

RUGBY FOOTBALL UNION

Incorporating as a company limited by guarantee

1. Introduction

This guidance gives more details to clubs about incorporating as a company limited by guarantee. You should first read "[Why Incorporate?](#)" and "[Choice of Structure](#)" documents.

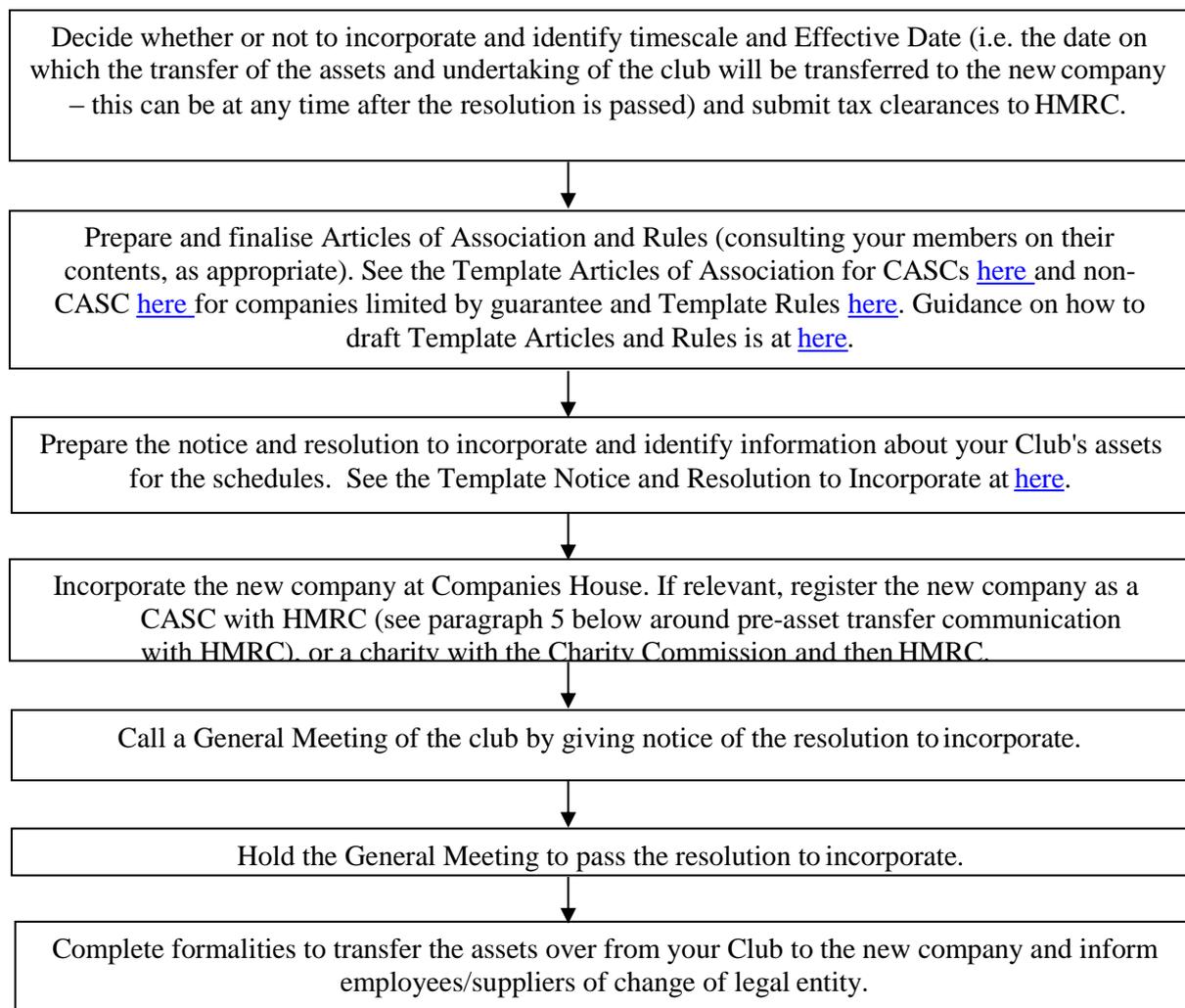
If your club is incorporating as a charitable club, there is separate guidance at "[Incorporating as a Charitable CLG](#)" that should be used instead of this.

