



MUSEUM
ACCREDITATION

Accreditation Scheme for Museums
and Galleries in the United Kingdom

Museum Constitutional & Governance Arrangements

Supporting Guidance

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Contents

Accreditation – Constitutional Guidance	3
1. Using this guidance	3
2. Structure of the guidance	4
3. Background	4
4. Purpose	4
5. Scope	5
6. The Basis of the Accreditation Standard	5
7. Key issues in determining Accreditation Status	8
Collections	8
Governing document	9
Charitable organisations	9
Other constitutional entities	10
Control	10
Public Benefit	11
8. Ineligible entities	11
9. Significant Change	13
Actions on winding up or closure – Charitable Company	13
10. Museums Accreditation: Eligible and ineligible constitutional options	14
Appendices	15
Appendix One: Guidance and resources	15
Appendix Two: Legal definitions of Public Benefit	16
Appendix Three: Glossary of terms	17

Accreditation – Constitutional Guidance

1 Using this guidance:

This guidance is intended to provide an overview of the main constitutional requirements that are regarded as acceptable in order to achieve Accredited museum status. It provides general guidance on the legal forms that are felt to provide the best opportunity for sound management of museums, delivery of public benefit and the protection of their collections and assets. The guidance also outlines those constitutional arrangements that are ineligible for Accreditation.

If your organisation is already constituted it will give you an outline of the requirements you need to have in place as part of the Accreditation process. If you are changing a current entity or considering the constitutional arrangements for a new entity it will give you an overview of the key issues you will need to address if you proceed with seeking Accreditation.

These guidelines presuppose no specialised knowledge of legal processes and terminology and are designed to assist governing bodies that have custody of collections and other relevant museum assets. It is a complex field and as such not every eventuality will have been covered here. If you are not clear about where your organisation fits please seek appropriate advice.

This is provided as general guidance and should not be used as a replacement for specialist guidance, in particular legal advice, in relation to constitutional arrangements for individual museums. The guidance relates specifically to museum Accreditation and is not intended to be read as a directive on the 'best' constitutional entity, you must determine for yourselves the most appropriate constitutional arrangement for your museum. More specific sources of guidance are provided in Appendix One.

There are some substantial differences between the law in England and Wales, and that in Scotland, and some minor differences in Northern Ireland as far as possible these are reflected in this guidance.

In this document, where we use 'must', we mean it is a specific legal or regulatory requirement affecting the governing body or institution. Organisations must comply with these requirements.

We use 'should' for items we regard as good practice, but for which there is no specific legal requirement. Entities should follow the good practice guidance unless there is a good reason not to.

2 Structure of the guidance

The guidance is set out in four sections:

1. Overview
2. Basis of the Accreditation Standard
3. Significant change
4. Guidance on eligible and ineligible constitutional types

As a result of the range of constitutional options, and their variants, now available, the guidance is wide-ranging. It is intended to highlight the characteristics of each constitutional form and the relevant issues relating to Accreditation Requirement 1.2.

3 Background

This guidance relates to the requirements for “An acceptable constitution for the governing body” in the Accreditation Standard (2018 edition):

‘The museum must be a long-term organisation that exists to benefit the public and protect its assets, including collections. It must have an appropriate and acceptable constitution for the governing body.’

This statement sets out the three core elements regarded as central to Accredited museums; longevity, public benefit and the protection of assets. When the Museum Registration Scheme was introduced in 1988, there was a limited number of available constitutional forms and it was usually the case that the owners of museums ran them.

The context in which museums operate has changed significantly in the last ten years; new and more flexible constitutional forms are available, levels of public funding have decreased, public sector museum and cultural services have been ‘spun out’, and operational structures have become more complex. There are now up to ten possible constitutional forms, and governance arrangements can include combinations of these different entities, the guidance is intended to reflect these changes.

