

Sailing for the Disabled – Manx Charity No. 325
Proposal to convert the charity into a charitable company limited by guarantee

1. What is it we are doing?

Sailing for the Disabled (“SFTD”) is currently established as an Unincorporated Association which is effectively a group of individuals who have come together to provide sailing activities for disabled people and who do not have limited legal liability.

The proposal is to convert SFTD into a charitable company limited by guarantee.

2. Why are we doing this?

We are proposing to convert SFTD into a charitable company primarily to limit the personal liability and risk of the Charity’s trustees.

The current Association is run by its trustees. The trustees are the members of the charity’s committee. The trustees owe a range of duties to the charity, e.g. to act with the necessary care and within the objects and powers of the charity. If the trustees cause loss to the trust, either through a lack of proper care or by spending money for purposes outside the charity’s objects, they can be called upon to refund the charity out of their own resources.

This principle does not apply as much to directors of a charitable limited company unless they act negligently or outside the Governing document/ Constitution – the Memorandum and Articles of Association.

The most important distinction is that unlike a company, the Unincorporated Association does not have its own legal personality. This means that the charity can only do those things which are specifically set out in the Constitution, if the Trustees act otherwise they could become jointly and severally personally legally liable for such acts. The debts and other potential liabilities of third party claims which cannot be met out of its own resources or insurance arrangements can similarly become the joint and several personal liability of the Trustees.

Joint and several liability means that a Trustee could be liable for a proportion or the whole liability depending upon the collective ability of the Trustees to meet such.

It is now considered best practice for charities in the Isle of Man to be incorporated, in the form of a company limited by guarantee, if they provide services to users, as is the case with SFTD.

3. What is the view of the current committee

The committee has been discussing this matter for some time and a subcommittee consisting of Anthony Charnley, Chris Cope and Chris Wood has been formed to progress the matter with the requirement that the committee is updated monthly. The Committee are unanimous in their support for this matter.

4. Will we become Sailing for the Disabled Limited?

No, there is a specific provision in Isle of Man Company Law that charities can dispense with the word “Limited”. We have made an application for such exemption.

5. Will we keep our current charity number?

No. We are forming a new charity which will have a new charity number but the same name. The current charity will be dissolved after all the assets and liabilities are transferred.

6. How will the transfer be made?

At an Extraordinary General Meeting (“EGM”) on the same date as the Annual General Meeting (“AGM”) during October 2021, members will be invited to approve the dissolving of the current charity which will gift all of its assets and liabilities to the new charitable company.

7. What date will the transfer be made?

We are still finalising the decision but are considering making the transfer at the end of the current financial year on 31 March 2022.

8. What are the cost implications?

There will be some cost to conversion as signage, documents and leaflets will need to reflect the new charity number. There are no significant legal or professional fees in converting. There is a requirement to file certain documents annually which may attract fees if not filed within prescribed time limits.

9. What does it mean to members?

The only change members will notice is a new registered charity number. The name will remain unchanged. The membership form will be amended to include a guarantee to pay the sum of £1 in the event of the charity being unable to meet its debts.

10. What does it mean to our donors?

The change will be neutral to donors as we will still be a charity just constituted in a different way.

11. Who will the shareholder of the new company be?

The company will have no shares in issue so have no shareholders but guarantee members. Each member will be liable for £1 in the event that liabilities exceed assets on winding up of the charity.

12. What other Isle of Man Charities are structured as a company?

It is quite normal for charities that provide services to communities to set themselves up as limited companies. Isle of Man Food Bank, Isle of Man Carriage Driving for the Disabled, Isle of Man Live at Home Scheme, Jurby and North Community Initiatives and Parkinson's Disease Society, are just a few examples.

13. Will the constitution change?

The new company will be formed using specific incorporation documents that have to be pre-approved by the Attorney General Chambers. These are largely generic to all charities. The charity will then have rules which will be the same as its current constitution, except where matters are covered in the incorporation documents. The Codes of Practice will remain unchanged.

14. How will the charity be run?

The intention is that the company will have a limited number of directors (together the "Board") and Committee(s) who will run the charity day to day. The Committee(s) will have more members and have a broader base than the Board. Not all Committee members will be directors and not all members of the Board have to be members of the Committee(s).

The Trustees of the charity are sometimes referred to as the Directors of the Company but they are one and the same.

15. Will this not create duplication?

No, this structure is very common in commercial and charitable organisations. The Board sets the broad tone and strategy, the Committee(s) deal with the day to day running of the charity reporting to the Board. We would expect the Board to meet quarterly and the Committee(s) to meet monthly.

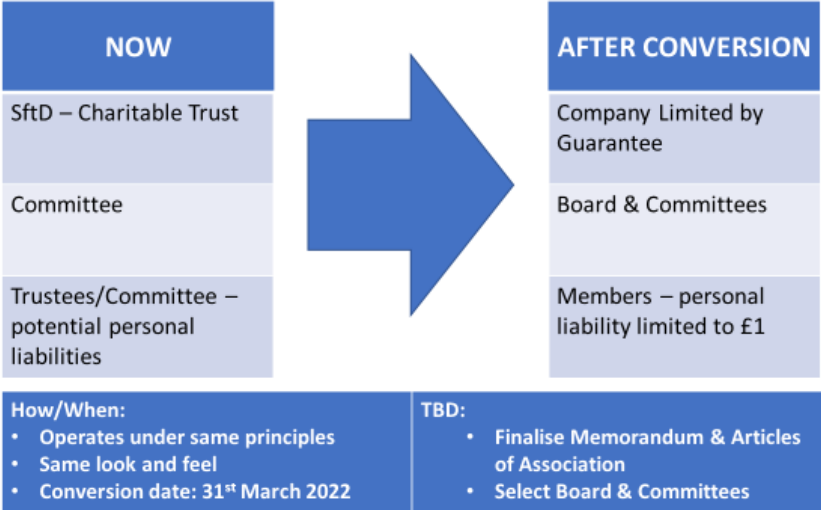
16. What do I as a member need to do?

The purpose of this FAQ is to inform you of the plan and seek your support at the EGM by voting for this matter. There will be nothing else for most members to do during this process.

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Sailing for the Disabled Conversion to Limited Company



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