

## Parent Support Group Action Pack – Wales



### Legal structures for local and national support groups - Wales

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This guide is for information purposes only and is not intended to be a source of legal advice and must not be relied upon as such. Other organisations are listed for information purposes only and inclusion does not constitute endorsement by Contact.

## **Introduction**

This guide aims to give you an overview of the different types of charity framework available, along with links to lots of useful resources to help you find the right structure for you.

Alternatively, if your aim is meeting to share emotional support and information then keeping your group informal may work best for you – the choice is yours!

If you want to fundraise to expand what you offer families with disabled children, or to fund medical research into a rare condition, then it can be harder to raise funds from people other than from friends or work mates if you are not registered.

If your group is unsure whether you can register as a charity, company or other type of organisation, this guide will give you information about the different legal forms of organisation that local and national support groups can take. A legal form is the sort of organisation a group is considered to be in the eyes of the law.

Each organisation must decide which legal form is most suitable for them. Choosing the right legal structure for your group is a decision which has an impact on your future development. Charities can't usually benefit anyone connected with the charity by, for example, giving work to a trustee's family member, unless it is authorised. Choosing an unsuitable structure can cause issues later that may be expensive and time consuming to change if you need to pay a solicitor to help you.

You should think whether the key features of each legal form will be suitable for your group's size, what you plan to do, and how your work might develop in the future.

Local and national support groups can also have more than one legal structure, depending on your activities and needs. There are organisations listed at the back of this guide who can help you to decide which structure suits you best.

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## **Charities law in England and Wales**

Whilst the principles of charity law are similar throughout the UK, the registration process and terminology are not the same in all four nations. The regulatory bodies for charities in the UK are the Charity Commission, the regulators for charities in England and Wales

The principles of charity law for England and Wales are covered in this document.

The information in this guide does not substitute for taking legal or other expert advice, but contact details to find out more about issues for local and national support groups across the UK are included in the 'Further information' section on page 12.

## What is a charity?

When an organisation (such as a parent support group) exists only for the public benefit, it is considered to be a charity whether it is registered or not. Definitions of 'public benefit' include:

- the relief of those in need, by reason of disability
- the advancement of education
- helping the community other ways, (including offering support to families of children with disabilities, specific conditions and special needs).

## England and Wales

- Guidance on ['public benefit'](#)
- Guidance on ['charitable purposes'](#).

Even if you are a small group and do not think of yourselves as a charity, you will still be charitable in the eyes of the law if you have charitable purposes. Registering with a charity commission simply turns an existing charity into a registered charity. Charities fall under the jurisdiction of the Charity Commission whether they are registered or not and should abide by charity law.

All community associations and voluntary groups have an obligation to:

- abide by the terms set out in their constitution (or other governing document)
- run their group responsibly and be well managed
- act within the law.

## Unincorporated associations

Unincorporated associations are made up of a group of individuals who join together for a particular purpose. These individuals are known as 'members of the association'. Associations usually have a written constitution which includes how members are appointed and removed and how meetings are held, amongst other things. Unincorporated associations can include:

- members' clubs
- voluntary organisations
- charitable trusts.

An unincorporated association usually has a management committee elected by the members. Since it is unincorporated, it does not have limited liability, meaning individuals involved will be personally liable for the debts of the association.

You might still be able get tax relief on donation as an unregistered charity. Read information about this and other tax issues for charities from [HM Revenue and Customs](#).

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## Setting up a charitable trust – England and Wales

Charitable trusts are often set up by a small group of people who want to give charitable grants of a particular purpose. Some national condition support groups are also set up as trusts. You do not need a large amount of money to set one up, but the trust's charitable purposes must be for public benefit. The agreement between donors and trustees is set out in what is called a 'trust deed'. You can find a [model deed](#) on the Gov.uk website:

The charitable trust structure is relatively simple to run. Taking minutes of meetings, for example, is a good idea, although this is not a legal requirement. Trust Deeds usually leave the trustees to decide how often they meet. A charitable trust provides a framework for strategic giving and has tax benefits. Many organisations, including groups involved in education and providing advice can be structured as charitable trusts. Setting up a trust might be for your group if:

- your group is run by a small number of people and your administration is and will remain simple
- your group has no membership
- your organisation's sole activity is giving specific advice and support and/or grants
- you want to ask others to contribute to the trust's funds
- land and buildings are to be held in trust for the charity's permission to use
- your group will not be involved in commercial business.