4 Purpose

The purpose of this guidance is to:

- Provide a rationale for which constitutional arrangements are acceptable for Accredited museums. This is based on an agreed international framework of museum ethics, and draws on the legal doctrine of public trust
- Explain the legal forms available to museums that are capable of providing the necessary levels of protection for assets and supporting the ethical management of museums, and those likely to be ineligible
- Identify the key issues for assessing Accreditation applications, and how they are reconciled with the Standard

5 Scope

The scope of this guidance is principally the Nations of the United Kingdom – England, Scotland, Wales and Northern Ireland. It also covers the Crown Dependencies of the Isle of Man, Jersey and Guernsey. Information is provided on the substantive differences between the regulatory frameworks where these exist.

It is recognised the information on which this guidance is based will be subject to change, for example the Law Commission is currently preparing a draft Bill addressing technical issues arising from the review of Charities Act 2006 and the Charitable Incorporated Organisation is yet to come into force in Northern Ireland. It will be necessary to review the guidance on a regular basis. The guidance provided is current as of November 2018.

6 The Basis of the Accreditation Standard

The Accreditation Standard is based on the Museums Association’s 1998 definition of a museum.

‘Museums enable people to explore collections for inspiration, learning and enjoyment. They are institutions that collect, safeguard and make accessible artefacts and specimens, which they hold in trust for society.’

The Standard endorses the importance of museums holding their collections and assets ‘in trust for society.’ This derives from recognised international and UK Codes of Ethics:

- Museums that maintain collections hold them in trust for the benefit of society and its development (International Council of Museum’s Code of Museum Ethics, Principle 2)
- Museums are public facing, collections-based institutions that preserve and transmit knowledge, culture and history for past, present and future generations. This places museums in an important position of trust in relation to their audiences, local communities, donors, source communities, partner organisations, sponsors and funders. (Museums Association Code of Ethics)

The concept of ‘public trust’ is nebulous and not formally defined in law, for the purpose of this guidance it is encapsulated within the following principles (adapted from Public Trust Doctrine):

- There are cultural resources that are of such fundamental importance to the wellbeing of society that:
 - o The public should have a guaranteed access to those resources
 - o There should be public accountability in respect of decision-making regarding such resources, and

- o It should reflect 'inter-generational equity' that shows respect for the legacy of past generations, balanced by meeting the needs of the present day, with the aim of passing on, in good order, the inheritance from both to the next generation
- The public should be able to have trust in the constitutional and operational activity of a museum which ensures the above

The International Council of Museums (ICOM) provides the most explicit guidance in terms of public benefit and trust:

Museums that maintain collections hold them in trust for the benefit of society and its development.... Inherent in this public trust is the notion of stewardship that includes rightful ownership, permanence, documentation, accessibility and responsible disposal.... Museum collections are held in public trust and may not be treated as a realizable asset.

This guidance is produced at a time when public confidence in core institutions has been declining, although this has primarily concerned national and local government, banks and major corporations, it has also occurred in the wider nonprofit sector. The most recent Charity Commission Review (2016) shows that declining confidence has also featured in the charity sector:

Public trust in charities has fallen lower than it has been since this study began in 2005 and the public are highly critical of both specific, individual charities and trends within the sector as a whole.

(Charity Commission (2016) Public Trust and Confidence in Charities: 8)

The wider findings of the report show that the public is looking for transparency, accountability and impact from its charitable organisations.

In order to achieve Accreditation a museum will need to show that:

- Its constitutional arrangements safeguard the public interest ensuring that no individual has exclusive control of the conduct of the museum
- It has a governing body (a group of unrelated individuals, or a body corporate) that appropriately controls and directs its strategy, operations and activities
- The governing body is formally constituted under a governing document and that the document provides for the holding of assets
- There is a statutory basis for its activities as a museum or there are specific powers to provide or operate a museum laid out in the governing document
- A public benefit is provided by the museum, and any financial advantage to any individual involved on the governing body must be wholly incidental to the operation of the museum

