



Forming a Constitution

What to do

These guidelines are intended for anyone who is starting out on the road to constituting their group. They are intended as an outline of the steps you will need to take, highlighting the choices you will need to make, the information you will need to gather, and other organisations you will need to contact. The guidelines should be used in conjunction with the other more detailed documents that are referenced throughout. We recommend that you read these carefully to help you make informed decisions about what is right for you and your museum. A list of useful contacts is provided at the end.

1. Choosing a legal structure

One of the first decisions you will need to make is what type of legal structure to adopt. Independent museums most commonly choose to structure in one of two ways:

- As a trust
- As a company

There are advantages and disadvantages to both, although you should note that the obligations of each are very different and require different levels of commitment. You must decide which is most appropriate to your core aims and objectives, the scale of your operations and the people involved. We would recommend that you read the SCVO (Scottish Council for Voluntary Organisations) and SAC (Scottish Arts Council) guides listed below, as an introduction to the different structures and associated obligations, and as a guide to your decision making.

Ref: SCVO - *Guide to Constitutions and Charitable Status – Module 1, Choosing a Legal Structure*

www.scvo.org.uk/essentials

SAC - *Care Diligence and Skill*

(a handbook for the governing bodies of arts organisations)

SMC - *Guidance Notes on Legal Structures and Responsibilities*

2. Drafting your constitution

Whether you decide to become a trust or a company, you will need to draft some form of governing document. In both instances, you will need to incorporate the answers to some important questions and ensure that everyone involved has the same vision for your organisation.

In the case of a trust . . .

You will need to draft a **trust deed**. You will need to consider:

- A name for your trust.
- The purpose (or objects) of the trust. The statement of purpose should act as a guide to trustees and clearly identify what the trust is set up to do. Wording should accurately reflect the aims and activities of the trust, and as a principle of good practice should provide for the protection of your collection.
- The composition of the trustees. Remember that the role of trustees is to control and supervise the activities of the trust. You might consider including a statement about the intended number and composition of trustees to ensure the trust operates to best effect.

Ref: SCVO - *Guide to Constitutions and Charitable Status –
Module 4, Forming a Trust*

SMC - *Specimen Deed of Declaration of Trust*

In the case of a company . . .

You will need to draft **articles and memorandum of association**. You will need to consider:

- A name for your company.
- The purpose (or objects) of the company, set out in the memorandum of association. The purpose should clearly reflect the aims and activities which your organisation will pursue in practice, and as a principle of good practice should provide for the protection of your collection.
- The composition of the board. The board's role is to control and supervise the activities of the company. You will need to consider the number of directors, their composition, election and period in office.
- The qualifications for membership.

Ref: SCVO - *Guide to Constitutions and Charitable Status –
Module 3, Forming a Company Limited by Guarantee*
www.SCVO.org.uk/essentials/toolkit/index.htm

SMC - *Specimen Memorandum and Articles of a Company Limited by Guarantee*

3. Seeking advice from a solicitor

Our model constitutions have been endorsed by a solicitor and by the Inland Revenue and can be used to assist you with the drafting process. However, we would always recommend that you seek independent legal advice on your final document. It is important that your constitution is suited to your specific situation and that nothing has been omitted which might later hinder your application for charitable status.

If you choose not to follow our given models, we would recommend that you seek the expert advice of a solicitor who deals regularly with drafting constitutions for charitable organisations. The Law Society of Scotland can recommend suitable solicitors in your area.

4. Forming your trust or company

Once you have agreed on the final draft of your trust or company documents you will want to become formally recognised.

In the case of a trust . . .

- Complete the signing page of the trust deed, inserting the number of pages, the names of the people forming the trust, the place of signing, the date and the full name and address of the witness. Each of the people forming the trust should also sign on the last page of the document, in the presence of the witness who will also sign.
- Send your signed trust deed to the Stamp Office together with the required stamp duty (currently £5). The deed will normally be stamped and returned to you within 5 days.

Ref: SCVO - *Guide to Constitutions and Charitable Status –
Module 4, Forming a Trust*

Edinburgh Stamp Office

In the case of a company . . .

