

England & Wales

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I. Summary

This report is limited to England and Wales. Scotland and Northern Ireland, the other two components of the United Kingdom, have separate legal systems. Their legal structures and taxation rules are similar to those of England and Wales. In the past their provisions for regulating charities have differed significantly, but Scotland now has a similar regulatory regime and Northern Ireland also has similar new legislation,

A. Types of Organizations

England and Wales is a common law, nonfederal jurisdiction with four primary forms of not-for-profit, nongovernmental organizations (NGOs): [\[1\]](#)

- Companies limited by guarantee;

- Unincorporated associations;
- Trusts; and
- Industrial and provident societies.

An NGO in any of these categories can qualify as a “charity.” A charity is eligible for significant tax benefits and, as discussed below, is subject to a series of regulations relevant to an equivalency determination. A new incorporated legal structure, available solely for charities, the “charitable incorporated organization,” is to be introduced in 2010.

Other not-for-profit legal forms, which are outside the scope of this Note due to their limited interaction with U.S. grantmakers, include some churches which, if they have annual income under £100,000, are excepted from registration requirements affecting charities; charities specially incorporated by Royal Charter or by Act of Parliament; political parties; unions; and a legal form introduced in 2005, the community interest company (CIC), which can take the form of a company limited by shares or a company limited by guarantee and involves an asset lock and in the case of a company limited by shares, a cap on dividends. The CIC must be established for the benefit of the community and can be used by social enterprise organizations but not by charities.

B. Tax Laws

Registered charities are exempt from income tax on grants, donations, and similar sources of income. Certain commercial activities carried out by a charity are tax exempt below a certain threshold. Membership subscriptions are exempt provided that they are essentially donations and not fees for benefits, which may be subject to tax. Donations of cash by corporations and natural persons to charities qualify for tax relief under the so-called “Gift Aid” scheme, described in section V (B) below. Donations of shares, land and buildings also qualify for tax relief.

The Value Added Tax (VAT) is required to be collected by entities, including NGOs, whose turnover exceeds £67,000 in a given year. Certain transactions are exempt from VAT, including most grants. Certain goods and services are zero rated, including those donated to charity for sale or export and medical and scientific equipment for use in medical research and treatment.

II. Applicable Laws

- Charities Acts of 1992, 1993 and [2006](#);
- Companies Act [2006](#);
- Trustee Acts of 1925 and 2000;
- Industrial and Provident Societies Acts of 1965 and 2002;
- Income and Corporation Taxes Act of 1988;
- Finance Acts of 1990, 2000;
- Race Relations Act of 1976; and

- Human Rights Act of 1998.

III. Relevant Legal Forms

A. General Legal Forms

The law of England and Wales creates four NGO forms pertinent to this Note: the company limited by guarantee, unincorporated association, trust, and industrial and provident society.

An entity set up under any of these four NGO structures can qualify as a charity. [\[2\]](#) The Charities Act 2006 defines a charity as a body or trust that is established for a charitable purpose and provides benefit to the public. The Act includes a list of twelve specific headings and one general heading. (For a detailed discussion of what constitutes “charity,” please see section III (B) below.) A charity must register with the Charity Commission for England and Wales if it has a gross annual income of over £5,000 per year. Some charities known as exempt, or excepted, charities are not required to register (see below).

Company Limited by Guarantee

A company limited by guarantee is a membership organization in which the members' liability is limited to some nominal amount such as £1. The membership can be quite large, or it can be limited to the trustees. A company limited by guarantee can be not-for-profit in nature. It is a legal person. Companies House registers companies limited by guarantee.

Unincorporated Association

An unincorporated association is a membership organization. Charities and other NGOs commonly fall in this category, including many community associations, sports clubs, and social clubs. An unincorporated association is not a legal person. Members of the management committee are jointly and severally liable for the organization's debts; officers or members may also be liable. Unincorporated associations are governed by a body of case law and not by statute. [\[3\]](#)

Trust

A trust is an entity created to hold and manage assets for the benefit of others. [\[4\]](#) The trust must pursue a charitable purpose and is governed by trustees.

A trust ordinarily is not a legal person. Under the Charities Act of 1992, however, the body of trustees can apply to the Charity Commission for a certificate of incorporation (Charities Act 1992, Art. 14 (1)). An incorporated body of trustees is a legal person, but without the usual corporate limitation on liability. Incorporation allows the trust to perform particular functions -- hold property, enter into contracts, and sue and be sued -- in its own name rather than in the names of trustees (Charity Commission Publication, "[Incorporation of Charity Trustees](#)," CC 43 Section 4).

