

# NONPROFIT LAW IN ENGLAND & WALES



Current as of August 2020

This section describes the legal framework governing nonprofit organizations (also known as non-governmental organizations or NGOs) in England & Wales, and includes translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 92-94.

These reports have been prepared by the [International Center for Not-for-Profit Law](#) (ICNL). Please direct corrections and comments to [Lily Liu](#).

We include hyperlinks to the following information, to the extent available:

- Longer country reports analyzing various aspects of local legislation; and
- Texts of local laws that affect the decision whether or not to qualify a grantee (generally in translation, although ICNL and the Council cannot warrant the accuracy of any translation; in addition, legislative excerpts were selected by in-country contacts, and ICNL and the Council cannot warrant that all relevant provisions have been translated).

## Table of Contents

- I. [Summary](#)
  - A. [Types of Organizations](#)
  - B. [Tax Laws](#)
- II. [Applicable Laws](#)
- III. [Relevant Legal Forms](#)
  - A. [General Legal Forms](#)
  - B. [Public Benefit Status](#)
- IV. [Specific Questions Regarding Local Law](#)
  - A. [Inurement](#)
  - B. [Proprietary Interest](#)
  - C. [Dissolution](#)
  - D. [Activities](#)

- E. [Political Activities](#)
- F. [Discrimination](#)
- G. [Control of Organization](#)
- V. [Tax Laws](#)
  - A. [Tax Exemptions](#)
  - B. [Incentives for Philanthropy](#)
  - C. [Value Added Tax](#)
  - D. [Property Tax](#)
  - E. [Other Tax Benefits](#)
  - F. [Double Tax Treaty](#)
- VI. [Knowledgeable Contacts](#)

## 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. In the past, their provisions for regulating charities have differed significantly, but Scotland and Northern Ireland both now have similar regulatory regimes.

## A. TYPES OF ORGANIZATIONS

England and Wales is a common law, non-federal jurisdiction with five primary forms of not-for-profit, nongovernmental organizations (NPOs): [\[1\]](#)

- Companies limited by guarantee (including community interest companies, or CICs);
- Unincorporated associations;
- Trusts;
- Registered societies (formerly known as industrial and provident societies); and
- Charitable incorporated organizations.

An NPO that takes one of the above forms (excluding CICs) 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.

Other not-for-profit legal forms, which are outside the scope of this Note due to their limited interaction with U.S. grantmakers, include the following: some churches which, if they have annual income under £100,000, are exempt from registration requirements affecting charities; charities specially incorporated by Royal Charter or by an Act of Parliament; political parties; and unions.

## B. TAX LAWS

Charities are exempt from income tax and corporation 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 as well, 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). Donations of shares, land, and buildings also qualify for tax relief.

The Value Added Tax (VAT) is required to be collected by entities, including NPOs, whose turnover exceeds £85,000 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 1992 and 2011 (the 2011 Act consolidated the [1993 Act](#) and [2006 Act](#)); and the Charities (Protection and Social Investment) Act 2016
- [Companies Act 2006](#)
- Companies (Audit, Investigations and Community Enterprise) Act 2004
- [Trustee Acts 1925 and 2000](#)
- Co-operative and Community Benefit Societies Act 2014
- [Finance Acts 2010 and 2011](#)
- [Corporation Tax Act 2010](#)
- [Income Tax Act 2007](#)
- [Taxation of Chargeable Gains Act 1992](#);
- Equality Act 2010
- [Human Rights Act 1998](#)
- Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

## III. RELEVANT LEGAL FORMS

### A. GENERAL LEGAL FORMS

The law of England and Wales creates five NPO forms pertinent to this Note: the company limited by guarantee (including community interest companies [CICs] which can also be incorporated as companies limited by shares), unincorporated association, trust, registered

society (formerly known as an industrial and provident society), and charitable incorporated organization.

