

England Athletics

Athletics Clubs: Legal Structure and Special Tax Status

(including 'not-for-profit' status)

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1 Introduction

- 1.1 At England Athletics, we understand that our member clubs are shaped largely by the volunteers who promote participation in their sport, often from generation to generation. While no two clubs are the same, we also recognise that there are many shared issues and common themes which clubs across England face regularly, along with a wide range of marginal gains which can be made off the track, as well as on it, to improve each athlete's experience. With this in mind, we feel it is important to identify how clubs can benefit from passing their expertise and experiences to other clubs, particularly in relation to questions about how they should be set up and run. This Guide is intended to explain the different types of legal structure and special tax status (particularly when operating on a not-for-profit basis) which clubs can adopt.
- 1.2 This Guide has been produced by England Athletics following various requests by clubs reviewing their governance and tax arrangements. Common questions on England Athletics' dedicated free legal helpline include, how could we better protect our members from personal liability? What are the benefits of charitable status? How do we go about reconstituting?
- 1.3 All are good questions which deserve a thorough but simple answer in plain English. This Guide discusses some of the key pros and cons of different legal structures. It also describes 'step by step' how a club can reconstitute as a limited company (a process sometimes known as 'incorporation').
- 1.4 England Athletics does not require clubs to adopt one specific legal form over another. This is a decision for each club to take as they will be best placed to know the most appropriate legal form for their club in their particular circumstances. Most clubs affiliated to England Athletics are unincorporated, promote participation in running and track & field and are operated by volunteers; which for most is a fairly low maintenance structure with 'light touch' regulation. However, clubs should always be mindful that the legal structure they choose should relate directly to the risk attached with the activities they engage in. What are the key triggers for considering incorporation? How could charitable or CASC status possibly make a tangible difference? We will explore that in the following pages.
- 1.5 Before a club reconstitutes as a new legal entity, it should liaise with England Athletics as its national governing body to ensure that its membership and affiliation are duly transferred. We also strongly recommend that clubs obtain independent legal and tax advice before taking any steps to change their legal structure or not-for-profit status.
- 1.6 England Athletics runs a free legal telephone helpline for the benefit of its affiliated clubs. This is delivered by its lawyers, Muckle LLP, which is nationally recognised for its experience and expertise in the community sports sector. If you are considering changing your club's constitution or reconstituting as a limited company, Muckle LLP has prepared a suite of template documents which deal with setting up the new company and transferring the assets of the existing club. Muckle LLP can provide these documents for a fixed price.
- 1.7 If you have any further legal queries after reading this Guide, expert assistance is available without charge to affiliated clubs by calling **0191 211 7797** or by sending an email to englandathletics@muckle-llp.com. Alternatively, if you believe that your club needs more bespoke advice on its options, please contact:



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2 Club Structures

- 2.1** What structure a club adopts is essentially a matter for each club. England Athletics does not prescribe or specify a required format.
- 2.2** When reviewing your club's legal structure, it is important to distinguish between **legal form** (i.e. what type of legal entity it is and how it is constituted – see sections 3 to 5 below) and **not-for-profit status** (i.e. what special tax status it has, if any – see sections 6 to 9 below).
- 2.3** Athletics clubs may adopt one of several different legal forms. The most common are:
- 2.3.1** unincorporated association;
 - 2.3.2** company limited by guarantee;
 - 2.3.3** company limited by shares;
 - 2.3.4** charitable incorporated organisation (**CIO**); and
 - 2.3.5** community benefit society (formerly known as an industrial and provident society).
- 2.4** Athletics clubs may also adopt one of several different structures suitable for 'not-for-profit' status or none at all. The most common are:
- 2.4.1** no special status;
 - 2.4.2** charitable;
 - 2.4.3** community amateur sports club (**CASC**); and
 - 2.4.4** community interest company (**CIC**).
- 2.5** The table below sets out the various permutations:



Legal Structure	Tax Status			
	No special status	Charitable	Community amateur sports club	Community interest company
Unincorporated association	Yes	Yes	Yes	N/A
Company limited by guarantee	Yes	Yes	Yes	Yes
Company limited by shares	Yes	No*	No*	Yes
Charitable incorporated organisation (CIO)	N/A	Yes	N/A	N/A
Community benefit society	Yes	Yes	Yes	N/A

*It is theoretically possible, albeit unusual and complicated, for a company limited by shares to adopt charitable or CASC status. A company limited by guarantee is more common and appropriate for a club electing to adopt charity or CASC status.

3 Unincorporated Associations



Introduction

- 3.1** The most common type of legal form for an athletics club is an unincorporated association. This is typically because it is the simplest, cheapest and most informal way of running a club. Essentially, it is a club run by the members predominantly for the benefit of the members and with little or no outside control other than those requirements imposed by the club's national governing body.
- 3.2** The members of an unincorporated association are, in essence, contractually bound together by the constitution or rules of the club. The club itself is not a legal person, which means that it cannot enter into legal relationships in its own right. For example, the club itself cannot
- 3.2.1** hold property (either land or other assets); or
 - 3.2.2** employ staff; or
 - 3.2.3** enter into contracts.
- 3.3** Instead where the club wishes to enter into a contract, this must be done by one or more authorised individuals for and on behalf of the club. Normally a club will have a management committee to oversee the club's operations. In practice it will therefore usually be one or more members of the club's management committee which enter into contracts on behalf of the club. Likewise the club's constitution or rules may sometimes stipulate that land or investments are held in the name of one or more 'custodians' or 'holding trustees' on behalf of the club.

Pros

- 3.4 Flexibility and control** – An unincorporated association, as a members' club, is largely free to determine and amend its own rules subject to any requirement imposed by its national governing body.
- 3.5 Privacy** – An unincorporated association is generally not subject to public scrutiny (unless it has charitable or CASC status) unless its national governing body so requires.
- 3.6 Participation in the profits and assets** – The assets are held for the purposes of the club but, if the constitution so allows (subject to the requirements of CASC, charitable or CIC status, if relevant), profits can be distributed to members and residual assets can also be distributed upon dissolution.

Cons

- 3.7 Personal liability** – As individuals have to enter into contracts in their own names, they could be held personally liable on an unlimited basis if, for example, the club breaches the terms of a contract. Similarly, as the club has no legal personality, if the club is negligent and causes personal injury, the claim will usually be made against one or more members of the management committee. In either case, if the club has taken an insufficient level of insurance cover or has somehow voided its policy and then has insufficient funds to meet the claim, the individuals will be personally responsible for making up any shortfall.
- 3.8 Joint and several liability** – Members of the management committee are usually 'jointly and severally' liable for the club's liabilities. This means that one member could be liable for all of the club's debts if other members of the management committee cannot pay. Clubs affiliated to England Athletics will benefit from public liability insurance and coaches and officials will also gain insurance as part of being licensed. But it is important that, where relevant, clubs obtain adequate insurance to cover the club's significant assets and relationships e.g. buildings and contents insurance in respect of any club premises, motor insurance in respect of any club minibus and employers' liability insurance to cover club employees (employed through the clubs management committee members).

- 3.9 Procedures on succession** – When individuals cease to be involved with the club, it is important that any contracts to which they are party or interests in land held by them are transferred to the succeeding individuals at the club. Otherwise there is a risk that the outgoing individuals may remain personally liable for matters over which they no longer have any control.



When not to incorporate

- 3.10** There may be some circumstances where incorporation is undesirable. For instance:

- 3.10.1** clubs will need to ensure they are not subject to any restrictions on transferring their assets to a corporate successor;
- 3.10.2** check that the terms of any lease, bank facility, grant funding or contract do not restrict the ability to transfer assets to a third party; and (where there is such a restriction) liaise with the landlord, bank, funder or contracting party (as the case may be) to obtain consent.

Updating your club's constitution

- 3.11** If your club wishes to remain as an unincorporated association, the management committee should nonetheless consider updating its rules or constitution. As a minimum, the club's constitution should cover the following matters:

- 3.11.1** name of the club;
- 3.11.2** purposes of the club (sometimes known as the objects);
- 3.11.3** powers of the club;
- 3.11.4** restrictions (if any) on the payment of funds to members of the club or management committee members;
- 3.11.5** admission and removal of members;
- 3.11.6** categories of membership;
- 3.11.7** officers of the club;
- 3.11.8** election of the officers and other members of the management committee;
- 3.11.9** proceedings of the management committee;
- 3.11.10** delegation of powers to sub-committees;
- 3.11.11** ownership of property, investments and other assets;
- 3.11.12** operation of the club's bank account;
- 3.11.13** how the constitution may be amended; and
- 3.11.14** how to dissolve the club and what happens to residual assets.

- 3.12** England Athletics provides a model constitution for unincorporated associations, which is available at:
www.englandathletics.org/page.aspx?sitesectionid=933§ionTitle=Clubmark+Templates.
The use of the England Athletics model constitution is recommended but not obligatory.