A trust is regulated by the Trustees Acts of 1925 and 2000, plus a substantial body of case law.

Industrial and Provident Society

An industrial and provident society is a not-for-profit corporate entity. It is a legal person. The structure is widely used for housing associations and cooperatives, as well as for some charitable organizations. Its principal advantage is that the governing law, the Industrial and Provident Act of 1965, is simpler than the law governing companies. Charitable Industrial and Provident societies are exempt charities and do not typically register as charities with the Charity Commission (Industrial and Provident Societies Act of 1965, Art. 4). Under the Charities Act 2006, however, some charitable industrial and provident societies will be required to register with the Charity Commission. These provisions will come into force in 2009.

B. Public Benefit Status

The [Charity Commission for England and Wales](#) registers and regulates charities. Its website contains policy guidelines and publications, summaries of the common law, and the register of charities.

Under the Charities Act 2006, a charity is defined as a body or trust which is for a charitable purpose that provides benefit to the public. The new list of charitable purposes has 12 specific headings and one general heading. The categories of charitable purposes are as follows:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality or diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;

- the advancement of animal welfare;
- 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
- other purposes that are currently recognized as charitable or are in the spirit of any purposes currently recognized as charitable.

The last, general provision enables new purposes to be recognized by the Charity Commission or the High Court.

The new statutory definition is broadly a restatement of the existing law and the common law is preserved for the interpretation of the terms used.

A Commentary on the descriptions of charitable purposes in the Charities Act 2006 appears on the Charity Commission website.

In addition to falling under the statutory list of purposes, a charitable purpose must be for the public benefit. General Guidance on the meaning of public benefit appears on the Charity Commission website (Charity Commission Publication, "Charities and Public Benefit: Summary Guidance for Charity Trustees," January 2008).

IV. Specific Questions Regarding Local Law

A. Inurement

Charities

Charities must not distribute profits as dividends or otherwise (Charity Commission Publication, "Registering as a Charity," CC 21). Under charity law, all expenditures must further the organization's charitable purposes.

This principle applies to salaries as well as other expenditures. The law does not establish a particular limit, but excessive salaries could lead to sanctions. All charities must report the number of employees whose salaries fall between £50,000 and £60,000, £60,000 and £70,000, and so on.

Trustees ordinarily cannot receive payment for acting as a trustee or be employed by the charity unless the charity's governing documents permit it. If the governing documents do not contain such a provision, the charity must seek authorization from the Charity

Commission or the High Court of England and Wales. Article 36 of the Charities Act 2006 introduced a new power to pay trustees for goods or services delivered to the charity provided that: such payment is not expressly prohibited by the governing document, only a minority of trustees are so paid, and other conditions are met (Charity Commission Publication, "Trustee Expenses and Payments," CC11 ¶, June 2008).

Other NGOs

The law generally does not prohibit inurement for non-charitable NGOs.

B. Proprietary Interest

Charities

The proprietary interests in the assets of a charity generally belong to the charity itself. Donors can, however, retain a proprietary interest in their donations by reaching an agreement with the charity at the time of the donation. (Charities Act 2006, Art. 17(3)) Such an agreement, known as a claw-back provision, lets the donor retrieve the property in particular circumstances -- if the charity fails to use the assets for the designated purpose, for example, or if the charity dissolves.

Other NGOs

Other NGOs are free to let donors retain a proprietary interest in donations. These organizations and their donors can reach whatever agreement they wish. Mutual benefit organizations, for instance, often rebate contributions to members when they retire from the organization.

C. Dissolution

Charities

The assets of a charity, upon its dissolution, must convey to another charity or other charities pursuing the same or similar purposes. This is generally set out in the dissolution provision of the charity's governing documents. In addition, both the court and the Charity Commission have wide powers to intervene in the affairs of a charity to protect charity property and order its transfer to ensure that it continues to be applied for charitable purposes. (Charities Act 2006, Part 2, Chapter 5 and Charities Act 1992, Art. 8)

Other NGOs

The assets of other NGOs, upon their dissolution, are distributed according to the governing documents; however, the assets need not convey to a charity or other NGO.

D. Activities

1. General Activities

A charity can be established only for a charitable purpose, and its activities must advance that purpose (Charities Act 2006 (1)(1)(a)). It cannot engage in certain commercial or political activities. (Charity Commission Publication, "Speaking Out - Guidance on Campaigning and Political Activities by Charities," CC9, March 2008) As discussed below, these sorts of restrictions are generally limited to charities and do not apply to other NGO forms.

