



Becoming a Charity in Scotland

**This guide is for anyone who is considering applying
to become a charity in Scotland**

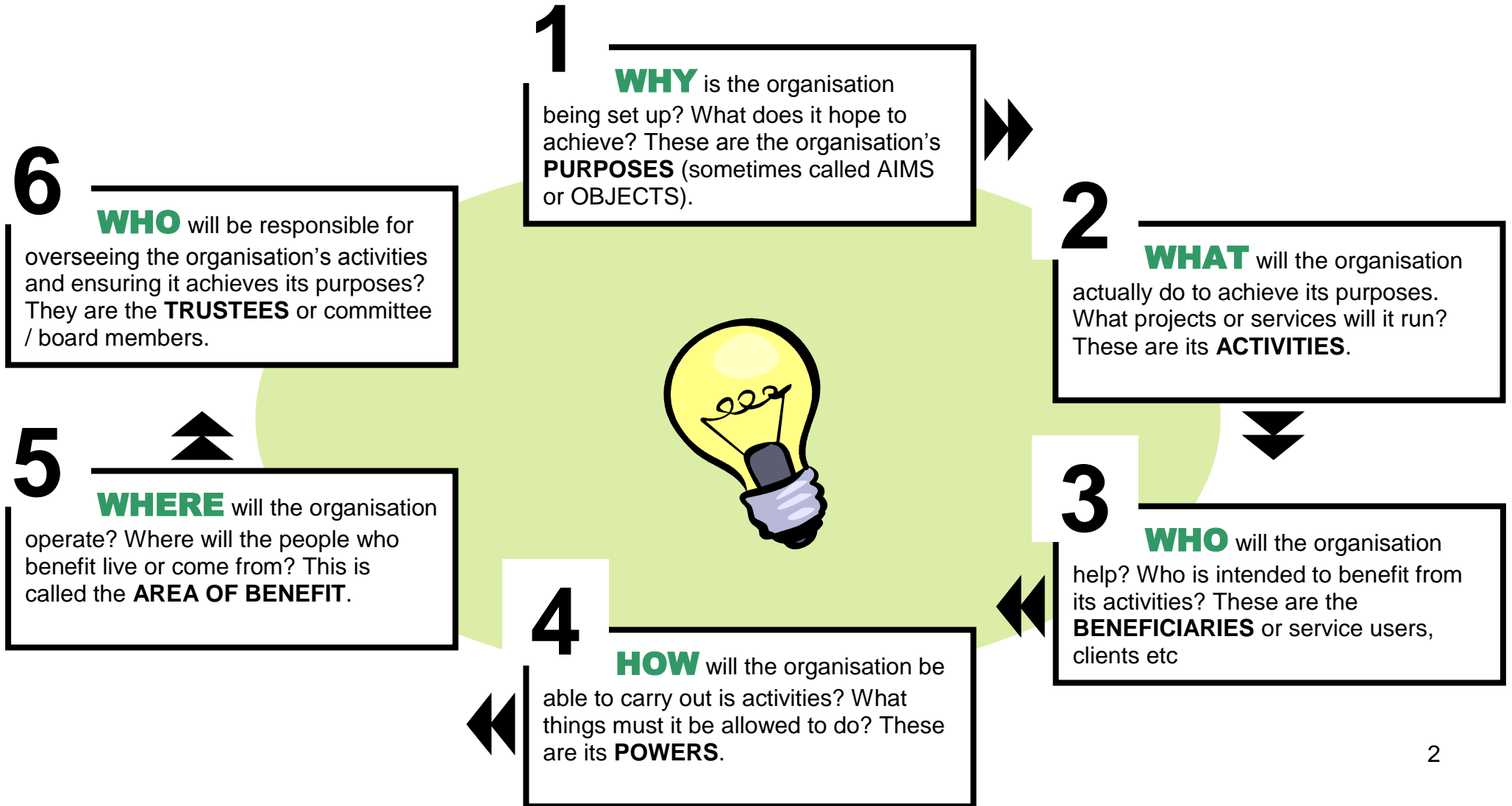
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Have you thought about these?

More details are given on the following pages.



Purposes, activities and powers: the difference at a glance

PURPOSES

The **purposes** of a charity are the reasons **why** it exists (sometimes called its aims, or objects) as apposed to what it does.

In order to meet the **charity test** and be suitable for registration by OSCR as a charity an organisation must have **entirely charitable purposes**.

Section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 defines 15 broad charitable purposes. A charity's purposes must fall entirely within one or more of these 15.

The purposes must be set out in the organisation's constitution (trust deed, memorandum of association). OSCR pays particular attention to this clause when deciding whether an organisation can be registered as a charity.

Although a charity may, with the consent of OSCR, change its purposes, they should provide permanence, continuity and long-term strategic direction to the organisation.

ACTIVITIES

The **activities** of a charity are the things it actually does in order directly to achieve its purposes. For example, a charity formed for the *purpose* of promoting animal welfare may, among its *activities*, run a sanctuary for injured animals.

