

STARTING UP

Choosing and Preparing a Governing Document

April 2008



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 180,000 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 a gross 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:

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All Commission publications referred to in this publication may be viewed on, or downloaded from, our website.

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What is this publication about?

1. This publication gives guidance about:
 - the different types of governing document that a charity might use;
 - our recommended standard provisions for governing documents, ie the provisions that we would normally expect to see in a governing document; and
 - the procedure for formally adopting your governing document.

Meaning of words and expressions used

2. In this guidance:

Must or need to are used to refer to actions that trustees, or their agents or employees, have to take by law.

Where we use terms such as the trustees **should** or we **suggest, recommend** or **advise** we are referring to actions which the trustees, their agents or employees could take and which we consider to be good practice, but which are not legal requirements.

Beneficiaries means those people who are eligible to benefit from the charity.

Charity Database means the computerised public Register of Charities in England and Wales.

Central Register means the offices at which the Charity Database can be viewed.

Governing document means any document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, articles of association, will, conveyance, Royal Charter, Scheme of the Commission, or other formal document.

An **Order** is a legal document by which we may give trustees a power which they do not already have to do something, eg to include a power of amendment in a charity's governing document.

Permanent endowment means property (eg land, buildings, investments, or cash) which may not be spent by the trustees as if it were income.

Remuneration includes not only payment in money terms, but also benefits in kind.

Trustees means **charity trustees**. Charity trustees are the people who, under the charity's governing document, are responsible for the general control and management of the administration of the charity. In the charity's governing document they may be called trustees, managing trustees, committee members, governors, or directors, or they may be referred to by some other title.

Some charities also have **custodian** or **holding trustees**, whose function is restricted to holding the property of the charity, and who can only act on the lawful instructions of the charity trustees.

What is a governing document?

3. A governing document is the formal document which sets up a charity and which we recommend contains all the information about:
 - what the charity is set up to do (objects);
 - how the charity will do those things (powers);
 - who will run it (charity trustees);
 - what happens if changes to the administrative provisions need to be made (amendment provision); and
 - what happens if the charity wishes to wind up (dissolution provision).

4. It should also contain the following administrative provisions:
 - how the charity trustees will run it; and
 - internal arrangements for meetings, voting, looking after money, etc.
5. A governing document is obviously important. It is not just something that a charity has to have in order to be a registered charity. It is the charity trustees' 'instruction manual' for the charity, as well as a legal document. We advise charity trustees to refer to it regularly to remind themselves what the charity's purposes are and how it should be run. Each trustee should be given a full copy of the governing document on appointment.

Types of governing document

6. There are four main types of governing document, and the type you choose will determine the type of organisation the charity will be. The four main types of governing document are:
 - constitution or rules (see paragraphs 14-22);
 - small charity constitution (see paragraphs 23-27);
 - trust deed (see paragraphs 28-36); and
 - articles of association (see paragraphs 37-45).

Our model governing documents

7. We produce model forms of these types of governing document:
 - Charitable Companies: Model Articles of Association - **GD1**.
 - Charitable Trusts: Model Trust Deed - **GD2**.
 - Charitable Associations: Model Constitution - **GD3**.
 - Small Charity Constitution.
8. Our models contain administrative provisions which are suitable for each of these types of organisation. However, it is still necessary for anyone using those models to insert the objects of the organisation, complete blank spaces left in certain clauses, select some clauses where options are available and to consider the suitability of the clauses generally to individual circumstances of the organisation. Copies of these models are available, free of charge, on our website or by calling Charity Commission Direct on 0845 300 0218.
9. The Charity Law Association (CLA) also produce suitable model governing documents for which a charge is made. To order copies of the CLA governing documents please email the CLA administrator on admin@charitylawassociation.org.uk

Approved governing documents

10. Some large national charities produce an approved governing document which can be used by organisations associated with that charity. These approved governing documents contain both agreed objects and administrative provisions which are specific to a particular type of organisation. A list of organisations for which an approved governing document has been agreed can be found on our website.

Will the adoption of a model or approved governing document speed up an application for registration?

11. **Yes.** The procedure for organisations which adopt an approved governing document is much more straightforward because the objects and administrative provisions have already been agreed. Organisations using an approved governing document will be required to confirm that they have approached the appropriate national body with regard to use of that document, and that they will operate within the guidelines issued by that body. Our consideration of such applications does not need to be as detailed as it might be otherwise, because we are already fully aware of the activities of those organisations.
12. Organisations which adopt one of our model governing documents will, similarly, be easier to consider because the administrative provisions have already been agreed, but some consideration will have to be given to the organisation's activities and to the objects declared in that document. If an organisation is to be recognised as a charity it must have exclusively charitable objects. We recognise that preparing charitable objects can be difficult. To help you in preparing your governing document we have published some example objects for a range of charities on our website.
13. Before using either an approved governing document or one of our model governing documents, you will need to consider whether it is appropriate for your organisation.

When to use a constitution or rules

What kind of organisation does a constitution or rules create?

