

Summary consultation paper in plain English

# **Liability of Clubs, Societies and other Unincorporated Associations**

**Please send us your views by**

**Wednesday 15 March 2023 at 5:30pm**

# Consultation Paper

This Paper focuses on 'unincorporated associations' and their liability (responsibility) under the law. These are associations that are voluntary non-profit associations like a club, society or other group. These groups of people come together for at least one common purpose. The common purpose must be non-commercial and lawful.

**Your views are sought by: Wednesday, 15 March 2023 at 5:30pm**



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**Telephone:** + 353 1 637 7600

**Email:** [UnincorporatedAssociations@lawreform.ie](mailto:UnincorporatedAssociations@lawreform.ie)

**Website:** [www.lawreform.ie](http://www.lawreform.ie)

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## What is the Law Reform Commission?

### **What does the Law Reform Commission do?**

The Law Reform Commission reviews the law and recommends changes to it. The Commission also works to make the law easier to:

- access
- understand
- follow.

## We would like to hear your views

**The deadline is Wednesday, 15 March 2023 at 5:30pm**

### **About this consultation**

We are inviting you to read and share your views on this document. It is our Consultation Paper. A Consultation Paper is the first step in the Law Reform Commission's work to see if new laws or changes to the law are needed.

In this Consultation Paper we:

- explain the key topics the Law Reform Commission would like you to think about and discuss
- we ask you questions on these topics so we can get your views.

## What we ask you to do

In Chapter 4, we invite your views on our suggestions about key topics.

You can also give us any other information that you think might be important for making the law about unincorporated associations clearer and fairer.

## Questions we would like you to answer

**You can answer all questions or just some of the questions. Please email or post your responses. You can save this document if you like and type your answers in. If you prefer you can copy the questions and space for answers into another document and complete and send it to us. You can phone us with your responses too. We welcome all feedback.**

**Please answer questions in Chapter 4 and send them to us**

**Email**

[UnincorporatedAssociations@lawreform.ie](mailto:UnincorporatedAssociations@lawreform.ie)

**Post**

Law Reform Commission

Styne House

Upper Hatch Street

Dublin 2

Ireland

D02 DY27

**Please phone us if you need more information or if you would like to respond over the phone**

(01) 637 7600

**Deadline, Wednesday 15 March**

Please let us have your views by Wednesday, 15 March 2023 at 5:30pm.

Thank you.

Usually, a Consultation Paper does not contain any final view of the Law Reform Commission. That is the case in this Consultation Paper too. A Consultation Paper is designed to give people a chance to give their views by answering questions it asks.

**The public may ask to see your answers under the Freedom of Information Act**

Answers and views you share are confidential **but** could be subject to a Freedom of Information request.

When a person sends their views to the Law Reform Commission, another person or organisation can apply, under a law called the Freedom of Information Act 2014, to see the other person's views.

If we were asked to give someone else's information because of a request for information under the Freedom of Information Act 2014, we would first contact the person or people who sent us that information to tell them about the application.

## What is this consultation about?

This consultation is about non-profit unincorporated associations like clubs and societies. An 'unincorporated association' means an association that is a voluntary non-profit association like a club, society or other group. These groups of people come together for at least one common purpose. The common purpose must be non-commercial and lawful.

### **This consultation deals with the following**

#### **Liability (responsibility)**

This consultation looks at issues of civil and criminal liability (responsibility). We focus especially on complying with and enforcing regulations and the law. Civil law issues involve disputes between you and another person, or between you and an organisation (an unincorporated association in this instance). Criminal law issues relate to conduct which is against the law such as theft and fraud.

#### **Suing unincorporated associations**

We explain that it is not possible to sue an unincorporated association, instead it is the members who must be sued. It can be difficult to find out who the members of an unincorporated association are.

#### **Legal consequences**

This consultation explains the legal consequences for people who are involved in non-profit unincorporated associations.

