

## Application for registration: Guidance notes



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## Introduction

This booklet is intended to guide you through the application form: it tells you how to complete the questions and defines some of the specific terms. If you have any queries that aren't covered in the booklet please call **Charity Commission Direct** on **0845 300 0218** for further advice.

### Data Protection

Any information you give to us will be held securely and in accordance with the rules on data protection. We will treat personal details as private and confidential and safeguard them. We will not disclose them to anyone unconnected with the Charity Commission unless you have consented to their release, or in certain circumstances where:

- we are legally obliged to do so;
- disclosure is necessary for the proper discharge of our statutory functions; or
- disclosure is necessary to comply with our function as regulator of charities and is in the public interest.

We will ensure that any disclosure made for this purpose is proportionate, considers your right to privacy and is dealt with fairly and lawfully in accordance with the Data Protection Principles of the Data Protection Act.

The Data Protection Act 1998 regulates the use of 'personal data', which is essentially any information, whether kept in computer or paper files, about identifiable living individuals. As a 'data controller' under the Act, we must comply with its requirements.

## A About the organisation seeking registration

### A1 What is your organisation's name?

#### Main name

Most organisations are formally named in their governing document. If this applies to your organisation, please write its name as it's shown in the governing document. Otherwise, please tell us the name you use for formal purposes.

#### Working name or acronym

Please tell us if your organisation plans to use an acronym; for example, the RSPCA (the Royal Society for the Prevention of Cruelty to Animals) or the RNLI (Royal National Lifeboat Institution). Members of the public will often search the register of charities using these abbreviations or acronyms rather than the full title.

Some organisations are better known by a working name. For example, "Comic Relief" and "Sport Relief" are working names for the charity called Charity Projects. Members of the public are more likely to search the Register of Charities for this using one of the two working names as they are more widely known. So if your organisation uses a working name, please record it here.

### A2 Contact for the purpose of this application

Enter the details for the person who will be the contact for this application. This could be your legal advisor and not someone directly involved in the organisation itself. This is the only person other than a named trustee with whom we'll discuss this application. It would not generally be appropriate for us to discuss its progress with an interested member of the public. Please check first with the named contact if you think you have not heard from us.

### A3 Assessing eligibility for registration

We need your answer to the questions in this section of the form so that we can work out whether you need to register.

**We may decide that we cannot consider your application at this time.**

Only charities with:

- a gross annual income exceeding £5000;
- that are not legally excepted or exempt from registration; and
- that are governed by the law of England and Wales;

are required to register with us.

**(a) What is my gross annual income?**

Gross income means all the money the organisation has received in a financial year from all sources, including:

- grants;
- gifts;
- sales of goods and services;
- fundraising;
- interest on investments;
- capital that the trustees can decide to spend as income (this figure is calculated before deduction of any costs or expenses); and
- income from any special trusts.

It excludes:

- the receipt of a loan by the charity;
- loan repayments to the charity;
- money received from the sale of investments and fixed assets; and
- gains or profits on the sale of investments and fixed assets.

**If you do not provide evidence that the gross annual income will exceed £5000, such as:**

- a bank statement;
- annual accounts; or
- a pledge of funding; or
- a letter from us confirming we will consider your application without proof of income,

**we will return your application as incomplete.**

(See our publication **Registering as a Charity (CC21)** for more information about when we might be prepared to consider an application for an organisation that does not yet have £5000 income.)

**(b) Exempt charities**

Exempt charities are not currently allowed to register with the Commission. They are exempted by the Charities Act 1993. Generally, they are overseen by other public bodies, such as the Financial Services Authority or Housing Corporation. When the relevant part of the Charities Act 2006 comes into force some of these charities will need to register and will then be regulated by us.

If the existing regulator has agreed to take responsibility for ensuring that their charities act in the way charity law requires, these charities will not be required to register. We can use our enabling powers to assist exempt charities. In future we will be able to investigate these charities if their principal regulator asks us to do so.

A previously exempt charity that does not have another regulator will have to register with us. To ease the transition, this will apply only to those charities with an annual income of over £100,000. However, all such previously exempt charities will come under our jurisdiction. The £100,000 threshold for registration is an interim level. It may be reduced in future, but this will not happen for at least five years, when there will be a review of the Act.

The Office of the Third Sector is working with principal regulators to agree how the new arrangements will work and to make sure they have the powers they need for this role.

**Excepted charities**

Some groups of charities have traditionally not needed to register with us; they are known as 'excepted charities'. Examples include some churches, Boy Scouts and Girl Guides and some armed forces charities. However excepted charities have already been, and will continue to be, under our jurisdiction.

When the relevant part of the Charities Act 2006 comes into force, some of these charities will need to register with us. Initially only excepted charities with an annual income of £100,000 or more will have to register. Those under the £100,000 threshold will not have to register. This £100,000 threshold is an interim level. It may be reduced in future, but this will not happen until the Act has been reviewed.

## A3 Assessing eligibility for registration

### (c) Is my organisation governed by the laws of England and Wales?

It is governed by the law of England and Wales if:

- it is a company registered in England and Wales; or
- the governing document says that the organisation is governed by the law of England and Wales.

If neither of these applies, then whether the charity is governed by the law of England and Wales depends on the answers to the following questions:

- are the assets of the organisation, such as buildings, property, and money in the bank, located in England or Wales?
- will the organisation carry out its activities mainly in England or Wales?
- is the centre of administration for the organisation located in England or Wales?
- are the trustees located in England or Wales?

If you are uncertain about whether or not you are eligible to apply please contact us or take legal advice before applying.