Type of organisation: Unincorporated association

Charity trustees are usually called: Executive or management committee members

14. Constitutions are sometimes referred to as 'rules'. The terms are interchangeable but the type of governing document is the same. A constitution or rules will create an **unincorporated association**.
15. The 'association' part of this description means that it is an organisation consisting of a group of people who have decided to co-operate in furthering what the organisation is set up to do, and who have certain parts to play in its administration.
16. The 'unincorporated' part of the description tells you that the organisation is not a company (which is incorporated). This means that the association will not:
 - (unlike a company) have limited liability and a legal personality of its own (ie the charity trustees may be liable for the repayment of any debts which they have incurred on behalf of the charity: such debts can be met from the charity's own funds (if they are sufficient) unless the charity trustees had not acted prudently, lawfully, and in accordance with the charity's governing document);
 - be able to own land (and usually investments) in its own name. It will need to appoint either a custodian or holding trustee(s) to do this.

Which organisations use this type of structure?

17. It may be appropriate to establish an unincorporated association where any one or more of the following applies:
 - the organisation is to be relatively small in terms of assets – note that if its gross income is likely to be less than £5,000, it may be more appropriate to use the short model constitution described in paragraphs 23–27 below;
 - the organisation is to be a local branch of a national charity, and an approved constitution exists for branches;

- it has a membership;
- the charity trustees are elected or appointed to hold office for a fixed period of time - usually one year;
- the charity trustees are to be elected by members;
- the views of local residents, local councils, and other bodies need to be represented through membership, or as users of the facilities; and
- the objects of the organisation are to be carried out wholly or partly by, or through, the members (ie where the members undertake office or voluntary work on behalf of the organisation).

Do you need a professional legal adviser?

18. Generally, no. As a constitution is a simpler document than a trust deed or articles of association, you may not need the help of a professional legal adviser to set it up. We recommend standard provisions for a constitution and these are set out at paragraph 50.

How is a constitution put into operation?

19. In practice, it is normally put into operation by being **adopted** (accepted for use) at a formal meeting of those people who are, or will be, the charity trustees and the general membership. This means that you will require a final typed version of the constitution which should be:
- signed by all the charity trustees, eg the committee members;
 - dated the day of the meeting at which it was agreed.
20. It will also be necessary for the minutes of that meeting to formally record that the constitution was adopted.

What documents are needed for registration?

21. We need:

- a completed copy of the application form and the declaration; and
- a copy of the constitution.

If we ask you to revise the governing document before we can consider registering the organisation then we will also need **either**:

- a copy of the constitution showing ALL the changes that we have asked for;
- confirmation of the date of the meeting of members at which ALL these changes were approved and adopted.

or

- a copy of the original constitution; and
- a copy of the resolution setting out all the required amendments; and
- confirmation of the date of the meeting of the members that approved the changes.

22. It is much better for all concerned if a new version of the revised constitution is provided. This means the committee, the members, the Commission and the general public can see clearly exactly how the organisation operates.

When to use our model small charity constitution

What kind of organisation does our model small charity constitution create?

Type of organisation: Unincorporated association with a gross annual income under £5,000.

Charity trustees are called: Trustees.

Which organisations use our model small charity constitution?

23. It may be appropriate to establish a small charity using our model constitution where the following apply:
- the organisation's annual gross income will remain under £5,000 and it will therefore not need to register with the Commission;
 - it has a membership;
 - the charity trustees are to be elected by members;
 - the views of local residents need to be represented through membership;
 - the charity neither owns a building nor employs people.
24. If you are setting up your organisation as a local branch of a national charity which produces its own approved model constitutions (for example, Parent Teacher Associations, Pre-School Learning Alliances, Women's Institutes, Scouts and Guides) then please contact them for advice and use their model document.
25. If the charity's gross annual income grows larger than £5,000, you must register with the Charity Commission and will need to replace this constitution with a more comprehensive version as this one will no longer be appropriate.

Do you need a professional legal adviser?

26. No, this should not be necessary. Our model constitution has been designed to be easy to use and you may not need the help of a professional legal adviser to set it up. We recommend that you retain the standard provisions as contained in our model small charity constitution.

How is our model small charity constitution put into operation?

27. You need to:
- discuss the constitution and check that everybody understands and agrees with it;
 - write in the charitable 'Purposes' to describe what the charity has been set up for. You might also need to say which geographical area the charity will work in;
 - ensure that the people who are setting up the charity sign and date it, thereby adopting it as the document governing their charity. (The date will be the day of the meeting at which it was agreed.)

When to use a trust deed

What kind of organisation does a trust deed create?

Type of organisation: Trust

Charity trustees are called: Trustees

28. A trust deed will create a **trust**. A trust cannot own land or sign documents in its own name. It will need to provide for holding or custodian trustee(s) if it is planned that the charity will own or lease land.
29. Trust deeds can be known by other names, such as a declaration or deed of trust, deed of settlement, or will trust.

Which organisations use this type of structure?

30. It may be appropriate to establish a trust where some or all of the following apply:
- the organisation is to be run by a fairly small group of people;
 - there is no time limit on how long the charity trustees will be in office (although we recommend that the composition of the trustee body is reviewed regularly);
 - new charity trustees are going to be appointed by the continuing charity trustees;
 - the organisation is not going to rely on a membership for any part of its administration;
 - the administration of the organisation is going to be simple;
 - the organisation is to be a grant-making body only;
 - land and buildings are to be held on trust for permanent use for the purposes of the charity; and
 - there is to be a restriction on spending capital.

