

This note outlines some useful information for the club. It is not intended to be a guide. It is recommended that you seek legal advice about setting up a club or how it should be run.

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or an association of two or more persons who meet to pursue particular sports, political, or religious activity

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' and "proprietary clubs".

3.1 Members' clubs

unincorporated or incorporated

- benefit of the members and not be
a trade or business or other
and
- be vested in either the body of
behalf of the members, or an

Members will lack “commerciality” from that supply will be exempt as “trading”.

any goods or services to non-

circumstances of each club can
 nces of each club need to be
 f its profits will be taxable.

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In contrast, a proprietary club is owned by an individual, partners or a company (not for the general membership). Part or all of its activities may be managed

Profits earned by a proprietary club are not exempt from tax.

Since proprietary clubs are business entities, the model constitutions and other documents in the CO.CLUB subfolder touch only briefly on the legal aspects of proprietary clubs. If you wish to set up a proprietary club, it is recommended that you seek specialist legal advice.

4. Legal forms of clubs

The legal form chosen for a club depends on its particular needs and features.

A proprietary club may be in incorporated form (e.g. a private company with shares) or in the form of an unincorporated association.

A members' club may be incorporated (e.g. a company limited by guarantee) or other legal forms (e.g. Industrial and Provident Societies or Friendly Societies).

However, members' clubs are usually unincorporated associations. If it is intended to set up a members' club, its founders will normally set it up as an unincorporated association. It will then not be necessary to either register it with the Companies Act or with any ongoing compliance. Nevertheless, it is recommended that such a club's constitution, rules, and accounts are dealt with by a professional legal, and accounting, adviser.

Unlike incorporated entities, unincorporated associations are not bound to each other by law. The rules within a club are usually the rules within a contract between the members. These will usually be the rules adopted and amended from time to time by the members. The rules amount to an agreement between each of all the other members. There is no discrete body of law governing unincorporated associations, but the courts will readily interpret the rules of unincorporated associations.

5. Liability

5.1 Clubs which are unincorporated

There is often concern amongst club members that a club that is set up as an unincorporated association is liable for debts or other liabilities. This concern stems from the fact that an unincorporated association is not a legal entity – as outlined above, the law regards it as no more than the members who are legally bound to each other by the constitution and rules.

Proprietary club is run for profit and owned by an individual, partners or a company (not for the general membership). Part or all of its activities may be managed

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There is a lack of adequate representation on liability of members mean that there will often be a rare for committee or ordinary members to sue individual members, clubs should minimize the risk that any of the

To elaborate, if, for example, someone sues the club to acquire anything, or indeed to sue for responsibilities, liabilities, or other damages, since it is not a separate legal entity, it cannot sue in the names of particular named members, even if they are the only members. The individual committee members and/or sign the contract (and, in the event the club defaults on the contract

However, if the club has sufficient funds to cover the debt, this will not be a practical problem where the committee approves the contract and its signatories approve such a contract and the committee's constitution and rules.

It is prudent to include in the club's constitution a clause stating that the committee/trustees (and the other members) shall not be liable for any sum in excess of the stated maximum sum, and to elect a committee member who becomes personally liable to a particular amount (e.g. £10,000).

Personal liability of members of the club can be covered by insurance. If an injury were caused to a visitor due to the club's premises, this and other liabilities can be covered by insurance. However, this and other liabilities can be covered by insurance. However, this and other liabilities can be covered by insurance.

Where a club is to hold a lease, it must do so in the names of individuals as trustees for the club. The club's constitution will typically be between 2-4 such trustees.

5.2 Clubs which are incorporated

If a members' club is set up as an incorporated association, this will in all normal circumstances avoid the potential exposure of its members and trustees to personal liabilities. Using an incorporated form - typically a company limited by guarantee - will avoid the potential exposure of members for debts and other financial liabilities of the club and its trustees. The disadvantage of using an incorporated form is that it is more costly to set up and on an ongoing basis, since it must be registered with Companies House, and comply with company law.

incorporated associations, and the potential exposure of its members and trustees to personal liabilities in many cases. Whilst it is not possible to avoid the potential exposure of members and third parties are reluctant to sue individual members, clubs should minimize the risk that any of the

for goods, or signs a contract on behalf of the club, it cannot do so in its own name but must do so in the names of and through the committee members. The committee members (expressly or impliedly) authorise the club to be for the club and all its members will be personally liable if the club defaults on the contract (and, in the event the club defaults on the contract

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the personal liability of the club's members and trustees to the club's funds or to a particular amount (e.g. £10,000). Both provides for an indemnity to the committee members and limits an ordinary member's liability to a particular amount (e.g. £10,000).

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If a club in incorporated form wishes to purchase any goods or services, it is the incorporated entity itself which enters into the contract with the suppliers. The members who sign the contract will not be personally liable for a debt of the club which may persuade clubs to incorporate. This may also persuade clubs to incorporate with businesses, or to employ staff.

6. Clubs as charities

The nature of a members' club must meet the relevant legal requirements for registration with the Charity Commission. Advice should be sought to establish whether a proposed club is eligible to register as a charity.

A club derives tax benefits (and other advantages) if it registers as a charity, but it will not only incur the costs of registration, but it will also then be more restricted in how it operates and must comply with the requirements of the Charity Commission.