## A4 Operating in Scotland

If you have registered, or are planning to register, your organisation in Scotland, and you also successfully register it with the Charity Commission, you will have to comply with the Office of the Scottish Charity Regulator's (OSCR) requirements as well as ours. These requirements may differ. You will also have to comply with two sets of accounting requirements.

What is charitable in law in Scotland differs slightly from the law of England and Wales. Therefore it is possible the organisation will be accepted for registration by one or other but not both.

The Charity Commission has a memorandum of understanding with OSCR. We have agreed to tell each other of instances where there is a difference in terms of what is accepted by one and not by the other.

## A5 Finance and funding

### (a) Gross income

For an explanation of gross income see the guidance note relating to section A3a.

### (c) Financial year end date

If your organisation has operated for more than a year and has produced annual accounts, then please supply your financial year end date from the latest accounts. If your organisation is still in its first year then please supply the expected financial year end date.

### (d) Fundraising

The choice of fundraising methods is a matter for trustees to decide. However, registered charities need to be alert and sensitive to public opinion and criticism. Fundraising methods that meet with disapproval can damage the charity and reduce public confidence in other charities.

Before undertaking any fundraising, the trustees should develop a strategy. Some forms of fundraising can be costly. The trustees should be satisfied that the costs will be justified by the amount the charity will raise. We produce separate guidance on fundraising: **Charities and Fundraising (CC20)** and **Fundraising through Partnerships with Companies**. These are both available on our website or from Charity Commission Direct.

### (e) Professional fundraising consultants

A professional fundraiser is any person or organisation that carries on a fundraising business for gain, except:

- another charity or connected company;
- an officer or employee of a charity or connected company (see definition in E2);
- a charity trustee;
- a public charitable collector;
- people who appeal for funds on TV or radio on behalf of the organisation; or
- any commercial participator.

## A5 Finance and funding

A commercial participator in relation to any charity means any person (apart from a company connected with the charity) who:

- (a) carries on for gain a business other than a fundraising business; but
- (b) in the course of that business, takes part in any promotion which states that charitable contributions will go to, or be used to, benefit the charity.

The term does not apply if the fundraiser receives a payment of:

- £500 or less in connection with a particular campaign; or
- £5 a day or £500 or less a year, where there is no specific promotional campaign.

## A6 Special circumstances

We consider the following to be special circumstances that we would like you to bring to our attention:

- there is a deadline by which you need a registered charity number, such as a planned public launch of the organisation, or in connection with proposed funding;
- the organisation's purpose is novel or innovative or may attract comment or criticism;
- there may be significant media, political, or other interest;
- the organisation has links with central or local government initiatives and/or is funded by them; or
- the organisation has links with one or more major organisations and/or is, or will be, funded by them.

## B Governing document

### B1 Governing document

It is very important that an organisation starts out with the right type of structure and governance arrangements. Please see our publication **Choosing and Preparing a Governing Document (CC22)**.

Your governing document sets out the way the organisation functions. It should describe how trustees are appointed and how valid decisions are made. Trustees must always comply with the rules set out in it. This is why it is so important to get it right.

If the organisation is a company it will have a memorandum and articles of association. Normally the company must be registered with Companies House before we can consider an application for registration as a charity. So we need to have the registered company number and a copy of the Certificate of Incorporation.

If the new company will have the word 'charity' or 'charitable' in its title then Companies House will not register it until they have our approval. We therefore consider the application and the memorandum and articles together and decide if the company is charitable. This is the only time we do not expect a company to have a registered company number.

#### Date governing document became effective

A governing document needs to be formally 'accepted' by those responsible for the organisation's management and administration. Each type of governing document is accepted in a particular way.

- A **constitution** is adopted at a formal meeting of those people who are, or will be, the charity trustees, and the general membership.
- A **trust deed** is executed by being signed and dated by the trustees in the presence of an independent witness, or independent witnesses.
- A company (with **memorandum and articles of association**) is incorporated at Companies House and issued with a certificate of incorporation.
- A **will** is validated by the grant of probate.
- An **Act of Parliament** is passed, but may come into effect in stages.

When a company is established, it is entirely separate from the existing organisation. It needs to be registered as a new charity (unless it is exempt, or excepted, or its income is not sufficient).

If you are setting up a company to replace an existing charity that is not a company please make sure you have taken appropriate advice about:

- whether you will be able to transfer the assets of the unincorporated charity to the new company. (If the unincorporated charity has permanent endowment or there is something in its governing document about what happens to the assets if the charity ceases to exist then a transfer to the new company will probably not be possible.)
- whether any deeds of covenant or bequests to the unincorporated charity will automatically pass to the new charitable company.

### (a) Registered charity number

We are asking here for the registered charity number of the existing unincorporated charity.

### (b) Is the wording of the objects clause exactly the same as the existing charity?

Often the charitable company will be set up for the same purposes as the existing organisation. So its governing document will have the same objects. Please compare the objects clause of the existing organisation with the objects clause in the new memorandum and articles of association and let us know of any differences.

You may want to take this opportunity to put your objects in plain, modern language or to adopt a more recently recognised charitable purpose as well as updating your administrative rules.

If the objects are exactly the same as, or a modern restatement of the existing charity's objects, then registering the new company will usually be straightforward. (NB If you do restate your objects it is very important to get the wording right. Please see the *Example Objects* section of our website for advice.)

In addition to the objects we will also look at any changes to:

- the trustee benefits clause if it allows trustees to gain any new benefit;
- any power that allows the trustees to alter the governing document;
- what happens if the charity ceases to exist; and
- the rules governing the make-up of the trustee body or allowing there to be fewer than three trustees.

If there are significant changes to these clauses then it is likely to take us longer to consider your application.

