

Social Enterprise Factsheet

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Set up a social enterprise

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Unincorporated associations

Trusts

Limited companies with a social purpose

Community benefit societies (BenComs)

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Introduction

A social enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.

Within this definition, social enterprises can take on a variety of forms, including:

- unincorporated associations
- trusts
- limited liability companies
- some industrial and provident societies such as community benefit societies
- charities
- Community Interest Companies
- charitable incorporated organisations

This guide will outline the differences between these forms.

You should note that it's what a business does with its profits that determines whether it is a social enterprise, rather than its specific legal structure. However, it is worth considering the options carefully to ensure the chosen structure is the most suitable in terms of ownership, management style and image. In many circumstances professional advice is recommended.

Unincorporated associations

Unincorporated association status is usually chosen when a number of individuals agree or "contract" to come together for a common purpose - which may be of a social nature.

How unincorporated associations operate

Unincorporated associations are run informally. They are relatively straightforward and cost nothing to set up. They make their own rules for running the organisation and set these down in a democratic constitution. A management committee is elected to run the organisation on behalf of the members.

Unincorporated associations do not need to register with or be regulated by either Companies House or the Financial Services Authority. They enjoy greater freedom of operation than a company. For example, they don't have to submit annual returns.

If an unincorporated association has **charitable objects** (or aims), it can apply to the Charity Commission for charitable status. Upon approval it will have to comply with the Commission's regulations. [Read FAQs on registering a charity on the Charity Commission website.](#)

Unincorporated associations may also have trading or business objectives or carry on commercial activities.

Although an unincorporated association cannot own property, it may be able to set up a trust to legally hold ownership of property and assets for the community they are intended to benefit. See the page in this guide on [trusts](#).

Personal risk

Unincorporated associations have **no separate legal identity**. This means that their members will have to sign loans and contracts as individuals and carry the risk of personal liability.

This form is unlikely to offer a long-term solution if you intend to sign contracts or expand the enterprise. You should consider incorporation if you intend to:

- take on employees
- raise finance, apply for grants or open bank accounts
- issue shares
- enter into large contracts
- take on a lease or buy freehold property

This should help you to gain access to a wide range of financing sources that will not put your personal assets at risk.

[Download a guide on good governance for the voluntary and community sector from the Governance Hub website \(PDF\).](#)

Trusts

Many organisations can be classed as trusts - for example, educational, artistic or enterprise businesses.

How trusts work

Trusts are unincorporated companies and do not distribute their profits. They're managed by trustees. Trustees do not benefit from the trust, but act on behalf of the community for whose benefit it is set up. Trusts make their own governing rules and have no legal identity of their own.

Trusts have a **trust deed** which protects their social objectives. This covers the terms under which an individual or organisation is given assets. It also lists the intended beneficiaries and the conditions under which the trust's assets may be used.

As trusts can hold ownership of property and other assets for the community, they can act as sister companies to unincorporated associations. See the page in this guide on [unincorporated associations](#).

Trusts are relatively straightforward and cost-effective to set up, with legal advice. As they have no separate legal identity, the trustees are personally liable for the trust's liabilities. Seek legal advice on whether you need to register the trust with Companies House.

Charitable trusts

In addition to a non-profit distribution clause, if a trust has charitable objects and wishes to register as a charitable trust, it can apply to the Charity Commission. If successful, it will be regulated by the Charity Commission. See the page in this guide on [charities](#).

Asset locks

Trusts may write an asset lock into their rules to **secure assets for their intended community**. Some other social enterprises can also do this. See the pages in this guide on [Community Interest Companies](#), [community benefit societies \(BenComs\)](#) and [charitable incorporated organisations](#).

Development trusts

Development trusts are community-based, owned and managed, and do not distribute any profits. They provide a hub of trade or service with the aim of regenerating their local community - eg to develop or manage property, restore buildings or improve the environment.

There is no standard organisational form for a development trust. Most register as a company limited by guarantee and in a few cases as an industrial and provident society. Many register as charities. For the legal and financial issues, see the pages in this guide on [limited companies with a social purpose](#) and on [community benefit societies \(BenComs\)](#).

Limited companies with a social purpose

Social enterprises often take on the form of a limited liability company (LLC). This is a more accountable form than, for example, an unincorporated association.

LLCs have an "objects" clause that sets out the company's aims or purposes. Although these objects can be commercial, if your business is **a social enterprise**, they may be to regenerate an area or provide employment for people with learning difficulties. If you are a **charity**, you must have an object that the law defines as charitable, such as relieving financial hardship or promoting education.

Types of LLC

There are two incorporated forms to choose between when setting up a social enterprise as an LLC:

- **Private company limited by shares (CLS)** - shareholders each hold shares in the company. Their liability is limited to the amount unpaid on shares they hold. A public limited company (PLC) differs from a CLS in that its shares can be sold to the general public.
- **Company limited by guarantee (CLG)** - each of the members gives a guarantee for a certain sum that will be put towards the company's finances if the company is wound up. A CLG cannot raise finance by issuing shares, nor pay dividends to its members.

