

STARTING UP

Charitable Associations: Model Constitution



The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 190,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income or expenditure over £10,000 must provide annual information and accounts to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

More information about the Commission together with a range of guidance for charities can be found on our website www.charitycommission.gov.uk, or by contacting Charity Commission Direct:

Telephone: **0845 300 0218**

Typetalk: **0845 300 0219**

By post: **Charity Commission Direct**

PO Box 1227

Liverpool

L69 3UG

Charitable Associations: Model Constitution (GD3)

It may be appropriate to establish an unincorporated association where the organisation:

- is to be relatively small in terms of assets;
- has a membership;
- is to be run by Charity Trustees who will be elected by members or appointed to hold office for fixed terms;
- wants to take account of the views of local residents and organisations through membership or as users;
- wishes to carry out its work wholly or partly through the voluntary effort and contributions of its members.

Where the organisation is to have a membership but is expected to have considerable resources and/or employ staff and become engaged in charitable purposes which involve commercial risks it is usually more appropriate to take the form of a charitable company for which our publication *Charitable Companies: Model Memorandum and Articles of Association* (GD1) can be used.

Before you complete this model, we recommend that you read our publications *Registering as a Charity* (CC21) and *Choosing and Preparing a Governing Document* (CC22). *Registering as a Charity* explains what types of organisations can be charities and which need to apply for registration. *Choosing and Preparing a Governing Document* provides advice about choosing the most appropriate legal form for your Charity, the practicalities of completing the Charity's governing document and the different provisions which may be needed. If you then propose to use this model constitution, please read it through carefully, including the guidance notes. The Application to register a charity pack contains guidance and forms (CC5a, CC5b and CC5c) to enable you to apply to us for registration of the Charity. Organisations with projected annual incomes of under £10,000 which substantively use this model, and which complete the CC5a and CC5c in full can expect to have their application decided well within the current average of 70 working days.

The model is not comprehensive, however, and if you want to include any special or complex provisions which are not contained in the model you should consider asking a solicitor to help you. We may require more time to consider any such specialist changes. It is important to make clear what changes you make.

When you have completed this document please check that you have filled in all the gaps, deleted any clauses which are not appropriate and numbered all the remaining clauses in sequence.

You will need to send to the Commission:

- completed CC5a and CC5c;
- one certified copy of the constitution; and
- a certified copy of the minutes of the general meeting at which it was adopted.

Note: To certify a document, a person authorised by the Trustees to do so should write on the document "I certify that this is a true copy of [enter the name of the document]" and sign and date it.

Completed applications should be sent to:

Charity Commission Direct

PO Box 1227
Liverpool
L69 3UG

The Commission cannot guarantee that a proposed organisation which uses a model as its governing document will be accepted as charitable. Every case has to be considered separately.

Notes

Clause 4 - This clause directs how the Charity's income and property should be used and what benefits may be allowed to members and Trustees. Sub-clause 4(2) covers Trustee expenses and sub-clause 4(3) covers members' benefits and those Trustee benefits which do not require specific further authority. Sub-clause 4(4) prevents Trustees from being rewarded for acting in that capacity, whilst sub-clauses 4(5) and 4(6) describe the procedures to follow if it is proposed to provide other Trustee benefits not covered by sub-clause 4(3) or 4(4). Sub-clause 4(8) explains that these procedures must also be followed when people and organisations connected with a Trustee stand to benefit.

4. Application of the Income and Property

- (1) The income and property of the Charity shall be applied solely towards the promotion of the Objects.
- (2) A Trustee may pay out of, or be reimbursed from, the property of the Charity reasonable expenses properly incurred by him or her when acting on behalf of the Charity.
- (3) None of the income or property of the Charity may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Charity. This does not prevent:
 - (a) a member who is not also a Trustee from receiving reasonable and proper remuneration for any goods or services supplied to the Charity;
 - (b) a Trustee from:
 - (i) buying goods or services from the Charity upon the same terms as other members or members of the public;
 - (ii) receiving a benefit from the Charity in the capacity of a beneficiary of the Charity, provided that the Trustees comply with the provisions of sub clause (6) of this clause, or as a member of the Charity and upon the same terms as other members;
 - (c) the purchase of indemnity insurance for the Trustees against any liability that by virtue of any rule of law would otherwise attach to a Trustee or other officer in respect of any negligence, default breach of duty or breach of trust of which he or she may be guilty in relation to the Charity but excluding:
 - (i) fines;
 - (ii) costs of unsuccessfully defending criminal prosecutions for offences arising out of the fraud, dishonesty or wilful or reckless misconduct of the Trustee or other officer;
 - (iii) liabilities to the Charity that result from conduct that the Trustee or other officer knew or ought to have known was not in the best interests of the Charity or in respect of which the person concerned did not care whether that conduct was in the best interests of the Charity or not.
- (4) No Trustee may be paid or receive any other benefit for being a Trustee.

