



United Kingdom

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation, Cooperative, Corporation, Limited Liability Company, Company Limited by Guarantee, Trust, Endowment, Society, Charitable Incorporated Organization

Five main social issues addressed by these organizations: Higher Education, Arts and Culture, Health and Medical Research, Basic Needs, Religion

Average time established by law to register a philanthropic organization: 31-60 days

Average cost for registering a philanthropic organization: US \$0

There are currently no charges to register with the Charity Commission. It does not cost anything to register with Companies House in the case of charitable companies, though there might be some cost if a charitable trust is liable to pay stamp duty. There might be other costs, for instance, legal fees if the organization seeks legal advice in relation to registration.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government, State Government

Charity law and regulation is now devolved (for purposes other than taxation) in Scotland and Northern Ireland. Scotland and Northern Ireland now have their own regulators, which operate in a similar manner to the Charity Commission for England and Wales.

Philanthropic Environment Scores:

| Year | Ease of Operating | Tax Incentives | Cross-Border Flows | Political Environment | Socio-Cultural Environment | OVERALL SCORE |
|------|-------------------|----------------|--------------------|-----------------------|----------------------------|---------------|
| 2018 | 4.7 | 4.0 | 4.0 | 3.8 | 4.5 | 4.18 |

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

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| Score: 5.0 |
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Individuals may act collectively through unregistered groups and may pursue any legal purposes. Charities (a defined sub-set of POs) can only pursue a charitable purpose, which does not include political purposes. They are generally free from legal impediments from the State. Charity law and regulation is now devolved (for purposes other than taxation) in Scotland and Northern Ireland, so there are different (but similar) legal and administrative regimes. This section will discuss England and Wales. Registration requirements are not onerous, and charities in England and Wales must register with the Charity Commission unless their annual income is below £5,000. Documentary requirements are clear and reasonable, with model documents available for adoption. There is currently no registration fee, although this may change. The process is reasonably efficient and is conducted with due process in a timely fashion with appropriate rights of review and appeal, including a recently set up Tribunal that hears appeals from certain defined decisions and actions of the Charity Commission.

There are minimum age limits on becoming a charity trustee, which are 18 or 16 depending on the legal structure of the organization. Additionally, some people are disqualified by law from acting as trustees, such as undischarged bankrupts (individuals in the process of bankruptcy). The list of disqualifying features has recently been extended.

The Charity Commission's regulatory performance has attracted considerable public and parliamentary interest recently. This has occurred against a background of significant budget cuts through government spending reductions aimed at tackling the UK's budget deficit. Following criticism from, among others, the House of Commons Public Accounts Committee and the National Audit Office in 2013–14, the Charity Commission began to focus on its regulatory role and to become more proactive in this regard. Recent assessments of its performance are more favorable.

Question 2: To what extent are POs free to operate without excessive government interference?

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| Score: 4.0 |
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The structure and governance of POs are flexible and do not overly constrain the internal affairs of organizations. The four traditional primary forms of POs are companies limited by guarantee; unincorporated associations; trusts; and industrial and provident societies. A PO in any of these categories can qualify as a charity if it pursues exclusively charitable purposes. While none of these structures are specific to charities, a new legal form has been created that is the first structure specifically designed for charities—the Charitable Incorporated Organization (CIO). Whilst the majority of registered charities are currently unincorporated bodies, the new CIO form is proving

popular with new charities. Within 3 years of its introduction in 2013, it accounted for 25 percent of new registrations; this is because it gives incorporated status and limited liability but is not subject to company law. There are model governing documents for each legal structure that charities may, but are not required to, adopt.

While POs may carry out any lawful activities, charities cannot serve political purposes. POs may freely collaborate and communicate with other entities through networks, collaborations, and may use the Internet and all forms of social media. Legislation enacted in 2014 that affects non-party campaigners (those that campaign at elections but are not standing as political parties or candidates) has impeded charities' ability to engage in campaigning in the run up to an election, and there are calls for changes to this law.