LLCs often underpin other forms of social enterprise- such as Community Interest Companies (CICs) - in which case you will have to meet additional requirements. See the page in this guide on [Community Interest Companies](#).

The issues are complex and you should seek professional advice. See our guide on how to [set up and register a limited company \(private or public\)](#).

Registration and costs

All LLCs - including CICs - must register (incorporate) and file annual returns at Companies House. LLCs must also submit a set of memoranda and articles of association. A standard incorporation certificate costs £20.

LLCs, with the exception of CICs, can also apply for charitable status if the organisation has exclusively charitable objects. However, a CLS is unlikely to get charitable status. See the pages in this guide on [charities](#) and on [Community Interest Companies](#).

Community benefit societies (BenComs)

BenComs are incorporated industrial and provident societies (IPS) that conduct business for the benefit of their community. Profits are not distributed amongst members, or external shareholders, but returned to the community.

For example, a nursery school might use this form to let staff take part in decision-making.

How BenComs operate

As IPS, some key characteristics of BenComs are as follows:

- They are set up to conduct a business or trade.
- They are run and managed by their members.
- They must submit annual accounts.

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- They can raise funds by issuing shares to the public.
- They can apply for charitable status, allowing them to raise capital through public grants and charitable trusts. If approved, they're known as exempt charities - reporting to the Financial Services Authority (FSA), not the Charity Commission. [Read about exempt charities on the Charity Commission website.](#)

BenComs are not to be confused with another form of IPS - co-operatives. Co-operatives operate for the mutual benefit of their members and may or may not be a social enterprise, depending on their activities and how they distribute their profits. [Read information on IPS at the FSA website.](#) BenComs and co-operatives are both regulated by the FSA. [Download information on BenComs and their registration from the FSA website \(PDF\).](#)

Registration and costs

To register as a BenCom, you must demonstrate your social objectives and your reasons for registering as a society, rather than a company.

It can cost between £40 and £950 to register a BenCom with the FSA - payable each year. The fee depends on the BenCom's assets and whether it registers under self-written rules or FSA-approved rules. [Download information on application fees from the FSA website \(PDF\).](#)

You should seek legal advice, particularly if creating your own rules.

Adopting or opting out of this structure

A registered company may, by special resolution and under certain circumstances, convert into a registered society. Conversely, members can vote to change an IPS's objectives and convert it into a company.

Asset locks

Non-charitable BenComs can now apply an asset lock. This protects their assets for the future benefit of the community. BenComs that do so may only convert to a community interest company (CIC). See the page in this guide on [Community Interest Companies.](#)

Charities

To be a charity, your organisation must have aims - or **charitable purposes** - that are exclusively charitable. For example, it may aim to advance education or religion, relieve financial hardship or benefit the wider community.

In addition to their charitable purposes, charities also have to pass a test to demonstrate that

they **operate for public benefit**. [Read about public benefit on the Charity Commission website.](#)

[Read a guide to registering as a charity at the Charity Commission website.](#)

Some **advantages** of charitable status are that:

- you can get a wide range of tax benefits and business rate discounts
- you may be able to raise funds more easily than non-charitable bodies
- you can get free advice from the Charity Commission

Some **disadvantages** of charitable status are that:

- your business activities are restricted to being exclusively charitable
- strict campaigning, trading and dual financial reporting rules apply
- your trustees must follow certain rules and restrictions

[Read about the advantages and limitations of being a charity on the Charity Commission website.](#)

A formal governing document is needed to set up a charity. There are three main types of governing document. Which you choose determines the type of organisation the charity will be.

Governing document	Organisation created
Constitution or Rules	Unincorporated association
Memorandum and articles of association	Company limited by guarantee
Trust deed	Trust

The Charity Commission provides model documents for the above structures. Some national charities also produce a standard governing document to be used by organisations associated with them.

Registering a charity

In addition to registering with Companies House or the Financial Services Authority, you must register with the Charity Commission if your organisation is set up under English and Welsh law and is established for exclusively charitable purposes. It must also have an income of more than £5,000 a year.

[Read about the Charities Act 2006 at the Charity Commission website.](#)

[Find out about exempt charities at the Charity Commission website.](#)

Incorporated charities

A new charity form is the **charitable incorporated organisation**. See the page in this guide on [charitable incorporated organisations](#).

Community Interest Companies

Community Interest Companies (CICs) are limited companies that exist to provide benefits to a community, or a specific section of a community. The CIC has the flexibility of the familiar company form, and access to a range of financing options, so may be appropriate for those working for a social purpose.

Its key features include an asset lock and a community interest statement.

Setting up a CIC

To register as a CIC, you must register as either a company limited by shares or a company limited by guarantee. See the page in this guide on [limited companies with a social purpose](#).