A set of template documents has been produced to assist an unincorporated rugby football club (**the Club**) to "incorporate" as a company limited by guarantee.

The word "incorporate" suggests that the Club will somehow transform itself into a company. In fact distinct steps are involved as shown in the flowchart below:

2. Flowchart

In order to ensure an efficient incorporation, the project is best carried out in the following sequence:



3. Steering Group

Most Clubs will want to appoint a steering group (made up of members of the club's executive committee) to take the incorporation project forward. We strongly recommend this. On average, an incorporation is likely to take between five and ten months.

4. New Constitution

4.1 The first step is to analyse your existing constitution to see if you have the ability to dissolve your club (and transfer your assets to a company or other body established for similar purposes to your club). If you do not have this power, your rules will require amendment. This amendment can be effected at the same time as proposing the resolution to transfer the assets and undertaking.

4.2 The next step is to identify how the new company should be structured, who the directors should be and which of your rules you would like to retain in the new body.

4.3 You will need to decide whether or not you would like to be a CASC or a charity (see [here](#)) and then analyse the relevant template Articles carefully to see what, if any, changes you would like to make to them. Several of the Articles are drafted in the alternative and you will need to decide which apply to your club: (link to [CASC CLG Articles](#) and [Charitable CLG Articles](#))

4.4 Once you are happy with the Articles and have gathered all details of the directors, secretary and initial members, the new company will need to be registered at Companies House. To do this you will need to complete the statutory IN01 and Memorandum of Association (to be completed by the first members or "subscribers") and return this with the final version of the Articles of Association to Companies House. Form IN01 may be downloaded free of charge from the Companies House website (<http://www.companieshouse.co.uk>). You also need to include the incorporation fee (currently between £12 and £100, depending on whether the application is made online or on paper, and whether a same-day incorporation is required)

5. Tax Clearances/CASC Eligibility

5.1 Generally speaking, it should be possible to effect incorporation as a company limited by guarantee as a reconstruction on a no gain no loss basis (i.e. without incurring a tax liability). The transfer should be treated as a reconstruction and therefore clearance should be sought in respect of corporation tax on capital gains from HMRC (see [template letter 1](#)). The Club may also need to obtain confirmation from HMRC that its mutual trading status will be preserved on incorporation (see [template letter 2](#)).

5.2 At the outset, you should take expert advice and send amended versions of the template letters (which should be amended to reflect your Club's particular circumstances). You should ensure you receive a positive written response before proceeding with incorporation.

5.3 If your Club is VAT registered you should also write to HMRC regarding the VAT consequences of incorporation and the company's ongoing compliance (although as a matter of policy HMRC do not provide advance clearances in relation to VAT) ([link to template letter 3](#)).

5.4 In many straightforward incorporations no Stamp Duty Land Tax will be payable. A straightforward incorporation is one where the assets and undertaking of the Club are transferred to a new company (specifically set up to carry on the Club's business) and there is no consideration (such as the assumption of a legal charge or mortgage by the new

company) for such transfer. If Stamp Duty Land Tax is going to be an issue, you should consider if incorporation as a co-operative society may be a better option.

5.5 Where CASC status has already been obtained for the existing Club using the old constitution you should ensure the new incorporated body is eligible for CASC status **before** any assets are passed over; although HMRC will not actually grant CASC status until after the asset transfer. If a CASC does transfer its assets to a company that is then refused CASC status, there'll potentially be a capital gains tax charge on the unincorporated club which is based on the value of the chargeable assets that have been transferred. It is therefore advisable to check with HMRC that the new company is suitable for CASC status before you make the transfer you should submit a CASC application for the new company with a covering note which:

- explains that your Club intends to incorporate
- gives details of the existing unincorporated CASC and provide the last set of financial accounts
- provides a copy of the proposed governing documents (memorandum and articles of association) for the new company

5.6 HMRC will review this application and let you know whether the new company will meet the conditions of the scheme. If the new company meets the conditions of the scheme HMRC will then put the application on hold until the assets and activities are transferred across to the new company.

5.7 Once you've transferred the assets and activities across to the new club you should write to HMRC providing:

- 3 months bank statements in the new company's name
- details of the date the assets and activities were transferred across to the new company.

5.8 See Annex 2 of HMRC's CASC Guidance regarding incorporation of an existing CASC for more details, including more information on what to do following a transfer of assets to the new company – available [here](#).