Do you need a professional legal adviser?

31. A trust deed is a formal document, so you may need the help of a professional legal adviser to complete and execute it. We recommend standard provisions for this type of governing document, and these can be found at paragraph 50.

How is a trust deed put into operation?

32. It is **executed**: this means that it needs to be signed and dated, in the presence of an independent witness, by those who are setting up the trust. The witnesses must then sign their name against each of those signatures and give their address. The purpose of this is to verify the identity of those signing.
33. The trust deed should refer to a specific amount of money or some other asset which will belong to the trust at the time that the trust deed is executed. It is acceptable for a nominal sum of money to be declared, say £5 or £10.
34. If the trust deed declares charitable trusts but does not refer to any actual assets which are held on those trusts at the time the deed is executed, then it is said to be "*in vacuo*". We would not register the charity unless and until there was independent evidence that some property has actually been settled on the trusts of the deed. The minimum requirement for registration will still need to be met (ie an annual gross income of £5,000 or more).

Does it need to be stamped?

35. The position is that:
- Deeds executed before 1 December 2003 require stamping.
 - Deeds executed on or after 1 December 2003 but before 13 March 2008 only require stamping if the deed declares trust over stocks and shares.
 - Deeds executed on or after 13 March 2008 do not require stamping.

If your deed needs to be stamped then it should be sent to:

HM Revenue & Customs
Birmingham Stamp Office
City Centre House
30 Union Street
Birmingham B2 4AR

Further information can be found on the HM Revenue and Customs website (www.hmrc.gov.uk) or by ringing the Stamp Duty helpline: 0845 603 0135.

What documents are needed for registration?

36. In addition to the application form and the declaration form, both of which are included in the *Application to Register a Charity Pack*, the following must be provided:
- a copy of the dated trust deed showing the names of the first charity trustees and the witnesses to their signatures;
 - copies of any supplemental deeds or deeds of variation showing subsequent amendments, duly signed and witnessed, showing evidence of stamping if necessary.

When to use articles of association

What kind of organisation do articles of association create?

Type of organisation: Company limited by guarantee

Charity trustees are called: Board, council of management or directors

37. A memorandum and articles of association create a company. (The memorandum of association refers to the subscribers' wishes to form a company and their agreement to become members of the company. Please refer to paragraph 44 below.) A company has an advantage over a trust and an unincorporated association in that it is 'incorporated'. This means that the law considers it to be a person, in the same way as an individual. Therefore a company, like an individual, can own land and enter into contracts in its own name.
38. A company is a legal person quite separate from its members and directors (who, in the case of charitable companies are usually called members of the council of management). The directors are agents of the company and as such are not normally liable personally for its debts. A person who acts as a director whilst disqualified from being one commits a criminal offence and may be personally liable. A director may be liable to make payments to the company:
- if he or she acts in breach of trust or duty to the company; or
 - if he or she is responsible for fraudulent or wrongful trading by the company (sections 213/214 Insolvency Act 1986).
39. The company will also have 'limited liability' which means, in the case of a typical charitable company, that its members are normally only liable for the debts of the company to the extent which they have undertaken to guarantee them (usually the limit of liability stated in the articles of association is a nominal amount, eg £5).
40. A company is subject to company law, as well as to charity law, and there are certain duties which must be observed, such as the annual filing of accounts with the Registrar of Companies.
41. However, charitable companies can never be the same as commercial companies. The main purpose of commercial companies is to make profits for distribution to their members. The constitution of a charitable company always precludes the distribution of profits to members. All the property of a charitable company is applicable for charitable purposes.

Which organisations use this type of structure?

42. It may be appropriate to establish a company where some or all of the following apply:
- the organisation is to be quite large;
 - it will have employees;
 - it will deliver charitable services under contractual agreements;
 - it will regularly enter into commercial contracts; and
 - it will be a substantial owner of freehold or leasehold land or other property.

Do you need a professional legal adviser?

43. Yes, because a company is subject to company law (which can be quite complex) you may well need the help of a professional legal adviser to set it up. We recommend standard provisions for this type of governing document and these can be found at paragraph 50.

How are articles of association put into operation?

44. They are put into operation by the memorandum of association being subscribed to by one or more people in accordance with the provisions of Part 2 of the Companies Act 2006 and by registration with the Registrar of Companies at Companies House who will issue a **certificate of incorporation**. There is a fee for registering companies with the Registrar of Companies. (You can contact Companies House at Cardiff CF14 3UZ, telephone 0870 333 3636 or on their website at www.companieshouse.gov.uk)

What documents are needed for registration?

45. In addition to the application form and the declaration form, both of which are included in the *Application to Register a Charity Pack*, the following must be provided:
- a copy of the articles of association;
 - a copy of the certificate of incorporation; and
 - copies of any special resolutions showing subsequent amendments.