A club which is also a charity can be set up in either incorporated or unincorporated form, but if it is anticipated when setting up that it will be better to set it up at the outset as a charity (i.e. probably as a company limited by guarantee).

7. Types of sports clubs

7.1 Charitable sports clubs

Charity legislation has long recognised that the advancement of sports (e.g. sports facilities provided for the community, or community participation in health and fitness) may be advanced *by means of* sports.

Charity legislation has developed over time to recognise that a club's aims are exclusively charitable if the club's activities are of sports or games undertaken for the purpose of promoting physical or mental skill or exertion, and the club is recognised as a charity. If a club's game qualifies, it does not automatically qualify as a charity. Instead, the tests of promotion of the public benefit in relation to Community Amateur Sports Clubs (CASCs) are applied. As explained in clause 8 below, only certain sports qualify as CASCs.

This note is primarily concerned with clubs which are not charities, and so no further detail about charities is included in this note. Further detail about charities is included in the Charities and Non-Profit sub-note.

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7.2 Community Amateur Sports Clubs

A local amateur sports club (incorporated or unincorporated) which is a members' club and meets the statutory requirements for registration as a CASC (and certain tax advantages (and rate relief) from its status as a club) may elect to be registered with HM Revenue & Customs as a CASC. Further detail about CASCs is set out in the next section.

A club involved in sports may meet the requirements for a CASC or a charity.

- (i) the requirements for a CASC;
- (ii) the requirements for registration as a charity;
- (iii) both "(i)" and "(ii)"; or
- (iv) neither "(i)" nor "(ii)".

If a club meets both "(i)" and "(ii)" it should decide which of the two possible registrations (CASC or charity) it should take professional advice before reaching that decision. It is not registration as a charity rather than as a CASC confers greater benefits, but that a charity may also benefit from greater funding opportunities. There are other consequences of a club being a CASC and vice versa, affecting the club and its trustees, which are set out in the next section.

It should be noted that a club can register as a CASC and as a charity, but if a club initially registers as CASC and subsequently instead as a charity (if it meets the relevant criteria for a charity) it will cease to be a CASC.

7.3 Ordinary members

If a club involved in sports does not meet the requirements for achieving status as either a CASC or as a charity, it will be spared the cost and compliance requirements for achieving status as a CASC, or meeting the special requirements for achieving status as a charity, but it will still have to comply with the Charity Commission (if its annual income exceeds £5000) and the special requirements for charities or CASCs.

8. Community Amateur Sports Clubs

8.1 Types of sport

The CASC legislation only recognises sports, and does not apply any test of promotion of health (in contrast to the requirements applicable to charities).

As outlined in clause 7 above, the requirements for a club involved in a sport or other activity is a charity differ from those for a CASC. Despite that differing approach, there is an overlap between those types of sport which qualify for CASC purposes and those which are recognised (subject to other tests being met) for charity law purposes.

8.2 Form of club

A CASC may be set up either in a incorporated form, but it is more usual to set up a CASC in unincorporated form.

8.3 Eligibility

A club will only be eligible to register if it meets all of the following requirements. This is only a brief summary of the requirements. Further advice should be taken to interpret and what is required:

8.3.1 It is open to all persons of any age, sex, race, religion, or ethnicity. (This means full membership must be offered to all, without discrimination, that the facilities are available to all, and that any fees do not represent a financial or other obstacle to membership or use of facilities or activities.)

8.3.2 It is organised for the purposes of providing or promoting amateur sports, and its assets must be non-profit making, and only the ordinary benefits of an amateur sports club. It must require all net assets on dissolution to be applied for approved sporting or charitable purposes, and no assets must be distributed to any individual or other persons.

8.3.3 It has as its primary purpose the promotion of facilities for, and the provision of facilities for, one or more eligible sports. (The list of eligible sports is provided in the Charities and Non-Profit Subsidies Regulations 2008.)

8.3.4 It meets the requirements of the Charities and Non-Profit Subsidies Regulations 2008, and must be set up and provide its facilities in accordance with those requirements.

8.3.5 It meets the requirements of the Charities and Non-Profit Subsidies Regulations 2008, and must have managers who are fit and proper persons who ensure that the club's assets are only used for the proper purposes of the club. It must require a person to be appointed as a manager, and the appointment to the effect that he/she is fit and proper for the purposes of the Charities and Non-Profit Subsidies Regulations 2008.

Its constitution must reflect the requirements of the Charities and Non-Profit Subsidies Regulations 2008, and its membership must formalise its agreement to those requirements.

8.4 Registration

A CASC only comes into existence when it is registered with HMRC, but the registration date will usually be the beginning of the current accounting period.

The process for registration of a CASC is set out in the HMRC guidance. A club must complete and submit to HMRC a signed paper copy of the application for registration form (CASC(A1)). This CASC(A1) Form must be submitted to HMRC website.

Clubs must enclose with CASC(A1) the following documents:

8.4.1 The constitution of the club, including the rules and regulations, and the CASC is included in the

Charities and the government, but if the club is incorporated, the Memorandum and Articles of Association

8.4.2 Club rules

8.4.3 Club's latest financial statements

8.4.4 Club's profile

8.4.5 Members' details

9. Further guidance

This note applies only to clubs in England and Wales. It is only a brief overview of the subject. We recommend you seek professional guidance and specialist legal, tax and financial advice on any point where you need more detail.