

Recommended Model Club Constitution Guidance Notes (January 2022)

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Understanding the Legal Status and subsequent rules of the Club

It is important for those forming a Club and those who are updating or reviewing their constitution to understand the nature of a “Members Club” and its legal status and responsibilities. This will help to understand why Swim England and its Regions require the inclusion of certain aspects in the Constitution or Rules of an affiliated Club.

A “Members Club” does not have a legal existence as an entity (i.e. separate from its members). The Club can therefore neither sue nor be sued in its own name but only through its Officers. It is important to appreciate that in legal terms there is a risk to the Officers and, strictly speaking, the members in that they may be sued for the Club’s debts, or damages for personal injuries and other claims if not adequately covered by insurance. Included within this guidance are recommendations with regard to Club insurances.

The Recommended Unincorporated Model Club Constitution (sometimes referred to as the ‘Club Rules’) does contain appropriate indemnity clauses which, if adopted by a Club, will cover Committee members liabilities provided those liabilities are incurred whilst acting entirely within the Club Rules and Swim England Regulations and Policies. The importance of adopting an indemnity clause and for members to then act in accordance with the Club Rules and guidance issued by Swim England cannot be underestimated. To do otherwise, means a member will not qualify for the full benefit of the Swim England insurance cover provided with membership.

In addition, the members of a Club have duties and liabilities to each other. The source of these duties and liabilities is principally the Constitution or rules of the Club. These rules are treated by the law as a contract between the members.

Clubs are under the control of the members themselves and it is the members that must see that the rules are observed. It is important that a full and up to date list of members is kept at all times and that a Club has a clear policy in relation to matters such as the admission and expulsion of members. The day-to-day administration of a Club is usually delegated to the control of Club Officers and a Committee. The Committee in turn may have the power to delegate to sub-committees.

It is, however, most important to appreciate that if anything were to go wrong the Committee, Officers and even the members may be personally liable and for that reason it is strongly recommended that Clubs adopt this model Constitution and this will help to minimise the prospect of claims arising due to disputes with individual members.

The rules of the Club constitute a contract between the members. It is most important that new members are provided with and sign for a copy of the current rules and by-laws of the Club when they are accepted into membership. Any failure to do this may present the Club with problems in subsequently seeking to rely upon the conditions of the “contract” comprised within the rules, for instance where the Club becomes involved in a dispute with the member concerned. In this situation the Club may experience difficulty in enforcing the contract because the conditions were not drawn to the attention of the member at the time he/she was admitted. Similarly, any amended rules must be communicated to the wider membership and it is recommended that this be undertaken by individual notification rather than simply placing a notice on a Club notice board, either online or a physical board.

There are legal limits placed upon the ability of “minors” (persons under the age of 18 years) to enter into contracts. Whilst younger members may be given “rights” e.g. voting, this is

different to being able to enforce “responsibilities” (e.g. a contract). For this reason, it is strongly recommended that an acknowledgement from the young person’s parent or guardian be taken. This is referenced at the end of the Constitution and must appear on the Club membership form.

Insurance

Because of the legal position of unincorporated associations and of the prospect of individual members and Committee members being personally liable to outsiders it is imperative that Clubs obtain comprehensive insurance cover. AFFILIATION TO A REGION (AND HENCE SWIM ENGLAND) PROVIDES THIS COVER TO ALL CLUBS AND MEMBERS OF AFFILIATED CLUBS.

This insurance includes:

- Public Liability Insurance (including member to member cover)
- Employers Liability Insurance (a compulsory insurance where applicable). The Certificate of Insurance must be displayed at all places of work of the employee(s)
- Personal Accident insurance
- Directors and Officers insurance
- Legal Expenses Insurance

For full details of scope of insurance cover provided through Swim England see our website on the following link <http://asa.howden-sites.co.uk/clubs>.

Insurance cover will not extend to any activities excluded from the scope of Insurances. A list of current excluded activities appears on the link above.

If a Club has a legal problem with regard to an employee, then guidance can be obtained from the legal services helpline operated by DAS. Details of this service can be accessed from the link above.

If the advice of the DAS is sought it is mandatory for the Club to comply with the advice given for that specific issue. Failure to do so may result in insurance cover being declared not applicable to the Club/member.