4 Companies limited by guarantee

Introduction



- 4.1** Companies can be formed as (i) companies limited by guarantee and (ii) companies limited by shares. Which company you choose for your club will depend on the underlying purpose for which it is formed (i.e. for financial gain or community participation). If the primary motive is to promote community participation in athletics, a company limited by guarantee is the more common legal form. Alternatively, if it is important that the club is able to distribute profits and assets to members, a company limited by shares would be more typical (see section 5.2). This section examines companies limited by guarantee.
- 4.2** Companies limited by guarantee are governed principally by the Companies Act 2006. The directors of a company limited by guarantee have legal responsibility for the management and day-to-day operation of the company. The company's members act as a constitutional control on the directors and are given certain rights and responsibilities under the Companies Act 2006 or the company's articles of association.
- 4.3** The articles of association are the company's governing document. This document, together with the Companies Act 2006, sets out the respective rights and powers of the directors and the members. For example, usually the members will elect some or all of the directors for a specified term of office and the directors will then usually be eligible for re-election in accordance with the articles. In this way, the articles of association perform the same essential function as an unincorporated association's rules or constitution.
- 4.4** Unlike an unincorporated association, a company limited by guarantee has its own separate legal identity (sometimes known as 'legal personality'). This means that the company is recognised in law as being separate and distinct from its members. In turn, this means that the company can enter into contracts, employ staff and hold land and assets in its own name; it does not need individuals to enter into these legal relationships on its behalf.
- 4.5** The members of a company benefit from limited liability. Each member of the company guarantees to pay a nominal amount (e.g. £1 or £10) if the club becomes insolvent, but this is the extent of his or her personal liability for the debts or liabilities of the company.
- 4.6** A company limited by guarantee has no shares and, ordinarily, most companies limited by guarantee will include an express restriction in their articles of association to demonstrate their "not-for-profit" credentials. As such, a company limited by guarantee is not really suitable for clubs seeking to pay profits to their members. Similarly, a company limited by guarantee can (subject to any restriction in its articles) distribute residual assets to its members on winding up. However, the articles will often include a restriction requiring any residual assets to be applied for charitable or community sports purposes.
- 4.7** Companies limited by guarantee are very flexible when compared with companies limited by shares and are widely used in the not-for-profit sector.
- 4.8** Further information can be found at www.gov.uk/government/organisations/companies-house.

Pros

- 4.9 Separate legal identity** – The company is able to act and enter into legal relationship in its own right rather than having to rely on members of the management committee or other individuals. Subject to particular statutory exceptions (e.g. corporate manslaughter, wrongful trading), this removes the risk that directors can be held legally responsible for the debts and liabilities of the company itself.
- 4.10 Limited liability** – The members of the company have limited liability for the debts and liabilities of the company. If it becomes insolvent, the members' personal liability will be limited to the nominal amount stated in the company's articles (e.g. £1 or £10).



- 4.11 Transparency** – The company will be required to file annual accounts, an annual return and directors' details with Companies House. Certain information will be publicly available (although a director's date of birth and residential addresses need not be disclosed publicly). This gives the company transparency to third parties.
- 4.12 Credibility** – Linked to transparency, running the club as a company usually creates the impression (whether or not justified!) that the club is managed with a greater degree of procedural formality, financial propriety and regulatory compliance. This may also result in better access to grant funding and loan finance, in particular, because companies can grant fixed and floating charges as security over their current and future assets.

Cons

- 4.13 Increased regulation** – A company has to file annual accounts, an annual return and directors' details at Companies House. Non-compliance can result in a penalty, being removed from the Register of Companies and, in serious cases, prosecution. Companies also have to file a form every time a director is appointed, is removed or his/her personal details change. In addition, companies must maintain various statutory registers, including a register of members, a register of directors, a register of secretaries (if any) and a register of charges over the Company's assets as well as records of board minutes and resolutions passed by the company.
- 4.14 Lack of privacy** – As mentioned above, a company limited by guarantee must provide various documents and information to Companies House for public access. In addition, the Companies Act 2006 requires companies to make various statutory registers available for public inspection and copying at their registered office or other specific location.
- 4.15 Directors' duties** – The directors of a company have duties and responsibilities in company law such as the duty to promote the success of the company, to promote the achievement of the company's purposes, and to comply with the company's articles of association.
- 4.16 Asset lock** – Although it is possible for the members of a generic company limited by guarantee to receive dividends, this is not common as it would undermine any claim to be a not-for-profit company. Instead it is common for the company's articles of association to prohibit the distribution of profits to the members. Likewise, the articles will usually state that any residual assets on dissolution must not be distributed among the members but must instead be used to further the company's purposes or transferred to another organisation with similar purposes. These kinds of restriction may deter investment into the club by potential investors.
- 4.17 Restriction on transfer of membership** – A member of a company limited by guarantee cannot usually transfer his or her membership to a third party in the same way that a shareholder can transfer his or her share. Instead, a member may resign as a member by giving the company prior written notice or the directors can resolve to terminate a member's membership. The provisions governing resignation and termination of membership are typically stated in the company's articles of association.
- 4.18 Funding** – Although many public bodies and charitable foundations will be familiar with companies limited by guarantee, some may be less comfortable with funding a generic or commercial company limited by guarantee than they would a company limited by guarantee with a special not-for-profit status (e.g. charitable, CASC or CIC). This may be less of an issue if the company's articles of association contain express restrictions in respect of the distributions of profits to members, the remuneration of directors and the transfer of residual assets on dissolution. In addition, without any share capital there is no mechanism for people to invest by way of equity in the same way that an investor can acquire shares in a company limited by shares or a community benefit society.

5 Other Incorporated Club Structures

- 5.1 In practice the most common legal structure for an unincorporated athletics club is the unincorporated association (see section 3) and for an incorporated athletics club it is the company limited by guarantee. Nonetheless there are options. Which you choose will depend on how the club is to be run and what you are trying to achieve.
- 5.2 We understand that not all these structures are likely to be relevant to England Athletics member clubs (e.g. athletics clubs, unlike, say, golf clubs, rarely generate 'profits' or attract 'investors' in the true meaning of the word, excluding philanthropists of course).
- 5.3 Nonetheless, there are other options and for completeness we have appended the alternative structures for reference at Appendix 3. Which you choose will depend on how the club is to be run and what you are trying to achieve.



6 'Not for Profit' Status

6.1 Whatever legal form they may take, athletics clubs can operate with no special tax status; or, if established on an amateur and 'not-for-profit' basis, they generally have the option of registering as a:



6.1.1 **community interest company (CIC)** with the CIC Regulator (see section 7 below);

6.1.2 **community amateur sports club (CASC)** with HM Revenue & Customs (see section 8 below); or

6.1.3 **charity** with the Charity Commission (see section 9 below).

The table at section 2.5 above demonstrates what not-for-profit status can attach to what legal forms.

6.2 Adopting a "not for profit" or special tax status can potentially bring with it significant tax benefits, which are considered in general terms below.

6.3 If the club cannot and does not distribute any profit it makes, and any profit is used only to carry on or improve sporting services provided by the club, it is also likely to be what is known as an 'eligible body' for VAT purposes. Similarly, this can bring some advantages but strict conditions apply. In each case, you should take tax advice to make sure you understand the implications before changing your club's tax status.

7 Community Interest Companies (CICs)



- 7.1** A CIC is a limited liability company designed for social or community enterprises which want to use their profits and assets for the public good and not purely for private benefit. A CIC has the specific aim of providing a benefit to a community and must use its income, assets and profits for the community it is formed to serve. The primary purpose of a CIC is to benefit the community and not its members, directors or employees. For this reason CICs have an asset lock restricting (but not entirely prohibiting) the capacity to transfer assets for less than market value or to pay dividends. Although CICs share many of the characteristics of a charity (e.g. asset lock, community purpose etc.), a CIC is not a charity.
- 7.2** A CIC must satisfy the community interest test at formation and continue to do so for as long as it remains a CIC. A CIC will satisfy the community benefit test if it can show that a reasonable person might consider that its activities are being carried on for the benefit of the community. A CIC will not satisfy the test if its activities only benefit members of a particular body or its activities are political. Not all of the activities carried on by a CIC need to have a direct benefit to the community to which it serves, but everything a CIC does should somehow contribute to benefiting the community it is set up to serve. For example, a sports club for employees of a business will only satisfy the community benefit test if it provides a wider community benefit by making its facilities available to the local community as well.
- 7.3** As a limited company, a CIC has a separate legal identity and its members are protected from the liabilities of the CIC. Only limited companies can apply for CIC registration (i.e. it is not available to unincorporated associations or societies).
- 7.4** A CIC can be any of:
- 7.4.1** a private company limited by shares; or
 - 7.4.2** a private company limited by guarantee; or
 - 7.4.3** a public limited company (although in practice only companies limited by shares or guarantee are appropriate for grassroots clubs).
- 7.5** A CIC is suitable for a club which wishes to operate as a **social enterprise**. It can either be formed as a company limited by guarantee or as a company limited by shares.
- 7.6** **Unlike CASCs and charities, CICs have no special tax advantages** (except that investors in a CIC may receive social investment tax relief). In this way CICs create a similar level of complexity and administrative burden as a charity without any of the tax advantages of charitable status.
- 7.7** Further information can be found at www.cicregulator.gov.uk

Pros

- 7.8 Legal personality and limited liability** – As a limited company, a CIC will have the standard advantages of being incorporated. See sections 4.9 to 4.12 above.
- 7.9 Community benefit and asset lock** – Legislation specifies that the CIC cannot transfer its assets (including any profits or other surpluses generated by its activities) for less than market value unless transferring them to another CIC or charity or, if the transfer is for the benefit of the community it was set up to serve. This “asset lock” is set out in the articles of association of the CIC. CICs must consider the asset-lock when entering into commercial relationships and when deciding remuneration for its employees and directors. The asset lock protects the assets of the CIC and ensures that the assets and profits of the CIC will be devoted to the benefit of the community and not for rewarding members and directors.
- 7.10 Payment of directors** – A CIC has a board of directors who are subject to the statutory and common law duties of company directors in the normal way. Directors of a CIC can receive payment in return for their directorship or any services they provide if it is considered



reasonable and the CIC's articles allow this. Payments to directors are overseen by the CIC Regulator who will raise enquiries if any payments to directors appear unreasonable. However, the CIC Regulator has stated previously the importance of CIC's being able to attract and reward the best possible people and therefore will only become involved in issues relating to payments to directors in exceptional circumstances.