An **approved** governing document is one that has been agreed with a parent body (often a national umbrella body), Her Majesty's Revenue and Customs (HMRC) and ourselves as suitable for registration. It will contain agreed objects as well as administrative rules. We will also have discussed with the umbrella body the kinds of activities that will take place to further the objects.

If you use an **approved** governing document, **and do not change it**, your application is likely to be handled more quickly and with the minimum of additional enquiries.

A full list of approved governing documents can be found under the *Registering a Charity* section of our website.

You can get copies of approved governing documents from the sponsoring body. These are **not** available from the Charity Commission.

The trustees must make sure they have the permission of the sponsoring body to use its approved governing document. They must abide by any guidelines it produces about how the charity will operate and what it will do.

Approved governing documents often contain optional clauses. It is very important that you check carefully to ensure that, where there are options, you have made the right choice, and deleted the options that do not apply.

Sometimes the governing document will have blank spaces for the trustees to complete. For example you may need to insert the month in which the Annual General Meeting will take place, or the number of trustees. Please ensure that you have filled in all the blanks wherever they occur.

Choosing between optional clauses and completing blanks are not considered changes to an approved governing document.

### Objects

A charity's purposes or 'aims' are usually expressed in the 'objects clause' of its governing document. The objects clause should adequately and fully express the organisation's aims. It can sometimes be difficult to word the objects clause in the way that the law requires. Under the Example Objects section of our website we have set out suitable wording for a variety of charities. An incorrectly worded objects clause, or an objects clause that does not correctly express the organisation's aims, is by far the most significant cause of delay to, or rejection of, an application. Even if we think what you are doing may be capable of being charitable, if the objects clause is not worded in the right way then you will have to amend the governing document before we can consider registering the organisation. This may mean calling a meeting of the trustees and/or the members to agree the change.

In this section of the form please insert the objects exactly as they appear in your governing document.

If your organisation has more than three objects, please photocopy this page and attach the additional pages to your application.

### Ways in which the objects are, or will be, carried out for the public benefit

We need to know what the organisation does, or will do, to carry out its aims for the public benefit. It could be lots of different things, or it could be something straightforward, like making a grant or issuing advice.

Please provide full details of how the charity's aims are, or will be, carried out. But do not include here:

- ways that are about raising money to enable the organisation to operate; or
- powers that the trustees have (such as to co-operate with other charities).

Sometimes we find that what an organisation proposes to do does not relate to the stated objects but could properly support a different object. In cases like this we may be able to suggest new objects.

We need to ensure there is no mismatch between the stated objects and what the organisation proposes to do.

To enable us to assess whether your organisation's aims are for the public benefit, please provide information about how your organisation meets the principles of public benefit set out in the Annex at the end of this guidance. For further information please see our publication *Charities and Public Benefit*.

If your application does not include sufficient information about how your organisation's aims are, or will be, carried out for the public benefit, we may need to ask you more questions. However, please do not send us additional information (such as business plans or promotional literature) at this time. If we feel we need extra information we will ask for it.

This section is for those organisations seeking to register as a charity that:

- works with children; and/or
- is concerned with the care of vulnerable adults, where the trustees have access to such vulnerable adults in carrying out their normal duties.

CRB checks are currently the best way for trustees to check whether a fellow trustee is disqualified from working with vulnerable people. For this reason, the Commission's policy is that trustees:

- **must** be CRB checked when there is a legal requirement to do so; and
- **should** be checked when there is a legal entitlement to do so.

All charity trustees have a duty of care and a duty to act solely in the interests of their charity. Accordingly, we believe that charity trustees risk being in breach of these duties if they fail, without good reason, to carry out appropriate CRB checks, when they are allowed to do so.

There are also a number of specific offences related to disqualified individuals becoming charity trustees:

- an individual who is disqualified from working with children commits an offence if s/he applies for, offers to become, accepts a position as, or does any work in a regulated position. This includes the regulated position of trustee of a children's charity (S.35 Criminal Justice and Court Services Act 2000);
- an individual is guilty of an offence if s/he offers a regulated position (including a position as a trustee of a children's charity) to an individual who is disqualified from working with children. S/he is also guilty of an offence if s/he fails to remove such an individual from that position. It is not a defence to claim that s/he did not know that the individual was disqualified (S.35 Criminal Justice and Court Services Act 2000);

- an individual who is considered unsuitable to work with vulnerable adults (as indicated by their inclusion in the Protection of Vulnerable Adults (POVA) list) is guilty of an offence if s/he knowingly applies for, offers to do, accepts or does any work in a care position. This applies to:
  - (a) trustees of charities that provide accommodation to vulnerable adults in a care home, where the trusteeship enables the trustee to have regular contact with vulnerable adults in the course of his/her duties;
  - (b) trustees of charities that provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance (S.89 Care Standards Act 2000).

### Trustees with access to vulnerable people

#### Criminal Records Bureau (CRB) checks

The law surrounding CRB checks is complex and it can be difficult for charities to understand how it applies to them. Each charity and its trustees have to decide whether they are legally allowed to carry out CRB checks and in some cases whether they are legally required to do so. Where appropriate they must request these checks. It is important that trustees proactively consider these questions and seek advice (for example from a solicitor) if they are unclear when CRB checks are legally available or are required. This will help trustees to ensure that they are safeguarding the vulnerable people with whom they work and are not breaking the law.

