

# United Kingdom

## Focus on England and Wales

### **Legal Environment for Philanthropy in Europe 2024**

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## I. Legal framework for foundations

- 1. Does the jurisdiction recognise a basic legal definition of a foundation? (please describe) What different legal types of foundations exist (autonomous organisations with legal personality, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations, party political foundations, family foundations, foundations of banking origin as a specific type, companies limited by liability, trusts)? Does your jurisdiction recognise other types of philanthropic organisations?**

Different charity laws exist across the UK. The principal charity laws are as follows:

- For England and Wales: The Charities Act 2011, as amended by the Charities Promotion and Social Investment Act 2016 and the Charities Act 2022 (hereafter referred to as “the Act”)
- For Scotland: The Charities and Trustee Investment (Scotland) Act 2005, as amended by the Charities (Regulation and Administration) (Scotland) Act 2023
- For Northern Ireland: The Charities Act (NI) 2008, as amended by the Charities Act (Northern Ireland) Act 2022

This country profile is based on England and Wales.

In practice, the term “foundation” is used to refer to a grantmaking charity, many of which will have an endowment. However, the term “foundation” in this profile is intended to be synonymous with the term “charity”. Section 1 of the Act states: “‘Charity’ means an institution, which is established for charitable purposes only, and falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.” There is no specific legal form for foundations required by law.

The legal forms available to charities range from unincorporated bodies, such as associations and trusts, to incorporated bodies such as companies limited by guarantee; bodies created by Royal Charter or Act of Parliament; Friendly Societies and community-benefit societies; and charitable incorporated organisations (CIOs). Unincorporated organisations have no legal personality, and in many cases the board members enter into agreements and undertake liability in a personal capacity. The board of an unincorporated organisation may set up a charitable company limited by guarantee to act as the sole trustee in order to limit the personal liability of the individual trustees and/or obtain insurances to protect their position. Charitable companies limited by guarantee acquire legal personality upon registration at Companies House. The board members of a charity are generally referred to as the “charity trustees” regardless of the legal form of the charity; thus the directors of a charitable company are usually also the charity trustees.

Charitable companies limited by guarantee are subject to dual regulation: They must submit annual returns to both the Charity Commission for England and Wales (the Commission) and the companies regulator.

A CIO has the advantages of a corporate structure, but without having to provide dual annual returns. A CIO is only required to submit annual returns to the Commission. Existing charities may convert to the CIO structure, or they may retain their existing legal form. A CIO acquires legal personality upon registration with the Commission.

- 2. If your jurisdiction provides for different laws for different foundations/philanthropic organisations, please indicate this here, and then specify under further relevant questions whether a different answer applies to these types of foundations/philanthropic organisations.**

None of these legal forms is intended to be used exclusively by foundations, but in practice an organisation that acts as a foundation is likely to take the form of a trust, a company limited by guarantee or a CIO. The constitution of a CIO must follow one of two models: the association model or the foundation model. The association model is suitable for membership-based organisations whereas the foundation model is designed for use by foundations.

### 3. What purposes can foundations legally pursue?<sup>1</sup>

- ☒ Only public-benefit
- ☐ Both public- and private-benefit

### 4. What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?

Section 15(4) of the Act requires the Commission to maintain a register of all charities required to be registered by the Act. There are currently around 168,000 registered charities in England and Wales. There are also a significant number of charities which are not registered charities. All charities, whether registered or unregistered, are subject to the general principles of charity law. The following charities do not have to register with the Commission:

- “Exempt Charities”, which already have a principal regulator that has agreed to take responsibility for ensuring they meet charity law (e.g. universities)
- “Excepted Charities”, which are permanently or temporarily excepted from registration by the Commission or by statutory instrument

The Commission decides whether an applicant falls within the definition of charity as defined by the Act and can be registered as a charity. Additionally, the Commission may require, or advise on, changes that may need to be made to the governing document. The main types of governing document are the following: a constitution or rules, a trust deed and/or articles of association.

Applications for registration must be submitted to the Commission through an online form which requires details of the organisation’s board members and an explanation of how its proposed activities provide public benefit. The applicant is normally required to show that it has or will have an annual income of at least £5,000 (~ €5,800) before the Commission will proceed with registration.

### 5. Is state approval required? (approval by a state supervisory authority with/without discretion)

- ☐ Approval by a state authority with discretion
- ☐ Approval by a state authority without discretion
- ☐ Approval by a court
- ☐ Notarisation by a notary public

<sup>1</sup> This question focuses only on public-benefit foundations (see the definition in the [glossary](#) developed for this project).

The state's approval is not required, but the Commission's is. The Commission is a Non-Ministerial Government Department, accountable to parliament and the public, independent from those it regulates.

## 6. Are foundations required to register?

a) If foundations must register, in what kind of register?

- ☐ Company register
- ☐ Foundation register at national level
- ☐ Foundation register at the regional/county level
- ☐ Beneficial ownership register
- ☐ Any other public register (other than a foundation/charity one)

All foundations established in England and Wales with an annual income exceeding £5,000 (~€5,800) must register with the Charity Commission unless they are required to register with a different regulator (e.g. a government department).

Foreign foundations cannot register with the Charity Commission unless they are subject to the jurisdiction of the High Court in England and Wales, which will normally not be the case.

b) If foundations are registered, what information is kept in the register?

The register includes the governing instrument, details of the charitable purposes, the geographical area of activity, the names of the board members and whether they are board members of other charities, and copies of annual accounts.

c) If foundations are registered, is the register publicly available?

- ☒ Yes, all information publicly accessible - it is available on the [Charity Commission website](#).
- ☐ Yes, some information publicly accessible
- ☐ Yes, accessible upon request
- ☐ No

## 7. Is a minimum founding capital/endowment required?

- ☒ No
- ☐ Yes, amount:

## 8. Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime? Are spend-down foundations allowed?

Foundations with a "permanent endowment" are required to maintain that endowment throughout their lifetime. Spend-down foundations can be established. Prior to CA 2022 it was not normally possible to convert a permanent endowment into a spend-down foundation unless the original purposes had become impossible or impractical to carry out.

CA 2022 introduced new statutory powers to enable:

- Charities to spend, in certain circumstances, from a "smaller value" permanent endowment fund of £25,000 (~€29,100) or less without Commission authority
- Certain charities to borrow up to 25% of the value of their permanent endowment fund without Commission authority

Charities that cannot use the statutory powers will require Charity Commission authority. The procedures required to close a charity will vary according to the legal form of the charity. The Commission has published a guide to the operation of these procedures ("How to close a charity", Charity Commission, Updated March 2024).

