

## **MEMBER SERVICES**

### ***Advice Note 1: Charitable Status***

Many community groups are charitable in law because of their objects and activities. Formal recognition of a group's charitable status is given by Her Majesty's Revenue and Customs (HMRC).

#### **ADVANTAGES AND DISADVANTAGES OF CHARITABLE STATUS**

Some of the benefits of charitable status include the following:

- (1) Exemption from the payment of tax on most income and gains provided they are applicable and applied for charitable purposes only (income does not include grants, members' subscriptions or donations).
- (2) The right to apply for relief from the payment of rates on your premises.
- (3) Charitable groups will be eligible to apply to grant-making charitable trusts. Most charitable trusts will give grants only to groups formally recognised as charities.
- (4) Charitable groups will be eligible to receive gifts made under the Give As You Earn, Cheques for Charity and Gift Aid schemes and, provided this income is applicable and applied to charitable purposes only, the income tax already paid may be recovered.
- (5) Some companies will give discount to charities for goods or services.
- (6) BBC and UTV will allow only recognised charities to make charitable appeals on radio and television.

NICVA retains the copyright to the material in this document. Short extracts may be published provided NICVA is credited and the title of the Advice Note is given. Permission for longer quotations should be sought from the Communications Officer at NICVA.

Every effort is made to ensure that the contents of this document are accurate, but the advice given should not be relied on as a definitive legal statement.

Some of the disadvantages of charitable status include the following:

- (1) Charities must confine their objects and activities to those which are charitable in law.
- (2) Charities cannot carry on permanent trading activities unless the trade is exercised in the course of carrying out a primary purpose of the charity, or the work in connection with the trade is mainly carried out by the beneficiaries of the charity.
- (3) Charities cannot have political objects, although a charity can properly seek to influence opinion on particular issues which are directly relevant to its objects and experience.
- (4) Charity trustees cannot be paid for their services.

If your group is interested in being recognised as a charity, this leaflet will explain exactly what you do.

## **HOW TO OBTAIN FORMAL RECOGNITION OF CHARITABLE STATUS**

### **Step One**

HMRC will decide (by reference to the appropriate legislation) whether your group is a charity for tax purposes. To make its decision, the Revenue needs:

- A copy of your constitution.
- A summary describing the activities of your group.

If your group has not got a constitution, the Charity Advice Officer at NICVA may be able to help you get a suitable constitution. If you have a constitution already, it may be beneficial to send it to NICVA first, so we can advise you if it is in a form which is acceptable to HMRC.

### **Step Two**

HMRC bases its decisions on Charity Law. The Law says that only the following purposes are charitable, provided they are carried out for the public benefit:

- (1) The advancement of education.
- (2) The advancement of religion.
- (3) The relief of poverty.
- (4) Other purposes beneficial to the community.

This last phrase does not, however, mean **all** other purposes beneficial to the community, as some activities, which undoubtedly benefit the community, are not charitable. Below are some examples of activities which are charitable in Law under heading (4):

- (a) The protection and preservation of health (including the relief of aged and disabled persons); the protection of the natural environment.

- (b) The provision of facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare, ie the facilities are provided with the object of improving the conditions of life for the persons for whom they are intended, **and** either:
- (i) those people have need of such facilities by reason of their youth, age, infirmity or disablement, poverty or social or economic circumstances *or*
  - (ii) the facilities are to be available to the public or female members of the public at large
- (c) ‘The relief of unemployment for the public benefit in such ways as may be thought fit, including assistance to find employment’ is now considered a legally charitable object for the first time since the *Charity Commission Review of the Register* project in 1999 examined the case for such an object to be considered charitable.
- (d) Also as an outcome of the *Review of the Register* project, the following objects may be considered charitable in law – the ‘promotion of urban and/or rural regeneration in areas of social and economic deprivation (and in particular [specify an area \_\_\_\_\_]) by the following means’:
- The relief of poverty.
  - The relief of unemployment.
  - The advancement of education, training or retraining particularly among unemployed people, and providing unemployed people with work experience.
  - The provision of financial assistance or business advice or consultancy in order to provide training and employment opportunities for unemployed people in cases of financial or other charitable need through help (i) in setting up their own businesses, or (ii) to existing businesses.
  - The creation of training and employment opportunities by the provision of workspace, buildings, and/or land for use on favourable terms.
  - The provision of housing for those who are in conditions of need and the improvement of housing in the public sector or in charitable ownership provided that such power shall not extend to relieving any local authorities or other bodies of a statutory duty to provide housing.
  - The maintenance, improvement or provision of public amenities.
  - The preservation of buildings or sites of historic or architectural importance.
  - The provision of recreational facilities for the public at large or those who by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances, have need of such facilities.
  - The protection or conservation of the environment.
  - The provision of public health facilities and childcare.
  - The promotion of public safety and the prevention of crime.
  - Such other means as may from time to time be determined by the Charity Commissioners of England and Wales.

