There are several different options for becoming incorporated. Many of our members that look to become incorporated opt for becoming a co-operative as it is a good fit for allotment associations.

Options for Associations taking on leases, self-management or the ownership of land:

Unregistered association

As an allotment association operating as an unregistered association you would have no legal identity, so you would be unable to own land, trustees would have to do this on your behalf, the association cannot take legal action or take out any form of contract in the associations own name, you would need to appoint individuals to represent the group. It is however, possible to enter into a Lease as an unregistered association The Association concerned will need to have a clause within their Constitution to allow the appointment of Trustees (a minimum of two trustees) also a clause that covers the Trustees having the right to attend Association meetings even if they cease to be committee member. There should be a minimum of two Trustees appointed often three or four. This is due to the fact as Trustees, they are responsible for the payment of the rent and any breaches of the Tenancy Agreement. When entering into an agreement of this kind if the trustees are prepared to accept the risks involved that is fine, another option is to look at trusted persons insurance, this type of insurance protects trustees against personal liability when their organisation or a third party makes a legal claim against them. Finally, if the risks are seen as not acceptable to the trustees you may wish to consider one of the options listed below. The advantages of being limited as well as the distinct legal identity separate from that of members, the association can buy and sell property in its own name, may also defend legal proceedings in its own name. The other aspect that is important is the protection of individual members, the personal liability of members is limited to the amount they agree to guarantee. Under company law the management committee would generally have no personal liability unless they:

Act fraudulently

Are fined for a breach of statutory duty or a criminal offence

Act in breach of trust or duty

Continue running the company when they know that it is or will inevitably become insolvent.

Charity

If you wish to go down the route of raising the capital to purchase the allotments as the association, you will have to become a Limited Company in some format and there are a number of ways that this can be achieved. Charitable Trust is a type of unincorporated property in accordance with a trust deed. The advantages are that they can be set up quickly and relatively cheaply, trusts may carry out trading activities that are consistent with their activities. Administration is relatively cheap and simple; however, accounts must be kept in accordance with trust law. Amendments can also be made to the deed, provided that there is provision for this within the deed. The main disadvantages are that as a Charitable Trust you would have to register with the Charities Commission and further information can be obtained from www.charity-commission.gov.uk. Trusts which are unincorporated mean the trustees may be personally liable for contracts entered into by the trustees as with unincorporated associations, trusts have no separate legal existence. The Constitution of a charitable trust is called a trust deed.

Under the Charities Act 2011 it is not possible to become a charity without a governing document or a legal form. Charitable status can bring many advantages including tax relief, wider access to grant funding and a positive public image. Unless it is an exempt or excepted charity an organisation that meets the statutory definition of charity has an annual income of £5000 or more must register with the Charity Commission. The Charity Commission does not generally register new charities with an income under the £5000 limit but does provide model documents. To be recognised as charitable an organisation must be able to demonstrate that it operates for the benefit of the public and that its activities fall wholly within one or more of the charitable purposes set out within Section 3 (1) of the Charities Act 2011. For an organisation to be a charity each of its purposes must be for the public benefit, which has two aspects the benefit aspect and the public aspect.

Charitable incorporated organisation

It is also now possible to create a charitable incorporated organisation (CIO) this is designed specifically for charities; this option has the benefit of a corporate structure but without the complexities of company law. The main advantage of this format is of being a legal entity as a company however, CIOs enjoy a number of further advantages over a charitable company including:

Only one regulator the Charity Commission

Less onerous accounting regulations

A single annual return and simpler filing requirements

Lower costs

Straightforward arrangements for mergers

Simpler constitutional flexibility group and any losses resulting from their actions which are in breach of trust

A clear set of duties for charity trustees and members that reflect its charitable nature

The transfer of property can be difficult and hence if going down this route you would need to take further advice from a Solicitor. The disadvantages include meeting the requirements of the charity registration, therefore subject to the restrictions. Trusts are essentially undemocratic, unlike other legal structures there is generally no membership structure, although a trust deed can allow for members and elected trustees. The trustees are generally the only people with legal powers to make decisions relating to the trust. The main disadvantages CIO’s have all the restrictions of charitable status, also they are more complicated to set up and run than other incorporated associations. The legal structure is new and therefore untried.