An entity set up under any of these five NPO structures—excluding CICs—can qualify as a charity. [\[2\]](#) The Charities Act 2011 defines a charity as a body or trust that is established for a charitable purpose and provides a benefit to the public. The Act includes a list of charitable purposes, with 12 specific headings and one general heading. (For a detailed discussion of what constitutes “charity,” please see Section III(B).) 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. Charitable incorporated organizations (CIOs) must register with the Charity Commission regardless of their income. Some charities, known as exempt or excepted charities, are not required to register.

### **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 may be limited to the trustees. A company limited by guarantee can be not-for-profit in nature. It is a legal person, and it is registered by the Companies House. Companies are governed by the Companies Act 2006.

A subset of companies limited by guarantee, the community interest company (CIC), was introduced in 2004 and may be of interest to U.S. grantmakers as it is among the fastest-growing public interest-oriented organizational forms in the UK. The CIC must be established for the benefit of the community and can be used by social enterprise organizations, but not by charities. The main distinguishing features of the CIC are a lock on company assets that ensures their use in the community interest, and a limitation or cap on dividends. CICs are governed by the Companies (Audit, Investigations and Community Enterprise) Act 2004 along with the Companies Act 2006. [\[3\]](#)

### **UNINCORPORATED ASSOCIATION**

An unincorporated association is a membership organization. Charities and other NPOs 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. [\[4\]](#)

### **TRUST**

A trust is an entity created to hold and manage assets for the benefit of others. [\[5\]](#) The trust must pursue a charitable purpose and is governed by trustees.

A trust ordinarily is not a legal person. Under the Charities Act 2011, however, the body of trustees can apply to the Charity Commission for a certificate of incorporation (Charities Act

2011 Part 12). 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—e.g., to hold property, enter into contracts, sue and be sued—in its own name rather than in the names of trustees. [6]

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

### **REGISTERED SOCIETY (FORMERLY KNOWN AS INDUSTRIAL AND PROVIDENT SOCIETY)**

A registered society is a not-for-profit corporate entity. It is a legal person. There are two types of registered societies: the co-operative society and the community benefit society. The latter type is widely used for charitable and non-charitable housing associations, as well as for some other charitable organizations. The principal advantage of the registered society is that its governing law, the Co-operative and Community Benefit Societies Act (which replaced the Industrial and Provident Societies Act 1965), is simpler than the law governing companies. Registered societies are regulated by the Financial Conduct Authority. While charitable registered societies are generally required to register as charities with the Charity Commission, those that are registered providers of social housing are exempt from this requirement (Charities Act 2011 Part 4 Section 30).

### **CHARITABLE INCORPORATED ORGANIZATION (CIO)**

A charitable incorporated organization is a membership organization. The membership may be limited to the trustees (“a foundation CIO”) or it may be broader (“an association CIO”). A CIO is a legal person. CIOs register solely with the Charity Commission; this registration confers both corporate and charitable status. A charitable incorporated organization is governed by the Charities Act 2011 and regulations made there under. Fifty-eight percent of newly-registered charities are now established as charitable incorporated organizations.

## **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 2011, a charity is defined as a body or trust which is for a charitable purpose that provides a benefit to the public. [7] The list of charitable purposes has 12 specific headings and one general heading, as follows:

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 or 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. 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
13. Other purposes that are currently recognized as charitable or are in the spirit of any purposes currently recognized as charitable.

The final provision enables new purposes to be recognized by the Charity Commission or the High Court. 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 as to the meaning of “public benefit” is available in the Charity Commission website’s [“Public Benefit Guides,”](#) which were revised in September 2013.

## **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. Charities that are subject to statutory audits (those with an annual gross income which exceeds £1m, or which have gross assets exceeding £3.6m and gross income exceeding £250,000) must report the number of employees whose salaries fall in intervals of £10,000 over £60,000—for instance, those between £60,000 and £70,000, and between £70,000 and £80,000.

