

RUGBY FOOTBALL UNION
INCORPORATING YOUR CLUB

Your Questions Answered

1 Why incorporate?

Principally to obtain for the Members of the Club the benefit of limited liability.

2 Why do you need limited liability?

Without incorporation, Members would be personally liable for any borrowings or other liabilities that the club may have. Depending on the nature and extent of the liabilities this may involve a degree of risk that Members would find unacceptable.

3 Are there other advantages?

Yes. They include the following:

- (a) All the property of the club would become directly owned by the club rather than through the trustees as at present which removes the need to appoint or change trustees;
- (b) Incorporation will enable the club to give a floating charge over its assets or to create debentures so as to secure any borrowings it may wish to make. This will make it easier to raise finance when it is needed by the club; and
- (c) In an increasingly litigious age legal actions will involve the club itself rather than its Trustees, Officers or Committee Members.

4 How can the club incorporate?

Incorporating as an Industrial and Provident Society is one way a club can incorporate. Another way is as a company, usually limited by guarantee rather than by shares. This note and the Model Rules contained in the incorporation pack only relate to incorporating as an Industrial and Provident Society but the RFU will be issuing guidance and an incorporation pack on how to incorporate as a company limited by guarantee in due course.

It will be for each club to decide for itself which is the most appropriate structure. Incorporating as a company limited by guarantee is procedurally a little more complicated than as an Industrial and Provident Society but may be simpler to run once it is established as

advisers and other third parties are generally more familiar with a company structure than an Industrial and Provident Society structure. It is the belief of the RFU that many clubs, and perhaps also some of the Constituent Bodies, would wish to enjoy the benefits of incorporation, either as an Industrial and Provident Society or as a company limited by guarantee.

5 Will the club need to adopt new Rules?

In order to take advantage of the incorporation service, at a cheaper rate through the RFU, a club is required to adopt a set of the Model Rules. These will in varying degrees differ from the club's existing rules and each club should seek advice and comments from its solicitors and auditors as to the effect of any particular change. Two sets of Model Rules have been produced, the first of which has been in use for some years and the second version introduced in 2005 for clubs that wish to qualify as Community Amateur Sports Clubs.

6 Will the new Rules place a limit on the Committee's power to borrow money in the name of the club?

Yes. The Model Rules provide a limit on the amount it may borrow, however, it is up to each club to decide what the appropriate borrowing limit is for it. This will depend on commercial requirements and the ability to repay. The borrowing limit may be changed with the consent of the Members at a general meeting.

7 Will Members have shares in the club once it has been incorporated?

An Industrial and Provident Society has to have a share capital and each Member will therefore have one share.

8 Will Members have to pay for their shares?

Not in the sense of having to pay anything extra. Each share will have a nominal value of 5 pence and 5 pence of each existing Member's subscription for the next season will be applied in paying for its share. In the case of new Members, the 5 pence will come from their first subscription.

9 Will different categories of Members be permitted?

Yes. But the FSA will not accept the description "member" for any person who is not a full voting member. Therefore only membership categories which carry full voting rights should be described as "members". There must be one vote for each member:

- (a) anyone who is a full member must have one vote: there can be no differential voting rights; and
- (b) anyone other than a full voting member should be described as an associate, supporter, or some similar word.

The Description “Honorary Member” is acceptable to describe a full voting member who is not required to pay a subscription.

10 Will it be possible for anyone to build up a large shareholding in the club?

No. Each Member will have one share and no more and shares will not be transferable.

11 What will happen to a Member’s share when he ceases to be a Member?

It will be cancelled and the 5 pence paid for it will fall into the club’s funds.

12 Will a share in the club have any value?

Not in a commercial sense. It will not be transferable and can therefore not be bought and sold. It will be cancelled when its owner ceases to be a Member, and for example, cannot therefore be left to anyone else by will.

13 Will members be issued with share certificates?

No. Since the share will not be transferable, this would serve no useful purpose and would therefore be an unnecessary expense.

14 Will Members notice any difference between the Club in its unincorporated state and when it has been incorporated?

This is thought to be unlikely. However, this will depend on the extent to which the Model Rules differ from the club’s existing rules.