When registering your company with Companies House, you will need to provide additional documents, including a **community interest statement** describing your social purpose. The CIC Regulator will approve your application if your statement passes the **community interest test** - ie the business activities you intend to undertake will be carried out for the benefit of the community or a section of it.

[Read guidance on how to form a CIC on the CIC website.](#)

CICs shouldn't be confused with charities. CICs do not have charitable status. This means they do not get the tax benefits of a charity, but in return they do not have the strict reporting requirements of a charity.

See the page in this guide on [charities](#).

How CICs operate

CICs have to follow specific rules, including the following:

- CICs must have an **asset lock**. This means that the company cannot generally transfer its profits or assets for less than their full market value. It will also protect any remaining assets for the community if you dissolve the CIC.

- If you set up your CIC as a company limited by shares, you'll have the option of **issuing shares** that pay a capped dividend to investors. The cap is set by the CIC Regulator to protect the asset lock.
- Together with your annual accounts, you must present an **annual community interest company report** for public record. The report must show what the CIC has done during the year to pursue its pre-specified community interest and involve the individuals or groups with a particular interest in the CIC.

Charitable incorporated organisations

From autumn 2006, you will be able to set up as a charitable incorporated organisation (CIO). This form is specifically tailored for charities registered in England and Wales. It will be available to new organisations and existing charities that meet all the criteria for being a charity but do not want to use the charity form.

Converting to a CIO

Under certain conditions, the following organisations may be able to apply to the Charity Commission for conversion to a CIO, and for the CIO to be registered as a charity:

- an existing company which is registered as a charity
- a charity which is a regulated industrial and provident society

Exempt charities and companies or regulated societies with a share capital - where any of the shares are not fully paid up - will not be able to apply for conversion to a CIO. [Read about exempt charities on the Charity Commission website.](#)

Special features of CIOs

CIOs will differ from traditional charities in the following ways:

- Although CIOs will not use company terminology - directors will be called charity trustees - they will be closer to companies than charities are.
- Traditional charities may or may not be incorporated, depending on their legal form. As CIOs are always incorporated, they will be separate legal entities and their members will have either no liability or limited liability.
- CIOs - like Community Interest Companies and community benefit societies - will have their assets locked in for the benefit of the community. They will not be able to distribute profits or assets to their members. See the pages in this guide on [Community Interest Companies](#) and [community benefit societies \(BenComs\)](#).
- Unlike charities, CIOs will report only to the Charity Commission, not to Companies House or the Financial Services Authority.
- A choice of formats and administration will be available to suit organisations of all sizes, with or without a membership structure.

Helplines

Development Trust Association

0845 458 8336

Business Link Helpline

0845 600 9 006

Companies House Contact Centre

0870 33 33 636

Charity Commission Contact Centre General Enquiry Line

0845 3000 218

Related guides on businesslink.gov.uk

[Download a guide to legal structures for social enterprises \(DOC\)](#) | [Choose the right finance when starting up](#) | [Legal structures: the basics](#) | [Set up employee share schemes](#) | [Companies House annual return](#) | [Change your business structure](#) | [Use our interactive tool to find and secure the right finance for your business needs](#) | [Set up and register a limited company \(private or public\)](#) | [Set up and register a partnership](#) | [Set up and register a limited liability partnership \(LLP\)](#) | [Grants: the basics](#) | [Choose and manage a solicitor](#) |

Related web sites you might find useful

[Download a guide to social enterprises from the Social Enterprise Coalition website \(PDF\)](#)

[Find resources for social enterprises on the Social Enterprise Training and Support website](#)

[Read a guide to social enterprises on the i10 website](#)

[Access social enterprise resource materials on the Social Enterprise London website](#)

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Read about the Companies Act 2006 on the Department of Trade and Industry website

Download a guide on good governance for the voluntary and community sector from the Governance Hub website (PDF)

Find out about charitable objects on the Charity Commission website

Find the legal definition of unincorporated associations on the HM Revenue & Customs website

Find programmes to help develop and start up a social enterprise business on the Third Sector Enterprises website

Find training programmes for social enterprises at the School for Social Entrepreneurs website

Search the finding finance directory on the Community Development Finance Association website

Read about development trusts on the Development Trusts Association website

Find the requirements for company formation on the Companies House website

Order a postal copy of the incorporation starter pack at the Companies House website

Download information on BenComs and their registration from the FSA website (PDF)

Download information on application fees from the FSA website (PDF)

Download information on converting a company into an IPS from the FSA website (PDF)

Read about exempt charities on the Charity Commission website

Purchase a guide to legal forms for social enterprises from the Social Enterprise Coalition website

Find out about CICs on the Community Interest Companies website

Read a guide to registering as a charity at the Charity Commission website

Set up a social enterprise

Find out about governing documents on the Charity Commission website

Order an application pack at the Charity Commission website

Read about the Charities Act 2006 at the Charity Commission website

Find out about charity law and governance on the Institute of Fundraising website

Find out how to register a CIC on the Community Interest Companies website

Find out how to form a CIC on the Companies House website