financial year to file their documents. If needs be, the Charity Commission does offer advice and guidance to help meet this deadline. Charities failing to provide evidence of their activity and existence by submitting accounts, Annual Returns or Annual Updates are sent reminders. However, if the Charity Commission does not receive the overdue documents, the charity may be removed from the Register.

Q. Is the Amateur Swimming Association’s Department of Legal Affairs able to provide legal advice to the club as to the benefits of charitable status/what we need to do?

A: The Department is not able to offer legal advice to clubs. In due course it will produce a form of model documents in the hope that they may provide some assistance to clubs wishing to consider becoming charitable. However, clubs will always need to take into account their unique circumstances (present and future) and where appropriate, see specialist independent legal advice.

As a minimum clubs should consult the Charity Commission’s documents, “Registering as a Charity”, “Choosing and Preparing a Governing Document” and “The Essential Trustee: what you need to know” which are all available via www.charity-commission.gov.uk/registration/fagpage.asp