



RUGPFJE2

RM 23/04/2010 370

COMPANIES HOUSE

Insert the name of the company

Insert the name of the company

These notes and the accompanying model Memorandum and Articles have been updated to take into account the relevant provisions of the Companies Act 2006 which have already come into force or are due to come into force on 1 October 2008. They do not take into account those provisions which do not come into force until 1 October 2009.

**Clause 1** - In general, the Commission can accept any name unless it infringes the principles set out in section 6 of the Charities Act 1993, which are explained in our publication *Registering as a Charity* (CC21) and in our Operational Guidance (OG18 - 'Names') available on our website. In very broad terms, the name should not be misleading, offensive or likely to be confused with the name of an existing charity.

**Clause 2** - Choose one of the options

**Clause 3** - Insert the purpose for which the company has been formed. A charity's objects must be expressed in exclusively charitable terms and this can be quite difficult. Guidance is available in our publication *Choosing and Preparing a Governing Document* (CC22). The key elements to include are:

- the purpose itself (eg establishing and running a school),
- the people who can benefit (in our example, school age children), and, if appropriate,

any geographic limits which may be needed to define the area of benefit. This will not always be necessary if you do include an area of benefit, it is common to define it by reference to a local government area: this has the advantage of clarity and simplicity, but can create problems if the area is subsequently altered or abolished.

697 5984

## COMPANY LIMITED BY GUARANTEE

## Memorandum of Association of

FACTCHECK ...

## 1 The company's name is

FACTCHECK ...

(and in this document it is called the charity).

## 2 Option 1

The charity's registered office is to be situated in England. ✓

~~Option 2~~~~The charity's registered office is to be situated in Wales.~~

3(a) The purposes of the charity shall be to promote the advancement firstly of citizenship and community development, secondly of civic responsibility and engagement, thirdly of public education in relation to the foregoing and fourthly in particular (without prejudice to that generality) to promote informed public discourse and debate on matters of public concern in relation to the foregoing by making available full, accurate and relevant facts concerning the same.

(b) In promoting the objects aforesaid the trustees shall have particular regard for the need for the charity to be impartial, objective and balanced in what it does and chooses to do and to that end they shall appoint an independent Ombudsman to deal with any complaints as to lack of impartiality, objectivity and balance and to advise the trustees in relation to the preservation of those characteristics"

## NOTES

**Clause 4** - It is useful to include these powers to avoid any misunderstanding of the nature of the key powers available to the charity and the conditions that have to be met when exercising the powers. Examples of powers that companies already have include a power to insure and a power to amend the memorandum and articles of association. Note however that this power of amendment may in certain circumstances only be exercised with our prior consent under s44 of the Charities Act 1993 (see our Operational Guidance (OG47) "Alterations of governing documents charitable companies" on our website).

**Clause 4(1)(a)** - This sub-clause provides a general power to raise funds through a wide variety of methods including inviting and receiving donations and legacies. 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 provides guidance on the tax treatment of different sorts of trading). If your charity is likely to raise funds from trading, our publication *Trustees, Trading and Tax* (CC35) provides detailed advice. 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.

**Clause 4(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.

**Clause 4(1)(c)** - This power enables the charity to dispose of its property. 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.

**Clause 4(1)(d)** - This provides the company with an explicit 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 the Charities Act 1993 as amended by the Charities Act 2006. Briefly, the Act requires that the Directors 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.

- 4 (1) In addition to any other powers it may have, the charity has the following powers in order to further the Objects (but not for any other purpose):
  - (a) to raise funds. In doing so, the charity 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 charity 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 charity must comply as appropriate with sections 38 and 39 of the Charities Act 1993, as amended by the Charities Act 2006, if it wishes 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 to 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;
  - (i) to employ and remunerate such staff as are necessary for carrying out the work of the charity. The charity may employ or remunerate a Director only to the extent it is permitted to do so by clause 5 and provided it complies with the conditions in that clause,
  - (j) to
    - (i) deposit or invest funds,
    - (ii) employ a professional fund-manager, and
    - (iii) arrange for the investments or other property of the charity to be held in the name of a nominee;

*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,*

## Notes

**Clause 4(1)(i)** - This power cannot be used to employ Directors as staff. See Clause 5.

**Clause 4(1)(j)** - 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 5(1)** - The income of a charity must be applied solely to further its objects and not to benefit the members. The Directors have a duty to ensure that the funds are correctly applied in accordance with this principle.

- (k) to provide indemnity insurance for the Directors or any other officer of the charity in relation to any such liability as is mentioned in subclause (2) of this clause, but subject to the restrictions specified in subclause (3) of the clause;
- (l) to pay out of the funds of the charity the costs of forming and registering the charity both as a company and as a charity,
- (m) to do all such other lawful things as are necessary for the achievement of the Objects.