CA 2022 also introduced a new statutory power that is now in force which enables charities that have opted into a total return approach to investment to use their permanent endowment to make social investments with a negative or uncertain financial return, provided any losses are offset by other gains.

## 9. What governance requirements are set out in the law? Is it a one-tier or two-tier foundation governance model?

a) Is it mandatory to have a:

- ☐ Supervisory board
- ☒ Governing board

b) What are the requirements concerning board members? Is a minimum/maximum number of board members specified? Does the law regulate the appointment of board members and their resignation/removal, or can this be addressed in the statutes/bylaws?

For an unincorporated charity the number of board members that are necessary will be specified in the governing document. For incorporated charities the minimum required by the Companies Act 2006 is one for private companies and two for public companies. The Charity Commission normally requires a minimum of three individual board members, but it is possible in some circumstances for a charity to have a single charity trustee (e.g. a corporate body).

Usually, the charity's governing document will also set out how trustees are to be appointed. It is good practice for the governing document to deal with such matters, and for the term of office to rotate so that the skills of the board are diverse and refreshed.

c) What are the duties and what are the rights of board members, as specified by national legislation or case law?

The primary pieces of legislation that are relevant for board members of charitable entities in England and Wales are the Act, the Companies Act 2006 and the Trustees Act 2000, as well as any other legislation relevant to the undertaking of the charity. The Commission also issues operational guidance based on charity law which sets out good practice and general guidance for trustees. Trustees' duties include duty of compliance, duty of prudence, and duty of care. In relation to an incorporated charity, the requirements of the Companies Act 2006 in regard to directors' duties will also apply. These include: duty to act within powers; duty to promote the success of the company; duty to exercise independent judgment; duty to exercise reasonable care, skill and diligence; duty to avoid a conflict of interest with the company; duty not to accept benefits from third parties; duty to declare any direct or indirect interest in a proposed or existing transactions or arrangements with the company; and duty to keep company information confidential.

The Charity Governance Code, devised by charity sector umbrella bodies and supported by the Commission, sets out voluntary principles of best practice for charities of any size.

d) What are the rights of founders during the lifetime of the foundation? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

A charity may be established by a founder for a specific purpose, provided such purpose complies with the Act. It is possible for founders to include provisions to protect their interests in the governing instrument of a charity, but they cannot override decisions of the board. A founder might determine that the charity's assets are to be used for specific charitable purposes only; such assets cannot be used for different charitable purposes and if they are so required, such use can only occur with the permission of the Commission.

- e) Can the board or the founder amend the statutes including the purpose of the foundation? If yes, please indicate any particularities. What is the relationship between the powers of the founders, the statutes of the foundation and the power of the board members?

See above.

- f) What are the rights of third parties (e.g. right of information)?

Charities must make their accounting records and annual reports available to the public on request. There are also provisions under the Data Protection Act (2018) that give individuals rights to personal data held on them by an organisation, including a charity.

- g) What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?

Trustees have a duty to avoid situations where their personal interests or their duties conflict with their duty to the charity. The legal definition has been determined by case law and accepted best practice. A conflict of interest may include financial or non-financial benefit, and a conflict might also arise if such benefit is obtained by a person connected with the trustee. The exception to this is when such benefit is derived lawfully. It is good practice for the charity to have in place a conflict-of-interest policy and a register which notes any conflicts that might arise. The Companies Act 2006 brought in statutory duties for trustees of charitable companies which include a duty to avoid conflicts of interest (see above).

- h) Can staff (director and/or officers) participate in decision-making? How and to what extent?

The trustees may have the power to delegate to staff and/or other agents provided there is adequate provision for doing so in the governing document and/or under any applicable legislation. Where they need to delegate decisions for the day-to-day management of the charity to employees and/or other agents, it is good practice to set out the level, scope and accountability of the delegated authority.

**10. What is the liability of the foundation and its organs? What is the general standard of diligence for board members? (e. g. duty of obedience, duty of care/prudence, duty of loyalty)? In what type of rule are these criteria established: fiscal, administrative, civil, commercial? Is there a solid case law, if any, regarding the duty of due diligence? Does your country differentiate between voluntary (unpaid) and paid board members? Who is allowed to bring a complaint about breaches of such duties: the other members of the board, the founder/s, the public authorities? If a complaint is brought, which authority has competence in such cases: administrative, tax authority, only the judiciary power (attorney general) or beneficiaries/general public?**

The duties of paid and unpaid board members are the same, but board members who have relevant expertise may be subject to a higher standard of care than other members.

If the board members can demonstrate that they have acted prudently, lawfully and in accordance with the governing document, then liabilities can be met out of the foundation's

resources. However, if trustees incur liabilities that amount to more than the value of the foundation's assets, they may not be able to cover them in full.

If the board members act imprudently, or are in breach of law or the governing document, they may be personally responsible for liabilities incurred by the foundation, or for making good any loss. Different liability rules apply to the directors of incorporated charities, as company law applies in addition to charity law. The directors of a foundation at risk of insolvency will generally have a duty to consider the interests of the foundation's creditors as well as those of its beneficiaries.

The appointment of charity trustees is regulated by the foundation's governing document which will set out any restrictions on who may be appointed. Trusteeship is generally open to everyone, and the charity sector is currently devoting more resources to providing training and other support to new trustees and to the creation of more diverse boards than have existed in the past.

**11. Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation? Do the director and officers have powers of representation based on legislation?**

The board of the charity has collective responsibility in law for the administration of the charity. The governing document of the charity may permit the board to delegate responsibility for individual tasks to employees or third parties, but the board will retain legal responsibility. In an unincorporated charity the trustees represent the charity in its dealings with third parties. An incorporated charity has legal personality and can therefore represent itself.

**12. Are purpose-related/unrelated economic activities allowed? If so, are there other types of limitations on economic activities (related/unrelated)?**

Charities are allowed to engage in economic activity (trading) where it is pursued in furtherance of the charitable purposes of the organisation (so-called "primary purpose trading"). If charities wish to conduct more than a nominal amount of non-primary purpose trading activity, they must use a non-charitable trading subsidiary company to conduct such activities.

