

## Advisory Note 10

### Your community woodland group - choosing a legal structure

This Advisory Note has been written to help you consider which legal structure would be appropriate for your organisation. It draws on the experience of community woodland groups in Wales who have already tackled this question, and highlights some of the key factors to consider.

### Setting up a community woodland group

As a voluntary group, you can probably do some things without bothering with a formal structure. If all is going well, there may seem to be no need to have rules and regulations – you just get on with doing things in the woodland as a group.

However, if your work is based on verbal agreements and loose understandings it is all too easy to end up in difficulties, and without a formal structure you may find it hard to open a bank account or secure funding. In practice, it is worth agreeing some basic rules and writing these down so that everyone is clear about the aims of the group and how the group will be managed. In the eyes of the law, the group is then an **unincorporated association**, in other words a collection of individuals working together.

As soon as you begin to talk about owning woodlands, entering into a contract such as signing a lease or a grant agreement, employing staff, trading or undertaking work which involves any sort of risk, you need to consider adopting a more formal incorporated legal structure and deciding what to include in the governing documents.

This will give your organisation a legal identity separate from the people involved in running it and helps to protect them from personal liability.



*Photo: Ruperra Conservation Trust is a registered charity and a company limited by guarantee. The Trust owns Coed Craig Ruperra, 62 hectares of woodland alongside Ruperra Castle. The Trust has set up a Community Interest Company to generate income from the woodland. See LlyG Case Study 4 - A steep learning curve: Ruperra Conservation Trust.*

### Is there a 'best' structure for a community woodland group?

There are many legal structures to choose from and there will probably be more than one structure which would work for you. It is, for example, possible to be a charitable company, which is both registered as a charity with the Charities Commission and as a company limited by guarantee with Companies House.

A registered charity is an unincorporated association, so has no limited liability. Limited liability comes with company registration. (As of December 2012, the Charitable Incorporated Organisation offers the opportunity to be a registered charity with limited liability.)

If you decide to go the co-operative route, to limit members' liability you would also need to be a company limited by guarantee or an industrial and provident society. A co-operative is a way of working together as a group, not a legal structure in its own right. The membership organisation for co-operatives is itself a co-operative, not a regulatory body determined by law as are the Charities Commission and Companies House

So when making a decision about the legal structure for your organisation, you may be faced with 'either/or' choices, rather than making a simple selection from a list. Add to that the fear of making a 'wrong' choice and the concern that you are dealing with something legal which could have major implications beyond your experience, and it is easy to see why groups may agonise over what to do for the best. All you really want to do is to enjoy the woodland, not get bogged down in a mass of rules and paperwork.

Difficulties are more likely to arise from inaction and delays in dealing with legal formalities. Remember that you already have legal responsibilities as individuals in an informal group or an unincorporated association; such as safety issues in your woodland, duty of care for your volunteers, paying bills and public liability, and that most 'mistakes' in deciding the detail of your governance structure can be corrected.

Getting a separate legal identity as an incorporated association does not expose you to greater risk, and will help you to manage your responsibilities better.



Photo above: **The Coed y Bobl Trust** was set up for members of the local 'community of interest' to become the primary land managers of a local woodland owned by the Woodland Trust. See LlyG Case Study 2 - *By the people – for the people Coed y Bobl Community Woodland*.

Photo right: **Blaen Bran Community Woodland**, from being an embryonic community group in the form of a Trust, has evolved to be a Company limited by guarantee and also a registered Charity which owns 40 hectares of woodland. A social enterprise has been set up to generate income from the woodland. See LlyG Case Study 1 - *Responding to opportunities, Blaen Bran Community Woodland*

## What are the main structures appropriate for a community woodland group?

### Unincorporated Structures (legally recognised structures, but not legal entities)

- Association
- Trust
- Partnership

### Incorporated Structures (legal entities)

- Company Limited by Guarantee
- Company Limited by Shares
- Industrial and Provident Society (IPS)
  - Community benefit
  - Co-operative
- Limited Liability partnership
- Community Interest Company (CIC) limited by guarantee
- Community Interest Company (CIC) limited by shares
- Charitable Incorporated Organisations (CIO)
  - Foundation
  - Association

Charities and co-operatives do not appear on this list because they are not legal structures. It is what is included in the governing document which makes a charity or a co-operative.

