

# Members' rights duties and liabilities checklists

Checklist

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## Note: Informal ‘membership’

Some organisations have an informal ‘membership’, that is a group of individuals who, while perhaps described as ‘members’, are not members in any formal legal sense. Rather they are in a less formal relationship with the organisation, perhaps as supporters or practical volunteers. It is important to distinguish any such groups from those who are formal legal members (with rights and responsibilities in respect of the organisation).

- It is best to avoid use of the term ‘member’ in such situations, choosing an alternative term instead (such as ‘supporter’ or ‘associate’).
- The governing document should be carefully worded to avoid confusing genuine formal members with other groups – it is important to draw distinctions clearly.

The checklists below relate to members in the legal sense.

# Members' rights, duties and liabilities – companies

## Introduction

A company limited by guarantee is one of the most common legal forms used by organisations such as national governing bodies and charities. It is, inherently, a membership organisation that has both members and directors/trustees.

## Checklist

### Requirement to have members

- There must be members in any company.
- Typically, the articles of a company will require a minimum of three members. Unless stated in the articles, there is no upper limit.

### Duties – statutory

- Company members do not have specific statutory duties.

### Legal responsibilities

- Members are bound by the terms of the company's articles and must observe the provisions of those articles.
- The articles may require certain specific things of members – for example, payment of an annual membership subscription applicable to their particular class of membership.

### Rights – general

- Members of a company have a range of rights. Some are statutory (arising from the Companies Act), others arise from the company's articles.
- Many of the members' statutory rights cannot be overridden and any attempt to do so (for example, a contradictory clause in the articles of the company) will be ineffective.
- Other rights depend on the terms of the particular company's articles.
- There may be several membership classes, with some differences between the rights of those classes.

### Members' statutory rights (Companies Act 2006)

- Some of the most important statutory rights of company members are:
  1. to attend and vote at general meetings of the members (unless the particular membership class held does not have these rights);
  2. to appoint a proxy to attend, speak and vote at general meetings of the members (instead of the member attending in person);
  3. to vote on written resolutions of the members (providing the member is in a voting class of membership and is an 'eligible member' in respect of that resolution under the Companies Act provisions for written resolutions of the members); and
  4. to be provided with copies of the annual trustees' report and accounts.
- Items 3 and 4 cannot be restricted or removed by provisions in the articles, they are absolute rights.
- Members also have access rights to the company's statutory registers.

### **Matters reserved to the members**

- In addition to their statutory rights, company members have particular rights in relation to matters reserved to the members. These are matters which the members have a formal legal right to deal with.
- Important examples of such matters (which are specified in the Companies Act 2006) are:
  - a) a special resolution to alter the articles (including an alteration to the charitable purposes [objects] where the organisation is a charity);
  - b) a special resolution to change the name of the company (including a change to omit the word 'limited') [this applies unless the articles give a specific power to the directors/trustees to alter the name, which is unlikely];
  - c) removal of a director from office as a director (particular procedures apply and the director has specific rights); and
  - d) removal of an auditor before the end of the relevant period of office (particular procedures apply and the auditor has specific rights).

### **Class rights**

- Members in a particular class of membership have various protections with regard to their membership class rights. Those rights cannot be varied, directly or indirectly, unless the relevant class of members gives its consent to the variation.

### **Liabilities**

- Members of a company have limited liability protection, in their capacity as members. This means that, under normal circumstances, they cannot be held liable for the company's debts and its other liabilities.
- The guarantee sum is fixed at the incorporation of the company and cannot subsequently be increased. It is not possible to set different levels of guarantee for different classes of members.
- Members of a CLG have a theoretical financial liability, under the terms of their members' guarantee. This is the sum each member agrees to pay if the company is ever wound up (typically it is a nominal sum, usually just £1). The guarantee is only payable if a liquidator makes a call for the payment during the course of winding up (this is extremely unlikely in practice).
- Members of a company limited by shares are liable to pay the sum they have agreed to pay to the company on their shares (often the nominal value of each share, sometimes the nominal value plus an extra sum of share premium). The members stand to lose that sum, in the event of insolvent liquidation, but they cannot be pursued for any additional contributions to the debts and liabilities of the company.

### **Procedure**

- Most procedures relating to the nature, exercise and alteration of members' rights are governed by Companies Act provisions.

### **Filing requirements**

- There are filing requirements at Companies House when members exercise some of their rights and when they deal with matters reserved to the members.