A trust can help individuals or organisations. It can operate anywhere across the world or, in its charitable purposes, restrict its activities to the UK or a local, geographical area.

You can find more information on trusts from the [Association of Charitable Foundation](#).

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## Charity registration in England and Wales

If your group is in England and Wales, has a charitable purpose and an annual income of £5,000 or more, then you must register as a charity. There is no fixed deadline for registering, though, and no financial penalty for not being registered. This means you can choose to register when it best suits your group's development and you have everything you need in place.

### Less than £5,000 in your bank account?

At present, the Charity Commission will not register charities in England and Wales that have an income of less than £5,000. A small charitable organisation with an income of less than £5,000 can enjoy some of the benefits of charitable status by registering with Her Majesty's Revenue and Customs (HMRC) (see page 10).

### Advantages of registration

Many trusts and businesses will only give money to registered charities. Many members of the public also think that registered charities are more credible than organisations which are not registered. Having a charity number can raise the public's confidence in your group, and help you attract more volunteers and funds. Registered charities may also:

- get relief from some taxes including: income tax (where the income is derived from investments like property, shares, and securities and is applied for charitable purposes); capital gains tax, stamp duty and VAT concessions.
- become eligible for schemes such as Gift Aid and payroll giving. These schemes will enable your group to claim the tax on donations from tax payers. The value of such schemes varies depending on donors' income tax rates.

# What do groups need to do before registration?

## 1. Select your trustees

Before your group can register as a charity, you will need to have a board of trustees. These are the people who are responsible for applying the group's constitution and management. You do not need a large number of trustees but should have at least three – a Chair, a Secretary and a Treasurer. Other group members can be actively involved in running the group without being trustees.

Keeping the number of trustees small will help maintain good communications and make organising trustee meetings easier. For more information, see our guide, *The Role of trustees*.

The plain English guide, [The Essential Trustee – what you need to know](#) is aimed at trustees running small charities. The guide explains the main provisions of the Charities Act and how to make the most of the new developments.

## 2. Draw up a constitution

Before you can register as a charity, your group must have a constitution known as a 'governing document'. The governing document sets out the aims of your group, its structure and the rules that control how your group is run. This document should cover all the workings of your group including who can become a member, how many trustees there should be and procedures for meetings and voting.

The Gov.uk website has information on [writing your constitution and sample templates](#). If your group uses model governing documents from the Charity Commission, it may be easier for the Commission to consider an application for registration from your group. If you are setting up your organisation as a local branch of a national charity which has approved model constitutions (the National Autistic Society, for example), contact them for advice and ask to use their model document. You can also find model constitutions and governing documents on the Get Legal website (see page 13).

Whatever the source of your template or model constitution, your group will need to make sure that all your organisation's aims are included. 'Objects' is the term used to describe the purpose and aims for which a charity has been set up. To help you in preparing your governing document, the Gov.uk website has some [example objects](#).

Once your committee has drawn up the constitution and agreed the finer details, it will need to be 'adopted' at a committee meeting. This must be recorded in the minutes which will form part of the paperwork required by the Charity Commission.

A governing document is not just something that a charity has to have in order to be a registered charity. It is the charity trustees' manual for running the charity, as well as a legal document. Charity trustees are advised to refer to the governing document regularly to remind themselves what the charity's purposes are and how it should be run. Each trustee should have a copy of the governing document.

### **3. Write to your group's members**

Once you have a formal constitution, your committee needs to write to your group's members informing them of the plan to register as a charity and asking for their approval. You need to let them know that copies of the governing document are available. When writing, groups can also state that failure of a member to acknowledge the letter will be taken to mean they agree to go ahead with registration.

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## **Obligations of registration**

Once registered, your group will have to send annual updates to the Charity Commission and let them know about any changes to trustees and your group's contact details. If your group has an income of £10,000 or more, you will also have to send a copy of your accounts and Annual Report. Other requirements include:

- your group's aims (also known as 'objects') must be exclusively charitable. This means that strict rules apply to trading
- there are [limits to the amount of political or campaigning activities](#) you can take part in.
- your group must hold an annual general meeting (AGM)
- you must let the Charity Commission know if you wish to make any changes to your constitution
- any headed notepaper, emails or publicity your group produces must have your charity registration number on it.