Notes

Sub-clauses 4(5) and 4(6) - Note that Trustees may only receive the types of benefits described in sub-clause 4(5) if they comply with the conditions of sub-clause 4(6). If followed, these procedures should avoid the conflict of interest that would otherwise arise when a Trustee benefits from the Charity. These restrictions and conditions extend to people closely connected to the Trustees - see clause 4(8). These provisions do not prevent a Trustee from buying or leasing land from the Charity: such transactions will however require the Commission's consent under s.36 of the Charities Act 1993, as amended by the Charities Act 2006. Existing charities wishing to adopt similar provisions can only do so with the Commission's prior consent.

- (5) A Trustee may:
- (a) sell goods, services or any interest in land to the Charity;
 - (b) be employed by or receive any remuneration from the Charity;
 - (c) receive any other financial benefit from the Charity,
- if :
- (d) he or she is not prevented from so doing by sub-clause (4) of this clause; and
 - (e) the benefit is permitted by sub-clause (3) of this clause; or
 - (f) the benefit is authorised by the Trustees in accordance with the conditions in sub-clause (6) of this clause.
- (6) (a) If it is proposed that a Trustee should receive a benefit from the Charity that is not already permitted under sub-clause (3) of this clause, he or she must:
- (i) declare his or her interest in the proposal;
 - (ii) be absent from that part of any meeting at which the proposal is discussed and take no part in any discussion of it;
 - (iii) not be counted in determining whether the meeting is quorate;
 - (iv) not vote on the proposal.
- (b) In cases covered by sub-clause (5) of this clause, those Trustees who do not stand to receive the proposed benefit must be satisfied that it is in the interests of the Charity to contract with or employ that Trustee rather than with someone who is not a Trustee and they must record the reason for their decision in the minutes. In reaching that decision the Trustees must balance the advantage of contracting with or employing a Trustee against the disadvantage of doing so (especially the loss of the Trustee's services as a result of dealing with the Trustee's conflict of interest).
- (c) The Trustees may only authorise a transaction falling within paragraphs 5(a)-(c) of this clause if the Trustee body comprises a majority of Trustees who have not received any such benefit.
- (d) If the Trustees fail to follow this procedure, the resolution to confer a benefit upon the Trustee will be void and the Trustee must repay to the Charity the value of any benefit received by the Trustee from the Charity.

Notes

Sub-clause 4(8) - Examples of a person connected with a Trustee would include a child, parent, grandchild, grandparent, brother, sister or spouse or any person living with the Trustee as his or her partner. Examples of a firm or company connected with a Trustee would include ones in which the Trustee is a partner, employee, consultant, director or shareholder, unless the shares of the company are listed on a recognised stock exchange and the Trustee holds less than 1% of the issued capital.

Sub-clause 5(6) - The Charities Act 1993 sets out the accounting obligations on charities: see our website for further guidance.

(7) A Trustee must absent himself or herself from any discussions of the Trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Charity and any personal interest (including but not limited to any personal financial interest) and take no part in the voting upon the matter.

(8) In this Clause 4, "Trustee" shall include any person firm or company connected with the Trustee.

5. Dissolution

(1) If the members resolve to dissolve the Charity the Trustees will remain in office as Charity Trustees and be responsible for winding up the affairs of the Charity in accordance with this clause.

(2) The Trustees must collect in all the assets of the Charity and must pay or make provision for all the liabilities of the Charity.

(3) The Trustees must apply any remaining property or money:

(a) directly for the Objects;

(b) by transfer to any Charity or charities for purposes the same as or similar to the Charity;

(c) in such other manner as the Charity Commission for England and Wales ("the Commission") may approve in writing in advance.