- During the drafting process, you should start to gather together various pieces of supporting information including:
 - The first directors' full names, any former names, home addresses, dates of birth, nationality, business occupations, any directorships.
 - The company secretary's full name, former names, home address.
 - The proposed address of the registered office.
 - Full names and addresses of all subscribers.These will later be sent to Companies House as part of a larger package of information.
- Contact Companies House and ask for a Company Incorporation Pack. This is a starter pack containing helpful information about your application, guidance notes and two forms which you must complete:

- Form 10: First directors and secretary and intended situation of registered offices.
- Form 12: Declaration on application for registration.
- All subscribers must sign at the end of the memorandum and articles of association, in the presence of a witness. The witness should also sign, giving their full name, address, occupation and date.
- You should post all the above documents (supporting information, Forms 10 and 12 and signed memorandum and articles of association) to Companies House, including a payment of £20 for incorporation dues. Your application will then be processed, usually within 2-3 days. Should you choose it, a fee of £80 will ensure a same day service. Companies House will issue you with a Certificate of Incorporation which will officially bring your company in to being.

Ref: SCVO - *Guide to Constitutions and Charitable Status –
Module 3, Forming a Company Limited by Guarantee*

Companies House – *Company Incorporation Pack*

5. Registering as a charity

There is no system to register a charity in Scotland but you can apply to the Inland Revenue for recognition as a charity for tax purposes. It is advisable to send a draft copy of your trust or company documents to the Inland Revenue for comment at an early stage. You will be given an indication of whether charitable recognition can be granted and can make any necessary amendments.

Once your documents have been finalised and you are formally constituted as a trust or company, you will then be in a position to seek recognition as a charity. You will need to send the Inland Revenue copies of your final documents.

In the case of a trust . . .

You will need to send a copy of your stamped deed of trust, certified as a true copy by one of the trustees, or an Extract Registered copy of the trust deed.

Ref: SCVO - *Guide to Constitutions and Charitable Status –
Module 5, Charitable Status*

Inland Revenue leaflet – *Setting up a Charity in Scotland*
www.inlandrevenue.gov.uk/charities/index.htm - IR 2004, chapter 2

In the case of a company . . .

You will need to send a copy of your memorandum and articles of association (certified by the company secretary), a copy of the Certificate of Incorporation, and a note of the registered office address.

Once you are recognised as a charity, you will be sent a letter allocating you a Scottish charity number. The name and address of your charity will be included in the index of Scottish Charities.

Ref: SCVO - *Guide to Constitutions and Charitable Status – Module 5, Charitable Status*

www.inlandrevenue.gov.uk/charities/index.htm

What next . . . ?

Getting constituted and gaining recognition as a charity is just the start. You will have set up your organisation with a view to achieving specific goals and it is up to your trust or company to ensure they are achieved. To maintain a healthy, active and effective organisation takes time, commitment, pride in good governance, investment in training and development, and an awareness of external issues.

There are many sources of information available to help you learn about your new roles and responsibilities, as well as organisations that can help you develop to meet your goals. We recommend that you make full use of these resources to help you and your organisation change and grow.

Ref: SAC - *Care Diligence and Skill*
(a handbook for the governing bodies of arts organisations)

Useful contacts . . .

Companies House (General Enquires)
Argyle House
37 Castle Terrace
Edinburgh
EH1 2EB

0870 333 3636
www.companies-house.gov.uk

Edinburgh Stamp Office
Grayfield House
Spur X
5 Bankhead Avenue
Edinburgh
EH11 4BF

0131 442 3161
Inland Revenue (Charities)

Certify company documents,
bring companies into being.

Stamp trust documents, bring
trusts into being.

Grant recognition of charitable

Meldrum House
15 Drumsheugh Gardens
Edinburgh
EH3 7UL

0131 777 4000
www.inlandrevenue.gov.uk

Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh
EH3 7YR

0131 2267411
www.lawscot.org.uk

Scottish Arts Council
12 Manor Place
Edinburgh
EH3 7DD

0845 603 6000
www.scottisharts.org.uk

Scottish Charities Office
25 Chambers Street
Edinburgh
EH1 1LA

0131 226 2626
www.crownoffice.gov.uk

Scottish Council for Voluntary Organisations
15 Mansfield Place
Edinburgh
EH3 6BB

0131 556 3882
www.scvo.org.uk

Scottish Museums Council
County House
20-22 Torphichen Street
Edinburgh
EH3 8JB

0131 229 7465
www.scottishmuseums.org.uk

status for tax purposes.

Advice on finding solicitors who
draft trust and company
documents.

Advice on good governance of
charitable organisations and the
obligations of governing bodies.

Information and updates on the
Scottish Charity Law Revue.

Advice on setting up and
running charitable organisations,
list of frequently asked
questions.

Advice specific to museums,
sample museum constitutions,
good governance.