- It is not able to distribute its assets or profits for private gain as dividends or otherwise, and any income received is primarily applied to further the purposes for which the museum is established
- The entity has the powers on its dissolution to pass any assets (particularly any heritage assets) it owns to another body pursuing the same, or similar purposes and that can meet the above principles and conditions
- It is subject to statutory regulation or judicial process in relation to the conduct of its affairs and the discharge of any special trusts

Three types of constitutional arrangement are likely to meet all these requirements:

- Entities that fall within the statutory definitions of 'charity' in England, Wales, Scotland and Northern Ireland
- Entities defined as social enterprises that are subject to statutory regulation (Office of the Regulator of Community Interest Companies, or the Financial Conduct Authority)
- Assets held by national or local government and/or their agencies, or other public bodies, that are employed solely for the use, education, and enjoyment of the public, rather than held as the corporate property of the State, the public authority or government agency, or for private interest

It is expected that whatever the constitutional arrangement, any collections and assets will be considered to be heritage assets as defined in Financial Reporting Standard 30 'Heritage Assets':

all heritage assets that are held and maintained by an entity principally for their contribution to knowledge and culture. Heritage assets can have historical, artistic, scientific, geophysical or environmental qualities.

Key issues in determining Accreditation Status

The Accreditation process will take particular account of:

- The ownership and protection of collections and assets
- The nature and status of the governing document
- Control of the organisation
- Public benefit

Collections

Property (which may include but not be limited to buildings, collections, and intellectual property) held by charitable organisations and public trust takes two forms:

- Property held on trust, which is held for the purpose for which the organisation exists
- Corporate property, held for the general purposes of the organisation

It is important that these differentiations are adequately documented by the museum as corporate property can be dealt with as the organisation wishes. Use of the Spectrum UK collection management standard would help fulfil this requirement.

In most cases the property is in the ownership of the museum itself, but other arrangements may exist:

- Donors may retain a proprietary interest in their gifts, which would allow them to recover their property under particular circumstances such as failure to use the assets for the intended purpose or on the failure of the organisation (covered by the Charities Act 2011 s 65(3) in the case of charitable organisations)
- Some property may be loaned or hired for an extended period of time
- The property may be subject to terms and conditions that constitute them as separate trusts, i.e. their use is restricted to the purposes for which they were given, or they may be held by a subsidiary to or separate from the museum
- They may constitute or be part of a permanent endowment, in which case (if incorporated) they would be held as a separate unincorporated trust with the museum being its sole trustee

In some cases museums hold their collections in a separate constitutional vehicle from the main museum entity. This approach has its strengths and weaknesses and specialist advice should be sought to determine the most appropriate means of protection of collections and other assets.

Governing document

The governing document refers to a legal document setting out an organisation's aims and, usually, how it is administered. It may be a trust deed, constitution, rules, memorandum and articles of association, conveyance, will, Royal Charter, scheme of the Charity Commission or other formal document.

Charitable organisations

1. Make explicit reference to the primary purpose of the organisation being the provision of a museum, gallery or like facility. Or, list provision of a museum or gallery as a specific power in the case of larger conglomerate organisations, or
2. Make implicit reference to the provision of a museum, gallery or like facility within more broadly-drawn primary purposes. This must be reasonable within the context of the organisation's primary purpose, and be within the powers of the governing body, which, where there is no other specific mention, can be taken to be given by a general power to do those things that are lawful in pursuit of the charity's primary purpose

In some cases national charities with a non-museum primary purpose have setup a subsidiary charity, for example 'a heritage trust' to govern the museum. In this case the requirement will be to demonstrate that the subsidiary has the power to hold and/or own a collection and to operate a museum.

The registration of the entity with the appropriate regulator will be sufficient to demonstrate that the public trust test is in place.