### **This consultation does not deal with the following**

This consultation will **not** deal with:

- for-profit partnerships (though also unincorporated), for example solicitors or accountants who work together as partners
- incorporated bodies such as companies.



## Why is the Law Reform Commission carrying out this consultation?

We want to see if the law around unincorporated associations needs to be changed or if it can be improved.

## What topics do we discuss in the Consultation Paper?

### **Chapter 1: Overview of unincorporated associations in Ireland**

We review:

- unincorporated associations in Ireland
- the kinds of activities unincorporated associations do
- problems in applying the law to unincorporated associations.

### **Chapter 2:**

#### **Problems with civil liability arising from unincorporated status**

In Chapter 2 we look at and explain the following areas relevant to unincorporated status.

- Tort law.
- Contract law.
- Civil liability.
- Employment law.
- All about suing.
- Property and money.

### **Chapter 3: Criminal liability and unincorporated associations**

#### **Criminal law**

We explain the principles of criminal law.

We explain the difference between unincorporated bodies and incorporated bodies in criminal issues.

We look at how the criminal law is applied to unincorporated associations.

## **Chapter 4: Options for reform and your questions**

We explain:

- the aims of law reform
- the law in different countries on unincorporated associations
- the three ways that the law could be changed.

**In Chapter 4, we also list the questions we would like you to answer.**

## Chapter 1: Overview of unincorporated associations in Ireland

### **What is this chapter about?**

- Unincorporated associations in Ireland.
- The kinds of activities carried out by unincorporated associations.
- Problems in applying the law to unincorporated associations.

### **What is an unincorporated association?**

An 'unincorporated association' means an association that is a voluntary non-profit association like a club, society or other group. In these groups, people come together for at least one common purpose, for example, a shared interest in a sport or a religion.

### **What activities are carried out by unincorporated associations?**

Unincorporated associations provide many services to the community, including:

- sport,
- social services.
- emergency relief.

Unincorporated associations benefit:

- culture
- recreation
- social justice
- civil rights
- human rights.

They host a range of non-profit activities and are made up of small clubs, neighbourhood groups and political associations. In June 2021, there were 19,410 unincorporated associations in Ireland. Some 2,684 of these were charities.

Unincorporated associations can be:

- charities
- sports clubs (for example, GAA clubs)
- religious groups
- political groups
- volunteer groups
- community associations
- animal welfare groups.

### **What problems exist with the law of unincorporated associations?**

A legal entity is anything that has legal rights and obligations. As a person, you are a legal entity. This is referred to as having separate 'legal personality'. A company can be a legal entity. In Ireland, unincorporated associations are not legal entities separate from their members.

This causes many problems. Here are some of the problems.

#### **Cannot be sued**

Unincorporated associations cannot sue or be sued.

#### **Cannot enter a contract**

Unincorporated associations cannot enter a contract or be part of a contract. For example, a GAA club cannot contract with a physiotherapist. The contract must be between members of the club and the physiotherapist.

#### **Cannot own property**

Unincorporated associations cannot own their own property.

#### **Members cannot recover damages**

Members of an unincorporated association cannot sue that unincorporated association. This means, for example, that if a member is injured at a social function in their club they cannot sue the club even if there was negligence.

## **Civil and criminal law appear to apply but without legal personality it is difficult to enforce the law**

Civil and criminal laws appear to apply to unincorporated associations. In reality it is very difficult to enforce the law.

A company is incorporated. That means it is a legal entity separate from its members, staff and shareholders. This is referred to as having separate 'legal personality'. An organisation with legal personality can be prosecuted and fined. An unincorporated association, such as a club, does not have legal personality. It is simply the group of members. That makes it difficult to prosecute the club. It is possible that all the members of the club could be found guilty of an offence.

## **Uncertainty about the law**

Laws may apply to unincorporated associations, even if the law does not specifically say so. This makes the law unclear.