15 Will there be a Board of Directors?

No. The club will be run, as now, by a Committee elected by the Members.

16 Does incorporation have any effect on the club’s alcohol licence?

No. The regime is the same however the club is constituted.

17 Will the registration authority accept small amendments to the Model Rules?

The registration authority is prepared to register clubs with minor amendments to the Model Rules at an increased fee (see the Guidance Notes for details) but the amendments must not breach any statutory requirement and must not, for example, restrict the votes of members, or dispense with the holding of meetings. The amendments that have been accepted include the appointment of honorary and life members, provisions for junior members, the number of members to constitute a quorum for the purpose of holding a meeting and the method of advertising general meetings.

18 Can closed membership clubs register with Model Rules?

There is no provision in the Industrial and Provident Society Legislation which prevents a club imposing a qualification for membership. However, clubs that wish to qualify as CASC's must comply with the requirement that membership of the Club be open to the community at large and therefore any membership criteria that detract from that principle are unlikely to be acceptable for such clubs.

19 Can a rugby club which forms part of a larger sports club incorporate using the Model Rules?

In theory there is nothing to stop a rugby club which forms part of a larger sports club from incorporating. However, it is likely that the sports club as a whole will have Rules and therefore to incorporate the rugby club separately will require the co-operation of the sports club. Separate legal advice should be sought to ascertain the practicality of incorporation in these circumstances.

20 Must the club include the word "Limited"

The club's full name, including the word "Limited", must be displayed in a conspicuous position at its registered office and appear on all notices, advertisements and other official publications of the club and all business letters, cheques, bills, receipts and invoices.

Should a club so wish, it is possible to apply for permission to dispense with the word "Limited". However, it must be able to show that the objects of the club are wholly charitable or benevolent which would be unusual for a rugby club. Certain documents and information will be required from the club to support this.

21 What is the cost of registering as an Industrial & Provident Society?

The Financial Services Authority (FSA) charges a fee to register an IPS. Details are available from the FSA. The FSA has approved the RFU's model rules. The fees increase substantially depending on the number of changes to those model rules. However, the FSA does not consider the adding of information such as a name, address, a number or any text that is added to the model rule in a space specifically provided for such text to be a change for which a charge is made. However, any changes to a rule (irrespective of how many changes are made within that rule) are considered one change and will attract a fee.

22 What is the position concerning liability for the club's existing borrowing?

Following registration as an Industrial and Provident Society all the assets and liabilities of the club automatically vest in the incorporated body. Where the club has existing borrowing either secured by mortgages, personal guarantees, or merely by a form of loan agreement, there will be a continuing liability on the individuals i.e. trustees, club officials or personal guarantors who signed the relevant document except in cases where that document limited the liability of trustees or club officials to the assets of the club in their hands. Any new borrowings entered into or liabilities incurred after registration will be in the name of the incorporated club and personal liability will only arise if the lender requires it.

23 If the club has a lease of its premises, is the landlord's consent required to register as an Industrial and Provident Society?

There is no requirement in these circumstances to obtain the landlord's consent, although clubs should check the terms of any lease they have with their legal advisers to ascertain whether the registration certificate of the club as an Industrial and Provident Society should be registered with the landlord. The position of club trustees or individual guarantors who entered into the lease originally is similar to that in relation to borrowings mentioned in the reply to 6 above. In other words, the individuals remain liable themselves to the landlord unless in the lease they have limited their liability to the assets of the club in their hands.

24 Can a club registering or already registered with Model Rules also qualify as a Community Amateur Sports Club (CASC)?

Clubs wishing to incorporate as a CASC should use the CASC Approved Model rules as these have been approved by HM Revenue & Customs. The key differences between these and the other Model Rules are:

- (a) the requirement that on dissolution all assets of the Society be distributed for the benefit of the Game or another CASC or charity;
- (b) the limits on powers contained in rule 5 of the CASC version of the model rules; and
- (c) the requirement that membership of the club should be open to all without discrimination of any kind.

Clubs that adopt the rules should not therefore encounter objections from the Revenue on the basis that the rules do not meet their criteria for CASC compliance.

