

The precedent is designed for landowners in England and Wales who wish to protect private land for biodiversity/ecological purposes following their death and wish to do this in the most tax efficient manner, through obtaining charitable status.

### **Benefits of Charitable Status**

Setting up a charity to protect land in the future brings with it the following benefits, once it has been recognised formally by the Charity Commission as a charity:

- charitable status gives credibility and inspires trust from investors and donors because it is subject to a regulatory framework and monitored by the Charity Commission;
- may assist in obtaining government funding/grants;
- encourages longevity of the project;
- charities don't generally pay income tax/corporation tax, capital gains tax;
- gifts to a registered charity are generally free of inheritance tax and where a testator leaves at least 10% of his estate to charity a reduced rate of inheritance tax applies (36% as opposed to 40%);
- relief will generally apply in relation to Land Transaction Tax and Stamp Duty Land Tax;
- charities are often able to obtain reductions, or sometimes even exemption, from business rates;
- charities may in certain circumstances receive special treatment for VAT, eg exemption for qualifying charity fundraising events; and
- can reclaim gift aid from private donations from individuals.

### **What qualifies as a charity?**

To qualify as a charity, the organisation must have a charitable purpose and be for the public benefit. The organisation must also be exclusively charitable.

In the case of appended document, the recognised charitable purpose falls under the category of the advancement of environmental protection or improvement. In our example, the objective is the conservation of a habitat or area of land. Undertaking agricultural activity can also be a recognised purpose if undertaken not for the benefit of those engaged in agriculture but for the benefit of the public generally. Sometimes, the charitable objective of protecting the environment will also go hand in hand with the objective to advance education of the public in conservation, protection and improvement as long as the material is neutral, unbiased and not entered into as a means of promoting the subjective interests of the charity.

When deciding whether to grant charitable status, the Charity Commission will want the organisation to satisfy a criterion of merit and they will need to provide independent expert evidence that the land or habitat is worthy of conservation. When trying to show the Charity Commission that the land or habitat is worthy of conservation, a starting point for such evidence could be the designation of the land as a Site of Special Scientific Interest, an Area of Outstanding Natural Beauty, a National Nature Reserve or designation of habitat land under a recognised Government scheme.

For it to be of public benefit, the purpose of the charity must both be beneficial to the public and benefit a sufficient section of the public. The more traditional means of satisfying the public benefit requirement is by allowing the public to have direct physical access to view the site. However, the

Charity Commission can be flexible in its approach to the level of physical access to the site, for example the public should not be allowed access at the expense of the deterioration of a fragile environment. In some cases where access needs to be limited or in unusual cases excluded, alternative methods could be put in place to inform the public about the charity, its objectives and its activities. Such methods could be allowing access to part of the site which is less harmful to the environment, facilities to view the site externally for example with cameras, telescopes, internet sites etc and promotional and informative material about the charity's work such as videos, books, lectures, seminars, exhibitions, photographs and so forth. When looking to limit or find alternatives to direct physical access, it will have to be agreed with the Charity Commission that this satisfies the public benefit criterion.

The charity must not be used for non-charitable purposes (eg trading with local businesses) and any private benefit to individuals should be incidental.

### **Disadvantages of Charitable Status**

In return for the generous tax benefits and the kudos of being a registered charity, there are some down sides, including but not limited to:

- A charity must have exclusively charitable purposes;
- Charity trustees are not generally able to receive financial benefits from managing the charity, only out of pocket expenses which can in turn make it difficult to find trustees who are willing to accept the appointment and responsibility the role entails;
- There are strict rules which apply to trade by charities; and
- A charity is subject to regulation and public scrutiny.

### **So, you've decided that a charitable trust may be of interest to you?**

There are various options open to you, such as setting up a charity during your lifetime (perhaps initially with a nominal sum), creating a charitable trust in your Will by setting out all its terms or leaving a gift in your will to your trustees to establish a charitable trust.

The attached document gives an example of how this can be done and seeks to protect and conserve the habitat and biodiversity of the land by giving the land to trustees in a Will together with cash funds, either in the form of a lump sum or as required from the residuary estate, to assist meeting the associated expenses of establishing the charity, such as expert reports. The trustees shall then set up a charity within the framework outlined in the Will. The advantage is for the landowner to remain in control of the land during the landowner's lifetime. Upon the death of the landowner, the trustees shall then have the flexibility within the provisions set out in the Will to be able to work with the Charity Commission to ensure that the terms of the trust are acceptable to them in order to register the trust as a charity. The trustees will also wish to ensure that HMRC accept the trust as a charity in order to claim gift aid relief.

The danger of setting up a charity in the Will now would be that the terms the landowner applies in their Will as a qualifying charity during his lifetime may no longer be acceptable to the Charity Commission on the landowner's death which could be many years later. For example, the criterion of merit may change and what is sufficient to satisfy the public benefit requirement may also change,

especially with advances in technology and mindsets. New legislation may also be introduced in the future.

### **The Example**

[see separate sheet]

### **The Letter of Wishes**

The landowner may wish to leave their trustees a letter of wishes to explain their purpose in wishing to set up and place some of their assets into a charitable trust. This would be a personal letter and should not be written so as to be binding upon the trustees. The letter is merely a way of offering guidance, suggestions and setting out one's wishes without interfering with in the powers of or decisions made by the trustees.

The letter may be updated from time to time without affecting the terms of the will.

### **Please note:**

The material above is intended only as a guide and a suggestion as to a possible course of action if setting up such a Charitable Trust is of interest to you. It may not be appropriate in all circumstances and you must seek independent legal advice concerning your own individual circumstances before entering into any such arrangement and on whether the attached example is appropriate in your situation. The material above is not a substitute for specific legal advice. Agri Advisor Legal LLP cannot accept responsibility for any actions you may or may not take in light of the above material and are not liable if the attached document is used without specific individual and tailored legal advice having been taken by any individual.