Guide to Legal Structures for Rugby Clubs in Scotland

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There are various legal structures through which a rugby club can operate in Scotland. This guide sets out the most common structures together with some advantages and disadvantages of each.

Scottish Rugby does not require any club to adopt a specific legal structure. This is a matter for each individual club to decide based on the best interests of that club in its own specific circumstances. Clubs ***must*** seek their own independent professional advice before making this decision.

1. Unincorporated Associations

1.1 This is one of the most common and straightforward approaches for smaller rugby clubs. Unincorporated Associations may be set up by a group coming together as a club for a common, non-profit making purpose. They are bound together by a written constitution (a guiding document setting out the club's objectives and rules) with a committee of members meeting regularly to run the club.

1.2 Constitutions should be drafted to meet the needs of each individual club on a gender-neutral basis. They should include:

- Club objectives e.g., its purpose and what it will do for members.
- Membership types e.g., adult, junior, team, playing, social.
- Club subscription rates and whether these are weekly, monthly or annual, plus the consequences of non-payment.
- Rules or reference to rules that the club and members must follow. This should reflect Scottish Rugby's rules and the rules of Word Rugby.

• How membership might be ended, including any procedures for discipline, suspension or expulsion.

• Management structure e.g., the committee, how and when this meets, the committee term of office, committee roles and responsibilities, committee elections and how committee members might be removed etc.

• How the club's bank account and other finances/expenses will be managed e.g., the identity and number of authorised signatories and spending authorisation levels.

• Annual General Meeting and Extraordinary General Meeting details e.g., date, number of members required, notice period etc.

• How the club's constitution can be amended.

• A 'Dissolution' clause setting out how the club will be dissolved if it ceases to exist and how it will spend remaining funds or deal with remaining assets or outstanding liabilities.

• An 'Open to All' clause stating that membership is open to all, applications will only be refused on reasonable grounds and that there will be no discrimination.

1.3 A club's constitution should not include:

• Separate male and female membership classes

• Requirements for a proposer and seconder for membership applications

• Requirements to post prospective member details on public display

1.4 Some advantages of unincorporated associations are:

• Relative ease of set up and management

• Simpler accounting requirements e.g. no requirements to file accounts

• Less external scrutiny

• Recognised by governing bodies, banks and funding bodies

• Club itself cannot be sued

1.5 Some disadvantages of unincorporated associations are:

• Club cannot enter into contracts in its own name. Committee members will have to enter into contracts on behalf of the club in their own names, either jointly or individually in their capacity as office bearers. Such members can therefore be sued and may be personally liable for any debts/obligations of the club, contractual or otherwise. It is therefore sensible to consider insurance for club officer bearers and the club itself.

• Members are jointly and severally liable for all the club's liabilities, so one member could be liable for all the club's debts if other members cannot pay and then would have to try to recover the amounts paid from the other members.

• Club cannot hire staff in its own name, this would have to be done by club office bearers on behalf of the club in their own names, either jointly or individually.

• Club cannot hold property or assets in its own name. These would have to be held by club office bearers on behalf of the club in their own names, either jointly or individually and transferred to another committee members if the named individual leaves the club.

• Club itself cannot sue anybody

2. Incorporated Companies

2.1 These are companies incorporated by law, where the liability of company members is limited to either what they have invested in, or guaranteed in respect of, that company. The main legislation is contained within the Companies Act 2006. Professional advice must always be sought before setting up an incorporated company.

2.2 A **Company Limited by Guarantee** is owned by its members but, unlike an unincorporated association, has a separate legal personality so can sue and be sued in its own right. Each member guarantees to pay up to a small capped amount if the company becomes insolvent, normally £1.

2.3 Incorporated companies require Articles of Association, which are governing documents setting out what the company can and cannot do. Template or "model" Articles of Association are set out in the Companies Act 2006. Articles of Association define the company's purposes, responsibilities, the kind of business it will do and the rights and duties of the company, its board and its members. Often the members will elect directors to be responsible for running the company, who may be re-elected in accordance with the Articles of Association. Companies limited by guarantee do not issue shares or pay dividends to members.

2.4 Some advantages of companies limited by guarantee are:

• Club has a separate legal personality, so it can enter into contracts in its own name, hold property and assets in its own name and hire staff.

• Club member liability for the club's debts if it becomes insolvent or cannot meet its obligations is capped at the amount each member has guaranteed to pay, normally £1.

• No individual should be able to control the club and its assets unless the Articles of Association allow. Directors must act in the best interests of the company at all times by law.