## **Notes**

### **Governance**

- The members' role in relation to governance of companies is largely passive (governance is a matter for the directors/trustees). In most companies, the only part members play is to appoint some or all of the directors/trustees at the annual general meeting (check the particular organisation's articles as the relevant rules and procedures do vary from one company to another).

### **Trading subsidiaries**

- Usually the parent organisation will be the only member. However, if the organisation is unincorporated, the subsidiary's shares will have to be held by individuals acting as nominees.
- It is common for the parent organisation to have additional rights and powers, beyond the members' rights and powers that apply under the Companies Act. Check the terms of the subsidiary's articles to establish the exact details in each case.

# Members' rights, duties and liabilities – unincorporated members' associations

## Introduction

An unincorporated members' association is one of the most common legal forms used by sports organisations, particularly those small in size. It is, inherently, a membership organisation that has both members and a governing committee.

Note that the association has no independent legal existence of its own, rather it is simply a collection of individuals associating together for an agreed purpose and on agreed terms (as set out in its constitution). This has very important practical and legal implications for the individual members, as well as for the members of the committee.

## Checklist

### Requirement to have members

- There must be at least two members in any members' association. The constitution may specify a higher minimum number of members.

### Duties – statutory

- There are no specific statutory duties of membership as unincorporated members' associations are essentially governed by common law, there is no specific Act of Parliament (as there is for companies or CIOs).

### Legal responsibilities

- Members are bound by the terms of the association's constitution and must observe those provisions.
- The constitution may require certain specific things of members – for example, payment of an annual membership subscription applicable to their particular class of membership.

### Rights – general

- The rights of members of an unincorporated members' association depend on the terms of the particular association's constitution.

### Class rights

- There may be several membership classes, with some differences between the rights of those classes. If so, the constitution may provide particular procedures that must be followed to alter the rights of any membership class.

### Members' statutory rights

- The members do not have specific statutory rights.

### Matters reserved to the members

- Some matters may be reserved to the members by the terms of the particular association's constitution, which may require a formal resolution of the members in particular situations or to deal with particular matters.
- Typically, these matters are likely to require a members' resolution:
  - altering the constitution (including the charitable purposes, where the association is a charity);
  - changing the name; and
  - winding up.

**Liabilities**

- The members of an unincorporated members' association do not have the protection of limited liability.
- While the greatest risks of personal liability rest with the members of the committee and the officers of the association, in some extreme situations there can be a risk of members' liability.

**Procedure**

- Procedures required – for example, in relation to members' decision making, annual general meetings or other general meetings of the members, etc. – will depend on the terms of the particular association's constitution.

**Filing requirements**

- An unincorporated members' association without charitable status does not have to report to any external regulator but should produce externally scrutinised accounts. A charitable unincorporated members' association is subject to the usual public filing obligations for unincorporated charities.

**Notes**

- There is no separate public register of unincorporated members' associations.



# Members' rights, duties and liabilities – Charitable Incorporated Organisations

## Introduction

A CIO is one of the legal forms used by charities. It is, inherently, a membership organisation that has both members and trustees.

## Checklist

### Requirement to have members

- There must be at least one member in any CIO (usually there will be more).
- The constitution is likely to specify a minimum number of members.

### Duty – statutory

- A member of a CIO has a specific statutory duty to exercise their membership powers in a way the member decides, in good faith, will be most likely to further the charitable purposes of the CIO.

### Legal responsibilities

- Members of a CIO are bound by the terms of the particular CIO's constitution and must observe the provisions of that constitution.
- The constitution may require certain specific things of members – for example, payment of an annual membership subscription applicable to their particular class of membership.

### Rights – general

- Members of a CIO have a range of rights. Some are statutory (arising from the Charities Act and the CIO regulations); however, most depend on the terms of the particular CIO's constitution.

### Class rights

- There may be several membership classes, with some differences between the rights of those classes. If so, the constitution may provide particular procedures that must be followed to alter the rights of any membership class.

### Members' statutory rights

- Members of CIOs do not have the same range of statutory rights as the members of a charitable company have under company law. For example, they do not have a statutory right to appoint proxies to attend members' meetings (they may only do so if the particular CIO's constitution permits this).
- CIO members have a statutory right to inspect the CIO's register of members.

### Matters reserved to the members

- Some matters are reserved to CIO members and so require a formal resolution of the members, in particular:
  - alteration of a CIO's constitution;
  - a decision to amalgamate with another CIO;
  - a decision to transfer the CIO's undertaking to another CIO; and
  - a decision to dissolve the CIO.

### Liabilities

- The members of a CIO have the protection of limited liability.