#### Legal entitlement to carry out CRB checks on trustees

Because a CRB check might involve disclosing sensitive personal data about an individual, the law allows these checks only in certain circumstances. The only time that the term 'trustee' is specifically mentioned in the legislation on CRB checks is in relation to trustees of children's charities. However other trustees may be entitled to a CRB check because the positions they hold involve contact with vulnerable people. For ease of reference we have used the term 'trustees' in setting out such entitlements throughout this document even where the law does not specifically refer to trustees. The law permits CRB checks in the following circumstances:

- (i) for charities working with those under age 18, the following positions are entitled to be checked:
  - all trustees in 'children's charities'; and
  - trustees in charities that work in a further education institution, but only where the normal duties of the trusteeship involve regular contact with people aged under 18.
- (ii) where an organisation is concerned with:
  - the provision of care services for vulnerable adults; or
  - the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or a relevant Act of Parliament;

all trustees who have access to vulnerable adults in receipt of these services are entitled to be checked.

#### Specific legal requirements to carry out CRB checks on trustees

Certain explicit legal requirements mean that CRB checks must be carried out for some charities and specified trustee positions. In summary these apply to the following positions:

- governors of independent schools – the Education (Independent Schools Standards) (England) Regulations 2003 say that to meet national minimum standards independent schools must carry out CRB checks on their proprietors who, in the case of charitable independent schools, are the trustees;
- trustees of charities that are 'child care organisations' – under the Protection of Children Act 1999, it is compulsory to check these trustees against the Protection of Children Act list. This is only possible through a CRB check;
- trustees of charities that work with vulnerable adults who are in a care position – under the Care Standards Act 2000 organisations providing care services to vulnerable adults must carry out a Protection of Vulnerable Adults list check before appointing anyone to a care position. Charity trustees of some charities working with vulnerable adults may come within the definition of 'care position' (see Definitions section below).

For further information about CRB checks and other ways of checking the eligibility of trustees please see **Finding new trustees: What charities need to know (CC30)**.

### Children's charity

A children's charity is defined in the Criminal Justice and Court Services Act 2000. It is a charity whose workers normally include individuals working in regulated positions. The term 'regulated position' is also defined in that Act as one that involves working with children. An individual is a worker in a charity if they do work under arrangements made by the charity. However, this does not include any arrangements made for purposes that are merely incidental to the purposes for which the charity is established.

### Regulated position

- (a) a position whose normal duties include work in an establishment listed below:
  - (i) an institution which is exclusively or mainly for the detention of children,
  - (ii) a hospital which is exclusively or mainly for the reception and treatment of children,
  - (iii) a care home, residential care home, nursing home or private hospital which is exclusively or mainly for children,
  - (iv) an educational institution,
  - (v) a children's home or voluntary home,
  - (vi) a home provided under section 82(5) of the Children Act 1989. subsection (2),
- (b) a position whose normal duties include work on day care premises,
- (c) a position whose normal duties include caring for, training, supervising or being in sole charge of children,
- (d) a position whose normal duties involve unsupervised contact with children under arrangements made by a responsible person,
- (e) a position whose normal duties include caring for children under the age of 16 in the course of the children's employment,
- (f) a position a substantial part of whose normal duties includes supervising or training children under the age of 16 in the course of the children's employment,
- (g) one of the following positions:
  - (i) member of the governing body of an educational institution,
  - (ii) member of a relevant local government body,
  - (iii) director of children's services and director of adult social services of a local authority in England,
  - (iv) director of social services of a local authority [in Wales],
  - (v) chief education officer of a local education authority [in Wales],
  - (vi) charity trustee of a children's charity,
  - (vii) member of the Youth Justice Board for England and Wales,
  - (viii) Children's Commissioner and deputy Children's Commissioner appointed under Part 1 of the Children Act 2004,
  - (ix) Children's Commissioner for Wales or deputy Children's Commissioner for Wales,
  - (x) member, or chief executive, of the Children and Family Court Advisory and Support Service,
- (h) a position whose normal duties include supervising or managing an individual in his work in a regulated position.

### Protection of Children Act list

This list includes details of people who are barred from working with children.

### Childcare organisation

This is defined by the Protection of Children Act 1999 as an organisation that "...is concerned with the provision of accommodation, social services or health care services to children, or the supervision of children" and "whose activities are regulated by, or by virtue of, any prescribed enactment; and which fulfils such other conditions as may be prescribed".

### Prescribed enactments

The following are the prescribed enactments concerning 'child care organisations'

- (a) Local Authority Social Services Act 1970, sections 2 and 7A to 7D;
- (b) Adoption Act 1976, section 9;

## D2 Working with children - Definitions

- (c) National Health Service Act 1977, sections 8 and 15 to 18A, Schedule 5 and Schedule 5A;
- (d) Registered Homes Act 1984 sections 16 and 26;
- (e) Children Act 1989, sections 72 and 73, paragraph 4 of Schedule 4, paragraph 7 of Schedule 5 and paragraph 10 of Schedule 6;
- (f) National Health Service and Community Care Act 1990, section 5 and Schedule 2;
- (g) Criminal Justice Act 1991, sections 84 to 88A;
- (h) Probation Service Act 1993, section 25; and
- (i) Criminal Justice and Public Order Act 1994, sections 7 to 15.

### Childcare position

This is defined broadly by the Protection of Children Act 1999 as a regulated position for the purposes of Part II of The Criminal Justice and Court Services Act 2000 – including a regulated position at a school which is a children’s home for the purposes of the Care Standards Act 2000. But it is not a position that involves work to which section 142 of the Education Act 2002 applies; therefore, a 'childcare position' does not include most work involving education at a school or further education institution.

