

<b>Neil Park Consultancy</b>
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Neil Park had been commissioned to complete some consultancy work on SUS' behalf. He has been asked to consider whether SUS should become incorporated and the benefits of charitable status.

Please see his report below. Neil will join us at the meeting to go through his findings and to answer any questions that arise.

It is hoped that a decision will be reached at the meeting and Neil will then complete any further work and help SUS through any changes.

**SUS Executive is asked to:**

Item
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| ➤ Digest the report and prepare any questions for Neil Park |
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# **SCOTTISH UNIVERSITIES SPORT**

## **An Overview of the Benefits of Charitable Status**

**Neil Park  
Edgewood Consulting**

**May 2008**

## **Introduction**

At the meeting of the Scottish Universities Sport (SUS) Executive Committee meeting in February 2008 it was agreed to conduct a short investigation into the possible merits of SUS considering adopting Charitable Status.

Edgewood Consulting was contracted in May 2008 to conduct this work and to provide in the first instance a brief for consideration at the meeting of the Executive on 23 May 2008.

In investigating the possible benefits to SUS of pursuing Charitable Status, it is in the first instance worth considering the current legal status of SUS and other possible options available to the organisation.

## **Current Position**

Established in 2005, at present SUS is what's legally termed an "unincorporated association" and is governed under the terms of reference as detailed in its Constitution. Its current annual budget from latest accounts is circa £120,000.

### **▪ An Unincorporated Association**

This is the most common structure used by the vast majority of the smaller sports organisations and sports clubs, where the members come together and agree to establish the organisation or club with its own rules and operating procedures. These are then set down in the Constitution.

The Constitution sets out the purpose (aims and objects) and rules of the organisation and is a fairly basic document which helps to ensure smooth and proper running of the affairs of SUS including the broad objectives (e.g. what SUS wants to do or provide for its members), the different forms of membership, how SUS is to be managed (e.g. the Executive Committee, Working Committees and Fora) and how the members control the organisation through the AGM.

It's an "Association" because SUS does not have a separate and distinct legal identity. For legal purposes, SUS is regarded as a voluntary coming-together of its members - literally, an association of members.

One consequence that SUS should be aware of with this type of structure is that - on the rare occasions that something does go seriously wrong - ALL the members of the association are liable. So, if SUS goes bankrupt, all the members could be liable for the debts, irrespective of their individual financial circumstances.

Increasingly, the majority of Governing Bodies, through the *modernisation programme* promoted by Sports Councils, are "incorporating" or becoming a Company Limited By Guarantee.

## ▪ **Incorporation as a Company Limited By Guarantee**

Forming or converting SUS to a Limited Company would enable it to become established as a legal entity in its own right, separate from the individual members.

There are two forms of Limited Company:

1. Companies with an issued share capital, where ownership and control lies with the shareholders. This form is generally inappropriate for sports organisations and clubs.
2. Companies limited by guarantee, where the members of the company each guarantee to pay a nominal sum (usually up to £5 each) in the event of the company being unable to meet its obligations. This form is usually used for sports governing bodies, organisations and clubs wishing to incorporate as a company.

There are several advantages to this structure as because SUS would be a distinct legal entity, it would be easier for SUS to enter into contractual arrangements e.g. to borrow money, own buildings, or stage very large events.

SUS itself, rather than the individual members, would be responsible for its obligations and debts (unless one of the officers has acted negligently or fraudulently, in which case the individual remains personally liable) and the individual members can only be held responsible for the debts and obligations of SUS up to the nominal value of their guarantee.

The regulation and administration of Limited Companies is however more onerous and there are legal penalties for failure to comply.

All Companies require various legal instruments such as a Memorandum and Articles of Association (which replace the existing constitution) and these must be registered with Companies House.

The annual accounts must be presented in a prescribed form for Companies and also lodged with Companies House where they are open for public inspection.

All Companies are subject to the provisions of Company Law; they are run by "Directors", and some members may potentially be prohibited from becoming a Director because of their previous involvement with other companies or their financial status.

In recent years some smaller sports clubs have investigated becoming a Mutual Society, with limited liability and regulated by the Financial Services Authority, however this option has been found to be inappropriate for larger sports bodies.