Liability of Members/Officers

A member of a Club has a liability to pay his/her annual subscription and such other fees as are properly determined by the Club.

There is no general right of any Committee member or Officer to seek to obtain an indemnity from the membership for any losses or expenses suffered by him/her in the performance of his/her duties. However, an individual member or group of members may become liable for losses arising if a court finds him/her/them to have been negligent. This will particularly be the case if an individual member is made specifically responsible for any particular aspect of the Club’s activities.

Normally liability for contracts made with a Club depends upon who authorised the particular contract e.g. if a contract is authorised by the Committee then it is the Committee that is liable. Individual members must take care to ensure that the basis upon which he/she enter

into any contract on behalf of the Club is clearly understood by the person with whom he/she are dealing to avoid the contract being treated as entirely personal to the member. A member may also incur personal liability if he/she exceeds any authority given to him/her by the Club.

In relation to any contract on which all members are liable any member who pays more than his/her proper share is entitled to recompense from the other members. Similarly, a Committee member may claim recompense from other members of the Committee in respect of a Committee liability. However, an individual member of a Club or Committee member who becomes liable on a contract personally is not entitled to an indemnity from the other members of the Club unless there is a rule to that effect. A very clear rule and procedures for giving authority to make contracts is desirable.

Alternative Legal Structures

Affiliated clubs can take any structure, providing the requirements for affiliation are present. Some clubs decide not to use the unincorporated Members Club template and instead, follow an alternative structure which may be more suitable to their own needs.

Further details and [template structures](#) are on the Swim England website and below are options more commonly followed:

(i) Company Limited by Guarantee

If members wish the Club to benefit from limited liability, incorporation under Company Law is one option. The form of incorporation generally adopted by Clubs is that of a Company Limited by Guarantee rather than by shares. The main benefit of incorporation from the members' point of view is that their liability is then limited to a nominal sum (typically £1) which the member guarantees to pay on the winding up of the company. Other benefits are that the company itself can hold property and sue and be sued in its own name. The disadvantages of incorporation are cost and lack of privacy. Costs are incurred in setting up a company in the first place and subsequently in preparing and filing the annual return and audited accounts. Details of the Club will thus, at least notionally, be available to the public. It should also be remembered that the members of the Committee who are appointed directors of the company will owe additional liabilities as company directors.

(ii) Companies are regulated by Companies House

The rights and responsibilities of the Club's Officers and members must be clearly spelt out in the Articles of Association of the company. It is strongly recommended that professional advice be sought by anyone contemplating forming a company. Company law can be complex and it is to be noted that failure to comply with company rules and regulations may invoke legal jurisdiction above and outside of Swim England.

(iii) Charitable Incorporated Organisations (CIO's)

CIO's are a new type of structure which combines limited liability with charitable status. Unlike charitable companies, which fall within the jurisdiction of both Companies House and the Charities Commission, CIOs are solely regulated by the Charity Commission.

Further, detailed information is available on their website:

<https://www.gov.uk/guidance/how-to-write-your-charitys-governing-document>

(iv) Registration as a Charity or Community Amateur Sports Clubs (CASC)

We are often asked as to whether Swimming Clubs can obtain registration as a charity thereby gaining additional taxation and other advantages. This is often combined with the creation of a company limited by guarantee.

Any Clubs who believe that their own special circumstances may entitle them to seek charitable status should seek professional advice and, before proceeding further, are recommended to visit their very comprehensive website:

<https://www.gov.uk/government/organisations/charity-commission>

Alternatively, members may wish to consider the creation of a Community Amateur Sports Club ("CASC") which enjoys certain taxation concessions. Further guidance and documentation is available on the Swim England website:

<http://www.swimming.org/swimengland/community-amateur-sports-club/>

Additional background information on CASCs;

<http://www.cascinfo.co.uk/>

<https://www.gov.uk/government/publications/community-amateur-sports-clubs-detailed-guidance-notes>

Supporting information and explanatory notes related to the recommended Model Constitution (number relates to appropriate section)

(1) Club Name

The name of the club must reflect the area or location that the majority of the Club activities take place within. The name must not be similar to, or could be mistaken for, an existing affiliated Club.

(2) Club Objects

The objects of the club clearly define the disciplines that the Club will offer. It is important that this section clearly represents the Club activities.