- 7.11 Funding** – The CIC concept is designed to appeal to funding bodies and facilitate the financing of CICs by way of loans and (in the case of companies limited by shares) share capital. Certain grant funders may consider CIC registration to be beneficial in considering applications for project funding.
- 7.12 Transparency** – As well as the other standard company documents, a CIC has to deliver to the Registrar of Companies an annual community interest company report. This report records the CIC's activities for that year including any details on assets transferred for less than market value, dividends paid and the remuneration of directors.
- 7.13 Simple to set up** – It is relatively easy to register a new CIC. CICs are formed under the Companies Act 2006 like any other limited company with a memorandum and articles of association and, in addition, a form CIC36. The CIC Regulator has produced various forms of model memoranda and articles of association for CICs, which are available on its website. See www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies for more information.
- 7.14 Timing** – The CIC Regulator aims to process registration applications typically within 5 working days of receipt. In practice, a CIC is usually registered within two weeks of submitting the relevant documentation to Companies House.
- 7.15 Flexibility** – A CIC can take the form of a number of different company structures so long as all its activities contribute to providing benefit to the community. If the CIC is a not-for-profit organisation, it can be formed using a company limited by guarantee. If, however, it wishes to make profits and distribute some of those profits to its members, it may be formed using a company limited by shares. As CICs cannot be charities, their objects do not have to be exclusively charitable and it is not subject to regulation by the Charity Commission. In principle a CIC may also declare dividends on its shares to investors who are not asset-locked bodies (subject to its articles of association).
- 7.16 Regulated activities** – CICs are not charities. The community benefit test is broader and easier to satisfy than furthering charitable purposes for the public benefit, which is the equivalent requirement for charities. CICs therefore have greater operational flexibility.
- 7.17 Social investment tax relief** – Investors in a CIC will (subject to compliance with the relevant rules) benefit from social investment tax relief.

Cons

- 7.18 Tax** – CICs do not generally benefit from any of the tax advantages available to charities or CASCs. This means that a CIC will generally be liable to corporation tax on its profits and to pay business rates.
- 7.19 Lack of privacy** – This is the negative side of the advantages of transparency set out at section 7.12 above.
- 7.20 Funding** – Although many public bodies and charitable foundations are content to provide grant funding to a CIC, some will only provide grant funding to a charity or CASC.
- 7.21 Supervision and regulation** – CICs are regulated by the CIC Regulator who ensures that the CIC satisfies the community interest test and pursues its community interest objects. The CIC Regulator has powers of intervention which include removing or appointing directors, transferring the CIC's property or shares and taking action in the name of the CIC.

- 7.22 Compliance with company law** – as CICs are limited companies, they will have to comply to company law and regulations just like any other company, as well as the specific legislation relating to CICs.
- 7.23 Public perception** – CICs are still relatively new and members of the public are generally still not as familiar with CICs than with charities. Although many public bodies and charitable foundations are content to provide grant funding to a CIC, some will only provide grant funding to a charity or CASC.
- 7.24 Complexity** – For clubs simply wishing to operate on a simple ‘not for profit’ basis, a company limited by guarantee with no special tax status may be the more straightforward, more flexible and cheaper to administer.





8 Community Amateur Sports Club (CASC) status

- 8.1** Until the Charities Act 2006 (now replaced by Charities Act 2011) came into force, the law did not regard the promotion of amateur sport in itself as being wholly charitable. For this reason legislation was passed in 2002 establishing CASC status and conferring some (but not all) of the tax advantages available to charities.
- 8.2** Further information can be found at www.cascinfo.gov.uk including how to register as a CASC.

Can my club register as a CASC?

- 8.3** Unincorporated associations, companies limited by guarantee and community benefit societies can in principle register as a CASC.
- 8.4** To register as a CASC, a club must have a formal written governing document and satisfy the following conditions:
- 8.4.1** The main purpose of the Club is the provision of facilities for, and the promotion of participation (whether by competing, coaching or refereeing) in, one or more sports (rather than say being a club consisting mainly of “social members”).
- 8.4.2** The sport(s) in question must be an “eligible sport”. The list of “eligible sports” is maintained by the National Sports Councils and includes athletics and various other sports and recreational activities. The range of eligible sports under the CASC scheme is wider than the Charity Commission permits for charitable sports clubs. www.sportengland.org/our-work/national-governing-bodies/sports-that-we-recognise
- 8.4.3** Membership and facilities are open to the whole community.
- 8.4.4** The club must be organised on an “amateur basis”. This means that:
- 8.4.4.1** the club’s constitution must provide that profits are reinvested in the club and its assets cannot be distributed to members or third parties;
- 8.4.4.2** the club may provide only ordinary benefits to members and guests;
- 8.4.4.3** the club does not exceed the limit on paying participants (see section 8.6.3 below); and
- 8.4.4.4** the club’s constitution must require that any residual assets on a winding up are not distributed to members but must be applied for its community sports purposes or transferred to a sports governing body, a charity or another CASC.
- 8.4.5** The facilities must be provided in an “eligible location”. The UK is an eligible location.
- 8.4.6** The club must be managed by “fit and proper persons” (i.e. persons who have not been involved in tax evasion or fraud). Further guidance on the management condition can be found at www.gov.uk/who-can-run-charity-finances.
- 8.4.7** The club’s income must fall under certain thresholds (see section 8.6.4 below).

Community Amateur Sports Club Regulations 2015

- 8.5** The CASC rules changed with effect from 1 April 2015. Existing CASCs had a **12 month period of grace ending 31 March 2016** to see if they could still comply and to decide whether or not they wished to remain in the CASC scheme. Existing CASCs could opt to leave the CASC scheme during this grace period if they wished and, if so, they would not suffer a capital gains charge if their only reason for leaving was because they did not wish to comply with the changes in the new CASC scheme and they had been fully compliant with the previous rules before 1 April 2015.



8.6 In summary the main changes are:

- 8.6.1 Membership fees** – Membership fees for any member are subject to a limit of **£1,612 per year** (i.e. £31 a week) even if discounted rates are offered to others. If the costs associated with being a member are greater than **£520 per year** (i.e. £10 a week), the CASC must make allowance for people on low incomes to be able to become members and participate fully for £520 or less.
- 8.6.2 Social membership** – At least **50% of members must be participating** members. This means that they must take part in the CASC's sporting activities or competitions or help with the organisation of the CASC. This requirement remains from the previous rules. A participating member must participate at least 12 times in a 12 month period (although seasonal sports can opt for a shorter season exemption).
- 8.6.3 Payment of participants** – Clubs are now able to pay participants subject to a maximum aggregate limit of **£10,000 per year per club across all participants**. Clubs are also to pay reasonable travel and subsistence expenses to participants where they are participating in away games/events and club tours (subject to the relevant qualifying conditions).
- 8.6.4 Trading income** – There is no limit on the amount of income a CASC may generate from trading with its own members. However, there is **a new limit of £100,000** on income a CASC can generate from trading with non-members and from property in any year. Clubs generating higher levels of income will need to consider setting up a trading subsidiary to carry on this trading activity.
- 8.6.5 Corporate Gift Aid** – Gift Aid for corporate donations to CASCs was introduced with effect from April 2014. This means that companies can now make corporate Gift Aid donations to CASCs in the same way as they can to charities. Likewise, CASCs can set up trading subsidiaries which can now pass up their taxable profits to the CASC tax-free.
- 8.6.6 Fundraising income** – Profits from UK trading where the turnover of the trade is less than **£50,000** will be exempt from corporation tax. For these purposes income from members is not treated as assessable trading income.
- 8.6.7 Rental income** – The annual rental income exemption threshold increases **to £30,000**.

Pros

- 8.7 Rate relief** – CASCs may claim a mandatory 80% non-domestic business rate relief on property occupied wholly or mainly in furtherance of their community sports purposes, with a further 20% relief available on a discretionary basis by application to the local authority. If discretionary relief is awarded, this has the effect that the CASC pays no rates whatsoever.
- 8.8 Tax exemptions and reliefs** – CASCs are exempt from various taxes including taxes on the club's fundraising or trading turnover (such as receipts from a bar or sales of branded clothing) up to certain limits. They do not pay tax on interest earned in bank accounts and no inheritance tax is payable on legacies left to a CASC.
- 8.9 Tax effective giving** – CASCs can claim Gift Aid from HMRC on donations made by individual UK taxpayers to the CASC (but **not** on membership fees). This means that the Government will **add 25p to every £1 received** from the UK taxpayer as a donation to a charity or CASC (subject to compliance with the relevant conditions). Valid donor declarations are required and records must be kept for at least 6 years. Higher and additional rate tax relief is also available to higher and additional rate taxpayers. In addition, **donations from UK companies** are also eligible under the corporate Gift Aid Scheme, but the process is slightly different. In the case of companies, the amount of the donation is deductible from its profits **before** tax. This means that the club receives the full amount of the **gross** donation from the company and the club cannot therefore claim any Gift Aid from HMRC on corporate donations.



