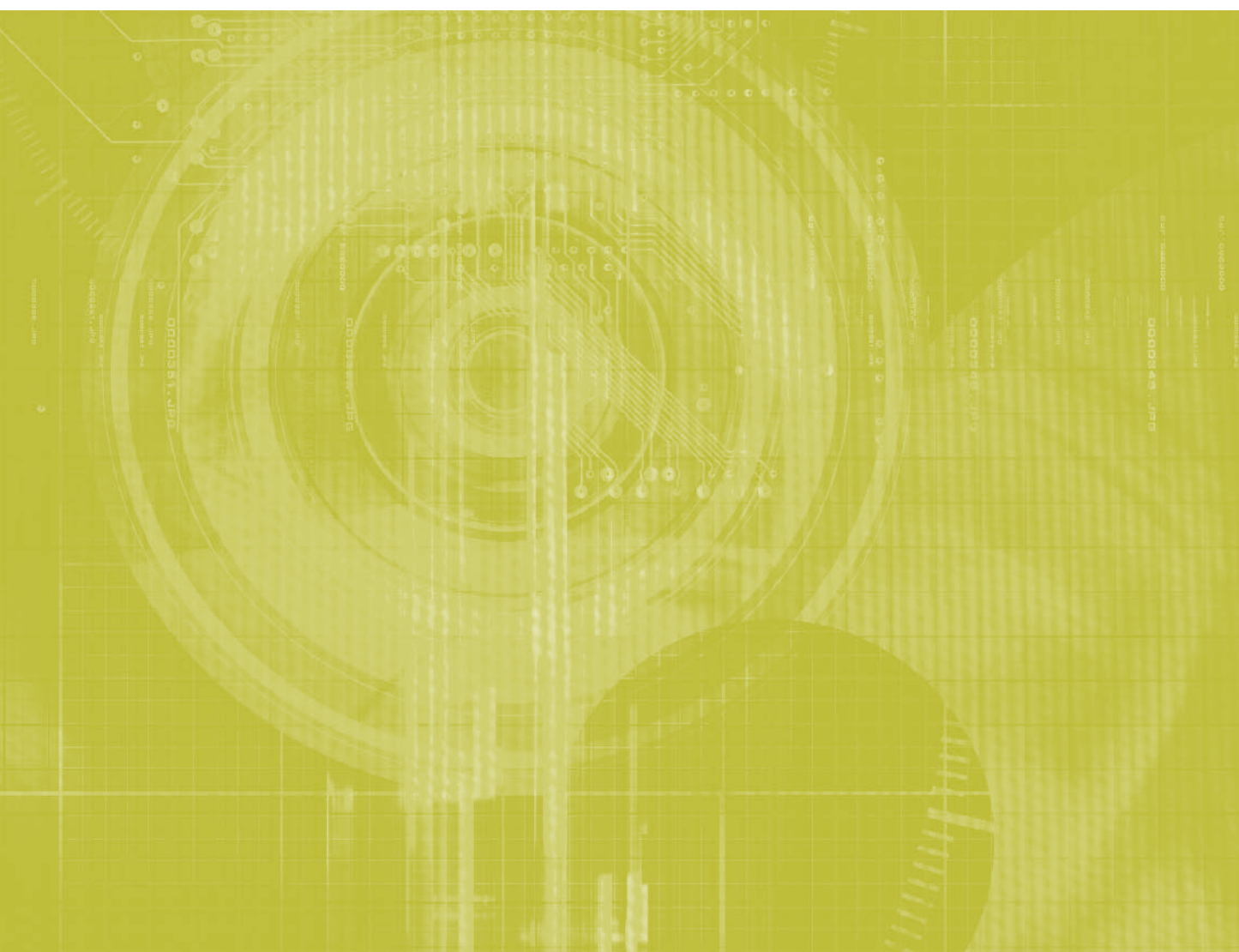




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Charities and charity trustees – an introduction for school governors in Wales



Guidance

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Charities and charity trustees – an introduction for school governors in Wales

Audience	School governors in Wales.
Overview	The purpose of this guidance is to ensure that governors are aware of their duties and obligations.
Action required	The aim of the guidance document is to ensure that school governors are aware of their duties in relation to compliance with the law; that they act and make decisions responsibly in the interest of the charity and its beneficiaries; that they carry out effective financial management and financial controls, that they understand risk management, accountability and transparency.
Further information	Enquiries about this document should be directed to: Edwina Meggy Capital Funding Branch Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ Tel: 029 2082 6063 Fax: 029 2082 6109 e-mail: 21stcenturyschools@wales.gsi.gov.uk
Additional copies	This document can be accessed from the Welsh Government's website at http://21stcenturyschools.org/?skip=1&lang=en

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Introduction: who should read this?

