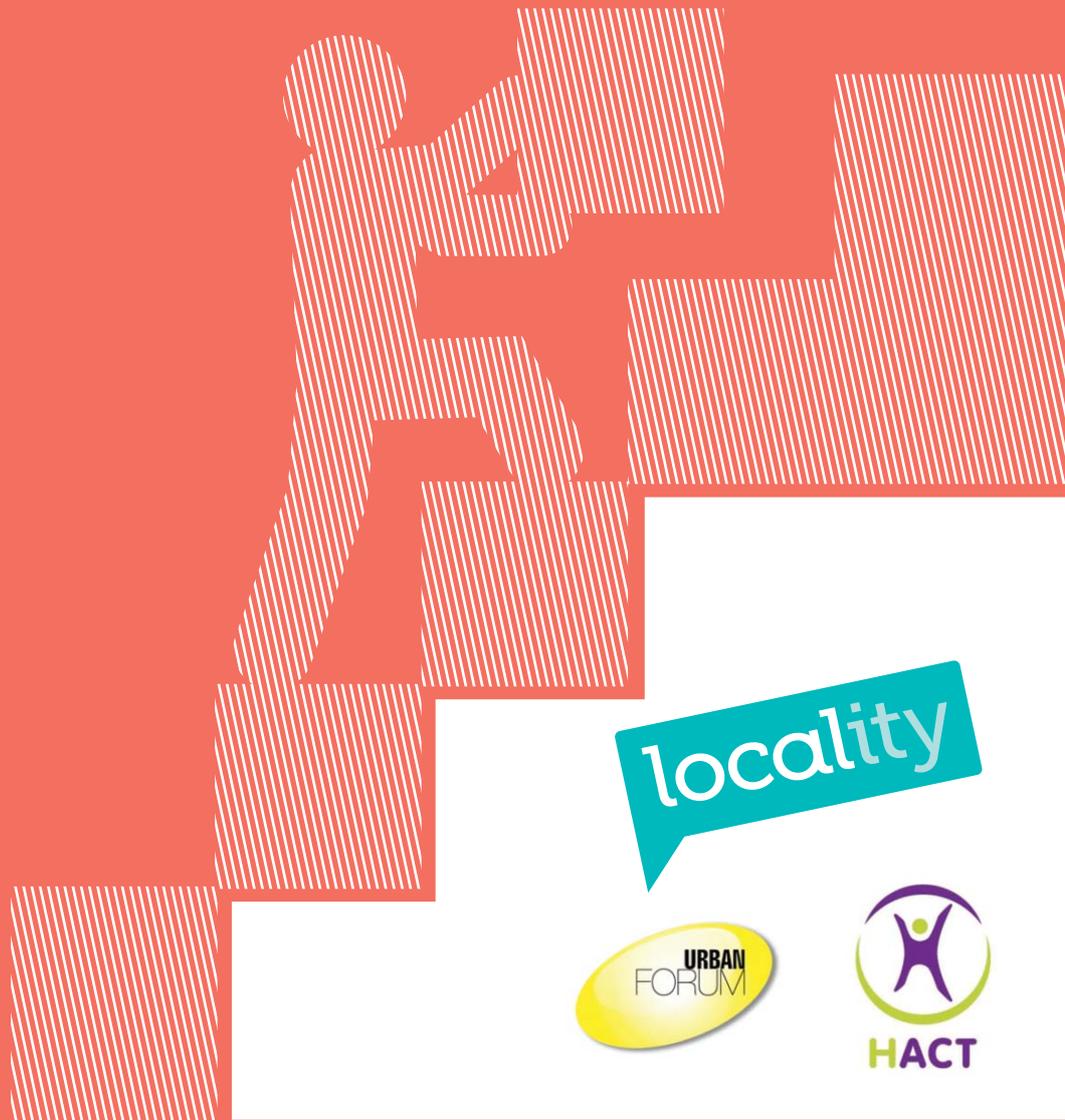


My Community Rights

Community Right to Build

Step 2:

Getting started



Legal structures for a community organisation

Community organisations and the community right to build

In order to use the Community Right to Build powers, a community organisation must meet certain requirements as set down in the legislation.