(4) The members may pass a resolution before or at the same time as the resolution to dissolve the Charity specifying the manner in which the Trustees are to apply the remaining property or assets of the Charity and the Trustees must comply with the resolution if it is consistent with paragraphs (a)–(c) inclusive in sub-clause (3) above.

(5) In no circumstances shall the net assets of the Charity be paid to or distributed among the members of the Charity (except to a member that is itself a Charity).

(6) The Trustees must notify the Commission promptly that the Charity has been dissolved. If the Trustees are obliged to send the Charity's accounts to the Commission for the accounting period which ended before its dissolution, they must send the Commission the Charity's final accounts.

6. Amendments

(1) The Charity may amend any provision contained in Part 1 of this Constitution provided that:

(a) no amendment may be made that would have the effect of making the Charity cease to be a Charity at law;

Clause 7 - For advice and guidance on best practice for running membership organisations, see our research report *Membership Charities (RS7)* available on our website or in hard copy from Charity Commission Direct.

Sub-clause 7(4) - It is very important for the good administration of the Charity to keep the register of members up-to-date: failure to do so can result in a number of problems, including serious difficulties with the calling of annual or extraordinary general meetings. The Trustees must ensure that they handle personal data in accordance with the requirements of the Data Protection Act 1998.

- (b) no amendment may be made to alter the Objects if the change would not be within the reasonable contemplation of the members of or donors to the Charity;
 - (c) no amendment may be made to clause 4 without the prior written consent of the Commission;
 - (d) any resolution to amend a provision of Part 1 of this constitution is passed by not less than two thirds of the members present and voting at a general meeting.
- (2) Any provision contained in Part 2 of this constitution may be amended, provided that any such amendment is made by resolution passed by a simple majority of the members present and voting at a general meeting.
- (3) A copy of any resolution amending this constitution shall be sent to the Commission within twenty one days of it being passed.

Part 2

7. Membership

- (1) Membership is open to individuals over eighteen or organisations who are approved by the Trustees.
- (2) (a) The Trustees may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the Charity to refuse the application.
 - (b) The Trustees must inform the applicant in writing of the reasons for the refusal within twenty-one days of the decision.
 - (c) The Trustees must consider any written representations the applicant may make about the decision. The Trustees' decision following any written representations must be notified to the applicant in writing but shall be final.
- (3) Membership is not transferable to anyone else.
- (4) The Trustees must keep a register of names and addresses of the members which must be made available to any member upon request.

8. Termination of Membership

Membership is terminated if:

- (1) the member dies or, if it is an organisation, ceases to exist;
- (2) the member resigns by written notice to the Charity unless, after the resignation, there would be less than two members;

Notes

Sub-clause 8(3) - The notice for any general meeting should remind members of this requirement. We would recommend that there is a reasonable gap between the deadline for payment of subscriptions (or any other regular payments by members to the Charity) and the holding of a general meeting to reduce the risk of this becoming an administrative problem for the Charity.

Clause 9 - We provide guidance on meetings in our booklet *Charities and Meetings* (CC48), produced in association with ICSA (The Institute of Chartered Secretaries and Administrators).

Sub-clause 10(1) - 'Clear' days does not include the day on which the notice would be received by the member or the day on which the meeting is held – see sub-clause 28(5)(c). Section 81 of the Charities Act 1993 sets out how notice may be given by post. In broad terms, the Charity may send notice to each Trustee at the UK address held in the Charity's records: no notice is required for Trustees living outside the UK.

- (3) any sum due from the member to the Charity is not paid in full within six months of it falling due;
- (4) the member is removed from membership by a resolution of the Trustees that it is in the best interests of the Charity that his or her membership is terminated. A resolution to remove a member from membership may only be passed if:
 - (a) the member has been given at least twenty one days' notice in writing of the meeting of the Trustees at which the resolution will be proposed and the reasons why it is to be proposed;
 - (b) the member or, at the option of the member, the member's representative (who need not be a member of the Charity) has been allowed to make representations to the meeting.

9. General meetings

- (1) The Charity must hold a general meeting within twelve months of the date of the adoption of this constitution.
- (2) An annual general meeting must be held in each subsequent year and not more than fifteen months may elapse between successive annual general meetings.
- (3) All general meetings other than annual general meetings shall be called special general meetings.
- (4) The Trustees may call a special general meeting at any time.
- (5) The Trustees must call a special general meeting if requested to do so in writing by at least ten members or one tenth of the membership, whichever is the greater. The request must state the nature of the business that is to be discussed. If the Trustees fail to hold the meeting within twenty-eight days of the request, the members may proceed to call a special general meeting but in doing so they must comply with the provisions of this Constitution.