**13. Is there any legal/fiscal framework for grantmakers to be able to fund legal entities that are conducting economic activities in addition to their public-utility activities? If any, what are the limitations for funding those kinds of legal entities?**

Foundations can fund legal entities that are conducting economic activities as long as the funding is provided on terms that restrict the use of the funds to activities that are within its charitable purposes.

The Commission has issued guidance for charities on how to manage a close connection with a non-charitable organisation.

**14. Are foundations permitted to be major shareholders in a company? Are there any limitations to voting rights? Is this considered as an economic activity? Are foundations allowed to engage in active ownership of companies that they own (for example through board representation, informal strategy discussions or the right to be consulted on key issues such as CEO succession)?**



Yes. Foundations can own all the shares and all the voting rights in a company. This is considered to be an investment rather than an economic activity.

Foundations can engage in active ownership of commercial companies provided this is permitted by the relevant governing documents. If the foundation has a controlling holding in the company, it will have a duty to actively manage that holding in the interests of the charity.

Any directors of the company that are appointed by the foundation will owe their duties as directors primarily to the company rather than to the foundation.

**15. Are there any rules/limitations in civil and/or tax law regarding foundations' asset management (only secure investments/bonds/investments with a certain return)? What, if any, types of investment are prohibited? Are there any limitations on mission-related investments?**

Charity trustees have a general duty to invest charity funds. Foundations have the right to hold and to receive tax-free most types of investment. Shareholding and whole ownership of commercial companies is allowed. Modern governing documents of charities typically cater for a diversified and flexible asset allocation for the charity and the ability to spend capital as well as income. Most forms of investment are permitted if they are authorised by the governing document and not unduly speculative.

The Commission strongly recommends that charity trustees decide on an investment policy for their charity, record it clearly in writing, and keep it under review. Under the Trustee Act 2000 this is a legal requirement if the trustees delegate their investment function to an investment manager.

Tax law exempts the income and capital gains of foundations only to the extent that they are applied to charitable purposes. This condition is considered to be satisfied if foundations invest their funds pending their application to charitable purposes, provided that the funds are not invested for an excessive period without being applied. The tax law includes a list of approved categories of assets in which foundations can invest freely. If a foundation makes an investment outside these categories, it must show that the investment has been made for the benefit of the foundation and has not been made for tax avoidance purposes. Mission-related investments are permitted if they meet the criteria for a financial investment or a social (i.e. programme-related) investment and are not prohibited by the foundation's governing documents.

**16. Are foundations legally allowed to allocate grant funds towards furthering their public-benefit purpose/programmes which (can) also generate income – impact investing? (recoverable grants; low interest loans; equities)**

Yes, through the provision of loans, loan guarantees or the subscription or purchase of shares or through the letting of land and buildings. Applying charitable funds in this way is referred to as “programme related investment” (“PRI”) or “social investment”, but the charity's main objective in making them should be to help its beneficiaries. A charity cannot make use of PRI if its governing document prohibits this.

**17. Are there any limitations (in civil law/tax law) to political party related or general lobby/advocacy activities?**

Charities cannot be established with political purposes. They can undertake general lobbying/advocacy activities provided that they further their charitable purposes and are carried out on a non-partisan basis.

## 18. What are the requirements for an amendment of statutes/amendment of foundations' purpose?

All foundations which take the form of charitable companies (see answer to Section 1 q1 for a definition of this term) can amend their articles of association. However, there are certain "regulated alterations" which require Commission approval.

Statutory powers for certain (small) unincorporated charities to change their governing document have been repealed by CA 2022. A new statutory power that trusts and unincorporated associations can use to make changes to their governing document is now in force. If using this power, these charities will need to get the Commission's authority to make certain "regulated alterations" in the same way as charitable companies and Charitable Incorporated Organisations (CIO).

The changes relating to this power that are in force include:

- How unincorporated charities must pass trustee and (where they have members) member resolutions when using the new power
- Confirmation that the Commission will apply the same legal test when deciding whether to give authority to charitable companies, CIOs and unincorporated charities changing their charitable purposes
- A power for the Commission to give public notice of, or to direct charities to give notice of, any regulated alterations that they make

The CA 2022 also made changes enabling Royal Charter charities to change provisions in their Royal Charter with approval of the Privy Council.

## 19. What are requirements with regard to reporting, accountability, auditing?

a) What type(s) of report must be produced?

- ☒ Annual financial report/financial accounts
- ☐ Annual activity report
- ☒ Public-benefit/activity report
- ☐ Tax report/tax return
- ☐ Other reports e.g. on 1% schemes
- ☐ Reports on governance changes (e.g. new board members)
- ☐ Report on conflict of interest (self-dealing and conflict of interest breach cases)

All charities must submit an annual return to the Charity Commission. In addition those with annual income exceeding £25,000 (~ €29,100) must submit an annual report by the trustees including details of their public benefit activities, annual accounts and an independent examiner's report on the accounts. If the charity's income exceeds £1 million (~ €1.17 million) or it has gross assets exceeding £3.26 million (~ €3.8 million) and income over £250,000 (~ €290,000), its accounts must be audited. All charities with income over £25,000 (~ €29,100) are also required to report serious incidents to the Commission.

b) Must all/any of the reports produced by the foundation be submitted to supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?

All registered charities must prepare a Trustees' Annual Report (TAR) and accounts and make copies available to the public. Charities with income below £10,000 (~ €11,700) do not have to submit as much information to the Commission.

All CIOs must submit an annual return to the Commission. Other registered charities must file an annual return if their gross annual income exceeds £10,000 (~ €11,700). The return lists information about the charity (which forms part of the charity's entry in the Register, and includes contact and trustee details as well as income and expenditure), financial information and reports of any serious incidents.

c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?

The Commission reviews the annual report and accounts, and checks that the charity is complying with the requirements of the relevant accounting standards for charities.

d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)?

The annual accounts of most charities are published on [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

e) Is external audit required by law for all foundations?

Sections 144 and 145 of the Act set out the rules which govern when a professional audit of a charity is required. A non-company charity's accounts will have to be professionally audited if it has: gross annual income over £500,000 (~ €583,000); **or** an aggregate value of balance sheet assets over £3.26 million (~ €3.8 million) and gross annual income over £250,000 (~ €290,000). Below this threshold, for non-company charities, an independent examiner can be used instead. An independent examination is less rigorous and must be carried out by "an independent person who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the financial statements". An independent examination is not required if the charity's income is below £250,000 (~ €290,000).

