

Charitable Associations: Model Constitution

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

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

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

Guidance to consider before you begin

You may find it helpful to begin by reading the following guidance on our website:

- The comprehensive information under Start up a charity
- Registering as a Charity (CC21) - its checklist of questions will help you to decide how best to set up the charity
- Choosing and Preparing a Governing Document (CC22) - this gives advice on the practicalities of completing the charity's governing document and on the different provisions which may be needed
- The Essential Trustee - What you need to know (CC3), which sets out the basics that all charity trustees need to know

Next steps

1. Completing the constitution

Once you have decided to apply to register a charitable association, please read the constitution and its accompanying guidance notes carefully.

Some clauses contain blank spaces that you will need to fill in.

Notes

The model is intended to be sufficiently flexible to deal with most eventualities. If you want to include special or complex provisions which are not contained in it you should consider asking a solicitor to help you. Please make clear any changes you make and why they are necessary. This will help us to consider your application as quickly as possible. We cannot guarantee to accept every organisation which uses the model constitution as charitable. We must consider each case separately.

2. Adopting the constitution

Once you have completed the constitution, the organisation's members need to adopt it.

3. Applying to register

To register a new charity, apply online. (The online application material includes Application for registration - guidance notes.)

Please attach a copy of your final signed constitution as adopted by the members and your signed Trustee Declaration to your application. If you cannot attach these documents to your application please proceed to apply online and we will email you instructions about how to send them to us.

If you cannot apply online, please contact us using the link from our website homepage.

4. How long will it take?

We can normally make a decision in 15 working days if an organisation:

- uses our model wording for its objects (as set out in the Example charitable objects on our website);
- shows that its activities that are consistent with the objects;
- shows that any private benefit is incidental and is properly managed; and
- uses our model governing document.

Other applications will need closer consideration and so will take longer (especially where the charity's purposes are novel and/or at the boundaries of what is charitable).

Notes

Model Constitution guidance notes

Insert the date of the meeting at which it was decided to adopt this constitution.

Clause 1 - The constitution is in 2 parts. Part 1 covers the purposes of the charity and how its money and other property can be used. It also contains the powers to change the constitution and to wind the charity up. Part 2 sets out the administrative provisions, including membership, the appointment of charity trustees, members' and trustees' meetings and the powers available to the trustees in running the charity. The provisions in part 1 can only be changed by a 2/3rds majority of members present and voting at a meeting whereas those in part 2 can be changed by a simple majority of them.

Clause 2 - Insert the name of the charity. In general, the Commission can accept any name unless it infringes the principles set out in section 42 of the Charities Act 2011, which are explained in our guidance Registering as a Charity (CC21) and in our Operational Guidance Names of Charities 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 3 - Insert the purpose for which the charity has been formed. A charity's objects must be expressed in exclusively charitable terms and this calls for precise drafting. Guidance is available in Choosing and Preparing a Governing Document (CC22) and example objects covering some of the most common charitable purposes are available on our website. 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.

If the charity will operate in Scotland and/or Northern Ireland you should include the wording in square brackets to meet the requirements of charity law in that/those countries, deleting as required if the charity works in one of those two countries.

Constitution

adopted on the 1ST AUGUST.....2017

PART 1

1. Adoption of the constitution

The association and its property will be administered and managed in accordance with the provisions in Parts 1 and 2 of this constitution.

2. Name

The association's name is

SALTASH MARITIME CADETS.....

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

3. Objects

The charity's objects ('the objects') are

WE TAKE CADETS FROM THE AGE OF 8 - 18 yrs
BOTH BOYS & GIRLS. WE AIM TO TEACH THE
YOUNG PEOPLE SKILLS BASED ON NAVAL
TRADITIONS, WITH SOME QUALIFICATIONS
THAT CAN BE USED TO GAIN EMPLOYMENT
WHEN THEY ARE 18 yrs OLD. WE ALSO
TEACH LIFE SKILLS SUCH AS COOKING,
PERSONAL HYGIENE AND DISCIPLINE.