This section also details the relevant Swim England Policies and Procedures that a Club is expected to follow including but not limited to the Swim England Regulations, Equality Policy, Code of Ethics and Wavepower.

A Club that is formed from within a School or similar organisation whose membership is limited could add into 2.3 the internal policies that would be expected from the educational establishment but it is important to understand this would be in addition to and not replace the Swim England Policies and Procedures that are required to be followed by an affiliated Club.

In this section the Club would add in the County Association and Swim England Regional names that they would be affiliated to / represent. This is where the main activities of the Club take place.

(3) Membership

It is important to highlight that Club membership also consists of membership to Swim England, the Region and the County all or some having applicable fees attached.

All Clubs need to ensure that any person assisting in any way at Club activities must become a member with all applicable fees being paid to ensure that person is entitled to Swim England insurance.

As a general rule no person has a right to become a member of a Club. The Club can refuse to admit any person to membership however it is important that any power of refusal is clearly set out in the Club rules to avoid any suggestion that any person who meets certain criteria is eligible for membership for instance membership may be refused if the character or conduct of an individual is likely to bring the Club or sport into disrepute or agreed entry standards are not met. A

Swim England advise against adding in any subjective words or phrases that do not add value to the statement as grounds for refusal or that could be misinterpreted.

An important principle to uphold is that a membership cannot be refused on discriminatory grounds adhering to the Equality Act 2010 (as may be amended).

It is possible to amend the Model Constitution to allow refusal of membership without a reason being given. There is nothing in law to prevent a Club from adopting this clause and

would more commonly be used for an affiliated School based Club whose membership is limited to current pupils of the School only.

If a Club adopts wording to restrict the membership (i.e. a School based Club) it is known as a “closed Club”. The alternative is to adopt the proposed wording in section 3 that will create application for membership as an “open Club”. It is important to consider the following when setting any membership criteria for the Club;

- The adoption of the wording for an open Club will mean a reason will be given for any refusal of membership to a Club in addition to the ability to appeal against a refusal of membership to an independent panel that will have the task of considering as to whether or not the reason for refusal is fair. The significant benefit gained from adopting an “open Club” membership is access to funding e.g. from Lottery Grants or in seeking charitable status in the future.
- Swim England’s Equality Policy has at its heart, the vision of being able to offer access to swimming to all on a fair and equitable basis. It is more in keeping with the Equality Policy that Clubs should adopt the “open membership” format. However, it is not a mandatory requirement for Clubs to adopt the “open membership” format.
- In respect of a Club adopting the “open membership” format, Swim England would comment that it is not the governing body’s intention that any Club, as a result, should then lose the purpose for which it exists. For example, it is acceptable for some Clubs to exist for elite swimming purposes and to refuse membership on the basis that the applicant’s standard is not high enough. Caution is particularly advised on issuing reasons for refusal of membership, insofar as they do not contradict discrimination law. Refusal of membership on the example given may also prevent some Clubs from achieving charitable status however the overriding factor is that a fair process must be available if membership is refused.
- It is also worth noting that in accordance with guidance produced by the Equality and Human Rights Commission clubs/societies can restrict membership to people who share a protected characteristic.

Point 3.8 is important to highlight as parents who are not members in their own right are not entitled to vote on behalf of their children. This can be resolved by including 3.9 into your Club constitution that for every family with one or more children under the age of 18 a minimum of one parent or guardian must be a member of the Club. This will also require all relevant fees to be paid for that individual. It is important to note that 3.9 is optional.

(4) Membership and other fees

Swim England fees are payable for all members between January and December each year. The annual renewal of Swim England, Region and County fees is due on the 1st of January each year. A Club may want to adopt the same membership year. A school club may adopt a term / school year approach. Either is the choice of the Club but Swim England membership renewal and fee collection remains the same.

In January each year Clubs will receive notification via the Online Membership System (OMS) that they can access their renewals list online to renew the Club membership and pay the relevant fees. If a Club has outstanding fees from the previous year they will not be able to submit their renewals until the monies owing has been paid.

Clubs which have not paid their Swim England renewal fee by 28th February will be suspended.

In this section a Club can detail if additional membership fees are applicable to the club in addition to those already stated above. Reference to suspension for failure to pay membership fees can be included in 4.3. Additional information can also be added into 4.4 regarding remittance of part or all of the Club fees to address issues of social inclusion.