We look at each of these problems in more detail in the next chapter.

## Chapter 2: Problems with civil liability arising from unincorporated status

Civil law issues involve disputes between you and another person, or between you and an organisation (an unincorporated association in this instance).

### What is this chapter about?

- [Tort law](#)
- [Contract law](#)
- [Civil liability](#)
- [Employment law](#)
- [All about suing](#)
- [Property and money](#)

### What is tort law?

A tort is when someone does something that harms someone else. Torts include wrongs like:

- negligence (carelessness)
- nuisance which means doing something that harms other people's rights
- defamation which means making a statement either orally or in writing which damages someone's reputation
- false imprisonment which means wrongfully keeping someone in custody
- trespass which means unlawful interference with another person or their property rights.

### a) How does tort law apply to unincorporated associations and plaintiffs?

In Ireland, unincorporated associations are not legal entities separate from their members. This means that a person who goes to court to make a claim against someone else (known as a 'plaintiff') cannot take a tort case against an unincorporated association. Instead, the plaintiff can take a case against:

- members of the management committee of the unincorporated association
- the trustees (in this instance this means people who hold property and look after it on behalf of an unincorporated association)
- members who are responsible for the harm caused
- everyone who was a member at the time the wrong was committed
- the person who committed the wrong.

Sometimes, it can be hard to find out who these people are.

Plaintiffs can take a case based on a wrong committed by one member or a group of members. These cases are usually about negligence or nuisance. Plaintiffs can also take a case against one or more members who are responsible for the wrongful act of another member.

### b) How does tort law apply to unincorporated associations and its members?

Members of an unincorporated association cannot take a case against that unincorporated association. The law sees this as a member suing themselves.

## What is contract law?

A contract is an agreement between two or more people to do or avoid doing something. Contract law is a set of laws that make sure contracts are formed, enforced, and complied with.

### a) How does contract law apply to unincorporated associations and people?

Unincorporated associations may need to buy things, employ people or get a loan.

All these activities require a contract. Unincorporated associations are not legal entities separate from their members. This means that an unincorporated association cannot enter contracts.

Instead, members can enter contracts on behalf of the unincorporated association. In some unincorporated associations, it might look like the association has a contract with someone, but the contract is actually between the person and an individual member of the association.

This can be unsatisfactory for members of the unincorporated association who enter into contracts on behalf of the association. It is also unsatisfactory for people and businesses that want to create a contract with the unincorporated association. The difficulty is that it is unclear who is liable (responsible) if the contract is breached.

Suppliers and other contractors might think they have a contract with a club, but they are actually in a contract with a person representing that club or with all of the members of the club. **The law is unclear.**

### **What other laws apply to unincorporated associations?**

Some **civil laws** appear to apply to unincorporated associations. However, the law is unclear because laws are designed for individuals and companies, not for unincorporated associations.

This has created confusion in Irish law and makes it difficult to ensure that unincorporated associations are complying with the law.

Unincorporated associations must comply with the law. Some laws that apply to unincorporated associations include:

- the Registration of Clubs Acts
- equality law
- data protection law.



## **b) How does employment law apply to unincorporated associations?**

Often some unincorporated associations (like clubs and sports organisations) have paid employees. An unincorporated association cannot be an employer because it is not a legal entity separate from its members. It can be difficult to know who the employer is. Employers must follow employment law in terms of areas like:

- unfair dismissal laws
- holidays
- minimum notice
- rates of pay
- employment equality
- employment of children
- maternity leave.

It is important for an employee to know who their employer is. To take a case against an employer, an individual needs to know the inner workings or organisational structure of an unincorporated association. This information can be difficult to find.

### **Can unincorporated associations sue or be sued?**

No. Unincorporated associations cannot sue or be sued in their own name. A case taken against an unincorporated association must be taken against some or all members of that unincorporated association.