Preparing a governing document

Drafting a governing document

46. You can choose to prepare your own governing document, following the guidance set out in paragraphs 48-96. Annex A contains some example clauses which might be useful. Alternatively, you may prefer to seek professional assistance, such as a solicitor, or approach an organisation which advises on the setting up of charities, such as: the InterChange Legal Advisory Service; National Association for Voluntary and Community Action (NAVCA); or the Wales Council for Voluntary Action (WCVA). Details of such organisations can be found at the back of our guidance *Registering as a Charity* (CC21). There are also governing documents produced by us, by the Charity Law Association and by some large national charities, one of which you may wish to use.
47. When preparing a governing document you need to ensure that it is in an acceptable form when you apply for registration. If you apply to us to register your organisation as a charity we will consider whether your governing document contains all the provisions necessary for the efficient administration of your organisation.
48. Full and detailed guidance on our recommended standard provisions for governing documents can be found below and we suggest you refer to that guidance when you are ready to start preparing your governing document. A checklist for completion is also included at paragraphs 98-100.

Recommended standard provisions

49. There are certain provisions which we recommend be included in a governing document, either because they are essential to a charity or because they will help the charity trustees to run the charity efficiently. Whilst there is no legal requirement for all these provisions to be included in a governing document we have identified those which reflect good practice and are likely to help trustees avoid some of the common pitfalls of running a charity.

50. These provisions are set out below in approximately the same order as they appear in most governing documents:

- charity name;
- objects (including details of beneficiaries);
- powers;
- charity trustees (including how they are appointed);
- meetings and proceedings of charity trustees;
- membership (not relevant for trusts);
- accounts;
- bank accounts;
- trustees not to have a personal interest;
- holding of land and investments;
- power of investment;
- power of amendment; and
- power of dissolution.

51. The purpose of each of these provisions is explained in the following paragraphs and examples of specific wording which may be used, according to the type of governing document you choose, can be found in Annex A.

Charity name

Entry on to Charity Database

52. The name of the charity is normally set out in the governing document, and is entered onto the Charity Database when the charity is registered. The chosen name must not be offensive nor can it be the same as, or too similar to, an existing charity's name.

Power to change name

53. It is advisable to include in the governing document a simple power for the charity trustees to change the charity name with our approval.

Objects

What are objects?

54. The objects set out what a charity is set up to do. They should therefore be described clearly and unambiguously in the governing document, using words with a commonly accepted meaning. A charity may have more than one object.

55. It is important to remember that:

- all of the objects must be charitable for the public benefit, because if any aspect of them is not, the organisation cannot be accepted as a charity because it will not be **exclusively** charitable;
- the objects should reflect what the organisation intends to do; and
- the objects should be understandable.

For guidance on what it means to have objects that are 'for the public benefit' please see our publication *Charities and Public Benefit*.

Describing beneficiaries

56. If the organisation is to benefit a particular section of the public rather than the public as a whole, we suggest that you make it clear in the objects clause. Similarly if the organisation is not going to benefit individuals we suggest that this is made clear.
57. If the benefits of the organisation are to be confined to a particular geographical area, again we suggest that you mention that area in the objects clause. A local government area (county, district, parish etc) is usually the clearest and simplest to adopt.
58. If you wish to benefit a particular ethnic group, you will need to take care with the wording of the objects. For example, the effect of the Race Relations Act 1976 on the objects of charities is to discount words relating to colour from the wording. So a charity that has objects to advance education amongst black women would in effect be a charity to advance education amongst women generally. The Race Relations Act 1976 does not affect the name of the charity.
59. If you wish to restrict the beneficial class other than by reference to a geographical area, you will need to consider whether the restrictions are reasonable and justifiable or whether they will adversely affect the public benefit likely to result from the objects. Limitations to a particular sex or race are not acceptable unless the charitable purpose is addressing a particular charitable need of the group in question, or is pursuing a legitimate aim for the benefit of the whole community.

Expressing the objects

60. If you have any difficulty in expressing the objects or have any doubts at all about whether the objects you have chosen are charitable for the public benefit, we suggest that you seek advice from your legal advisers before the governing document is completed. To help with preparing objects we have published some example objects on our website. These are suitable for use by a range of charities and can be included in any type of governing document. (Examples are also given in Annex A at paragraph A2.) It is important that you include a power to amend the objects in your governing document in case this is needed. This is dealt with at paragraphs 87-94.

Powers

What are powers?

61. The charity trustees of most charities will need some powers which they can use to help them carry out the objects of the charity. For example, if the objects of a charity are to care for elderly sick people, the charity trustees might need to raise funds from the public towards the cost of purchasing and equipping a property for use as a nursing home. Later, the charity trustees might wish to sell that property and purchase another one; or they might need to borrow money to pay for the cost of improvements. Some of the powers which might be appropriate for such eventualities are set out in paragraph A4 of Annex A.
62. We suggest that you consider carefully what powers the charity trustees might reasonably be expected to need and include them in the governing document. This might avoid having to amend the governing document at a later date.
63. It is important that the powers are not confused with the objects as they are not charitable in themselves. The powers are usually, therefore, set out in a separate clause immediately following the objects clause (see paragraph A4 of Annex A for an example of how the objects and powers should be separated).