8.10 Gift Aid Small Donations Scheme – The Gift Aid Small Donations Scheme allows CASCs to claim Gift Aid on **cash donations up to £5,000** without the donors having to make a tax declaration. This means that a CASC can recover up to an additional £1,250 from HMRC on small donations such as bucket collections. From April 2016, the small donation limit will increase to £8,000, which will increase the maximum amount of Gift Aid which can be claimed under the Gift Aid Small Donations Scheme to £2,000 per annum.

8.11 Payment of participants – CASCs can pay participants subject to a maximum aggregate **limit of £10,000 a year per club across all participants** with effect from 1 April 2015 subject to certain conditions (see section 8.6.3 above) plus expenses. CASCs wishing to progress to become semi-professional and ultimately pay participants will need to carefully consider their long-term plans and whether registering as a CASC may inhibit their future development.

Cons

8.12 HMRC regulation – A CASC must register with HMRC to benefit from the tax advantages available to CASCs. Normally this involves changing the club's constitution to ensure it operates "on an amateur basis" (see section 8.4.4 above). The club must then continue to comply with all the CASC rules (see section 8.6 above). This compliance will need to be under continuous review, particularly as the club progresses or grows, and a serious breach of the CASC rules may result in an investigation by HMRC into claimed tax relief and the club facing a tax charge.

8.13 Open to all – A CASC must allow anybody to become a member, unless they would be a disruptive influence or the level of facilities means that the club cannot physically accept any more members. If the club has two or more classes of member, the club must allow anybody to become the class of member which enjoys the main voting rights.

8.14 De-registration restrictions – A CASC is not ordinarily able to voluntarily deregister as a CASC (**unless** it did so under the grace period ending on 31 March 2016 following implementation of the Community Amateur Sports Club Regulations 2015). However, HMRC may deregister a CASC if it determines that the club no longer satisfies the qualifying conditions. If a club is deregistered as a CASC (or ceases to hold its assets for qualifying purposes), it will automatically become subject to a capital gains charge on a deemed disposal and reacquisition of its assets equal to the market value at the time. Depending on the circumstances, this can have a significant detrimental financial effect and, in some cases, may well result in the club's insolvency.

8.15 No VAT reduced or zero rating on purchases – Normal VAT rules apply to supplies made to CASCs, which do not benefit from the VAT reduced or zero ratings on purchases by a charity under Schedules 7A and 8 to the Value Added Tax Act 1994. Specific VAT exemptions may be available (subject to conditions) in relation to certain supplies made by a CASC:

8.15.1 supplies of sporting and physical education services are VAT exempt if the CASC qualifies as an "eligible body";

8.15.2 income from qualifying fundraising events is VAT exempt if the club meets the qualifying conditions.

8.16 Complexity – When the CASC scheme was established in 2002, one of its advantages was its simplicity and 'light touch' regulation by HMRC. The legislation governing CASC status has become increasingly complex, particularly since the Community Amateur Sports Club Regulations 2015 came into effect, and the CASC scheme is arguably now more complex for amateur clubs to navigate than the equivalent rules on charitable status. See section 9 below.

9 Charitable Status



- 9.1** Subject to satisfying the relevant criteria, unincorporated associations, companies limited by guarantee and community benefit societies can be charities or not. A charitable incorporated organisation (CIO), itself a relatively new form of alternative incorporated legal structure, **must** be a charity (see paragraph 3 of Appendix 3 for full details).
- 9.2** The Charities Act 2006 (now replaced by Charities Act 2011) set out a list of descriptions of charitable purposes, including the promotion of amateur sport and the promotion of community participation in healthy recreation by the provision of facilities for sport.
- 9.3** The current guidance for sports clubs who wish to register as a charity is found in the Charity Commission's document *Charitable Status and Sport (RR11)*, which predates the Charities Act 2006 (now replaced by Charities Act 2011). For this reason the guidance only deals with the promotion of community participation in healthy recreation by the provision of facilities for sport, which is relevant to most grassroots athletics clubs. According to this guidance, athletics clubs applying to register as a charity will need to show that they:
- 9.3.1** promote "community participation" (see sections 9.4 to 9.7 below) in "healthy recreation" (see section 9.8 below);
 - 9.3.2** have "open membership";
 - 9.3.3** are "amateur" (see section 9.9 below); and
 - 9.3.4** are "for the public benefit" (see section 9.10 below).
- See www.gov.uk/government/publications/charitable-status-and-sport-rr11
- 9.4** "Community participation" refers to the community in its widest sense and is also linked to the concept of "open membership".
- 9.5** Membership of the club must generally be available to all members of the public who wish to join it and, where there is a waiting list, membership must be on a first come first served basis. A club's governing document may or may not define the geographical area whose residents will be eligible to join. However, where a geographical area is defined, it must not be too narrowly drawn (e.g. by reference to a few streets) otherwise it is likely to be deemed to be too restrictive.
- 9.6** To show community participation, membership fees must be affordable for the majority of the community and there must be no test of skill for admission into the club.
- 9.7** A charitable athletics club can organise competitions and team structures. If facilities are allocated to higher performing members, the club must be able to demonstrate equal treatment of less skilled and less competitive members. The same principle applies to coaching, which must be available for all members whatever their skill level.
- 9.8** Sports that are capable of providing "healthy recreation" are those sports which, if practised with reasonable frequency, will tend to make the participant healthier (i.e. fitter and less susceptible to disease). Fitness may include elements of stamina, strength and suppleness. This will include athletics and various other (mostly physical) recreational activities. Please note, however, that the range of sports and activities recognised by the Charity Commission as capable of providing "healthy recreation" is narrower than the equivalent range of sports and activities for CASCs.
- 9.9** Charitable athletics clubs must be organised on an amateur basis. The Charity Commission's guidance RR11 expressly refers to organisations concerned with professional or elite sport as not being charitable. It also states that, unlike CASCs, charitable clubs cannot pay their participants (although participants can receive expenses and can be paid for providing other services e.g. coaching).



- 9.10** All charities must exist for the benefit of the general public (or a sufficient section of it) rather than just its members (albeit that a charity may have a membership structure). In addition, those in poverty must not be excluded from the opportunity to benefit and the club may need to adapt its fees to comply. The Charity Commission's guidance on public benefit was revised in February 2014. Please see www.gov.uk/guidance/public-benefit-rules-for-charities for more information.
- 9.11** The principal purpose of a charitable athletics club must be to promote community participation in healthy recreation or advance amateur sport rather than provide social facilities. Although the Charity Commission accepts that there are certain circumstances where membership may be restricted legitimately, all members of a charitable sports club must fall within one or more of the following categories:
- 9.11.1** players or participants;
 - 9.11.2** parents of junior players or participants;
 - 9.11.3** supporters who help raise funds for the club and volunteers who help run the club; or
 - 9.11.4** people who wish to remain members of the club but who are unable to play or participate for reasons of age or ill-health.
- 9.12** The provision of facilities exclusively for 'social' members is not charitable. This means that the charity cannot have any non-participating members unless listed in section 9.11 above. If a non-charitable club currently has social members but wants to adopt charitable status, it will likely have to revise its membership structure with professional advice.
- 9.13** The charity will be run by a management committee or a board of directors or trustees, who will be charity trustees for the purposes of the Charities Act 2011. Generally a trustee must not receive any benefit from the charity unless it is authorised by the charity's governing document or the Charity Commission.
- 9.14** A charity's governing document will normally restrict the benefits which trustees and people connected with them can receive from the charity. This will often include provisions allowing:
- 9.14.1** payment for goods or services (but not under a contract of employment) provided that no more than half the trustees benefit in this way;
 - 9.14.2** interest on a loan made to the charity at a reasonable rate;
 - 9.14.3** reasonable rent or hire fee for land or buildings let or hired to the charity;
 - 9.14.4** trustee indemnity insurance; and
 - 9.14.5** reimbursement of expenses.
- 9.15** Once registered with the Charity Commission, a charity will also have to register with HMRC to obtain the relevant tax reliefs and exemptions. This involves meeting the "fit and proper persons" test which requires that the charity be managed by persons who have not been involved in tax evasion or fraud. Further guidance on the management condition can be found at www.gov.uk/who-can-run-charity-finances.

