# CHARITABLE STATUS

Two major changes in the tax regime for sports clubs were introduced in April 2002.

In his Budget speech, the Chancellor announced that all community amateur sports clubs (CASCs) would be eligible for a package of tax reliefs, whether they were charities or not. These reliefs were brought into law in the Finance Act 2002. For further information on CASC status please see the RYA CASC leaflet (available to download online or by contacting the Legal Team).

At the same time the Charity Commissioners published a detailed guidance note on their recent decision to recognise as charitable

- 'the promotion of community participation in healthy recreation by providing facilities for playing particular sports' and
- 'the advancement of the physical education of young people not undergoing formal education'

The effect of this decision is that, for the first time, sports clubs are able to apply for charitable status provided they satisfy the following conditions:-

- The sport in question must be capable of improving physical health and fitness, and must not be classed as 'dangerous';
- The club must have an open membership; i.e. access to the club facilities must be genuinely available to anyone who wishes to take advantage of them, regardless of ability, although there may be a waiting list for membership in which case admission must be on a first come first served basis;
- Membership must be affordable;
- Any special clothing or equipment is either affordable, or if not then provided free or at a reduced rate by the club;
- More and less skilful players are treated even-handedly by the club;
- The club has a child protection policy in place;
- Social activities and trading (e.g. the bar and fund-raising evenings) are hived off into a separate undertaking [1](perhaps with the same committee members) unless the turnover is the lower of 25% of the club's turnover or £50,000.

[1] It is important that the relationship between the charity and the trading subsidiary is structured correctly so that the charity's funds are not being used to subsidise the activities of the trading subsidiary. Therefore any loans from the charity to the trading subsidiary must be secured by a legal charge over the subsidiary's assets and interest at a market rate must be paid on the loan. The charity should also have an agreement in place detailing the charges it will make on an arms length basis for use of any shared facilities or resources, a licence of the club's name and logo and a licence to use any intellectual property or data owned by the club. The trading subsidiary should not pay any tax as it is able to gift aid all its profits to the charitable club.

At first sight these conditions may appear off-putting to some clubs, but every club should at least consider the option. Further comprehensive information in the form of a general guidance note, and frequently-asked questions is available on the Charity Commission's website.

Advice is also available from the regional Sports Council offices, each of which has a dedicated helpline to respond to club enquiries on charitable status.

However easy the Charity Commissioners and the Sports Council are trying to make the process of conversion to a charity, there is no denying that the process can be complex and time-consuming, both in completing the conversion process and in satisfying the management and reporting requirements of the Charity Commissioners thereafter.

Registering as a charity must be given serious consideration because it is not possible to de-register.

**CHARITIES ACT 2006**

The Charities Bill was published in 2004 and it has taken a number of years to reach the statute books, finally receiving Royal Assent in November 2006. The 2006 Act came into force in stages from 2007 to 2010.

The objectives of the Act are to:

- modernise charity law and status to provide clarity and a stronger emphasis on the delivery of public benefit;
- improve the range of legal forms a charity can adopt;
- develop greater accountability and transparency;
- ensure independent, fair and proportionate regulation.

**Amateur Sport:**

The 2006 Act provides, that for the first time, the advancement of amateur sport itself is a charitable purpose (less restrictive than 'community participation in healthy recreation') provided the club in question meets the 'public benefit' test. A club will have to demonstrate how it meets the 'public benefit' test thus 'public benefit' is no longer presumed.

The definition of 'sport' within the Act is 'sports or games which promote health by involving physical or mental skill or exertion'. The reference to health within the definition of sport is not supposed to create an additional bar to charitable status but rather is an 'entry point for sport to prove that it promotes public benefit'.

Facilities must be open to all, not restricted according to competence (though different teams can exist within a club). The level of club's fees will have a bearing on the public benefit question.

Amateur is not defined within the Act but it is believed that the Treasury's definition of amateur in Schedule 18 of the Finance Act 2002 will apply. This prohibits payments to players but allows:

- payment for cost of obtaining coaching qualifications; and
- reimbursement of reasonable travel expenses incurred by players and officials.

Unless there is specific provision (either by enactment or in the Charity Commission Guidance) amateur will bear its ordinary meaning of 'non-professional'.

Under the Act there is a simpler process for registration as a charity and simplification of the regulatory framework. The annual income threshold rises from £1,000 to £5,000 and there is still scope for voluntary registration for charities with income below this level.

**Protection for Trustees:**

Where it is in the charity's best interests, charities will, subject to certain safeguards, be able to purchase trustee indemnity insurance to indemnify them against personal liability where they have acted in good faith. The consent of the Charity Commission will, in most situations, no longer be required.

The Act also allows the Charity Commission to relieve trustees of personal liability where they have acted in good faith.

**Remuneration of Trustees:**

Trustees (or connected persons) may be remunerated in return for services if:

- the amount is reasonable and agreed in writing;
- the trustees agree the arrangement is in the charity's bests interests;
- less than half the trustees are benefiting in this way at any one time;
- there is no express prohibition in the charity's constitution;
- the remuneration does not apply to services provided in the trustee capacity;
- the remuneration does not apply to services provided under a contract of employment;
- the Trustee Act 2000 duty of care applies when considering the arrangement.