For charities that are companies, accounts have to be audited if the charity has: gross annual income over £500,000 (~ €583,000); **or** a balance sheet asset total over £3.26 million (~ €3.8 million) and gross annual income over £250,000 (~ €290,000). A charitable company which does not meet the above thresholds may have an independent examination instead of an audit.

f) By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?

An audit is undertaken by a person who is eligible under the 1993 Act. These standards comprise a number of Statements of Standard Accounting Practice (SSAP), Financial Reporting Standards (FRS) and "Urgent Issues Taskforce Abstracts" (UITF abstracts) and Statements of Recommended Practice (SORPs). A specific SORP has been issued for the charity sector.

## 20. Supervision: Which authority, what measures?

a) What type of body is the supervisory authority? (multiple answers possible)

- ☐ A public administrative body
- ☒ A public independent body - The Charity Commission for England and Wales is a non-Ministerial Government Department with quasi-judicial functions where it uses powers similar to those of the High Court (which also has authority over charities).

- ☐ A combination of a governmental body and a court
- ☐ A court
- ☐ A public administrative body and an independent body
- ☐ A tax authority
- ☐ Other

b) Does the supervisory body review reports?

- ☒ Yes
- ☐ No

c) Are foundations subject to inspection?

- ☒ Yes
- ☐ No

d) Is approval from the authority required for certain decisions of the governing board?

- ☒ Yes, formal approval is needed in limited circumstances. Examples have been given throughout, for example in seeking approval for certain changes to a governing document.
- ☐ Yes, needs just to be informed
- ☐ No

If yes, please specify which type of decisions:

e) Is it mandatory to have a state supervisory official on the governing board?

- ☐ Yes
- ☒ No
- ☐ Can a government official be appointed to the governing board by a state authority, if so please mention: This is possible in the case of a small number of charities that have been created by a statute which provides the government with a right to nominate a person to the governing body.

f) What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public-benefit status?

The Commission has an Investigation and Enforcement Monitoring Unit whose primary purpose is to monitor charities where the Commission has concerns that there is, or believes that there is a significant risk of, serious non-compliance within the charity. The regulatory supervision and monitoring of charities includes appropriate and targeted scrutiny of accounts, ensuring that actions trustees have promised to carry out have been completed. The Commission also operates a programme of compliance visits to charities. The visits act as a deterrent to those who wish to abuse charities. The purpose of these visits is to verify that the charity is complying with the legal and regulatory framework and ensure that the trustees are discharging their duties and responsibilities as trustees. If the Commission is concerned about the compliance of a specific charity, it refers this concern to the Commission's Assessment Unit to decide the most appropriate and proportionate course of action.

Most problems in charities can be resolved by the charity trustees themselves, or simply by the Commission providing advice and guidance without the need for a formal investigation. However, where serious problems exist, the Commission may need to investigate further.

The Commission carries out two kinds of investigations: non-statutory investigations, called Regulatory Compliance Cases, and Statutory Inquiries.

The Commission has power to open an inquiry into a charity's compliance with charity law and publish the results. The Commission may appoint an Interim Manager to run the charity where the charity trustees are not competent to do so. If the Commission finds that a board member has committed mismanagement or misconduct, it may seek to disqualify the individual from acting as a member of any charity's board for an extended period of years and may also initiate the dissolution of the charity.

## **21. When and how does a foundation dissolve?**

A foundation can only be dissolved if a) all of its property is expendable and has been disposed of, or b) the governing document contains a dissolution or winding-up provision, or c) in the case of a charity with permanent endowment, the trustees have used the powers in sections 281 to 284 of the Act to remove the permanent endowment restriction on their charity's capital and have then decided to wind the charity up, or d) the trustees have decided to transfer their charity to another with similar objects. The trustees must send a copy of the final accounts to the Commission, with a request to have the charity removed from the Register of Charities. Different rules apply to the winding up of charitable companies.

Foundations can also be dissolved in the event of insolvency.

## **22. Is there a maximum that can be spent on office/administration costs in civil law and/or tax law? If yes, what is the amount?**

There is no limit in civil law or tax law. However, excessive expenditure may be viewed by the Commission as evidence of mismanagement, particularly if it involves unauthorised benefit to an insider.

## **23. Does civil and/or tax law require a foundation to spend a certain percentage of its overall assets within a certain period of time (e.g. within the next financial year)? In particular, can a foundation accumulate these expenses over a period of time (and if so, what kind of authorisation is required to do so)?**

There is no pay-out rule in civil law or tax law.

However, a foundation's exemption from tax on income or capital gains is available only to the extent that the income and gains are applied to charitable purposes. Failure to apply these funds within a reasonable time may lead to a challenge by the tax authority.

## **24. Under what conditions does the civil law in your country recognise a foreign foundation? Do they have to register? Does your law recognise the concept of trusts?**

English civil law generally recognises the legal status of foreign entities without imposing any conditions. However, recognition of the charitable status of a foreign entity under English civil law is generally not possible except in the case that a foreign entity is subject to the jurisdiction of the English High Court. The sole criterion for deciding if charitable companies are regulated by the Commission is whether they are incorporated in England and Wales.

## **25. Does the law in your country allow a foundation to conduct (some or all) activities (grantmaking, operating, asset administration, fundraising) abroad? Is there any limitation?**

Yes, this is allowed, and there are no restrictions other than those imposed by the nature of the charitable purpose and the terms of the foundation's governing instrument.

**26. Does the law in your country impose any restrictions on ability to receive donations from abroad? If so, please describe.**

There is no specific prohibition in charity law, but charity trustees should consider whether acceptance of the donation is in the best interests of the charity, and charities are also subject to laws intended to counter money laundering and terrorist financing.

**27. Does the civil law in your country allow the transfer of the seat of a foundation (in the EU) and/or cross-border mergers?**

The relevant civil laws vary according to the legal form of the foundation, but it is unlikely to be possible to transfer the seat unless this is permitted by the foundation's governing documents. In some cases it is conceivable that the civil law restrictions may be overridden by the freedom of establishment in EU law, but this is unlikely to be relevant following Brexit.

## II. Tax treatment of foundations

### 1. What are the requirements to receive tax exemptions?

- ☐ Pursuing public-benefit purposes
- ☐ Non-distribution constraint
- ☐ Being resident in the country
- ☐ Other

For UK taxation purposes, **the law is essentially the same in all three legal jurisdictions across the United Kingdom.** The definition of charity for UK tax purposes follows the definition for charity law purposes in England and Wales. Once established as a charity registered by the relevant charity regulator, such registration will generally lead to its acceptance as a charity for tax purposes by the tax authority, His Majesty's Revenue and Customs (HMRC).

