

Arts Council of Wales

Governing Document Guidelines for Organisations

February 2011





Arts Council of Wales is committed to making information available in large print, braille, audio and British Sign Language and will endeavor to provide information in languages other than Welsh or English on request.

Arts Council of Wales operates an equal opportunities policy.

Governing Document Guidelines

Any organisation applying to the Arts Council of Wales for funding must prove that they provide an activity or a service for the people of Wales. An organisation must also have a valid, formal, governing document, or at least have a written statement of its aims, objectives and the way it operates. Guidance is given on the more general requirements of a charity at Charity Commission website at <http://www.charitycommission.gov.uk/Publications/cc22.aspx>

What is a governing document?

- 1. A governing document is the formal document which sets up a charity and which we recommend contains all the information about:**

what the charity is set up to do (objects);
how the charity will do those things (powers);
who will run it (charity trustees);
what happens if changes to the administrative provisions need to be made (amendment provision); and
what happens if the charity wishes to wind up (dissolution provision).

- 2. It should also contain the following administrative provisions:**

how the charity trustees will run it; and
internal arrangements for meetings, voting, looking after money, etc.

- 3. A governing document is obviously important. It is not just something that a charity has to have in order to be a registered charity.**

It is the charity trustees' 'instruction manual' for the charity, as well as a legal document. We advise charity trustees to refer to it regularly to remind themselves what the charity's purposes are and how it should be run. Each trustee should be given a full copy of the governing document on appointment.

Types of governing document

- 4. There are four main types of governing document, and the type you choose will determine the type of organisation the charity will be. The four main types of governing document are:**

constitution or rules (for an unincorporated association);
small charity constitution (where the organisation's annual gross income will remain under £5,000 and it will therefore not need to register with the Charity Commission);
trust deed (for trusts); and

articles of association (for a Company limited by guarantee).

5. Charities' Commission produce model forms of these types of governing document:

Charitable Companies: Model Articles of Association.

Charitable Trusts: Model Trust Deed.

Charitable Associations: Model Constitution.

Small Charity Constitution.

6. The models contain administrative provisions which are suitable for each of these types of organisation.

However, it is still necessary for anyone using those models to insert the objects of the organisation, complete blank spaces left in certain clauses, select some clauses where options are available and to consider the suitability of the clauses generally to individual circumstances of the organisation.

7. The Charity Law Association (CLA) also produces suitable model governing documents for which a charge is made.

To order copies of the CLA governing documents please email the CLA administrator on admin@charitylawassociation.org.uk

Again, more information on what type of document is appropriate for your circumstances and how to prepare one can be found at

<http://www.charitycommission.gov.uk/Publications/cc22.aspx>

A. Organisations With An Existing Governing Document

In addition to the Charity Commission and Companies House rules, in the case of organisations which already have a governing document, certain key points need to be included in it in order to ensure funding eligibility. These include:

- i) The governing document should be a written record of the body of fundamental principles or established precedents according to which the organisation is governed.
- ii) The governing document should state clearly the name of the organisation and its aims. The aims should include an appropriate reference to the arts, e.g. for an amateur dramatic society:

The name of the Society shall be "The Players". Its objects shall be:

- the fostering, development and encouragement of the dramatic art;
 - the production of plays from time to time for entertainment of the general public; and to do all such things as shall be conducive to the attainment of the above objects.
- iii) The governing document should state clearly what is to happen with the funds of the organisation, e.g.
- the funds of the Society shall be applied solely to the stated objects of the Society;
 - no member of the Society shall receive payment directly or indirectly for services to the Society or for anything other than legitimate expenses incurred in its work;
 - in the event of dissolution of the Society the property of the Society will be realised and after the satisfaction of all its debts and liabilities, such property shall not be paid to, or distributed among, the members of the Society but shall be given or transferred to some other charitable institution having objects similar to the objects of the Society. This is to be determined by the members at or before the time of dissolution and, in default by such Judge of the High Court of Justice as may have or has acquired jurisdiction in this matter, and so far as effect cannot be given to this provision then to some charitable object.
- iv) The governing document should contain details of how the organisation is to be managed, consistent with the aims. In most instances this will involve a committee of management accountable to the members. Accounts should be produced annually and there should be at least two signatories to any bank account.
- v) The governing document should contain details of membership and any subscription scheme in place.

A copy of the governing document should be given to each member on joining the organisation.

B. Organisations Without An Existing Governing document

Again, the guidelines below are in addition to any Charity Commission or Companies House rules

- i) For a voluntary group a governing document should be drawn up - examples can be found at <http://www.charitycommission.gov.uk/Publications/cc22.aspx>
- ii) In cases where an application is from more than one individual who could in any way be described as "trading" or "carrying out a business" e.g. running a drama/music school, puppet group, theatre group etc. and where the applicant does

not wish to register as a charity, a suitable company or trust must be formed to ensure that the non-profit distributing criterion is met. This will involve the appointment of Board members or Trustees who are not paid employees of the company.

- a) The simplest method of meeting the criterion will be the formation of a charitable company limited by guarantee and not having a share capital as set out in the Companies Acts. A model Memorandum and Articles of Association is available from the Charities Commission as described above.
- b) In instances where the organisation is run by paid employees the establishment of a non-profit distributing company can satisfy the eligibility criteria but only where the majority of Board members are unpaid. There must be a minimum of three Board members. A copy of the draft Memorandum and Articles of Association should be included with the application.

In considering any application the Council will take into account the existing work and status of an organisation and give advice and assistance where necessary to define or refine the governing document. Applicants who draw up or amend their governing documents merely to apply for funds may find their applications unsuccessful. Changes to governing documents after receipt of an Arts Council of Wales grant could result in the applicant becoming liable to repay the grant.

General Information

1. Assistance with registration as a charity and general information for voluntary groups can be obtained from:

Wales Council for Voluntary Action

Baltic House,
Mount Stuart Square
Cardiff CF10 5FH

Tel: 0800 2888 329

Fax: 029 20431701

Minicom: 0808 1804 080

enquiries@wcva.org.uk

WCVA - North Wales office

Morfa Hall
Bath Street
Rhyl
Denbighshire LL18 3EB

Tel: 0800 2888 329

Fax: 01745 357541

Minicom: 0808 1804 080

enquiries@wcva.org.uk

2. Company registration details can be obtained from:

The Registrar of Companies

Companies House
Crown Way
Cardiff CF14 3UZ
+44 (0)303 1234 500

3. The Arts Council of Wales

Cardiff Office

Bute Place
Cardiff
CF10 5AL

Tel: 08458734900

Fax: 029 20441400

Minicom: 029 20451023

e-mail: info@artswales.org.uk

e-bost: gwybodaeth@celfcymru.org.uk

North Wales Office

36 Prince's Drive
Colwyn Bay
LL29 8LA

Tel: 01492 533440

Fax: 01492 533677

Minicom: 01492 532288

Mid & West Wales Office

6 Gardd Llydaw
Jackson Lane
Carmarthen
SA31 1QL

Tel: 01267 234248

Tel: 01267 233084

Review Date: February 2013