Trustees ordinarily cannot receive payment for acting as a trustee nor may they 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. Section 185 of the Charities Act 2011 includes a power to pay trustees for goods or services delivered to the charity, provided that: a) such payment is not expressly prohibited by the governing document; b) only a minority of trustees are so paid; and c) other conditions are met (Charity Commission Publication, "Trustee Expenses and Payments," CC11, March 2012). All payments to trustees including expenses must be disclosed in the Annual Accounts. [\[8\]](#)

### **OTHER NPOS**

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

## **B. PROPRIETARY INTEREST**

### **CHARITIES**

A charity generally holds proprietary interest in its assets. Donors can, however, retain a proprietary interest in their donations by reaching an agreement with the charity at the time of the donation. Such an agreement, which is sometimes known as a claw-back provision, allows the donor to retrieve the property in particular circumstances—for example, if the charity fails to use the assets for the designated purpose, or if the charity dissolves. Property will also be returnable to the donor on the failure of a charitable appeal unless they have made a disclaimer or the donor cannot be traced following advertisement (Charities Act 2011 Section 63).

### **OTHER NPOS**

Other NPOs 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 return contributions to members when they retire from the organization.

## **C. DISSOLUTION**

### **CHARITIES**

The assets of a charity, upon its dissolution, must be conveyed 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 broad powers to intervene in the affairs of a charity to protect charity property and mandate its transfer in order to ensure that it continues to be applied for charitable purposes (Charities Act 2011 Part 6).

### **OTHER NPOS**

The assets of other NPOs, upon their dissolution, are distributed according to the organization's governing documents. In general, the assets need not be conveyed to a charity or other NPO. In the case of a community interest company (CIC), however, any surplus assets must be transferred to another asset-locked entity—that is, an entity the assets of which are locked for use in the community interest.

## D. ACTIVITIES

### 1. GENERAL ACTIVITIES

A charity can be established only for a charitable purpose, and its activities must advance that purpose (Charities Act 2011 Section (1)(1)(a)). It cannot engage in certain commercial or political activities. As discussed below, these sorts of restrictions are generally limited to charities and do not apply to other NPO forms.

### 2. ECONOMIC ACTIVITIES

Charities may carry out trade activities in the course of performing a primary purpose of the charity. This is commonly known as "primary purpose trading." [\[9\]](#) Examples include:

- The provision of educational services by a charitable school or college in return for course fees;
- The carrying out of trade activities 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." Charities may not 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. [\[10\]](#)

<b>Total of charity's incoming resources in a particular tax year</b>	<b>Maximum permitted "non-purpose trading" turnover in that tax year</b>
Under £32,000	£8,000



<b>Total of charity's incoming resources in a particular tax year</b>	<b>Maximum permitted "non-purpose trading" turnover in that tax year</b>
£32,000 to £320,000	25 percent of charity's total incoming resources
Over £320,000	£80,000

Commercial and economic activities other than the exceptions set out above cannot be conducted directly by the charity; however, any commercial and 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. [\[11\]](#)

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

## **E. POLITICAL ACTIVITIES**

A charity can never be formed for the purpose of engaging in political activities. [\[12\]](#) A charity may, however, engage in some political activities as a means of achieving its charitable purposes.

A charity can lobby legislators, urge the public to communicate with legislators about issues, and engage in other activities to influence government bodies to change the law or policy if: (i) the issues relate to the charity's specific purposes or to the well-being of the charitable sector in general; and (ii) these political activities are not the main reason for its existence (see Charity Commission Publication CC9, B1). 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). Lastly, a charity's political activities are subject to additional constraints during the one-year period before a general election, according to the provisions of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act of 2014. These election period constraints apply to all NPOs.

NPOs other than charities are generally free to engage in political activities, subject to restrictions under the Broadcast Law, Protest Law, and Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act of 2014 as noted above. Community interest companies (CICs) may be subject to additional restrictions on political activities, as well.

## **F. DISCRIMINATION**

The Equality Act 2010 prevents discrimination on the following grounds, known as protected characteristics:

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex; and
- Sexual orientation.