Pros

- 9.16 Public perception** – Charitable status is more widely understood by the public, grant-making bodies and professional advisers. People may be more willing to fundraise for a registered charity.
- 9.17 Tax benefits** – Charities have more tax advantages than CICs and CASCs. These include:
- 9.17.1** full exemption from tax on profits made from their membership fees, bank interest or investment income (to the extent that such funds are applied for the charity's purposes);



- 9.17.2 gifts are free from income tax, inheritance tax (IHT) and capital gains tax (CGT) (to the extent that such funds are applied for the charity's purposes);
- 9.17.3 like CASCs, Gift Aid can apply to donations from both individual UK taxpayers and companies (see section 8.9 above);
- 9.17.4 charities (but not CASCs) can obtain relief from stamp duty land tax on the acquisition of land and buildings; and
- 9.17.5 charities (but not CASCs) can obtain a reduced or zero rating (under Schedules 7A and 8 to the Value Added Tax Act 1994) on the purchase or specific goods or services (e.g. a VAT zero rating on the construction costs of a community centre or, **indoor** playing facilities or improving disability access **subject to certain strict HMRC criteria being met**). Professional advice and HMRC approval should be obtained before proceeding. Specific VAT exemptions may be available (again, subject to conditions) in relation to supplies of sporting and physical education services.
- 9.17.6 **Rate relief** – Like CASCs, charities may claim a mandatory 80% non-domestic business rate relief on charity property occupied by wholly or mainly in furtherance of their charitable purposes, with a further 20% relief available on a discretionary basis by application to the local authority. If discretionary relief is awarded, this has the effect that the charity pays no rates whatsoever.
- 9.18 **Fundraising** – Charities are permitted to run certain types of small 'society' lotteries and other fundraising activities for which non-charities require a licence from the Gambling Commission. The lottery income is entirely exempt from tax.
- 9.19 **Potential accessibility to grant funding** – Certain public bodies or charitable foundations may opt to fund only charities, whereas others may also include CICs and CASCs in their eligibility criteria. Registration as a charity may therefore allow the club to access funding which it would otherwise be ineligible to apply for.
- 9.20 **Commercial opportunities with corporate partners** – Corporate partners may choose to support a charitable club either by:
- 9.20.1 making a corporate Gift Aid donation, which is fully deductible from taxable profits of the donor company and in respect of which, the recipient charity can make only a 'mere acknowledgement of support' to the effect that the charity is "*Kindly supported by [donor company]*" (strict HMRC conditions apply and professional advice should be sought where appropriate); or
- 9.20.2 entering in to a sponsorship arrangement, which in some circumstances may be match-funded by a grant-making body.

Cons

- 9.21 **Registration** – Once a club has become a charity, it cannot simply stop being a charity and its assets must only be used for charitable purposes. On winding up, it would have to transfer its assets to another charity or otherwise expend them for its charitable purposes.
- 9.22 **Membership** – All members of the club must generally be members who participate in its sporting activities (but see also section 9.11 above). It cannot have "social members". Membership must be open to all. Although the club can have 'representative' teams (where there can be an acceptable level of competition to get into, for example, the first team), everybody must have an equal opportunity to use the club's facilities. The level of fees must be low enough so that everyone has the opportunity to join the club.

- 9.23 Payment of participants** – Participants must be amateur and may **not** be paid for participating (unless the Charity Commission exceptionally consents to this). However, they can receive reimbursement of expenses for travel to away matches and payment can be made for providing professional services to the charity (e.g. coaching or grounds maintenance).
- 9.24 Commercial trading** – Where a club has a bar or other social facilities, a charitable club should set up a trading subsidiary through which to operate. This ensures that the charity's charitable activities do not subsidise this non-charitable activity. Taxable profits from the bar can be paid by the subsidiary to the charity tax-free under corporate Gift Aid.
- 9.25 Compliance** – A charity must register with the Charity Commission if its annual income is **over £5,000** (or, in the case of a charitable incorporated organisation, it must register with the Charity Commission in order to come into existence). A registered charity must submit annual accounts and an annual return to the Commission each year subject to the relevant income and asset thresholds. The charity's trustees must also comply with charity law. The Charity Commission has published a significant amount of guidance on its website to help charities to comply with these requirements – www.gov.uk/government/organisations/charity-commission



10 Summary

What is the most appropriate legal structure for my club?

- 10.1** The best legal structure for your club is ultimately for your club to determine based on its own circumstances and plans. Clubs should consult with their professional advisors in this regard and seek independent legal advice.
- 10.2** Small athletic clubs, particularly if for example they deliver participation in running only and have limited assets (other than say a central bank account to collect members' subscriptions), may not wish to incur the expense of changing their legal form by reconstituting as a body corporate. The club's management committee should consider, from an informed position, the need to address any perceived risk(s) to the club and/or its members arising from the club's activities. Incorporation would, amongst other things, limit the members' personal liability and help to ensure (in most cases unless the directors have acted wrongfully, fraudulently or negligently) that any claims are made against the club itself rather than individuals representing it. Even while remaining an unincorporated association, clubs should consider registering as a charity or CASC if they own land and/or may receive donations from members so that they can benefit from the tax advantages available to charities and CASCs.
- 10.3** Clubs (even relatively small ones) may wish to pay the one-off cost of reconstituting from an unincorporated association to a company limited by guarantee or CIO because of the benefits of separate legal personality and limited liability.

Should my club adopt a special not-for-profit tax status?

- 10.4** Again, the best tax status for your club is a matter for your club to determine. We recommend that clubs take specialist tax and VAT advice before taking any steps to adopt (or cease having) a not for profit status such as charity or CASC.
- 10.5** Clubs may wish to consider registering as a CASC or charity if they:
- 10.5.1** own or occupy land (in order to obtain 80% mandatory relief from business rates); or
 - 10.5.2** receive voluntary donations from individual members, supporters or corporate donors (so that the club and any donor may benefit).
- 10.6** Please note, however, that club membership fees are not eligible for Gift Aid because HMRC deems these to be payments in exchange for goods and services (i.e. access to club facilities and coaching). Likewise, a commercial sponsorship payment (i.e. where payment is made in return for the club advertising the sponsor) is not a donation for the purpose of corporate Gift Aid because HMRC regards the commercial exposure to be a material benefit. HMRC therefore considers the payment to the club not as a gift but as a payment in exchange for advertising services, which is a taxable commercial activity liable to VAT.





11 Incorporation: A Step by Step Guide

11.1 If your club decides that it would like to remain an unincorporated association but adopt charitable or CASC status, the process is relatively simple. It should review its constitution and, where necessary, secure the necessary amendments to ensure it reflects the mandatory requirements of charitable or CASC status (as the case may be). Such amendments should be made, usually by the members of the club, in accordance with the procedure for amendment set out in the club's rules. The club should then apply to the Charity Commission or HMRC (as the case may be) for registration as a charity or a CASC.

11.2 If your club decides that it would like to reconstitute from an unincorporated association to a company or charitable incorporated organisation, the process is more complex. This section of the Guide sets out the procedure for doing so. In all cases, this procedure will be dependent on:

11.2.1 the current legal form and special not-for-profit tax status of the club; and

11.2.2 the new legal form and special not-for-profit tax status which the club has chosen.

This is something that you should discuss with your club's professional advisers.

11.3 This section of the Guide provides a generic overview of the steps that will need to be taken to set up a company (although an analogous procedure would also apply for a transfer to a new community benefit society or charitable incorporated organisation, once established). As the most common incorporated legal structure which is adopted by grassroots clubs is a company limited by guarantee, an overview of the process is set out below and summarised in Appendix 1.

Liaison with England Athletics

11.4 A club's right to participate in athletics events is through its holding of the relevant membership with and affiliation to England Athletics and competition organisers. It is therefore important that the club liaises with England Athletics and competition organisers, at an early stage to ensure that its membership of and affiliation to England Athletics and competition organisers is properly transferred to the new company and that any regulatory requirements are met. For example, the articles of association of an affiliated club will need to include EA-specific provisions which restate Sport England's "club equity" statement, which is intended to ensure that fairness is incorporated across all aspects of club development.

Constitutional power

11.5 Any decision to reconstitute the club and transfer its property to a new company (and then wind up the old unincorporated association) is likely to be beyond the implied authority of the management committee unless the constitution provides otherwise. This will differ from club to club and will need to be determined on a case by case basis. Nevertheless, it will likely be necessary for the members to pass a resolution at an annual general meeting or an extraordinary general meeting approving the proposal to:

11.5.1 reconstitute as a company;

11.5.2 transfer the club's assets to the company; and

11.5.3 subsequently wind up the unincorporated association.

Steering group

11.6 The club may wish to form a small steering group or project committee tasked by the management committee with managing the process of reconstituting the club.



Formation of a new company

- 11.7** The club – either its management committee or steering group – will need to set up the new company. Section 11 assumes that the club will form a new company limited by guarantee. However, section 5 above briefly deals with setting up alternative legal structures.
- 11.8** Support and guidance is available free of charge by calling the England Athletics helpline **0191 211 7797** or by sending an email to englandathletics@muckle-llp.com. England Athletics' legal partner, Muckle LLP, will then be able to advise on options and prepare relevant documentation at fixed costs, depending on what is suitable for the size and nature of the club. Alternatively, the club may choose to undertake the incorporation itself or use its own solicitors or a company formation agent in establishing the company.
- 11.8.1** Limited company – To set up a new company, the founding member(s) will need to complete and submit the following to Companies House:
- 11.8.1.1** form IN01;
 - 11.8.1.2** memorandum of association;
 - 11.8.1.3** articles of association; and
 - 11.8.1.4** registration fee payable to Companies House.
- 11.8.2** For an accredited club it is important that the company's articles of association contain specific provisions restating Sport England's "club equity" statement (see Appendix 2). It will then be necessary to submit the signed form IN01 together with a signed memorandum of association, the articles of association and the registration fee.
- 11.8.3** The articles of association are considered further under section 4.3 above. Full details on how to complete the form IN01 is beyond the scope of this Guide. Nonetheless, the form requires the completion of information about the proposed company name, the type of company, the registered office, the first directors and the secretary (if any), the statement of capital (if the company is to be a company limited by shares) or alternatively a statement of guarantee, then finally a statement of compliance.
- 11.8.4** The company will not come into existence until the Registrar of Companies issues a certificate of incorporation. Registration usually takes about a week as standard (£40 fee payable) unless the premium "same day" (£100 fee payable) service is used.
- 11.8.5** If it is intended that the company will have charitable status, the company can apply to be registered with the Charity Commission using its online application form once it has been registered at Companies House.

