



The Arts Society

(The Arts Society is the operating name of The National Association of Decorative and Fine Arts Societies)

Guidance for Societies considering registration as a Charity

A: Background

Guidance on this matter was last issued in 2003 along with information on Gift Aid. Since then there have been very few changes that would have a practical impact for a Society considering registration.

However, new legislation has come into force and some changes have been made by the regulator. This is an update to the earlier guidance and is at a level of detail suitable to assist with basic considerations but does not represent detailed legal advice.

B: Regulatory Framework

The regulator for England and Wales is the Charity Commission (www.charity-commission.gov.uk) and in Scotland, The Office of the Scottish Charity Regulator (www.oscr.org.uk). There are some 80 Societies registered as a charity and The Arts Society is itself registered with both regulators.

C: Why register?

Whilst The Arts Society itself is a registered charity, there is no requirement for a member Society to register as a charity – this is a decision for each individual Society to take, and Societies should carefully consider the arguments for and against registration before taking this significant legal step. The entire committee should be involved in the decision and with due consideration of their membership as a whole.

In recent years the most usually discussed incentive for registration has been the facility for registered societies to claim Gift Aid on the entire membership subscription for each of their participating members rather than the society participating in The Arts Society Gift Aid scheme.

Under this scheme The Arts Society claims Gift Aid on the affiliation fee only and then pays an administrative charge of £1.00 per head per annum to the Society. The net benefit from Gift Aid claimed through The Arts Society is then being used by the Patricia Fay Memorial Fund for grants.

Small societies with a turnover of less than £5,000 cannot register with the Charities Commission. However, HM Revenue and Customs will accept registrations for Gift Aid from such Societies, but see D 7 below.

Since December 2012, it has been foible to register with the Charities Commission as a 'Charitable Incorporated Organisation' (CIO). This is an incorporated form of charity which is not a company, but its Trustees will normally have limited or no liability for the debts of the organisation. A CIO only has to register with the Charities Commission, not Companies House, and is created once it is registered with the Charities Commission. The CIO has been created in responses to requests from charities for a new structure which provides some of the benefits of being a company, but without some of the burdens of traditional incorporation.

Previously, to obtain limited liability status, charities were required to register as companies limited by guarantee, of which The Arts Society is an example.

D: Advantages and Disadvantages of registration

These may not be exhaustive but represent comments and information gathered from research and received from various member Societies.

a) Advantages

1. Gift Aid

Potential at present to claim Gift Aid (currently at a rate of 25p per £1) on the entire membership subscription of eligible members who complete an appropriate declaration.

2. Income/Corporation Tax exemptions

Charities do not normally have to pay Income or Corporation tax. With investment income in particular, non-registered Societies are technically liable for Corporation Tax on investment income exceeding £500 per annum. It is thought unlikely that many Societies will have this level of income.

3. VAT concessions

Some VAT relief on purchases may be possible but in practice restricted to a) certain advertising costs and b) certain hire of educational venues from other educational bodies.

4. Profile raising

There may be a benefit from enhanced standing in the community and this might extend to obtaining funds or awards etc.

5. Advice from the Charity Commission

The Charity Commission indicate this as being a benefit. Some Societies have welcomed the involvement of a regulator due to their size and complexity.

Disadvantages

1. Administration involved to register

The Charity Commission will guide a committee through the process and they are usually very helpful and supportive. Some points worth noting are:

- The registration process may reveal issues requiring changes to the constitution. This process may involve both time and costs.
- The 'pilot constitution' offered by The Arts Society is a suitable starting point but individual experiences with adjustments suggested by the Charity Commission may vary from case to case. For this reason The Arts Society has not issued an "off the shelf" solution to Societies.
- Here are some constitutional adjustments that have been required from past experience of Societies:

Inclusion of certain specific terms such as confirming compliance with the Charities Act.

Including tighter clauses on meetings and regulatory procedures.

Including clauses relating to Trustees and their conduct.

Broadening of the main objects for more 'outreach' activity or giving.

Membership must be open and unrestricted. Any clauses mentioning waiting lists *may* be challenged, as may any membership recruitment rules giving the impression of a private members club. (See E below on Public Benefit).

2. Ongoing compliance and reporting requirements

There are annual filing requirements with the Charity Commission. For most small charities these are described as 'light touch' but the committee and Treasurer should be aware of the additional obligations. Further details and the current requirements at different income levels can be found on the Charity Commission website (see G below). Note that gross income for Societies will include gross receipts from outings, trips and study days.

3. Maintaining charitable objects

The main objects in the constitution and certain others cannot be changed without Charity Commission consent.

The committee will have to be mindful of the duty to ensure that charitable funds are applied *strictly* to the objects. This can sometimes cause anxiety in decision making processes. As mentioned above, the Charity Commission does not like club-like recruiting mechanisms. It is also very keen on the demonstration of public benefit – see E below.