(2) The liabilities referred to in sub-clause (1)(k) are

- (a) any liability that by virtue of any rule of law would otherwise attach to a director of a company 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,
- (b) the liability to make a contribution to the charity's assets as specified in section 214 of the Insolvency Act 1986 (wrongful trading).

(3) (a) The following liabilities are excluded from sub-clause (2)(a)

- (i) fines,
- (ii) costs of unsuccessfully defending criminal prosecutions for offences arising out of the fraud, dishonesty or wilful or reckless misconduct of the Director or other officer,
- (iii) liabilities to the charity that result from conduct that the Director or other officer knew or must be assumed to have known was not in the best interests of the charity or about which the person concerned did not care whether it was in the best interests of the charity or not.

- (b) There is excluded from sub-clause 2(b) any liability to make such a contribution where the basis of the Director's liability is his or her knowledge prior to the insolvent liquidation of the charity (or reckless failure to acquire that knowledge) that there was no reasonable prospect that the charity would avoid going into insolvent liquidation.

- 5 (1) The income and property of the charity shall be applied solely towards the promotion of the Objects.
- (2) (a) A Director is entitled to be reimbursed from the property of the charity or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the charity.
- (b) Subject to the restrictions in sub-clause 4, a Director may benefit from trustee indemnity insurance cover purchased at the charity's expense.

**Clause 5(4)** - A Charity Director may not derive any financial benefit from his or her office unless specifically authorised to do so by the Charity Commission or the express terms of the governing document of the Charity. This prohibition extends to people closely connected to the Director - see clause 5(7)(b)

Use Option 1 and delete Option 2 (subclauses 1-5) if the Charity will want to prohibit the Directors from receiving any payment from the Charity other than for the type of expenses permitted at sub-clause (5)(2). Any departure from this principle would require the authority of the Charity Commission - our publication *Trustee Expenses and Payments* (CC11) advises on the considerations when seeking the Commission's authority in these circumstances.

Use Option 2 (sub-clauses 4-5) and delete Option 1 if it is thought that it will be in the interests of the charity to allow one or more of the Directors to enter into the sorts of transactions covered in 5(5).

As from 1 October 2008 directors will be under a specific duty to avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict with the interests of the company (section 175(1) of the Companies Act 2006).

In the case of a charitable company this duty can be modified as regards a conflict of interest arising in relation to a transaction or arrangement with the company if it is permitted by the company's articles of association (section 175(3) of the Companies Act 2006). Although the present clause is contained in the memorandum, there is a provision in the articles that all those provisions in the memorandum which could be contained in the articles shall take effect as if repeated in the articles.

Where a benefit is authorised by an order of the Court or of the Charity Commission, the duty to avoid a conflict of interest does not arise (section 20(5)A of the Charities Act 1993).

In addition, authorisation may be given by the unconflicted directors to a conflict of interests where the company's constitution includes provision enabling them to provide such authorisation (section 175(5)).

Clause 5(4) and (5) in Option 2 of the memorandum provides the necessary structure for all the benefits previously authorised by Option 2 of the model memorandum and articles to continue to be authorised after 1 October 2008. These

(c) A Director may receive an indemnity from the charity in the circumstances specified in Article 49

(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 member who is not also a Director receiving

(a) a benefit from the charity in the capacity of a beneficiary of the charity,

(b) reasonable and proper remuneration for any goods or services supplied to the charity

#### ~~Option 1~~

(4) No Director may

(a) buy goods or services from the charity,

(b) sell goods, services or any interest in land to the charity,

(c) be employed by or receive any remuneration from the charity,

(d) receive any other financial benefit from the charity,

unless the payment or transaction is

(i) permitted in accordance with, and subject to the conditions in, section 73A or 73F of the Charities Act 1993 [services provided by a charity trustee to the charity, trustee indemnity insurance], or

(ii) previously and expressly authorised in writing by the Charity Commission

#### Option 2

(4) No Director may

(a) buy any goods or services from the charity,

(b) sell goods, services, or any interest in land to the charity,

(c) be employed by, or receive any remuneration from the charity,

(d) receive any other financial benefit from the charity,

unless

(i) the payment is permitted by sub-clause (5) of this clause, does not exceed an amount that is reasonable in all the circumstances, and does not result in a majority of the Directors having received a financial benefit from the charity, or

## Notes

are all accommodated within the terms of section 175(3) or are to be authorised by the Commission so that the duty in section 175(1) does not apply. In addition, because of the impending specific duty some provision has been made for conflicts of duty where a director owes a duty of loyalty to another organisation but the unconflicted directors consider it is in the interests of the charity for that director to continue as a director. This provision can be found at Clause 5(7).

