

Report to ACM

Swim England, or more properly the Amateur Swimming Association (Swim England) Ltd, the national governing body (NGB), incorporated in 2017. All but 2 regions – this region and London – have now incorporated or have taken decisions as a presage to the formal act of incorporation.

The rationale for incorporation is as follows:

1. The Region would become a company subject to the Companies Act; this means that there are various statutory requirements which have to be followed in relation to members' meetings etc. Unincorporated associations are not generally subject to any outside scrutiny and their rules and accounts are private documents. Conversely, companies are subject to regulation and must file certain documents at Companies House including annual reports and accounts which therefore become public documents.
2. Limits the liability of Board members.
3. Provides the Region with a separate legal entity and reduces the legal risks faced by individuals in unincorporated bodies.
4. Promotes good governance and transparency.

The law does not recognise an unincorporated association as a separate legal entity distinct from its members or its management committee. An unincorporated association cannot in its own name:

1. Enter into contracts – Problems with any contracts undertaken by the Region would fall upon the person who made the contract.
2. Sue or be sued – This means that any legal claim brought against the Region (e.g. employment tribunals or supplier disputes), would be against the members of the management board, who would be personally liable if there were insufficient assets and/or inadequate insurance to meet the claim. However, if those management board members were directors of a company they would have limited liability (usually £1) and may only be personally liable if they had committed some wrongdoing or if the organisation continued to trade when insolvent.
3. Take on a lease or own property – Any property of the Region must be held by trustees. Problems can arise where property continues to be vested in individuals, whether formally appointed as trustees or not.
4. Employ Staff – There is a workaround with Swim England to allow the Region to employ its staff

The Regional Management Board now recommends that the Region follow the lead of the NGB and other regions to incorporate, hence the motion before the meeting

“That the Region incorporates, as a Company Limited by Guarantee not having a share capital, called Swim England South East Ltd, on the terms set out in the accompanying report, with effect from 1 January 2023”.

The details of this are set out in the following paragraphs.

Company Type

It is proposed that the Region incorporates to become a Company Limited by Guarantee and not having a share capital. This is the model adopted by other regions, none of whom have sought, for instance, to have charitable status.

Directors

Having reviewed a number of board structures, and subject to the proposals regarding Officers, below, it is proposed that there would be 12 directors, the same number as there are members of the present Regional Management Board. However, there would only be 9 elected directors: there would also be 3 directors who would be appointed by the Board, for their skills and experience, rather than appointed by the Membership. The directors would have a term of office of 3 years, with one-third retiring each year, with a maximum of 3 consecutive terms, unless there is no option. In this connection, any previous appointment terms, under the present unincorporated structure, would not be counted. As part of the transition to the new Company, existing terms of office of the members of the Regional Management Board would be maintained.

Officers

In addition to the Directors mentioned above, there would be a Chairman and a Finance Director. It is proposed that the appointment of the Chair remain as now, with recruitment through an open process and appointed by the Board. His or her term of office would be 4 years and would be limited to two consecutive terms. The Finance Director would be appointed by recruitment, as with the Chair, but with the ability to appoint from within the Board.

The Board would appoint a Vice Chair, from amongst the Directors, at first meeting after the ACM.

Qualification

To be appointed as the Chairman, Finance Director or a director, individuals must be over 18, not declared as bankrupt or otherwise disqualified by law from serving as a company director. All directors must be a Swim England member and a member of a club within the Region.

Responsibilities of Board

It is proposed that the Company Board maintain all existing responsibilities of the Regional Management Board. However, the Board will have additional responsibilities commensurate with company legislation.

Members of the Company

There will be no shareholders of the Company, but, as with Swim England, there will be "Members". The Regional Management Board proposes that each affiliated club be a member and have one vote, and that each county association in the Region also have one vote. Investigations are ongoing as to the possibility of appointing a club, rather than an identified individual, in order to reduce the administration involved in maintaining the register of members. The Chairman and each of the directors would also be members. If the Region decided to appoint a Company Secretary, that person would also become a member. Liability of Members would be limited to £1 for each member of the Company.

Delivery of the Sport

The current arrangements for Discipline Managers and Discipline Groups, which have worked very well, will continue.