The constitution should also include details of:

- Trustee's powers of investment
- Remuneration of trustees
- Procedures for dealing with trustees conflicts of interest and personal interest
- A limit on transferring the remaining assets after winding up to another charity with a similar purpose
- A clause precluding amendment to these core clauses and changes to the primary purpose (objects) without the regulators consent, or that would have the effect of making the museum cease to be a charity at law

As a minimum the governing document must include:

- The museum's area of benefit
- The ways in which the charity will fulfil its objects and its range of activities
- The number of trustees and who may or may not qualify as a trustee
- How the trustees run the entity and its processes and procedures
- Authority to vary administrative arrangements
- The power to wind up or merge the entity and transfer the assets (after all liabilities have been satisfied) to a charity with similar objects or a specified entity that is able to demonstrate public trust

Organisations are encouraged to regularly review their governing documents and to keep them updated to ensure they meet these criteria and conform to relevant legislation.

Charities that are vested in a local authority or other public authorities, as sole trustee must:

- Have registered (unless excepted) with the appropriate regulator
- Have put in place arrangements to ensure that decisions are taken in the best interest of the charity. This may be achieved through appointing a special committee to oversee the decisions in respect of the charity or appointment of an independent scrutineer
- Produce an annual report and accounts in the format required by the current Statement of Recommended Practice: Accounting by Charities (SORP)

Other constitutional entities

Non-charitable entities should provide copies of any relevant Constitutions, Rules or Terms of Reference that are in place to oversee and supervise the museums assets and activities. Entities must comply with the requirements of the relevant regulator.

Control

Any constitutional arrangement is only as good as those that manage it so there are a number of wider governance issues that are taken into consideration for Accreditation:

- Control of the organisation
- Personal benefit
- Conflicts of interest

It is an expectation that whatever the constitutional entity the governing body will ensure the museum delivers public benefit and that it will act in the best interest of the organisation. This is enshrined in the governance of Charities and also laid out in the Nolan Principles of Public Life (see link in Appendix One for details).

Where the governing body sits within a larger entity (e.g. a university) it is expected that there will be clear delegation of authority and that the internal reporting and decision-making processes allow the governing body to discharge its responsibilities unencumbered.

An Accredited museum must have transparent and accountable governance with appropriate policies and procedures for managing conflicts of interest.

No individual must gain undue personal benefit from being a member of the governing body of a museum, particularly where this sits in conflict with the delivery of public benefit or places assets, including collections, at risk.

It is possible in some circumstances for a museum to be unduly influenced or controlled by another entity; any such practices would make the museum ineligible for Accreditation. They may also be subject to challenge by the appropriate regulator.

Public Benefit

An Accredited museum needs to be able to demonstrate it provides a public benefit. The appropriate regulators (such as the Charity Commission) work to criteria defined by the relevant legislation (Appendix Two). In relation to Accreditation the expectation is that you will provide opportunities for public access and engagement with your assets and collection/s.

8

Ineligible entities

Ineligible entities are those where:

- The right to own a collection or other assets is not fully established or clear
- The protection of the museum's collection/s or assets is not robust
- Individuals involved in running the museum can gain undue personal benefit either by way of profits or realising the value of assets and this is a priority over delivery of public benefit (i.e. a private limited company is obliged to maximise benefit from shareholders which would override public benefit if it were operating a museum)
- The activities of the museum are subject to interference or undue influence from other bodies that may cause concerns over the transparency of the management of the museum, threaten the assets or undermine public trust

No single constitutional arrangement can be guaranteed to be completely risk free; poor or unscrupulous management can influence any entity.

However, there are several constitutional forms that are unlikely to fulfil requirement '1.2: Acceptable Constitution for the Governing Body':

- Sole trader
- Limited Liability Partnership
- Company Limited by Shares that is profit driven
- Unincorporated Associations (if not a Trust)
- Cooperative Societies (Industrial and Provident Societies)
- Special Purpose Vehicles
- Private museums

It is recognised that many museums and heritage organisations begin as Unincorporated Associations based on the enthusiasm of an individual or a committed group of volunteers. As the organisation develops and acquires assets and collections it is advised that this be reviewed as the assets and liabilities become the individual responsibility of those involved and are not protected by the constitutional entity. There are various ways this can take place and it is suggested that legal advice should be taken. If the route chosen is to fully incorporate a new legal entity needs to be created and the process goes through several phases:

1. Power to transfer: confirming the Unincorporated Association has the power to transfer its assets
2. Incorporating the new constitutional entity
3. Registering the new charitable company (or other entity) with the appropriate regulator, such as the Charity Commission
4. Creating the legal agreement to transfer the assets and undertakings of the original charity to the new corporate charity
5. Completion of transfer agreement
6. Removal of the original charity from the Charity Commission Register

It is important these steps are taken at the earliest possible opportunity to avoid issues in future in terms of ownership and powers to hold a collection.

