

# Charitable Status

FEBRUARY 2010



Many voluntary and community groups are charitable in law because of their objects and activities. Formal recognition of a group's charitable status is given by Her Majesty's Revenue and Customs (HMRC). The Charity Commission for Northern Ireland will soon be taking on this role when the Register of Charities is officially established.

## ADVANTAGES AND DISADVANTAGES OF CHARITABLE STATUS

Some of the benefits of charitable status include the following:

- (1) Exemption from the payment of tax on most income and gains provided they are applicable and applied for charitable purposes only (income does not include grants, members' subscriptions or donations)
- (2) The right to apply for relief from the payment of rates on your premises
- (3) Charitable groups will be eligible to apply to grant-making charitable trusts. Most charitable trusts will give grants only to groups formally recognised as charities
- (4) Charitable groups will be eligible to receive gifts made under the Give As You Earn, Cheques for Charity and Gift Aid schemes and, provided this income is applicable and applied to charitable purposes only, the income tax already paid may be recovered
- (5) Some companies will give discount to charities for goods or services
- (6) BBC and UTV will allow only recognised charities to make charitable appeals on radio and television.

Some of the disadvantages of charitable status include the following:

- (1) Charities must confine their objects and activities to those which are charitable in law
- (2) Charities cannot carry on permanent trading activities unless the trade is exercised in the course of carrying out a primary purpose of the charity, or the work in connection with the trade is mainly carried out by the beneficiaries of the charity
- (3) Charities cannot have political objects, although a charity can properly seek to influence opinion on particular issues which are directly relevant to its objects and experience
- (4) Charity trustees cannot be paid for acting as charity trustees.

If your group is interested in being recognised as a charity, this leaflet will explain exactly what you do.

## QUESTIONS TO CONSIDER BEFORE STARTING UP A CHARITY

Setting up a charity is a big step carrying with it a number of responsibilities and as such it is important that the governing body ask itself some key questions to ensure that they have given careful consideration as to what it means to be a charity. Each governing body must consider whether it is appropriate for them to set up a charity by balancing all of the issues in that individual organisation. Some questions they should consider are:

- Is there another organisation in the area registered as a charity doing the same type of things with the same aims?

If so, could we work with this organisation in partnership rather than set up a new organisation?

- Do we have a governing document and if so is it in the right format?
- Have we thought about the legal structure that we want our organisation to have, ie an unincorporated association, trust, charitable company? (see NICVA Advice Note 3: Legal structures)
- Do all members of the governing body (ie committee, board, etc) understand their roles and responsibilities? (see NICVA Advice Note 7: Trustee Duties)
- Does one of the founding members want to derive a salary from the group? If so have we considered establishing a Community Interest Company?
- Where will the money come from to operate it?
- Do we have the diverse range of skills required to govern a charity?

## **HOW TO OBTAIN FORMAL RECOGNITION OF CHARITABLE STATUS**

### **Step One**

When the NI Register of Charities is established, the Charity Commission for Northern Ireland will grant charitable status but until then it is HMRC which will decide if your group is a charity for tax purposes. To make its decision, HMRC needs:

- A copy of your governing document (such as a constitution, Trust Deed, Memorandum and Articles of Association)
- A summary describing the activities of your group.

If your group has not got a governing document, the governance team at NICVA will be able to help you draft a suitable document for a small fee.

If you have a governing document already, it may be beneficial to send it to NICVA first, so we can advise you if it is in a form which is acceptable to HMRC.

### **Step Two**

The Charities Act (NI) 2008 states that only the following purposes are charitable, provided they are carried out for the public benefit:

- (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 and 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) Any other purposes includes any purpose recognised as charitable under existing charity law and any purposes which may reasonably be regarded as analogous to the listed purposes above as well as those by virtue of section one of the Recreational Charities Act (1958).

The above twelve purposes replace the four charitable heads that have been used since 1891. The expansion of the definition of charity helps to reflect the wide range of charitable organisations and helps to modernise charity legislation. The new additions should help to recognise and deem charitable the work of many Northern Ireland groups in the areas of peace and reconciliation and/or addressing sectarianism and racism.

The broad interpretation of the advancement of religion will include the belief in one god or more than one god and any analogous philosophical belief which does not have to involve belief in a god.