When considering an application for charity registration OSCR will look at the proposed activities to make sure they are consistent with the purpose(s) in the governing document and to assess whether they provide **public benefit**.

There is space on the application form to describe activities and applicants are encouraged to send other supporting material to assist OSCR to gain a better understanding of what the organisation does.

Unlike a charity's purposes it is not necessary to describe activities in detail in the constitution. In fact it is advisable not to because they may change from time to time and it would be inconvenient to have to amend the constitution each time.

POWERS

The **powers** of a charity are the things it must be able to do in order to carry out its activities. They differ from activities in that they do not provide direct public benefit.

For example, nearly all charities need funds in order to run their activities. Powers to raise, invest and spend funds by are therefore very important. Fund raising is not in itself a direct charitable activity but a means to an end.

Some constitutions provide long lists of explicitly stated or **express powers** that the charity and its trustees may exercise. Examples are given on later pages. Additionally there may be **implied powers** that can be reasonably inferred from what is written without needing to say so. For example an explicit power to employ staff may contain an implied power to pay them!

At the very least a charity's constitution should contain a general powers clause allowing it to exercise any lawful power provided it furthers the charity's purposes.

What are Charitable purposes?

Section 7(2) of the Charities and Trustee Investment (Scotland) Act defines 15 + 1 purposes that are recognised as charitable in law. Here they are at a glance. You can find more details about each of them in OSCR's guidance *'Meeting the Charity Test'*.

- a. the prevention or relief of poverty**
- b. the advancement of education**
- c. the advancement of religion**
- d. the advancement of health (including the prevention or relief of sickness, disease or human suffering)**
- e. the saving of lives**
- f. the advancement of citizenship or community development (including rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities)**
- g. the advancement of the arts, heritage, culture or science**
- h. the advancement of public participation in sport (which involves physical skill and exertion)**
- i. the provision of recreational facilities or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended**
- j. the advancement of human rights, conflict resolution or reconciliation**
- k. the promotion of religious or racial harmony**
- l. the promotion of equality and diversity**
- m. the advancement of environmental protection and improvement**
- n. the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage (including relief given by the provision of accommodation or care)**
- o. the advancement of animal welfare**

- p. any other purpose that may reasonably be regarded as analogous to any of the preceding purposes

Writing a ‘purposes’ clause in a charity constitution

The purposes clause is one of the principal parts of a constitution OSCR will look at when deciding whether an organisation can be registered as a charity.

1

What will the charity do? Summarise the activities or projects it intends to run.

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2

Why is it doing these things? What does it aim to achieve?

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4

Now write this as a ‘purposes’ clause for the constitution.

The purpose(s) of the charity is / are

TO.....

..... [the purpose(s)]

.....

.....

BY

.....[a summary of the main activities]

.....

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.....

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.....



3

Which of the charitable purposes does this best relate to A-O? (it may be more than one)

.....

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.....



Have you got the power?

To carry out its activities effectively a charity may need additional powers to acquire, manage and use the charity's property for things other than direct charitable activities. These may be stated explicitly in the constitution. Here is a checklist of some examples that can be included:

	YES	NO		YES	NO
to raise funds?	<input type="checkbox"/>	<input type="checkbox"/>	to pay professional or technical advisors?	<input type="checkbox"/>	<input type="checkbox"/>
to charge fees for goods or services?.....	<input type="checkbox"/>	<input type="checkbox"/>	to set up other charities?	<input type="checkbox"/>	<input type="checkbox"/>
to enter into contracts?.....	<input type="checkbox"/>	<input type="checkbox"/>	to affiliate to or become a member of other charities?	<input type="checkbox"/>	<input type="checkbox"/>
to open and operate bank accounts?.....	<input type="checkbox"/>	<input type="checkbox"/>	to amalgamate, merge with or take over other charities	<input type="checkbox"/>	<input type="checkbox"/>
to borrow and raise money on loan?.....	<input type="checkbox"/>	<input type="checkbox"/>	to cooperate or work in partnership with public sector bodies?	<input type="checkbox"/>	<input type="checkbox"/>
to invest surplus funds?.....	<input type="checkbox"/>	<input type="checkbox"/>	to commission, carry out and publish research? ..	<input type="checkbox"/>	<input type="checkbox"/>
to buy, lease or hire land and buildings?....	<input type="checkbox"/>	<input type="checkbox"/>	to register patents, claim copyrights etc?	<input type="checkbox"/>	<input type="checkbox"/>
to buy or acquire other property?.....	<input type="checkbox"/>	<input type="checkbox"/>	to stage events such as exhibitions, conferences, lectures etc	<input type="checkbox"/>	<input type="checkbox"/>
to sell, exchange, transfer and dispose of property?.....	<input type="checkbox"/>	<input type="checkbox"/>	to obtain and pay for licences, permits etc?	<input type="checkbox"/>	<input type="checkbox"/>
to equip, maintain, alter or improve property?	<input type="checkbox"/>	<input type="checkbox"/>	to store and manage personal data?	<input type="checkbox"/>	<input type="checkbox"/>
to take out insurances?.....	<input type="checkbox"/>	<input type="checkbox"/>	to register with professional or regulatory bodies, quality marks etc?	<input type="checkbox"/>	<input type="checkbox"/>
to employ and pay staff?.....	<input type="checkbox"/>	<input type="checkbox"/>	to amend the constitution?	<input type="checkbox"/>	<input type="checkbox"/>

Choosing a legal form: the options at a glance

CHARITABLE TRUST

The simplest and oldest form of charity. 20% of all Scottish charities are trusts.

