



Rules and the Charities Act

The Charities Commission does not require you to have any specific wording in your rules, but we must be satisfied that your organisation meets certain criteria.

What do we mean by 'rules'?

To be considered for registration as a charitable organisation, you must send us a copy of your rules with your application form.

Your rules are the documents that set out your purposes, what you do and how you operate. For example, they may be your trust deed, constitution or charter. (If your organisation was specifically set up under an Act of Parliament, your rules may be that Act.)

If your charity isn't an incorporated society, a registered charitable trust or a company (that is, if it isn't a legal organisation commonly referred to as 'registered with the Companies Office'), the rules you send us should be signed and dated by either the original officers or the current officers.

When you apply for registration under the Charities Act, we read your rules to identify whether you have a "charitable purpose".

Charitable purpose as defined in section 5(1) of the Charities Act includes:

"... every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community."

Read our guidance on [charitable purpose](#) for more details.

While we don't require any specific wording in your rules, we must be satisfied that your organisation:

- has a legal name that is not misleading or offensive and
- has exclusively charitable purposes that fall within one of the four purposes set out in section 5(1) of the Charities Act and which provide a public benefit and
- does not have powers clauses which would allow the organisation to undertake non-charitable activities and
- is not carried on for the private financial benefit or profit of an individual and
- restricts distributions on winding up to charitable purposes.

Name

Your rules should clearly display the formal (legal) name of the applicant organisation. Your name must not be misleading or offensive. For more, read our information sheet [The name of your organisation](#)

Purpose clauses

Purpose clauses, often called “objects” clauses, state what an organisation aims to achieve.

You should clearly identify a list of purposes in your rules and the list should begin with the organisation’s main purposes.

All purposes must be lawful, and should show a clear charitable aim. They shouldn’t say things like “to fulfil social needs” because this is too vague, general and uncertain to clearly show a charitable aim.

You may wish to show how your purposes fit with the four categories of charitable purpose like this:

- “To relieve poverty by. . .”
- “To advance education by. . .”
- “To advance religion by. . .”
- “To be beneficial to the community by. . .”

as appropriate.

Your organisation may still qualify for registration even if some of its purposes are not charitable. This is the case as long as the non-charitable purposes **are undertaken to further a charitable purpose** and are not independent purposes.

For more details about ancillary (secondary) purposes see our guidance on [charitable purpose](#).

We suggest you keep your purpose clauses separate from any “powers” clauses.

Powers clauses

Powers clauses set out the things that your organisation may do to achieve its purposes - for example, employ people; borrow and invest money; purchase, lease and hire land, buildings and vehicles.

Powers clauses must not allow the organisation to undertake non-charitable activities. For example, the following clauses are **unlikely** to be accepted by the Commission:

- officers have the power to do anything in relation to the organisation, including things that would usually require an express power or an order from the Court
- officers can determine the governing law applicable to the organisation.

Private profit clauses

To register your organisation under the Charities Act, we must be satisfied that it is not carried on for private financial benefit or profit to an individual.

Your rules should reflect this, and clearly show that your organisation may only act to advance its charitable purposes. The payment of reasonable salaries and other expenses to advance your charitable purpose is acceptable.

If a trust wants to be able to make payments or provide benefits to its trustees, its trust deed must clearly show that this is allowed.

Here is an example of a combination of clauses that would be acceptable:

- *All income, benefit, or advantage must be used to advance the charitable purposes of the organisation.*
- *No member of the organisation, or anyone associated with a member, is allowed to take part in, or influence any decision made by the organisation in respect of payments to, or on behalf of, the member or associated person of any income, benefit, or advantage.*
- *Any payments made must be for goods or services that advance the charitable purpose and must be reasonable and relative to payments that would be made between unrelated parties.*

Your rules should not include clauses that would allow private pecuniary profit for individuals or other organisations.

For example, the Commission is **unlikely** to accept clauses which would allow the organisation to:

- provide loans or advances without security
- provide loans or advances at below market interest rates
- guarantee the liability of any individual or organisation
- give security in support of a guarantee to any individual or organisation

- sell, exchange, or lease the organisation's property at below market rates
- purchase, lease, or exchange property at above market rates.
- provide remuneration to individuals at above market rates
- place an officer's, or any other individual's, interest above its duty to the beneficiaries and its charitable purpose.¹

Companies must have clauses in their rules that either:

- prevent distribution of dividends or payments to shareholders **or**
- restrict current shareholders and the transfer and issue of shares to registered charitable entities or trustees of a trust for charitable purposes.