### Care position

‘Care position’, in relation to an individual, means:

- a position which is such as to enable the holder to have regular contact in the course of his/her duties with adults to whom accommodation is provided at a care home;
- a position which is concerned with the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance. (Section 80 Care Standards Act 2000)

## D3 Vulnerable adults - Definitions

Vulnerable people means children and vulnerable adults. ‘Children’ are persons under the age of 18 years. There are three different definitions of ‘vulnerable adults’ depending on what type of check is being carried out, set out in detail below:

### 1. Definition of ‘vulnerable adult’ for the standard CRB check

‘Vulnerable adult’ means a person aged 18 or over who has:

- 1) a substantial learning or physical disability; or
- 2) a physical or mental illness or mental disorder, chronic or otherwise, including an addiction to alcohol or drugs; or
- 3) a significant reduction in physical or mental capacity.

### 2. Definition of ‘vulnerable adult’ for an enhanced CRB check

‘Vulnerable adult’, for the purpose of an enhanced CRB check, means a person aged 18 or over who satisfies all of the following three requirements:

- 1) They are receiving one or more of the following services:
  - (a) accommodation and nursing or personal care in a care home;
  - (b) personal care or nursing or support to live independently in their own home;
  - (c) any services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body;
  - (d) social care services;
  - (e) any services provided in an establishment catering for a person with learning difficulties.
- 2) They are suffering from:
  - (a) a learning or physical disability; or
  - (b) a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
  - (c) a reduction in physical or mental capacity.

## D3 Vulnerable adults - Definitions

- 3) Because of the condition in (2), they have one of the following disabilities:
- (a) being dependent on others to perform, or needing help in performing, basic physical functions;
  - (b) severe impairment in the ability to communicate with others;
  - (c) impairment in the ability to protect themselves from assault, abuse or neglect.

### 3. Definition of 'vulnerable adult' in the definition of 'care position' for the Protection of Vulnerable Adults (POVA) list search

The definition of 'care position' does not use the term 'vulnerable adult'. However, 'vulnerable adult' is used in part of the Care Standards Act 2000 headed 'Protection of Children and Vulnerable Adults'. 'Vulnerable adult' here is defined as:

- 1) an adult to whom accommodation and nursing or personal care are provided in a care home; or
- 2) an adult to whom personal care is provided in their own home under arrangements made by a domiciliary care agency; or
- 3) an adult to whom prescribed services are provided by an independent hospital, independent clinic, independent medical agency or National Health Service body; or
- 4) an adult to whom support, care, or accommodation is provided by an individual (who is not a relative of that adult), under an agreement between that individual and a person within subsection 7(e) of section 80(6).

(Subsection 7(e) refers to "any person who carries on a scheme under which an individual agrees with that person to provide support, care or accommodation to an adult who is in need of it.")

### Protection of Vulnerable Adults (POVA) list

This list includes details of people who are barred from working with vulnerable adults.

## E Private benefit

### Private benefit

There is **private benefit** where an individual or an organisation personally gains from their involvement with the organisation. In some cases it may be proper for a charity to provide the benefit; in some cases not. Charities can provide private benefits so long as those benefits directly contribute towards achieving the charity's purposes and/or are a necessary result, or by-product of, carrying out those purposes.

Examples of private benefits that directly contribute towards achieving a charity's purposes include giving a grant to an individual to relieve their financial hardship or providing someone with an education. The benefit must be the same as, or very similar to, what anyone who qualified as a beneficiary would receive.

Examples of private benefits that are a necessary result or by-product of carrying out those purposes include paying reasonable salaries to a charity's staff, or where there are limited profits to businesses as a result of charitable regeneration projects.

In general, a private benefit is a necessary result or by-product of carrying out those purposes if:

- it follows from some action taken in furthering the purposes of the charity; and
- that action is taken only with the intention to further the organisation's charitable purposes (as opposed to a separate purpose of, in effect, providing private benefit); and
- the amount of benefit is reasonable in the circumstances.

If the trustees decide to use a membership structure in order to carry out the charitable purposes, then generally the private benefit to the members can be regarded as a necessary result, or by-product of, carrying out those purposes, provided membership is open and not unduly restricted. However, an organisation which is supported by its members for the purpose of providing benefits for themselves cannot usually be a charity. It is a question of degree; does the organisation exist primarily for the advantage of its members, or has the membership structure been adopted solely as an effective way of delivering charitable benefits, or to make administration easier?

Charity trustees must put the interests of the charity first. It is a basic rule of charity law that charity trustees must not benefit from their position of trust nor put themselves in a position where their duties and responsibilities as trustees conflict with their own interests. For further information see **The Essential Trustee: What you need to know (CC3)** and **Payment of Charity Trustees (CC11)**. These are available to download from our website or from Charity Commission Direct.

## E1 Conflict of interest policy

For further information about conflicts of interest please see 'A Guide to Conflicts of Interest for Charity Trustees'. This is available on our website or from Charity Commission Direct.

## E2 Connected persons

For the purpose of this question, we consider the following persons to be connected persons:

1. A trustee, their child, stepchild, parent, grandchild, grandparent, brother or sister.
2. The spouse or civil partner of any of the above. By spouse we include a person living with another as that person's husband or wife and by civil partner we include a person living with another as if they were civil partners.
3. A person carrying on business in partnership with any of the persons mentioned above.
4. Any institution which is controlled either individually or by two or more people mentioned above. By this we mean they are able to secure that the affairs of the institution are conducted in accordance with their wishes.
5. A body corporate in which any of the people mentioned above has a substantial interest, either solely, or between two or more people. By this we mean someone who:
  - (a) has shares that have a nominal value of more than one-fifth of the share capital; or
  - (b) can control the exercise of more than one-fifth of the voting power at any general meeting.

**If the answer to question E2 is 'Yes' then you must complete section E3 in respect of the connected person benefit.**

## E3 Private benefit details

You may copy the page of the application form and submit additional copies to us for each type of benefit and/or for each person receiving benefit.

### (b) Relationship between the connected person and the organisation

This may be:

- a family relationship; or
- a role such as trustee; or
- description such as director of a body corporate with a controlling interest.

