

Setting up a charitable foundation

A brief note
February 2023



What are trusts and foundations?

The terms 'trust' and 'foundation' are often used interchangeably. All charitable foundations are trusts - that is, they are managed by trustees who may or may not be supported by paid staff. Foundations do not, therefore, have a distinct legal identity or constitution and are subject to the same public benefit tests, governance and accounting requirements, and Charity Commission regulation (or relevant body in Scotland/NI) as all other charities. They derive their income from an endowment of land or invested capital.

Not all foundations make grants; some use their income to finance charitable activity of their own. This means that the difference between the terms 'foundation', 'trust' and 'charity' in the UK is semantic only; charities whose principal activity is grant-making are usually called 'charitable trusts' or 'charitable foundations', in preference to 'charities'.

What is a charitable trust: A trust is an arrangement whereby a person or persons (the trustees) is (are) made the nominal owner of property for the benefit of another person or group of people (the beneficiaries). Where the trust is charitable, the beneficiaries are not named and the purposes are public. The trust deed will specify either a wide group of people, any of whom can benefit, or a charitable purpose.

A useful glossary of terms relating to foundations, including the definition of trusts and foundations given above can be found on the Charity Commission publication, [Firm Foundation](#).

I want to give money as a philanthropist, where do I start?

A useful resource for general information is the [Philanthropy Impact](#). Philanthropy Impact incorporates Philanthropy UK, the leading resource for free and impartial advice to aspiring philanthropists who want to give effectively.

Within that framework the section on '[Giving tax-efficiently](#)' it outlines in basic terms the "how" of setting up a charitable grant-making trust, which explains some terminology and gives estimates of costs associated with establishing a trust.

There are also alternative vehicles for giving – which can be an interim step between giving directly as an individual and setting up an independent foundation. These alternatives include [donor advised funds or charity accounts](#) and [Community Foundations](#) – which are an option for those who wish to focus their giving in a particular geographical location.

Who regulates charities?

The Charity Commission of England and Wales is the regulator of charities in those home nations, with [OSCR](#) & [NI](#) providing a similar role in Scotland and Northern Ireland respectively.

They offer comprehensive information about [registering as a charity](#), and what needs to be considered and be in place before registering.

The Charity Commission also has information about what constitute [Charitable purposes](#) and specific guidance about demonstrating [public benefit](#).

Where do I go for charity tax law information?

HM Revenue & Customs provides advice and information on [charity tax law](#).

How big do I have to be as a charity to register and report?

Charities with income over **£5,000** must register with the [Charity Commission](#) for England & Wales, [OSCR](#) in Scotland or [Charity Commission](#) Northern Ireland

If a charity's annual income is below the threshold (as well as certain excepted or exempt charities) it can apply directly to HMRC for recognition as a charity for tax purposes. Otherwise the Charity Commission registration must be completed before seeking recognition from HMRC.

There are other income, and/or asset thresholds for registered charities which determine their [annual reporting and accounting responsibilities](#). Broadly speaking if the registered charity has income over £25,000 it needs to prepare simplified accounts each year to be submitted to the Charity Commission, as well as completing an annual return. All accounts must receive external scrutiny, but only charities with income over £1 million (except where the value of the assets of the charity exceed £3.26 million) need to have their accounts audited by a registered auditor.

Please note: There is now a legal form for charities which was introduced in England & Wales in January 2013, Charitable Incorporated Organisations (CIO). For CIOs there is no minimum registration threshold as the new CIO is formed and registered at the same time, and all CIOs must file annual report and accounts.

Should I get legal advice?

We would strongly advise that appropriate professional advice is sought when deciding upon the legal structure for a trust/foundation - and especially when drawing up governing documents. However, for information, there are a number of examples of governing [documents available](#).

The [Charity Law Association](#) also provides, for a charge, example model governing documents. If you wish to consult someone with charity law expertise you could either

contact The Charity Law Association or you could search The Law Society's [database of solicitors](#).

What if I want to give through my company?

In 2010 the Charity Commission published a report '[A Guide to Corporate Foundations](#)'. ACF members from our network of Corporate Foundations were involved in discussions about the guide and gave input into its development.

Corporate Citizenship, a corporate responsibility consultancy, has also published some research on [corporate foundations in the UK](#), which provides some context and case studies from new and established corporate and business foundations.