Note that Article 39 of the Articles of Association imposes a duty on the Directors to declare an interest in any transaction of the Charity and to absent themselves from any discussion where there may be a conflict between their personal interests and those of the Charity. This would include, for example, discussions about the need for the provision of a particular service which one of the Directors might have an interest in supplying (although in this example the terms of section 73A of the Charities Act 1993 would already make it necessary for the director to absent him/herself). Statutory duties to declare any interests will come into force on 1 October 2008 (sections 177 and 182 of the Companies Act 2006).

**Clause 5(4)(a)** - This does not prevent a Director 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.

**Clause 5(4)(d)** - Our publication *Trustee Expenses and Payments* (CC11) explains the circumstances in which we will authorise a payment to a Director.

**Clause 5(5)** - Sub-clauses 5(5)(a) - (e) set out possible powers to permit a range of different benefits for Directors if Option 2 is used and it is going to be in the interests of the charity to include these.

These powers cannot be adopted by existing charities without the authority of the Charity Commission. None of these options permits the Directors to receive payment for acting as Director.

**Clause 5(6)** - If Option 1 is chosen, renumber this as clause 5(5) and replace - (5) with - (4) after (2) in the first line. Renumber subsequent subsection (7) as (6).

- (ii) the Directors obtain the prior written approval of the Commission and fully comply with any procedures it prescribes
- (5) (a) (i) A Director may receive a benefit from the charity in the capacity of a beneficiary of the charity
- (ii) A Director may enter into a contract for the supply of goods or services to the charity where that is permitted in accordance with, and subject to the conditions in, section 73A of the Charities Act 1993
- (iii) A Director may receive interest on money lent to the charity at a reasonable and proper rate which must be 2% (or more) per annum below the base rate of a clearing bank to be selected by the Directors
- (iv) A company of which a Director is a member may receive fees remuneration or other benefit in money or money's worth provided that the shares of the company are listed on a recognised stock exchange and the Director holds no more than 1% of the issued capital of that company
- (v) A Director may receive rent for premises let by the Director to the charity if the amount of the rent and the other terms of the lease are reasonable and proper and provided that such a Director shall withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion
- (vi) The Directors may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the Directors in accordance with the terms of, and subject to the conditions in, section 73F of the Charities Act 1993
- (b) The employment or remuneration of a Director includes the engagement or remuneration of any firm or company in which the Director is:
  - (i) a partner,
  - (ii) an employee,
  - (iii) a consultant,
  - (iv) a director, or
  - (v) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Director holds less than 1% of the issued capital
- (6) In sub-clauses (2)-(5) of this clause 5
  - (a) "charity" shall include any company in which the charity
    - holds more than 50% of the shares, or

- controls more than 50% of the voting rights attached to the shares, or
- has the right to appoint one or more directors to the Board of the company,

(b) "Director" shall include any child, parent, grandchild, grandparent, brother, sister, spouse or civil partner of the Director or any person living with the Director as his or her partner

(7) If a conflict of interests arises for a director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in this memorandum or the articles, the unconflicted directors may authorise such a conflict of interests where the following conditions apply

- (a) the conflicted Director is absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting that other organisation or person,
- (b) the conflicted Director does not vote on any such matter and is not to be counted when considering whether a quorum of Directors is present at the meeting,
- (c) the unconflicted Directors consider it is in the interests of the charity to authorise the conflict of interest in the circumstances applying

6 The liability of the members is limited

7 Every member promises, if the charity is dissolved while he or she is a member or within twelve months after he or she ceases to be a member, to contribute such sum (not exceeding £10) as may be demanded of him or her towards the payment of the debts and liabilities of the charity incurred before he or she ceases to be a member, and of the costs charges and expenses of winding up, and the adjustment of the rights of the contributories among themselves

**Clause 8** - The Charity has power under the Companies Act to wind up. The Directors must comply with company law in using that power and provide Companies House with the required documentation. In these circumstances, Directors will need to send to us promptly a copy of the relevant resolution and a copy of the final accounts

8 (1) The members of the charity may at any time before, and in expectation of, its dissolution resolve that any net assets of the charity after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the charity be applied or transferred in any of the following ways

- (a) directly for the Objects, or
- (b) by transfer to any charity or charities for purposes similar to the Objects, or
- (c) to any charity for use for particular purposes that fall within the Objects

- (2) Subject to any such resolution of the members of the charity, the Directors of the charity may at any time before and in expectation of its dissolution resolve that any net assets of the charity after all its debts and liabilities have been paid, or provision made for them, shall on dissolution of the charity be applied or transferred
  - (a) directly for the Objects, or
  - (b) by transfer to any charity or charities for purposes similar to the Objects, or
  - (c) to any charity or charities for use for particular purposes that fall within the Objects
- (3) 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) and if no such resolution is passed by the members or the Directors the net assets of the charity shall be applied for charitable purposes as directed by the court or the Commission

We, the persons whose names and addresses are written below, wish to be formed into a company under this Memorandum of Association

[The persons whose signatures, names, and addresses are written at the end of the Memorandum will be the first members of the Company]

Signatures, Names and Addresses of Subscribers

*John N. P.*  
*William M.*  
*Charles J. M.*

Dated

28.07.2009

Witness to the above Signatures

*John N.*

Name

WILLIAM M.