Purpose five which includes rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities, will make it easier for support networks and infrastructure bodies within the sector to achieve charitable status.

The advancement of amateur sport now includes games which promote health by involving mental skill or exertion.

The twelfth purpose provides for the ongoing development and flexibility of charitable purpose over time. However, it does not mean that *all* other purposes that are beneficial to the community are charitable.

## **Non-Charitable Purposes**

The following objects, which undoubtedly benefit the community, are not charitable in law:

- (1) Campaigning for house repairs
- (2) Benefiting individuals (charities must exist to benefit the public)
- (3) Political objects such as pressurising government or civil servants to change laws, policy or administrative decisions.

If your group wishes to pursue the activities in (1), (2) or (3) above, it will not get charitable status. If its activities are a mixture of charitable and non-charitable activities, it will not get charitable status, since the law says that a charity must have exclusively charitable purposes.

The governing document of a charity should set out good charitable objects, ie those which comply with the headings (1) to (4) set out on page two. In addition, the charity must limit its activities to furthering those charitable objects and must not undertake any activities which are not allowed, such as unlawful campaigning or carrying on a permanent trade.

When a group is considering whether it is eligible to become a charity, it must consider both the objects in its governing document and the activities which it undertakes to carry out those objects.

## **Step Three**

When you send your group's draft governing document to HMRC, you must also send a summary describing your group's practical work or activities. This need only be a short description of the sort of thing your group has done in the past or intends to do in the future. One page will usually be sufficient.

The purpose of the summary is to describe your group to HMRC and to reassure it that your group is carrying out only charitable activities.

If HMRC thinks that either your group's objects or its activities are non-charitable, it will say that you are not eligible to become a charity. If it thinks that some of the group's objects and activities are charitable, but not all, again it will say that you are not eligible to become a charity.

If you are not sure whether the summary of your group's activities describes charitable activities, ask NICVA for advice before you contact HMRC.

#### **Step Four**

This is the address to which you should send your governing document and summary of your group's activities:

Charity, Assets and Residence  
HM Revenue and Customs  
St John's House  
Merton Road  
Liverpool L75 1BB

#### **Step Five**

If HMRC accepts that your governing document is a charitable one and that your group is capable of being recognised as a charity, it will inform you by letter giving you a HMRC reference number. At this stage, you should get the group together and formally adopt the governing document approved by HMRC. Keep a record or minute of this meeting, making sure to sign and date the governing document.

Alternatively HMRC may reply saying that your group is capable of becoming a charity,

provided you alter your governing document in the way it suggests. If it does this and you are agreeable with the changes it suggests, rewrite your governing document to include the changes. Then get your group together and formalise the changed governing document. Keep a minute or record of the meeting adopting the new governing document.

#### **Step Six**

The next step is to send the following documents to HMRC quoting your HMRC reference number at the address above:

- A copy of the formally adopted governing document showing date of adoption and signatures
- A copy of the record or minute of the meeting (a Special or Annual Meeting of the members of your group – not just the committee itself) at which the governing document was adopted
- In the case of a company limited by guarantee, a copy of the certificate of incorporation.

On receipt of these documents, HMRC will hopefully confirm that your group is a charity and may benefit from the tax exemptions that charities are entitled to eg exemption from paying Income Tax and Capital Gains Tax. If all your documents are in order, HMRC will formally confirm the charitable status of your group.

The letter from HMRC confirming the tax exemption of your charity's income should be kept in a safe place as you may need it in the future if the charitable status of your group is queried.

Thereafter, copies of your annual accounts should be available for inspection by HMRC as and when requested.

**THIS PROCESS WILL SOON BE CHANGING...**

Northern Ireland will soon have a register of charities which will be established and maintained by the Charity Commission for Northern Ireland. It is envisaged that the charity register will go live in April or May 2010.

The Commission will conduct an awareness raising campaign before May to communicate what will be expected of charities. The official guidance on the public benefit test will be published in March 2010 by the Charity Commission for Northern Ireland.

**FOR FURTHER INFORMATION, PLEASE CONTACT:**

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Website: [www.nicva.org](http://www.nicva.org)

**FURTHER SOURCES OF INFORMATION**

**[www.nicva.org](http://www.nicva.org)**

For the latest developments in NI charity law reform. Specialist Governance and Charity section containing frequently asked questions and various advice notes.

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