[Nothing in this constitution shall authorise an application of the property of the charity for purposes which are not charitable in accordance with section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and/or section 2 of the Charities Act (Northern Ireland) 2008.]

Notes

Clause 4(1) - sets out a trustees' entitlement to reasonable expenses and reflects statutory provisions in the 2011 Act about a charity trustee's entitlement to benefit from trustee indemnity insurance. It is included in the constitution to inform people involved with the charity.

Clause 4(2) - reflects charity law requirements that the income and property of a charity must be applied solely to further its objects and not to benefit the members or charity trustees (except as permitted by the governing document (see clause 5) or other express power). The trustees have a duty to ensure that the funds are correctly applied in accordance with this principle.

Clause 5 - Charity trustees may only benefit from their charity if they have express legal authorisation to do so (such as a clause in the constitution). This restriction extends to people closely connected to a trustee ('connected persons' - this term is defined in interpretation clause 34). This clause clarifies the restrictions that apply to the charity trustees. Even where trustees are allowed to benefit from the charity, this must only happen where the benefit is in the interests of the charity. Our guidance *Trustee expenses and payments (CC11)* provides more information about trustee benefits.

This clause permits a minority of the charity trustees or connected persons to receive payments and other benefits in certain instances (such as for goods and services they supply to the charity), subject to the stated controls. The option also allows other types of trustee benefit subject to the Commission's prior consent.

No part of the clause allows trustees to receive payment for acting as a trustee.

4. Application of income and property

- (1) The income and property of the charity shall be applied solely towards the promotion of the objects.
 - (a) A charity trustee 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) A charity trustee may benefit from trustee indemnity insurance cover purchased at the charity's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- (2) 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 trustee from 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.

5. Benefits and payments to charity trustees and connected persons

(1) General provisions

No charity trustee or connected person may:

- (a) buy or receive any goods or services from the charity on terms preferential to those applicable to members of the public;
- (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 is permitted by sub-clause (2) of this clause, or authorised by the court or the Charity Commission ('the Commission'). In this clause, a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value.

Notes

Clause 5(2)(a) - If your charity will benefit all local inhabitants in a specific geographical area (eg as a community association) you may wish to substitute the following: 'A trustee or connected person may receive a benefit from the charity as a beneficiary provided that it is available generally to the beneficiaries of the charity.'

Clause 5(2)(d) - The charity should document the amount of, and the terms of, the trustee's or connected person's loan.

(2) Scope and powers permitting trustees' or connected persons' benefits

- (a) A charity trustee or connected person may receive a benefit from the charity in the capacity of a beneficiary of the charity provided that a majority of the trustees do not benefit in this way.
- (b) A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the charity where that is permitted in accordance with, and subject to the conditions in, section 185 of the Charities Act 2011.
- (c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the charity with goods that are not supplied in connection with services provided to the charity by the charity trustee or connected person.
- (d) A charity trustee or connected person may receive interest on money lent to the charity at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the charity. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the charity on the same terms as members of the public.

(3) Payment for supply of goods only - controls

The charity and its charity trustees may only rely upon the authority provided by sub-clause 2(c) of this clause if each of the following conditions is satisfied:

- (a) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the charity and the charity trustee or connected person supplying the goods ('the supplier') under which the supplier is to supply the goods in question to or on behalf of the charity.
- (b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.

Notes

- (c) The other charity trustees are satisfied that it is in the best interests of the charity to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.
 - (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the charity.
 - (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.
 - (f) The reason for their decision is recorded by the charity trustees in the minute book.
 - (g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 5.
- (4) In sub-clauses (2) and (3) of this clause:
- (a) 'the charity' includes any company in which the charity:
 - (i) holds more than 50% of the shares; or
 - (ii) controls more than 50% of the voting rights attached to the shares; or
 - (iii) has the right to appoint one or more trustees to the board of the company.
 - (b) 'connected person' includes any person within the definition set out in clause 34 (Interpretation).