It can be difficult to do this in practice. Unincorporated associations might not have an office or building so there is no address to send enforcement notices or legal documents. Another issue is that it is not always clear who controls the unincorporated association or who is a member.

Company law says that, if a company is being sued, someone must appear in court as a representative of the company.

In England and Wales, the law says that any document that needs to be given to an unincorporated association can be given to any member involved in managing the unincorporated association. However, in Ireland there is no law to make sure that someone must appear in court as a representative of a club, society or other unincorporated association. This makes it hard for people in Ireland who want to sue an unincorporated association.

### **Can an unincorporated association own its own property?**

Because an unincorporated association is not a legal entity, it cannot own its own property. Usually, the assets of an unincorporated association are owned by trustees. Trustees are people who hold property and look after it on behalf of someone else.

Assets must be transferred to another 'owner' if a trustee:

- no longer wants to be a trustee
- is unable to be a trustee

dies.

### **Can an unincorporated association borrow money?**

This depends on the rules of the unincorporated association. If an unincorporated association has rules that allow it to borrow money, it can do so. If it does not, it cannot borrow money.

## Chapter 3: Criminal liability and unincorporated associations

Criminal law issues relate to conduct which is against the law such as theft and fraud.

### What is this chapter about?

In this chapter, we discuss:

- [criminal law](#) and unincorporated associations
- the [difference](#) between incorporated associations and unincorporated associations in criminal offences
- [how criminal law is applied to unincorporated associations](#).

### What is criminal law?

Criminal law are laws designed to:

- prevent undesirable behaviour
- publicly condemn actions that threaten or harm people and the community
- prevent conduct that harms others.

Criminal law applies to people. It can also apply to incorporated associations, like companies.

Many criminal laws fail to acknowledge that unincorporated associations are not legal entities. These laws say that they apply to unincorporated associations even though unincorporated associations are not legal entities separate from their members.

### How is criminal law applied to incorporated associations like companies?

An incorporated association like a company is a legal entity separate from its members, staff and shareholders. This is referred to as having separate 'legal personality'. (Defined on page 16).

Sometimes companies commit offences. The criminal law applies to companies when:

- an employee or other person commits a crime when acting for the company, or
- no single person has been at fault, but there has been a number of failings involving different individual company employees.

**Example:** In one case, a child was injured and died while playing on a building site. The site had not been secured and dangerous chemicals were left out. No single person was responsible for the boy's death, but a number of employees failed to make the site safe and the company was prosecuted.

If an offence has been committed, the company can be prosecuted, found guilty and fined. Sometimes, individuals can be prosecuted along with the company.

## **How is criminal law applied to incorporated associations compared to unincorporated associations?**

1. **Incorporated associations (like companies) are separate legal entities from their members, but unincorporated associations are not**

Companies can be prosecuted and found guilty of criminal offences.

It is much more difficult to prosecute an unincorporated association. For example, all the members of a club could be criminally liable if there was an oil leak from a tank owned by the club that caused environmental damage. This might cause injustice. It is also unsatisfactory because it makes the law difficult to enforce.

2. **There are no criminal procedure rules to prosecute unincorporated associations**

The Companies Act 2014 says that a person can act as a representative of a company if the company is charged with a criminal offence. The representative can enter a plea of guilty or not guilty on the company's behalf. They will not have any personal criminal liability if the company is found guilty.

There are no similar laws for unincorporated associations. Clubs, societies and other unincorporated associations might not be as well organised as companies. It is

difficult to enforce criminal law without rules that force representatives of an unincorporated association to attend court to represent their association.

## **How is criminal law applied to unincorporated associations?**

Criminal law should be clear and accessible.

An unincorporated association is not a legal entity in the way that a company is, but the criminal law appears to apply to unincorporated associations as though they were companies. The criminal law ignores the fact that those associations are unincorporated.

There are specific criminal laws that appear to apply to unincorporated associations.

