

GETTING IT RIGHT LEGALLY

STATUS AND STRUCTURE
FOR PLAY AND CHILDCARE
ORGANISATIONS



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Getting it Right Legally

Legal status and structure for play and childcare organisations



Introduction

& acknowledgements

Welcome to '**GETTING IT RIGHT LEGALLY**- Status and Structure for Play and Childcare Organisations'.

This guide is the result of a unique collaboration between the legal profession and the play and childcare sector. The partnership came about in response to requests from associations and development officers in the childcare and play sectors. They required legal guidance to help them navigate successfully through the potential minefield of setting up a community childcare or play facility. To this end, Bates Wells and Braithwaite solicitors have created guidance relating mainly to status and structure, and have included model constitutions outlining ways in which they may be used. Many individuals and organisations have contributed their support and ideas. We believe this makes for an accessible, clear and comprehensive guide.

Funding from the European Social Fund's EQUAL programme through the EQUIPE Development Partnership as well as the DTI's Phoenix Fund has made this work possible. We would like to thank all those who have played a part in 'Getting It Right Legally' for their support and wish every success to all who go on to use this guide.

Playwork Partnerships at the University of Gloucestershire
Bates Wells and Braithwaite solicitors
Clybiau Plant Cymru Kids' Clubs

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This guide is intended to provide helpful advice, but this is necessarily of a general nature and specific advice should be taken for specific circumstances.



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Glossary

Glossary of terms used in this Guide

Why read this guide? What it covers and how to use it

Many things demand your attention when setting up/running a play or childcare organisation.

All are easier to deal with if you have already established the right **legal structure** for your organisation. It is the foundation of, and the framework for, any organisation's successful development, particularly one intending to pursue its social purpose with self-sustaining principles of business operation.

Getting the **legal structure** wrong means uncertainty, potential confusion, and the risk of constitutional difficulties that distract from the real work. All of these things can undermine efficiency, support and, ultimately, viability.

This guide provides practical and expert guidance on the **legal status** and **legal structure** of community play and childcare organisations in England and Wales.

This guide focuses primarily on community play and childcare organisations as **not-for-profit** organisations. It has a limited application for those intending to run play and childcare organisations as **for-profit** businesses, but does deal with play and

childcare planning issues, equally applicable to such businesses.

Rather than providing an undifferentiated list of possible **legal forms** for play and childcare organisations, this guide makes and explains a specific recommendation of a **Company Limited by Guarantee** as the **legal form** currently suitable for most community play and childcare organisations. It also indicates when that recommendation might not be appropriate.

In addition, the advantages of **charitable status** for most community play and childcare organisations are explained.

This guide's principal sections cover:

- establishing your organisation with an appropriate **constitution** (**Section 3**);
an explanation of how constitutions work (**Section 7**);
model constitutions with a commentary (**Appendix**);
and illustrative case studies (**Section 4** and **Section 11**);
- the advantages of **charitable status** and how to register your organisation as a **charity** (see **Section 5**);

- how to turn an already established **unincorporated organisation** into a company providing limited liability (**Section 6**).

These sections are supplemented by outlines of other key matters requiring attention, to ensure your organisation is established on a solid basis:

- feasibility and planning (**Section 2**);
- regulatory matters (**Section 8**); and
- policies and procedures for efficient management and administration (**Section 9**).

It is intended that this guide should be read alongside more general guidance publications for play and childcare organisations that cover **legal status and structure** in less detail and the subject matter of this guide's supplementary sections in more detail.

A selection of complementary guidance material is set out in **Section 10**.

The sections are set out in a step-by-step order, similar to that in which the relevant issues occur as you plan and develop your organisation.

Throughout the guide particular terms and words of significant importance are **highlighted in green**. These are defined in the glossary at the back of the guide for reference.

Points to note for using the guide:

- The term **board of management** is used throughout the guide to refer to the group of individuals with overall management responsibility for an organisation whatever its **legal status and structure**. There are various other terms for the same group, for example, **directors** or **charity trustees**. **Voluntary management committee** is a term for the same group, widely used in childcare and play organisations. It usually describes the **board of management** of an **unincorporated organisation**. (**Section 3**, point 3.2).
- The term **not-for-profit** is used to describe an organisation that does not distribute its profits to members or shareholders, but uses them for its community benefit purposes.
- Attached to the inside of the back cover is a DVD. This contains a short film in the form of a light-hearted, cautionary tale about getting the **legal status and structure** right - this could be used as a training resource.
- **Model constitutions** are available in Word from:
www.playwork.co.uk/legal.htm
These can be downloaded and edited with your organisational information. An electronic version of this guide is also available.
- **Please check the website for latest changes and updates to this guidance:**
www.playwork.co.uk/legal.htm