The main source of finance for any Club may be its members' membership fee. There should be a clear rule either setting out the amount of the membership fee or, preferably, delegating the setting of annual fees to the Committee. There is no objection to different rates of subscription for different types of members e.g.: reduced rates for young swimmers, officials, helpers etc.

(5) Resignation

This section gives detail on how a member can resign from the club and the process that should be followed.

A member is deemed as having resigned from that Club if Club fees remain unpaid for two months or more. The Club must inform the member that this is the case.

Any member who does resign or whose membership is terminated should not expect any or part of their annual membership fee returned to them but a Club may want to add in some wording allowing for a refund to be issued by the Club in certain circumstances.

A Club is required to inform both Swim England the relevant Swim England Region should a member resign or have their membership terminated when still owing money or property to the Club.

(6) Expulsion, Disciplinary Action and Dispute Resolution

In order for a Club to exercise any power in respect of the above it must act in good faith, comply strictly with its own rules and follow Swim England Judicial Regulations for handling Internal Club Disputes ([Swim England Handbook Reg 100-106](#) inclusive) and satisfy the rules of natural justice.

It is imperative that a Club understands and follows the process outlined in the Swim England handbook to ensure a fair and amicable resolution to a dispute is first sought before the more formal process takes place.

It is important to note that failure to process a renewal application cannot be treated as expulsion unless due process has taken place. In such circumstances a Judicial Tribunal will have regard as to whether the procedure outlined in the regulations has been adhered to by the Club.

A Club can give detail in this section on any disciplinary procedure they will adopt in addition to following the required Swim England procedure i.e. how to initially raise the issue to a club officer.

(7) Committee highlighting Executive Officer roles and Club Welfare Officer

Section 7.1-7.3 gives detail on the make-up of a Committee. A Committee shall consist of a Chairman, Secretary and Treasurer (known collectively as 'Executive Officers of the Club') and a desired number of other elected members all of whom must be 18 years or older and members of the Club. Committee numbers should be manageable and not all roles should be considered committee roles i.e.; The person leading on the Club shop doesn't have to be a committee role.

The primary role of the Committee is to manage the Club. Should a committee member take on a secondary role then that is ancillary to their main committee role function. Other volunteer / paid roles within the Club are additional to support the committee.

Junior members (i.e. Club Captains) may be invited to attend meetings for a particular discussion but this would be without the power to vote.

To avoid any perception of conflict of interest and to assist in succession planning it is desirable that the Officers should not be members of the same family. Where this is not possible at least one of the Officers should not be related to the other Officers and signatories to payments and orders should not all be members of the same family.

This conflict of interest and relationships is particularly important to consider when appointing the Club Welfare Officer so that person can remain independent and impartial at all times.

Paid employees may attend committee meetings however all conflict of interests should be declared. Any staff contracts should include reference to this.

The arrangements for the day-to-day management of its affairs are a matter for individual Clubs to decide. The management of the affairs of a Club is usually delegated to an elected Committee. Because a Committee's powers are delegated from the membership all Committee members must agree unless the rules provide for a majority of members to determine issues.

Provided the Committee acts within the powers granted to it, it is up to the members of the Committee to determine their own methods and procedures. However, there is one important limitation on a Committee's powers; that they are to be exercised in the interests of the Club as a whole and not in the interests of any particular section of the Committee.

Where the Committee is involved in making a decision, any individual participating in that decision making process and who has an interest in the outcome must declare that interest and take no further part in deciding the outcome. For example, it would not be appropriate for a Club Coach to decide on the terms and conditions of his/her own contract of employment with a Club.

The elected members of the committee shall be voted on at a Club AGM and their term of office is detailed in 7.4. There are two choices and the Club must select the one most appropriate for them.

It is important to include the necessary number needed to ensure a quorum is present for any decisions that require a vote as detailed in 7.5.

It is important to ensure that the Club Committee maintain a log of all accidents/incidents at Club related activities. Swim England membership department should be informed of these

and all records should be kept for a period of six years or in respect of an injury to a child they should be kept for six years from when they turn 18 years of age.

