

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
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A NEW LEGAL STATUS FOR NON-PROFIT CLUBS AND ASSOCIATIONS?

The Scottish Law Commission today publishes a Discussion Paper on Unincorporated Associations. It identifies the legal issues which may affect the tens of thousands of non-profit making associations (including many charities) and clubs and suggests possible ways forward.

In Scotland, and indeed throughout the United Kingdom, unincorporated associations are not recognised as legal entities separate from their members. The consequence of this is that such organisations do not have the capacity to enter into legal relationships, such as in contract or delict, or hold title to land in their own name. This can give rise to unfortunate, and perhaps unforeseen, repercussions for members. For example, it is possible under the current law that a member of an unincorporated association may, by virtue of that membership alone, find himself or herself personally liable in delict to a third party injured at an event organised by the association. It is perhaps not readily apparent to members that, by joining a voluntary group or club, they may be exposing themselves to serious personal financial risk.

The Commission invites comment on the question whether the unfairness and uncertainty inherent in the current law indicate that it is time to make legislative change for Scotland.

Colin Tyre, QC, the lead Commissioner for this project, said:

“The law relating to unincorporated associations and clubs is widely regarded as being in an unsatisfactory state. Many people who join clubs or devote time to the management of voluntary associations are unaware of the personal liabilities which they may incur simply by becoming a member or a committee member. We think the time has come to consider treating such associations as legal entities with their own rights, assets and liabilities.”

The Discussion Paper proposes that the negative consequences which may impact upon unincorporated associations and their members could be remedied by granting to such organisations some form of legal status. There are several ways in which this result could be achieved. The Commission seeks views on whether it would be preferable to attribute

legal personality to all organisations meeting certain specified minimum criteria; to allow organisations to opt-in to such an arrangement either by registration or by statement of intent; to grant certain legal capacities to unincorporated associations without according them the status of legal persons; or to introduce a new corporate vehicle specifically designed for non-profit organisations which are not registered as charities. Comments are requested by 6 March 2009.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Drummond Young, a Court of Session judge. The other Commissioners are Professor George L Gretton, Patrick Layden QC TD, Professor Joseph M Thomson and Colin J Tyre QC. The Chief Executive is Malcolm McMillan.

2. Further information can be obtained by contacting Mrs Gillian Swanson, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk).

3. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO Scotland Bookshop.