Address

32 OUTWOOD HOUSE  
 LONDON  
 SW2 4LP

Occupation

RESEARCHER

A witness must be someone who is not related to any of the signatories but who is acquainted with them. The witness must be over 18.



Insert company name

**Article 1** - The Articles include reference to a company secretary. Having a company secretary is no longer a legal requirement and reference to the company secretary can be removed if it is not intended to make provision for such an officer. Apart from the definition of "secretary" and "officers" in this interpretation article, there are also references to the secretary in Article 33(3) and Article 41.

## THE COMPANIES ACTS 1985 AND 2006 COMPANY LIMITED BY GUARANTEE

### Articles of Association of

**FACTCHECK**

### Interpretation.

#### 1 In these articles

"the 1985 Act" means the Companies Act 1985,

"the 2006 Act" means the Companies Act 2006,

"address" means a postal address or, for the purposes of electronic communication, a fax number, an e-mail or postal address or a text message number in each case registered with the charity,

"the charity" means the company intended to be regulated by these articles;

"clear days" in relation to the period of a notice means a period excluding

- the day when the notice is given or deemed to be given, and
- the day for which it is given or on which it is to take effect;

"the Commission" means the Charity Commission for England and Wales,

"the memorandum" means the memorandum of association of the charity;

"officers" includes the Directors and the secretary,

"the seal" means the common seal of the charity if it has one,

"secretary" means the secretary of the charity or any other person appointed to perform the duties of the secretary of the charity, including a joint, assistant or deputy secretary,

"the Directors" means the directors of the charity. The directors are charity trustees as defined by Section 97 of the Charities Act 1993,

"the United Kingdom" means Great Britain and Northern Ireland, and

words importing one gender shall include all genders, and the singular includes the plural and vice versa

Unless the context otherwise requires words or expressions contained in these articles have the same meaning as in the 1985 Act or the 2006 Act but excluding any statutory modification not in force when this constitution becomes binding on the charity

Apart from the exception mentioned in the previous paragraph a reference to an Act of Parliament includes any statutory modification or re-enactment of it for the time being in force.

The provisions of the Memorandum to the extent that they could have been contained in the Articles shall take effect as though repeated here

#### Members.

- 2 (1) The subscribers to the memorandum are the first members of the charity
- (2) Membership is open to other individuals or organisations who
  - (a) apply to the charity in the form required by the Directors, and
  - (b) are approved by the Directors
- (3) (a) The Directors 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 Directors must inform the applicant in writing of the reasons for the refusal within twenty-one days of the decision
- (c) The Directors must consider any written representations the applicant may make about the decision. The Directors' decision following any written representations must be notified to the applicant in writing but shall be final
- (4) Membership is not transferable to anyone else
- (5) The Directors must keep a register of names and addresses of the members

#### Classes of Membership.

- 3 (1) The Directors may establish classes of membership with different rights and obligations and shall record the rights and obligations in the register of members
- (2) The Directors may not directly or indirectly alter the rights or obligations attached to a class of membership
- (3) The rights attached to a class of membership may only be varied if
  - (a) three-quarters of the members of that class consent in writing to the variation; or
  - (b) a special resolution is passed at a separate general meeting of the members of that class agreeing to the variation.
- (4) The provisions in these articles about general meetings shall apply to any meeting relating to the variation of the rights of any class of members

**Article 2(5)** - 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. It should also be remembered that section 116 of the 2006 Act sets out certain requirements for making the register available to members of the charity and to the public.

**Article 5** - We provide guidance on meetings in our booklet *Charities and Meetings* (CC48), produced in association with ICSA (The Institute of Chartered Secretaries and Administrators). This article makes provision for an annual general meeting. However, an annual general meeting is no longer a legal requirement and this article can be amended where this is appropriate. If no provision is to be made for an annual general meeting, consequential amendments will be required to articles 7(1) and (3), 24, 25(2) and 29(2).

**Article 7** - This article provides for 21 days' notice for an annual general meeting or a general meeting called for the passing of a special resolution. The only legal requirement in respect of notice for general meetings of a private company specifies notice of at least 14 days. Accordingly, this figure can be substituted if considered appropriate.

Notice of a general meeting is required to include a statement setting out the rights of members to appoint a proxy (section 325 of the Companies Act 2006).

## Termination of Membership.

- 4 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,
  - (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 Directors 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 Directors 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.

