

TRUST

A trust can exist with or without charitable status and is typically established as a means of controlling how assets are to be used or distributed. For example, a village hall trust will own the hall and ensure that it is applied for public benefit as directed by its trust deed. Similarly, a trust may also make donations or awards from its monetary assets to support the beneficiaries stated in its trust deed. As an unincorporated legal structure, meaning that the trustees incur personal liability (*please see section 1.1*), and with limited powers in achieving its purposes, the trust has become somewhat of a redundant structure. In fact since January 2016, the number of registered charities adopting the trust structure has reduced by 244 (July 2018). With incorporated alternatives available such as the Scottish Charitable Incorporated Organisation (SCIO) and company limited by guarantee, careful consideration should be given before selecting the trust structure. Although you may want to use the word 'Trust' in your organisation's name, it doesn't mean that your organisation has to be a trust; most community development trusts are in fact companies limited by guarantee. The key characteristics of a trust are detailed in the below table.

Key characteristics of a trust	
<i>Is this legal structure incorporated?</i>	No.
<i>Can this legal structure be a charity?</i>	Yes, providing it can meet the charity test.
<i>Who are the regulators?</i>	A trust has no regulator unless it is a charity, in which case it will be regulated by the Office of the Scottish Charity Regulator (OSCR).
<i>What is the key legislation?</i>	Trusts (Scotland) Act 1921. If a charity, the Charities and Trustee Investment (Scotland) Act 2005 also applies.
<i>Is there a registration fee?</i>	No. As a trust has no regulator, unless a charity, there is no fee. Applications for charitable status are also free of charge.
<i>What type of governing document is required</i>	Trust deed.
<i>What is the membership structure?</i>	Trusts have a single tier structure and therefore no membership.
<i>What are the annual reporting requirements?</i>	A trust without charitable status does not have to report to any external regulator but should produce externally scrutinised accounts. With charitable status, it must submit to OSCR a Trustees' Annual Report, completed Annual Return form and externally scrutinised accounts.
<i>What are the accounting requirements?</i>	Regardless if it has charitable status, providing its constitution doesn't state that it should prepare accrued accounts a trust can prepare accounts on a receipts and payments basis. With charitable status, the income must also be under £250,000 to do so.
<i>Are there any specific duties or requirements?</i>	Specific duties as set out in the trust deed and the requirements of trust law such as, if necessary or appropriate, obtaining and considering proper advice prior to exercising the power of investment.