While reporting requirements are clear and predictable, there is some duplication of reporting for certain forms of POS that may be subject to more than one regulatory body. For example, charitable companies must file with both the Charity Commission and Companies House. In addition, charities that operate across borders may have to register in more than one jurisdiction. Reporting requirements are graduated, depending on the size of income.

Question 3: To what extent is there government discretion in shutting down POs?

Score: 5.0

The governing bodies of charities are able to voluntarily terminate their charity. This is regulated by law and the procedure to be followed will depend upon the legal structure of the charity. The procedure, which is generally supervised by the Charity Commission, requires that any remaining funds must be applied toward charitable purposes. Charities with a permanent endowment may need to change their objects to cover new areas of work, change their constitution to allow the endowment to be spent, or merge with another charity.

The Charity Commission is not allowed to become directly involved in the running or administration of a charity, although it can, under certain circumstances, give directions to charity trustees, appoint interim managers to displace the trustees, and make remedial schemes. The legal framework is designed to protect assets and envisages a charity continuing after the Commission has dealt with misconduct or mismanagement, albeit perhaps with different trustees in control of the charity. Ordinarily, the Charity Commission will only remove a charity from the Register of Charities if it ceases to operate or exist, which is relatively common, or, more rarely, if it can be proven to be a sham and never was a charity in the first place. Legislation introduced in 2016, aimed at extending the Charity Commission's powers to tackle abuse in charities, gives greater ability to effectively force a charity's dissolution in instances where the charity does not operate or its purposes can be promoted more effectively if it ceased to operate. Prior to directing a charity to dissolve, the Commission must give public notice of its intention to do so, specifying a period in which resolutions may be made and which, in turn, the Commission must take into account.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 4.0

Single charitable donations of money can give rise to a tax repayment for the charity and income tax or corporation tax relief for the donor via Gift Aid. For basic-rate taxpayers, charities receive the (after tax) donation and then reclaim basic-rate tax (20%) on its gross equivalent (the amount before the tax was deducted). Therefore, with a gift to charity of £100, the charity can claim back £25. For a charity to receive £100, a basic-rate taxpayer need only make a donation of £80, with the basic-rate tax of £20 being reclaimed. Donors taxed at the higher rate can claim an additional 20 percent tax relief (the difference between the higher rate of 40% and the basic rate of 20%) on the grossed-up donation. Gift Aid payments require a donor declaration, which may now be in writing, by phone or via the Internet. Donors may also now complete a single declaration to cover a series of donations. However, and despite improvements, the Gift Aid procedure is complex and many individual donors do not understand how it works. As a result, many higher-rate taxpayers do not claim via their self-assessment tax return the relief to which they are entitled. This may be through ignorance, complexity, or because they consider that it is not worth doing. In addition, there are complex ‘tainted charity donations’ rules aimed at denying tax relief in instances where the main purpose of the donor is to receive directly or indirectly from the charity, an advantage for the donor, or a connected person. An alternative form of tax relief, Payroll Giving, allows employees to make regular and one-off payments to charity directly from their pay before tax is deducted, ensuring that employees are given tax relief on their donation immediately. Relief is also available for individuals making gifts or transferring discount shares, securities, and real property to charities. Lastly, companies may benefit from corporation tax relief if they give or transfer at a discount land, property, or qualifying shares to a charity.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 4.0

Charities are exempt from most forms of direct taxation. Their main exemptions from income or corporation tax are on income from: Gift Aid payments; payments of money from other charities; income from profits of a trade; investment income; profits from fund-raising events; lottery income; and, property income. Charities are also exempt from paying stamp duty, land tax, inheritance tax, and capital gains tax. Generally, to be exempt, the relevant income and gains must be applied to charitable purposes only.