You should read this if you are a governor of:

- (a) a foundation school (including a trust school),
- (b) a voluntary aided or voluntary controlled school,

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. They are called exempt charities. The Welsh Government is their Principal Regulator (charity regulator) in Wales.

The Welsh Government and the Charity Commission have jointly produced this guidance. It briefly explains:

- your responsibilities as a charity trustee
- what exempt charity status means
- what a principal regulator is

Why are some schools charities?

To be a charity, an organisation must have only charitable purposes. Charitable purposes are defined in the Charities Act 2011 and must be for the public benefit. Charities must also be independent, not controlled by another organisation.

Advancing education can be a charitable purpose in accordance with the Charities Act provided it is for the public benefit. Many independent schools are charities. In addition, the laws that create some types of schools make them charities automatically. The School Standards and Framework Act 1998 (SSFA) defines the governing bodies of foundation, voluntary and foundation special schools as charities. (The governing body of a community or community special school cannot be a charity.)

For an introduction to charitable status and public benefit see:

www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/pbsummary.aspx

What is the charity and who are the trustees?

Foundation schools

Foundation schools can be established in one of two ways, as explained below. In either case the governing body (a corporate body created under the SSFA) is a charity and the governors are its charity trustees. The advancement of education through 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:

1. the governing body, a corporate body created under the SSFA, which runs the school;
2. 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 method of advancing education as the charitable activity of the governing body, but the school is not an entity in itself.

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 and charity trustee are similar, but it is important to know about these duties and remember them when you are making decisions, and the management of any risk to the charity is the responsibility of the trustees. The main difference in practice will be the information that you need to supply to regulators and the public (see the section on accountability and transparency in Q8).

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.

For further guidance on making decisions as a charity trustee:

<http://www.charitycommission.gov.uk/trustees-staff-and-volunteers/trustee-board/making-decisions/>

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

- dealing with any conflicts of interest - preventing conflicts from affecting decision making
- 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 Charity Commission’s guide [The Essential Trustee](#) (CC3).

Do we have to register with the Charity Commission?

Some school charities, including the governing bodies of foundation, foundation special and voluntary schools and foundation bodies are defined by the Charities Act as ‘exempt charities’ and cannot register with the Commission

The Welsh Ministers have been appointed as the Principal Regulator for these exempt charities in Wales. The Welsh Ministers are also the Principal Regulator of any exempt charity which is administered by or on behalf of one of these educational institutions and is established for the general purpose of, or for any special purpose of or in connection with, that institution. 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: www.charitycommission.gov.uk/Publications/cc23.aspx.

Any foundation (trust) or foundation body established under the SSFA is also an exempt charity (with 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, then it probably must register with the Commission. www.charitycommission.gov.uk/Start_up_a_charity/default.aspx.

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 *How we regulate charities* (http://www.charitycommission.gov.uk/About_us/Regulation/default.aspx)

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 Welsh Ministers are the Principal Regulator for exempt charity schools 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.

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. Local authorities in Wales will have model Instruments of Government for schools if required.

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.
- **Conflicts of interest and trustee benefits** – charity trustees can only benefit from their charity (e.g. 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 cannot usually discuss or vote on any matter

where they have a conflict of interests. [Conflicts of interest: a guide for charity trustees \(CC29\)](#)

- **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 e.g. tuck shops, uniform sales

You can find a range of guidance on these topics here:
www.charitycommission.gov.uk/Publications/cc25.aspx

- **Managing risk** – ignoring or running from risk are not the best ways of dealing with it. There is some helpful guidance on how to identify and manage risks here – <http://www.charitycommission.gov.uk/running-a-charity/your-charity-work/protecting-your-charity/risks-and-how-to-manage-them/>
- **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. For example, you must provide a copy of your accounts to anyone who asks in writing. (You can charge to cover costs.)

Most schools now have their own websites. 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 from all charities:

- The register of charities:
www.charitycommission.gov.uk/showcharity/registerofcharities/registerhomepage.aspx?&=&
- Charity information for Higher Education charities:
www.hefce.ac.uk/whatwedo/reg/charityreg/highereducationinstitutionsascharities/charityinformationbyinstitution/

More information on accountability and transparency:
<https://apps.charitycommission.gov.uk/Publications/rs8.aspx>

Where can we get advice, help, information or permission?

The Welsh Ministers are the Principal Regulator for foundation and voluntary schools in Wales. For further information see
<http://wales.gov.uk/topics/educationandskills/?lang=en>

The Charity Commission (www.charitycommission.gov.uk/) 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.

Governors Wales is an organisation funded by the Welsh Government to represent the interests of governors of maintained schools in Wales, and provides a range of support services, including a confidential helpline. For further details of Governors Wales activities see the link below:

<https://www.google.co.uk/#q=governors+wales>

For more information on principles of good governance (governing well) for charities, see <http://www.goodgovernancecode.org.uk/>

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