Following Brexit, the law was amended in the Finance Act 2023 to remove with effect from 14 March 2023 the rights of charities resident in EEA Member States that are comparable to UK resident charities to obtain HMRC recognition that they are entitled to the same UK tax reliefs as UK charities.

### 2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other)?

Charities claiming tax privileges must satisfy a separate definition for tax purposes in the Finance Act 2010. In addition to having purposes that are charitable under the law of England and Wales, the charity must meet the jurisdiction, registration and management conditions. The jurisdiction condition requires the charity to be subject to the control of a court in the exercise of that court's jurisdiction with respect to charities. In order to meet the registration condition, an organisation that is required to register with a charity regulator under the law of the territory in which it is established must be so registered.

For a charity to satisfy the management condition, its managers must be "fit and proper persons". There is no definition in the legislation of a "fit and proper person". HMRC applies this test to those who have the general control and management of the administration of the charity. HMRC assumes that all people appointed by charities are fit and proper persons unless they hold information to show otherwise. Before a charity can make a tax repayment claim it needs to nominate someone in the charity to be an authorised official and/or someone to be a nominee. A charity can make a claim whenever it likes, but there are certain time limits. HMRC will repay claims only if they are signed by an authorised signatory of the charity.

### 3. Is specific reporting required for the use of public funds (grants received from public bodies/state/municipality/etc.)?

No. However, there is a general requirement under charity law to demonstrate that the foundation is providing public benefit and funds are applied for charitable purposes. Charity exemptions from tax on income and capital gains are restricted to the extent that the income and gains are not applied to charitable purposes.

### 4. Is there an obligation to report to public authorities on donors and beneficiaries? If so, to which authority and what type of information?

There is no specific tax law requirement to do so. Charities are generally required to submit a tax return only if they have taxable income to report or are requested to do so by HMRC. The tax return requires disclosure of the aggregate amounts received from donors or paid to beneficiaries. In addition, some charities are required to report annually to HMRC all grant payments to beneficiaries that are resident in jurisdictions that are reportable under the OECD Common Reporting Standard.

**5. Is there a statutory definition of what a public-benefit purpose (charitable purpose) is in the civil law (foundation law, trust law) of your country? If yes, please give us the definition. If so, is the determining definition that subsequently links to tax benefits?**

Yes. See part 1 of this profile.

**6. Is there a statutory definition of what a public-benefit purpose is in the tax law of your country? If yes, please give us the definition.**

No. See part 1 of this profile for the civil law definition.

**7. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country (noting that the tax status often depends on additional requirements):**

Public-benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection	X			
Civil or human rights		X		
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination				
Social welfare, including prevention or relief of poverty	X			
Humanitarian or disaster relief	X			
Development aid and development cooperation		X		
Assistance to refugees or immigrants	X			



Protection of, and support for, children, youth or elderly	x			
Assistance to, or protection of, people with disabilities	x			
Protection of animals	x			
Science, research and innovation		x		
Education and training	x			
European and international understanding (e.g. exchange programmes/ other activities aimed at building bridges between nations)		x		
Health, well- being and medical care	x			
Consumer protection		x		
Assistance to, or protection of, vulnerable and disadvantaged persons	x			
Amateur sports	x			
Infrastructure support for public-benefit purpose organisations	x			
Party political activity				x
Advocacy		x		
Advancement of religion	x			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>	x*			

\*Other purposes accepted in charity law and tax law include (i) the promotion of the efficiency of the armed forces and the police, fire, rescue and ambulance services, and (ii) the provision of recreational facilities in the interests of social welfare. The list of eligible purposes is an open list

that allows new charitable purposes to be recognised by analogy with any of the existing purposes.

## 8. Support of “the public at large”

- a) Do the activities of a foundation with public-benefit status for tax purposes generally have to benefit “the public at large”?

Yes, it is necessary to show that the foundation exists to further the public benefit.

- b) If yes, can a foundation with public-benefit status for tax purposes support a closed circle in a sense that beneficiaries can be identified based on legal or family affiliations?

Charity law generally requires that a purpose must serve a sufficient section of the public to be charitable, but this restriction does not apply to purposes involving the relief of poverty.

## 9. Non-distribution constraint

- a) Does a foundation with public-benefit status for tax purposes generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc.?

The non-distribution constraint generally precludes the distribution by way of profit to any member or trustee of a charity. This would not preclude the payment of reasonable remuneration to staff or board members where permitted by the foundation’s governing instrument or otherwise authorised (e.g. by the Commission).

- b) What happens with the foundation’s assets in case of dissolution? Can the assets revert to private ownership, or do they have to stay in the public-benefit sphere?

Surplus assets remaining after the discharge of liabilities can generally be transferred only to another charity with the same or similar purposes.

## 10. “Altruistic” element

- a) Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

The payment of reasonable remuneration to board members is allowed where permitted by the foundation’s governing instrument or otherwise authorised. There are no monetary limits in civil law or tax law.

- b) Does **tax law** allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)

A charity can give tokens of appreciation (“benefits”) to acknowledge a gift, but there are limits on the value of the benefits that can be provided. For small donations (£100 or less) (~ €117 or less) the limit is 25% of the donation: For larger donations the limit is £25 (~ €29) plus 5% of the excess of the donation over £100 (~ €117) up to a total annual benefit value of £2,500 (~ €2,900).

- c) Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**? If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

There is no limit in civil law or tax law.

- ☐ Personnel costs (staff salaries/payroll costs)
- ☐ Board remuneration
- ☐ Costs of external audit
- ☐ Other legal/accounting costs
- ☐ General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- ☐ Insurance
- ☐ Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- ☐ Asset administration costs
- ☐ In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- ☐ Costs related to fundraising

## 11. Hybrid structures (elements of private benefit in public-benefit foundations)

- a) Does the **civil law** of your country accept the following provisions/activities of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, their spouse and descendants.					x
The founder retains a beneficial reversionary interest in the capital of a property or other asset for their own continuing use.	x				
The gift consists only of the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favour of the founder (or another member of their family) as tenant.	x				
A foundation distributes a (small) part of its income to the founder or their family.					x

- b) Does the **tax law** of your country accept the following provisions/activities of a tax-exempt foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, their spouse and descendants.					x
The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for their own continuing use.	x				

The gift consists only of the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favour of the founder (or another member of their family) as tenant.	x				
A foundation distributes a (small) part of its income to the founder or their family.					x

## 12. Distributions and timely disbursement

a) Are foundations allowed to spend down their endowment?