There are a number of VAT reliefs and exemptions available specifically for charities, subject to certain conditions and restrictions. Charities are entitled to an 80 percent reduction of business rates. Whilst other POs do not generally enjoy tax benefits, sports clubs registered as Community Amateur

Sports Clubs (CASCs) can benefit from various tax advantages that are ordinarily reserved for charities.

Previously, tax legislation containing charity reliefs relied on the common law definition of ‘charity’, or latterly, the definition contained in charities statutes and not in tax legislation. In 2010, however, a new definition of ‘charity’ was introduced, one which applies to all UK charity tax reliefs and exemptions. As a result, charities must be recognized and registered as charities, where appropriate, and be located in the UK, a European Union member state, or, Iceland, Norway, or Liechtenstein. In addition, all persons in the charity having control and management responsibilities must be ‘fit and proper persons,’ a restriction designed to prevent charities from claiming unlawful tax exemptions and from abusing the charities’ tax status. This new, stricter definition of charity for tax purposes could potentially lead to a body being recognized as a charity by the Charity Commission but being denied tax reliefs for both the charity itself and its donors.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

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| Score: 4.0 |
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Actual instances of terrorist abuse of charities are extremely small in number, but the Charity Commission has become increasingly concerned about charities operating abroad or supporting overseas charities. If trustees simply pass funds to another organization without controlling the way that funds are spent, such transactions are not regarded as charitable by law.

Additionally, expenditures overseas may be considered non-charitable, and, therefore, are liable for tax, if domestic charities do not take the steps that HM Revenue & Customs (HMRC) considers sufficient to ensure that the funds are used for charitable purposes. If a charity cannot provide evidence that it took the necessary steps (set out in detailed HMRC guidance) to establish that donations to offshore recipients would be, or have been, spent charitably to the satisfaction of an officer of HMRC, the expenditure may be deemed non-charitable and tax exemptions may be restricted accordingly.

Previously, donors wishing to give to European Union (EU) charities and to claim UK tax reliefs were obliged to make the gift to a UK registered charity. This led to some larger EU charities establishing ‘sister’ organizations in the UK to receive donations from UK taxpayers. As a corollary, donations to other smaller EU charities had to be channeled through donor-advised funds. However, there has been a recent extension of UK tax reliefs to bodies equivalent to charities in the EU and in the European Economic Area (EEA) countries of Iceland, Norway, and Liechtenstein. This was necessitated by a decision of the European Court of Justice, which held that to deny tax exemptions for cross-border gifts made to EU charities is contrary to the principle of free movement of capital.

Donations made directly, rather than being routed through a UK intermediary charity, to charities in countries outside the EU or EEA do not qualify for tax relief.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 4.0

The Charity Commission recommends that, after having applied a charity's risk management processes, trustees need to carefully evaluate incoming donations and may need to take extra steps in identifying, verifying, and handling donations received from sources outside the UK. Whilst trustees can accept anonymous donations, trustees must be able to identify and be assured of the legality of substantial donations. Good due diligence helps to assess and mitigate risks, legitimizes the process of accepting money and assures recipients that the donation is not from any illegal or inappropriate source.

Gift Aid relief for donors do not ordinarily apply to gifts from individuals or from companies headquartered overseas. For individuals, the donor must be charged income tax and/or capital gains tax for the year of donation at least equal to the tax treated as deducted from all their Gift Aid donations. For companies, Gift Aid donations are only deductible against UK Corporation Tax profits. HMRC guidance states that, in addition to permitting charities to receive tax exemptions for all interest, Gift Aid donations and other annual payments, these exemptions apply to any non-UK equivalents of such income, which would otherwise be assessed as foreign income. The guidance also notes that, occasionally, charities seeking to claim exemption from foreign tax from an overseas tax authority may request confirmation that they are subject to UK tax. Certain Double Taxation Agreements provide that a resident of the UK will be entitled to exemption or relief from the foreign tax on certain types of income only if he or she is subject to tax on that income in the UK. HMRC advises that charities should be aware that a person is not regarded as subject to tax in the UK if the income in question is statutorily exempt from tax.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.5