Clubs should, however, be mindful of making any amendments to the rules which could have a bearing on the club's compliance with CASC requirements. In particular, any changes that relate to the powers of the society to use its funds for any purpose which may not be regarded by the Revenue as qualifying expenditure or any change which would raise any barrier to entry to the club by the community at large is likely to be viewed as being in breach of the requirements. This would be a relevant consideration for any club contemplating having a professional team as payments to players would result in the club ceasing to qualify as a CASC. It may be possible for the professional element to be operated by a separate entity with a view to the club retaining CASC status but this cannot be guaranteed and clubs in this position should obtain their own advice on how best to proceed.

Clubs should also be aware that the fact that the rules are CASC compliant does not guarantee that the club will retain CASC status in the future. The legislation requires not only that the constitution of the club comply with the legislative requirements but also that the club's operation should remain within the limits set down by the rules and the legislation. This is particularly relevant in the context of the rules that focus on issues of qualifying expenditure and the provision of benefits for the community as a whole.

25 Does the adoption of the CASC compliant Rules guarantee the club will always have CASC status?

No. It is in the nature of model rules, which adopt a 'one size fits all' approach, that they give clubs a wide range of powers so as to avoid debates arising as to whether a particular course of action was or was not within its powers. This raises the possibility of a conflict between matters which might still be authorised under the rules but could still fall foul of the requirements of the CASC legislation.

Examples of where such issues could arise include the following (rule references are to rule numbers in the CASC Version of the Model Rules):

- (a)** Rule 4.3 (which gives clubs power to use its assets as security for loans) is drafted to enable a club's assets to be used as security for loans for other persons or corporations in which the club has an interest. Whilst giving such third party security is not specifically precluded by the CASC legislation, HM Revenue & Customs would need to be satisfied that such security was provided in furtherance of the main object of the club, namely the provision of facilities for and promotion of participation of the whole community in the game;
- (b)** the Revenue regard the requirement that the club be open to the community as a whole as being of the utmost importance and it is one of the specific requirements of the CASC legislation. Rule 18 of the CASC version of the model rules provides for the payment of annual subscriptions by members. If these were set at too high a level it could be seen as a form of indirect discrimination against sections of the community that are unable or would find it difficult to afford such a payment. Subscriptions should therefore always satisfy the test that they be set at a level which can be afforded by people on average earnings;
- (c)** Rule 4.7 regarding the support of other charities or events. Whilst this would entitle a club to put on events such as quiz nights and charity auctions, it could also entitle it to run or support a fully commercial operation which may not be within the scope of a CASC;
- (d)** in relation to Rule 19.1, regarding the sale of tickets for games, again any distribution of match tickets as a means of enabling members or players to achieve a mark up by selling on the tickets would be a breach of CASC legislation as it would be perceived as a disguised payment to players or members; and
- (e)** clubs must ensure they have a majority of members participating in the sport. This is not restricted to playing members as it can include coaches, managers or any other non-paid work undertaken on behalf of the club.

Many of the changes that were made to enable the rules to become CASC compliant were designed to ensure that all expenditure by a club must be qualifying expenditure, which in the context of a rugby club, means that all expenditure must be incurred for the purpose of providing facilities for, and promoting participation in rugby. As a result, all payments to members for playing the game are prohibited (Rule 5.1.3) and clubs must keep in mind the need to ensure that the CASC rules governing expenditure are complied with at all times.

26 What happens if a club fails to comply with CASC rules?

Whilst the legislation does not provide a mechanism to allow clubs to de-register as a CASC, the Revenue does have the power to de-register a club if it considers the club has committed a serious transgression of the CASC rules. The club would then cease to benefit from the CASC tax exemptions from that date which could result in substantial tax becoming due.

27 Where do I find the FSA application form?

This is available to download from the FSA website at http://www.fsa.gov.uk/pubs/forms/ms_application_form.doc. The RFU will need to sign the form at section 15 as the sponsoring body. To obtain this signature the club is required to send the form to the Legal Officer at the RFU together with a marked up copy showing any changes made to the model rules. Further information about CASC's and more detailed guidance on Revenue interpretation can be found on the HM Revenue and Customs website at www.hmrc.gov.uk/casc/ which also contains illustrations of how the rules operate in practice.