Yes, subject to any restrictions in their governing instrument.

b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum length of time for which the foundation must exist?

Yes. No minimum length of time is specified.

c) Does the **civil law** and/or **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If yes, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated for building up the endowment be included in/excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?

Both civil law and tax law require that the foundation spends its income within a reasonable period of time. What is a reasonable period will vary from case to case but, absent special circumstances, a foundation will generally be expected to apply its income within three years of receipt.

d) Does the **civil law** and/or **tax law** of your country require a foundation to spend a percentage of its overall assets in the form of a "pay-out rule"?

No.

Example: Does the **civil law** of your country require the following of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public-benefit purpose of the foundation.				x	

Example: Does the **tax law** of your country require the following of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public-benefit purpose of the foundation.				x	

**13. Are activities abroad in another country compatible with the public-benefit tax status?**

Yes, to the extent allowed by its objectives without prejudicing its charitable status.

**14. Can public-benefit organisations with a tax-exempt status also support/give grants to for-profit organisations (such as a small green start-up)?**

See the response to Part I question 12.

**15. Corporate income tax treatment. How are the following types of income treated for corporate income tax purposes? Are they taxable or exempt?**

a) Grants and donations

Grants and donations received by foundations do not normally constitute taxable income. Tax-privileged donations are treated as income of the foundation but are specifically exempt. A charity can claim exemption from tax, and claim basic rate tax back from HMRC on income received from individuals through Gift Aid donations, as long as the income is used for charitable purposes only. A charity can claim exemption from tax on donations received from companies, as long as the income is used for charitable purposes.

b) Investment income (asset administration)

- ☐ Interest from fixed rate bonds
- ☐ Equities
- ☐ Income from leasing of a property that belongs to the foundation

Most forms of income from asset management are exempt, whether the assets are located in the UK or other countries. No relief is available for foreign taxes on foreign investment income or capital gains.

c) Economic activities (related/unrelated)

- ☐ Income from running a hospital/museum/opera
- ☐ Income from producing/selling books (e.g. art books sold by a cultural foundation)
- ☐ Income from running a bookshop inside a museum/opera run by the foundation
- ☐ Income from running a café in the hospital/museum run by the foundation
- ☐ Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose)
- ☐ Income from intellectual property (e.g. royalties and licence fees)

Income from intellectual property is normally categorised as asset management rather than economic activity and, if so, will generally be exempt.

Exemption from tax depends on whether the activity is “related” or “unrelated” to the charitable objectives. The terms generally used in the UK are “primary purpose trading”, which is when the economic activity is pursued in furtherance of the charitable objectives of the organisation as set out in its governing document, and “non-primary purpose trading” which is when the activity is intended to raise funds for the charity.

In certain defined cases the economic activities of a charity are exempt from corporation/income tax. The sale of donated goods is not normally considered to be an economic activity. In addition, profits from fundraising events that are not held on a regular basis or in competition with commercial businesses are generally exempt. All profits of a primary purpose trade are exempt from tax. Profits of a trade ancillary to the primary purpose trade are also exempt if the activity is related in a broader sense to the primary public-benefit purpose (e.g. profits of a theatre bar open only to the patrons of the theatre).

- d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)?

Such income is tax-exempt for charities.

- e) Is major shareholding in a business undertaking considered as an economic activity and taxed accordingly?

Major shareholding is allowed and is not considered to be an economic activity of the foundation. Income and capital gains derived by the foundation from a major shareholding are generally exempt. However, if the foundation makes an investment in the subsidiary, it must show that it is for the benefit of the foundation and not for tax avoidance. The company in which the foundation holds the shareholding is treated as a separate entity for tax purposes and will normally be fully liable to corporation tax on its profits.

## **16. Are capital gains subject to tax? If so, are they liable to corporate income tax or to a separate tax?**

Capital gains are exempt from tax to the extent that they are applicable to charitable purposes.

## **17. Does any kind of value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exist in your country?**

There is a scheme for refunds of VAT incurred on non-business activities to be paid to specified public bodies, which extends to some categories of private law bodies that are eligible for charitable status: museums and galleries that provide free admission, academy schools, and charities providing palliative care, air ambulance, search and rescue or medical courier services. There is no refund scheme for other charities, regardless of whether they are funded wholly or mainly by the state.

## **18. Is capital tax levied on the value of assets, where applicable?**

The UK has an annual tax on the value of high value residential properties that are owned by legal entities including charities. Most charities likely qualify for relief for dwellings that are held for use in furtherance of charitable purposes, or as an investment whose profits are applied to charitable purposes.

## **19. Are there taxes on the transfer/ sale of assets by foundations?**

There are no taxes on the transfer of assets other than stamp taxes (see below).

**20. Are there any other taxes to which public-benefit foundations are subject to (e.g. real property tax)?**

Stamp Duty applies to a limited range of transfers of property evidenced by deed or other documents. Its current application is largely limited to transfers of shares that are executed on paper. Stamp Duty Reserve Tax (SDRT) applies to electronic transfers of shares. Generally, such transfers to charities are exempt from SDRT and from stamp duty. Charities are also subject to business rates, a local tax on the occupation of non-domestic real estate. Charities are entitled to 80% relief – the remaining 20% being at the discretion of the local authority.

**21. Can a foreign foundation (EU and other) get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions? If they have to fulfil exactly the same requirements as locally based public-benefit foundations, please refer to above but indicate which documents need to be provided and translated:**

No charity tax benefits are available to a foreign foundation unless it has been registered by HMRC as comparable to a UK charity. This is no longer possible since 14 March 2023 following an amendment to the law in the Finance Act 2023. Foreign charities that were recognised by HMRC prior to this date continued to be entitled to claim UK tax reliefs until April 2024.

- ☐ Statutes (translation required?)
- ☐ Last annual financial report (translation required?)
- ☐ Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public-benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
- ☐ Other

**22. Does your country have signed bi-lateral tax treaties, which provide for reciprocal tax treatment of public-benefit organisations? If so, with which countries?**

The only UK tax treaty with a specific article dealing with public-benefit organisations is that with Ireland, which provides a limited exemption for UK and Irish charities from tax on income or capital gains derived from immovable property situated in the other state.