## ▪ **Registration As A Charity**

The Charities and Trustees Investment (Scotland) Act 2005 and the similar Charities Act 2006 (applying to England and Wales) have both introduced modernising reforms to charity legislation.

It is now possible for sports organisations to apply for registration as a charity, particularly relevant in Scotland where it has been agreed that "sport" qualifies as a "charitable head".

There are two main benefits.

1. Charitable registration establishes the organisation as a corporate body and legal entity (as distinct from the voluntary association of members in an unincorporated body).
2. Charities are also able to benefit from more favourable tax treatment including Gift Aid on donations, discretionary relief on rates and other tax benefits.

To meet the charitable registration requirements, SUS would have to meet two criteria.

First it must provide one of several charitable purposes.

These now include: "the advancement of public participation in sport" where sport is defined as physical skill and exertion and which have a health benefit; and "the provision of recreational facilities, or the organisation of recreational facilities, with the object of improving the condition of life for the person for whom the facilities or activities are primarily intended".

For the latter, presently SUS itself does not provide facilities, as these are provided by individual member institutions.

Secondly, SUS must demonstrate that it provides a "public benefit".

Guidance on this aspect is still being developed: in essence SUS would need to show that its activities (or facilities) are generally available to the public without being unduly restrictive.

Charitable registration requires the organisation and its officers to comply at all times with charity regulations, including the annual provision of a trustees report and accounts (in a prescribed format) and be open for periodic inspection by the regulator.

A major part of the regulator's role (Office of the Scottish Charity Regulator for charities registered in Scotland) is to ensure public confidence and trust in all charitable activities.

- **The Benefits to SUS From Charitable Status**

As stated above, to qualify for charitable status and to be included on the register of charities held by OSCR, SUS would need to:

- have one or more of the charitable purposes set out in the Act (and no non-charitable purposes)

(Note: The most obvious would be h) “the advancement of public participation in sport”, as mentioned above, however there are others where SUS may feel it would contribute, eg: in d) the advancement of health or l) the advancement of equality and diversity)

- to provide or intend to provide public benefit in Scotland or elsewhere

The principal benefits of charitable status are as already stated tax-related.

Special advantageous reliefs and schemes concerning Income Tax, Corporation Tax, Council Tax/Rates and others are available to recognised charities.

Charities do pay VAT although there are exemptions available for various activities.

In addition, charitable status is beneficial to fundraising.

Many grant-giving trusts and foundations can only give funding to registered charities and as such, “charity” is a very emotive word and can be very persuasive in encouraging the general public to donate in a variety of ways.

It would be a concern, as experience of obtaining charitable status for BUCS has shown, that for SUS to comply with the charitable purposes described above would be difficult given its current focus on the development of competitive and personal development opportunities for students and staff within HE in Scotland.

**It should also be noted, that increasingly the regulators generally across the UK are becoming more aware of the “abuse” of charitable status and in particular are more stringent in their investigations into increased trading for commercial purposes by some charities through, for instance, advertising revenues and sponsorship promotional activity on web sites.**

## **Conclusion**

Any thoughts of registering as a charity by SUS should be considered in respect of its future strategic direction, rather than on financial terms and the current and future resources at its disposal to manage future governance requirements, charity regulations and any additional income generated (eg: as a direct distributor of bursaries to students) against expenditure.

It terms of where it is now it might be more appropriate for SUS to consider incorporation, as described above, developing its current Executive Committee as a Board of Directors, while leaving the existing objects, management infrastructure of committees and membership criteria relatively untouched.

Developing a clearer vision for the growth of SUS in tandem with incorporation would then allow SUS to consider becoming a Company with charitable status in the future.

The benefits of favourable tax treatment including Gift Aid on donations, discretionary relief on rates (currently SUS pays no rates) and other tax benefits might be more advantageous at this stage, when a better understanding of the need for this cost benefit and the application of this income might be clearer.

Any increase in commercial income could be dealt with through a trading arm of the Company.

The Director of "SUS Limited" could then be considered for appointment as the Trustees of the charity, provided of course that the individuals are aware of their responsibilities and are not disqualified from acting as charity trustees.

Should SUS determine that initially incorporation is the best option at this stage further advice and guidance on the change process and development of Memorandum and Articles can be provided within the terms of this work.