

Rules and trust deeds of charitable trusts



The Charitable Trusts Act 1957 requires every charitable trust to provide the Registrar of Incorporated Societies with a copy of the documents that show the general purposes of the trustees or society. In the case of a society applying for incorporation as a charitable trust, they must also provide a copy of the document that sets out the constitution of the society.

- The terms 'trust deed' and 'rules' are used to describe the 'constitutional document' that sets out how the board is to operate and how the trust property is to be administered.
- It is common for trustees as a board to be governed by a trust deed and societies as boards to be governed by a constitution or a set of rules. These documents need to be registered with the Registrar of Incorporated Societies.
- There must be a clear intention to devote property to a charitable purpose. The property must be clearly defined and the purpose must be of a public nature. That is, for the benefit of the community or a section of the community.
- The purpose of the trust must either comply with the meaning of the term 'charitable' as defined in the Charitable Trusts Act 1957 or be religious or educational in character.
- The Charitable Trusts Act 1957 does not prescribe the format or what needs to be included in a trust deed or a set of rules.

What is contained in a trust deed or set of rules?

A trust deed or set of rules should contain the following information (you may need to include additional paragraphs depending on your circumstances):

- The name of the board.
- The purposes of the trust.
- The make-up of the board, including the number of trustees or board members and how they are appointed, how long they serve and how they can be removed.
- How the property of the trust is to be controlled and managed by the board.
- The powers and duties of the trustees.
- How the funds and property of the trust will be applied.
- How meetings of the board are to be held including quorum numbers and notice of meetings.
- How the financial affairs are to be managed such as the banking of money and the preparation of financial accounts.
- The use of a common seal.
- How the trust deed or rules of the organisation may be altered.
- How the distribution of surplus assets on winding up or dissolution will occur.

How to draft a trust deed or set of rules

It is always important that legal documents are properly prepared. If they are unclear or ambiguous, problems could arise later that could be expensive to solve, as the documents will need to be varied or possibly have to be referred to the High Court.

It is therefore important that intending applicants discuss what is proposed with their solicitor, as there is a lot of law on what is in fact 'charitable' and there are restrictions on the names that can be given to a Board.

It would be helpful to a solicitor if you prepare a summary with:

- what is intended
- who is to benefit
- what the initial trust property will be and

- the names and addresses of all the people involved.

Involving your solicitor at the start will help to ensure that the trust document is clear and easily understood - which in turn means the application for incorporation will be in order and that the future administration of the board will run as smoothly as possible.

Deeds of trust are likely to have a lot of administrative detail aside from expressing the charitable purpose, including

- how trustees are appointed and removed
- how many there are to be
- how they are to make decisions etc.

The Charitable Trusts Act 1957 does not prescribe the format or content for trusts or rules.

If a trust document does not have these details, as would happen with a trust created by Will for example, the trustees would have to decide on their procedures at their first meeting. At the first meeting of a board, it would have to make a number of decisions including making a resolution to open a bank account and adopting the common seal among other matters.

When drafting a trust deed or set of rules it can be very helpful to read the deeds or rules of existing organisations with a similar purpose to yours. It is free to search the registered documents of existing incorporated charitable trusts.

[➔ Read more about how to find information on a charitable trust.](#)

[How do you change the rules or trust deed of a charitable trust?](#)

Where a society that has been incorporated as a board wishes to alter its rules, this can only occur if the alterations will not affect the trust. The board must register a copy of the relevant document showing the change if any variation is made in the trusts or additional property becomes vested in the board.