Charity trustees

Appointing charity trustees

64. We suggest that the governing document makes it clear how many charity trustees there are to be, and how they are to be appointed. It normally either appoints, or provides for the appointment of, the first charity trustees of the charity.
65. It is for each organisation to decide what number of charity trustees best meets its needs. However, we suggest that there are not so many that meetings are likely to be unwieldy and decision-making difficult. Nor that there are so few that an unfair burden of work is placed on them. As a general guide, every charity usually has at least 3 charity trustees and most charities find that between 3 and 9 charity trustees is adequate.
66. For some charities (such as village halls and community centres) it may be necessary to provide for considerably more than 9 charity trustees, so that all local organisations which use the charity's facilities regularly have the opportunity to appoint some of the charity trustees. We do accept that users of a charity's facilities can also be its trustees, notwithstanding that they will benefit from that charity, provided that there are adequate provisions for dealing with any conflict of interest that may arise. *Users on Board: Beneficiaries who become trustees* (CC24) gives further guidance on this issue.
67. It is for each organisation to decide which method, or combination of methods, of appointment is the most appropriate. Further guidance on the appointment of trustees applicable to each type of governing document can be found in Annex A. We have also published general guidance on the selection and appointment of trustees in *Finding new trustees: what charities need to know* (CC30), available on our website or by phoning Charity Commission Direct.

How long do charity trustees hold office?

68. It is advisable for the governing document to state for how many years the charity trustees are appointed to hold office. Otherwise, a charity trustee who is no longer effective could continue as a charity trustee until he or she dies or chooses to resign. Appointments from 1 year to 5 years are normal.

Staggered terms of office

69. To help continuity in the administration of the charity it may be useful for the governing document to provide for trustees to hold office for a different number of years. By staggering the terms of office in this way you will avoid a situation whereby all the charity trustees' appointments end at the same time.

Re-appointment

70. Charity trustees are usually only re-appointed if those who can appoint them are satisfied that they remain the best-equipped people to take the charity forward. Even where retiring trustees are performing well, the opportunity to bring in fresh ideas should not be overlooked. That said, a provision which allows any competent charity trustee to be re-appointed can also be useful for retaining valuable experience and providing continuity.

Meetings and proceedings of charity trustees

Usual administrative provisions

- 71.** The charity trustees will find it difficult to run their charity efficiently unless the governing document provides at least a basic administrative framework. The following list of provisions will be helpful for the charity trustees of all charities. It is not, however, exhaustive, and we recommend that charity trustees consider whether any additional provisions are needed. We recommend that the governing document should state:
- the minimum number of trustee meetings that the charity trustees should have each year in addition to the holding of an annual general meeting (AGM) - the charity trustees of even small charities usually meet at least twice;
 - how emergency or special meetings are called to discuss a particular matter;
 - how all meetings of the charity trustees are to be arranged;
 - how a chair is to be appointed;
 - the chair's right to a second or casting vote when the numbers of charity trustees voting for and against a resolution are equal; and
 - the number of charity trustees who need to be present if a meeting is to be valid (ie the number of charity trustees needed for a quorum). If there are 3, 4 or 5 charity trustees we would suggest that the quorum be 2, but if there are 6 or more charity trustees, we would suggest that the quorum be stated as '3, or one-third of all the current charity trustees, whichever is more'. We recommend that the number required for a quorum is not set too high as it may lead to difficulties later in arranging meetings which a sufficient number of people can attend. Further guidance is available in *Charities and Meetings* (CC48).
- 72.** If it is not possible to include these provisions, a power to make such rules as are necessary for the proper administration of the charity (but which cannot override any powers or limitations in the governing document) should be included.

Membership

Conditions of membership

- 73.** Organisations which have a constitution (including our model small charity constitution) or articles of association, have a membership. We suggest that the governing document sets out who can be a member. For example, it may consist of interested individuals only, or interested individuals and organisations - such as companies and other associations.
- 74.** We also suggest that the governing document sets out:
- whether any subscription is payable;
 - how people apply for membership and the criteria for acceptance;
 - whether members will have any voting rights; and
 - how membership may be terminated (see paragraph 77).
- 75.** For charitable organisations, membership is normally open to any individuals (over the age of 18 years), or any corporate body or unincorporated association interested in furthering the charitable objects. It is important that it is made clear to members that they must exercise their membership rights only in the interests of the charity, and not for any private interest they may have. Our model small charity constitution states who can be a member.

76. Some charities, especially those involving young people, choose to have a junior membership in addition to full adult membership. The governing document can provide for this but we recommend that provisions make it clear that junior members cannot be appointed to trustee positions or have voting rights. No-one under the age of 18 can be appointed as a trustee unless the charity is a registered company.

Termination of membership

77. It is good practice that the membership of any individual or organisation is usually only terminated:
- for good and sufficient reason; and
 - if the individual or organisation concerned normally has the right to be heard, accompanied by a friend if necessary, before a final decision is made.

General and special meetings of the members

78. Where a governing document provides for a membership, we recommend that it also provides for the calling of general and special meetings of the membership in addition to meetings of the charity trustees and the AGM. Such provisions usually include:
- the manner and period of notice to be given prior to the meeting, the notice normally specifying the time, place and general nature of the business of the meeting;
 - the quorum: that is, the minimum number of members required to be present at the meeting if it is to be valid. An example might be '10 members, or one-tenth of all the current members, whichever is more'. We recommend that the numbers required for a quorum is not set too high as it may lead to difficulties later in arranging meetings which a sufficient number of people can attend; and
 - the taking of minutes and voting.
79. Further guidance can be found in *Charities and Meetings* (CC48).

