

## Incorporation of Charity Trustees



## The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are over 160,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

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## What is this guidance about?

1. This guidance provides information about the incorporation of charity trustees under the [Charities Act 2011](#). This is **not** the same thing as the charity itself becoming incorporated as a company limited by guarantee, which is not covered here. We recommend that trustees considering that option contact us for information and advice.

## Meaning of words and expressions used

2. In this guidance:

**The Charities Act** means the [Charities Act 2011](#).

**Governing document** means any document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, will, conveyance, Royal Charter or Scheme of the Commission.

**Property** means land and buildings, cash, stocks, and other investments.

**Sealing** is the term used to describe the means by which we make an Order effective. The date of sealing is the date on which the Order becomes effective.

**Trustees** means **charity trustees**. Charity trustees are the people who, under the charity's governing document, are responsible for the general control and management of the administration of a charity. In the charity's governing document they may be called trustees, managing trustees, committee members or governors, or they may be referred to by some other title. Sometimes a charity also has **custodian** or **holding trustees**, whose function is restricted to holding its property. Custodian or holding trustees have no power to make management decisions and must act on the lawful instructions of the charity trustees. In this publication it is the charity trustees who are being referred to unless stated otherwise.

**Must** is used to refer to actions that trustees or their agent or employees, are obliged to take by law.

**Recommend** or **advise** are used where we are suggesting to the trustees actions which we consider to be good practice, but which do not represent a legal requirement.

## Background

3. The Charities Act contains provisions about trustee incorporation which:
  - apply to all charities;
  - allow us to grant a certificate of incorporation if we consider it to be in the interests of the charity;
  - allow us to include in the certificate such conditions or directions as we think fit;
  - require us to keep a record of all applications and certificates (see paragraph 14);
  - set out how documents must be executed by the incorporated body, including the use of a common seal if the body chooses to have one (see paragraphs 15-18);

- allow us to amend a certificate either on the application of the trustees or, under certain circumstances, of our own motion (see paragraphs 19-21);
- allow us to dissolve an incorporated body on the application of the trustees or, under certain circumstances, of our own motion (see paragraphs 22-26).

## Advantages of incorporation

4. The main advantages of incorporation are:
  - the property of a charity is vested in the name of the incorporated body. This avoids the need for the execution of deeds transferring land or investments to new names whenever new holding trustees are appointed; and
  - the trustees may enter into contracts and sue and be sued in the name of the incorporated body.

## Does incorporation limit the trustees' liability?

5. No, incorporation of the trustees (unlike incorporation of the charity as a company) does not confer any limited liability on the trustees. They retain the same powers and remain subject to the same restrictions and liabilities as before.

## What types of charity can apply?

6. Trustees of both registered charities and charities which are exempt or excepted from registration with us can apply for a certificate of incorporation. Where an applicant charity is not registered, but we consider that it should be, the charity must be registered before the application can proceed. Further details on registration requirements and procedures can be found in our guidance [Registering as a Charity \(CC21\)](#).
7. When considering whether or not to grant a certificate our main concern will be that it is in the interests of the charity. For example, where the property of a charity consists only of land, the main advantage of trustee incorporation can be achieved more simply by making an Order vesting the land in the Official Custodian.

## How to apply

8. The Commission will only issue certificates in circumstances where:
  - incorporation of the charity is in the best interests of the charity; and
  - the trustees have, in deciding to apply for a certificate, adequately informed themselves of other forms of incorporation (such as the CIO structure) available

Please [Contact us](#) if you wish to apply for a certificate of incorporation.

9. We have to be satisfied that the trustees have been validly appointed (in legal terms) - if we are not, then we may need to ask for more information. Trustees therefore need to make sure that all documentation or information asked for in the pack is sent in with the application. If there are any irregularities in the appointment of the trustees, these will need to be corrected before the certificate can be granted. This can be done by the trustees themselves if they have the necessary powers, or, if not, by a Scheme or Order of the Commission.

## Naming an incorporated body

10. It is a requirement that the name of the incorporated body be stated in the wording of the certificate, and will need to contain either the word “Trustees” or, where appropriate, “Governors”. We strongly recommend that the word “Registered” **not** be used as this may suggest to members of the general public that the charity is registered under the Companies Act. We recommend wording such as:
- “The Trustees of the Charity of John Smith”; or
  - “The Incorporated Trustees of the Charity of John Smith”.