Co-operative

A Co-operative (now under the Co-operative and Community Benefit Societies Act 2014) formerly Industrial Provident Society has the benefit of incorporation, groups which go down this route must prove that they are either a bona fide co-operative or acting for the benefit of the community. The main advantages here should be low legal fees, it is possible as an Allotment Association to register using NSALG (as the sponsoring body) model rules lodged with the Financial Conduct Authority (FCA). Registration under this format limits the chance of mistakes, may reduce the fee payable and can also shorten the time taken to register. It is relatively simple to convert into a company limited by guarantee at a later date and where benefiting the community may qualify for charitable status. Most importantly, committee members are protected from personal liability under contracts and can generally be personally liable only if they act fraudulently, or in breach of trust, or continue to run the organisation when they ought to know that it has no reasonable chance of avoiding insolvent liquidation. The disadvantages: the registration process is slower, although 15 working days is quoted at present, the documentation subject to more scrutiny than charities, the registration costs are substantially more costly that for companies, however using NSALG as sponsor can reduce the fees to as little as £40, depending on the number of changes required. This type of group would be regulated by the FCA and further details can be obtained from www.fca.org.uk Annual returns must be submitted to the FCA and a register of members and officers must be kept and available for members of the public. This model does fit the way in which allotment associations operate and many members are incorporated using this option.

Company Limited by Guarantee

Thirdly, Company Limited by Guarantee, usually has substantial commitments, entering into contracts, holding property, employing staff may be worth registering as a limited company. The advantages include that the organisation has separate legal identity and this will enable it to hold property and take legal action in its own name, members personal liability is limited, unless they act fraudulently or in breach of trust. A limited company can also register as a charity if its objects are exclusively charitable. The constitution of a limited company consists of two parts:

The Memorandum of Association – this contains the company’s aims, the powers it has to pursue and the extent of the members’ liability

The Articles of Association – this describes the Company’s rules, including its procedures for electing the committee members (company directors) and keeping accounts.

The disadvantages include the regulation by Companies House, also the requirement to submit returns and to notify of changes within the directors, there is a requirement to keep a register of members. Further information can be obtained from www.companieshouse.gov.uk

Community Interest Company

Finally, the Community Interest Company (CIC’s) this new vehicle was established by the Companies (Audit, Investigations and Community Enterprise) Act 2004. These are limited liability companies designed for social enterprises (non-charitable, not for profit organisation pursuing community benefit) A CIC can be a private company limited by guarantee, or by shares, or a public limited company. They are regulated by the Regulator of Community Interest Companies. A CIC will need to satisfy a ‘community interest test’ that is to show that its activities are carried out in the interests of the community or wider public and that access to its benefits will not be confined to an unduly restricted group. CICs cannot distribute assets to its members – this is known as the asset lock. A CIC is a corporate body and therefore has the same advantages as any other company. Since a CIC cannot be legally charitable, it will not have the benefits of charitable status. Further information can be obtained from www.bis.gov.uk/cicregulator/ A community interest company is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. CICs tackle a wide range of social and environmental issues and operate in all parts of the economy. I have attached some further information relating to CIC’s government guidance.

Choosing to Incorporate

It is sensible to incorporate if an organisation:

Employs staff

Owns or expects to own land, buildings, investments or other substantial assets

Is or expects to be involved in activities, leases or contracts, where there is a financial risk and/or

Is finding it difficult to recruit governing body members because they want the protection from personal liability that comes with incorporation.

Incorporation may not be suitable if an organisation:

Does not employ staff, own property or investments, or have a long-term lease or contracts.

Does not expect to last for a long time.

Does not have the administrative capacity (or desire) to comply with the paperwork requirements and external rules about how it operates.

Does not want its details of members and governing body to be public.

Does not want to put onto the members of its governing body, the extra responsibilities and liabilities involved with incorporation (However, without incorporation they would have all the responsibilities and risks which arise from not being incorporated).

Looking further into process for going down the limited company route, it would be necessary to gain the agreement of the membership. For example, the NAS reviewed their own rules, and they went to the AGM in York, June 2016. These rules were accepted by the membership, and they were then accepted by the FCA. So, if the Association adopt the sponsorship rules as they stand, registration will cost £40. Amendments to the rules can increase the registration fee on a sliding scale.

With regard to the process, most constitutions outline the procedure for dissolving the current unregistered association and transferring any assets to another organisation. You will need to inform and transfer the following, although individual circumstances may include notifying other parties:

Any contractual arrangements you have in place, including leases

Software or IP Licenses

Any registrations that you are holding

Bank accounts

Insurance companies

Policies and procedures may need to be amended

Written and electronic documentation

Gas, electricity and telephone services if any applicable

Suppliers

HMRC

Here is summary document of the legal forms >

Here is a summary of the pros and cons of becoming incorporated >

If you are interested in moving forward with one of these options, then please do get in touch to have a conversation with one of the legal team.