The Act allows a charity to restrict benefits to people with shared protected characteristics in certain defined circumstances. (More information is available from the [Equalities and Human Rights Commission](#) or "[Supporting Specific Beneficiary Groups: Equality Act Summary Guidance](#)" from the Charity Commission.)

## **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. 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 or by an American grantor charity (which requires that the charity specifically so provide in an affidavit; the affidavit may be requested by the Charity Commission upon registration).

These concerns are more pronounced in the case of other NPOs: 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, including rent.

## **B. INCENTIVES FOR PHILANTHROPY**

Donations of cash by 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 of twenty percent that the donor has paid on the income from which the gift was made. For example, if the charity receives £400, this is treated as having been made out of a £500 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 Her Majesty's Revenue and Customs (HMRC), 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 HMRC office (Income Tax Act 2007 (individuals)). There is a separate scheme providing top-up payments to charities on small donations where it is difficult to obtain a certificate. This applies to donations of £20 or under, up to a maximum of £8,000 per charity per year and subject to a number of conditions (see [Small Charities Donations Act 2012](#) for additional guidance).

Apart from donations of cash, tax relief is also available under the Gift Aid scheme on the sale proceeds of donated goods, provided that the correct documentation is completed.

Donations by corporations to charities under the Gift Aid scheme operate in a different way. Gift Aid donations made by corporations are paid in gross, so no tax is repayable to the charity, but the amount paid by the corporation can be set against profits for corporation tax purposes (Corporations Act 2010). [\[13\]](#)

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 Section 25, as amended; and Finance Act 2000 Section 39).

There are complex anti-avoidance provisions to prevent abuse of tax reliefs available (Finance Bill of 2011 Clause 27; Guidance on the Revenue and Customs [website](#)).

The Finance Act 2010 introduced a new requirement that, for tax purposes, the managers of a charity (which includes board members) must be "fit and proper persons" (Finance Act

2010 Schedule 6-7). Guidance on this requirement is available at the Revenue and Customs [website](#).

## **C. VALUE ADDED TAX**

Charities and other NPOs are generally subject to the standard VAT rate of 20 percent if they deliver goods and services of a value greater than £85,000 in a given year. Some supplies are subject to the reduced rate of 5 percent.

Grants, including grants from foreign donors, are not ordinarily subject to the VAT. The tax may apply, however, if the donation is paid to subsidize a trading activity of an NPO, 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 provided by charities are zero-rated—that is, taxable but at a zero percent rate—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. (This preference applies to certain qualifying bodies as well as charities.)

Aside from the preference for one-time fundraising events, these preferences apply only to charities, and not to other NPOs.

## **D. PROPERTY TAX**

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

Non-charitable NPOs 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 and stamp duty land tax on the transfer of assets, including shares and land; 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

- Lindsay Driscoll ([lindsayjdriscoll@btopenworld.com](mailto:lindsayjdriscoll@btopenworld.com))
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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 NPOs" refers to pertinent not-for-profit organizations that do not qualify as charities.

[3] As of August 2014, there were more than 10,000 registered CICs. See "[Office of the Regulator of Community Interest Companies](#)" for more detailed information on CICs.

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

[5] A trust can be public or private, however this Note addresses only public trusts.

[6] See Charity Commission Publication, "[Incorporation of Charity Trustees](#)," CC 43, Section 4.

[7] The 2011 statutory definition of charity is largely a restatement of the previous law; the common law is preserved for the interpretation of the terms used.

[8] See "[Accounting and Reporting by Charities: Statement of Recommended Practice](#)," for more information.

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

[10] These thresholds were introduced by the Finance Act 2018, which amended the Income Tax Act 2007 and the Corporation Tax Act 2010.

[11] Charities may engage in other types of trading as well, 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 website](#). 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.

[12] Political activities are 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.” More information is available in [“Speaking Out - Guidance on Campaigning and Political Activities by Charities”](#) on the Charity Commission website.

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