5.9 If your tax affairs are not straightforward or you want to incorporate as more than one company, you should obtain specific legal and tax advice.

6. Resolution to transfer the assets of the Club and acceptance by Newco

6.1 The sample resolution to transfer the assets of the club to Newco (available [here](#)) will need to be amended to reflect the club's particular circumstances and the schedules completed to reflect its assets.

6.2 The resolution to transfer the assets of the club to Newco will need to be proposed and passed in accordance with your existing rules by the appropriate majority at a general meeting of the unincorporated association. Your rules may not allow for such a transfer in which case the resolution will need to include paragraph 1. If you do need to include paragraph 1, the resolution should be proposed in the same way as any other resolution to change your rules.

6.3 Newco will need to hold a meeting of its directors to resolve to accept the transfer of the assets and undertaking of the unincorporated association.

6.4 The same directors' meeting will deal with administrative matters.

6.5 You will need to complete the company books for the new company. You will then need to administer the company appropriately (see [Guide to the Administration of Companies](#))

[Limited by Guarantee.](#))

7. Transfer of Assets

- 7.1 Any freehold/leasehold property will have to be transferred to the new company and the transfer registered at HM Land Registry if appropriate.
- 7.2 Intellectual property (such as copyright, trademarks etc) may need to be specifically assigned.
- 7.3 A detailed analysis of the contracts entered into by the unincorporated association will have to be done before the change in constitution. A list of the contracts will have to be attached as a schedule to the resolution. The other parties to any major contracts should be asked to "novate" (or renew) the contracts in favour of the new company. If there are any minor contracts (e.g. in respect of utilities) these can simply be renewed by the new company. Other contracts will need to be reviewed carefully and discussions with the suppliers initiated as to how best to ensure Newco benefits from them.
- 7.4 Any insurance policies should be novated in favour of the new company.

- 7.5 If investments are held in the name of nominees these may be retained by those nominees but they should be notified that the new company is the new beneficiary. If any investments are held in the name of individuals then they should be transferred to the new company.
- 7.6 The club's bank and any building societies will have to be informed of the incorporation. They may require a new bank account to be opened.
- 7.7 New stationery will have to be prepared for use by the new company containing the relevant details (see [Guide to the Administration of Companies Limited by Guarantee](#)).
- 7.8 Any employees of the club will need to be notified of the change in their employer. The legal requirements of TUPE are not fully dealt with in this note, and the obligations both before and after the incorporation process may vary depending on the specific circumstances.
- 7.9 The Information Commissioner will need to be informed of the new Data Controller and existing notification cancelled. Unfortunately the Registry will not waive the charge for the new registration.
- 7.10 Any pension arrangements will need to be reviewed in the light of the incorporation.

8. Taxation

- 8.1 HMRC will need to be informed of the new company's details and of the transfer of assets and undertaking to the new company. A template letter is included in the pack of template documents. Any changes to PAYE arrangements will need to be made and your VAT number transferred to the new company.
- 8.2 HMRC's CASC Guidance (available [here](#)) says that any Gift Aid declarations that have been signed by donors to the unincorporated association will not be valid if the new company makes a claim for Gift Aid. If the new company is successfully registered with HMRC then it should obtain new declarations from donors before making any Gift Aid claims. This conflicts with HMRC's guidance on Gift Aid elsewhere. Specifically, paragraph 3.9.2 of HMRC's 'Charities: detailed guidance notes, Chapter 3: Gift Aid' (available [here](#)) says "*Where a charity changes its name (for example because of a merger) the charity won't need to obtain a new declaration from a donor so long as the charity can show beyond doubt that the name of the charity on the existing declaration is a name previously used by the charity*". Irrespective of this consistency, it is recommended clubs comply with the CASC Guidance and should seek to obtain new declarations.

9. Further advice

This publication is a general summary. It should not replace legal advice tailored to your club's specific circumstances. Please note the importance of seeking legal and tax advice when deciding how best to use the template documents for incorporation. Further, as referred to elsewhere, you can look at Annex 2 of HMRC's CASC Guidance for more detail – available [here](#).

Guidance prepared by Farrer & Co LLP), incorporating guidance previously prepared by Bates, Wells and Braithwaite LLP, along with further updates from Bates, Wells and Braithwaite LLP.