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# Charities and charity trustees – an introduction for school governors

## Introduction

SGOSS, the [Department for Education](#) and the Charity Commission have produced this guidance, which briefly explains your responsibilities as a charity trustee and where to find out about being a company director (for academies).

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## 1. Who should read this?

You should read this if you are a governor of:

- a mainstream or special foundation school (including a trust school)
- a voluntary aided or voluntary controlled school
- an academy, including converter and sponsored academies, free schools, university technical colleges, studio schools, alternative provision academies and 16-19 academies that are managed by an academy trust

The bodies that run these schools are state-funded independent charities; their governors are charity trustees. Unlike most charities, they do not have to register with the Charity Commission and are called exempt charities. Academy trusts are also companies limited by guarantee, so their governors are company directors.

The [Department for Education](#) is their principal regulator in England and the [Welsh Government](#) for those in Wales.

## 2. Why are some schools charities?

To be a charity an organisation must have only charitable purposes as defined by the [Charities Act 2011](#) and be for the public benefit. Charities must also be independent and not controlled by another organisation.

Advancing education can be charitable and many independent schools are charities. In addition, the laws that create some types of schools make them charities automatically. These include:

- the governing bodies of foundation, voluntary and foundation special schools
- qualifying academy proprietors (academy trusts with charitable articles of association)

The [School Standards and Framework Act \(SSFA\) 1998](#) prevents the governing body of a community or community special school from being a charity, but a community school that converts to an academy automatically becomes a charity.

For an introduction to charitable status and public benefit please see the Commission's guidance [Charities and public benefit: summary guidance for charity trustees](#).

## 3. What is the charity and who are the trustees?

### Single academies

The academy trust (academy proprietor) is the charity. The academy, free school, university technical college or studio school is the charitable activity of the academy trust. The governors of the academy trust are charity trustees and company directors.

## Groups of academies

Some academy trusts run a number of academy schools. This is called a multi-academy trust

- the academy trust is one single charity
- the directors of the academy trust are the charity trustees and company directors
- each individual school may have its own governors (sitting on a local governing body), but in this arrangement they are not charity trustees; they are sub-committees with delegated authority

Some academy trusts belong to a group which may simply involve working together. It may be a formal arrangement with an umbrella body or 'umbrella trust'

- each academy trust in the group is a charity in its own right
- if the group has an umbrella trust, that too might be a charity
- the governors of each academy trust (and, if applicable, the directors of the umbrella trust) are charity trustees

## Foundation schools

Foundation schools can be established in one of two ways. In either case the governing body (a corporate body created under the SSFA 1998) is a charity and the governors are its charity trustees. The school is the charitable activity of the governing body charity.

- Some foundation schools have a foundation (sometimes called a trust), a separate charity which holds the title to the land and buildings on trust for the provision of the school. The members of the trust are its charity trustees. The two charities work interdependently. The trust also appoints some of the governors – the number will be specified in the school's Instrument of Government.
- Some foundation schools do not have a foundation (or trust). The governors run the school *and* hold the land and buildings; they are the only charity trustees.

## Voluntary schools

Voluntary (aided or controlled) schools usually comprise two charities that work interdependently.

- the governing body, a corporate body created under the SSFA 1998, which runs the school
- the charity usually called the foundation, which holds the land and buildings on trust for the provision of a school and/or for specified religious and educational purposes

Each of these charities has its own charity trustees. The foundation appoints some of the school's governors:

- a majority in the case of voluntary aided schools
- a minority for voluntary controlled schools

The 'school' is the charitable activity of the governing body, not an entity in itself.

#### 4. What difference does charity status make to me as a governor?

It should not mean a lot of extra work. Your duties as a school governor, charity trustee and/or company director are all similar. However, it is important to know about these duties and remember them when you are making decisions. The main difference in practice will be the information that you need to supply to regulators and the public, see accountability and transparency in Q10.

It does mean, however, that you are responsible for an independent charity. Within the limits of the law, and any requirements attached to public funding, the governors are responsible for deciding the school's policies and plans. Charitable status can also bring financial and other benefits to the school.

#### 5. What are my responsibilities as a charity trustee?

As a charity trustee, you have ultimate responsibility for the charity and its property. This means:

- making sure the charity complies with the law and its governing document
- acting responsibly, in the interests of the charity and its beneficiaries
- managing any conflicts of interest
- exercising reasonable care and skill – using relevant personal knowledge or taking professional advice where appropriate

School governors are appointed in different ways and may reflect different perspectives including staff, parents, local authority, and the community. Your duty as a governor and charity trustee is not to represent any body or group that appointed you; your duty is to the charity.

For more information, see the Commission's guide [The Essential Trustee \(CC3\)](#).

#### 6. Where can I find out about company directors' duties?

[Companies House](#), the registrar for companies in England and Wales, publishes some guidance on company directors' duties. [Business Link](#) also produce a guide on company director responsibilities.

#### 7. Do we have to register with the Charity Commission?

Some school charities, including those described in Q1 are defined by the Charities Act 2011 as 'exempt charities' and cannot register with the Commission

The Department for Education is their principal regulator (charity regulator) in England. The Welsh Government is the principal regulator in Wales. Principal regulators work with the Commission to ensure their charities comply with charity law.

For more information on exempt charities and principal regulators, see the Commission's guidance [Exempt Charities \(CC23\)](#).