Schedule 4C of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011) states that

3(1) For the purposes of this Schedule a “community organisation” is a body corporate—

(a) which is established for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live, in a particular area

And that

4(1) A community organisation is authorised for the purposes of a community right to build order to act in relation to a neighbourhood area (whether or not any part of the neighbourhood area falls within the area of a parish council) if—

(a) the area mentioned in paragraph 3(1)(a) consists of or includes the neighbourhood area, and

(b) at the time the proposal for the order is made more than half of the members of the organisation live in the neighbourhood area.

Being a ‘body corporate’ simply means that the organisation is a legal entity that is recognised in law and therefore has the

legal capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and can be held responsible for its actions.

Additionally regulation 13 of the Neighbourhood Planning (General) Regulations 2012 apply the following conditions to community organisations-

(a) individuals who live or work in the particular area for which the community organisation is established (“the particular area”) must be entitled to become voting members of the community organisation (whether or not others can also become voting members); and
(b) the constitution of the community organisation must—

(i) provide that taken together the individuals who live in the particular area—

(aa) hold the majority of the voting rights; and

(bb) have the majority on the board of directors or governing body of the community organisation;

(ii) include a statement—

(aa) that the community organisation will carry on its activities for the benefit of the community in the particular area or a section of it; and

(bb) indicating how it is proposed the community organisation's activities will benefit the community in the particular area (or a section of it);

(iii) provide that any assets of the community organisation may not be disposed of, improved or developed except in a manner which the community organisation consider

benefits the community in the particular area or a section of it; and
(iv) provide that any profits from its activities may only be used to benefit the community in the particular area or a section of it (the payment of profits directly to members or directors is not to be considered a benefit to the community in the particular area or a section of it);
(v) provide that in the event of the winding up of the community organisation or in any other circumstances where the community organisation ceases to exist, its assets must be transferred to another body corporate which has similar objectives; and
(vi) provide that the organisation has at least 10 members, living in different dwellings to each other, who live in the particular area.

Understanding why you need a legal structure

Setting up a formal legal structure is called 'incorporating'. Incorporation is an essential prerequisite if an organisation wishes to use the Community Right to Build. There are various options available – which is most appropriate for you will depend on what you are trying to achieve and the nature of your proposed development although the most common legal structure for an incorporated community organisation is a Company Limited by Guarantee with charitable status.

Company Limited by Guarantee with charitable status

This is a company, registered at Companies House and entered on the Register of Charities, having been recognised as a charity by the Charity Commission. Each member of the company undertakes (guarantees) to pay a nominal sum

(normally £1) towards the company's debts should it go into liquidation – and therefore the liability of the members is limited to the sum guaranteed – hence "limited by guarantee".

Company law governs the company and annual accounts must be submitted to Companies House. The Articles of Association (the constitution of the company) establish the company on a 'not for profit' basis; if it is to be a charity, all of its 'objects' (i.e. the aims which it says it will pursue) must be charitable in nature under the Charities Act 2006 and its activities must provide public benefit in line with those objects.

Advantages of being a company limited by guarantee include:

- **Legal entity.** A company is a clear legal entity separate from the people involved in it. It can therefore employ staff and enter into contracts to provide services or buy land and buildings. This also provides continuity as any legal relationship is with the company and would not be affected even if the whole board resigned.
- **Democratic control.** The Articles of Association specify who is eligible to become a member of the company and how the company is subject to the democratic control of its members. The Community Right to Build legislation further defines the specific membership requirements needed to exercise the Community Right to Build (see above).
- **Limited Liability for Members.** A guarantee company does not have a share capital, but has members who are guarantors instead of shareholders. The guarantors give an undertaking to contribute a nominal amount (typically £1.00) towards the winding up of the company. This statement of liability is contained within the Articles of Association.

- **Limited Liability for Directors.** Directors are those people who run the company and are also its charity trustees. They are protected in most circumstances from personal liability.
- **Credibility.** Funders and partners are familiar with the structure of a company limited by guarantee and generally recognise it as a stable and effective organisational structure.
- **Maximising Return** (donations from individuals) You will be able to maximise the benefit of donations from individuals, through Gift Aid and Payroll Giving.
- **Rates relief.** In relation to premises occupied by the charity, there is automatically 80% rates relief and up to a discretionary 100% rates relief.
- **VAT.** You will be able to access VAT concessions that only apply to charitable bodies – though there are only a small number of VAT concessions of that kind.

