

Proposal To Change The Legal Status Of Gairloch Boat Club

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When I was looking at the possibility of our club taking over the ownership of the boat park from Highland Council (by means of a Community Asset Transfer), I realised that the current legal status of the club (an unincorporated club) was probably not robust enough to carry it out. There are a number of options, but the one which other clubs seem to be adopting is to become a charity (a Scottish Charitable Incorporated Organisation or SCIO)

Even if we do not go down the route of Community Asset Transfer, the change to a SCIO has benefits in legal protection and opportunities for fund raising.

To carry out the change, if members agree, we would need to change our Constitution, which requires a two thirds majority at a General Meeting.

I've added a few Q and A which may help you to decide whether to back this proposal or not.

Regards, Alistair

Q: What are the potential advantages of charitable status?

A: Grant funding:

Some grant funders, particularly grant making foundations prefer to support charities. This is not the case for all funders but charitable status may increase the options available to you when applying for financial support.

Tax Breaks

One of the most significant advantages of charitable status is the range of tax exemptions and reliefs available to charities.

Q: What are the potential disadvantages of charitable status?

A: These are the features of charitable status that are sometimes seen as disadvantages, although some of them can be regarded as distinct advantages.

Charities must be established for exclusively charitable purposes for the public benefit. This means that a club wishing to become a charity will be limited in the activities it carries out.

Clubs will also need to satisfy the public benefit criteria. All charities must have purposes which are for the public benefit. A charity's trustees (the people responsible for its overall management) must run their charity for the public benefit.

Q: Why do we need to incorporate now, we've managed without problem for years.

A: While a well-managed unincorporated association can limit the risks to committee members, our club holds a number of assets and carries out risky activities. The current climate is more litigious than it has been in the past. An unincorporated association does not have a separate legal personality so ownership of assets lies with individuals acting on its behalf, usually office bearers/management committee.

Leases/formal contracts have to be entered into in names of office bearers. This can cause technical difficulties where there are changes in the people holding these offices.

Legal proceedings cannot be taken by the organisation but only by individuals representing it. Similarly, legal proceedings would be taken out against individuals rather than the organisation.

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Management committee could be personally liable for debts if the organisation were unable to meet its debts and liabilities out of its own resources.

Because it is a more informal structure, may be seen as "less professional" in the eyes of potential funders.

Q: Why can't the liabilities of committee members be covered by insurance?

A: The club has taken out indemnity insurance, but this cannot cover all the potential liabilities of the committee members. It does not cover personal liability of committee members for contractual claims, nor provide protection against financial claims or debt which the organisation cannot meet.

Q: Are sailing and water sports charitable activities?

A: Yes. One of the charitable purposes is the "advancement of public participation in sport".

Q: Would it cost us more to run a SCIO?

A: There are no fees to set up a SCIO but we may incur legal fees to transfer any heritable property. Once the SCIO is running there should be no extra costs except we may need to pay for the independent examination of the accounts. A professional audit of the accounts is not required. (Independent examination is a less onerous form of external scrutiny than an audit and is available, under the Regulations, for charities with a gross income under £500,000, where the gross assets are less than £3,260,000. It is not available where the constitution of the charity or another enactment requires the accounts to be audited. An independent examiner reviews the accounting records kept by the charity and compares them with the accounts prepared from those records. The examiner then writes a report which provides the information required by the Regulations and provides an assurance of whether or not anything has been found that needs to be brought to the attention of readers of the accounts.)

Q: Would we need a more complex accounting system as charity?

A: Receipt & payment accounts, as used by the club at present, are acceptable for our level of turnover.

Q: What are the duties of charity trustees and SCIO members?

A: Trustees must operate in a manner consistent with the charity's purpose, act with care and diligence and manage any conflict of interest between the charity and any person or organisation who appoints trustees. Members are subject to some of the same duties as charity trustees, specifically, they must act in the interests of the SCIO, and seek, in good faith, to ensure the SCIO acts in a manner which is consistent with its charitable purposes.

Q: Most sailing clubs are unincorporated associations, some of which are big clubs with lots of assets, and only a few are listed as SCIOs. If it's OK for them, then why do we need to change?

A: Most of these clubs, like us, were set up many years ago when the options for legal structures were more limited, litigation less common and understanding of the risks lower. The SCIO structure was set up as an easier way to become incorporated and lower risks. It has only been available for six years. It has taken clubs time to become aware of the option. Changing legal structure also requires a commitment from clubs and particularly their committee members to see it through. It is easier to stick with the status quo even if it is not the best option.

I hope that we can give the commitment to change.

Further reading:- <https://www.gov.scot/publications/communities-forming-a-scottish-charitable-incorporated-organisation-template-guidance/>