Thus the Act allows trustees to be paid for additional services, for example, for legal advice or painting.

**Charitable Incorporated Organisation:**

The Act introduces for the first time the Charitable Incorporated Organisation. The aim of this vehicle is to combine the best elements of a limited company with the best elements of charitable status for use by the charitable sector.

A CIO has limited liability and acts as a corporate body. Incorporation gives a charity its own legal personality which means that it can enter into contracts, own or lease property and employ staff all in its own name.

The rules within Scotland and Northern Ireland are different from England and Wales.

## GUIDANCE ON THE FIT AND PROPER PERSONS TEST:

The Finance Act 2010 introduced a new 'management condition' for tax purposes for organisations in receipt of UK charity tax reliefs, this includes charities. In order to satisfy the 'management condition' individuals must be fit and proper persons to be 'managers' of the organisation.

The purpose of the test is to ensure that charities are not managed or controlled by individuals who present a risk to the organisations tax position.

The term 'manager' is defined in the legislation as persons having general control and management of the charity and applies to the trustees of charities, directors of corporate charities and any other officials having general control and management over the running of the charity or the application of its assets.

There is no definition of 'fit and proper person' within the Act however HMRC has published Detailed Guidance on how it intends to apply the test to those who have general control and management of a charity. This can be found at www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test. HMRC has also published a Model Declaration for Fit and Proper Persons which it suggests should be used by a charity for trustees/officers/directors etc appointed after 5th April 2010 to ensure that it has complied with its duty to ascertain the fitness of its 'managers'.

It is reassuring to note that HMRC's default position is that it considers charities will have given proper consideration to the suitability of their managers and that consequently they are fit and proper persons. HMRC is only likely to take action where it becomes aware of information that suggests managers are not fit and proper persons.

It is important to note that HMRC will not act as a clearance service to confirm that particular managers are fit and proper persons; although in exceptional circumstances, such as the intended appointment of a person who may be considered not a fit and proper person, it will work with charities to ensure that they meet the management condition.

Where HMRC is concerned that a manager may not be a fit and proper person it will notify that person of the grounds for concern and give them the opportunity to challenge HMRC's view; the charity may be included in the discussions. If HMRC determines that someone is not a fit and proper person it will notify the charity and advise what it must do and by when.

As one might expect the factors that point to a manager not being a fit and proper person include, but are not limited to, individuals:

- with a history of tax fraud;
- with a history of other fraudulent behaviour e.g. identity theft;
- for whom HMRC have knowledge of involvement in attacks against or abuse of tax repayment systems;
- for whom HMRC have information or evidence pointing to a heightened risk of involvement in other fiscal or financial impropriety;
- who are barred from acting as a charity trustee by a charity regulator or Court, or being disqualified from acting as a company director.

HMRC will expect charities to be able to demonstrate that they have given proper consideration to the suitability of people they appoint to a position of trust and influence, particularly where they are able to exert control over finances and tax matters. It is up to individual organisations to decide how they will give proper consideration to the suitability of managers and that the managers are fit and proper persons. There is no statutory procedure to be followed, however, HMRC has published a suggested procedure which is contained with its Detailed Guidance (referred to above).

Where a charity innocently appoints a person who is not fit and proper it will not necessarily automatically lose access to tax reliefs, provided it can show due diligence and that the failure to satisfy the condition has not prejudiced the charitable purpose of the organisation HMRC has the discretion to treat the charity as having met the 'management condition'.

The management condition applies to Gift Aid with effect from 1st April 2010.

You may wish to look at our Comparison of CASC and Charitable Status which can be downloaded from our website:
http://www.rya.org.uk/clubs/support/management/constitution/Pages/legalcharitablestatus.aspx

**CONTACTS:**

Charity Commission
PO Box 1227
Liverpool
L69 3UG

Direct Tel: 0845 3000 218
Fax: 0151 7031 555
www.charity-commission.gov.uk

HMRC Charities
St Johns House
Merton Road
Bootle
Merseyside L69 9BB

HMRC Tel: 08453 020203/
www.hmrc.gov.uk

Haysmacintyre
Fairfax House
15 Fulford Place
London
WC1V 6AY

Tel: 020 7969 5500
Fax: 020 7969 5600
Email: marketing@haysmacintyre.com
www.haysmacintyre.com

Deloitte & Touche Sport
Deloitte & Touche
201 Deansgate
Manchester
M60 2AT

Tel: 0161 455 6303
Fax: 0161 455 6013
Email: sportsteamuk@deloitte.co.uk
www.sportconsulting.co.uk

For further details kindly contact the RYA Legal Team on 023 8060 4223 or legal@rya.org.uk.

**RYA Responsibility Statement:**

The RYA Legal Team provides generic legal advice for RYA members, affiliated clubs and Recognised Training Centres. The information contained in this Guidance represents the RYA's interpretation of the law as at the date of this edition. The RYA takes all reasonable care to ensure that the information contained in this Guidance is accurate and that any opinions, interpretations and guidance expressed have been carefully considered in the context in which they are expressed. However, before taking any action based on the contents of this Guidance, readers are advised to confirm the up to date position and to take appropriate professional advice specific to their individual circumstances.