**23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?**

The UK levies withholding tax on certain payments of rent, interest and royalties, but not on dividends. Tax withheld from payments to domestic charities can generally be reclaimed on the basis that the charity is exempt from tax on the income concerned. Foreign charities can make similar claims to the extent that these are permitted by bilateral tax treaties.

### III. Tax treatment of donors

#### 1. Is there a system of tax credit or tax deduction or other mechanisms such as tax allocation systems or matching grants?

System of tax deduction.

#### 2. Tax treatment of individual donors

- a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

Individuals may make tax-deductible gifts of money under the Gift Aid or payroll giving schemes to UK charities. Gifts to foreign charities in EU states, Iceland, Liechtenstein or Norway that are comparable to UK charities ceased to qualify for Gift Aid relief on 14 March 2023.

- b) Which assets qualify for tax deductibility (e.g. cash, real estate, in kind or other)?

Under the Gift Aid regime, individual donors who pay tax in the UK can make cash donations of any amount. The donor gives a declaration to the charity that they have paid enough UK income or capital gains tax to cover the gift. The donor claims a deduction from taxable income or capital gains for the amount of the donation grossed up by the basic rate of tax (currently 20%). Gift Aid allows the charity then to reclaim from HMRC the income tax deducted from the donation. Individuals liable to income tax at the higher rates (currently 40% and/or 45%) can claim relief for the difference between the higher and basic rate in their self-assessment tax return.

An individual donor can also donate via payroll giving whereby the employer deducts the specific amount of the donation from the gross salary and sends it to an agency charity, which then distributes the donation to the charity nominated by the donor.

Individuals can also claim an income tax deduction for the market value of gifts of certain assets. Qualifying assets are limited to interests in UK real estate, listed shares, units in authorised unit trusts, shares in a UK open-ended investment company, and holdings in certain foreign collective investment schemes.

#### 3. Treatment of corporate donors

- a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

Corporate donors can claim a deduction for their charitable donations from their taxable profits for corporation tax purposes. There is no minimum or maximum ceiling.

- b) Which assets qualify for tax deductibility (e.g. cash, real estate, in kind, or other)?

Companies can claim a deduction from their taxable profits for donations of money to UK charities. Companies can also claim a deduction for the value of their gifts of qualifying shares and securities and interests in UK real estate. If companies make gifts to UK charities of assets that have appreciated in value, the capital gain that is deemed to arise is exempt.

#### 4. Tax treatment of donations to non-resident public-benefit foundations: Do donors get the same tax incentive?

Donations to non-resident charities do not qualify for any tax relief (since 14 March 2023).



**5. Other frameworks such as percentage law systems, whereby the donating taxpayer may assign part of the tax due to a public-benefit organisation?**

The UK does not operate a percentage law system.

**6. What are the requirements that the donor must fulfil and/or what is the information they must provide in order to claim tax benefits? What information must donors provide to their tax authority in order to receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)?**

Donors must be able to show that any benefits received in connection with their gifts do not exceed the permitted limits. Individual donors who have made Gift Aid declarations must be able to satisfy HMRC that they have paid enough tax in the tax year to cover the tax reclaimable on their Gift Aid donations.

**7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation? What information must donors to foreign-based organisations provide in order to receive tax incentives for their donation (e.g. statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)? Are translations of documents required?**

Donations to non-resident charities do not qualify for any tax relief (since 14 March 2023).

**8. Do donors get tax incentives when donations are done via specific tools such as:**

- ☐ Requesting money in public (street, door-to-door)
- ☐ Via TV and radio campaigns
- ☐ Via sms
- ☐ Crowdfunding

Do they have to follow any kind of particular process? If so, which one?

Individual donors can claim tax relief under the Gift Aid system for payments of money, regardless of the method of payment, provided that the donor supplies a Gift Aid declaration to the charity.

## IV. Tax treatment of beneficiaries

*(i.e. those receiving a grant or other benefit from a foundation)*

### 1. **Individuals: Are individual beneficiaries of grants required to pay taxes or are the grants tax exempt?**

Donations received by persons other than charities may be subject to income tax or inheritance tax where applicable. No liability to income tax generally arises unless the grant or benefit is recurring or otherwise has the character of income. Income from a scholarship held by an individual in full-time education at a university, college, school or other educational establishment is generally exempt.

### 2. **Legal entities: Is there any legal/fiscal framework for beneficiaries conducting economic activities so that they can be eligible for foundation funding? Are there any limitations on the economic activities of the beneficiaries?**

Donations received by non-charitable organisations may be subject to income tax or inheritance tax where applicable. No liability to income or corporation tax generally arises unless the grant or benefit is recurring or otherwise has the character of income in the hands of the beneficiary.

### 3. **Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?**

No.

## V. Gift and inheritance tax

- 1. Does gift and inheritance tax/transfer tax exist in your country and, if yes, who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?**

The UK imposes inheritance tax on gifts on death and lifetime gifts within 7 years of death. The tax is levied on the estate or the donor, not the recipient of the gift.

Gifts made to qualifying charities established in the UK will be free of inheritance tax provided that the gift meets the following criteria: the asset given is used solely for charitable purposes; the gift takes immediate effect in possession; the transfer must not depend on a condition that is not satisfied within 12 months of the transfer; the gift must not be defeasible (i.e. it cannot be annulled); the transfer is not for a limited period; no interests must be retained in the property transferred; and the donor must give away his entire interest.

- 2. What are the tax rates? Is there a preferential system for public-benefit organisations (PBOs)? Which PBOs qualify? Is there a difference according to the region or the legal status of the PBO?**

Inheritance tax is generally levied at a flat rate of 40%. In the case of a death after 5 April 2012 any estate that includes charitable legacies of at least 10% of the net estate will be liable to inheritance tax at a reduced rate of 36%. Since 14 March 2023 this relief is no longer available for estates with legacies to qualifying charities that are established in the EU, Iceland, Liechtenstein or Norway and are comparable to a UK charity.

- 3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?**

No.

- 4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?**

No, except that in Scotland a fixed share of certain property is reserved for protected heirs. In other parts of the UK any individuals who were financially dependent on the deceased can apply to the court for an order that they should receive reasonable provision out of the estate.

- 5. What is the tax treatment (inheritance and gift tax) of legacies to non-resident public-benefit foundations?**

See answer to question 2.