Given the range of constitutional arrangements available Accreditation applications will be considered on a case-by-case basis.

9

Significant Change

It is understood that the operating context for museums is rapidly changing and that constitutional arrangements may need to adapt to those changes. It is important that as an Accredited museum or a museum seeking Accreditation you notify the relevant organisation (Museum Development, Arts Council England, Museums Galleries Scotland, Northern Ireland Museums Council, or Welsh Government) of any current or anticipated significant changes, these may include but will not be limited to:

- Merger or takeover
- Creation of a formally constituted consortium such as a Special Purpose Vehicle
- Creation of a Public Sector Mutual or other change from public authority to independent status
- Serious financial concerns that could lead to danger of insolvency
- The winding up of the current organisation and transfer of assets to a new body
- Change of status from a Charitable Company to a Charitable Incorporated Organisation
- Significant changes to constitutional objects, purpose or governing documents

Actions on winding up or closure – Charitable Company

Disposal of charity assets on the winding up of a charitable organisation is subject to the 'cy-près' doctrine. The cy-près doctrine provides that when such a trust has failed because its purposes are either impossible or cannot be fulfilled, the High Court of Justice or Charity Commission can make an order redirecting the trust's assets to the nearest possible purpose. This should be outlined in the governing document, which normally leaves the recipient charity unstated and looks to the Trustees of the outgoing charity to resolve. The appropriate regulator will provide consent and can resolve the issue if the Trustees are unable to deal with it.

Where there are serious risks to a charity or its assets, the Charity Commission can also direct charities or third parties (e.g. banks) to carry out specific actions or take other actions to protect a charity or its assets.

Where a museum entity is not a charitable organisation but fulfils a public benefit and public trust mandate it is expected that the principle of cy-près would also apply.

Dependent on the extent of the institutional change and the nature of risk to assets and public trust the relevant assessing organisation may require the new entity to reapply for Accreditation. The new entity will need to demonstrate it complies with the constitutional requirement and there will be no automatic transfer of Accreditation from one museum to another.

10 Museums Accreditation: Eligible and ineligible constitutional options

If you are considering setting up a new entity or changing your current constitutional status you should seek appropriate advice.

The following table sets out those organisations likely to be eligible and those that are ineligible for Accreditation.

Eligible	• Charitable Company Limited by Guarantee (CCLG)
	• Charitable Incorporated Organisation (CIO) and Scottish CIO (SCIO)
	• Public Service Mutuals (if CIO or CCLG)
	• Local Authority Museums (may be the Principal Authority or a Town, Community (Wales) or Parish Council where authority has been delegated)
	• Joint Committee/ Management Arrangements
	• Organisations constituted by Royal Charter
	• National museums set up by primary legislation
	• University Museums (where eligibility criteria are met)
	• Charitable Trust (where eligibility criteria are met)
Potentially eligible: dependent on the nature of asset lock, level of profit distribution, level of public benefit/trust etc.	• Benefit of Community Societies (previously Industrial and Provident Societies) – ‘BenComs’
	• Community Interest Companies Limited by Guarantee (CICLG)
	• Unincorporated Association (Charitable Trust)
	• Public Service Mutuals (if CIC or BenCom)
Ineligible	• Unincorporated Association (Voluntary/Community Organisation)
	• Private and Public Company Limited by shares
	• Partnership and Limited Liability Partnership
	• Community Interest Companies Limited by Shares
	• Co-operative Societies
	• Special Purpose Vehicles and other short-term structures

