Incorporating 4S and Charter changes - FAQ

August 2022

Emma Kowal, 4S President

Why should 4S incorporate?

Incorporating 4S will provide a legal framework for 4S operations and appropriate liability protection for 4S Council members and officers. Currently, 4S officers that sign contracts (e.g. with hotels) are technically signing in their personal capacity and are personally responsible for that contract. If 4S is sued for any reason, 4S Council members and officers are personally liable. Although the risk of being sued is low, it is not a workable situation and will affect the willingness of members to take on positions of responsibility in 4S.

Who has provided legal advice to 4S?

4S asked the American Council for Learned Societies (ACLS) for recommendations for a firm that deals with legal issues related to learned societies including incorporation. Stephen M. Schaefer was recommended. In February 2022, 4S Council voted to engage Stephen M. Schaefer from Whiteford, Taylor and Preston (WTP) law firm to advise on incorporation and prepare Articles of Incorporation.

Why is 4S proposing to incorporate in the state of Virginia?

We are currently operating as an unincorporated nonprofit association that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. While our current business address is in Wisconsin, 4S could incorporate in any US state. Stephen Schaefer considered the possibilities and advised that incorporating in Virginia was the most advantageous option. The laws for corporations in Virginia best match the governance needs of 4S, including allowing the Council to make routine decisions on behalf of the membership and allowing virtual meetings, and the ongoing requirements for filing are not onerous. Council considered incorporating in another country but this was not thought to offer clear benefits and to involve significant risks.

Will incorporating change the status of 4S as a non-profit?

Incorporating will not affect our status as a non-profit 501(c)(3) tax-exempt organization. We will continue to be a non-profit, and many non-profits are incorporated.

What will change if 4S incorporates?

The Virginia office of Whiteford, Taylor and Preston law firm would become the legal address of 4S. They would forward any correspondence to us free of charge. We are able to change our legal address and law firm at any time in the future.

Some changes to the Charter would be required. These are presented in detail the table at the end of this document. In summary the changes are:

Change in terminology: The word ‘Charter’ becomes ‘Bylaws’.
Quorum for Business meetings: Currently our Charter has no quorum for business meetings. All US state laws require a quorum for any meetings of members. The default percentage for a quorum in most states is 10% of the membership, but many scholarly societies choose a smaller percentage for quorum in recognition that most members are not particularly interested, and do not tend to participate, in society governance. 4S currently has over 2000 members. A 5% quorum would mean that over 100 people would be required for a quorate Business Meeting, which arguably provides a reasonable balance between ensuring adequate member participation in governance and the reality that most 4S members choose not to participate in 4S Business Meetings. Of course, we would always aim for higher than 5% participation!

Section 5 (C): This section of the Charter is no longer required.

Changed procedure for amending the Charter/Bylaws: Currently, there is a four-stage process for changing the Charter (note that the Charter will be called Bylaws if/when incorporation is approved):

1. Council votes on amendment(s).
2. If a majority of Council approves, a Business Meeting is called to vote on the amendment(s). There is no quorum for this meeting.
3. If a majority of those attending the Business Meeting votes for the amendment(s), the membership then has an online vote. There is no quorum for online voting.
4. If a majority of those voting online vote for the amendment(s), they are adopted.

If we adopt a quorum for actions taken by members with or without a meeting (as permitted if we incorporate), the process will change. A quorum of members will be required for action to be taken at the Business Meeting (which can be made up of any combination of in-person and online attendees) or any action taken by the membership without a meeting (i.e. via online or mail voting or ballot). If 4S becomes incorporated, it does not make sense to require voting at a Business Meeting and a separate online vote, as this is effectively the membership voting twice. The revised procedure for amending the Charter/Bylaws would therefore be:

1. Council votes on the amendment(s).
2. If a majority of Council approves the amendment(s), the amendment(s) is sent to the membership for approval via a vote at a Business Meeting (in-person and/or online) or a vote without a meeting (online). In either case, 5% membership participation is required to fulfill the quorum requirement.
3. If a majority of members votes for the amendment(s), it is adopted.

If 4S is incorporated, will 4S Council members have more responsibilities than they currently have?

They will have the same responsibilities as they currently have, except that they will no longer be personally liable for any of 4S’ liabilities.

How would we change the Charter to enable the incorporation of 4S?

The current process for changing the Charter will be followed.

1. Council votes on the amendments listed in the table at the end of this document.
2. If a majority of Council approves, a Member Meeting is called to vote on the amendments. We would call a Special Business Meeting to be held online.

3. If a majority of those attending the Special Business Meeting votes for the amendments, the membership then has an online vote.

4. If a majority of those voting online vote for the amendments, they are adopted.

This procedure could also be used to seek member approval for Incorporation at the same time.

**What other Charter changes are being proposed (not related to incorporation)?**

There are three additional Charter changes not related to incorporation that the Council, Special Business meeting and membership would also vote on.