4. Trustee Status

The committee members become Trustees upon registration with the commensurate additional responsibilities of the role. There are occasional issues around succession where committees find others reluctant to take on what might sound like a more onerous position or one for which they feel they do not have the expertise. Note

however that no additional insurance is required as the insurance cover arranged through The Arts Society for all Societies is appropriate for both registered and non-registered Societies. Although it is not likely to be a formal requirement for most charitable societies, it is good practice to induct new trustees by briefing them on the structure and modus operandi of the committee and on their legal obligations under charity law.

5. Subject to future changes in legislation and regulation

The regulations for registered charities may change from time to time. Trustees will have to keep well informed about them and how they impact on their particular Society.

The Charity Commission operates an email update service which is a useful way to keep up to date with regulatory and other developments.

6. Impractical to de-register

In practice the registration process is 'one way' and it is not possible to simply opt out if registration proves inconvenient.

7. Gift Aid – the future?

It should not be assumed that Gift Aid will continue in future years as it does now. For example the present rate for claiming Gift Aid (of 25p per £1) may change in a future budget.

Charities can backdate claims for four years (previously six years). Backdating by a newly registered Society is something that would have to be agreed on an individual Society basis with HMRC.

Not all members will be eligible or will wish to participate but some Societies have high take up rates.

HMRC have issued guidance on those subscriptions that in their opinion do and do not qualify for Gift Aid.

At present HMRC specifically allow memberships subscriptions to qualify even if they allow members to 'take part in activities that form part of your charity's objectives - for example a youth organisation providing craft workshops as part of its educational objectives' However they are not allowed where they are "payments received for in return for goods or services... for example payment for admission to a concert". Currently HMRC have accepted that Societies who have registered as charities fall within the 'educational objectives' test, but it is always possible that HMRC might at some time in the future change their interpretation of the requirements and argue that since most members join just for admission to a series of concerts. In particular, it is already the case that if a Society charges guests for admission to a lecture, HMRC regard that as establishing a pecuniary benefit for the value of a lecture. A pecuniary benefit for the value of a lecture, their subscriptions are 'payment received for services' as would be the case with admission to a series of concerts. In particular, it is already the case that if a Society charges guests for admission to a lecture, HMRC regard that as establishing a pecuniary benefit for the value of a lecture. As a result most charities have ceased to charge but may still ask for a donation at the door.

E: Public Benefit

Public Benefit criteria mean that charities must demonstrate that they provide a benefit to the public. There is guidance on this point available from the Charity Commission and some specifically for fee based charities. A review of the detailed guidance shows this should not be too onerous for Societies given the wide and inclusive membership of The Arts Society. The relatively modest annual subscription charged for local members to benefit from the arts education offered is also an indication of open membership.

You are referred to Charities Commission www.gov.uk/guidance/public-benefit-rules-for-charities

F: Gift Aid

[NB: this section does not apply to those participating in The Arts Society Gift Aid Scheme]

Registration as a charity allows the Society to reclaim tax on gift aid donations from HMRC. A summary of HMRC guidance relating to membership subscriptions and Gift Aid can be found at www.gov.uk/guidance/gift-aid-what-donations-charities-and-cascs-can-claim-on#membership-subscription

However, HMRC may well have questions of its own around the constitution and practices of the Society. More advice is available directly from HMRC.

One recurring issue has been around the practice of charging guests for entry. Some Societies were challenged strongly on the 'donor benefit' rules (included in the guidance notes) with HMRC arguing that the amount charged to guests established a pecuniary benefit for the value of a lecture. As a result most charity Societies have ceased to charge but may still ask for a donation at the door.

Further guidance can be obtained by contacting the NADFAS Finance Department. However the tax arrangements of each Society are ultimately their own private affair.

G: Summary of useful links

www.gov.uk/government/organisations/charity-commission

www.oscr.org.uk

www.gov.uk/government/organisations/hm-revenue-customs

www.gov.uk/guidance/gift-aid-what-donations-charities-and-cascs-can-claim-on#membership-subscription

In summary, Societies considering registration are advised to take independent legal advice and to study Charity Commission and HMRC guidance very carefully. Filing and requirements to make returns for different sizes of Charity can be found on the Charity Commission web site

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November 2017

Appendix 1: Extract from the Charity Commission web site

What a charity annual return includes

Before you start, you'll need:

- your charity's online services password, you can [request a new password](#) if needed
- your registered charity number
- registration numbers for any linked charities (if applicable)

The [annual return service for 2016 and 2017](#) is available.

You will need to submit your annual return for 2016 before you can do the return for 2017.

There will be a high demand for this service. We advise using it outside peak hours (10am to 3pm) to avoid any problems logging in.

Financial information

If you need to submit an annual return, from your charity's latest accounts provide:

- start and end dates for the financial period you're reporting (for example 01/04/2016 to 31/03/2017)
- total income and total spending for this reporting period
- total spending outside England and Wales (if applicable)

Serious incident reports

If your charity's income is over £25,000, make sure you have [reported all serious incidents](#) to the Commission before you submit your charity's annual return.