Finance

Accounts

80. All charity trustees must comply with the accounting requirements of the Charities Act 1993 relevant to the income/expenditure levels of their charity. Charities that are companies will have additional accounting requirements under company law.
81. Further guidance on the accounting requirements for charities can be found in *Charity Reporting and Accounting: The essentials April 2009* (CC15b).

Bank Accounts

82. We recommend that all governing documents provide for the setting up of bank or building society accounts as necessary, and make adequate provision for the control of such account(s) - including authority for signing cheques. We recommend that at least two people sign cheques, one of whom is a trustee. Further advice can be found in *Internal Financial Controls* (CC8), and guidance on electronic banking can be found under 'Publications and Guidance' on our website.

Charity trustees not to have a personal interest

83. It is a well established legal principle that a charity trustee should not be placed in a position where any personal interest might conflict with his or her duties as a trustee. Therefore, a charity trustee should not be in a position to benefit personally from his or her position as a charity trustee. It is important that charity trustees are aware of this fact, and it is therefore usual for a clause to be included in the governing document of every charity to remind them. Examples of this clause are given in Annex A.

84. If you intend that one or more of the charity trustees should benefit in any way, such as by receiving remuneration, explicit authority will be required. Please see *Trustee expenses and payments* (CC11).

Holding of land and investments

Custodian and holding trustees

85. Where an organisation needs to appoint a custodian trustee or holding trustees to hold land and/or investments on its behalf, we recommend that the governing document makes provision for these appointments.

Power of investment

86. Where an organisation intends to rely on the statutory powers of investment contained in the Trustee Act 2000 it is not necessary to include a provision in the governing document setting out those powers.

Power of amendment

Reasons for inclusion

87. For most charities it is very important that the governing document sets out a procedure by which amendments may be made to it. There are two reasons for this:
- if, when we consider your application, we decide that some amendment must be made to the governing document before the organisation can be registered, the charity trustees (in the case of a trust) or the members (in the case of an unincorporated association) will be able to make that amendment quite simply (if there is no power of amendment, the only option will be to wind up the organisation and to start again with a new governing document); and
 - once a charity has been registered there are likely to be occasions when some amendment needs to be made to the governing document to meet changing needs.
88. The position is different depending on whether the organisation is established as a trust, an unincorporated association or a company. Further guidance on this can be found in the next few paragraphs.

If there is no amendment provision

Constitutions

89. Where there is no amendment provision in a constitution, although it is possible for amendments to be made, it can be an extremely difficult process. There are three options available, being:
- A **unanimous** resolution of **all** the members can be passed agreeing the amendments. However, in practice it can be very difficult, if not impossible, to obtain a vote from every member and/or achieve a consensus of opinion.
 - If there is a dissolution provision, the charity can be dissolved and a new charity set up, with a governing document containing the appropriate amendments, to which any remaining assets of the dissolved charity can be transferred. However, our consent to this proposal may be required first. It is also a relatively complicated process and will result in the charity having a new registration number.
 - The trustees may use the new statutory power of amendment introduced by the Charities Act 2006 to amend the charity's administrative provisions. (Please see our operational guidance OG 45 and guidance note CSD-1342A on our website for details of how and when this power can be used.)
90. **It is therefore in the charity's interests for an amendment provision to be included in the constitution to avoid having to take this action.**

Trust deed

91. Where there is no amendment provision in a trust deed, there are two possible solutions:

- If the trust deed contains a dissolution provision, and/or the charity has no permanent endowment, the charity can dissolve and a new charity can be set up (with a governing document containing the appropriate amendments), to which any remaining assets of the dissolved charity can be transferred. However our consent to this proposal may be required first. It is also a relatively complicated process and will result in the charity having a new registration number.
- The trustees may use the statutory power of amendment introduced by the Charities Act 2006 to amend the charity's administrative provisions. (Please see our operational guidance OG 45 and guidance note CSD-1342A on our website for details of how and when this power can be used.)

92. **It is therefore in the charity's interests for an amendment provision to be included in the trust deed to avoid having to take this action.**

Power of amendment for a company

93. In the case of a **company** it is not necessary to include a power of amendment in the governing document. This is because company law allows the articles of association of a company to be amended by the members. Where, however, a proposed amendment alters the objects, any other provision directing or restricting the application of property on dissolution, or any provision where the alteration would authorise any benefit to be obtained by the directors or persons connected with them (other than as permitted by statutory power) our written consent is required **before** the amendment can be brought into effect (section 64 of the Charities Act 1993).

Provisions normally requiring our consent to amend (all governing documents)

94. Our prior consent is usually required for a proposal to alter or include any of the following provisions:

- the objects provision;
- the amendment provision;
- the dissolution provision; and
- any provision authorising benefits to trustees (eg remuneration or indemnity insurance);
- widening the trustees' power of investment to eliminate a specific restriction or prohibition;
- the expenditure of permanent endowment.

Power of dissolution

95. There may come a time when, for whatever reasons, a charity cannot continue operating. We recommend that charities without any permanent endowment set out in their governing document:

- how the charity may be dissolved or wound up; and
- what happens to any remaining assets after all debts and liabilities have been settled. In every case, any remaining assets must be applied for charitable purposes consistent with the objects of the charity.