2. Economic Activities

Charity law allows charities to exercise a trade in the course of actually carrying out a primary purpose of the charity. This is commonly known as "primary purpose trading."

[5] Examples include:

- the provision of educational services by a charitable school or college in return for course fees;
- the carrying out of trading involving the charity's beneficiaries;
- the holding of an art exhibition by a charitable art gallery or museum in return for admission fees;
- the provision of residential accommodation by a residential care charity in return for payment;
- the sale of tickets for a theatrical production staged by a theatre charity; and
- the sale of certain educational goods by a charitable art gallery or museum.

Trustees may also engage in trading activities to raise money. If fundraising is the main or sole aim of such trading activities (rather than "primary purpose trading" that also happens to produce income) this is called "non-primary purpose trading." Charity law does not permit charities to directly carry out non-primary purpose trading where a significant risk to their assets would be involved. There are special tax rules to help charities that wish to carry out small amounts of non-primary purpose trading, when all the profits from the trading are to be used by the charity. The limits are set out in the following table.

Total of all incoming resources in a particular tax	Maximum permitted "non-purpose trading" turnover in that
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year of charity	tax year
Under £20,000	£5,000
£20,000 to £200,000	25% of charity's total incoming resources
Over £200,000	£50,000

Commercial/economic activities other than the exceptions set out above cannot be conducted directly by the charity; however, any commercial/economic activities can be conducted through a for-profit subsidiary with the profits then transferred tax-free to the charity. Many charities now have trading subsidiaries for fundraising purposes. [\[6\]](#)

These restrictions on economic activities apply only to charities, not to other NGOs.

E. Political Activities

A charity can never be formed for the purpose of engaging in political activities. [7] (Charity Commission Publication, "Speaking Out - Guidance on Campaigning and Political Activities by Charities," CC9, March 2008) A charity may, however, engage in some political activities as a means of achieving its charitable purposes.

A charity can lobby legislators and urge the public to communicate with legislators about issues and engage in other activities to influence government bodies to change the law or policy (i) if the issues relate to the charity's specific purposes or to the well-being of the charitable sector in general; and (ii) if these political activities are not the main reason for its existence (see Charity Commission Publication CC9, ¶¶ B1 as referenced above). There is no set limit on the proportion of resources that can be used for lobbying or advocacy and in some cases the trustees may choose to focus most or all of their resources on political activity for a period. Political activity cannot, however, be the only way in which the charity pursues its purposes (Charity Commission Publication CC9, ¶¶ D8). In addition, charities cannot support a political party or candidate although they may engage with a political party in support of their own charitable purposes (Charity Commission Publication CC9, ¶ E1, E2).

The restrictions on political activities apply only to charities, and not to other NGOs. Other NGOs are generally free to engage in political activities subject to restrictions under Broadcast Law and Protest Law.

F. Discrimination

Under the Race Relations Act of 1976, discrimination on the basis of race is generally unlawful. Section 19 of the Race Relations Act provides that public facilities providing education must not engage in racial discrimination. However, there are some situations where NGOs may consider race as a factor in providing access to services. For example,

race can be used as a factor in providing access to education and training and ancillary benefits to people who are not ordinary residents in the United Kingdom, provided the educational training is reasonable and the person does not intend to remain in the United Kingdom after the course. (Race Relations Act, Art. 36)

G. Control of Organization

With regard to charities, there is a broad principle that charity trustees should be independent. It is, however, possible for another legal person to have the legal right to appoint or elect directors, officers, or trustees of a charity. The Charity Commission will not normally permit a provision in a Trust Deed that gives another legal person the right to remove trustees; however, in the case of a charity established as a company limited by guarantee under company law, the members always have the right to remove directors. Therefore, it is possible that a charity may be controlled, perhaps indirectly, by a for-profit entity (which will lead to additional IRS scrutiny) or by an American grantor charity (which requires that the charity specifically so provide in the affidavit). This control could be subject to challenge by the Charity Commission.

These concerns are more pronounced in the case of other NGOs: there are no restrictions on the control of these entities by other organizations or persons.

V. Tax Laws

The following section discusses relevant tax legislation, recognizing that taxes may affect the amount of the grant actually flowing to the grantee.

A. Tax Exemptions

Charities are exempt from most forms of direct taxation. They do not pay tax on grants, donations, and similar sources of income. Charities are exempt from taxation on donations they receive from both corporations and individuals, including grants from foreign sources. Membership subscriptions are exempt if they are essentially donations, but if they entitle donors to benefits, they can be deemed trading activity and potentially taxed.