Disadvantages of being a company limited by guarantee include:

- **Procedures.** There are formal and ongoing procedures (e.g. filing annual returns, notification of changes of directors etc).
- **Statutory Requirements.** Along with the procedures there are various statutory requirements in company law regarding the running of meetings and making decisions. Many of these will be set out in your Articles of Association.
- **Training.** Directors are likely to require training to equip them for their roles and responsibilities in the company.
- **Company Structure.** This can appear intimidating for those considering becoming involved or putting themselves forward as a director despite the fact that it is in fact a protective measure.

The main advantages of charitable status are:

- **Tax relief.** You will qualify for relief from tax on surpluses and on any interest on sums held on deposit.
- **Funding.** You will have the ability to raise funds from charitable foundations that can only support charitable bodies.
- **Gift Aid on company donations.** You will have the ability to recover basic rate tax on donations from tax payers, whether individuals or companies and in addition individuals paying higher rate tax will be able to reclaim tax relief under the Gift Aid scheme for gifts of money to charities.

- **Stamp Duty Land Tax.** Charities are exempt from SDLT on most property transactions.
- **Credibility.** Charities are recognised as having both status and credibility with the community, your partners and funders.

The main disadvantages of charitable status are:

- **Limitations on what your organisation can do** (or support financially – the same principles apply). You will be limited to activities that further your charitable purposes – however non-charitable activities can be carried on by subsidiary companies set up and owned by the organisation. A subsidiary company will typically take the form of a company limited by shares. The shares would be wholly owned by the community organisation. See the Charity Commission's publication "CC35 Trustees Trading and Tax".

Note: Regulations are due to be issued in the near future allowing for a new type of organisational structure for charities – the Charitable Incorporated Organisation (CIO). If you incorporate as a company limited by guarantee in advance of these regulations there will be no need to change the structure when the new CIO model becomes available – but if you wish to do so, the process of conversion is expected to be quite straightforward.

What are the other possible structures for your organisation?

A company limited by guarantee is the most popular form of legal structure for an incorporated community organisation in the UK. It is, however, by no means the only structure available. It may be that an alternative to a company limited by guarantee with charitable status may be more appropriate for your organisation. The most relevant for the purposes of using the Community Right to Build are likely to include the following:

- Industrial and Provident Society
- Community Interest Company

The following is a brief overview of the advantages, disadvantages and main features of these alternatives. More detailed information can be found in the Charity Commission's guidance CC22 Choosing and Preparing a Governing Document, or Chapter 1 of the Voluntary Sector Legal Handbook (see sources of further information).

Industrial and Provident Society

An Industrial and Provident Society (IPS) has similar advantages and disadvantages to a company limited by guarantee although it is regulated by the Financial Services Authority (FSA) rather than Companies House. An IPS may be appropriate if:

- The group is satisfied that it can fit the details of its proposed rules within an established set of model rules with minimal changes (otherwise the registration process is very expensive, compared with a company limited by guarantee).
- The facility to raise money in the form of shares is something that the group regard as useful (though a one-off membership subscription in a company limited by guarantee format could be a

simpler way to do this).

- The group does not mind having a structure which will be less familiar to some funders, accountants and other professionals.
- The group does not mind paying additional registration fees for registering the organisation.
- The group is not too concerned about the additional timescales (as compared with a company) associated with the FSA processing matters such as a change of name.

Community Interest Company

A Community Interest Company (CIC) is another type of company – and could be either a company limited by guarantee or a company limited by shares although the former is more likely to be relevant for taking forward the Community Right to Build. The name of a CIC always ends with the words "Community Interest Company" or "CIC" – rather than "Limited" – so it is instantly recognisable. The CIC model was developed specifically for social enterprises, and is intended to cover a situation where an organisation carries on trading activities, but is intended to operate for the benefit of the community – so it is closely aligned to the ethos that underlies community organisations.

The problem, though, is that a CIC cannot have charitable status, even if its objects are charitable. That is a very significant drawback. Normally, if there is the prospect of gaining charitable status, a group would go for charitable status because of the advantages that that brings; if, however, charitable status is not going to be available (e.g. because the aims – although providing community benefit – do not fall within the charitable purposes as set out in the Charities Act 2006; or because the group wants to carry on non-charity trading without having a separate subsidiary

company), then the option of using a CIC model should be considered.

