

# Applicant Guidance

*Setting up a company limited by guarantee*

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**New  
Schools  
Network**

## Setting up a Company Limited by Guarantee

This guidance explains how to set up a company limited by guarantee (CLG), which you will need to do as part of your application to open a free school. It also discusses some of the important issues your group will need to consider as part of this.

Please be aware that this guidance is given on a general basis for information only and does not constitute legal advice. If your group has specific issues relating to your CLG you should seek specific legal advice.

### What is a CLG?

A company limited by guarantee (CLG) is a type of company where its members are guarantors rather than shareholders. The members' liability is limited to the amount they agree to contribute to help pay the company's debts if the company is wound up. In the case of a CLG set up for the purposes of running a free school, the liability of each of the members will be limited to no more than £10.

Unlike a private or public company limited by shares, a CLG is not suitable for commercial purposes since it generally cannot distribute profits. As a result, a CLG is commonly used by 'not-for-profit' organisations to provide them with a legal entity.

### Why does our group need to set up a CLG?

Your group needs to set up a CLG to establish and run your proposed free school. Your CLG will act as the legal body through which your group will sign a funding agreement with the Secretary of State once final approval has been given for your free school to open.

Make sure you set up your CLG in good time before applying to open a free school as you must provide details of it in the application form you will submit to the DfE.

### How do we set up a CLG?

In order to become a Company Limited by Guarantee you must register at Companies House. You do not need to register your company with the Charities Commission since your CLG will be an 'exempt charity'. This means that it will operate like a normal charity, but with oversight from the DfE instead of the Charities Commission.

To register your CLG you should go to the Companies House website and download the relevant application materials. Your application will consist of 3 documents:

- Application form
- Memorandum of Association

- Articles of Association

While these are legal documents, and you should take care to ensure that you understand your obligations under them, they are relatively easy to complete.

Once these three documents have been completed, you should return them to Companies House along with the relevant fee. There are two options for submission:

- Standard paper registration: £40 (documents processed within 8 - 10 days of receipt)
- Same day service: £100 (documents must be received by 15:00 and the envelope should be clearly marked 'SAME DAY INCORPORATION')

They can be sent to the 'New Companies Section' at either of the below addresses:

Companies House  
Crown Way  
Cardiff  
CF14 3UZ

Companies House  
4 Abbey Orchard Street  
Westminster  
London  
SW1P 2HT

## What Memorandum and Articles of Association should we use?

Your CLG you will need to adopt Memorandum and Articles of Association in order to set out how it will operate.

In this case you should use the DfE's model Memorandum and Articles which are [available here](#). If your group is approved to open a free school, your group will be expected to have these in place when signing a funding agreement with the Secretary of State.

If you are an existing provider or organisation you may be able to use your existing Memorandum and Articles of Association if they clearly state that they are for the purposes of running a school. However, you will need to adopt the DfE's model documents if you are approved and you will need to put forward any amendments necessary to allow the pre-existing charitable company to continue.

However, you should be aware that the need for legal advice can make this a lengthy and potentially expensive process.

Where their memorandum and articles of association conflict with the DfE's models, most existing organisations find it easier to set up a new CLG explicitly for the purposes of the free school.

## How does a CLG operate?

Your CLG will have 2 essential elements – members and directors. These roles and their responsibilities are given below:

## Members

These are the people who create the company. Their major roles are to be the decision makers for the company. They have ultimate control over the running of the company, including making important decisions as selecting the directors of the company and amending its constitution (if necessary).

Members have the rights and powers, under the Companies Act 2006, to:

- Change the constitution of the company
- Appoint and remove directors of the company
- Receive the annual accounts of the company
- Receive notice of, attend and vote at all company meetings

In order to set up an Academy Trust it is necessary to have a minimum of 3 members. However, the DfE advise in the [Academies Financial Handbook](#) that although Trusts should be established with this number of Members they should then recruit at least 2 further Members, so that there are at least 5 in total, as this:

- ‘ensures enough members can take decisions via special resolution (which requires 75% of members to agree) without requiring unanimity
- facilitates majority decisions being taken by ordinary resolution (which requires a majority of members to agree).’

You should therefore bear this in mind when deciding how many Members your Trust will have. As mentioned above, members also act as the nominal guarantors of the company if it is wound up but their personal liability is limited to £10.

## Directors

These people are selected by the members and can be members themselves, but do not have to be. The DfE recommend that the majority of directors are not also members so as to leave a clear line of accountability between members and directors.

When setting up the company, the members will need to appoint at least one director. They do the actual work of the company and in the case of a school, act as its governors. Once your company is incorporated (registered with Companies House) with the appropriate memorandum and articles of

association, it becomes an Academy Trust and the directors also become the trustees of this trust. As a result, 'directors', 'governors' and trustees are often held to be interchangeable terms for free schools.

For the purposes of your free school, all of your company's directors will automatically act as governors. However, if your free school is approved you will also need to add other governors to the governing body of the school, for example, parent governors.

These people do not have to be directors of the company.

Directors/governors/trustees of the company have a wide range of responsibilities. These include:

- The management and control of the company and its strategic direction
- Acting as charity trustees under charity law, including a fiduciary duty to act in the best interests of the company
- Following duties to the company under company law, as defined in the Companies Act 2006

### Administrative responsibilities

There are also a number of administrative tasks your CLG will have to complete in order to satisfy company law. These requirements relate to:

- Holding a registered office
- Publicity requirements
- Undertaking an annual audit of accounts
- Completing Companies House filing
- Issuing notice of meetings (for Directors and Members, including proxy notice)
- Keeping minutes of meetings
- Keeping accounting reference data
- Compiling company registers
- Noting company resolutions (ordinary and special)
- Noting any change of directors

### Who should we choose as members or directors of our CLG?

Most free school proposers draw members and directors of their CLG from amongst their steering group.

There is no ideal number of directors; your group needs to find an appropriate balance of skill and expertise and should not be so large as to become unwieldy. Remember, your group will be able to add and remove directors as appropriate, by contacting Companies House. Many free school groups

keep the number of directors small before they apply to set up a free school and then expand this as the school moves closer towards opening, in order to bring in the broader range of expertise required.

When selecting who will be members and directors of the company you should bear in mind that:

- Members and directors will need to make very different time commitments. Members will have to make crucial decisions, such as whether to approve the Academy Trust's annual accounts, but may only meet a few times a year. Directors will have a much more intensive role - attending frequent meetings of the governing body and making decisions which have an impact on the day-to-day running of the free school.
- The DfE have indicated that they do not consider it to be good practice for a majority of the directors of a CLG to be drawn from amongst its members, since this would blur lines of accountability between them; and
- The DfE have indicated that there should be no personal or professional relationships between those who have responsibility for your school's spending and potential suppliers. Therefore, if you choose to appoint directors with a material interest in the school (such as being employed by it) your application will need to set out plans for managing this potential conflict of interest.

## Further information

- Companies House [guidance](#) and information on [fees](#)
- The DfE's model [Memorandum of Association & Articles of Association](#)