Profound economic, social, and technological changes have posed new challenges for charities and have resulted in some high-profile failures, leading to intense scrutiny of the sector. However, the overwhelming majority of charities continue to do excellent work and trust in the sector fundamentally remains strong. Recently, charities' funding has changed significantly with public sector grants largely replaced by contracts, often with complex commissioning processes. These have disadvantaged smaller charities, which struggle to bid for services at scale, and have constrained

the valuable innovation that charities can bring to service delivery. For all charities, contract funding is tightly defined, creating additional challenges in funding charities' core costs. There has also been pressure on charities to reduce back office costs and an increasing expectation that all money donated should go to the frontline. The result has been further pressure on charities' viability and sustainability.

The Charity Commission is considering whether to charge charities in order to fund part of its operation. Concerns have been raised about the impact of a charge, both for the charity sector and for the Commission itself. Recently, charities' ability to advocate for change has been threatened. Legislation enacted in 2014 that affects non-party campaigners (those that campaign at elections but are not standing as political parties or candidates) have impeded charities' ability to engage in campaigning in the run up to an election, and there are calls for changes to this law. In addition, in 2016, the government attracted controversy by proposing (but then withdrawing the idea) that an 'anti-advocacy clause' would be included in all future government grants, forbidding any use of public money for advocacy work on the part of charities. Withdrawal from the European Union will affect the charity sector, with estimates that the sector receives around £200 million a year from the EU.

Question 9: To what extent are public policies and practices favorable for philanthropy?

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| Score: 4.0 |
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The government actively and strategically promotes philanthropic values and facilitates equal access to national and international resources and opportunities. Donors are generally free to support any philanthropic cause without government pressure. However, the "Big Society" as a model for engaging charities and delivering social policy goals, which seemed to hold great promise for the third sector both in terms of delivering services and helping communities to empower themselves, has not come to fruition. The government seeks to improve on the fiscal benefits of charitable giving, with recent changes to the Gift Aid scheme as an example. Government agencies demonstrate adequate capacity to support and oversee POs, but there are concerns that support is diminishing.

In response to significant resource constraints and widespread criticism of its performance, the Charity Commission's renewed regulatory focus may have come at the expense of its other role as an advisor and enabler to the charity sector. The government has strengthened the Charity Commission's regulatory powers through legislation enacted in 2016. Compacts exist between the government and voluntary sector bodies at both national and local levels. These are voluntary agreements that are intended to promote partnerships between public bodies and voluntary organizations. Nevertheless, compact principles are not always adhered to and charities do not always feel fully consulted about proposed new laws and regulations, increasing the risk of unintended consequences. This particularly applies to smaller charities, which do not have the resources to devote to additional legal and regulatory compliance. For example, some charities are struggling to safeguard against data security lapses when faced with a tougher data protection enforcement regime.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

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| Score: 4.5 |
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There is a strong tradition of highly respected and widely practiced philanthropic activity. Frank Prochaska, a historian and noted authority on the matter, claimed that “no country on earth can lay claim to a greater philanthropic tradition than Britain.” The UK is the 8th most generous nation, according to the Charities Aid Foundation (CAF) World Giving Index 2016. The CAF 2015 UK Giving Report found that two in three people (67%) had given to charity in the last year, and two in five people (42%) had given in the last month. Volunteers are also a vital part of the work of POs, and the National Council for Voluntary Organizations (NCVO) Almanac for 2016 noted that 27 percent of the population formally volunteers at least once a month.