Governing document: Trust deed

Features: No membership, just a body of trustees which is usually quite small and self-appointing, although it is possible to build external appointment rights into a deed. Most commonly used for managing a trust fund which disburses grants to individuals or other charities or for providing custodianship of property, rather than providing direct services.

Advantages: Easy to set up and cheap to run. No membership to service so low overheads. Continuity of trustees is easy to ensure.

Disadvantages: No membership to appoint trustees or hold them to account, so less democratic and no sense of community ownership. Trusts are unincorporated so trustees potentially have unlimited personal liability for debts and no corporate identity for property ownership, contracts etc

UNINCORPORATED ASSOCIATION

The commonest type of Scottish charity, about 54% of all on the register.

Governing document: Constitution

Features: Very flexible form but usually has one or more classes of membership and a committee (the trustees) elected by, accountable to and usually at least partially drawn from the membership. Very common for community-based charities where local participation and ownership is a priority.

Advantages: Very easy to set up and dissolve. Flexible form suits informally run organisations. privacy of members is maintained. Democratic, inclusive.

Disadvantages: The law governing associations is undeveloped and can be vague. Disputes about rights and procedures can be difficult to resolve. Democracy can lead to high turnover of inexperienced trustees or domination by factions. Lack of corporate identity can cause problems for property ownership, contracts etc. Members potentially have unlimited personal liabilities.

COMPANY LIMITED BY GUARANTEE

About 20% of Scottish charities.

Governing document: Memorandum and Articles of Association

Features: Registered with OSCR and Companies House and subject to a dual regulatory regime. Wide variations possible on a basic two-tier theme; membership (the company's owners) and directors (the trustees).

Advantages: Very safe structure and highly regulated, lending credibility with funders etc. Members have clearly defined rights and obligations and their relationship with the directors is clearly defined. Corporate personality allows the company itself to own property, enter into contracts etc. Members personal liability limited.

Disadvantages: Inflexible procedures determined by complex company law. Expensive to set up and higher running costs. Complicated to dissolve. Loss of privacy as registers of both members and directors are in the public domain.

SCOTTISH CHARITABLE INCORPORATED ORGANISATION (SCIO)

About 10% of Scottish charities are SCIO's

Governing document: Single tier or two tier constitution

Features: Directly regulated through OSCR. Two variations either single tier or two tier. Separate legal personality

Advantages: Limited liability for members and trustees, protects against charity trustee personal liability. Single regulatory requirement through OSCR. Can receive donations and gift aid. Greater access to funding streams. Charity tax relief. Accounting procedures less onerous for smaller charities. Less administration (i.e. no need to notify about appointments /resignation of Board)

Disadvantages: When SCIO winds up it ceases to exist entirely. Not quick to establish (typically 2-3 months). Must keep register of Members as well as Trustees – could be onerous if large membership. Existence dependent entirely on charitable status, cannot convert to another legal form. As with any charitable form, restrictions in activity and trading, must be purely not for profit

Completing an application form for charitable status

When completing an application to OSCR for charity registration use this checklist to prevent commonly encountered errors.

ALL

Make sure you write something in answer to each question, even if it is not applicable, otherwise OSCR may think you have overlooked it. (For example, NOT APPLICABLE)

NAME

Make sure you enter the full legal name of the charity exactly as it appears on the governing document. If it is also known by an abbreviation, shortened form or other name, write this in the box below.

CONTACT

It is vitally important that OSCR is able to maintain contact with the charity at all times. Include full details here of the person best able to ensure this connection.

PURPOSES

Enter the purposes (objects or aims) exactly as they are stated in the charity's governing document. Tick the box or boxes that best fit the stated purposes.

ACTIVITIES

Use this space to describe what the charity does or plans to do to achieve its purposes. Do not list the powers from the governing document. Information about activities is more likely to be found in business plans, funding applications or publicity material. If you have it send other supporting material to describe the activities more fully.

CONDITIONS

*Do not leave **question** blank. If there are no conditions attached to benefit say so. Give details of any fees charged to service users or any conditions of eligibility (such as age, gender, residency, race etc).*

SIGN AND DATE

Make sure the form is signed and dated. The signatory should be one of the people who has completed an accompanying trustee declaration form.

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