Some examples include:

- environmental law
- criminal laws on theft and fraud
- laws about health and safety.

However, it is difficult to enforce the criminal law against unincorporated associations without:

- a way to make the unincorporated association responsible for the actions of members
- rules to bring an association before a criminal court.

## **Should some criminal laws be applied to unincorporated associations?**

In this Consultation Paper we ask if some criminal laws should apply to unincorporated associations.

We also ask if the criminal law should be changed so that it is possible to find an association guilty of an offence, not its members.

### **How can criminal procedure be applied to unincorporated associations?**

There are practical reasons why it can be difficult to prosecute an unincorporated association. An unincorporated association might not have an office or an official address to receive legal documents. Unlike a company, it can be hard to know who is in charge or who the members are.

**This chapter contains the questions we would like you to answer.**

# Chapter 4: Approaches to reform and consultation questions

## What is this chapter about?

In this chapter we:

- explain the aims of law reform ([section 1](#))
- look at the law in different countries ([section 2](#))
- explain three ways that the law could be changed ([section 3](#))
- list questions we would like you to answer (these feature throughout this chapter 4).

The questions we list in this chapter range from questions about our aims in changing the law to specific recommendations to change the law about unincorporated associations.



## **Chapter 4, Section 1:**

### **What our aims are when we talk about changing the law**

When we are talking about changing the law, there are nine things we want the change to do.

1. Make the law on unincorporated associations easier to understand.
2. Reduce the work that unincorporated associations need to do to comply with the law.
3. Help individuals deal with unincorporated associations.
4. Make it possible for the assets of an unincorporated association to be used so that the association can meet its responsibilities.
5. Change the law so that unincorporated associations can sue and be sued.
6. Make the law on how members can be found liable clearer.
7. Make it easier to understand how the law applies to unincorporated associations.
8. Make it possible to enforce the law on unincorporated associations.
9. Make it possible for people to sue an unincorporated association even if they are a member.

## Questions: Our aims for changing the law



**We are looking for your views on the questions below.**

Please tick Yes or No **and** explain your answer in the white space.

**1. Do you agree with the aims of law reform that we have listed above?**

Yes  No

Please explain your answer

**2. Do you disagree with any of the aims of law reform that we have listed above?**

Yes  No

Please explain your answer

**3. Can you think of any other aims of law reform that we should think about when talking about unincorporated associations in Ireland?**

Yes  No

If 'Yes', please tell us about them here.

## Chapter 4, Section 2: Different models for unincorporated associations

### How do other countries deal with unincorporated associations?

Most countries deal with unincorporated associations in one of three ways.

1. An unincorporated association must register to become its own legal entity.
2. If an unincorporated association fits certain criteria (conditions), it will automatically have its own legal entity.
3. An unincorporated association is not a separate legal entity from its members, but the law applies to an unincorporated association in a particular way.

Australia, Canada, New Zealand, France, Germany and Italy have laws that allow unincorporated associations to register as non-profit incorporated associations. After an unincorporated association has registered, it:

- is a legal entity
- can sue and be sued
- can own its own property.

In Québec, in some states in the USA and in South Africa, an unincorporated association that fits certain criteria automatically:

- becomes a legal entity
- can sue and be sued
- can own its own property.

In the UK the courts and lawmakers have worked around the rule that an unincorporated association is not its own legal entity separate from its members. They have done this by treating unincorporated associations as if they are companies.

## What ways could we change the law in Ireland?

There are many ways we could change the law to achieve the same aim. There are three models of reform that we could choose from.

**Model 1:** Change the law to create 'non-profit registered associations'. If an association registered, it would become a legal entity separate from its members.

**Model 2:** If an unincorporated association fit certain criteria, it could become a separate legal entity from its members.

**Model 3:** If an unincorporated association is not a separate legal entity from its members, the law must say how an unincorporated association could be held liable in contract, tort and criminal law (defined in Chapters 2 and 3). This would mean changing a lot of laws, in particular legislation.

