

Incorporation and the WEA



In April 2004, the WEA's National Executive Committee agreed that it would be in the best interests of the Association for the WEA to be incorporated as a charitable company. This decision will need to be ratified and the detail on how to incorporate agreed at October's WEA National Conference in Manchester.

This document is published as a result of the decision. Its purpose is to:

- explain why it has become an imperative to ensure limited liabilities and make the WEA into a more financially robust organisation on the same basis as other major charities
- explain in basic terms what incorporation means for the WEA
- give notice of a series of Regional events which will provide more detailed information on incorporation and which will allow the NEC to listen to views on the next stages.

During the course of the process, further information will be published on www.wea.org.uk to enable WEA members, volunteers, learners, tutors, staff and partner agencies to keep up to date with developments and to offer feedback.

THE WEA TODAY

In legal terms the WEA is presently an unincorporated charitable trust. Nine Regions and a Scottish Association form a National Association, which employs over 6,000 tutors, at any one time, and approximately 520 staff at Regional Offices and Corporate Services. It provides educational services, amounting to 3.6 million 'learner hours', to a total of 100,000 learners every year.

The WEA has over 19,000 national members and a network of almost 600 active WEA Branches run by WEA voluntary members.

The WEA owns, or leases and manages 45 properties across England and Scotland, and works in partnership with thousands of voluntary and community-based organisations.

In 2003/04 the WEA received an income of £33m, of which £18m was funded through the WEA's national contract with the Learning and Skills Council. The Association is governed by a single body of Trustees, the NEC, who are collectively and individually responsible for the WEA's assets and who manage the Association's charitable affairs.

THE CHARITY SECTOR TODAY

There are over 165,000 charities operating in England and Wales. Of these, the WEA is ranked among the top 0.3%, based on having an annual income exceeding £10m. The list includes organisations such as ActionAid, Community Service Volunteers (CSV), Help the Aged, Oxfam, Save the Children UK and UNICEF UK.

Nearly all major charities are incorporated. This is because of the increasing liabilities associated with legal compliance and employment and property contracts, under UK and EC law, combined with higher expectations and increasing scrutiny by regulators and funders.

By remaining unincorporated, the WEA is placing its Trustees at a high level of personal risk, and as a consequence also faces a tangible threat of withdrawal of funds now and in the future. In addition, the WEA needs to adopt Charity Commission Guidance and the National Council of Voluntary Organisations' (NCVO) 'Best Behaviour' Model Code of Conduct on Governance and ensure that all its operations are fully compliant with charity and company law.

WHAT IS INCORPORATION?

Like the WEA, many charities were originally established as unincorporated trusts.

In law, an unincorporated trust is not a legal entity and cannot enter into contracts in its own right. This means that the charity trustees are required to be named in contracts and accordingly are responsible for meeting the conditions - and liabilities - of any contract.

Where an unincorporated charity is entering into substantial contracts including employing staff, providing services, purchasing property and handling large sums of money, there is a real possibility for personal liability to fall on the trustees.

In the case of incorporation, the organisation becomes a limited company and members of the Board of Trustees have substantial protection from personal liability under the Companies Act.

The phrase 'limited company' can cause concern in the sense that profit-making businesses are generally set up as limited companies, and therefore commercial interest might appear to eclipse that of charitable interest. In the case of charities, the organisation becomes a charitable 'company limited by guarantee for a social purpose', as distinct from a commercial company.

The WEA's charitable status remains unchanged under incorporation as a charitable company.

BENEFITS OF INCORPORATION

There are a range of benefits for charities choosing to move from unincorporated trust status to that of an incorporated company limited by guarantee.

Some of the benefits that the WEA will realise after the process of incorporation are listed here. You will hear more information about these and will be able to ask questions at the Regional events running in February, March and April. Further information about the events is included on the back page of this document.

Main advantages of incorporation:

- **limited liability** – as an incorporated company limited by guarantee, the WEA will gain the benefits of limited liability, subject to the proper running of the company under law, and Trustees will be protected from the current problematic position of unlimited liability
- **legitimacy** – as a charitable company limited by guarantee for a social purpose (and not based on shares like a commercial company), the WEA will have opted for the most widely respected and legitimate legal and financial structure chosen by leading charities like Oxfam, Help the Aged and Save the Children UK
- **accountability** – as both a charity and a company limited by guarantee, the WEA will be fully accountable under charity and company law, offering members, funders, partners, government, education stakeholders and the public the assurance that all activities and monies are being transparently reported; and reports and activities are monitored by the Charity Commission and Companies House
- **strengthened governance** – a new, more independent Trustee body will strengthen the governance and management of the WEA and ensure full compliance with charity law and financial regulations
- **legal status** – as a charitable company limited by guarantee, the WEA will be a legal entity in its own right with full rights in law for property ownership & leasing, financial transactions (bank accounts), contracting, trading and employment in order to meet the charitable objects of the Association, in line with the charity's governing document
- **increased donations** – as a charitable company, the WEA will be able to raise funds and in-kind resources from government, grant-making trusts, the European Commission (ESF), business trusts and the UK Lottery more easily than as an unincorporated trust
- **tax exemption and benefits** – the WEA will not have to pay corporation tax, capital gains tax, stamp duty or inheritance tax and will receive VAT exemptions and rate relief on properties used to further charitable purposes

HOW WILL INCORPORATION CHANGE THE WEA?

In addition to the points outlined above, the main changes occurring as a result of incorporation will happen around governance and legal structure.

In consultation with the Association's legal advisors Bates, Wells and Braithwaite, and a specialist consultant, the NEC has already chosen to adopt a legal structure that will serve and strengthen the WEA's charitable interests and its democratic structures.