10. Notice

- (1) The minimum period of notice required to hold any general meeting of the Charity is fourteen clear days from the date on which the notice is deemed to have been given.
- (2) A general meeting may be called by shorter notice, if it is so agreed by all the members entitled to attend and vote.
- (3) The notice must specify the date, time and place of the meeting and the general nature of the business to be transacted. If the meeting is to be an annual general meeting, the notice must say so.
- (4) The notice must be given to all the members and to the Trustees.

Notes

Sub-clause 11(1) - This means that a quorum must be present when a matter is being discussed and voted on, in order for a decision on it to be validly made. If the meeting subsequently becomes inquorate, this will not invalidate earlier, quorate decisions.

Sub-clause 11(2) - Insert the figure for the quorum. This should be set with care. If it is too high, any absences may make it difficult to have a valid meeting. If it is too low, a small minority may be able to impose its views unreasonably. Note that sub-clauses 11(4)-(6) set out the procedure for dealing with situations where the meeting is inquorate.

Sub-clause 11(6) - Note that this provision permits the re-scheduled meeting to proceed without a quorum being present within 15 minutes of the specified start time. It also means that the number of members present 15 minutes after the scheduled start of the meeting will form the quorum if the quorum required at sub-clause 11(2) is not achieved.

11. Quorum

- (1) No business shall be transacted at any general meeting unless a quorum is present.
- (2) A quorum is;
 - [Number] members entitled to vote upon the business to be conducted at the meeting; or
 - one tenth of the total membership at the time,whichever is the greater.
- (3) The authorised representative of a member organisation shall be counted in the quorum.
- (4) If:
 - (a) a quorum is not present within half an hour from the time appointed for the meeting; or
 - (b) during a meeting a quorum ceases to be present,the meeting shall be adjourned to such time and place as the Trustees shall determine.
- (5) The Trustees must re-convene the meeting and must give at least seven clear days' notice of the re-convened meeting stating the date time and place of the meeting.
- (6) If no quorum is present at the re-convened meeting within fifteen minutes of the time specified for the start of the meeting the members present at that time shall constitute the quorum for that meeting.

12. Chair

- (1) General meetings shall be chaired by the person who has been elected as Chair.
- (2) If there is no such person or he or she is not present within fifteen minutes of the time appointed for the meeting a Trustee nominated by the Trustees shall chair the meeting.
- (3) If there is only one Trustee present and willing to act, he or she shall chair the meeting.
- (4) If no Trustee is present and willing to chair the meeting within fifteen minutes after the time appointed for holding it, the members present and entitled to vote must choose one of their number to chair the meeting.

Notes

Clause 13 - This is a discretionary power for the members to adjourn a quorate meeting – when the meeting is reconvened it must be quorate. This provision differs from the adjournment provisions in Clause 11 which are not discretionary and must be used where a general meeting is not quorate.

Clause 15 - Organisations which are members ('corporate members') enjoy the same rights and duties as individual members. Our research report *Membership Charities (RS7)* provides advice and guidance on managing corporate members.

13. Adjournments

- (1) The members present at a meeting may resolve that the meeting shall be adjourned.
- (2) The person who is chairing the meeting must decide the date time and place at which meeting is to be re-convened unless those details are specified in the resolution.
- (3) No business shall be conducted at an adjourned meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.
- (4) If a meeting is adjourned by a resolution of the members for more than seven days, at least seven clear days' notice shall be given of the re-convened meeting stating the date time and place of the meeting.

14. Votes

- (1) Each member shall have one vote but if there is an equality of votes the person who is chairing the meeting shall have a casting vote in addition to any other vote he or she may have.
- (2) A resolution in writing signed by each member (or in the case of a member that is an organisation, by its authorised representative) who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective. It may comprise several copies each signed by or on behalf of one or more members.

15. Representatives of Other Bodies

- (1) Any organisation that is a member of the Charity may nominate any person to act as its representative at any meeting of the Charity.
- (2) The organisation must give written notice to the Charity of the name of its representative. The nominee shall not be entitled to represent the organisation at any meeting unless the notice has been received by the Charity. The nominee may continue to represent the organisation until written notice to the contrary is received by the Charity.
- (3) Any notice given to the Charity will be conclusive evidence that the nominee is entitled to represent the organisation or that his or her authority has been revoked. The Charity shall not be required to consider whether the nominee has been properly appointed by the organisation.