### (c) Description of benefit

Private benefit can take many forms. It includes:

- payment for being a trustee;
- payment for services to the organisation;
- a salary;
- royalties from books, tapes, or CDs produced from recordings made by the individual in carrying out their duties;
- use of someone's land or home for which the organisation pays rent or contributes to running costs.

We need to know if any trustee of 'connected person' (for a definition of 'connected person' please see the guidance note relating to section E2 above) has:

- the right to receive income from the land or building in the form of rent or mortgage payments; or
- if the organisation occupies land or buildings belonging to a trustee or trustees.

If a trustee owns land occupied by the organisation the terms of occupation should be set out clearly in writing. If the organisation occupies a trustee's own property the payment of bills and taxes should be shared fairly. Sometimes a trustee will rent property to an organisation either free of charge or for less than the market rate. We will still need to know about this.

Before completing the declaration the trustees will need to be satisfied that:

- any private benefit directly contributes towards achieving the organisation's purposes; and/or
- is a necessary result, or by-product of, carrying out those purposes.

## **F** Information required for the Register of Charities

### **F1** Contact for the organisation

If we decide that we can register your organisation as a charity, this contact name will be displayed on our website and we will use it to contact you.

A charity contact may be:

- a person (a named individual); or
- an organisation (such as a firm of solicitors acting on behalf of a charity); or
- the charity itself (eg 'The National Aid Association').

### **F2** The organisation's addresses

The address provided in F2(a) will be shown on the public Register of Charities on our website. In most cases we would expect it to be the address from which the organisation operates.

#### **(b) Other address**

We will consider withholding the charity's operating address from the public register if its publication could be harmful eg it is the address of a women's refuge.

We would not normally withhold the address simply because it is a private address. We might make an exception if it was the address of a high profile person who could be exposed to danger or harm if their home address were widely available.

If we do agree not to make the main (operating) address public then we must have an alternative address for the Public Register. The purpose of the public address is to enable members of the public, interested parties (such as grant making bodies) and the Charity Commission to contact the charity.

Please make sure the address is one that has a post code and is regularly used or visited. This is so that correspondence can be handled without undue delay and does not go astray.

#### **(e) Organisation website**

If you have a website we would like to be able to make a link to this from the Register of Charities.

#### **(f) Email addresses**

Your organisation can have two email addresses: the public address will be displayed on the Register of Charities on our website; the private address is the one we will use for contacting you. The same address can be used for both purposes.

### **F3** Classification

We ask organisations wishing to become charities to classify themselves using three 'elements'. These describe WHAT the organisation does, WHO it helps and HOW it operates.

These classifications make it easier for potential donors and others to find the charities they want on the Register of Charities.

The classifications are broad categories that cannot be tailored to suit individual charities; organisations should select at least one category in each of the three elements.

### **F4** Where you work

Members of the public can look at, and search the Register of Charities on our web site. To make it easier for them, and for potential funders and people seeking help, to find the charities that operate in specific places we ask all organisations to tell us where they work.

By this we mean the geographical area where funds are applied rather than the place where it has its administrative headquarters. For example, if the organisation has been set up to run an orphanage in Romania but has its base in Hertfordshire 'Romania' not 'Hertfordshire', is needed here.

The governing document may specify where the organisation can work. If it does, the area is known as the 'area of benefit'. Only geographical areas within this 'area of benefit' can be included.

An organisation whose objects are to relieve the poor in the whole of England and Wales may, in practice, restrict its operations to certain inner city areas. If so please only include those inner city areas where you actually work.

**F4 Where you work**

We have listed below all the available Local Authority units, boroughs, counties, and countries using standardised geographical terms. Please enter those you feel are most appropriate for your organisation. Please do not include an area that is not listed below as we will not be able to record it.

It is important that the Register accurately reflects the area(s) where the trustees have chosen to focus the resources now. This may change. Trustees have a duty to keep the register up to date. If the organisation is accepted for registration then we will send you details of how you can view and amend your register entry. If the trustees keep the entry up to date then they are less likely to receive requests for help that are outside their remit.

If the organisation operates in more than 12 countries you may copy the relevant page of the application form to allow additional entries.

**England and Wales - Reference list of permissible geographical names****Greater London Metropolitan Boroughs**

Barking & Dagenham	Hackney	Lewisham
Barnet	Hammersmith & Fulham	Merton
Bexley	Haringey	Newham
Brent	Harrow	Redbridge
Bromley	Havering	Richmond upon Thames
Camden	Hillingdon	Southwark
City of London	Hounslow	Sutton
Croydon	Islington	Tower Hamlets
Ealing	Kensington & Chelsea	Waltham Forest
Enfield	Royal Borough of Kingston upon Thames	Wandsworth
Greenwich	Royal Borough of Lambeth	Westminster City

**Unitary Authority Areas**

Bath & North East Somerset	Isle of Anglesey	Reading
Blackburn with Darwen	Isle of Wight	Redcar & Cleveland
Blackpool	Isles of Scilly	Rhondda Cynon Taff
Blaenau Gwent	Kingston upon Hull City	Rutland
Bournemouth	Leicester City	Slough
Bracknell Forest	Luton	South Gloucestershire
Bridgend	Medway	Southampton City
Brighton & Hove	Merthyr Tydfil	Southend-on-Sea
Bristol City	Middlesborough	Stockton-on-Tees
Caerphilly	Milton Keynes	Stoke-on-Trent City
Cardiff	Monmouthshire	Swansea, City of
Carmarthenshire	Neath Port Talbot	Swindon
Ceredigion	Newport City	Telford & Wrekin
Conwy	North East Lincolnshire	Thurrock
Darlington	North Lincolnshire	Torbay
Denbighshire	North Somerset	Torfaen
Derby City	Nottingham City	Vale of Glamorgan
East Riding of Yorkshire	Pembrokeshire	Warrington
Flintshire	Peterborough City	West Berkshire
Gwynedd	Plymouth City	Windsor & Maidenhead
Halton	Poole	Royal Borough of Wokingham
Hartlepool	Portsmouth City	Wrexham
Herefordshire	Powys	York, City of