The role of POs has recently become the focus of more direct policy engagement, largely focused on the involvement of the sector in welfare provision and how this relates to the role of the State. This has led to debate about what the relationship between the State and POs should be, how this relationship should be managed and supported by the government, and how to maintain the independence of the sector. This is against a backdrop of recession, austerity, and unprecedented cuts in public funding for POs, many of whom are struggling to survive. Charities are restructuring, downsizing, and joining forces as they struggle to raise enough money to meet growing demands. In 2016, the Charity Commission reported that public trust and confidence in charities fell to the lowest recorded level since its monitoring began in 2005. This decline was attributed to critical media coverage of charity practices, distrust about how charities spend donations, and perceptions of aggressive fundraising tactics. Nevertheless, charities continue to enjoy a positive public reputation and are a highly valued part of public life. Positive, recent signs to win back trust include the establishment of a new fundraising regulator, an enhanced regulatory environment, and a renewed interest in the voluntary sector Code of Governance.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

A recent report of a Select Committee of cross-party members of the House of Lords noted that charities form a vital part of civil society in the UK. From small local organizations run entirely by volunteers to major global organizations with turnover in the hundreds of millions, their work touches almost every facet of British society. The environment in which charities work has changed dramatically in recent years. Shifts in funding, budget cuts, and charity scandals have all taken their toll. At the same time, the support available to the sector has been under considerable pressure. Many of the infrastructure bodies and umbrella organizations in the charity sector have faced funding challenges of their own, and their capacity to support charities has been stretched. In addition, the Charity Commission budget has reduced, and they have had to focus primarily on their regulatory

role and do less aimed at supporting and enabling work. The report concluded that charities have always helped society through periods of upheaval and would do so again.

More positively, recent research on large (£1 million plus) donations talks confidently about this being a “boom time” for UK philanthropy. There are substantial increases in the number of million-pound donations and their collective value, together with more “first time” £1 million donors. In addition, a bigger pool of charities is able to attract multiple mega-donations. These findings suggest that efforts to build a stronger culture of philanthropy in the UK have been successful.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- Charity fundraising scandals of 2015;
- Transparency of Lobbying, Non-Party Campaigning, and Trade Union Administration Act 2014; and
- The outcome of the United Kingdom European Union membership referendum, held in June 2016.

Future development trends in the philanthropic landscape

Like the rest of society, charities are challenged by enormous flux in the external environment. For example, in terms of digital innovation, while some charities are at the cutting edge of new technology, others have yet to realize its potential or overcome its challenges with regard to fundraising, volunteering, and communications. UK charities’ fundraising activities may be controlled by law in the future unless the establishment in 2016 of a new independent regulator of charitable fundraising succeeds in strengthening charity regulation and restoring public trust in fundraising. Following the inappropriate use of donors’ data, and some high profile cases in which unscrupulous fundraisers were accused of targeting old and vulnerable givers, this is the “last chance” for self-regulation of charity fundraising.

The boundaries between the third sector and the private and public sectors have become increasingly blurred by both the rise of social enterprise and contracting out of public services. The emergence of new commissioning models, such as the growth of payment by results, including social impact bonds (SIBs), is also challenging. Social investment has been heavily promoted by the government as a new form of income for charities.

However, alongside the potential advantages, there are also barriers, particularly for smaller charities that may not have the capacity. A recent House of Lord Select Committee Report on Charities recommended that the government and sector leaders should do more to address the reasons for high transaction costs and work to bring them down.

The potential impact of the UK’s withdrawal from the EU on the philanthropic landscape in the UK is hard to estimate, but is likely to be significant. In any event, negotiating the withdrawal will certainly dominate the political agenda, to the exclusion of all else, for some time to come. Traditional models of charity and their governance and leadership may well be questioned in the future.

Three key recommendations to improve the environment for philanthropy

1. All limits (legal, practical and even perceived) on charities in relation to legitimate campaigning removed.
2. The Charity Commission should be properly resourced and should use the powers that it has to more effectively and robustly regulate the sector.
3. Increased promotion of commissioning of public services based on impact and social value, rather than simply on the lowest cost.