16. Officers and Trustees

- (1) The Charity and its property shall be managed and administered by a committee comprising the Officers and other members elected in accordance with this Constitution. The Officers and other members of the committee shall be the Trustees of the Charity and in this constitution are together called "the Trustees".
- (2) The Charity shall have the following Officers:
 - A chair,
 - A secretary,
 - A treasurer.
- (3) A Trustee must be a member of the Charity or the nominated representative of an organisation that is a member of the Charity.
- (4) No one may be appointed a Trustee if he or she would be disqualified from acting under the provisions of Clause 19.
- (5) The number of Trustees shall be not less than three but (unless otherwise determined by a resolution of the Charity in general meeting) shall not be subject to any maximum.
- (6) The first Trustees (including Officers) shall be those persons elected as Trustees and Officers at the meeting at which this constitution is adopted.
- (7) A Trustee may not appoint anyone to act on his or her behalf at meetings of the Trustees.

Clause 17 - Our publication *Finding New Trustees: What charities need to know* (CC30) provides guidance on effective methods of recruiting new Charity Trustees and of familiarising them with the Charity.

17. The Appointment of Trustees

- (1) The Charity in general meeting shall elect the Officers and the other Trustees.
- (2) The Trustees may appoint any person who is willing to act as a Trustee. Subject to sub-clause 5(b) of this clause, they may also appoint Trustees to act as officers.
- (3) Each of the Trustees shall retire with effect from the conclusion of the annual general meeting next after his or her appointment but shall be eligible for re-election at that annual general meeting.
- (4) No-one may be elected a Trustee or an Officer at any annual general meeting unless prior to the meeting the Charity is given a notice that:
 - (a) is signed by a member entitled to vote at the meeting;
 - (b) states the member's intention to propose the appointment of a person as a Trustee or as an officer;

Notes

Clause 18 – It is sensible to set out all the powers that the Charity will commonly need, for the avoidance of doubt and to remind Trustees of the conditions that have to be met when they exercise those powers. Some of these powers are implicit in a Charity's objects (for example, if the object is to provide a school, the Trustees have an implicit power to acquire premises). Other powers are given by statute, often only if specific conditions are met. For example, the Trustee Act 2000 gives Trustees power to acquire and dispose of land, to borrow money in many circumstances, to delegate much of the running of the Charity and to invest. However, there are some things that can be done only if the Charity's governing document provides express power to do them.

Sub-clause 18(1)(a) - This sub-clause provides a general power to raise funds through a wide variety of methods. The only restriction here is that it does not allow the Charity to engage in substantial permanent trading for the purpose of raising funds. (Trading on a small scale is allowed. HM Revenue and Customs provide guidance on the tax treatment of different sorts of trading.) The terms of this power do not prevent trading in order to carry out the Charity's object - for example, an educational Charity can charge fees for the educational services it provides.

Sub-clause 18(1)(b) - This power is helpful if the Charity is to acquire property either for use as office premises or functionally (such as a playground or school site). Our publication *Acquiring Land* (CC33) contains further guidance on the issue. See also notes to sub-clause 18(1)(h) and clause 26.

Sub-clause 18(1)(c) - This power enables the Trustees to dispose of property belonging to the Charity (for example, by selling or leasing it). Sections 36 and 37 of the Charities Act 1993, as amended by the Charities Act 2006, apply to most charities and require compliance with certain conditions to ensure that Charity property is disposed of for the best terms reasonably obtainable. Our publication *Disposing of Charity Land* (CC28) provides more information about this.

Sub-clause 18(1)(d) - This provides the Trustees with a power to borrow. It also makes clear that if this power involves securing the loan on land of the Charity, it must comply with the requirements of sections 38 and 39 of the Charities Act 1993, as amended by the Charities Act 2006. Briefly, the Act requires that the Trustees take advice and provide certain certificates/statements when they are borrowing money by way of mortgage. Our Operational Guidance OG22 ('Borrowing and Mortgages') on our website provides detailed information on this.

Sub-clause 18(1)(j) - This power cannot be used if the goods or services are being provided by a Trustee: see Clause 4.