Club Chair / Chairman / Chairperson

The term “Chairman” is not intended to denote any particular gender. It is used in the modern-day gender-neutral sense of the word. However, it is of course open to Clubs to adopt an alternative (appropriate) term if they prefer, such as “Chair” or “Chairperson” and this can be amended in the Club Constitution as required.

The main roles of the Chairman are (but not limited to);

- To provide direction and leadership to the club, dealing with issues as and when they arise.
- To manage the processes surrounding internal disputes and discipline required under **Regulation 100-106.**
- To chair meetings; setting the agenda to support the development of the club and to ensure that proceedings are conducted in a proper manner.
- To oversee decisions made by the management, sub committees, officers and other club personnel.
- To prepare and present the annual report in conjunction with the Secretary (if necessary).
- To help ensure the correct and smooth running of all aspects of the club in accordance with its rules, constitution and by-laws, Swim England Regulations and UK law.

If a member wishes to make any direct overt-criticism of a Club Committee member or other member of the Club in a general meeting they must first notify the Chairman in good time to enable the Chairman to advise such person in advance of the meeting in order that he/she is able to prepare himself/herself for such criticism.

As a separate obligation on the Chairman of the meeting when an Official or member is the subject of criticism the Chairman must specifically afford such person the opportunity to respond to include if requested consideration of an adjournment to enable the person to collect his/her thoughts.

Any failure to follow these principles may give rise to a complaint to the Swim England Judicial system brought under a breach of the Code of Ethics. It is not intended that the Code of Ethics should be used to stifle democratic debate but ethical considerations and indeed common sense decency dictates that advance warning should be given to anyone who is to be the subject of criticism in a general meeting.

Club Secretary

The Club Secretary is usually responsible for the day to day running of the club in administrative terms, dealing with correspondence, organising meetings and ensuring accurate minutes are taken at appropriate meetings. It is important to include the expectations of the Club Secretary within the Club Constitution in terms of timelines connected to Annual or Special general meetings.

It is recognised that certain business discussed in Committee meetings may be prejudicial to the Club (or other persons) if made public (e.g. contracts of employment of staff). Minutes of Committee meetings may be kept private but **ALL DECISIONS MUST BE MINUTED**. It is also recommended best practice for the Committee to issue periodic briefings to members of key decisions made and matters discussed.

The main roles of the Club Secretary are (but not limited to);

- To act as a main point of contact for the club.
- To manage the day-to-day running and administration of the club including all internal and external correspondence.
- To organise committee meetings and AGMs, prepare agendas, take minutes, and distribute and communicate these as appropriate.
- To have a good knowledge and understanding of the roles and responsibilities of other club committee members.
- To maintain up-to-date contact details of all members, committee members, other key club personnel and Swim England secretaries at national, regional and county levels.

Club Treasurer

The Treasurer is responsible for the financial accounting of the Club. The Treasurer is required to make regular reports at meetings of the Club as to the financial position and prospects of the Club.

It is acknowledged that a number of club transactions will be via online banking. If this is the case it is recommended that at least two signatories / authorisation methods are set up to approve online transactions. If this facility is not offered by the Club's bank, then the Club should ensure that at least one other signatory authorises in advance payments made by the main signatory operating the account. This is set up as good practice to protect the treasurer as the Executive Officer in charge of the finance of the Club. Any authorisation should be recorded in writing and retained by the Club. It is also good practice for online transactions and bank statements to be reviewed regularly by the Committee.

As a matter of practice the Treasurer is also responsible for the Club's taxation affairs, in particular VAT returns if the Club is registered for VAT. Subscriptions paid by members of a Club are normally exempt from VAT, but VAT registration may become necessary where income from the sale of swimming kit, etc exceeds the VAT registration limit.

The main roles of the Club Treasurer are (but not limited to);

- To be responsible for all club finances by ensuring adequate accounts and records exist, and that all funds are used appropriately and banked promptly.
- To plan the annual budget in agreement with the club committee and to monitor throughout the year.
- To prepare end-of-year accounts and present to the auditor, management committee and AGM.
- To plan floats with members who would need to collect or pay out cash and make them aware of procedures.
- To be responsible for maintaining records of any wages/salaries paid and for meeting the requirements of HMRC.