We explain each of these models in more detail on [pages 30 to 39](#).


## Chapter 4: Section 3

### What about becoming a company limited by guarantee (CLG)?

Unincorporated associations turning into companies limited by guarantee would help solve many of the problems we have talked about. In a company limited by guarantee members do not have to buy shares or invest their own money. Becoming a company limited by guarantee might be a good solution for a large unincorporated association because it can:

- own its own property
- enter contracts
- hire employees.

However, this option can be expensive and requires a lot of paperwork. This means that it may not work for smaller unincorporated associations.

 <b>Questions: Becoming a company limited by guarantee</b>		
<b>We are looking for your views on the questions below.</b>		
Please tick Yes or No <b>and</b> explain your answer in the white space.		
<b>1</b>	<b>An association could become a company limited by guarantee (CLG) and this would solve some of the problems. Do you think there is a need for another way to give unincorporated associations legal personality? (See page 16)</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Please explain your answer		

## **Chapter 4, Section 4: Model 1:**

### **Change law to create 'non-profit registered associations'**

This model would make it easy to register to become a new type of association called a 'non-profit registered association'. If an association registered, it would become a legal entity separate from its members. Overleaf is a list of the advantages and disadvantages of this model.

## Advantages of Model 1 and being registered

### Contracts and property

A registered association could enter into contracts and own its own property.

### Legal cases

- It would be easier for people to take a case against registered associations.
- A registered association could sue or be sued.
- Members of a registered association could sue their registered association.
- Members of a registered association would be protected from being found personally liable for the act, or failure to act, of their registered association.
- Fines and awards made against the registered association would be payable from the funds of the registered association.

### Help regulation

Registration would help regulators because they would have details of key members of registered associations. Regulators include food safety authorities and fire officers.

### Public information

It would be easier for people to deal with the registered association because more information would be made public.

### Registration choice

An association would have to opt-in and could choose not to register as a registered association.

## Disadvantages of Model 1 and being registered

### Registration

- There would need to be some paperwork to register.
- There may be registration costs.

### Not all would incorporate

Unincorporated associations could choose to remain unincorporated.

Smaller associations may not know that they can register. They may not want to register. Or they may not be able to afford the cost of registration.

### Lack of scrutiny

The activities of the association may not be regulated carefully enough in comparison to corporate bodies like CLGs.

### False security

Registration may make people think the association is subject to certain regulations when it is not.



## Questions: Model 1

We are looking for your views on the questions below.

Please tick Yes or No **and** explain your answer in the white space. .

1	<b>Do you approve of Model 1?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
---	-----------------------------------	--

Please explain your answer

2	<b>If you said 'Yes' to 4, what information should be recorded when an association is registering?</b>
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## **Chapter 4, Section 5, Model 2:**

### **If an unincorporated association fits certain criteria, it can become a separate legal entity from its members.**

In this model, associations would automatically become separate legal entities from their members. Associations that fit the criteria would not have to register.

This model could apply to any association that is registered for a Revenue tax exemption. There would be a different way to choose which associations automatically became a separate legal entity. This would be to set out in law and show the exact criteria required which could include or require:

- a minimum number of members
- a constitution-type document
- a set of rules.

Overleaf is a list of the advantages and disadvantages of this model.

## **Advantages of Model 2 and being an automatic legal entity**

### **Contracts**

An unincorporated association could enter into contracts and own its own property.

### **Legal cases**

- It would be easier for people to take a case against an unincorporated association.
- Members could sue their unincorporated association.
- An unincorporated association could sue or be sued.

### **Liability**

Members would be protected from being found personally liable for the act, or failure to act, of their unincorporated association.

### **Fines and awards**

Fines and awards made against the unincorporated association would be payable from the funds of the unincorporated association. The members of the unincorporated association would not have to pay the fines from their own funds.

