



# RUGBY FOOTBALL UNION

## Advice for Clubs on Charities or CASCs

There have been some changes in the recent Finance Act 2010 which affect clubs designated as charities or Community Amateur Sports Clubs (CASCs) and these are highlighted here so clubs can consider how they are affected.

### ***Fit and Proper Persons test***

The particular element of the new Act most important to note is the introduction of a new Fit and Proper Persons (FPP) test for what are described as the 'management' of the club. This is important because those charities and CASCs that do not meet this requirement may not get the benefits of tax relief and may, in extremis, find their registration is terminated. Clearly this is a worst case scenario but it does underline the importance of this new condition.

At the same time, it is fair to say that both the terms 'management' and 'fit and proper persons' are not clear from the Act itself although Her Majesty's Revenue and Customs (HMRC) have provided some guidance in this area.

### ***Definitions***

In terms of what constitutes 'management' of a Charity or CASC then HMRC's guidance is that it applies principally to trustees, directors, CASC officials and any other officials having day to day control over the running of the charity or CASC. HMRC also say that in the case of a typical small charity it would include the Chairperson, Treasurer, Secretary and cheque signatories.

On the issue of who is a 'fit and proper person' HMRC lists the following factors as those that would lead them to decide that someone is not a 'fit and proper person':

- a history of tax fraud
- a history of other fraudulent behavior
- HMRC knowledge of involvement in abuse of tax repayment systems
- being barred from acting as a charity trustee by a charity regulator or Court
- being disqualified from acting as a company director

It is important to note that just because the charity regulator has accepted a trustee that does not, de facto, mean they are a 'fit and proper person' from a tax perspective.

### ***HMRC checks and actions***

So how will HMRC go about policing this? The first point to note is that HMRC does not intend to routinely ask existing charities to demonstrate their managers satisfy the FPP test. It will assume the charity has satisfied itself that the FPP test is met. It is for the charity or CASC to be able to show they have given proper consideration to the appointment of managers especially where they influence or control financial or tax matters. HMRC recommends that all managers appointed after 5 April 2010 should read HMRC's basic guide and complete a model declaration form to this effect which can be found at

<http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/model-dec-ff-persons.pdf>

Where HRMC do undertake checks they will first look at checks carried out by other bodies so that checks are not duplicated but where checks are necessary on an individual it is fair to assume they may take some time to complete.



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If HMRC identifies a concern about a manager it will notify the individual to provide an opportunity to challenge HMRC's view. Where that is not successful and as appropriate HMRC will advise the charity what to do e.g. to remove the manager within a specified period.

### *HMRC's discretion*

HMRC have discretion to treat the management condition as satisfied even where one or more of the charity's managers are not 'fit and proper persons' where this has not prejudiced the charitable purposes of the charity and where it is just and reasonable to do so. For example, if the person was appointed innocently and is removed HMRC may treat the charity as satisfying the condition throughout the time he or she was acting in a position of financial control.

### *What should we do next?*

It is HMRC's stated view that this should not affect the vast majority of charities but the risk is clear and you should be aware of the issue and try to take steps to mitigate those risks. You should not rely on their discretionary powers to get you out of trouble if it happens to you.

At the very least the new condition will result in an administrative burden for charities and CASCs. In some cases it may put off sports organisations registering under either route. Volunteers may object to being "checked out" by HMRC either directly or if their voluntary organisation asks them to complete the template declaration form. This is something you will need to consider in your volunteer recruitment.

More importantly you should consider taking steps to get all existing people who qualify under the 'management' definition outlined above to complete the declaration form to avoid future problems. It should not be onerous to download the form and get each person to sign it at your next management meeting as the best mitigation of risk.

### *Where can we go for more information?*

Many of you will want to look at this further and should consult the HMRC website. For advice clubs should contact their Funding & Facilities Manager in the first instance:

North – Ted Mitchell [tedmitchell@rfu.com](mailto:tedmitchell@rfu.com)

Midlands – Ross Baxter [rossbaxter@rfu.com](mailto:rossbaxter@rfu.com)

London & South East – Rick Bruin [rickbruin@rfu.com](mailto:rickbruin@rfu.com)

South West – Dave Stublely – [davestublely@rfu.com](mailto:davestublely@rfu.com)

Richard Baldwin the RFU's retained advisor on CASCs and charities can also help advise on these issues and can be reached on [rkbaldwin@btinternet.com](mailto:rkbaldwin@btinternet.com)

For those of you not yet charities or CASCs but who are thinking of becoming one the RFU would still urge you to strongly consider it as the Union believes that the benefits far outweigh the issues of a simple compliance exercise as outlined above.