Welfare Officer

- The Committee shall appoint a member of the Club to act as Welfare Officer who must be not less than 18 years of age, who should have an appropriate background and who is required to undertake appropriate training in accordance with Wavepower.
- The Welfare Officer shall not be related to or in a relationship with any one of the 'Executive Officers of the Club' or the Club's Coaches or Teachers.
- The Welfare Officer shall not hold another role within the Club. They must remain independent at all times.

- The Welfare officer can be a member of the Committee (or alternatively be invited to attend a meeting of the Committee and all sub-committees for particular disciplines) but will attend without a power to vote. It is important to recognise attendance at meetings will be for the purpose of sharing or addressing matters relating to Welfare.
- The Welfare Officer will make a report to the Committee on any issues relating to Child Safeguarding in consultation with Swim England's Independent Child Protection Officer/Swim England's Safeguarding Team with regard to any particular reported concerns.
- Whilst a Welfare Officer is mandatory for Clubs with members under 18 years of age it is important for Masters or Adult Only Clubs that they also address Adults at risk and nominate somebody who will act as a point of contact for issues raised.

(8) Ceremonial Positions and Honorary Members/Life Members

This section is optional to include in your Club Constitution however the section number should remain with the wording 'REMOVED' included in the Club Constitution.

Where clubs are intending to remove this section of the Club Constitution it is important that the current constitutional process in place is followed

Where Clubs do wish to include this section and make use of their powers to create either a specific time bound Honorary member or Life member, consideration needs to be given to including in the constitution 8.3 as to how these categories may be removed at a future date, if (for whatever reason) the need arises; that is not to say, however, in the event of disciplinary action/expulsion against the individual member which would be governed by the Club's usual procedures as prescribed in their Rules.

It is most likely that such a provision would never have to be used, but it is sensible to adopt all precautions. Please note that since honorary and/or Life memberships are conferred at an A.G.M, they will equally need to be removed at an A.G.M. The Committee would have to make an appropriate proposal in the meeting's agenda, as required in the Constitution, which will in turn put the matter into the public domain.

If any Honorary or Life members are appointed they shall **not** be entitled to vote at meetings and serve as Officers or on the Committee unless any such person shall also be a fee paying member of the Club in accordance with Rule 3. This could mean that the Swim England membership fee is paid by the Club or the individual but would mean that the individual is a paid up member.

If a Club is going to include this section in their constitution they are encouraged to consider the inclusion of a By-law detailing how to achieve / be awarded a ceremonial or life member position.

(9-11) Annual General Meeting and Special General Meeting

These sections give clear and exact detail on when and how Annual and Special General meetings are held or can be called.

The month in which the Annual General meeting is held each year must be included in this section along with the purpose and eligibility to attend and vote at the meeting. It is also important to include and adhere to the time-bound notifications as detailed in this section to ensure the procedure is carried out correctly.

The Club should ensure that when circulating the nominations form for committee positions that the roles are listed as detailed in 9.3. The Club can refer back to Section 7 for the Executive Officer roles and number to be elected if appropriate.

There is a choice in 9.6 as to how proposals can be put forward for consideration at an Annual General Meeting. It is important to consider how this best supports your Club. The proposal method is set for a Special General Meeting.

The age by which you can vote is included in section 11. This is different to the age by which a member can be a Committee member due to the responsibility that is also afforded to the Committee in running the Club. Those coaching or teaching in the Club may be as young as 16 years old and therefore should have a say in the overall running of their Club.

The two main methods of voting used at meetings of Clubs are a show of hands and a poll. Any member may demand a poll unless the rules provide otherwise. A poll is a precise method of ascertaining votes because each vote is recorded either on an individual voting slip or by signing a voting list. Sometimes, to ensure secrecy, typically in the election of Officers, a secret ballot may be used. This is also true for online meetings. An online vote can also be used from those who are present and eligible to vote.

It is Swim England's recommendation that Proxy voting is not used at a Club AGM or SGM and therefore should not be reference within the Club Constitution. If a Club allows meetings to be held online, then a person is able to attend without restriction.

It is normal practice that the Club Chairperson would be the nominated Chair of an AGM or SGM but in some cases this won't be appropriate and therefore the committee or in fact the Region would appoint an alternative that would act independently.

(12-13) Alteration of the Rules (Constitution), Other Resolutions and By-Laws

If a Club wishes to amend its own constitution, then section 12 gives detail on how this should be done.