An impressive list of options and quite daunting if you feel that you need to be an expert on each before you can make a decision! Don't try - spend the time looking at what it is that you, as a group, are setting out to do.



## Start with some long term planning

It is important to think clearly about your community woodland group and its aims and vision, and to think ahead, not just about where you are now. Long term planning makes you consider what you are set up to do (in legal terms, your objects), what you are going to do and how you are going to do it, how and by whom you want the organisation to be managed, the resources you will need and where these will come from. This should help you to choose a structure which best fits your purpose, and to decide what to put into the appropriate governing documents.

These are some of the questions you may need to consider:

- **How much paperwork do you want to have to do, or will your organisation have the capacity to do?**

*There is always some, but for registered charities, Community Interest Companies (CICs) and Industrial and Provident Societies, the requirement is heavier and more costly and may outweigh tax and other potential advantages. Unless you have expertise within your membership, you will need the services of an accountant. Note that, except in very exceptional circumstances which are not likely to be relevant to community woodland groups, it is not possible to register as a charity if the income of your group is below £5,000 per annum. This is because of the regulatory burden which would otherwise fall on a very small organisation.*

- **Do you have a social or political message that you want to get over in the company structure?**

*This may be for commercial reasons, 'because it sounds good', or because of your beliefs, but a structure chosen for such a reason might not prove to be 'fit for purpose' in the long run*

- **How much flexibility do you want to have for future changes of direction?**

*Charities, CIOs and Industrial and Provident Societies have very specific requirements as to what is and what is not permissible in the objects of the organisation. Limited liability companies offer greater flexibility and scope for change if the objects (what the company is set up to do) are kept fairly broad.*

- **Who do you want to decide on the direction of the company?**

*This could vary from being restricted to a committee or being open to all members, or anywhere in between. However, legal responsibility lies with directors (for limited liability companies), trustees (for trusts) and individuals on management committees (for associations).*

- **Who do you want your members to be? Who do you want to have voting rights?**

*You can specify this in the governing documents, apart from trusts which do not have members, only trustees.*



*Photo: The Coed Marros Co-op is a group of five people who have pooled their resources to purchase and develop Coed Marros as a community woodland. They are a member of Co-op UK. See LlyG Case Study 5 Turning a vision into reality Coed Marros Co-operative*

- **Do you want to make sure that a particular group of people (for example, from a specific location or with a particular interest) have and can retain control?**

*In broad terms, this can be included in the governing document of all structures, but the more regulated structures offer less flexibility.*

- **Do you want to trade for profit? (You may not want to now, but what about in the future?) Do you want to be able to determine where you can re-invest any profits?**

*Trading restrictions apply to registered charities. They can only trade in support of their primary purpose (e.g. if it is to advance environmental education, you can sell environmental education services) but they can set up a separate trading arm which donates any profit back to the charity, and there are tax advantages.*

*The governing documents of limited liability companies can specify how profits are to be distributed. Social enterprises are 'not for profit' in the sense that they do not distribute profits to their members, not because they are set up not to make a trading surplus.*

- **Might you want to raise money by taking out a loan or selling shares?**

*Companies and Community Interest Companies limited by guarantee cannot raise finance through selling shares, but can take out loans unless otherwise specified in their governing document. A CIC cannot use their assets as security for loan finance because of the asset lock. Share issues can be raised through an Industrial and Provident Society.*

- **Do you want to be able to pay dividends?**

*Paying dividends from profits may seem like a good idea if you want to give a financial return to members, and this can be written into the governing documents of a company limited by guarantee or shares. However, there could be implications for e.g. grant eligibility.*

- **Should the organisation be dissolved, what would you want done with any assets?**