Alternative structures

- 11.9** By way of comparison, the following steps would need to be taken in relation to the alternative structures (see Appendix 3 for details).
- 11.10** Community interest company – To set up a new CIC, the club will need to do as above as well as completing a form CIC36 setting out how its activities are for the benefit of the community or a section of the community. The CIC's articles of association will also need to comply with the relevant requirements. The Registrar of Companies will not register the company until the CIC Regulator has considered the CIC-specific aspects of the application. For this reason it is not possible to register a CIC using the premium "same day" service.
- 11.11** Community benefit society – To set up a new community benefit society, the club must submit a detailed application form supported by two printed and signed copies of the society's proposed rules. It will also be necessary to complete a table indicating the rule numbers in the society's rules which deal with the prescribed matters set out in the table. Although a company can be registered on a "same day" basis or within a matter of days, it takes much longer to register a society with the FCA (usually between three to four weeks). The cost of

registering a Society which the FCA charges range from £40 to £950 depending on whether model rules are adopted by the society and the number of modifications made to the model rules.

- 11.12** Charitable incorporated organisation – To set up a new charitable incorporated organisation (**CIO**), as opposed to a company, it is only necessary to prepare a constitution and then submit an online application to register the CIO with the Charity Commission together with signed trustee declaration forms. The Charity Commission has provided model constitutions. The CIO will come into existence only once it is registered by the Charity Commission. No fee is payable.
- 11.13** Whatever the legal form, for an accredited club it is important that the governing document contains specific provisions restating Sport England’s “club equity” statement (see Appendix 2).
- 11.14** Where the new legal entity adopts charitable or CASC status, the timeframe will be somewhat longer as there are certain registrations or approvals that need to be obtained before proceeding.

New governing document

- 11.15** The new company will need to adopt an appropriate governing document, the memorandum and articles of association, for an athletics club and possibly also supplemental rules or byelaws governing its administration and operation (e.g. admission, classification, rights and privileges of members etc).
- 11.16** The memorandum is a short document setting out the first members of the company.
- 11.17** The articles of association are more detailed and regulate the share capital (if any) of the company, the board and the powers of the shareholders/members. The articles are essentially the club’s new ‘rule book’ and ultimate governing document, although supplementary rules or bye laws may be adopted in addition to the articles to address more practical issues in greater detail (e.g. admission to membership, rights and privileges of membership, access to club facilities, disciplinary matters, etc).
- 11.18** Different approaches can be taken towards the choice of articles of association, although all accredited clubs must contain Sport England’s “club equity” statement (see Appendix 2).
- 11.19** Template articles of association may be obtained for a fixed cost by calling the England Athletics helpline on **0191 211 7797** or by emailing englandathletics@muckle-llp.com. These can be adopted with minor amendment as required to suit particular circumstances. These would likely then need to be supplemented by separate rules or bye-laws setting out in detail the decision-making process (see 11.20 below). Alternatively, the articles of association can be tailored specifically for your club to ease the transition from an unincorporated association to a company, but this would be reflected in the associated legal fees.

Rules and bye-laws

- 11.20** A company’s articles of association set out the high level rules governing the internal administration of the club. It may be appropriate, however, to adopt supplementary rules or bye-laws to set out more detail on various other internal matters for example:

11.20.1 the number of and qualifications required for directors;

11.20.2 operation of the bank account(s);

11.20.3 terms of reference for committees and sub-committees;

11.20.4 powers and terms of reference of the board;

11.20.5 arrangements for members’ meetings;

11.20.6 voting and proxy procedures;

11.20.7 membership categories and subscriptions;

11.20.8 financial reporting processes





11.21 The unincorporated club may already have a constitution or rules dealing with these matters. If so (and assuming that these remain adequate), these can simply be adopted by the new company.

Policies

11.22 As with rules and bye-laws the company may wish to adopt (amended where appropriate, if necessary) the same policies as used by the unincorporated club.

11.23 England Athletics has a range of template welfare policies available at www.englandathletics.org/athletics-clubs/i-help-to-run-a-club/welfare-everyones-responsibility/welfare

11.24 Assets

11.25 Reconstitution will require the unincorporated club to transfer its business and ownership of its assets to the new company. This may include:

11.25.1 employees;

11.25.2 equipment;

11.25.3 premises;

11.25.4 contracts, e.g. supplier contracts, buildings and contents insurance, etc;

11.25.5 investments;

11.25.6 bank overdraft facilities, loans, mortgages;

11.25.7 book debts;

11.25.8 intellectual property in the club, (e.g. its name and logo);

11.25.9 registration or affiliation with England Athletics.

11.26 As a practical step, it is useful for clubs to review and compile a list of their assets and liabilities. This will help the club's lawyers and accountants to identify if the transfer might give rise to any legal, financial or tax issues. **It is essential that clubs obtain legal and tax advice before attempting to transfer their assets and liabilities.**

11.27 From a legal perspective the transfer itself is usually a relatively straightforward process if the club owns little more than cash, equipment and its name and logo. However, if the club also needs to transfer (i) contracts, grants or loan arrangements, (ii) employees, and/or (iii) land to the new company, the transfer is likely to be legally more complex. For example:

11.27.1 Contracts, grants or loans will often include a restriction on assignment which requires the consent of (as the case may be) the other contracting party, the grantor or the lender.

11.27.2 If the club (though its management committee members) employs staff, it will be necessary to comply with the Transfer of Undertaking (Protection of Employees) Regulations 2006 (**TUPE Regulations**) and pensions legislation. Non-compliance with the TUPE Regulations can be costly if an employee makes a claim against the club and/or the new company. Legal advice is required if the club employs staff.

11.27.3 If the club owns any leasehold land, it may be necessary to obtain the landlord's consent to the transfer. It may also be necessary to register the transfer of land at HM Land Registry.

11.28 It may also be necessary to 'novate' some of the Club's existing contracts with suppliers to the new company. This means that the new company will, in essence step in to those existing contracts with the same suppliers on the same terms. The legal effect is that the club's existing contracts are extinguished and replaced by a new one between the suppliers and the new company. This is often required or considered desirable if the club's management committee wish (i) to be discharged from future liabilities under the existing contracts and (ii) to ensure that the new company agrees to take on past and future liabilities

- 11.29** For accounting convenience transfers normally take effect at the end of the year, quarter or month. In the run-up to the transfer date, the company will also need to
- 11.29.1** open up a new bank account;
 - 11.29.2** register with the Information Commissioner;
 - 11.29.3** amend/purchase insurance policies; and
 - 11.29.4** notify suppliers, utility providers etc that part of the club's business is transferring.



Confirming the 'not-for-profit' tax status

- 11.30** If the new company wishes to register as a charity, the usual order is to register with the Charity Commission first and then register with HMRC for charity tax status. However, if the new company is unable to register with the Charity Commission because its gross annual income is less than £5,000, it can register directly with HMRC for charity tax status. Ideally this should be done before the asset transfer agreement is signed in case an error in the company's articles of association means that it is not, as intended, established for wholly charitable purposes for the public benefit as required by the Charities Act 2011.
- 11.31** Alternatively, if the new company wishes to register as a CASC, it will register directly with HMRC. Again, ideally this should be done before the transfer in case it does not, as intended, satisfy the eligibility criteria for CASC status.
- 11.32** Please also note that the transfer of land and any shares held by the Club may potentially give rise to a tax liability, particularly if the new company is not a charity or a CASC. We would strongly advise the club to take independent tax and VAT advice **before taking any transfer its assets.**

Asset transfer agreement

- 11.33** The asset transfer agreement will deal with the issues referred to in paragraphs 11.25 to 11.32 above. It will also cover such issues as:
- 11.33.1** when and what publicity announcements can be made;
 - 11.33.2** the retention of records;
 - 11.33.3** whether there are any conditions to be satisfied before the transaction can be completed;
 - 11.33.4** whether there are any restrictions on the future use of any assets; and
 - 11.33.5** whether any consents need to be obtained.
- 11.34** A key condition is that England Athletics has consented to the transfer of the club's membership or affiliation to the new company.
- 11.35** Because of the issue relating to conflicts of interest, it would be useful if the club's management committee and the new company's board of directors were not identical. This would allow the non-conflicted members of the management committee and non-conflicted directors to act and decide solely in the best interests of their respective organisation.
- 11.36** Once the asset transfer agreement is finalised, it will need to be executed by the management committee (on behalf of the club) and the new company. The signed agreement should be retained for the company's records.