### **Registration unnecessary**

No registration would be required but there would need to be some level of organisation to meet the criteria.

## **Disadvantages of Model 2 and being an automatic legal entity**

### **Criteria must be met**

Many associations may not meet the criteria and the law relating to them would still be unclear.

### **Unclear if it protects individuals who deal with unincorporated associations**

This model might not provide enough protection for individuals who are dealing with unincorporated organisations, for example people who provide services to clubs and associations. This is because some unincorporated associations would still not have legal personality.

### **Lack of oversight**

There would be no oversight about how the organisation was run.



## Questions: Model 2

**We are looking for your views on the questions below.**

Please tick Yes or No and explain your answer in the white space.

**1 Do you think Model 2 is the right approach?**

Yes  No

Please explain your answer

**2 If you said 'Yes' to 2, what do you think the criteria should be?**

## Chapter 4, Section 6, Model 3:

### No separate legal entity but subject to law

**Using this model, an unincorporated association would not have a separate legal entity from its members, but existing laws would change to make it easier to make an unincorporated association liable in contract, tort and criminal law.**

The problems discussed could be resolved by making changes to the law so that it is clearer and fairer. This could be achieved by making changes to a number of laws. Here are some examples of what might be done:

#### **Contracts**

The law could be changed to allow unincorporated associations to enter contracts and be part of contracts.

#### **Legal cases**

The law could be changed

- To allow Individuals to take a case against an unincorporated association as if it were a company.
- To say that members of an unincorporated association would not be liable in contract law, tort law, criminal law or regulatory law.
- To say that members would only be liable for their own wrongdoing.

#### **Legal documents**

The law could be changed so that rules about where legal documents should be sent and other relevant rules would be the same as if the unincorporated association was a company.

#### **Identify members**

The law could be changed so that an unincorporated association would have to identify who its members were.

## **Cases against association not individual**

The law could be changes so that cases taken against unincorporated associations would be brought against the unincorporated associations and not against the members of unincorporated associations.

## **Members could sue**

The law could be changed to allow members to sue their unincorporated association.

### **Advantages of Model 3: not being a separate entity**

- Model 3 has most of the same advantages as Model 1 and Model 2.
- Model 3 would be applicable to all unincorporated associations, even if one did not 'sign-up' for, or 'subscribe' to, these changes.

With these changes, an unincorporated association would not become a legal entity but would be recognised in law.

### **Disadvantages of Model 3: not being a separate entity**

- There would not be the same transparency of unincorporated associations as there would be in Model 1 and Model 2.
- There would not be any oversight.
- Unincorporated associations could not own their own land.



### Questions: Model 3

We are looking for your views on the questions below.

You can enter more information in the empty white rows if you wish.

<b>1</b>	<b>If you think Model 3 is a good approach, which of these changes should be made to civil law? Tick each one that applies.</b>	
a.	<b>Contracts</b> An unincorporated association should be able to enter contracts and be part of contracts. However, they should only be able to do this if they followed the rules of their unincorporated association.	<input type="checkbox"/>
b.	<b>Legal cases</b> Individuals would be able to take a case against an unincorporated association as if it were a company.	<input type="checkbox"/>
c.	<b>Liability</b> Members would not be liable in contract law, tort law, criminal law or regulatory law. They would be liable only for their own wrongdoing.	<input type="checkbox"/>
d.	<b>Documents</b> Rules about where legal documents should be sent and other relevant rules would be the same as if the unincorporated association were a company.	<input type="checkbox"/>
e.	<b>Identify members</b> The unincorporated association would have to identify who its members were.	<input type="checkbox"/>
f.	<b>Association responsible not members</b> Cases taken against unincorporated associations would be brought against the association, but not against its members.	<input type="checkbox"/>
g.	<b>Members could sue</b> Members could sue their unincorporated association.	<input type="checkbox"/>
<b>2</b>	<b>Are there any other practical things that should be considered in the law for Model 3?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>

If 'Yes', please tell us about them here.