*One thing you may want to protect against is a takeover of your woodland for personal gain. The CIC structure offers an asset lock. You can include in the governing documents of limited companies very specific instructions as to how assets can be dispersed. It is the decision of Trustees as to how a Trust can be dismantled and assets distributed, though that has to be approved by the Charity Commission.*

- **Does the structure you have in place no longer feel 'fit for purpose'?**

*Maybe you as a group have achieved what you set out to do, or circumstances have altered, or new opportunities arisen, and the structure you have does not allow you to encompass the change. One option would be to set up a separate organisation to run in parallel (this could have been in the back of your mind all along).*

*Closing down and starting again with a different governing structure can be an acceptance of change and a positive way of addressing the future, but it is not an easy option.*





Photo: **Llangattock Community Woodland Group** is a constituted group that started out under the umbrella of the Llangattock Green Valleys CIC, which acts as an umbrella organisation for sustainable initiatives in the community.

Recently the group became a Charity. This decision was taken by the Management Group who felt that a lasting legacy was important. For them, becoming a Charity reinforced public benefit aims and provided funders and supporters with confidence that these aims would be delivered.

## Types of governing document

The type of governing document you need will depend on the structure you choose, but essentially the constitution of an association, the trust deed of a trust, or the articles of association of a limited company, CIC, or charity are the instruction manuals for how the organisation should be run and, as such, are legally binding.

This is not to say that amendments can't be made at a later stage. The constitution of an unincorporated association can be changed by members, but the regulatory bodies for legal structures each have their own procedure for how and what amendments can be made. All will require them to have been approved at an Annual General Meeting (AGM) or an Extraordinary General Meeting (EGM).

## Preparing governing documents

Generally it is better to keep these as flexible as possible so that it is easier to make amendments should circumstances change. Avoid putting in unnecessary detail as the greater the detail, the more you restrict what you can do. So it is a

matter of deciding what is essential to include and what can be left out without materially changing what it is you want to do and how you want to do it.

There is a plethora of examples of governing documents on the internet, with 'model' forms available on the websites of the various regulatory bodies. These give an idea of what must be included to meet at least the minimum legal requirements. You can write your own, but given the complexity of company law and regulatory rules, it is probably simpler to use a model form in its entirety or with minor amendments rather than to start from scratch and write your own version.

For matters of governance which are not required by law (so which will not be included in the model forms), you can agree a set of procedures or bye-laws giving more detail as to how you intend your organisation to operate. These have the force of law if they are adopted at a General Meeting (Annual or Extraordinary), or you can just have them as an informal code of practice. This is a way of making the management of your community woodland group more transparent.

## Why so many legal structures?

Legal structures for organisations have developed over the years from two different perspectives, depending on whether funding was external (i.e. not from members) or internal (i.e. from members).

Companies limited by shares or guarantees have traditionally been the route by which entrepreneurs have attracted outside investment into trading enterprises. Co-ops and Industrial and Provident Societies have developed from the pooling of resources by workers to benefit from their own efforts. Both models now occupy the same broad area – the limitation of personal liability; the ability to raise funds, and the ability to enable development of larger scale enterprises than can readily be handled by an individual.

Charities have traditionally been set up to raise funds and distribute these funds to specific 'worthy causes', but their main purpose cannot be to trade. Trusts were set up at the time of the Crusaders to deal with the affairs of estates during prolonged absence of the landowner.

The idea behind Community Interest Companies (CICs) and Charitable Incorporated Organisations (CIOs) was to give a simpler route to limited liability for social enterprises. CICs offer an asset lock to prevent assets being sold off for personal gain should the company be taken over. CIOs offer protection of charity trustees from personal liability without the need for dual registration with company and charity law.

## Where to go from here?

If you would like to talk to other community woodland groups in Wales with similar interests and responsibilities, contact Llais y Goedwig [llaisygoedwig.org.uk](http://llaisygoedwig.org.uk).

There are many useful on-line resources, from decision making tools to general guides. Visit [llaisygoedwig.org.uk/resources/set-up-manage-your-community-woodland/](http://llaisygoedwig.org.uk/resources/set-up-manage-your-community-woodland/) for a comprehensive list.

