

RUGBY FOOTBALL UNION

Incorporating as a charitable company limited by guarantee

1. Introduction

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

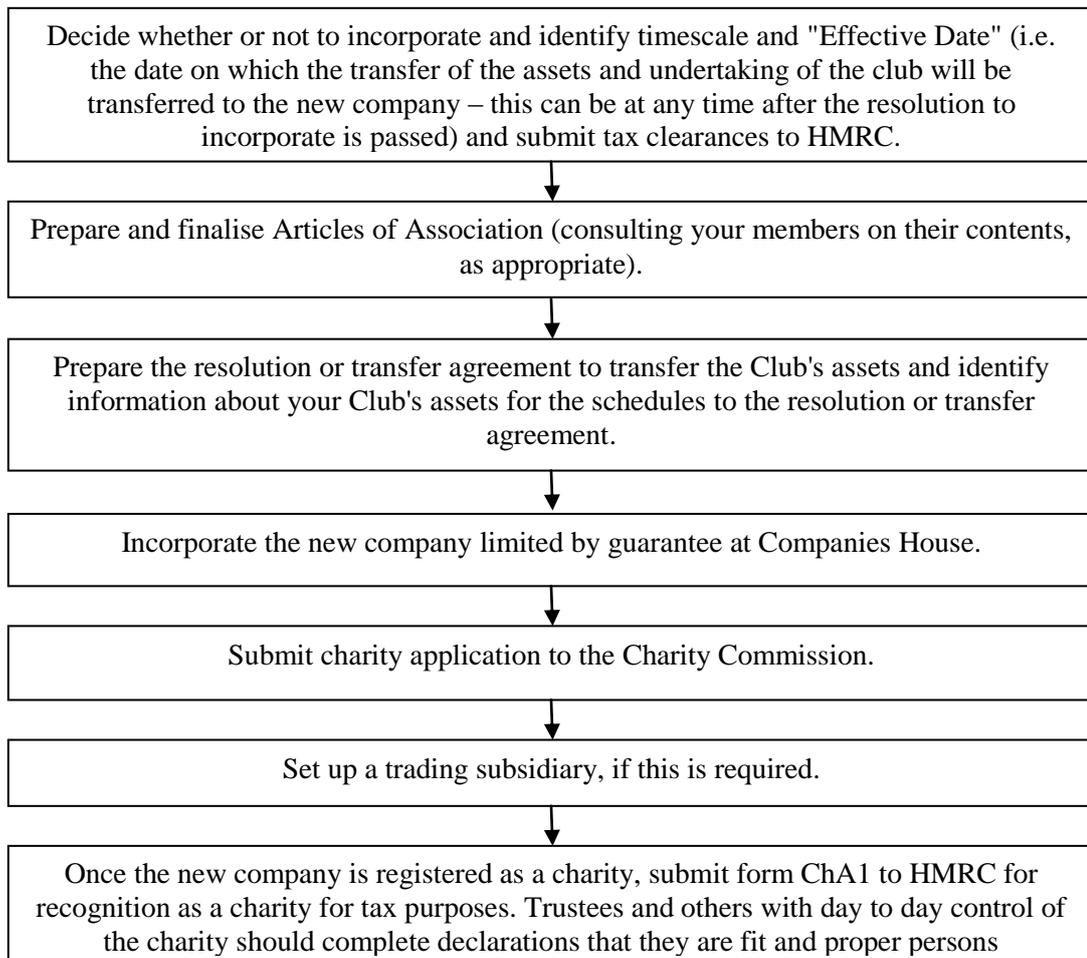
If your club is **not** incorporating as a charitable company limited by guarantee, there is separate guidance at "[Incorporating as a CLG](#)" that should be used instead of this guidance.

A set of template documents has been produced to assist an unincorporated rugby football club (**Club**) to "incorporate" as a charitable company limited by guarantee. These can be found at "[Charitable CLG Articles](#)".

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, 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 analyse the template Articles for a charitable rugby club [here](#) 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.

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 £13 and £100, depending on whether the application is made online or on paper, and whether a same-day incorporation is required).

5. Registering as a charity

5.1 Once the new company has been incorporated with Companies House the charity application can be submitted to the Charity Commission.

5.2 Information about the registration process and the relevant forms that need to be filled in are available on the Charity Commission website at www.charity-commission.gov.uk.

5.3 In particular you will need to send to the Charity Commission:

5.3.1 completed online application for registration;

5.3.2 completed trustee declaration signed by each of the first trustees;

5.3.3 a copy of the Articles of Association you have adopted;

5.3.4 evidence that the organisation will have an income of over £5,000 in the first year. This could either be a copy of the club's existing bank account or sometimes (but not always) the Charity Commission will accept a letter from the unincorporated club pledging a donation of £5,000 once the company has been registered. If the Charity Commission accepts this, the following wording is suggested: *We pledge to give [name of company] a donation of £5,000 following its registration as a charity;*

5.4 The Charity Commission will be keen to ensure that the club understands the implications of registering as a charity and that its activities do not conflict with the registration requirements

set out above. It is not unusual for the Charity Commission to seek clarification or additional information. Clubs should consider taking legal advice on the registration process to ensure the application proceeds smoothly.