- The members may, or may not, have a liability to contribute to the CIO's assets in the event of a winding up. If they do have such a liability the particular CIO's constitution will state this and specify an amount (typically a nominal sum, probably just £1).

#### **Procedure**

- Some procedures relating to the nature, exercise and alteration of members' rights are governed by the Charities Act and the CIO regulations; however, many depend largely or entirely on the terms of the particular CIO's constitution.

#### **Filing requirements**

- There may be filing requirements with the Charity Commission when members exercise some of their rights.
- There are usually filing requirements when a CIO's members deal with matters reserved to the members.

#### **Notes**

- There is a public right of access to a CIO's register of trustees (but not to its register of members).

#### **Governance**

- The members' role in relation to the governance of CIOs is largely passive (governance is a matter for the trustees). However, individual members should consider their statutory duty as a CIO member when exercising their membership rights (see above).
- In most CIOs, the main role of the members is to appoint some or all of the trustees at the annual general meeting (check the particular CIO's constitution as the relevant rules and procedures do vary from one CIO to another).

#### **Scotland**

- The position regarding SCIOs is broadly comparable. However, note that the statutory duties are:
  - to act in the interests of the SCIO; and
  - to seek, in good faith, to ensure the SCIO acts in a manner that is consistent with its charitable purposes.

# Members' rights, duties and liabilities – Scottish Charitable Incorporated Organisations

## Introduction

A SCIO (Scottish charitable incorporated organisation) is one of the legal forms used by charities in Scotland. It is, inherently, a membership organisation that has both members and trustees.

## Checklist

### Requirement to have members

- There must be at least two members in any SCIO (the English equivalent is permitted to have a sole member, subject to the terms of its own constitution).
- The constitution may specify a higher minimum number of members.

### Duty – statutory

- A member of a SCIO has specific statutory duties:
  - to act in the interests of the SCIO; and
  - to seek, in good faith, to ensure the SCIO acts in a manner that is consistent with its charitable purposes.

### Legal responsibilities

- Members of a SCIO are bound by the terms of the particular SCIO's constitution and must observe the provisions of that constitution.
- The constitution may require certain specific things of members – for example, payment of an annual membership subscription applicable to their particular class of membership.

### Rights – general

- Members of a SCIO have a range of rights. Some are statutory (arising from the Charities and Trustee Investment (Scotland) Act 2005 and the associated SCIO regulations); however, most depend on the terms of the particular SCIO's constitution.

### Class rights

- There may be several membership classes, with some differences between the rights of those classes. If so, the constitution may provide particular procedures that must be followed to alter the rights of any membership class.

### Members' statutory rights

- Members of SCIOs do not have the same range of statutory rights as the members of a charitable company have under company law. For example, they do not have a statutory right to appoint proxies to attend members' meetings (they may only do so if the particular SCIO's constitution permits this).
- SCIO members have a statutory right to inspect the SCIO's register of members.

### Matters reserved to the members

- Some matters are reserved to SCIO members and so require a formal resolution of the members, in particular:
  - alteration of a SCIO's constitution (including its charitable purposes);
  - a decision to amalgamate with another SCIO;
  - a decision to transfer the SCIO's undertaking to another SCIO; and

- a decision to dissolve the SCIO.

### **Members' meeting**

- A SCIO must hold a meeting of its members at least once in every 15 months. Note that there is no opt-out available (as would be the case for a charitable CLG which is only obliged to hold an AGM if its own articles specify a requirement for an AGM).
- The Charities and Trustee Investment (Scotland) Act 2005 does not specify the business for the AGM, so that will be subject to any relevant provisions in the constitution or, if the constitution is silent, the trustees will determine the business to be dealt with at the meeting.

### **Liabilities**

- The members of a SCIO have the protection of limited liability.
- The members may, or may not, have a liability to contribute to the SCIO's assets in the event of a winding up. If they do have such a liability the particular SCIO's constitution will state this and specify an amount (typically a nominal sum, probably just £1).

### **Procedure**

- Some procedures relating to the nature, exercise and alteration of members' rights are governed by the Charities Act and the CIO regulations; however, many depend largely or entirely on the terms of the particular CIO's constitution.

### **Filing requirements**

- There may be filing requirements with the Office of the Scottish Charity Regulator when members exercise some of their rights.
- There are usually filing requirements when a SCIO's members deal with matters reserved to the members.

### **Notes**

- There is a public right of access to a SCIO's register of trustees (but not to its register of members).
- Note that a SCIO cannot convert to another legal form, amalgamate with another SCIO or seek its own removal from the register of charities without dissolving itself.