Dissolution of the unincorporated club

- 11.37** Once the transfer has completed and the company legally owns all the assets, the unincorporated club will likely wish to dissolve.
- 11.38** However, if for any reason the unincorporated club continues to receive payments (e.g. legacies from wills), or continues to hold assets or contracts which it cannot lawfully assign to the new company without third party consent, the unincorporated club should continue to exist while these transitional issues are resolved.
- 11.39** This is particularly important because, once the unincorporated club is formally dissolved, it will cease to exist. This may have the effect of terminating any contracts between the unincorporated club and third parties which the club was not lawfully able to assign to the company. Similarly, once the unincorporated club ceases to exist, the bank would likely pass any funds held in, or paid into, the unincorporated club's bank account directly to HM Treasury as ownerless (known as 'bona vacantia').
- 11.40** For these reasons, unincorporated clubs often continue to exist, effectively as a 'shell' with only a handful of members (mostly likely the management committee), for a short period (typically a few months or more) following the transfer to deal with any transitional issues (albeit that the club membership and operations should be run by and through the new company from the transfer date). After a suitable period of time the unincorporated club could then meet to resolve to formally dissolve itself.



Appendix 1

Steps to incorporation (Company Limited by Guarantee)



Step 1: Is incorporation right for your club?	<p>The club should review its existing legal structure and decide whether incorporation is appropriate in the circumstances, taking independent legal and tax advice before proceeding. The England Athletics Legal Helpline is available free of charge on 0191 211 7797 or by sending an email to englandathletics@muckle-llp.com</p>
Step 2: Obtain prior England Athletics clearance	<p>Liaise with England Athletics in relation to the proposed incorporation.</p>
Step 3: Does the Committee have the constitutional power to incorporate?	<p>Consider the existing club's governing document to confirm whether the management committee has the express right to incorporate the club or whether it is necessary for the members to pass a resolution authorising this. If the latter, convene a meeting of the club's members to pass a resolution. Check the notice, quorum and any special majority required by the governing document.</p>
Step 4: Notify England Athletics	<p>Confirm decision to proceed and notify England Athletics.</p>
Step 5: Incorporate new legal entity	<ul style="list-style-type: none"> • Form IN01 • Memorandum of association • Articles of association • Registration fee
Step 6: Rules and bye laws	<p>Adopt bye-laws for new company</p>
Step 7: Due diligence	<p>Prepare a list of assets and liabilities to transfer. Take independent tax and legal advice on any issues arising from the proposed transfer.</p>
Step 8: Liaise with third parties	<p>Obtain whatever third party consents are required.</p>
Step 9: Taxation clearance	<p>Register with HMRC for corporation tax purposes following change of legal entity. Consider VAT registration depending on nature of supplies and tax advice where required.</p>
Step 10: Complete the transfer	<p>Finalise and sign the asset transfer agreement Transfer the assets and liabilities of the existing club to a new entity after obtaining England Athletics' approval.</p>
Step 11: Internal and external notification	<p>Commence operations through the new company. Notify members, suppliers, contractors etc.</p>

Appendix 2

Sport England's equity statement

"This club is committed to ensuring that equity is incorporated across all aspects of its development. In doing so it acknowledges and adopts the following Sport England definition of sports equity:



Sports equity is about fairness in sport, equality of access, recognising inequalities and taking steps to address them. It is about changing the culture and structure of sport to ensure it becomes equally accessible to everyone in society.

- ◆ The club respects the rights, dignity and worth of every person and will treat everyone equally within the context of their sport, regardless of age, ability, gender, race, ethnicity, religious belief, sexuality or social/economic status.
- ◆ The club is committed to everyone having the right to enjoy their sport in an environment free from threat of intimidation, harassment and abuse.
- ◆ All club members have a responsibility to oppose discriminatory behaviour and promote equality of opportunity.
- ◆ The club will deal with any incidence of discriminatory behaviour seriously, according to club disciplinary procedures."

Appendix 3

Alternative Forms of Club Structure



1. Companies Limited by Shares

- 1.1 A company limited by shares is an alternative option for a club where its members, or some of them, hope to receive some financial benefit from profits or a sale of the club.
- 1.2 Companies limited by shares are capable of distributing the club's trading profits and, on dissolution, its assets to shareholders. In a company limited by shares, the shareholders are the club's members. Legal membership is obtained by either subscribing for shares from the incorporated club or by buying shares from an existing shareholder, typically based on the value of the club at the time of acquisition.
- 1.3 The legal structure is similar to a company limited by guarantee except that the company is owned by shareholders who elect the directors in accordance with the company's articles of association and enjoy additional rights, as set out below.
- 1.4 Like the legal members of a company limited by guarantee, shareholders also typically have a right to vote. Again this will be set out the company's articles of association.
- 1.5 However, unlike the legal members of a company limited by guarantee, shareholders will also typically have the following additional rights (if the company's articles of association so permit):
 - 1.5.1 the right to receive a dividend out of the club's distributable profits (if a dividend is declared);
 - 1.5.2 the right to participate in a distribution of the club's assets on winding up; and
 - 1.5.3 the right to give or sell some or all of their shares to a third party.

Pros

- 1.6 **Attracting investment** – A company limited by shares may be suitable for a club which has or wishes to attract owners or investors who wish to invest in the club as a potentially profit-making operation as they can benefit from payment of dividends and an increase in the value of their shares (which can be sold, subject to the incorporated club's governing document, the articles of association).
- 1.7 **Transfer of shares** – Shares in the company can be bought and sold subject to any restrictions in the company's articles of association (but see also paragraph 1.11 below).
- 1.8 **Separate legal identity** – A company limited by shares will have a separate legal identity so, if it becomes insolvent, then the members (i.e. the shareholders) will not be liable for the company's debts other than to the extent that they have not fully paid the company for the shares that they hold.
- 1.9 **Remuneration of directors** – The company's directors can be paid for holding office if the company's articles so allow.

Cons

- 1.10 **Becoming a member or ceasing to be a member** – Companies limited by shares are not normally chosen as the legal structure for clubs which operate membership schemes because each time a member joins the club a share has to be issued to them and, similarly, each time a member leaves the club or dies, their share either has to be transferred to somebody else or redeemed. The rules under the Companies Acts for the redemption of existing shares can be complex. Furthermore, the transfer of a share from an outgoing member to a new member can in some circumstances create a liability to capital gains tax and/or inheritance tax.



- 1.11 Restrictions on public share offers** – a private company limited by shares is subject to legal restrictions on the public advertisement and sale of shares.
- 1.12 Dominant control** – one individual or a number of individuals can effectively take control of the club by acquiring a majority of the issued shares. A special majority of at least 75% of the issued shares effectively allows that individual(s) to change its articles of association, its name or wind up the company.

2. Community Benefit Societies and Co-operatives (formerly known as industrial and provident societies)

- 2.1** Community benefit societies and cooperatives are legal entities regulated by and registered with the Financial Conduct Authority (**FCA**). As they have legal personality, they exist independently of their members and can act, sue and be sued, and own property, land and other assets in their own name.
- 2.2** This means that legal liabilities taken on by the society are its liabilities and not the liabilities of its officers or members. As with companies limited by shares, the liability of members is limited to the share capital they hold in the society and the amount of any unpaid share capital.
- 2.3** Since 1 August 2014, it has not been possible to register an “industrial and provident society”. A society must now be registered as either:
- 2.3.1** a **co-operative society** formed primarily for the benefit of its members only; or
 - 2.3.1** a **community benefit society**, a business conducted primarily for the benefit of the community at large.
- In most cases, a community club adopting this type of legal structure would be set up as a community benefit society.
- 2.4** The FCA may register a society carrying on any industry, business or trade if:
- 2.4.1** the FCA is satisfied that the conditions for either a co-operative or a community benefit society are fulfilled;
 - 2.4.2** the society has at least three members or the society has two members both of which are registered societies;
 - 2.4.3** the society's rules contain various mandatory provisions; and
 - 2.4.4** the registered office of the society is in Great Britain or the Channel Islands.
- 2.5** Traditionally societies have been used for membership clubs or where organisations have wanted to operate on co-operative principles for the benefit of members, customers or suppliers. More recently they have become prominent as a community-owned vehicle to secure investment in community assets (e.g. pubs, post offices, windfarms etc). This is because the legislation restricting companies from making share offers to the public do not apply in the same way to a society.
- 2.6** A society can issue shares to members which may have the characteristic of being:
- 2.6.1** withdrawable (or not); and/or
 - 2.6.2** transferable (or not).

2.7 There is no statutory definition of “withdrawable” shares. In essence withdrawable shares are shares that can be withdrawn by the member at will at any time under provisions of the society's rules and for that reason such shares cannot properly be viewed as capital to be employed in the society's business. This is because, if a member with withdrawable shares wishes to terminate his or her membership, the society must repay the member the capital he or she has invested (plus any interest he or she has earned). A society should therefore keep some assets in liquid form to enable it to repay its members if this situation arises. This can be seen as a disadvantage if the intention is to invest members' monies in property or other non-liquid assets.



