

Unincorporated Associations

Scottish Law Commission's
Proposals for Reform

Existing forms of non-profit organisations

Company (incorporated association)

- Limited by shares or by guarantee
- CIC

Trust

Industrial and provident society

Unincorporated association

Charitable/Non-charitable

The current law

What is an unincorporated association?

Nothing.

What is an unincorporated association?

General rule: no legal status

No private law capacity

Individual members retain their own capacity and liability

Exceptions? Treated as existing for some purposes:

- Criminal liability

- Tax

The current law

Consequences of absence of legal personality:

- Cannot enter into contracts
- Cannot engage employees
- Cannot sue or be sued by members
- Cannot sue or be sued by others
- Cannot own property

The current law

Examples:

Lease of premises by after-school club

Accident at art club show

Charity which makes drivers redundant

Neighbour injured by cricket ball

Political party with £20 million overdraft!

The current law

Someone must be party to contracts and liable to be sued: who?

The individual who created the liability?

The management committee?

All of the members of the association?

All of the members who authorised the act resulting in liability?

Criticisms of the current law

Out of step with public perception

Unclear

Risks of liability for members

Uncertainty for creditors and others

Illogical

Inconvenient for property ownership

Criteria for law reform

Conformity with public perception

Protection of members and governing bodies

Protection of creditors and claimants

Removal of administrative inconvenience for associations

BUT

Not a legislative barrier

Proposals for reform

Attribution of legal personality to
unincorporated associations

and/or

Creation of new corporate vehicle for
organisations which are not "charities"

Attribution of legal personality

Effects: capacity to contract

- Association enters into contracts on its own behalf (e.g. with employees)
- Association can contract with individual members
- Liability limited to association funds
- Individuals may incur personal liability in certain circumstances:
 - Failure to disclose agency status
 - Exceeding authority
 - Inducing contract by misrepresentation

Attribution of legal personality

Effects: liability for negligence

- Association vicariously liable for acts of its representatives
- Actual wrongdoer remains personally liable
- No personal liability of other members, including office bearers
- Law clarified for insurance purposes

Attribution of legal personality

Effects: association's property

- Association owns its property
- No need for title to property to be held in trust
- Association can be tenant

Attribution of legal personality

To whom?

- Definition of an "association"
- Who needs legal status and who does not?
- Minimum criteria?
 - Size?
 - Seriousness of purpose?
 - Choice?

Minimum criteria

Proposed test: adoption of constitutive document dealing with at least:

Name and address

Objects

Membership criteria

Election procedures

Formalities for alteration of constitution

Disposal of assets on dissolution

Other?

Attribution of legal personality

Automatic, if minimum criteria fulfilled?

Optional, if minimum criteria fulfilled?

Wholly optional?

Contracting out

Attribution of legal personality

Protection of creditors and claimants:

- Access to association funds
- Prior awareness of identity of contracting party
- Action v individual in case of wrongdoing
- Better availability of insurance cover?

Attribution of legal personality

Avoidance of increased regulatory burden

- No new system of registration (?)
- No new obligation to produce accounts

Reduced administrative burden

- No need to transfer property or assign obligations when office bearers change

Attribution of legal personality

Interaction of SLC proposal with SCIOs

- Alternatives
- Suitability of SCIO vehicle for larger (charitable) associations
- New default regime for smaller associations

Benefits of offering a choice?

New corporate vehicle?

Existing possibilities:

- Company limited by shares or guarantee
- CIC – “community interest test”; not charity
- Industrial and provident society: business conducted for benefit of community
- SCIO – when it becomes available

New corporate vehicle

As an alternative to, or
In addition to
legal personality for unincorporated associations?

For all non-profit making associations which are
not "charities"?

For "member-interest" associations?

New corporate vehicle

New register

Minimum content of constitutive document

Internal governance rules?

Disposal of assets on dissolution

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