### **Governance**

- The members' role in relation to governance of SCIOs is largely passive (governance is a matter for the trustees). However, individual members should consider their statutory duties as a SCIO member when exercising their membership rights (see above).
- In most SCIOs, the main role of the members is to appoint some or all of the trustees at the annual general meeting (check the particular SCIO's constitution as the relevant rules and procedures do vary from one SCIO to another).

# Membership classes and variation of rights

## Introduction

Some, though not all, sports organisations have a formal membership. Whether or not there is a membership structure depends on the legal form of each organisation. Certain legal forms require a membership – for example, companies limited by guarantee, charitable incorporated organisations, and unincorporated members' associations.

Members' rights will in part depend on the terms of the particular governing document. In some legal forms there are also some statutory members' rights (for example, companies or CIOs).

A membership organisation may have different classes of membership, where the rights and responsibilities of each class differ from those of the other classes.

## Checklist

- If there are different membership classes, the governing document of the organisation probably specifies this and sets out the main rights and responsibilities of each membership class.
- Some detailed matters, such as the different membership application fees or annual subscriptions for the various membership classes, the members' code of conduct and the disciplinary procedures in relation to members, may be dealt with in subsidiary rules or bye-laws.
- As a rule of thumb, the most fundamental rights of membership should be dealt with in the main governing document (e.g. voting rights at general meetings of the members) while lower level matters, such as different annual subscription levels, can be dealt with in subsidiary rules or bye-laws.
- Care must be taken to ensure the rights of membership classes are respected and properly observed.
- Particular care must be taken when making any changes to membership classes that involve any variation of the rights of that class.
- The governing document and/or statutory provisions may specify how changes to membership classes can be made and provide safeguards for membership class rights.
- The consent of the members in the class affected is likely to be needed in order to make changes to the rights of a membership class. This will probably apply to indirect, as well as direct, variations of the rights of a membership class.

## CIOs

- The CIO regulations state that if a CIO has more than one class of membership then the different classes of membership together with their voting rights, *must* be set out in the constitution.

## Companies

- If a company has more than one class of members, it is strongly advisable to set out details of each membership class and the rights of the classes in the articles.

## Procedure

- Procedures vary, depending on the legal form of the organisation and applicable provisions in its governing document and/or statutory provisions.
- A variation of rights often involves changes to the organisation's governing document.

### **Unincorporated members' association**

- The constitution should set out procedures for varying membership rights and altering membership classes. This may include obtaining a specified majority vote in favour from the membership class affected and/or the membership as a whole.
- Some changes to the constitution are likely to be necessary in order to make the changes and/or in consequence of the changes.

### **CIOs and SCIOs**

- The constitution should set out procedures for varying membership rights and altering membership classes. This may include obtaining a specified majority vote in favour from the membership class affected and/or the membership as a whole.
- Some changes to the constitution are likely to be necessary in order to make the changes and/or in consequence of the changes.

### **Companies**

- In a company, the variation of the rights of a class of members requires the prior consent of each membership class affected. This is the case for indirect as well as direct variations of rights.
- If the articles provide a written method for variation of membership class rights that must be followed. Otherwise class consents must be obtained either:
  - in writing from at least three-quarters of the members in the class affected; or
  - by a special resolution passed at a separate meeting of the members in the class affected.
- If the alteration requires any amendment to the articles, a special resolution of the membership as a whole will also be required to make that change.
- The courts generally take a wide view of what is a membership class right and what is a variation of a members' class right. It is therefore advisable to err on the side of caution and obtain class consents if there is a possibility that any change amounts to a variation of rights.

### **Filing requirements**

- The creation or removal of a membership class or the variations of the rights of a membership class will need to be notified to relevant regulators where changes are made to:
  - a company;
  - a CIO;
  - a SCIO; or
  - some other legal forms of membership organisation (e.g. a charitable industrial and provident society).

### **Companies House**

- In a company, the creation of a new membership class, the naming of a membership class or the alteration of the name of an existing class, as well as any change to the rights of a membership class, must be notified to Companies House using the relevant forms (or electronic equivalent). Class consents to the variation of members' rights must also be filed, together with any special resolution to alter the articles and a printed copy of the altered articles.

## Notes

### Membership records

- Care should be taken to ensure records are clear with regard to who the formal members are and what class of membership each member holds (e.g. the register of members or membership list).
- Contemporaneous records should be made when new members join and when any members leave, to ensure the record of the formal members is accurate and up-to-date.
- The creation of membership classes and the variation of the rights of any class should also be recorded promptly and accurately.
- Note the statutory requirements to keep registers of members that apply to companies, CIOs and SCIOs.

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