- (c) is signed by the person who is to be proposed to show his or her willingness to be appointed.
- (5) (a) The appointment of a Trustee, whether by the Charity in general meeting or by the other Trustees, must not cause the number of Trustees to exceed any number fixed in accordance with this constitution as the maximum number of Trustees.
- (b) The Trustees may not appoint a person to be an Officer if a person has already been elected or appointed to that office and has not vacated the office.

18. Powers of Trustees

- (1) The Trustees must manage the business of the Charity and have the following powers in order to further the Objects (but not for any other purpose):
 - (a) to raise funds. In doing so, the Trustees must not undertake any substantial permanent trading activity and must comply with any relevant statutory regulations;
 - (b) to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
 - (c) to sell, lease or otherwise dispose of all or any part of the property belonging to the Charity. In exercising this power, the Trustees must comply as appropriate with sections 36 and 37 of the Charities Act 1993, as amended by the Charities Act 2006;
 - (d) to borrow money and to charge the whole or any part of the property belonging to the Charity as security for repayment of the money borrowed. The Trustees must comply as appropriate with sections 38 and 39 of the Charities Act 1993, as amended by the Charities Act 2006, if they intend to mortgage land;
 - (e) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
 - (f) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects;
 - (g) to acquire, merge with or enter into any partnership or joint venture arrangement with any other Charity formed for any of the Objects;
 - (h) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
 - (j) to obtain and pay for such goods and services as are necessary for carrying out the work of the Charity;

Notes

Sub-clause 18(1)(k) – Bank accounts – the Trustees can make rules (under clause 29) to allow others associated with the operation of the Charity such as employees or volunteers to sign cheques and other orders in relation to the Charity's bank accounts so long as these activities are properly managed so as to reduce the risk of fraud. For example, the Trustees might allow two senior volunteers to sign cheques up to a defined face value, with a limit on the total value of cheques which they are authorised to sign in any one month. In the case of charities which operate electronic bank accounts, we have provided guidance on Trustee duties and best practice for operating such accounts. This is on our website. With regard to the delegation and management of funds, the Trustee Act 2000 provides wide powers of investment and requires the Charity to take advice and to consider the need to invest in a range of different investments. Our publication *Investment of Charitable Funds: Basic Principles* (CC14) provides more information about charity investments. The powers to employ agents, nominees and custodians are of particular use where the Charity wishes to use an investment manager.

Clause 19 - Our booklet *Finding New Trustees: What charities need to know* (CC30) explains what section 72 of this Act covers. In very broad terms, someone who has been convicted of offences involving deception or fraud, or who is an undischarged bankrupt or who has been removed from office as a Charity Trustee by us will be disqualified for acting as a Trustee.

Clause 20 - We provide further guidance on meetings in our booklet *Charities and Meetings* (CC48).

- (k) to open and operate such bank and other accounts as the Trustees consider necessary and to invest funds and to delegate the management of funds in the same manner and subject to the same conditions as the Trustees of a trust are permitted to do by the Trustee Act 2000;
 - (l) to do all such other lawful things as are necessary for the achievement of the Objects;
- (2) No alteration of this constitution or any special resolution shall have retrospective effect to invalidate any prior act of the Trustees.
 - (3) Any meeting of Trustees at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the Trustees.

19. Disqualification and Removal of Trustees

A Trustee shall cease to hold office if he or she:

- (1) is disqualified for acting as a Trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision);
- (2) ceases to be a member of the Charity;
- (3) becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
- (4) resigns as a Trustee by notice to the Charity (but only if at least two Trustees will remain in office when the notice of resignation is to take effect); or
- (5) is absent without the permission of the Trustees from all their meetings held within a period of six consecutive months and the Trustees resolve that his or her office be vacated.

20. Proceedings of Trustees

- (1) The Trustees may regulate their proceedings as they think fit, subject to the provisions of this constitution.
- (2) Any Trustee may call a meeting of the Trustees.
- (3) The secretary must call a meeting of the Trustees if requested to do so by a Trustee.
- (4) Questions arising at a meeting must be decided by a majority of votes.
- (5) In the case of an equality of votes, the person who chairs the meeting shall have a second or casting vote.

Sub-clause 20(7) – where the total number of Trustees is the mid-point between two numbers which can be divided by three, we recommend rounding up to the next multiple of three.