## General meetings.

- 5
  - (1) The charity must hold its first annual general meeting within eighteen months after the date of its incorporation
  - (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

- 6 The Directors may call a general meeting at any time

## Notice of general meetings.

- 7
  - (1) The minimum periods of notice required to hold a general meeting of the charity are
    - twenty-one clear days for an annual general meeting or a general meeting called for the passing of a special resolution,
    - fourteen clear days for all other general meetings.
  - (2) A general meeting may be called by shorter notice if it is so agreed by a majority in number of members having a right to attend and vote at the meeting who together hold not less than 90 percent of the total voting rights

(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. The notice must also contain a statement setting out the right of members to appoint a proxy under section 324 of the Companies Act 2006 and article 14 of these articles.

(4) The notice must be given to all the members and to the Directors and auditors.

8 The proceedings at a meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the charity.

#### Proceedings at general meetings.

9 (1) No business shall be transacted at any general meeting unless a quorum is present.

(2) A quorum is:

- 3 members present in person or by proxy and 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.

10 (1) 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 Directors shall determine.

(2) The Directors must reconvene the meeting and must give at least seven clear days' notice of the reconvened meeting stating the date, time and place of the meeting.

(3) If no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting the members present in person or by proxy at that time shall constitute the quorum for that meeting.

11 (1) General meetings shall be chaired by the person who has been appointed to chair meetings of the Directors.

**Article 9(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 article 10 sets out the procedure for dealing with situations where the meeting is inquorate.

**Article 10(3)** - Note that this provision permits the rescheduled 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 in person or by proxy 15 minutes after the scheduled start of the meeting will form the quorum if the quorum required at Article 9(2) is not achieved.

**Article 12** - This is a discretionary power for the members present in person or by proxy to adjourn a quorate meeting. This differs from the adjournment provisions in article 10 which are not discretionary and must be used where a general meeting is not quorate.

**Article 13** - This sets out how votes may be taken. A poll is a formal count of votes on a resolution. It can be useful where a show of hands is inconclusive; it is also sensible where the votes of certain categories of member count for more than those of others and where there is a concern that this would not be recognised in a show of hands where the result is close.

- (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 Director nominated by the Directors shall chair the meeting.
  - (3) If there is only one Director present and willing to act, he or she shall chair the meeting.
  - (4) If no Director is present and willing to chair the meeting within fifteen minutes after the time appointed for holding it, the members present in person or by proxy and entitled to vote must choose one of their number to chair the meeting.
- 12
- (1) The members present in person or by proxy at a meeting may resolve by ordinary resolution that the meeting shall be adjourned.
  - (2) The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution.
  - (3) No business shall be conducted at a reconvened 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 reconvened meeting stating the date, time and place of the meeting.
- 13
- (1) Any vote at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded.
    - (a) by the person chairing the meeting, or
    - (b) by at least two members present in person or by proxy and having the right to vote at the meeting, or
    - (c) by a member or members present in person or by proxy representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.
  - (2)
    - (a) The declaration by the person who is chairing the meeting of the result of a vote shall be conclusive unless a poll is demanded.
    - (b) The result of the vote must be recorded in the minutes of the charity but the number or proportion of votes cast need not be recorded.
  - (3)
    - (a) A demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the person who is chairing the meeting.
    - (b) If the demand for a poll is withdrawn the demand shall not invalidate the result of a show of hands declared before the demand was made.

**Article 13(5)(c)** - Where it is decided that a poll is to take place in these circumstances after a general meeting all the members of the charity are entitled to vote

- (4) (a) A poll must be taken as the person who is chairing the meeting directs, who may appoint scrutineers (who need not be members) and who may fix a time and place for declaring the results of the poll
- (b) The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded
- (5) (a) A poll demanded on the election of a person to chair a meeting or on a question of adjournment must be taken immediately
- (b) A poll demanded on any other question must be taken either immediately or at such time and place as the person who is chairing the meeting directs
- (c) The poll must be taken within thirty days after it has been demanded.
- (d) If the poll is not taken immediately at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
- (e) If a poll is demanded the meeting may continue to deal with any other business that may be conducted at the meeting

#### Proxies: appointment and voting.

**Article 14** - This makes provision for proxy voting. Members of a company have a legal right to appoint proxies under section 324 of the Companies Act 2006. A statement about this right must be contained in a notice calling a meeting of the company (section 325 of the Companies Act 2006). Article 7 deals with such notices.

The provision for proxies is based on the provisions in Table C Section 11.6 of the Companies Act 2006 defines "hard copy" and "electronic format".

- 14 (1) Any member is entitled to appoint another person as a proxy to exercise all or any of the member's rights to attend and to speak and vote at a general meeting of the charity
- (2) The appointment of a proxy shall be executed by or on behalf of the appointor and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve) -

"charity name .