## Some terminology

- **Articles of Association**

*Articles of Association for a limited liability company can be written to reflect what you want the company to do. You can restrict membership and determine who has voting rights. You can specify whether directors can be paid, and for what and whether they can accept paid contracts for the company and under what terms.*

*You can set the criteria for governance, determine what counts as conflict of interest, decide on the frequency of meetings, notice to be given and whether board meeting will be open to members. You can specify what decisions need to go to an Extraordinary General Meeting (EGM) and what can be dealt with at an ordinary meeting. Within certain (very wide) limits as laid out in Company Law you can determine the rules by which your company will operate.*

- **Co-operatives**

*Cooperatives are a way of working, not a legal structure. They are owned by members, who will only have limited liability if the co-op is also a limited company or an IPS.*

- **Company or CIC limited by guarantee**

*Company or CIC limited by guarantee have no share capital and no shareholders, so cannot raise money by selling shares. Members give a guarantee of a nominal amount to cover the company's liabilities, normally limited to £1. The members are the owners of the company.*

- **Company or CIC limited by shares**

*Company or CIC limited by shares divides its share capital (the amount as specified in the governing documents) into shares of fixed amounts and can then issue them to shareholders either all at once or bit by bit. The shareholders then become the owners of the company.*

- **Industrial and provident societies (IPS)**

*IPS community benefit society and IPS co-operative are the two main co-operative legal structures. The difference between the two is in the stakeholder groups that the society is set up to benefit. An IPS co-operative is set up to benefit its members, whereas a IPS community benefit society is set up to benefit the community more widely, whether people are members or not.*

- **Objects**

*Objects of Limited Companies or CICs are the objectives of the organisation (i.e what it is setting out to do). They can be specified under the 'objects' clause of the articles of association, in which case they place a limit on the company's activities and powers. If they are not specified the company can undertake any business or activity whatsoever*

- **Regulatory bodies for legal structures in Wales are:**

- **Companies House** for Limited Liability Companies and Community Interest Companies (CICs)
- **Charities Commission** for Charitable Trusts, Registered Charities and Charitable Incorporated Organisations
- **Financial Services Authority (FSA)** for Industrial and Provident Societies (IPS)

- **Social Enterprises**

*Social Enterprises do not have a set legal form and can be a limited company, a trust, an IPS, a CIC or a CIO. They differ from commercial enterprises in that they are driven by shared values. Where they have been set up to be the enterprise arm of a charity, they need to share the same aims, objectives and same vision, and put any revenue generated into the parent organisation.*

- **Trusts**

*Trusts separate the legal and beneficial interests of property such as woodland. Trustees are legally obliged to manage the property for the beneficiaries in accordance with the governing document, the trust deed, and must always place the interests of beneficiaries above their own. Trusts do not have members, only trustees and beneficiaries.*

- **Unincorporated associations**

*Unincorporated associations are composed of members who delegate their power to a management committee to carry out the association's activities. The management committee is elected by and accountable to the members. Unlike an incorporated association (for example, a limited company) an unincorporated association is not a "person" in law and is not separate from its members.*

*This means that it cannot, as an association, enter into contracts such as signing a lease or arranging a loan, but a bank account can be opened in it's name (subject to acceptance by the bank of the credentials of the signatories). Committee members can enter into contracts on behalf of the association, which leaves them personally liable under those contracts. They can also be held personally liable for the consequences of wrongful actions of the association resulting in personal injury or nuisance.*

**This Advisory Note has been prepared for Llais y Goedwig by Fay Sharpley of Pobl y Fforest community woodland group based on the situation in January 2014.**

**Please note that the law regarding this topic is subject to change.**

**Llais y Goedwig is a voluntary association of community woodland groups that formed in November 2009 to provide a voice for community woodlands. We want to share experiences, support each other and enhance local woodlands to benefit the people of Wales. This resource is part of a growing series that we hope will be useful to our members, and others interested in community woodlands in Wales.**

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