Appendices

Appendix One: Guidance and resources

Source	Information	Link
Charity Commission	Wide ranging guidance on charity regulation and governance in England and Wales	Charity Commission Guidance
Office of the Scottish Charity Regulator	Wide ranging guidance on charity regulation and governance in Scotland	OSCR guidance
Charity Commission for Northern Ireland	Wide ranging guidance on charity regulation and governance in Northern Ireland	CCNI Guidance
UnLtd	Determining the Right Legal Structure	Legal structures
Resource Centre	Legal Structures	Legal structures
Co-operatives UK	Guidance on cooperatives	CoopUK Guidance
National Council for Voluntary Organisations	Extensive support for nonprofit organisations	Charity law and guidance
Scottish Council for Voluntary Organisations	Extensive support for nonprofit organisations in Scotland	Setting up a charity
Wales Council for Voluntary Action	Third Sector support in Wales	Newly formed charity
ACEVO – charity leaders network	Support for charity leaders	Governance
Collections Trust	UK collection standard	Spectrum UK
Association of Independent Museums	Wide range of resources for independent museums	Resources
Gov.UK	Seven Principles of Public Life	The Nolan Principles

Appendix Two: Legal definitions of Public Benefit

For the legal definitions of Public Benefit please see:

England and Wales: Charity Act 2011:

<https://www.legislation.gov.uk/ukpga/2011/25>

Charities Act (Northern Ireland) 2008:

<https://www.legislation.gov.uk/nia/2008/12/contents>

Charities and Trustee Investment (Scotland) Act 2005:

<https://www.legislation.gov.uk/asp/2005/10/contents>

British Crown Dependencies (Isle of Man):

<https://www.gov.im/media/1352994/charitiesregistrationact1989.pdf>

Appendix Three: Glossary of terms

Asset lock	A general term used to cover all the provisions designed to ensure that the assets of the CIC (including any profits or other surpluses generated by its activities) are used for the benefit of the community
Corporate property	Property owned by an entity for the purpose of conducting its daily affairs and which is unencumbered by any trusts or restrictions as to how it should be applied
Governing body	The persons having the general control and management of the administration of an entity
Governing document	The document that sets out an organisation's purposes and how it is to be administered
Heritage assets	Assets with historic, artistic, scientific, technological, geographical or environmental qualities held and maintained principally for its contribution to knowledge and culture
Incorporated organisation	An incorporated organisation is a legal entity in its own right. This means that it can enter into contracts, employ staff, lease property and have its own obligations and liabilities
Judicial process	The jurisdiction of the courts to provide a legally-binding process of review and judgment to control the activities of an entity
Local authority	A body subordinate to central government and normally controlled by democratically-elected members that provides services to local people either on behalf of central government or on its own account
Memorandum & Articles of Association	A written document that limits and defines the functions and powers of a company, and the rules for its administration. A form of governing document

Objects	The primary purpose(s) for which a charity is established
Permanent endowment	Property (including land, buildings, collections, cash and investments) which cannot be spent; may be functional, where it is used in a practical way (e.g. museum/gallery buildings) or investment where the capital is used to generate income but cannot itself be spent.
Public authority	A body constituted by or under Act of Parliament to deliver a specific function either on behalf of central government
Public Benefit	Provision for the general social, economic and cultural wellbeing, and health and safety, of the general public
Special trusts	Funds or property held and administered on its own separate trusts by a main charity for a special purpose. They may be constituent charities
Statutory regulation	Statutory regulation exists to protect the public against the risk of poor practice or contraventions of public policy
Trust Deed	A formally-executed legal document that creates a trust and sets out the charity's purposes and (usually) how it is to be administered. A form of governing document
Unincorporated organisation	Being unincorporated means that an organisation has no separate legal identity of its own. All risks and liabilities involved in running the by the individuals who own and/or manage it



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Llywodraeth Cymru
Welsh Government