Here is an example of a clause that prevents distribution of dividends or payments to shareholders:

- *No shareholders of the company shall be entitled to receive any benefit from the company by way of dividend or other payment from the company by virtue of a shareholder holding shares whether ordinary or any other class of shares in the company.*

¹ *Molyneux v Fletcher* (1898) 1 QB 648; *In Re Pauling Settlement Trust* [1964] 1 Ch 303, [1963] 3 All ER 1; *Cowan v Scargill* [1985] Ch 270

Here are examples of clauses that restrict the transfer and issue of shares to registered charitable entities or trustees of a trust for charitable purposes:

- *The directors shall refuse to register any transfer of shares unless the proposed transferee is a registered charitable organisation or a trustee who holds those shares in trust exclusively for charitable purposes as defined in section 5(1) of the Charities Act 2005.*
- *No shares shall be issued to any person unless that person is a registered charitable organisation or a trustee who holds those shares in trust exclusively for charitable purposes as defined in section 5(1) of the Charities Act 2005.*

Winding-up clauses

We suggest all charities include a winding-up clause in their rules. This sets out what will happen to their assets if they cease to operate and are voluntarily or involuntarily wound up.

If your organisation is an **incorporated society**, you will already have a winding-up clause. This is required under the Incorporated Societies Act.

If your organisation is a **trust**, you are not required to have a winding-up clause in your rules. If your rules have a clause that refers to winding-up in accordance with section 27 of the Charitable Trusts Act, that is,

as the court directs, this is acceptable.

To meet the requirements of the Charities Act, winding-up clauses must direct all assets to charitable purposes or charitable organisations.

Here are three different examples of winding up clauses:

1. A general winding-up clause:

- *If a decision is made to wind up or dissolve the organisation and any property remains after the settlement of the organisation's debts and liabilities, that property must be used to further a charitable purpose or purposes as defined in section 5(1) of the Charities Act 2005.*

2. A winding-up clause that distributes remaining property **to another organisation:**

- *If a decision is made to wind up or dissolve the organisation and any property remains after the settlement of the organisation's debts and liabilities, that property must be given or transferred to another organisation for a charitable purpose or purposes as defined in section 5(1) of the Charities Act 2005.*

3. A winding-up clause that distributes remaining property **to another organisation that has similar purposes:**

- *If a decision is made to wind up or dissolve the organisation and any property remains after the settlement of the organisation's debts and liabilities, that property must be given or transferred to another organisation for a similar charitable purpose or purposes as defined in section 5(1) of the Charities Act 2005.*

Governance

Governance clauses explain how your organization is managed. They should include the following information:

- **Who governs the organisation** – for example, *the organisation is governed by a management committee.*
- **How many governing officers your organisation should have and how they are appointed** – for example, *a management committee of between six and eight members will be elected at each AGM.*
- **How decisions are made** – for example, *by majority vote*
- **What will amount to a conflict of interest** – for example, *a conflict of interest exists for an officer if the officer's interests or duty in a particular matter conflicts, or might conflict, with his or her duty to the charitable entity*

- **How a conflict of interest should be managed** – for example, *when a conflict of interest exists for an officer, that officer must declare the nature of the conflict or the potential conflict; the officer must not take part in deliberations or proceedings including decision-making in relation to the conflict of interest. The officer must not be counted in the quorum required for decision-making on the matter for which he or she has the conflict of interest.*

Amendment clauses

We suggest all charities include a clause in their rules that sets out the procedure for changing their rules.

If your organisation is an **incorporated society**, you will already have a clause in your rules that explains the way your rules can be changed. This is required under the Incorporated Societies Act.

Although a charity registered with the Commission must notify us of any changes to its rules, we do not need to be consulted before a change is made.

Please **don't** put a clause in your rules saying that the Commission must approve amendments.

Important note: if you are an incorporated society, a registered charitable trust, or a company and you wish to make changes to your rules, you must send the changes to the Companies Office for their approval **before** you send them to us.

When you notify us of a change, we will consider whether the change affects your registration status.

If it does, we will send a formal notice to your address for service and give you the opportunity to have your say on the matter.

Helpful tip - Do you have a clause in your rules that says you must get approval for changes to your rules from Inland Revenue?

If you do, please note that this is no longer required, because Inland Revenue has agreed to the removal of such clauses. Check their website www.ird.govt.nz for more details

Related information sheets

- [The name of your organisation](#)
- [Charitable purpose](#)
- ["Public benefit" test: Guidance for charities](#)
- [Purposes beneficial to the community: Examples of wording for purpose clauses](#)
- [Advancement of education: Examples of wording for purpose clauses](#)
- [Advancement of religion: Examples of wording for purpose clauses](#)
- [Relief of poverty: Examples of wording for purpose clauses](#)

For further information

We hope this information is helpful.

For more information about the Charities Register or registration under the Charities Act, please browse [**www.charities.govt.nz**](http://www.charities.govt.nz)

You can also call the Charities Commission on our free information line - **0508 242 748**

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This information sheet was first published in February 2008 and updated in February 2012. Please refer to www.charities.govt.nz for any new developments or updates.