- 2.8** The possibility of members transferring their shares at all depends on whether the rules of the society, or the terms of issue of the shares, allow transfers. In addition, the provisions in the society's rules relating to the process of transfer (e.g. requirements for board or committee consent to, and registration of, the transfer) and provisions specifying the form of transfer would have to be followed.
- 2.9** Co-operatives can also issue "investor shares" to non-user investor members of the society which may be withdrawable and/or transferable (or not). A society inviting investors into membership must have protections in its rules that ensure that the participation of investors will not prejudice its standing as a bona fide co-operative society. The rules must provide expressly for investor membership and set out the rights and conditions attaching to the shares, including the restriction on voting on a resolution to convert to company status.
- 2.10** Further information can be found at www.fca.org.uk

Pros

- 2.11 Legal personality** – As with the other types of incorporated structures, a society will continue to exist even if its membership changes. A society can sue, be sued and own property and assets in its own name without the need for holding trustees (i.e. individuals who hold assets on behalf of an organisation).
- 2.12 Limited liability** – The society's liabilities are its own and not the liabilities of its officers or members. A member's personal liability is limited to the amount unpaid on his or her shares.
- 2.13 Unlimited shareholdings** – Unless a society's rules state otherwise, there is no limit on the number of shares which can be issued to its members.
- 2.14 Democratic in nature** – Members of a society normally have one vote each irrespective of the value of their personal investment in the society. Members may therefore feel they can contribute equally to the business.
- 2.15 Investment by the public** – A society can offer shares directly to the public without having to follow the restrictive rules on public share offers which govern companies. This means that funds can be raised more easily to invest in new projects.
- 2.16 Change of legal form** – A society can convert into a company limited by guarantee or a company limited by shares (or a company limited by guarantee or a company limited by shares can convert to a society). A society can also convert into a company with CIC or charitable status.

Specific pros for a community benefit society

- 2.17 Community purpose** – Like a CIC or a charity, a community benefit society must have a specific objective of benefitting the community.
- 2.18 Optional asset lock** – A community benefit society's assets may be protected expressly in its rules so that, if the society is ever wound up, the assets must be applied only for the benefit of the community (not the individual members).
- 2.19 Optional charitable status** – Although relatively rare, a community benefit society can have charitable status, in which case it will be an "exempt charity" (i.e. it is not required to register with the Charity Commission).
- 2.20 Reinvestment of surplus** – A community benefit society's rules must not allow either profits or the society's assets to be distributed to the members. Profits must generally be reapplied to further the objects of the society. By comparison, the members of a co-operative can share in its profits in accordance with its rules.

Cons

- 2.21 Registration restrictions** – Registering a society requires a detailed application form supported by two printed and signed copies of the society’s proposed rules. The form also requires applicants to complete a table indicating the rule numbers in the society’s proposed rules which deal with the various prescribed matters set out in the table.
- 2.22 Registration costs** – The FCA registration fee can also be expensive by comparison with setting up a company or a CIO and ranges from £40 to £950 depending on whether model rules are adopted by the society and the number of modifications which are made to the model rules. In addition, a society must pay an annual fee to the FCA to continue its registration, which varies depending on the size of the society.
- 2.23 Timing** – It takes longer to register a society with the FCA (usually a few weeks) than it does to register a company (typically a few days).
- 2.24 “Benefit to the community” test** – The FCA will only register a community benefit society if the applicant can demonstrate that it is intended to conduct a business for the benefit of the community at large and not primarily for the benefit of its members. The applicant must be able to demonstrate that there are special reasons why the society should not be incorporated as a company instead. FCA guidance states that the intended use of this structure to reflect a commitment to conduct the business of the society for the benefit of the community may be accepted as a special reason. There is, however, no legal definition of “special reason” and each case will be assessed by the FCA on its merits. If there is no demonstrable special reason, the FCA will not register the society.
- 2.25 Lack of privacy** – A society must submit an annual return to the FCA together with a set of accounts (which are both available to the public). Copies of special resolutions and notices to change the society’s name or registered office must also be filed with the FCA.
- 2.26 Ownership** – The nature of ownership of a society through share capital is different from ownership of a company by its shareholders. Shares in a society differ from shares in a company in that the former remains at **nominal value** (e.g. typically £1 per share) and therefore do not give the holder a share in the underlying value of the society. As a result, holders of shares in a society do not generally have any expectation of a share in a capital surplus on a solvent winding up. There is also either no right or a limited right for holders of shares in a society to receive any return on their shares. This follows from a co-operative society’s commitment to a defined set of ‘Co-operative Principles’ and a community benefit society’s commitment to community benefit that any return must not amount to a motivation in itself to acquire shares.
- 2.27 Limits on investment by members** – No member of a society may have or claim any interest exceeding £100,000 in withdrawable shares. The same **statutory limit** applies to investor shares. Under recent legislative changes there is no limit in relation to shares which are not withdrawable.
- 2.28 Committee requirement** – Every society must have a committee and a secretary. Members of the committee must be persons aged 18 years or over.
- 2.29 Rules** – A society must be run strictly in accordance with its registered rules. The rules are a binding contract between the society and its members and must contain provisions for various specified matters. The rules are therefore not as flexible as a company’s articles of association.
- 2.30 Amending the rules** – Although there is no statutory procedure for amending the rules, it is a requirement that the rules themselves set out such a procedure. Any amendments to the rules must be registered (and will not be valid until done so). In addition, two copies of the amended rules must be sent to the FCA signed by three members and the secretary of the society. There is also an FCA form to complete for amending society rules which include a statutory declaration by an officer of the society. However, no member is bound by a rule amendment that increases his or her liability to contribute to the society’s share or loan capital unless he or she has consented to that amendment.





- 2.31 Restrictions on distributing profit** – societies are regarded as social enterprises rather than as businesses run for profit. A community benefit society **cannot** distribute profits to its members but, depending on its rules, where it does issue more than nominal share capital or where members make loans to the society, it may be able to pay members a reasonable fixed rate of interest. By comparison, only a co-operative society's members and non-member investors (if any) can share in its profits in line with the society's rules.
- 2.32 Reputation and comparative lack of transparency** – Societies are traditionally associated with members' clubs rather than modern corporate legal structures such as CICs. As they are regulated by the FCA, less information is available publicly so it can be harder to search their documents and records than, by comparison, companies and CIOs.
- 2.33 Complexity** – For most clubs, a company limited by guarantee may be more straightforward, more flexible and cheaper to administer as well as being more familiar to banks, local authorities, accountants, etc.

3. Charitable Incorporated Organisations

- 3.1** We deal with charities more generally in section 9 above but, as the name suggests, a charitable incorporated organisation (CIO) is a legal form which, by definition, has charitable status. This is a relatively new type of legal form. Prior to their introduction in 2013, charities wishing to adopt a corporate legal structure had to set up as a company limited by guarantee under the Companies Acts (or in very exceptional circumstances by Royal Charter or Act of Parliament). This meant that charitable companies were then subject to dual regulation by both Companies House and the Charity Commission. The CIO is therefore a useful alternative because, since it is not a company, it is regulated by the Charity Commission but not Companies House.
- 3.2** The CIO is designed principally for small- or medium-sized charities, particularly those which were previously constituted as unincorporated associations, which now wish to have the benefit of a separate legal personality and limited liability. This means that it is the CIO itself (rather than the management committee) which holds the assets, enters into contracts and employs staff; and the liability of members of the CIO to third parties is limited to a nominal amount (e.g. £1) as set out in the CIO's constitution.
- 3.3** There are two types of CIO which a club can adopt:
- 3.3.1** the '**foundation**' model, where the trustees are the only members of the CIO; or
 - 3.3.2** the '**association**' model, where ultimate control rests with the CIO's members while the board of trustees manages the CIO. This is more suitable for a club which operates a 'one member, one vote' structure.
- 3.4** Further information can be found at <https://www.gov.uk/government/organisations/charity-commission>

Pros

- 3.5 Legal personality and limited liability** – CIOs have the standard advantages of being incorporated. See sections 4.9 to 4.12 above.
- 3.6 Fiscal benefits** – CIOs have all the tax benefits of being a charity set out in section 9 above.
- 3.7 Single regulator** – As CIOs are not companies, they are not subject to company law or regulation by the Companies Acts. Instead they are regulated by the Charity Commission.
- 3.8 No income threshold** – Unlike charitable trusts, companies, and unincorporated associations, new CIOs do **not** have to be able to show a gross annual income of at least £5,000 to register with the Charity Commission.

Cons

- 3.9 Increased regulation** – CIOs have the additional regulatory burden of being a charity. Please see section 9 above.
- 3.10 Timing** – The CIO will not exist legally until it is registered by the Charity Commission (which may take several weeks) whereas a company will exist as soon as it is registered with Companies House (which can take a day or so);
- 3.11 De-registration** – A CIO will cease to exist if it is de-registered as a charity by the Charity Commission whereas a company may continue to exist even after it is de-registered by the Charity Commission;
- 3.12 No register of charges** – Whereas Companies House maintains a register of charges (i.e. loans secured against company assets) for companies, the Charity Commission does not maintain a register of charges for CIOs. This means that banks and other lenders may be more wary about lending to CIOs because it is harder to independently verify if someone else already has a charge against the CIO's assets;
- 3.13 Lack of familiarity** – As CIOs are a relatively new form of charitable vehicle, banks, funders and other third parties are less familiar with them as opposed to charitable companies. This may mean that some third parties are more wary of engaging with a CIO, at least in the early years, until CIOs become more widely known;