Any foundation (trust) or foundation body established under the SSFA 1998 is also an exempt charity (with DfE or the Welsh Government as principal regulator). Other types of foundation charity linked to foundation and voluntary schools are 'excepted' from registration. This means they don't have to register, but the Commission still regulates them.

If your school is any other type of charity (including an umbrella trust), then it probably must [register with the Commission](#).

Even if your charity is exempt or excepted, the Commission can still provide information and guidance on a range of subjects. Sometimes charities need permission to do certain things, and the Commission is normally responsible for giving that permission. For further information see the Commission's guidance [How we regulate charities](#).

## 8. What does a principal regulator do?

A principal regulator is responsible for promoting compliance with charity law by a group of exempt charities. Principal regulators already regulate a particular group of charities, so becoming charity regulator fits in well with their existing role. The Department for Education is the principal regulator for the exempt charity schools described in Q1 in England, the Welsh Government is principal regulator in Wales.

Principal regulators can provide information about charity law requirements, and use their existing monitoring arrangements to check whether charities are complying with charity law. They have no additional powers but can involve the Charity Commission if they have concerns about the way a charity they supervise is operating.

## 9. What is in our Governing Document?

A charity's governing document is the legal document that sets out its purposes (sometimes called aims or objects) and, usually, how it is run. Charity trustees need to know what their governing document says – you should have a copy, including any alterations to it.

A governing document should contain important provisions such as:

- purposes (aims or objects) – what the charity exists to do
- powers – things the charity can do to further its objects
- charity trustees/governors – the people responsible for governing the charity; who they are and how they are appointed
- administrative provisions – how to organise meetings etc
- amendment – how to change the governing document, and any restrictions on doing so
- dissolution – what must happen when the charity closes

For school charities constituted under particular education acts, some of these provisions may be in the law itself. They may or may not be repeated in the governing document. In particular, there may be strict controls on changing the governing document or closing the charity.

If your charity is the governing body of a foundation or voluntary school, its governing document is an instrument of government. Model instruments of government are published in statutory guidance on DfE's website.

If your charity is an academy trust, its governing document is its articles of association. DfE has produced model articles for academies.

## 10. What else should we think about?

There isn't space here to cover everything, but you might need to think, or find out, about:

- **Governor induction, including charity law** – what information do new governors get? What do they find out about the school, who is who, the business of running the school, their legal responsibilities? At the very least new governors should have a copy of the governing document, the latest accounts and any current financial plan. Pairing up a new governor with a more experienced governor who can act as an informal mentor can also help. Further information can be found in our guidance [Finding new trustees: what charities need to know \(CC30\)](#)
- **Conflicts of interest and trustee benefits** – charity trustees can only benefit from their charity eg salary, payment for services, exemption from fees if it is expressly allowed by the governing document or the law, or authorised by the Charity Commission. (Some types of schools are allowed to have staff governors.) Charity trustees and company directors cannot usually discuss or vote on any matter where they have a [conflict of interests](#).
- **Finance, accounts and financial controls** – you are responsible for the school's assets, so you need to know enough about the finances and accounts to be confident that everything is ok. Financial controls ensure funds are used properly and reduce the risk of fraud or theft – are yours good enough? School charities often have other funds such as:
  - voluntary donations and gifts
  - funds for specific activities (such as nurseries)
  - special funds such as bursaries, endowments or prize funds
  - income from trading eg tuck shops, uniform sales

Additional information can be found in the Commission's guidance [Managing charity assets and resources: an overview for trustees \(CC25\)](#).

- **Managing risk** – ignoring or running from risk are not the best ways of dealing with it. The Commission's guidance on [Managing Risk](#) explains how to identify and manage risks.
- **Charity land** – the land and buildings used by your school may be owned by a separate charity or foundation with a separate body of charity trustees. This will affect what you can do on or with the land.
- **Accountability and transparency** – there is some information that you must provide by law. Academy trusts must publish their accounts, governing documents, funding agreements and the names of the governors on their website.

By publishing information about your charity: who runs it, what it does, and its accounts, you can encourage people who are interested in it (pupils, parents, staff, funders, supporters, your community) to have confidence in it. Think about the kinds of information that other charities provide – this is what the public now expect to see:

- [register of charities](#)
- [Charity information for Higher Education charities](#)
- [Transparency and accountability \(RS8\)](#)

## 11. Where can we get advice, help, information or permission?

The [Department for Education](#) is responsible for education and children's services. It runs the academies and free schools programme. It is the principal regulator for academies, foundation and voluntary schools and has a range of information on education and running schools.

The [Welsh Government](#) is principal regulator for foundation and voluntary schools in Wales.

The [Charity Commission](#) is the independent regulator and registrar for charities in England and Wales. There is a range of information and guidance on its website for all charities, including exempt charities. The Commission can authorise certain actions under charity law if a charity does not have the necessary power. The Commission must consult an exempt charity's principal regulator before using its powers.

[SGOSS](#) is a national charity that recruits volunteers with transferable skills to become school governors and provide a range of resources and publications for school governors.

The [National Governors' Association \(NGA\)](#) represents school governors from all state funded schools, including those from academies and local authority maintained schools in England.

[Good Governance: a code for the voluntary and community sector](#) provide information on principles of good governance (governing well) for charities.