The main changes can be summarised as follows:

- **The WEA will move from an unincorporated trust to become a charitable company limited by guarantee for social purpose**
- **A new WEA Board of Trustees/Directors will be formed with roles and responsibilities in line with charity and company law**
- **New independent Trustees will be nominated and able to join the Board of Trustees**
- **The role of the current NEC will be revised in keeping with the responsibilities of the new Board of Trustee/Directors**
- **The WEA's current Governing Document, (the Constitution), will be replaced by a new Governing Document called the Memorandum and Articles of Association**
- **A subsidiary trading company will be formed to ensure legal compliance and raise funds**

More detailed information about these changes and what they mean for the WEA will be available at the Regional events.

You will have an opportunity to ask questions and your feedback will be requested regarding the membership and working arrangements of the Board of Trustees and the NEC.

Based on feedback collected at the events, the NEC will consider the working arrangements under proposal and also publish further information on incorporation.

WHO IS AFFECTED?

Existing WEA Regional and Branch Committee structures will not be affected by incorporation and their respective powers will remain the same as currently. WEA English Regions and Scottish Association Local Areas will operate as currently, and the relationship between the WEA in England and Scotland will not be altered.

The status of WEA members will also remain unchanged under incorporation. Importantly, the NEC has made a commitment to consult widely on membership and the role of conference, during 2006/07.

The function, position and entitlements of WEA staff will not change as a result of incorporation.

Contracts of employment and pension entitlements will need to be transferred to the new company, and members of staff will be made aware of this process. Representatives from the WEA's recognised trades unions will be involved in the process.

On an individual and collective basis, it is the members of the WEA's National Executive Committee who will be most affected by the changes resulting from incorporation.

THE BOARD OF TRUSTEES

The NEC is proposing that the new Board of Trustees will comprise nine or twelve people.

This reflects common and best practice across the sector, and the Board would be made up as follows:

- 3 or 4 National Officers
- 3 or 4 Regional Representatives
- 3 or 4 Independent co-opted Trustees

The manner in which the Board is constructed is important. Under law and regulatory guidance, the Board is required to demonstrate that it is entirely independent and acts without sectional or constituency interest.

This means that the National Officers will need to give up any Regional or Branch positions held, upon appointment to the Board of Trustees.

It is proposed that the Regional Representatives would be nominated by, and appointed from the NEC. As such they would retain their existing Regional capacities, although they must commit to act for the overall interest, and comply with charity law, as Trustees.

As with current arrangements, Regional Representatives will at times be required to 'declare an interest' at Board meetings, and remove themselves from the discussion and voting process.

It is proposed that Independent Trustees would be nominated by the NEC and appointed by the standing Trustees. They can be drawn from all walks of life and, typically, are selected because of their ability to bring external perspectives, expertise and profile to a charity's cause.

The Board of Trustees therefore will comprise one third National Officers, one third Regional Representatives and one third Independent Trustees. This means that at any time, a majority (the National Executive Officers and the Independent Trustees), are able to act without a potential sectional interest, or conflict of loyalty, in keeping with charity law and guidance.

Additionally, two-thirds of the Trustees would be NEC members. This proportional structure of 'one third, one third, one third' is considered to offer the best balance between the legal requirement for independence, and the need for a Board that is democratically representative.

All the Trustees have the same legal duties and responsibilities. Across the sector, different titles can be used to describe the Trustees. In the case of incorporated charities the Trustees are often referred to as the Board of Directors.

In legal and technical terms, the roles and responsibilities of the Board are defined under charity and company law, and by the sector's regulator, the Charity Commission.

You will hear more about the structure of the Board, and the respective responsibilities of the Trustees and the NEC, at the Regional events listed here. If you would like to attend and have not received notification with this information sheet, please get in touch with your local Region.

HOW TO GET INVOLVED: WEA REGIONAL EVENTS

| Date | Region | Location |
|--------|--|-----------------|
| 05 Feb | South West Tel: 01392 490970 | Exeter |
| 12 Feb | Scottish Association Tel: 0131 226 3456 | Edinburgh |
| 26 Feb | Yorkshire & Humber Tel: 0113 245 3304 | To be confirmed |
| 05 Mar | North East Tel: 0191 461 8100 | To be confirmed |
| 12 Mar | Eastern Tel: 01223 350978 | Cambridge |
| 19 Mar | East Midlands Tel: 0115 962 8400 | To be confirmed |
| 02 Apr | North West Tel: 0151 709 8023 | To be confirmed |
| 09 Apr | West Midlands Tel: 0121 666 6101 | To be confirmed |
| 16 Apr | London & Southern Tel: 020 7613 7550 | London |

The meetings will provide an opportunity to hear more about incorporation and what happens now. You will be able to ask questions and offer feedback on some of the important detail regarding the Board of Trustees, the role of the NEC, and aspects of the new governing document, the Memorandum and Articles. Your feedback will form a report to the NEC which will help inform the next stages of the process. The meetings will also help to determine whether further information may need to be published, and how this can be produced to ensure that it's available to everyone who wants or needs to know about incorporation in the run up to National Conference.

If you are unable to attend a Regional meeting and would like to provide feedback on any of the points raised in this document, you can do so by e-mail to: aclark@wea.org.uk, or by post to:

Angela Clark, Conference Secretary
Workers' Educational Association,
Quick House, 65 Clifton Street,
London, EC2A 4JE

Further copies of this leaflet are available from WEA Regions, WEA Corporate Services (020 7375 3092) and online at www.wea.org.uk.

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