**3**

**Do you have any other thoughts on Model 3?**

Yes

No

If 'Yes', please tell us about them here.

## Chapter 4, Section 7: Criminal enforcement

The current law in Ireland makes prosecuting unincorporated associations difficult.

It should be clear what criminal laws apply to unincorporated associations, and how criminal laws apply, especially in:

- health and safety law
- food safety
- environmental law
- liquor licensing.

The law could be changed so that an unincorporated association can be found guilty, instead of the members.





## Questions: Criminal enforcement

**We are looking for your views on the questions below.**

Please tick Yes or No **and** explain your answer in the white space.

- |          |   |   |
|----------|---|---|
| <b>1</b> | <b>Should it be possible to prosecute an unincorporated association even though it is not a separate legal entity from its members?</b> | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
|----------|---|---|

Please explain your answer

- |          |  |   |
|----------|--|---|
| <b>2</b> | <b>Should the law say that members of unincorporated associations would not be liable just because they were members, however, members would still be liable for their own wrongdoing?</b> | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
|----------|--|---|

Please explain your answer

- |          |   |   |
|----------|---|---|
| <b>3</b> | <b>Should the law say that a member of an unincorporated association must be chosen to represent the unincorporated association in criminal cases taken against the unincorporated association?</b> | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
|----------|---|---|

Please explain your answer

- |          |   |  |
|----------|---|--|
| <b>4</b> | <b>If you said 'Yes' to 3, how would the law make sure that the member representing the unincorporated association appeared in court?</b> |  |
|----------|---|--|

Please explain your answer

- |          |   |  |
|----------|---|--|
| <b>5</b> | <b>What areas of criminal law (if any) which contain criminal offences would need to be changed to make it clear that an unincorporated association can commit the offence?</b> |  |
|----------|---|--|

Please explain your answer

- |          |  |   |
|----------|--|---|
| <b>6</b> | <b>Do you think we need to change the law to make sure that unincorporated associations who use volunteers are following health and safety requirements?</b> | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
|----------|--|---|

Please explain your answer

## **Chapter 4, Section 8:**

### **Making sure that an unincorporated associations' property could be used to meet damages**

Unincorporated associations cannot own their own property. A trustee owns the property for the members. This means that if someone wins a case against an unincorporated association, and the court wants to award damages, the assets held on trust cannot always be used to meet damages owed to the plaintiff.

In Australia, they changed the law but only for historical child abuse cases. This change meant that trust assets can be used to meet damages owed to the plaintiff. If this change had not happened, victims of historical child abuse could not receive compensation.



## Questions: Property being used to meet damages

We are looking for your views on the questions below.

Please tick Yes or No **and** explain your answer in the white space.

- |          |  |   |
|----------|--|---|
| <b>1</b> | <b>Is it harder to get compensation in Ireland because an unincorporated association's property is held by trustees?</b> | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
|----------|--|---|

Please explain your answer

- |          |  |   |
|----------|--|---|
| <b>2</b> | <b>If 'Yes', should the law be changed to make sure that an unincorporated association's assets can be used to meet its liabilities?</b> | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
|----------|--|---|

Please explain your answer

- |          |   |   |
|----------|---|---|
| <b>3</b> | <b>If 'Yes', do you think the law should be changed and should Ireland do what they did in Australia? (See page 42)</b> | Yes <input type="checkbox"/><br>No <input type="checkbox"/> |
|----------|---|---|

Please explain your answer

- |          |   |  |
|----------|---|--|
| <b>4</b> | <b>If 'Yes', do you think it should only be allowed in claims of child abuse or should it apply to other cases taken against unincorporated associations?</b> |  |
|----------|---|--|

Please explain your answer

**Thank you for reading this consultation paper. Feedback on the questions in each section would be most helpful, but we appreciate feedback on any questions you can answer.**