

RDA GROUPS and CIO'S

(Charitable Incorporated Organisations)



1. WHAT IS A CIO?

- a) A CIO is a Charitable Incorporated Organisation. Under this form your charity operates like a company and gets improved protection for the Trustees' liability (by becoming a limited company); however, it is simpler than a normal company, being a specific legal form for charities. It only requires the charity to report to the Charity Commission (or OSCR, in Scotland) and not Companies House.
- b) It was created by the Charities Act in 2005, and was introduced in England in March 2013. (In N Ireland, it will come, but more slowly).
- c) In Scotland the Scottish CIO (or SCIO) came into existence in April 2011 – further guidance and advice is available for Scottish Groups about this.
- d) All new RDA Charities are now set up as CIO's or SCIO's from the onset.

2. BACKGROUND

There are various legal forms that charities can take in the UK. Most RDA Groups were set up as Unincorporated Associations (and many of these still are). RDA National is now advising that ALL Groups should become incorporated bodies and this fact sheet explains what that means, why it important and what to do next.

NOTE – this fact sheet gives broad advice only – before your Group incorporates, you must seek professional advice, either through RDA national or through your own legal contacts.

3. WHAT IS THE DIFFERENCE BETWEEN AN UNINCORPORATED AND AN INCORPORATED RDA GROUP?

- a) In legal terms, an unincorporated RDA Group consists of a group of people who have decided to cooperate to form the Group and deliver the objects of RDA – as defined in the Group constitution. An unincorporated association has no separate “legal personality” from the people who are its members; it is simply an association of people with a common purpose, which has been defined in the constitution.
- b) As such, an **unincorporated Group** will not:
 - have limited liability and a legal personality of its own. This means that any liability or “legal existence” falls to the Trustees and not the organisation, as the law does not recognise the charity as a legal entity. The Groups Trustees will be liable for the repayment of any debts which they have incurred on behalf of the charity that cannot be met from the charity's own funds and are, in theory legally responsible for the actions of the Group (although this should be covered by RDA's Trustee liability insurance except in exceptional cases such as fraud);
 - be able to hold property, for example land or investments, in its own name;
 - be able to sign contracts in its own name – any contract (for example with a landlord or an employee) is, in effect signed between the Trustees and the other party.

- c) As an unincorporated Group cannot own property in its own name, any property will need to be held in the names of trustees to be applied or used for the charitable purposes.
- d) A **Group which is incorporated** has a legal personality distinct from its members and trustees. It has the legal capacity to do many things that a natural person can do. For example, the charity can own property and enter into contracts – when the Trustees sign these documents they sign them on behalf of the charity.
- e) **This means that in an incorporated Group the liability of the Trustees is limited and they have greater degree of protection.** This, in turn should help with recruitment and succession of Trustees, as you can demonstrate that your Group has this protection for any potential new Trustees.

4. WHY SHOULD OUR GROUP INCORPORATE?

- a) As the scale and complexity of most RDA Group activities increase so do the financial and other risks. The main advantage of incorporating is that it offers better protection from personal liability to trustees and members, by allowing the Group to act in a legally “more mature” way.
- b) Once incorporated, the Group becomes a “legal person” in its own right, quite separate from the trustees/directors and the members. So, for example, when the Group enters into a legal agreement – the company not the individuals who sign the contract) will be liable for any debts or other liabilities. (Note – under the current arrangement, Trustees are protected in simple contracts by the RDA Trustees liability insurance). As is always the case, if the trustees act illegally they may well be held personally responsible!
- c) As a legal person in its own right, a Group can hold land, investments or other property. Once a Group is registered as the owner of a property, then that title will continue until the property is sold or otherwise disposed of, or until the Group is wound up.
- d) **So after incorporation the trustees will have the protection of limited liability as an incorporated charity has a legal personality distinct from its members and trustees.**

5. WHAT WILL BE DIFFERENT?

- a) In operational terms, nothing changes – the Group continues to operate as it always has. The objects of the charity do not change and most of the rules set out in the constitution will remain the same.
- b) The new incorporated Group will be a new legal entity and will have a new charity number – so any assets or belongings have to be transferred to the new incorporated charity.
- c) The Group will have a new Constitution. As with the old constitution, the new Constitution defines why the charity exists and what the rules are governing how it is managed.
- d) RDA has a standard Constitution which has been agreed with the Charity Commission (for England & Wales), OSCR (for Scotland).
- e) The beauty of being a CIO means that the group only has to report to the Charity Commission (or OSCR, in Scotland)

6. WHAT DO WE NEED TO DO NEXT?

- a) **First – don't panic!** There is no immediate need to rush to do this, unless your Group has an employee, or your Groups has undertaken burdensome contractual obligations – which means you should do as soon as possible.
- b) If your Group owns land or buildings, or has plans to do so, it makes sense to move ahead with incorporation sooner rather than later
- c) **Second - get some advice** – if you are not sure about incorporation please get some advice. You can get this from
 - RDA UK
 - The RDA Trustees Lawline
 - If you have contacts with a sympathetic lawyer they may be able to help (it is useful to ensure they understand some charity law)
- d) When you have decided to incorporate, please contact Amanda Perkins at RDA National office before you do anything. She will be able to help you through the process and for smaller Groups there are no costs involved. **Please note, even if you are using your own system and lawyer, it is important that Amanda is made aware.**
- e) As RDA now has its own standard Constitution, it is important that you use these. **If you do not, it may incur cost, if you have to make a change.**
- f) Depending on the level of complexity of your Group, you may need to pay for legal advice to help with the change – as a basic rule of thumb – the simpler your Group is, the lower the cost will be.
- g) Once the process is complete, you need to sign a **new Membership Agreement with RDA National** – as you will have formed a new legal body.

7. FURTHER HELP AND ADVICE

Amanda Perkins, Executive coordinator, RDA National

Tel: 01926 476303 email: aperkins@rda.org.uk

Group support Tel: 01926 492915 email: groupsupport@rda.org.uk

RDA Lawline – 07788 313298