- (6) No decision may be made by a meeting of the Trustees unless a quorum is present at the time the decision is purported to be made.
- (7) The quorum shall be two or the number nearest to one third of the total number of Trustees, whichever is the greater or such larger number as may be decided from time to time by the Trustees.
- (8) A Trustee shall not be counted in the quorum present when any decision is made about a matter upon which that Trustee is not entitled to vote.
- (9) If the number of Trustees is less than the number fixed as the quorum, the continuing Trustees or Trustee may act only for the purpose of filling vacancies or of calling a general meeting.
- (10) The person elected as the Chair shall chair meetings of the Trustees.
- (11) If the Chair is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the Trustees present may appoint one of their number to chair that meeting.
- (12) The person appointed to chair meetings of the Trustees shall have no functions or powers except those conferred by this constitution or delegated to him or her in writing by the Trustees.
- (13) A resolution in writing signed by all the Trustees entitled to receive notice of a meeting of Trustees or of a committee of Trustees and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the Trustees or (as the case may be) a committee of Trustees duly convened and held.
- (14) The resolution in writing may comprise several documents containing the text of the resolution in like form each signed by one or more Trustees.

21. Delegation

- (1) The Trustees may delegate any of their powers or functions to a committee of two or more Trustees but the terms of any such delegation must be recorded in the minute book.
- (2) The Trustees may impose conditions when delegating, including the conditions that:
 - the relevant powers are to be exercised exclusively by the committee to whom they delegate;
 - no expenditure may be incurred on behalf of the Charity except in accordance with a budget previously agreed with the Trustees.

- (3) The Trustees may revoke or alter a delegation.
- (4) All acts and proceedings of any committees must be fully and promptly reported to the Trustees.

22. Irregularities in Proceedings

- (1) Subject to sub-clause (2) of this clause, all acts done by a meeting of Trustees, or of a committee of Trustees, shall be valid notwithstanding the participation in any vote of a Trustee:
 - who was disqualified from holding office;
 - who had previously retired or who had been obliged by the constitution to vacate office;
 - who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;

if, without:

- the vote of that Trustee; and
- that Trustee being counted in the quorum,

the decision has been made by a majority of the Trustees at a quorate meeting.

- (2) Sub-clause (1) of this clause does not permit a Trustee to keep any benefit that may be conferred upon him or her by a resolution of the Trustees or of a committee of Trustees if the resolution would otherwise have been void.

- (3) No resolution or act of
 - (a) the Trustees
 - (b) any committee of the Trustees
 - (c) the Charity in general meeting

shall be invalidated by reason of the failure to give notice to any Trustee or member or by reason of any procedural defect in the meeting unless it is shown that the failure or defect has materially prejudiced a member or the beneficiaries of the Charity.

23. Minutes

The Trustees must keep minutes of all:

- (1) appointments of Officers and Trustees made by the Trustees;
- (2) proceedings at meetings of the Charity;

Sub-clause 22(2) – see clause 4 (and in particular sub-clause 4(5)) which sets out the restrictions on Trustee benefits and the procedures to be followed if a benefit is to be allowed to a Trustee.

Clause 23 - Using the power to make rules at Clause 29, the Trustees can decide in what format the minutes should be kept and how to validate them.

Clause 24 - The key accounting requirements for charities are set out on our website. All registered charities with incomes over £10k must send accounts, Annual Report and Annual Return to us within 10 months of the end of the financial year.

Sub-clause 24(1)(e) - The Annual Return provides a summary of key financial data and is used by us for monitoring purposes to detect issues which might require our attention or guidance.

Sub-clause 24(2) - The Statement of Recommended Practice for charities (SORP 2005) is available on our website or can be purchased in hard copy (£15 per copy) from the publishers, CCH. Their customer services line is 0870 777 2906.

Clause 25 - A Charity's entry includes its name, correspondence address, objects, governing document (and any amendment) and names of its Trustees. The Commission issues to every Charity an Annual Information Update form and Annual Return on which these details can conveniently be supplied, although changes to the correspondent details should be provided as soon as possible.

When the Trustees acquire land for the Charity, the ownership of the land cannot rest with the Charity directly as it has no separate legal identity. The Trustees will therefore need to ensure that title to the Charity's land is held in the name of individuals ('holding Trustees') or a company, in trust on behalf of the Charity. Typically this can be some or all of the Trustees, the Official Custodian for Charities (see our booklet *The Official Custodian for Charities' Land Holding Service* (CC13)) or a nominee.