**Metropolitan Boroughs**

Barnsley	Leeds City	Solihull
Birmingham City	Liverpool City	South Tyneside
Bolton	Manchester City	St Helens
Bradford City	Newcastle Upon Tyne City	Stockport
Bury	North Tyneside	Sunderland
Calderdale	Oldham	Tameside
Coventry City	Rochdale	Trafford
Doncaster	Rotherham	Wakefield, City of
Dudley	Salford City	Walsall
Gateshead	Sandwell	Wigan
Kirklees	Sefton	Wirral
Knowsley	Sheffield City	Wolverhampton

**Non-Metropolitan Counties**

Bedfordshire	Gloucestershire	Oxfordshire
Buckinghamshire	Hampshire	Shropshire
Cambridgeshire	Hertfordshire	Somerset
Cheshire	Kent	Staffordshire
Cornwall	Lancashire	Suffolk
Cumbria	Leicestershire	Surrey
Derbyshire	Lincolnshire	Warwickshire
Devon	Norfolk	West Sussex
Dorset	North Yorkshire	Wiltshire
Durham	Northamptonshire	Worcestershire
East Sussex	Northumberland	
Essex	Nottinghamshire	

**Countries - Reference list of countries for organisations operating internationally**

**Africa**

Algeria	Gambia	Niger
Angola	Ghana	Nigeria
Benin	Guinea	Rwanda
Botswana	Guinea-Bissau	Sao Tome & Principe
Burkina Faso	Ivory Coast	Senegal
Burundi	Kenya	Seychelles
Cameroon	Lesotho	Sierra Leone
Central African Republic	Liberia	Somalia
Chad	Libya	South Africa
Comoros	Madagascar	Sudan
Congo	Malawi	Swaziland
Djibouti	Mali	Tanzania
Egypt	Mauritania	Togo
Equatorial Guinea	Mauritius	Tunisia
Eritrea	Morocco	Uganda
Ethiopia	Mozambique	Zambia
Gabon	Namibia	Zimbabwe

**Antarctica**

Antarctica

**Asia**

Afghanistan	Jordan	Qatar
Armenia	Kazakhstan	Saudi Arabia
Bahrain	Kuwait	Singapore
Bangladesh	Kyrgyzstan	South Korea
Bhutan	Laos	Sri Lanka
Brunei	Lebanon	Syria
Burma	Malaysia	Tajikistan
Cambodia	Maldives	Thailand
China	Mongolia	Timor-Leste
India	Nepal	Turkey
Indonesia	North Korea	Turkmenistan
Iran	Occupied Palestinian Territories	United Arab Emirates
Iraq	Oman	Uzbekistan
Israel	Pakistan	Viet Nam
Japan	Philippines	Yemen

**Europe**

Albania	Georgia	Northern Ireland
Andorra	Germany	Norway
Austria	Greece	Poland
Azerbaijan	Hungary	Portugal
Belarus	Iceland	Republic of Ireland
Belgium	Italy	Romania
Bosnia & Herzegovina	Latvia	Russia
Bulgaria	Liechtenstein	San Marino
Cape Verde	Lithuania	Scotland
Croatia	Luxembourg	Serbia
Cyprus	Macedonia	Slovakia
Czech Republic	Malta	Slovenia
Denmark	Moldova	Spain
Estonia	Monaco	Sweden
Finland	Montenegro	Switzerland
France	Netherlands	Ukraine

**North America**

Antigua & Barbuda	Dominican Republic	Nicaragua
Bahamas	El Salvador	Panama
Barbados	Grenada	Saint Kitts & Nevis
Belize	Guatemala	Saint Lucia
Canada	Haiti	Saint Vincent & the Grenadines
Costa Rica	Honduras	Trinidad & Tobago
Cuba	Jamaica	United States of America
Dominica	Mexico	

## F4 Where you work

### Oceania

Australia	Nauru	Solomon Islands
Fiji	New Zealand	Tonga
Kiribati	Palau	Tuvalu
Marshall Islands	Papua New Guinea	Vanuatu
Micronesia	Samoa	

### South America

Argentina	Colombia	Peru
Bolivia	Ecuador	Suriname
Brazil	Guyana	Uruguay
Chile	Paraguay	Venezuela

## F5 Trustee details

### Corporate trustee

If your organisation has a corporate trustee eg a company, Parish Council or NHS Trust please ensure that the organisation's name, address, telephone and email details are provided here and are correct. Otherwise complete the details for the individual trustees.

Usually an organisation has either a corporate trustee or individual trustees. Exceptionally an organisation will have both. In such cases we need details for the corporate trustee and for the individual trustees. If you are unsure whether your organisation has a corporate body as trustee, please read its governing document.

Where an organisation has a corporate trustee we also ask you to confirm this by ticking the box on the trustee declaration form. By ticking this box the directors (or the persons having the general control and management of the administration) of the corporate trustee are agreeing to complete the declaration subject to the following change of wording:

First bullet point

- He/she is willing to act as a director, or a person participating in the general control and management of the administration, of a corporate charity trustee, and is fully aware of the organisation's object(s) as set out in the governing document.