2.5 Some disadvantages of companies limited by guarantee are:

• Greater external scrutiny

• Annual accounts, annual returns and director details must be prepared in a prescribed format and submitted annually to Companies House (although there are dispensations for smaller companies to make this more straightforward). Further filings will be required when directors change. On-going professional assistance may be required for this and there are fines for late filings.

• Directors must ensure they act in the best interests of the company at all times. The role of a Director carries additional legal responsibilities and liabilities.

2.6 A **Company Limited by Shares** is similar to a company limited by guarantee, except that it issues shares to its shareholders who then own the company and elect the directors to run it. Many of the advantages and disadvantages of companies limited by guarantee apply e.g. separate legal personality and Companies House filing requirements.

2.7 Companies limited by shares are not normally used by member-based clubs because when a new member joins a new share would need to be issued each time. Equally, if a member leaves, their share has to be redeemed or transferred each time. The administrative burden is therefore greater.

2.8 If a company limited by shares becomes insolvent, member liability will generally be limited to the value of the shares they each own unless they have not fully paid the company for those shares. Shares can be bought and sold subject to any restrictions within the Articles of Association, although they cannot be advertised or sold publicly. If any member holds or builds up more than 50% of shares, they will be able to control the company and potentially block changes.

2.9 Clubs should refer to ***www.companieshouse.gov.uk*** for more information on companies limited by guarantee and companies limited by shares and for example model articles of association.

2.10 If a club which is a company limited by either guarantee or shares is a non-profit organisation formed for charitable purposes and for the public benefit, it may be able to apply for additional charity status, commonly as a **Scottish Charitable Incorporated Association (SCIO)**. SCIO status may provide additional tax benefits.

Clubs which are unincorporated associations may also benefit by applying for charity status.

Clubs should refer to https://www.oscr.org.uk/becoming-a-charity/ for more information on the benefits of charity status.

3. Industrial and Provident Societies (IPS)

3.1 These are structures for trading businesses or voluntary organisations which become registered with the Financial Conduct Authority. An IPS can either be run as a co-operative, for the benefit of their members, or for community benefit. Incorporated companies may be converted into an IPS, or a new IPS may be set up.

3.2 An IPS has the advantages of a separate legal personality and members will not be liable for club debts on insolvency. A community benefit IPS must have a social objective of benefitting the community and if it is wound up or becomes insolvent, its assets are protected for the benefit of the community.

3.3 The disadvantage of an IPS is comparatively high set up and annual fees. The rules on which clubs can register as an IPS are complex and the FCA will only allow clubs to register if they can clearly demonstrate why they should be an IPS. Clubs should refer to: https://www.fca.org.uk/firms/mutual-societies-forms for more information.

4. Community Amateur Sports Clubs (CASC)

4.1 Based on an HMRC tax scheme, CASC status is an alternative to charitable status for clubs which are either unincorporated associations or incorporated companies. Clubs may be eligible for CASC status if they:

- Are open to the whole community
- Have a main purpose of providing facilities for and encouraging participation in eligible sports
- Have at least 50% of their membership participating in sport at the club
- Are largely amateur and not for profit

4.2 Some advantages of CASC status are:

- Tax relief may be available, for example business rate relief of at least 80%
- Gift aid may be claimed on club donations (but not on membership fees)

• Exemption from some taxes e.g. taxes on club fundraising and trading turnover up to £50,000 a year and on income of up to £30,000 a year from renting out property.

4.3 Some disadvantages of CASC status are:

• Club must remain largely amateur. Players can only be paid as long as the club does not pay more than £10,000 in total to all their players in a single year. Clubs can only pay expenses for some matches and tours where players take part in and promote the club's sport.

• CASCs cannot earn more than £100,000 a year from trading with non-members or from property income.

• Membership fees cannot be more than £31 a week (£1,612 a year). If a club's membership fees and sporting activity costs are more than £10 a week it must provide help, for example a discount to reduce those costs to £10 a week for people who cannot pay more.

• Applications for CASC status can be difficult, expensive and time-consuming. Clubs must register with HMRC and it can be very difficult and expensive to de-register.

• Club must maintain on-going compliance with ever changing CASC eligibility criteria and rules. Transgressions could lead to HMRC investigation and fines. On-going professional assistance may be required at a cost.

• On winding up, club property and assets would be distributed to a sport's governing body, another CASC, or to charity.

• CASC status alone does not provide limited liability protection to members.

4.4 Clubs should refer to:

https://www.gov.uk/community-organisations/community-amateur-sports-clubs

for more information on CASC status.

5. Social Enterprises

5.1 Social Enterprises have a clear social and/or environmental mission set out in their governing documents. For further information visit:

https://www.gov.uk/set-up-a-social-enterprise

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