Another feature of CICs is the “asset lock” - which means that if the CIC is wound up, any surplus requires, in terms of the legislation, to be paid or transferred to a charity/charities or to another “asset-locked” body.

How do you choose the best structure for the organisation?

The structure that is chosen for your organisation needs to be able to:

- Reflect the principles and values of the organisation
- Allow the organisation to actually do what it wants to do (i.e. if you want to undertake profit making enterprises, registering as a charity may not permit this unless you also have a non-charitable subsidiary).
- Enable the organisation to appoint staff and enter into contracts.
- Protect the members and board members of the organisation (i.e. if the organisation is going to develop new buildings for community use, it will want people to be protected against personal liability where building contracts go pear-shaped or staff make a claim in the Tribunal).
- Enable the organisation to build the partnership it wants (i.e. it can actively involve different partners in the management of the organisation).
- Allow the organisation to raise the funds it will require from all the different sources available (e.g. charitable trusts, public sector grants, loan funds etc).

Sources of further information and useful contacts

Three particularly useful resources are:

Choosing a Legal Structure:

locality.org.uk/wp-content/uploads/Choosing-a-Legal-Structure.pdf

A comprehensive toolkit produced by Locality that takes you step by step through the process of choosing a legal structure – concentrating particularly on the Company Limited by Guarantee with Charitable Aims model – including model Articles of Association.

Simply Legal:

www.uk.coop/simplylegal

A clear, simple, comprehensive and understandable guide to the legal and governance processes required to support the ‘third sector’ – from co-operatives to social enterprises.

National CLT Network:

www.communitylandtrusts.org.uk/resources/toolkits/Legal-Toolkit

A Community Land Trust (CLT) is a non-profit distributing community-based organisation as defined in Section 79 of the Housing and Regeneration Act 2008. This toolkit provides guidance on the legal structures that a CLT can adopt (which are effectively those discussed above) and, once a CLT has determined the most appropriate legal form, template constitutions for adoption.

Other useful reading includes:

**Hallmarks of an Effective Charity,
Charity Commission**

Available from:
www.charity-commission.gov.uk

The Essential Trustee, Charity Commission

Available from:
www.charity-commission.gov.uk

The Good Trustee Guide 5th Edition by
Peter Dyer, London: NCVO, 2008.

The Russell-Cooke Voluntary Sector Legal
Handbook 3rd edition, Directory of Social
Change, 2009. Available from: Sandy
Adirondack sandy@sandy-a.co.uk

Helpful Organisations

Locality

33 Corsham Street, London N1 6DR
Tel: 0845 458 8336
www.locality.org.uk

Co-operatives UK

Holyoake House, Hanover Street,
Manchester M60 0AS
Tel: 0161 246 2900
www.co-operativesuk.coop

National CLT Network

c/o National Housing Federation, Lion
Court, 25 Procter Street, London WC1V 6NY
Tel: 020 7067 1191
www.communitylandtrusts.org.uk

Community Matters

12-20 Baron Street, London N1 9LL
Tel: 020 7837 7887
www.communitymatters.org.uk

National Council for Voluntary Organisations

Regent's Wharf, 8 All Saints Street, London,
N1 9RL
Tel: 020 7713 6161
www.ncvo-vol.org.uk

Companies House

Crown Way, Maindy, Cardiff CF14 3UZ
Tel: 0303 1234 500 (helpline)
www.companies-house.gov.uk

Financial Services Authority

25 The North Colonnade, Canary Wharf,
London E14 5HS
Tel: 0845 606 1234
www.fsa.gov.uk

Charity Commission

Charity Commission Direct, PO Box 1227,
Liverpool L69 3UG
Tel: 0845 3000 218
www.charity-commission.gov.uk

HM Revenue & Customs (Charities)

St Johns House, Merton Road, Liverpool
L75 1BB
Tel: 0845 302 0203
www.hmrc.gov.uk/charities

Law Society

The Law Society's Hall, 113 Chancery Lane,
London WC2PA 1PL
Tel: 020 7242 1222
www.lawsociety.org.uk