Governing document checklist

96. We hope you will find this checklist helpful. It reminds you of what you need to do to prepare a governing document before you send it to us.

Before you begin

97. We suggest you decide which type of governing document is most suitable for the organisation you want to set up. Do not forget that there are model governing documents available from us or CLA or there may be an approved governing document issued by a national charity with which you want to be associated (see paragraph 10).

Recommended standard provisions

98. The following is a checklist of those recommended standard provisions which we would normally expect to see included in your governing document. Tick the boxes to show which you have included in the governing document.

- Charity name and (in the case of a trust or an unincorporated association) power to amend the name.
- Objects which clearly set out what the organisation is set up to do.
- Powers, clearly separated from the objects.
- Provisions which describe how the charity trustee body is set up.
- Provisions which deal with charity trustee meetings and proceedings at those meetings, including voting and quorum.
- Provisions for a membership (if appropriate), including how someone becomes a member, and voting rights.
- Provisions for members' meetings and proceedings, if appropriate (eg annual general meetings, special general meetings).
- Provisions to deal with the keeping of charity's accounts and the control of the charity's bank account.
- Trustees not to have a personal interest provisions.
- An amendment provision (except for a company).
- A dissolution provision.

99. **Please note: we consider the above provisions to be those which will assist in the effective and efficient running of a charity. If a governing document does not include some of these minimum requirements, we will only refuse registration where the charitable status of the organisation is affected.**

Annex A: Example provisions

A1. Our model governing documents contain the minimum basic provisions needed. If you are preparing your own governing document, we are happy for you to copy some of their clauses word for word. We have included a few example clauses for key administrative functions. These will normally apply to any type of charity (company; trust or association), unless otherwise stated.

Objects

A2. Neither our own models nor those of the CLA include sample object wordings. The wording is a matter for the trustees to agree upon. However, it is important that objects are set out in a way which the law recognises as charitable. To help trustees in this sometimes difficult task, we have included below some examples of ways that objects are sometimes expressed, but these of course do not cover every situation; further examples can be found on our website.

“The objects of the charity shall be:

(a) *To advance the education of the public in the subject of [insert area of study]*

(b) *To promote the physical and mental health of sufferers of [insert medical condition] in [insert area of benefit] through the provision of financial assistance, support, education and practical advice.*

(c) *To advance the [insert basis of faith] [insert faith] [insert religion] for the benefit of the public in accordance with [the statements of belief appearing in the schedule] [the following doctrines].”*

A3. Our range of Review of the Register publications on different types of charitable activity also include possible object wordings which you may wish to use. These along with other example objects are available on our web site or by calling Charity Commission Direct on 0845 300 0218.

Powers

A4. We recommend that the powers are contained in a separate clause from those expressing the objects. Here is an example of the way that powers can be separated from objects:

“In addition to any other powers [they have, the trustees] [it has, the charity] may exercise any of the following powers in order to further the objects (but not for any other purpose):

(1) *to raise funds. In exercising this power, the trustees must not undertake any substantial permanent trading activity and must comply with any relevant statutory regulations;*

(2) *to buy, take on lease or in exchange, hire or otherwise acquire, property, and to maintain and equip it for use;*

(3) *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;*

(4) *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 wish to mortgage land owned by the charity.”*

Accounts, Annual Report and Annual Return

A5. The Charities Act 1993 requires all charities to keep accounts. To make this duty clear to future trustees we recommend that governing documents contain an express reference to this. For example:

“Charity trustees shall comply with the accounting requirements of the Charities Act 1993 as amended by the Charities Act 2006, relevant to the income/expenditure level of their charity, with regard to:

- *the keeping of accounting records for the charity;*
- *the preparation of annual statements of account for the charity;*
- *the auditing or independent examination of the statements of account of the charity;*
- *the preparation of an Annual Report and the sending of it together with the statements of account to the Charity Commission; and*
- *the preparation of an Annual Return and its transmission to the Commission.”*

Note: In the case of a company we suggest that this provision also include the following:

- *“accounts shall be prepared in accordance with the provisions of Part 15 of the Companies Act 2006.”*

Bank account

A6. It is important that the governing document specifically states that the assets are to be held in the name of the charity (eg the bank account should be in the name of the charity, and not that of one or more individual trustees). We also recommend that the number of signatories for cheques etc are clearly stated.

Appointment of trustees

A7. For a charity established as an **unincorporated association**:

- All or most of the charity trustees are often appointed by the members of the charity at its annual general meeting. The first charity trustees are usually named in the governing document and power given to them to administer the charity until the first annual general meeting. The first charity trustees might be the people (or some of them) who formally adopt the constitution or rules. Suitable wording for this provision may be found in our model constitution GD3, our small charity constitution, or the CLA model constitution.

A8. For a charity established as a **trust**:

- Provision is often made in the governing document for all new charity trustees to be appointed by resolution of the charity trustees themselves. For example, if there are three charity trustees and one of them resigns, the remaining two charity trustees together choose and appoint a replacement. The persons who are to be the first charity trustees are normally named in the governing document so that, immediately the charity comes into being, there are charity trustees to run it.