6. Trading company formation

It is likely that many clubs registering as charities will also need to set up a wholly owned trading subsidiary, for example, if the club runs a bar. You are advised to take legal advice on setting up a wholly owned trading subsidiary and getting the necessary documents in place to record the trading subsidiary's relationship with the charity.

7. Tax Clearances

7.1 Provided that the new company is a registered charity (and is recognised as such by HMRC for tax purposes) **before** the transfer takes place, any transfer of assets and undertaking (including shares in any trading subsidiary) by the Club to the company should, provided no consideration is given in respect of the transfer, be effected on a no gain no loss basis. This will be the case whether the Club currently has charitable status or not. As such, there should be no need to apply to HMRC for any pre-transaction tax clearances.

7.2 There should be no Stamp Duty Land Tax payable on the transfer of property to a charitable company.

7.3 If your Club is VAT registered it is recommended that you write to HMRC regarding the VAT consequences of incorporation and the company's ongoing VAT compliance (although as a matter of policy HMRC do not provide advance clearances in relation to VAT). A template letter can be found [here](#).

7.4 This paragraph is a general summary. At the outset, you should take expert advice to ensure that you are aware of the tax consequences of incorporation based on your Club's particular circumstances.

8. Recognition as a charity for tax purposes by HMRC

In order to be recognised as a charity for tax purposes, once confirmation of charity registration has been received by the Charity Commission, you should complete form ChA1. In addition, anyone who has day to day control in the running of the charity (for example trustees and senior employees) must complete a declaration that they are fit and proper persons. These must not be submitted to HMRC but must be kept by the charity in case HMRC ask to see them. Form ChA1 and a model declaration form can be found at www.hmrc.gov.uk/charities/tax/recognition.htm.

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

9.1 Once the charity is registered with the Charity Commission the transfer of assets can take place. Where the club has a bar and other non-charitable activity these must be transferred to the trading subsidiary and not the charity.

9.2 The sample resolution to transfer the assets of the club to Newco (available from [here](#)) will need to be amended to reflect the club's particular circumstances and the schedules completed to reflect its assets. However, legal advice should be taken to see if a transfer agreement would be more appropriate, this is likely to be the case if Newco may need to reimburse committee members of the unincorporated club for liabilities that arise after the transfer has taken place because this would not be admissible expenditure for a charity unless it was contractually obliged to make the payment.

- 9.3 The resolution to transfer the assets of the club to Newco (and possibly its trading subsidiary) 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. The resolution will need amending if some assets are transferring to the trading subsidiary.
- 9.4 Newco and if applicable the trading subsidiary will need to hold meetings of its directors to resolve to accept the transfer of the assets and undertaking of the unincorporated association.
- 9.5 The same directors' meeting(s) will deal with administrative matters.
- 9.6 You will need to complete the company books for each new company.
- 9.7 You will then need to administer the company and the trading subsidiary appropriately (see the Guide to the Administration of Companies Limited by Guarantee which is available [here](#)).

10. Transfer of Assets

- 10.1 Any freehold/leasehold property will have to be transferred to the new charitable company and the transfer registered at HM Land Registry if appropriate.
- 10.2 Intellectual property (such as copyright, trademarks etc) may need to be specifically assigned.
- 10.3 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 or transfer agreement. The other parties to any major contracts should be asked to "novate" (or renew) the contracts in favour of the new company or if relevant its trading subsidiary. 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 or if relevant its trading subsidiary benefits from them.
- 10.4 Any insurance policies should be novated in favour of the new company.
- 10.5 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.
- 10.6 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. If a trading subsidiary has been set up by a charitable club this will need its own bank account.
- 10.7 New stationery will have to be prepared for use by the new charitable company containing the relevant details (see Guide to the Administration of Companies Limited by Guarantee). If a trading subsidiary has been set up, it will also need its own stationery.
- 10.8 Any employees of the club will need to be notified of the change in their employer.
- 10.9 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.
- 10.10 Any pension arrangements will need to be reviewed in the light of the incorporation.

11. Taxation

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 [here](#). Any changes to PAYE arrangements will need to be made and your VAT number transferred to the new company. Similar details will also be required for any trading subsidiary, and if relevant a VAT group created.

12. 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.

Guidance prepared by Farrer & Co LLP, incorporating guidance previously prepared by Bates, Wells and Braithwaite LLP