Charity trustees cannot be paid or receive any financial benefits from the charity they manage, they can only receive out of pocket expenses. The Charities Act 2011, however, allows trustees to be paid for providing an additional service to the charity if it is considered that this is in the charity's best interests. So, if one of your trustee's was a website designer, they could be paid to develop your group's website, as long as the other trustees agreed that this was in your group's best interests, for example, because the trustee was charging a lower price than you would have to pay someone else.

Trustees are responsible for the good management of the charity. A trustee can be held personally liable for any debts and losses a charity faces as a result of mistakes they have made. It is rare, though, for any personal liability to be enforced unless a trustee has acted recklessly

and dishonestly. For more information, see the information guides [The Essential Trustee: what you need to know](#) from the Charity Commission.

It is possible to buy an insurance policy which prevents trustees having to personally pay for any claims made against them – this is called ‘trustee indemnity insurance’. The Charities Act 2011 allows trustees to buy this insurance with the charity’s funds without seeking permission from the Charity Commission. Trustees can only do this if there is no clause in the charity’s constitution forbidding it. You can read [guidance on insurance for charities in England and Wales](#).

Government recommends that charities who work with children and vulnerable adults that carry out [DBS checks \(Disclosure and Barring Service\) for trustees](#).

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## How to apply for registration

The Charity Commission has an [application pack to register as a charity](#) which includes an application form, notes and a trustees’ declaration form:

You will need to send the Charity Commission:

- your completed application form
- your group’s constitution
- the Trustee Declaration form signed by all committee members
- a copy of your group’s accounts for the past three years (if these are available), or other financial information if you are a new group
- minutes of the committee meeting at which your constitution was adopted
- where appropriate, a copy of your group’s Child Protection Policy and copies of your Trustees’ DBS disclosures
- background information about your group (such leaflets, newsletters and other publications).

If your group’s application is successful, you should hear from the Charity Commission within three weeks. The process can take longer if the Commission requires more information from you. If your application for registration is turned down, the Charity Commission will explain in writing why this is case and you have the right to appeal against the decision.

## Charity linking – England and Wales

The Charity Commission now allow the linking of charities. Small charities who don’t qualify to register can [link with a larger charity to share their charity number and trustees](#).



## Registering as a charitable company – England and Wales

Charities can be set up as a charitable company. Charitable trusts and unincorporated associations can convert to charitable company. A charitable company can own property, is liable for its own debts, and can do business with third parties. The company once registered must register with the Charity Commission as well. Unlike a commercial company, a charitable company:

- can't distribute its surplus money to its members or shareholders
- is usually limited by guarantee
- can only use its assets to carry out its charitable purposes
- must operate in a way which is in the best interests of the charity

A charitable company is governed by what are called 'rules of association' and must register with the Charity Commission (if eligible) and Companies House. You'll also need to submit annual accounts each year to both bodies.

A charity that is incorporated as a limited company, means [the charity is usually liable for its debts as the directors are protected by limited liability](#). This does not mean that trustees do not have legal obligations or personal liability if they do not act within charity and company law.

Microtia UK began as a parent support group set up by a parent of a child who has this rare condition. Three years after starting up, Microtia UK has become a registered charity. [www.microtiauk.org](http://www.microtiauk.org)

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## Registering with Her Majesty's Revenue and Customs (HMRC) as a charity - UK

Once an organisation in the UK has registered as a charity, it can also apply to HMRC for recognition as a charity for tax purposes. Registered charities must be registered with [HMRC](#) to claim gift aid and other tax reliefs.

Charities who do not qualify for registration with the Charity Commission [can apply to register with Her Majesty's Revenue and Customs \(HMRC\)](#). You will need to have a separate bank account for your group and provide statements as proof. Like a registered charity number, an HMRC registration can be used as evidence of your charitable status.