I/We, . . . , of . . . , being a member/members of the above-named charity, hereby appoint . . . of . . . , or failing him/her, . . . of . . . , as my/our proxy to vote in my/our name[s] and on my/our behalf at the general meeting of the charity to be held on . . . 20 . . . , and at any adjournment thereof

Signed on . . . 20 . . . "

- (3) Where it is desired to afford members an opportunity of instructing the proxy how to act the appointment of a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve) -

"charity name .

I/We, . . . , of . . . , being a member/members of the above-named charity, hereby appoint . . . of . . . , or failing him/her, . . . of . . . , as my/our proxy to vote in my/our name[s] and on my/our behalf at the general meeting of the charity, to be held on . . . 20 . . . , and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No 1 \*for \*against

Resolution No 2 \*for \*against

\*Strike out whichever is not desired

Unless otherwise instructed, the proxy may vote as s/he thinks fit or abstain from voting

Signed this . . . day of . . . 20 . . . "

- (4) The appointment of a proxy and any authority under which it is executed (or a copy of such authority certified by a notary or in some other way approved by the directors) may be lodged with the charity as follows.
- (i) in the case of an instrument in writing be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the charity in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or
  - (ii) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications -
    - (a) in the notice convening the meeting, or
    - (b) in any instrument of proxy sent out by the charity in relation to the meeting, or
    - (c) in any invitation contained in an electronic communication to appoint a proxy issued by the charity in relation to the meeting,

it must be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote,
  - (iii) in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll, or

**Article 15** - This complies with the Companies Act 2006 which provides that if certain requirements are met members may agree written ordinary and special resolutions (sections 238 - 298) What constitutes an authenticated document is explained in section 1146 of the Companies Act 2006 A document sent in hard form is sufficiently authenticated by a signature of the person sending or supplying it A document sent in electronic form is sufficiently authenticated (a) if the identity of the sender is confirmed in a manner specified by the company, or (b) where no such manner has been specified, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement

(iv) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the person chairing the meeting or to the secretary or to any director

- (5) An appointment of proxy which is not deposited, delivered or received in a manner described in sub-clauses 14(4) shall be invalid
- (6) A vote given or poll demanded by proxy or by the duly authorised representative of a member which is an organisation shall be valid even if the authority of the person voting or demanding a poll has been determined unless notice of the determination was received by the charity at
  - (i) its registered office, or
  - (ii) at such other place at which the instrument of proxy was duly deposited, or
  - (iii) (where the appointment of the proxy was contained in an electronic communication) at the address at which such appointment was duly received

before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll

#### Written resolutions.

- 15 A resolution in writing agreed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective provided that a copy of the proposed resolution has been sent to every eligible member and a simple majority (or in the case of a special resolution a majority of not less than 75%) of members has signified its agreement to the resolution in an authenticated document which has been received at the registered office within the period of 28 days beginning with the circulation date A resolution in writing may comprise several copies to which one or more members have signified their agreement In the case of a member that is an organisation, its authorised representative may signify its agreement

#### Votes of members.

- 16 Subject to Article 3, every member, whether an individual or an organisation shall have one vote
- 17 Any objection to the qualification of any voter must be raised at the meeting at which the vote is tendered and the decision of the person who is chairing the meeting shall be final



**Article 19(1)** - By 'natural person' we mean a human being rather than a company which can in some circumstances be regarded as a 'person'. The minimum age for a director in this article is 16 years. A statutory provision to this effect comes into force on 1 October 2008.

- 18 (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.

#### Directors.

- 19 (1) A Director must be a natural person aged 16 years or older.
- (2) No one may be appointed a Director if he or she would be disqualified from acting under the provisions of Article 31.
- 20 The number of Directors shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum.
- 21 The first Directors shall be those persons notified to Companies House as the first directors of the charity.
- 22 A Director may not appoint an alternate director or anyone to act on his or her behalf at meetings of the Directors.

#### Powers of Directors.

- 23 (1) The Directors shall manage the business of the charity and may exercise all the powers of the charity unless they are subject to any restrictions imposed by the 1985 Act or the 2006 Act, the memorandum, these articles or any special resolution.
- (2) No alteration of the memorandum or these articles or any special resolution shall have retrospective effect to invalidate any prior act of the Directors.
- (3) Any meeting of Directors at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the Directors.

## Retirement

- 24 At the first annual general meeting all the Directors must retire from office unless by the close of the meeting the members have failed to elect sufficient Directors to hold a quorate meeting of the Directors. At each subsequent annual general meeting one-third of the Directors or, if their number is not three or a multiple of three, the number nearest to one third must retire from office. If there is only one Director he or she must retire.
- 25 (1) The Directors to retire by rotation shall be those who have been longest in office since their last appointment. If any Directors became or were appointed Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (2) If a Director is required to retire at an annual general meeting by a provision of these articles the retirement shall take effect upon the conclusion of the meeting.