## What happens after incorporation?

### Transferring property to the incorporated body

11. The certificate automatically operates to vest all property of the charity in the incorporated body (other than any property which is vested in the Official Custodian). Any person (such as a holding trustee) who holds any stocks, funds, or securities in trust for the charity must transfer them into the name of the incorporated body.
12. Any land vested in the Official Custodian before the granting of the certificate can remain so. It may, upon request be transferred to the incorporated body, by an Order made by us. Any land not vested in the Official Custodian is automatically transferred to the incorporated body, but please note that for any registered land trustees will need to apply to the Land Registry so that the registered details can be amended.

### Continuing trustees

13. Incorporation of the trustee body does not affect the governing document of the charity. It does not, therefore, change:
- the composition of the trustee body; or
  - provisions in the governing document which relate to the appointment, retirement and removal of trustees.

These should be followed in detail as before.

### Incorporation and the Register of Charities

14. In the case of a registered charity, the certificate of incorporation, along with the application for it and the documentation which supported the application, will be placed on the charity's file. A note that the trustee body has been incorporated will also be made on the [Register of Charities](#) on our website.

### How to execute documents

15. A document may be executed by an incorporated body of trustees:
- by use of the body's common seal, if it chooses to have one (see paragraph 16 below); or
  - by being signed by a majority of the trustees and expressed as being executed by the incorporated body; or
  - by being executed under an authority granted by the trustees (see paragraph 18 below).

16. There is no longer a requirement for an incorporated body of trustees to have a common seal, but it may have one if it wishes. However, trustees need to be aware that this will involve costs. If the trustees want to have a common seal, then they should ensure that:
  - the design of the common seal includes the name of the incorporated body;
  - proper measures have been agreed by them for its safe custody; and
  - regulations have been agreed by them for its use.
17. The arrangements as to the safe custody and use are required to be included in the certificate of incorporation.
18. An authority may, unless the governing document of the charity disallows it, be granted by the trustees to two or more of their number to execute documents in the name of, and on behalf of, the incorporated body. This must be either in writing or by resolution of the trustees. It may be a general authority, or may be limited as the trustees think fit.

## Amendment of the certificate

19. The trustees cannot amend the certificate of incorporation, but we can, either on the application of the incorporated body or of our own motion.
20. If the trustees believe that an amendment is necessary, then they need to send in an application, in writing and signed or sealed, with their reasons for wanting the amendment. If we agree that the amendment is desirable, then we may amend the certificate either:
  - by making an Order; or
  - by issuing a new certificate.
21. We can also amend the certificate of our own motion, but this is rare and is likely to occur only where an amendment to the conditions we have inserted in the certificate is necessary, but the trustees are unwilling to make an application. The amendment would be made in one of the ways described in the previous paragraph.

## Dissolution of an incorporated body

22. We can make an Order under the Charities Act for the dissolution of an incorporated body either:
  - on the application of the trustees; or
  - of our own motion.
23. An application from the trustees for dissolution of an incorporated body needs to be in writing and signed or sealed. It should include a statement by the trustees of the reasons why they consider dissolution to be in the best interests of the charity. We can only make an Order dissolving the incorporated body if we are satisfied that this is the case.
24. We may dissolve an incorporated body of our own motion where:
  - the incorporated body has no assets or does not operate; or

- the charity (or institution treated as a charity) has either ceased to exist or was not a charity at the time of the incorporation of the trustee body; or
  - the purposes of the charity have been achieved as far as is possible, or are, in practice incapable of being achieved.
- 25.** In all cases, the effects of an Order are:
- to dissolve the incorporated body of trustees; and
  - to vest in the trustees of the charity all property previously vested for the charity either in the incorporated body or in any other person (apart from the Official Custodian), unless:
  - there has been a specific direction to the contrary; and
  - the institution is a charity.
- 26.** Where the institution has been dissolved because it has ceased to be, or never was, a charity, we may nevertheless be able to make supplemental Orders under the Charities Act in relation to the vesting of property if these are necessary to carry out the dissolution.

## Changes from the previous version of this guidance

Minor and consequential amendments have been made to keep the text as up to date as possible.

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**Charity Commission**

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Typetalk: **0845 300 0219**

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