The profits of “primary purpose trading” are exempt from tax (but not necessarily exempt from VAT), provided that the profits are applied solely to the purposes of the charity. Charities do not pay tax on investment income.

B. Incentives for Philanthropy

Donations of cash by corporations or individuals to charities qualify for tax relief under the so-called “Gift Aid” scheme. Under this scheme, the charity can reclaim the basic rate tax that the donor has paid on the income from which the gift was made. For example, if

the charity receives £300, this is treated as having been made out of £400 income from which the donor has already paid £100 in tax. The charity can claim the £100 from the Inland Revenue. In addition, a donor who is a higher-rate taxpayer can claim back higher-rate relief from the Inland Revenue, reducing the net cost of making the gift. Each donor must complete a simple Gift Aid Certificate. A single certificate can cover a series of donations. The charity is then able to reclaim the basic tax rate from the relevant Inland Revenue office (Income and Corporation Taxes Act 1988, s.577(9).a). [8]

Donations of shares, land and buildings also benefit from tax relief. In addition, some charitable giving by businesses (for example, sponsorship payments) can be treated as allowable expenses of the business (if made wholly and exclusively for the purposes of the trade) and deducted when computing the profits of the business for tax purposes (Finance Act 1990, s.25 as amended and Finance Act 2000, s.39).

There are complex anti-avoidance provisions involving gifts from major donors (a gift of £25,000 in one year or £100,000 across 6 years) whereby the tax relief must be repaid by the charity if the donor is involved in certain transactions with the charity (Finance Act 2006 Guidance on HMRC website).

C. Value Added Tax

Charities and other NGOs are generally subject to the standard VAT rate (currently 15% but due to increase to 17.5% on 1st January 2010) if they deliver goods and services of a value greater than £67,000 in a given year. Some supplies are subject to the reduced rate of 5%.

Grants, including grants from foreign donors, are not ordinarily subject to the VAT. The tax might apply, however, if the donation is paid to subsidize a trading activity of an NGO, or if the donation is conditioned on benefits to the donor or a third party. This is a complex area, and each grant or agreement must be considered on its own facts. Many services such as welfare and care provision and some educational services are exempt from VAT.

In addition, certain goods and services are zero-rated for charities, including:

- goods donated for sale or export;
- advertisements to raise funds or to publicize the name of the charity;
- medical and scientific equipment for use in medical research and treatment;
- certain equipment and building alterations for people with disabilities;
- construction of new buildings for certain charitable purposes, including residential accommodation and community buildings; and
- one-time fundraising events.

These preferences apply only to charities, and not to other NGOs.

D. Property Tax

Charities are entitled to an 80% reduction of business rates (the local property tax). Local authorities have the discretion to grant a further 20% relief.

Non-charitable NGOs can receive partial or total exemption from property taxes, at the discretion of local authorities.

E. Other Tax Benefits

Charities are exempt from paying ad valorem Stamp Duty on the transfer of assets, including shares; Inheritance Tax on legacies and bequests; and Capital Gains Tax.

F. Double Tax Treaty

England and the United States have entered into a double-taxation treaty.

VI. Knowledgeable Contacts

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Footnotes

[1] In England and Wales, these organizations are commonly referred to as “voluntary organizations.”

[2] For purposes of this Note, the term “other NGOs” refers to pertinent not-for-profit organizations that do not qualify as a charity.

[3] The best authority on the topic is Jean Warburton, *Unincorporated Associations: Law and Practice* (2d ed.) (London: Sweet & Maxwell, 1992).

[4] A trust can be public or private. This Note addresses only public trusts.

[5] This means that economic activity supports the primary purpose of the charity, not that the economic activity is the primary purpose of the organization.

[6] Charities may also engage in other types of trading, including “ancillary” lotteries, and trading within the “small scale exemption.” For more detailed information on these types of economic activities, please consult [Publication CC35, “Trustees, Trading and](#)

[Tax: How Charities May Lawfully Trade,” on the Charity Commission web site.](#) For purposes of this Note, the key point is that the principal purpose of a charity cannot be to engage in these additional types of trading activities.

[7] Political activities is defined as “activity by a charity aimed at securing or opposing any change in law or in the policy or decisions of central government, local authorities or other public bodies whether in this country or abroad” (“Speaking Out - Guidance on campaigning and political activities by charities,” CC9 on Charity Commission website).

[8] For further discussion of the “Gift Aid” scheme, see D. Morris, Comparative Analysis: The Global Perspective – the Treatment of Charitable Contributions in the UK.