## The Appointment of Directors.

- 26 The charity may by ordinary resolution.
- appoint a person who is willing to act to be a Director, and
  - determine the rotation in which any additional Directors are to retire.
- 27 No person other than a Director retiring by rotation may be appointed a Director at any general meeting unless
- (1) he or she is recommended for re-election by the Directors, or
  - (2) not less than fourteen nor more than thirty-five clear days before the date of 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 Director,
    - (c) contains the details that, if the person were to be appointed, the charity would have to file at Companies House, and
    - (d) is signed by the person who is to be proposed to show his or her willingness to be appointed.
- 28 All members who are entitled to receive notice of a general meeting must be given not less than seven nor more than twenty-eight clear days' notice of any resolution to be put to the meeting to appoint a Director other than a Director who is to retire by rotation.
- 29 (1) The Directors may appoint a person who is willing to act to be a Director.

**Article 27** - Our publication *Finding New Trustees: What charities need to know* (CC30) provides guidance on effective methods of recruiting new charity trustees or directors and of familiarising them with the charity.

**Article 27(2)(c)** - Certain details of newly appointed Directors must be sent to Companies House on Form 288a. This includes details of current and any former name, address, occupation, other directorships and consent to act.

**Article 31(2)** - Our publication *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 from acting as a Director.

**Article 33** - We provide guidance on meetings in our booklet *Charities and Meetings* (CC48).

- (2) A Director appointed by a resolution of the other Directors must retire at the next annual general meeting and must not be taken into account in determining the Directors who are to retire by rotation.

- 30 The appointment of a Director, whether by the charity in general meeting or by the other Directors, must not cause the number of Directors to exceed any number fixed as the maximum number of Directors.

#### Disqualification and removal of Directors.

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

#### Directors' remuneration.

- 32 The Directors must not be paid any remuneration unless it is authorised by clause 5 of the Memorandum.

#### Proceedings of Directors.

- 33
  - (1) The Directors may regulate their proceedings as they think fit, subject to the provisions of the articles.
  - (2) Any Director may call a meeting of the Directors.
  - (3) The secretary must call a meeting of the Directors if requested to do so by a Director.
  - (4) Questions arising at a meeting shall be decided by a majority of votes.

- 34 (1) No decision may be made by a meeting of the Directors unless a quorum is present at the time the decision is purported to be made
  - (2) The quorum shall be two or the number nearest to one third of the total number of Directors, whichever is the greater, or such larger number as may be decided from time to time by the Directors
  - (3) A Director shall not be counted in the quorum present when any decision is made about a matter upon which that Director is not entitled to vote.
- 35 If the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of filling vacancies or of calling a general meeting
- 36 (1) The Directors shall appoint a Director to chair their meetings and may at any time revoke such appointment
- (2) If no-one has been appointed to chair meetings of the Directors or if the person appointed is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the Directors present may appoint one of their number to chair that meeting
- (3) The person appointed to chair meetings of the Directors shall have no functions or powers except those conferred by these articles or delegated to him or her by the Directors.
- 37 (1) A resolution in writing agreed by a simple majority of all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the Directors or (as the case may be) a committee of Directors duly convened and held provided that
- (a) a copy of the resolution is sent or submitted to all the Directors eligible to vote, and
- (b) a simple majority of Directors has signified its agreement to the resolution in an authenticated document or documents which are received at the registered office within the period of 28 days beginning with the circulation date
- (2) The resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one or more Directors has signified their agreement

#### Delegation.

- 38 (1) The Directors may delegate any of their powers or functions to a committee of two or more Directors but the terms of any delegation must be recorded in the minute book

(2) The Directors 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 Directors

(3) The Directors may revoke or alter a delegation

(4) All acts and proceedings of any committees must be fully and promptly reported to the Directors

39 A Director must declare the nature and extent of any interest, direct or indirect, which s/he has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not previously been declared. A Director must absent himself or herself from any discussions of the Directors 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).

40 (1) Subject to paragraph 40(2), all acts done by a meeting of Directors, or of a committee of Directors, shall be valid notwithstanding the participation in any vote of a Director

- 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 Director; and
- that Director being counted in the quorum,

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

(2) Paragraph 40(1) does not permit a Director to keep any benefit that may be conferred upon him or her by a resolution of the Directors or of a committee of Directors if, but for paragraph 40(1), the resolution would have been void, or if the Director has not complied with article 39

**Article 42** Using the power to make rules at article 50, the Directors can decide in what format the minutes should be kept and how to validate them

**Article 43** - The Statement of Recommended Practice for Charities is available on our website, or in hard copy, from the publishers (CH at £15 (plus postage and packing) per copy. Their customer services number is 0870 777 2906

**Article 44** - Guidance available on our website sets out the key accounting requirements for charities. All 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