The interpretation of Charity Law changed in 1999 to recognise for the first time ‘the promotion of urban and rural regeneration’ as a charitable purpose in certain circumstances. When decisions are being made (by HMRC) about individual Northern Ireland groups having such objects, the Revenue will require detailed

information about the proposed activities of the applicant group. In particular, the group will have to show that the area it is operating in is deprived, that the public will benefit from the group's work, and any benefit to individuals is incidental to the public benefit of the project which must be the top priority.

### **Non-Charitable Purposes**

The following objects, which undoubtedly benefit the community, are not charitable in law:

- (1) Promotion of peace or reconciliation between different communities or nations.
- (2) Campaigning for house repairs.
- (3) Benefiting individuals (charities must exist to benefit the public).
- (4) Political objects such as pressurising government or civil servants to change laws, policy or administrative decisions.

So, if your group wishes to pursue the activities in (a), (b), (c) or (d) it will **not** get charitable status. If its activities are a mixture of charitable and non-charitable activities, it will **not** get charitable status, since the Law says that a charity must have exclusively charitable purposes.

The governing document of a charity should set out good charitable objects, ie those which comply with the headings (1)-(4) set out on page 2. In addition, the charity must limit its activities to furthering those charitable objects and must not undertake any activities which are not allowed, such as unlawful campaigning or carrying on a permanent trade.

When a group is considering whether it is eligible to become a charity, it must consider both the objects in its constitution and the activities which it undertakes to carry out those objects.

### **Networks and Charitable Status**

Networks have had difficulty securing charitable status because often their work is indirect (eg influencing policy decisions). Networks have to show HMRC that either:

The Network is directly pursuing charitable objects

or

The Network has a primary charitable object such as advancing education

If you are not sure whether your group is likely to be considered charitable by HMRC, contact NICVA for advice.

### **Step Three**

When you send your group's draft constitution to HMRC, you must also send a summary describing your group's practical work or activities. This need only be a short description of the sort of thing your group has done in the past or intends to do in the future. One page will usually be sufficient. The purpose of the summary is to describe your group to HMRC and to reassure it that your group is carrying out only charitable activities.

If HMRC thinks that either your group's objects or its activities are non-charitable, it will say that you are not eligible to become a charity. If it thinks that some of the group's objects and activities are charitable, but not all, again it will say that you are not eligible to become a charity.

If you are not sure whether the summary of your group's activities describes charitable activities, ask NICVA for advice before you contact HMRC.

#### **Step Four**

This is the address to which you should send your constitution and summary of your group's activities:

HM Revenue and Customs  
FICO (Charity Title)  
St John's House  
Merton Road  
Bootle  
Merseyside L69 9BB

#### **Step Five**

If HMRC accepts that your constitution is a charitable one and that your group is capable of being recognised as a charity, it will inform you by letter giving you your HMRC reference number. At this stage, you should get the group together and formally adopt the constitution approved by HMRC. Keep a record or minute of this meeting. Once your group has adopted the constitution approved by HMRC, it is entitled to regard itself as a charity.

#### **Step Six**

HMRC may reply to you saying that your group is capable of becoming a charity, provided you alter your constitution in the way it suggests. If it does this and you are happy with the changes it suggests, rewrite your constitution to include the changes. Then get your group together and formally adopt the changed constitution. Keep a minute or record of the meeting adopting the new constitution.

#### **Step Seven**

The next step is taken once your group has formally adopted the constitution draft which has been approved by HMRC. At that point you should send the following documents to HMRC in Bootle:

- A copy of the formally adopted constitution.
- A copy of the record or minute of the meeting (a Special or Annual Meeting of the members of your group – not just the committee itself) at which you adopted the constitution. The adoption details can be written in the form of a simple statement at the very beginning of the constitution.

Send the documents to HMRC at the above address, quoting your HMRC reference number. On receipt of these documents, HMRC will hopefully confirm that your group is a charity and may benefit from the tax exemptions that charities are entitled to, eg exemption from paying Income Tax and Capital Gains Tax. If all your documents are in order, the Revenue will formally confirm the charitable status of your group.

The letter from HMRC confirming the tax exemption of your charity's income should be kept in a safe place as you may need it in the future if the charitable status of your group is queried.

Thereafter, copies of your annual accounts should be available for inspection by HMRC FICO (Charity Title) as and when requested.

**FOR FURTHER INFORMATION, PLEASE CONTACT:**

NICVA Member Services  
61 Duncairn Gardens  
Belfast BT15 2GB

Tel: 028 9087 7777  
Fax: 028 9087 7799  
Email: [charityadviceofficer@nicva.org](mailto:charityadviceofficer@nicva.org)  
Website: [www.nicva.org](http://www.nicva.org)

**FURTHER SOURCES OF INFORMATION**

*So you want to be a charity*, NICVA 2002, price £5

*Charity Law in NI*, O'Halloran and Cormacain, published by Round Hall Sweet and Maxwell, 2001

*Charity Law Matters*, Cormacain, O'Halloran, Williamson, published by the Centre for Voluntary Action Studies, University of Ulster, 2001