A9. For a charity established as a **company**:

- All or most of the charity trustees are often appointed by the members of the charity at its annual general meeting. In this case the governing document (the articles of association) normally provides for the first charity trustees to be the persons named in the statement delivered to the Registrar of Companies under section 12 of the Companies Act 2006. The statement must contain certain other particulars (see sections 12(2) and 12(3) of the Companies Act 2006) of the persons concerned, and must be delivered to the Registrar of Companies at the time application is made for the company to be incorporated.

Other methods of appointment

A10. However, you may want the charity trustees, or some of them, to be appointed in some other way. For example:

- by organisations closely connected with the work of the charity (such as a local authority or another charity);
- or by the other charity trustees in office (charity trustees appointed in this way are usually known as 'co-opted charity trustees'); or
- you may consider it appropriate for there to be one or more ex-officio trustees. (An ex-officio trustee is one who is a charity trustee for as long as he or she holds a particular office (eg the mayor of the local town or a minister of a local named church)). They have the same duties and responsibilities as other trustees.

Trustees not to have a personal interest

A11. Because trusteeship is essentially voluntary in nature the governing document must include a clear statement concerning the ability of trustees to benefit from the charity. We suggest that for charities which are not companies the following clause is used:

"Except with the prior written approval of the Charity Commission no trustee may:

- *receive any benefit in money or in kind from the charity; or*
- *have a financial interest in the supply of goods or services to the charity; or*
- *acquire or hold any interest in property of the charity (except in order to hold it as trustee of the charity)".*

A12. For charities which are companies, the following clause should be included:

"The income and property of the charity shall be applied solely towards the promotion of the objects and no part shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to members of the charity, and no trustee shall be appointed to any office of the charity paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the charity: Provided that nothing in this document shall prevent any payment in good faith by the charity:

- *of reasonable and proper remuneration for any services rendered to the charity by any member, officer or servant of the charity who is not a trustee;*
- *of interest on money lent by any member of the charity or trustee at a reasonable and proper rate per annum not exceeding 2 per cent less than the published base lending rate of a clearing bank to be selected by the trustees;*
- *of fees, remuneration or other benefit in money or money's worth to any company of which a trustee may also be a member holding not more than 1/100th part of the issued capital of that company;*
- *of reasonable and proper rent for property conveyed or let by any member of the charity or a trustee; and*
- *to any trustee of reasonable out-of-pocket expenses."*

Amendment

A13. The way in which a power of amendment is exercised will vary depending on the type of organisation. In the example below, clause (1a) would be used for an unincorporated association governed by a constitution and clause (1b) would apply to a charity governed by a trust deed.

“(1a) Subject to the following provisions of this clause the constitution/rules may be amended by a resolution passed by not less than two-thirds of the members present and voting at a general meeting. The notice of the general meeting must include notice of the resolution setting out the terms of the amendment proposed.

(1b) The trustees may amend the provisions of this deed provided that:

(2) No amendment may be made to clause (the object clause), clause (trustees not to have a personal interest clause) [clause (remuneration of trustees clause)] [clause (trustee indemnity insurance clause)], clause (the dissolution clause), this clause or the trustees' power of investment [and no amendment may be made which would allow the trustees to spend permanent endowment of the charity] without the prior written approval of the Commission.

No amendment may be made which would have the effect of making the charity cease to be a charity at law.

The trustees must:

- (a) promptly send to the Commission a copy of any amendment made; and*
- (b) keep a copy of any such amendment with this constitution/these rules.”*

Dissolution

A14. It is important that if the charity can no longer operate or if the trustees feel that it has achieved all that it can, the organisation can dissolve and remaining assets can be passed onto another charity. The following examples would be sufficient for this.

*“If the charity trustees decide that it is necessary or advisable to dissolve the charity, they shall call a meeting of all members of the charity of which not less than 21 days' notice (stating the terms of the resolution to be proposed) shall be given. If the proposal is confirmed by a two-thirds majority of those present and voting, the charity trustees shall have power to realise any assets held by or on behalf of the charity. Any assets remaining after the satisfaction of any proper debts and liabilities shall be given or transferred to such other charitable institution or institutions having objects similar to the object of this charity as the members of the charity may determine, or, if that cannot be done, shall be applied for some other charitable purpose.” **This is suitable for an association.***

*“If the charity trustees decide that it is necessary or advisable to dissolve the charity, they shall realise any assets held by or on behalf of the charity. Any assets remaining after the satisfaction of any proper debts and liabilities shall be given or transferred by the charity trustees to such other charitable institution or institutions having objects similar to the objects of the charity as the charity trustees may decide, or, failing that, shall be applied by the charity trustees for some other charitable purpose.” **This is suitable for a trust.***

*“If the charity is wound up or dissolved, and after all its debts and liabilities have been satisfied there remains any property, it shall not be paid to or distributed among the members of the charity, but shall be given or transferred to some other charity or charities having objects similar to the objects of this charity which prohibits the distribution of its or their income and property to an extent at least as great as imposed on this charity by clause # above, chosen by the members of the charity at or before the time of dissolution, and if that cannot be done then to some other charitable object.” **This is suitable for a company.***

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