## VI. Trends and developments

- 1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's legislation, resulting from the [Persche](#), [Stauffer](#), [Missionswerk](#) or other relevant ECJ judgments, or are changes being discussed? Any changes being discussed with regard to the free movement of trust structures resulting from the [Panayi Trust](#) and [Olsen and Others](#) cases?**

The definition of a charity for tax purposes was changed in 2010 following the decision in the Persche case. There are no current initiatives seeking to facilitate cross-border activities.

- 2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws/rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)? Has it for example become more difficult to:**

- ☐ Set up a public-benefit foundation
- ☐ Obtain permission to transfer funds across borders
- ☐ If able to transfer of funds across borders, has the process become more burdensome administratively
- ☐ Open a new bank account
- ☐ Maintain a bank account
- ☐ Fund certain activities
- ☐ Fund certain regions/countries
- ☐ Fund certain organisations (please explain the reason - foreign funding restriction?)
- ☐ Report to authorities/deal with administration
- ☐ Other

The UK's money laundering laws were revised in 2017 to comply with the 4<sup>th</sup> Money Laundering Directive. These changes have made it more difficult and time consuming to carry out these kinds of activities in general and banking transactions in particular.

- 3. Does the national law consider foundations as obliged entities as defined by the Anti-Money Laundering Directive?**

Some foundations could be obliged entities depending on their activities.

- 4. Does the national law define/specify who is considered as a beneficial owner (BO) of a foundation?**

Beneficial owners are defined by reference to their legal form, which may vary between foundations.

- 5. Does your country have a specific register for BO of legal entities/foundations or does the foundation/company/association register serve as a BO register?**

There are different registers for different legal forms.

Trusts are generally required to register with HMRC's Trust Registration Service. Charities that do not have any UK tax liabilities are generally exempt from registration.

Companies are generally required to register with Companies House under the Persons with Significant control regime.

Companies House also operates a separate Register of Overseas Entities for foreign entities that own an interest in UK land.

**6. Are there any other recent trends or developments affecting the legal and fiscal environment for public-benefit foundations in your country such as one or more of the following?**

- a) Law revision in the pipeline
- b) Discussion about the role of supervisory authorities (civil law, charity regulator, tax authority) and collaboration among them? Decentralisation or centralisation of supervisory structures? Use of watchdog/rating agencies?
- c) Tendency towards more transparency requirements?
- d) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?
- e) Tendency to use alternative forms to classic public-benefit foundations
- f) Other?

Most of the current discussions focus on the adverse financial effects of the Covid-19 pandemic on the charity sector as a whole and the need for the government to provide a comprehensive support package.

There is also an increasing focus on transparency following a series of high-profile governance failures at well-known charities involving inadequate arrangements to look after their beneficiaries.

**7. Public fundraising: Are there any specific laws that regulate fundraising, and do they affect foundations?**

Trustees must ensure their charity complies with the law relating to fundraising and follows best practice. This includes all aspects of fundraising including fundraising methods, the costs involved, the financial risk and how the money raised is spent. Trustees need to think about the impact their fundraising methods will have on public opinion and the reputation of their charity.

Some aspects of fundraising are subject to specific regulation and charity law. Fundraising may also be subject to other laws that fall outside of charity law such as those relating to gaming, taxation, insurance, child protection and data protection.

For charities with a gross income over £500,000 (~ €583,000) which are required to have an audit, the SORP requires that the trustees comment on any fundraising activity undertaken during the year. Smaller charities might find this a useful activity to do as well.

Section 39 of the Act says that registered charities with a gross income of £10,000 (~ €11,700) or more in the last financial year must state, on a range of official documents, that the charity is registered. These documents include notices, advertisements, material placed on websites, invoices, receipts and other documents issued by or on behalf of a charity that are intended to persuade the reader to give money or property to the charity. This includes the solicitation of membership subscriptions.

## VII. Further information

### Useful contacts

**Paul Bater**, [Charity Law Association](#), [pbater2002@yahoo.co.uk](mailto:pbater2002@yahoo.co.uk), Tel: + 44 207 258 0680

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### Selected bibliography

- Tudor on Charities (W. Henderson & J. Fowles, Sweet & Maxwell, 2018)
- Taxation of Charities and Nonprofit Organisations (James Kessler, Key Haven, 2019)
- [Charity Commission website](#)
- [HMRC Charities detailed guidance notes](#)

### Selected law texts online

*England and Wales*

- [Charities Act 2011](#)
- [Charities \(Protection and Social Investment\) Act 2016](#)
- [Charities Act 2022](#)

*Scotland*

- [Charities and Trustee Investment \(Scotland\) Act 2005](#)

*Northern Ireland*

- [Charities Act \(Northern Ireland\) 2008](#)

*United Kingdom*

- [Finance Act 2010](#)
- [Income Tax Act 2007](#)
- [Corporation Tax Act 2010](#)

## VIII. About

### About Philea

Our vision is for philanthropy to use its full potential to co-shape and support a pluralistic, just and resilient society that centres people and planet. To achieve this, our mission is to enable, encourage and empower the philanthropic community to build a better today and tomorrow.

We nurture a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. With individual and national-level infrastructure organisations as members, we unite over 7,500 public-benefit foundations that seek to improve life for people and communities in Europe and around the world.

We galvanise collective action and amplify the voice of European philanthropy. Together we:

- **Co-create knowledge and learn** from effective practices
- **Collaborate** around current and emerging issues
- **Promote enabling environments** for doing good

In all we do, we are committed to enhancing trust, collaboration, transparency, innovation, inclusion and diversity.

[philea.eu](https://philea.eu)

### Policy and advocacy at Philea

Philea champions the interests of its members vis-à-vis the EU and multilateral organisations. Through [our policy and advocacy work](#), we strive towards an enabling operating environment for European philanthropy by monitoring and analysing policy and regulatory trends at national, European, and international level, and engaging around this agenda with policymakers and other stakeholders. We position philanthropy as a key actor on societal issues and facilitate strategic engagement and collaboration opportunities, including public-private partnerships.

### About this project

This country profile is part of a [larger analysis project](#), ongoing since 2002, which includes regularly updated profiles on the legal and fiscal landscape for philanthropy in some 40 countries across the wider Europe; and a comparative overview of the profiles compiled in our “Comparative Highlights of Foundation Laws”.

### Legal Affairs Committee

Philea’s [Legal Affairs Committee](#) consists of legal and public affairs experts from Philea members, composed of both national associations and foundations, across Europe. The members of the LAC advise on Philea’s policy and advocacy work.



Philea 2024

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