**Article 44(1)(c)** - The annual return provides a summary of key financial data

## Seal.

- 41 If the charity has a seal it must only be used by the authority of the Directors or of a committee of Directors authorised by the Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and by the secretary or by a second Director

## Minutes.

- 42 The Directors must keep minutes of all
- (1) appointments of officers made by the Directors,
  - (2) proceedings at meetings of the charity,
  - (3) meetings of the Directors and committees of Directors including:
    - the names of the Directors present at the meeting,
    - the decisions made at the meetings, and
    - where appropriate the reasons for the decisions

## Accounts.

- 43 (1) The Directors must prepare for each financial year accounts as required by the 2006 Act. The accounts must be prepared to show a true and fair view and follow accounting standards issued or adopted by the Accounting Standards Board or its successors and adhere to the recommendations of applicable Statements of Recommended Practice
- (2) The Directors must keep accounting records as required by the 2006 Act

## Annual Report and Return and Register of Charities.

- 44 (1) The Directors must comply with the requirements of the Charities Act 1993 with regard to
- (a) the transmission of the statements of account to the charity,
  - (b) the preparation of an Annual Report and its transmission to the Commission,
  - (c) the preparation of an Annual Return and its transmission to the Commission

**Articles 45 & 46** - There are detailed requirements with regard to electronic communications contained in the Companies Act 2006 Sections 308-309 deals with the manner in which notice is to be given and the content of any notice on a website. Section 333 relates to sending documents relating to meetings etc in electronic form. Sections 1143-1148 and Schedules 4 and 5 deal with sending or supplying documents or information. Section 1168 contains definitions of "hard copy" and "electronic form" and other relevant terms.

- (2) The Directors must notify the Commission promptly of any changes to the charity's entry on the Central Register of Charities.
- 45 Any notice to be given to or by any person pursuant to the articles
  - (1) must be in writing; or
  - (2) must be given using electronic communications
- 46 (1) 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.
- (2) 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
- 47 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.
- 48 (1) Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given
- (2) 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
- (3) A notice shall be deemed to be given
  - (a) 48 hours after the envelope containing it was posted, or
  - (b) in the case of an electronic communication, 48 hours after it was sent

**Article 49** - This provision is about the extent to which the directors and other officers of the company should be protected ('indemnified') from liability it reflects rules which came in on 6 April 2005 as a modification of existing company law, and provides four different approaches to choose from. This can be a complex issue and we have provided further information about it in our website guidance 'The Companies (Audit, Investigations and Community Enterprise) Act 2004: Company Officer, Director and Auditor Indemnity'. It may be helpful to consult your own legal advisers about which approach is best for your charity.

The options here cater for the needs of most charities. The main differences are to do with whether the company wishes to indemnify its directors and officers in individual cases, or whether this protection should be a right to which they are automatically entitled. Note that none of these options gives the company the power to grant a blanket indemnity to its officers - they are all limited to what is allowed by law and can only be exercised in the interests of the charity.

After considering the bullet points below, choose one option and delete the others.

Option 1A gives the company the option to indemnify directors in any circumstances permitted by the Act. It does not confer any right to an indemnity. This option does not explicitly cover officers other than directors, but the general law implies an ability to indemnify them.

Option 1B is similar to Option 1A but it explicitly includes officers as well as directors.

Option 2 enables the company to provide a **right** to an indemnity for directors and auditors. A **power** to indemnify other officers may be implied.

Option 3 enables the company to confer on all officers the right to the **limited indemnity** permissible before 6 April 2005.

## Indemnity.

### Option 1A

- ~~49 The charity may indemnify any Director against any liability incurred by him or her in that capacity, to the extent permitted by sections 232 to 234 of the 2006 Act.~~

### Option 1B

- 49 The charity may indemnify any Director, Auditor, Reporting Accountant, or other officer of the charity against any liability incurred by him or her in that capacity to the extent permitted by sections 232 to 234 of the 2006 Act.

### Option 2

- ~~49 The charity shall indemnify any Director or Auditor of the charity against any liability incurred by him or her in that capacity to the extent permitted by sections 232 to 234 of the 2006 Act.~~

### Option 3

- ~~49 The charity shall indemnify every Director, Auditor, Reporting Accountant, or other officer of the charity against any liability incurred in successfully defending legal proceedings in that capacity, or in connection with any application in which relief is granted by the court from liability for negligence, default, or breach of duty or breach of trust in relation to the charity.~~

## Rules.

- 50 (1) The Directors may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the charity.
- (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 meetings and meetings of the Directors in so far as such procedure is not regulated by the Act or by these Articles,



- Signatures, Names, and Addresses of Subscribers

John N. [unclear]  
[unclear] at [unclear]  
[unclear]  
Carter J. [unclear]

28.07.2009

Witness to the above signature

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RESEARCHER