- (3) meetings of the Trustees and committees of Trustees including:
- the names of the Trustees present at the meeting;
 - the decisions made at the meetings; and
 - where appropriate the reasons for the decisions.

24. Annual Report and Return and Accounts

- (1) The Trustees must comply with their obligations under the Charities Act 1993 with regard to:
- (a) the keeping of accounting records for the Charity;
 - (b) the preparation of annual statements of account for the Charity;
 - (c) the transmission of the statements of account to the Charity;
 - (d) the preparation of an Annual Report and its transmission to the Commission;
 - (e) the preparation of an Annual Return and its transmission to the Commission.
- (2) Accounts must be prepared in accordance with the provisions of any Statement of Recommended Practice issued by the Commission, unless the Trustees are required to prepare accounts in accordance with the provisions of such a Statement prepared by another body.

25. Registered particulars

The Trustees must notify the Commission promptly of any changes to the Charity's entry on the Central Register of Charities.

26. Property

- (1) The Trustees must ensure the title to:
- (a) all land held by or in trust for the Charity that is not vested in the Official Custodian of Charities; and
 - (b) all investments held by or on behalf of the Charity,
- is vested either in a corporation entitled to act as custodian Trustee or in not less than three individuals appointed by them as holding Trustees.

Clause 27 - These are the minimum requirements and Trustees should consider if any other forms of insurance are needed.

- (2) The terms of the appointment of any holding Trustees must provide that they may act only in accordance with lawful directions of the Trustees and that if they do so they will not be liable for the acts and defaults of the Trustees or of the members of the Charity.
- (3) The Trustees may remove the holding Trustees at any time.

27. Repair and insurance

The Trustees must keep in repair and insure to their full value against fire and other usual risks all the buildings of the Charity (except those buildings that are required to be kept in repair and insured by a tenant). They must also insure suitably in respect of public liability and employer's liability.

28. Notices

- (1) Any notice required by this constitution to be given to or by any person must be:
 - (a) in writing; or
 - (b) given using electronic communications.
- (2) The Charity may give any notice to a member either:
 - (a) personally; or
 - (b) by sending it by post in a prepaid envelope addressed to the member at his or her address; or
 - (c) by leaving it at the address of the member; or
 - (d) by giving it using electronic communications to the member's address.
- (3) A member who does not register an address with the Charity or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the Charity.
- (4) A member present in person at any meeting of the Charity shall be deemed to have received notice of the meeting and of the purposes for which it was called.
- (5)
 - (a) Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.
 - (b) Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given.
 - (c) A notice shall be deemed to be given 48 hours after the envelope containing it was posted or, in the case of an electronic communication, 48 hours after it was sent.

Notes

Clause 29 - Rules are effectively the internal procedures adopted by the Trustees for the proper administration of the Charity. They cannot be used to change any of the provisions in this constitution. Clause 6 of this constitution sets out the procedure for amending the provisions of this constitution.

Sub-clause 29(2)(e) - The Electronic Communications Act 2000 and the Electronic Signatures Regulations 2002 permit electronic signatures to be accepted as evidence, subject to certain conditions. This sub-clause summarises those conditions.

29. Rules

- (1) The Trustees may from time to time make rules or bye-laws for the conduct of their business.
- (2) The bye-laws may regulate the following matters but are not restricted to them:
 - (a) the admission of members of the Charity (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
 - (b) the conduct of members of the Charity in relation to one another, and to the Charity's employees and volunteers;
 - (c) the setting aside of the whole or any part or parts of the Charity's premises at any particular time or times or for any particular purpose or purposes;
 - (d) the procedure at general meeting and meetings of the Trustees in so far as such procedure is not regulated by this Constitution;
 - (e) the keeping and authenticating of records. (If regulations made under this clause permit records of the Charity to be kept in electronic form and requires a Trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.)
 - (f) generally, all such matters as are commonly the subject matter of the rules of an unincorporated association.
- (3) The Charity in general meeting has the power to alter, add to or repeal the rules or bye-laws.
- (4) The Trustees must adopt such means as they think sufficient to bring the rules and bye-laws to the notice of members of the Charity.
- (5) The rules or bye-laws shall be binding on all members of the Charity. No rule or bye-law shall be inconsistent with, or shall affect or repeal anything contained in, this constitution.

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