As part of the annual return you will need to declare that there are no serious incidents or other matters that trustees should have reported to the Commission but have not done so.

If you are not sure what a serious incident is or whether you should have reported it, please read the [guidance on reporting serious incidents](#).

What you need submit by organisation type

You can use our online tool to find out how to [prepare the right annual accounts for your charity's structure and income](#). Our guide to [accounting essentials for charities](#) will help you understand the type of accounts your charity has to prepare, and whether they need an audit or independent examination.

The tables below give a quick summary of what you need to submit for your annual return by organisation type.

Un-incorporated organisation

Income	What you need to submit
£0 to £10,000	Update charity details online through the annual return service
£10,001 to £25,000	Your annual return online
£25,001 to £250,000	Your annual return online , PDF copy of accounts and trustees' annual report (external scrutiny required)
£250,001 to £1 million and total assets below £3.26 million	Your annual return online , PDF copy of accounts and trustees' annual report (external scrutiny required)
over £1 million or gross assets over £3.26 million and gross income over £250,000	Your annual return online , PDF copy of accounts and trustees' annual report (with external scrutiny and full audit)

For accounts with incomes below £25,000 you don't need to go through external scrutiny unless stated as a requirement in your governing document.

Charitable company

Income	What you need to submit
£0 to £10,000	Update charity details online through the annual return service
£10,001 to £25,000	Your annual return online
£25,001 to £250,000	Your annual return online , PDF copy of accounts and trustees' annual report (external scrutiny required)
£250,001 to £1 million and total assets below £3.26 million	Your annual return online , PDF copy of accounts and trustees' annual report (external scrutiny required)
over £1 million or gross assets over	Your annual return online , PDF copy of accounts

Income	What you need to submit
£3.26 million and gross income over £250,000	and trustees' annual report (with external scrutiny and full audit)

For accounts with incomes below £25,000 you don't need to go through external scrutiny unless stated as a requirement in your governing document.

Charitable incorporated organisation (CIO)

Income	What you need to submit
£0 to £10,000	Your annual return online , PDF copy of accounts and trustees' annual report
£10,001 to £25,000	Your annual return online , PDF copy of accounts and trustees' annual report
£25,001 to £250,000	Your annual return online , PDF copy of accounts and trustees' annual report (external scrutiny required)
£250,001 to £1 million and total assets below £3.26 million	Your annual return online , PDF copy of accounts and trustees' annual report (external scrutiny required)
over £1 million or gross assets over £3.26 million and gross income over £250,000	Your annual return online , PDF copy of accounts and trustees' annual report (with external scrutiny and full audit)

For accounts with incomes below £25,000 you don't need to go through external scrutiny unless stated as a requirement in your governing document.

When to complete your annual return

Complete your charity's annual return as soon as you approve its latest accounts and trustees' annual report.

If your charity's income is more than £10,000, by law, you must complete an annual return within 10 months of the financial reporting period ending. All Charitable incorporated organisations (CIOs) must complete an annual return regardless of their income.

As trustees, you're responsible for making sure your charity's annual return is completed on time. If you delegate this task to a member of staff, make sure they know what to do and when it is due.

Plan ahead to make sure your charity completes its [annual return](#) on time. You should also:

- [update the charity's details](#) whenever something changes, such as a trustee being replaced
- keep your charity's password safe, particularly if the person who has it leaves the charity
- arrange handover training if someone takes over responsibility for completing the annual return
- arrange a trustee meeting to agree the accounts and trustees' annual report within two months of the financial period ending

Completing annual returns - the law

As a charity trustee, by law you must keep your charity's registered details up-to-date. You need to [update your charity's details](#) before you complete its annual return.

If your charity's income is more than £10,000, you must complete an annual return within 10 months of the end of each financial reporting period. Charitable incorporated organisations (CIOs) must complete an annual return regardless of their income.

If you fail to meet this legal requirement, your charity's details will be marked 'overdue'. This could put off potential donors, funders or volunteers.

If you don't submit your annual return it may be viewed as an indication that the charity is no longer operating, or doesn't exist. If we find that a registered charity no longer operates or exists, we may remove it from the [register of charities](#).

If your charity is not a CIO and its income is under £10,000, complete the annual return to meet your legal obligation to keep your registered details up-to-date.

Charity annual returns and the register

Over 6 million people search the [charity register](#) every year. The annual return you complete tells potential donors, funders, volunteers and beneficiaries about your charity. For example:

- how people can contact your charity
- what it is set up to do
- how it meets its aims
- how much money it makes and spends
- where it operates

You can find most of the information you need in your charity's accounts and trustees' annual report.

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Document information
Published: **23 May 2013**

Updated: **6 October 2017**