

Setting up an Association

DECEMBER 2010



INTRODUCTION

These notes summarise how to set up an unincorporated association. For details on other types of legal structures available to voluntary and community groups please see Advice Note 3: Legal structures for voluntary and community groups

Key Features of an Association

An unincorporated association is the simplest type of organisation and the favourite legal structure chosen by new groups. The attractions are that it is cheap to set up and run, and there is no red tape to deal with. It is suitable for setting up a group with aims that are “otherwise than for-profit” (it is not suitable for a ‘for-profit’ organisation).

The down side of the association is that it has no separate legal personality distinct from the members and it cannot enter into contracts or hold property in its own name. In addition, the committee members may incur personal liability.

Unincorporated associations are ‘membership bodies’. An unincorporated association cannot be set up by an individual.

WHAT TO DO FIRST

Before any group can set up as a voluntary organisation, it will need to call a meeting of all interested parties to discuss the following:

- Do we want to undertake one particular project, or do we have a number of aims?
- Is there another organisation in the area doing the same type of things with the same aims? If so, could we work with this organisation in partnership rather than setting up a new organisation?

- Do we intend to complete our work in a limited period of time or remain in existence for a long time?
- Is the group intending to establish a charitable organisation?

It is important that the meeting discusses and agrees the main aims right at the start, so that everybody works together with a common purpose.

Having decided what it wants to do, the group should elect a steering committee to draw up a constitution - the set of rules by which the organisation will be run. If the group believes that it will be a charitable organisation then particular care will be required in preparing a constitution. If the answer is no, some care will still be needed to reflect accurately the aims and procedures of the not for profit organisation.

The Constitution

The constitution is the governing document of the association and it is necessary to have one whether or not the association wants to seek charitable status. It is important to ensure that it takes into account not only what you intend to do in the first year, but also allows for the future development of the association’s work. It is a legal document which, once adopted, is binding on the members and formal procedures need to be followed to alter it.

A constitution should include the following:

- (1) **Name of the organisation.**
- (2) **Objects** – this clause expresses the aims (purposes) of the organisation. It is important that these are written in such a way as to cover everything you may want to do as your organisation develops.

When writing the objects of a charity, particular care is required to make sure the objects are exclusively charitable in law. If the objects include a mixture of charitable and non-charitable objects, the organisation cannot be a charity. If an organisation wants to be non-charitable, then there is more flexibility about the wording of the objects. Nevertheless, care should be taken to make sure that the objects are accurate.

- (3) **Powers** – this clause usually follows the objects and it sets out the things a particular organisation is permitted to do in order to pursue its objects.
- (4) **Membership** – this clause describes what type of individual or organisation will be eligible to apply for membership of the organisation. It may set out a variety of different types of membership (eg individual membership, full membership, associate membership, group membership). It should also make provisions for termination of membership.
- (5) **Management** – this clause describes how the organisation will be managed, ie by a management committee elected by and from among the members of the association, or by representatives appointed by the member organisations. It should state how and when they may be elected, the maximum number of co-opted members, the minimum number of times the committee should meet in a year, and what a quorum for meetings will be. If it is the intention of the organisation at some stage to appoint sub-committees, reference to this should be included.

(6) **General meetings** – this clause states when the Annual General Meeting will be held and what business is to be transacted at it, which should always include:

- Receiving from the committee an annual report and statement of accounts
- Electing office-bearers and the committee, and appointing an auditor or an independent examiner for the coming year.

The second part of this clause should make provision for extraordinary or special general meetings of the entire membership of the organisation - these may be called by the members when some special business has to be considered.

(7) **Rules and procedures at all meetings** – this clause may or may not be included but, if it is, it should state:

- Who chairs meetings in the absence of the Chair
- If the Chair is to have a second or casting vote
- That minutes of all meetings should be kept by a named office-bearer.

(8) **Finance** – this clause should make clear that the funds of the organisation can only be used to further the objects of the association and for no other purpose. It will state that a bank account should be opened and outline the number of signatories required to sign cheques on behalf of the organisation. The finance clause will also state if the accounts of the association are to be audited or independently examined.

(9) **Trust Property** – an unincorporated body cannot hold property in its own name. If such a body wishes to own buildings or land or other property, it will need to appoint trustees. Trustees are people who hold property in their name which is not their own, but has been entrusted to them. Sometimes people will act as holding trustees without any formality, but this could lead to confusion (if, say, the people holding the property lose contact with the association). It makes sense, particularly if the organisation has any valuable or important property, that it should formally appoint holding trustees with suitable documentation to make clear what property is being held, and by whom, and that it is being held on behalf of the association.

(10) **Amendments to the constitution** – a constitution may be altered, but only by its members, at a special general meeting or AGM of which proper notice has been given to the members. In the case of an organisation which is a charity, no changes may be made which would alter the charitable nature of the organisation.

(11) **Dissolution** – this states what happens if the organisation decides to wind up, in particular, what will be done with any funds remaining after all liabilities have been met. A charitable association which is dissolved is required by law to pass any remaining assets onto another charitable body.

When members of the group have formally adopted the constitution (ie agreed to follow its rules), it will then become legally binding on the members. The constitution of an unincorporated association is deemed in law to be like a 'contract' between the members.

Once a group has adopted its constitution it can then proceed to carry out its work under the management of its elected committee. The association can raise money through membership fees, jumble sales and other events. If the association is charitable in nature it should seek official recognition from the Revenue. If charitable status is approved then the association must abide by charity legislation.

BECOMING A CHARITY IN NORTHERN IRELAND

The HM Revenue and Customs (HMRC) is the government body which can confirm if a group in Northern Ireland is accepted as 'a charity for tax purposes'. The officers of the new organisation should send in the adopted constitution and a completed charities application form to HMRC. Please see Advice Note 1: Charitable Status for detailed information on applying for charitable status.

NICVA's Governance and Charity Advice team can provide detailed advice and assistance on applying for charitable status.

FOR FURTHER INFORMATION, PLEASE CONTACT:

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NICVA's governance and charity advice staff can assist with drafting a suitable constitution and applying for charitable status for your organisation as well as offering specialised training on governance issues.

All of NICVA's advice notes, as well as the most up to date information about the implementation of company and charity law, can be downloaded from www.nicva.org.

www.diycommitteeguide.org

Online governance resources mapped to the principles of the Code of Good Governance.

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