## Charitable Incorporated Organisation (CIO) – England and Wales

The [CIO is a legal form created by the Charities Act 2011](#). Due to its limited liability, the Charitable Incorporated Organisation (CIO) structure aims to make it easier for charities to recruit and retain trustees, engage in contracts and hold property. There are two different types of CIO – Association Model (membership organisations) and Foundation Model (run by a small group of appointed trustees). CIOs are different from other charity forms in that, for example:

- all CIOs must register with the Commission, regardless of their income
- while CIOs will not use company terminology – directors will be called charity trustees – they will be more like company forms than other types of charity forms
- CIOs only have to register with the Charity Commission
- as CIOs are always incorporated, they will be separate legal entities and their members will have either no liability or limited liability
- CIOs – like Community Interest Companies and community benefit societies – will have their assets locked in for charitable purposes.

**Groups should think very carefully about whether a CIO is the right legal form for them. If the CIO becomes unable to qualify as a charity for whatever reason, it will be removed from the register and any assets will be redistributed to other charities.**

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## Social enterprises in the UK

A social enterprise is a [business that aims to benefit communities and the environment](#). Social Enterprise UK and the Unity Bank have produced a useful online guide where you can find out more about what social enterprises are.

### Wales Co-operative Centre

The [Wales Co-operative Centre](#) offer free help and business advice to social enterprises and co-operatives in Cymru/Wales.

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## Community Interest Companies (CIC) – UK

One common legal form for a social enterprise is a Community Interest Company (CIC). A CIC is a limited company for those who want to run a business or other activity for community benefit, and not purely for private profit. This is achieved by a ‘community interest test’ and

'asset lock', to help ensure that the CIC is established for community purposes and assets and that there is a cap on the maximum dividend and interest payments that can be made from any profits.

Registration of a company as a community Interest company (CIC) [has to be approved by the Regulator](#), who also has a monitoring and enforcement role.

[Stand North Wales](#) was formed in April 2018, by Yvonne Brookes and Sarah McCulloch as a not for profit Community Interest Company in response to the closure of organisations representing families of children and young adults with SLCN, Additional Needs and Disabilities in North Wales. STAND NW is a parent-led organisation that recognises that families with children with additional needs and disabilities need to have a voice in their community, feel supported and empowered to be able to support their child to reach their true potential.

The Office of the Regulator of Community Interest Companies has [online guidance on what community interest companies are](#) and how to go about setting one up. You will also find information on constitutional documents, legal obligations, case studies and lots more.

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## Co-operatives - UK

A co-operative is a business that is owned and run by and for its members, whether they are customers, employees or the local community. As well as giving members an equal say and share of any profits, co-operatives act together to build a better world. Co-operatives are a flexible business model that may use different legal structures, depending on what works for members. A co-operative may be set up to benefit its members, or else to benefit the community more widely.

Setting up a co-operative is like starting any business with two differences. Starting a co-operative generally involves a group of people in a democratic process. This means that you create the business that members want. Lots of organisations can advise your group, as co-operation amongst co-operatives is one of seven co-operative principles.

Find out more at [Co-operatives UK](#).

**Cartrefi Cymru** was established as a not-for-profit charity in 1989 by a group of parents and activists. They wanted to ensure that people with learning disabilities living in rural Wales and the Valleys had the opportunity to live in their local community with the highest quality of support. In 2016, they became a co-operative, enabling the people they support, employees and community supporters to become co-producers of their future. [www.cartrefi.coop](http://www.cartrefi.coop)

## **Seeds for Change**

[Seeds for Change](#) has lots of resources to support cooperative working:

## **Wales Co-operative Centre**

Offers [free help and advice](#) to social enterprises and co-operatives in Wales.

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## **Further information**

### [Charity Commission](#) (England and Wales)

Tel: 0845 300 0218

### [Wales Council for Voluntary Action](#) (WCVA)

WCVA represents the interests of voluntary organisations, community groups and volunteers in Wales and is in contact with many more through national and regional networks.

## **Other useful organisations and guidance**

### [Association of Charitable Foundations](#)

UK-wide support organisation for grant-making trusts and foundations of all types.

### [Get Legal](#)

Free, online resources for charities, social enterprises and co-operative organisations. Get Legal enables organisations to access clear information and guidance on the most appropriate legal form and governance structure for delivering their goals. The Get Legal 'Decision Tool' can be used to help you decide what legal form would suit your organisation best.

### [Small Charities Coalition](#)

The Small Charities Coalition is a free to join and offers mentorin and resources

### [Foundation for Social Improvement](#)

Gives small charities free strategic support, including training and mentoring.

Tel: 020 7324 4777