However, it may be more convenient for the detailed regulations regarding the normal operation of the Club's activities to be in the form of by-laws and this is detailed in section 13. It is usual to leave the making of by-laws to the Committee. The advantage of enabling the making of by-laws by the Committee is that they can be altered in a normal Committee. This is often appropriate for the membership categories and Club Championship conditions.

It is, however, recommended that the fundamental rights and responsibilities of the membership and duties and liabilities of Club Officers are matters dealt with within the main Club Constitution and are not reduced to mere by-laws.

When changing the Club's Constitution, a copy must be provided to the Region to approve prior to adoption by the club. Regional and National contacts can be found [here](#).

(14-16) Finance, Borrowing and Property

Section 14 includes the financial operational requirements of the Club including how money is paid into a Club and should also include the approval method by which any money can be withdrawn. Reference to investing money on behalf of the Club is included but Clubs should ensure they are familiar with any taxation requirements.

Additional information on taxation and sports clubs can also be found at;

www.sportenglandclubmatters.com

www.funding4sport.co.uk

www.gov.uk

It is important to include the financial year in the Constitution (14.6). This date can only be changed following approval at a General Meeting.

The Club is required to maintain full and accurate financial records of its dealings with an independent examination of the accounts taking place and being submitted at the Annual General meeting. "Independent" for these purposes means a person who is not related to and preferably not a close personal acquaintance of the Treasurer or any member of the Committee.

This process has in the past been referred to as an "audit". However, the word "audit" has legal implications which may require an extensive financial process. It is unlikely that most Clubs will wish to pay for this, and because of the complex requirement, it is also unlikely that volunteers will be able to comply with the whole process at no cost. The recommended requirement is for Clubs to have their accounts "examined" as described above.

It is good practice to allow two months between the end of the financial year and the AGM to allow for the accounts to be examined.

Section 15 gives detail on how or if the Club can borrow money, specifically if this is a Committee decision or and specifically there is generally no power to borrow money unless given by the Club's rules which may detail specific uses and also detail on the repayment of such borrowing.

Section 16 refers to property of the Club and how this is managed. Property is anything that the Club owns not just a physical building. Custodians are members of the club who are appointed to manage things on behalf of the Club. These appointed members shall be elected and reaffirmed at a Club AGM for the role of Custodian.

(17) Dissolution

As a general rule an affiliated Club is used only by the members who come together for the non-commercial purpose of providing themselves with the facilities to enjoy their aquatic activity either for competitive or recreational purposes.

Section 17 gives detail on how a Club will manage the assets and liabilities of the Club at the time of dissolution.

If there are likely to be surpluses that arise from commercial trading activities with the Clubs members only (e.g. organising club competitions) then 17.3 gives detail of the distributions of property on dissolution. This would assist the Club in arguing that mutuality applies (the principle that one cannot make a taxable profit out of oneself), with the result that the Inland Revenue would probably treat the surpluses as arising from mutual trading and not be charged to tax.

If the alternative option providing for the property of the Club to be given to a charity or non-profit making organisation is taken one possibility would be for the Club to consider the property being passed to the relevant Region to be used for the development of the sport within the Region. Wording to this effect could be included in 17.3.

NB: Mutual trading rules apply within clubs, but not inter-club (e.g. on an open meet, income from club members would be mutual trading; income from other clubs would not be mutual trading). Further information is available via the Swim England website at: <http://www.swimming.org/swimengland/tax-guidance-for-clubs/>

(18) Acknowledgement

The Club Constitution referred to as the 'Club Rules' must be readily accessible to all members as these constitute a legally binding contract which regulates the relationship of the members with each other and the Club.

The Club constitution should be readily available to all members either included on the Club website or sharing annually at time of membership renewal.

It is a requirement that the acknowledgement appears on the Club Membership renewal and new membership forms to allow all Club members and parent/guardian for those under 18 years of age the opportunity to agree to the responsibilities of membership to the Club. This agreement should be by way of electronic or written acknowledgement by both the minor and responsible adult.

IMPORTANT NOTE:

Where reference is made to any Swim England publication it is important to check that you are in possession of the current edition. Please be especially careful if you only have a photocopy or extracts from a document, as something important may be missing or you might read something out of context.

Should you not be able to access any referenced document or require it in an alternative format, please contact legal@swimming.org