Boxes A, B, D and E to read

- A We jointly declare that we have ensured that CRB checks have been obtained on all the directors (or persons having the general control and management of the administration) of the corporate charity trustee, and that we are satisfied that all these persons are suitable to act as trustees of a charity that works with children.
- B We jointly declare that we are not required by law to carry out CRB checks on the directors (or persons having the general control and management of the administration) of the corporate trustee, and also that we are not allowed by law to carry out such checks.
- D We jointly declare that we have ensured that CRB checks have been obtained on all directors (or persons having the general control and management of the administration) of the corporate charity trustee, and that we are satisfied that all these persons are suitable to act as trustees of a charity that works with vulnerable adults.
- E We jointly declare that we are not required by law to carry out CRB checks on the directors (or persons having the general control and management of the administration) of the trustee, and also that we are not allowed by law to carry out such checks.

If the organisation of which the corporate trustee is trustee will have vulnerable beneficiaries then we require the Trustee Declaration to be signed by all the individual company directors (or persons having the general control and management of the administration of the corporate trustee) and for any relevant CRB checks to have been carried out for all such individuals.

### Individual trustees

The trustees are the people responsible, under the organisation's governing document, for controlling the management and administration of the organisation, regardless of what they are called. For instance, in the case of an unincorporated association, the executive or management committee are its trustees. In the case of a charitable company, it is the directors who are the trustees.

## F5 Trustee details

If your charity has individuals as trustees, their details should be entered on the application. We will need a full set of details for that person, which consists of:

- all their personal names (also known as first or given names);
- all their family names (also known as surnames);
- their date of birth; and
- their home address and postcode.

It is also helpful if you can supply a telephone number and email for each trustee, although this is not essential.

You may enter honours or qualifications the individual would like to appear after his or her name, eg BA, OBE.

You have the opportunity to enter a preferred name for the trustee, for example, Rob Clarkin instead of Mr Robert James Clarkin. This will be the name displayed on our website. If a preferred name is not given we will use the title (if supplied), full name and honours and qualifications (if supplied) in that order.

Please note that unless a dispensation is granted, the trustees' names will appear on the public register of charities, which can be viewed on our website. Trustees' addresses and other personal details will not be made public. For information on dispensations, please call Charity Commission Direct on 0845 300 0218.

### Other names

We need to know all previous and other current names that this person has or does use. For example a woman may use her married name in social situations and retain her birth surname in a professional capacity. We need all such names for the purposes of the checks we make on trustees.

We will not keep a permanent record of 'other names' and they will not be displayed to the public.

## Trustee declaration form

1. For details of our requirements in respect of directors of an organisation that is a corporate trustee please see the notes in section F5;
2. For a definition of 'working with children' please see the notes in section D2.

## Sending your application to us

When you have completed your application please send the following to Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG:

- the completed application form;
- the completed trustee declaration form signed by ALL the trustees;
- a copy of the current version of the governing document;
  - if you have used an approved or model governing document and have made ANY changes to it please highlight the changes;
  - if the organisation is a company please also supply a copy of the Certificate of Incorporation (unless you are unable to register with Companies House until we have consented to the use of the word charity or charitable in the company name);
  - if the governing document is a trust deed AND the trustees do not want their addresses to appear on the copy of the trust deed on our web-site then you may send us one copy of the complete trust deed and one copy with the trustees' addresses obscured;
- evidence of income (See Note A3(a) above).

PLEASE DO NOT ENCLOSE ANY OTHER INFORMATION OR PAPERS WITH THE APPLICATION FORM. If we need anything else we will ask for it during the conduct of the registration case.

### For all other enquiries contact us at:

**Charity Commission Direct**  
PO Box 1227  
Liverpool  
L69 3UG

**Telephone:** 0845 300 0218  
0845 300 0197 (Online Services advice)

**Typetalk:** 0845 300 0219

**Email:** [enquiries@charitycommission.gsi.gov.uk](mailto:enquiries@charitycommission.gsi.gov.uk)

**Web:** [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

## Public benefit

Under the Charities Act 2006, every organisation set up for one or more charitable aims must be able to demonstrate that its aims are for the public benefit if it is to be recognised, and registered, as a charity in England and Wales. This is known as 'the public benefit requirement'.

There are two key principles both of which must be met in order to show that an organisation's aims are for the public benefit. Within each principle there are some important factors that must be considered in all cases. These are:

### Principle 1: There must be an identifiable benefit or benefits

- 1a It must be clear what the benefits are
- 1b The benefits must be related to the aims
- 1c Benefits must be balanced against any detriment or harm

### Principle 2: Benefit must be to the public, or a section of the public

- 2a The beneficiaries must be appropriate to the aims
- 2b Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
  - by geographical or other restrictions or
  - by ability to pay any fees charged
- 2c People in poverty must not be excluded from the opportunity to benefit
- 2d Any private benefits must be incidental

## Questions to help assess public benefit

So we can assess whether your organisation's aims are for the public benefit you will need to provide information under part C of the Application Form. In providing that information, you might find it helpful to answer the following questions:

1. What are the benefits that arise from your organisation's aims?
2. Is there any detriment or harm that, in your view, might arise from carrying out your organisation's aims? Are you aware of any widespread views among others that such detriment or harm might arise?
3. Who do your organisation's aims intend to benefit?
4. If the benefit is to a section of the public, how are the beneficiaries defined or what restrictions are there on who can have the opportunity to benefit?
5. Does anyone receive any private benefits from your organisation, other than as a beneficiary? If so, what benefits do they receive? Are those benefits incidental?

### Charity Commission

Telephone: **0845 300 0218**

Typetalk: **0845 300 0219**

By post: **Charity Commission Direct**

PO Box 1227

Liverpool

L69 3UG

Website: **[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)**