1. In the past, Secretary and Treasurer have been appointed (non-elected) officers. In 2021, we appointed the Secretary and Treasurer from within the council to encourage elected officers to have a greater role in 4S governance. This is working well. This proposed Charter change will allow Secretary and Treasurer to be elected rather than appointed. This was presented to the 2021 Business Meeting as a proposed change. This change is achieved by amendments to Clauses II B 1 and II B 2 (see Amendments 2 and 3 in the table below).

2. Spell out the name of 6S.

3. Change the phrase “rules and regulations” to the word “policies”.

**Why is Council not proposing to add the Managing Director role to the Charter/Bylaws?**

In 2021, 4S Council created the position of Managing Director (part-time) for 3 years. This position will be reviewed in the final year of the contract. 4S is free to engage a Managing Director regardless of whether the Managing Director position is included in the Charter/Bylaws. However, 4S Council can consider adding this in the future.

**Can I vote for some of the Charter changes and against others?**

Incorporation and each Charter change will be voted on separately. You can choose to vote for, against or abstain for each one.

**When will incorporation and Charter changes be decided?**

The proposed timeline for changes:

- June 2022: Council votes on amendments.
- If council endorses amendments, information about the amendments and the Articles of Incorporation will be disseminated to the membership in information meetings will be held in different time zones. A Special Business Meeting will then be called. The time zone of the meeting will be a challenge and will inevitably inconvenience some members.
If the Special Business Meeting endorses the amendments, information about the amendments will once again be disseminated to the membership and an online vote will be held.

List of proposed amendments to the Charter/Bylaws and explanations.

Note that amendments 2, 3, 4 and 5 are not related to Incorporation but are unrelated proposed changes to the Charter. The remaining amendments are required to make the 4S Charter/Bylaws consist with the law once Incorporated.

<table>
<thead>
<tr>
<th>Amendment number</th>
<th>Current Charter clause</th>
<th>Change</th>
<th>Explanation</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Throughout</td>
<td>The word Charter becomes Bylaws</td>
<td>Required by law</td>
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<tr>
<td>2</td>
<td>II B1</td>
<td>The words ‘Secretary’ and ‘Treasurer’ are added in the first two sentences: “The Society shall have a Council composed of the following elective officers: a President, a President-elect, a Secretary, a Treasurer, and ten Council members, in addition to 6S representatives as referenced in points 3 and 4 below. The term of office for Secretary, Treasurer and ordinary Council members shall be three years.”</td>
<td>Will enable Secretary and Treasurer to be elected positions.</td>
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<td>3</td>
<td>II B2</td>
<td>Replace the existing first sentence with these four sentences: “Elections shall take place in a three-year cycle. In year one, a Treasurer and three ordinary Council members shall be elected. In year two, a Secretary and three ordinary Council members shall be elected. In year three, four ordinary Council members shall be elected.”</td>
<td>Will enable Secretary and Treasurer to be elected positions.</td>
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<tr>
<td>4</td>
<td>II B3</td>
<td>Spell out the name of 6S in the first sentence so the Clause reads: “One Society for Social Studies of Science Student Section (6S) representative.”</td>
<td>Spell out the name of 6S for clarity</td>
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<td>5</td>
<td>III D</td>
<td>Replace “rules and regulations” with policies so the Clause reads: “The Council may adopt policies for the conduct of its business not inconsistent with the Bylaws of the Society.”</td>
<td>Rules &amp; regulations, policies are all synonymous terms for governing procedures. 4S has not created Rules and Regulations but does have a few policies. Our lawyer reports that the term “policies” is more current and is the used by most frequently used by nonprofit organizations.</td>
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<td>6</td>
<td>V A</td>
<td>Add the sentence “Quorum for annual, special, or other meetings of the Society shall be 5% of the current membership.”</td>
<td>Currently there is no quorum for business meetings of online voting of the Society. The law requires that a quorum for member meeting is specified. Proposed quorum is 5% of membership, to be made up of in-person and/or online attendees.</td>
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<tr>
<td>7</td>
<td>V C</td>
<td>Delete</td>
<td>This section is no longer required as it is superseded by Incorporation.</td>
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<tr>
<td>8</td>
<td>VI</td>
<td>Delete “Recommendations of the Council shall be reported at the annual business meeting of the Society and such recommendations shall be approved, revised or rejected by majority vote at that meeting. Recommendations, if approved, shall be put to a mail ballot of the Society for ratification by a majority of those voting.” Add the sentence “An amendment to the Bylaws shall be approved by a majority vote of the Council and a majority vote of the membership.”</td>
<td>As explained above, members can approve an action (including Bylaw amendments) with or without a meeting by a majority vote, but the 5% quorum requirement needs to be met. Therefore, the process for amending the Bylaws becomes 1) approval by a majority of the Council and 2) approval by a majority of the membership, where the 5% quorum requirement is met (as specified in the amendment to Section V A).</td>
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