

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS 26 NOVEMBER 2009

A NEWS CONFERENCE WILL BE HELD AT 1100 HOURS ON 26 NOVEMBER

RECOGNISING THE EXISTENCE OF ASSOCIATIONS AND CLUBS

The Scottish Law Commission today publishes recommendations to clarify the law affecting tens of thousands of non-profit making associations (including many charities) and clubs in Scotland.

You might think, not unreasonably, that your association or club has a legal existence but, in Scotland and indeed throughout the United Kingdom, unincorporated associations are not recognised as entities separate from their members. Consequently such organisations cannot, contrary to the expectation of most, carry out acts such as entering into contracts, owning property or engaging employees. This lack of legal personality can also give rise to unfortunate and perhaps unforeseen repercussions for members. For example it is possible that under the current law a member of an unincorporated association could, 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 managing or even simply joining a voluntary group or club, they may be exposing themselves to personal financial risk.

Colin Tyre, QC, who was the lead Commissioner on 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. For too long the law has brushed under the carpet the difficulties caused by its failure to recognise these associations as separate legal persons. We think the time has come to treat them as legal entities with their own rights, assets and liabilities.”

The Commission's Report recommends a simple regime with the minimum of administrative burdens. Separate legal personality will be accorded to associations which satisfy certain conditions. The main conditions are that the association has at least two members; that its objects do not include making a profit for its members; and that it has a constitution

containing certain minimum specified provisions. These provisions are: the association's name; its purpose; membership criteria; the procedure for the election or appointment of those managing it; the powers and duties of its office-bearers; the rules for distributing its assets if it is dissolved; and the procedure for amending its constitution. Many associations will already have constitutions which contain these provisions but, for those which do not, the Commission anticipates that style constitutions will be made available, free of charge, on the websites of organisations such as the Scottish Council for Voluntary Organisations.

To ensure that as many associations as possible benefit from the reforms, the Commission recommends that all associations which meet these criteria should be treated as separate legal entities unless they resolve to opt out.

The recommendations also address the protection of those who might have contractual or other dealings with an association with separate legal personality; for example, such an association will be required to disclose its name and official address on documents and publications and certain documents must be made publicly available on application to that address.

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 Laura J Dunlop QC, Professor George L Gretton, Patrick Layden QC TD, and Professor Hector L MacQueen. The Chief Executive is Malcolm McMillan.

2. **A News Conference will be held on 26 November 2009 at 1100 hours** at the Commission's office, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk). You are invited to be represented. Media copies of the paper will be available at the News Conference or can be collected from the Commission's office. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO (tsoshop.co.uk).

3. Further information can be obtained by contacting Mrs Gillian B Swanson, at the above address.