6. Dissolution

- (1) If the members resolve to dissolve the charity the trustees will remain in office as charity trustees and be responsible for winding up the affairs of the charity in accordance with this clause.
- (2) The trustees must collect in all the assets of the charity and must pay or make provision for all the liabilities of the charity.
- (3) The trustees must apply any remaining property or money:
 - (a) directly for the objects;
 - (b) by transfer to any charity or charities for purposes the same as or similar to the charity;

Notes

Sub-clause 6(6) - The Charities Act 2011 sets out the accounting obligations on charities: see our website for further guidance.

- (c) in such other manner as the Charity Commission for England and Wales ('the Commission') may approve in writing in advance.
- (4) The members may pass a resolution before or at the same time as the resolution to dissolve the charity specifying the manner in which the trustees are to apply the remaining property or assets of the charity and the trustees must comply with the resolution if it is consistent with paragraphs (a) - (c) inclusive in sub-clause (3) above.
- (5) In no circumstances shall the net assets of the charity be paid to or distributed among the members of the charity (except to a member that is itself a charity).
- (6) The trustees must notify the Commission promptly that the charity has been dissolved. If the trustees are obliged to send the charity's accounts to the Commission for the accounting period which ended before its dissolution, they must send the Commission the charity's final accounts.

7. Amendment of constitution

- (1) The charity may amend any provision contained in Part 1 of this constitution provided that:
 - (a) no amendment may be made that would have the effect of making the charity cease to be a charity at law;
 - (b) no amendment may be made to alter the objects if the change would undermine or work against the previous objects of the charity;
 - (c) no amendment may be made to clause 3 (Objects), 4 (Application of income and property), clause 5 (Benefits and payments to charity trustees and connected persons), clause 6 (Dissolution) or this clause without the prior consent in writing of the Commission;
 - (d) any resolution to amend a provision of Part 1 of this constitution is passed by not less than two thirds of the members present and voting at a general meeting.
- (2) Any provision contained in Part 2 of this constitution may be amended, provided that any such amendment is made by resolution passed by a simple majority of the members present and voting at a general meeting.
- (3) A copy of any resolution amending this constitution shall be sent to the Commission within twenty one days of it being passed.

Notes

Clause 8 - For advice and guidance on best practice for running membership organisations, see Membership Charities (RS7) on our website.

Sub Clause 8(1) - The law says people under 18 cannot be trustees or take on the administrative rights and duties of full members. Associations can have separate junior membership arrangements if it is clear that they do not have the rights and responsibilities of administration of full members, like voting. See our website for detailed guidance on involving younger people under Running a charity - good practice for charities.

Sub-clause 8(4) - It is very important for the good administration of the charity to keep the register of members up to date: failure to do so can result in a number of problems, including serious difficulties with the calling of annual or extraordinary general meetings. The trustees must ensure that they handle personal data in accordance with the requirements of the Data Protection Act 1998.

Sub-clause 9(3) - The notice for any general meeting should remind members of this requirement. We would recommend that there is a reasonable gap between the deadline for payment of subscriptions (or any other regular payments by members to the charity) and the holding of a general meeting to reduce the risk of this becoming an administrative problem for the charity.

Part 2

8. Membership

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

9. Termination of membership

Membership is terminated if:

- (1) the member dies or, if it is an organisation, ceases to exist;
- (2) the member resigns by written notice to the charity unless, after the resignation, there would be less than two members;
- (3) any sum due from the member to the charity is not paid in full within six months of it falling due;
- (4) the member is removed from membership by a resolution of the trustees that it is in the best interests of the charity that his or her membership is terminated. A resolution to remove a member from membership may only be passed if:
 - (a) the member has been given at least twenty one days' notice in writing of the meeting of the trustees at which the resolution will be proposed and the reasons why it is to be proposed;
 - (b) the member or, at the option of the member, the member's representative (who need not be a member of the charity) has been allowed to make representations to the meeting.

Notes

Clause 10 - We provide guidance on meetings in Charities and Meetings (CC48), produced in association with ICSA (The Institute of Chartered Secretaries and Administrators).

Sub-clause 11(1) - 'Clear days' does not include the day on which the notice would be received by the member or the day on which the meeting is held - see sub-clause 31(5)(c). Section 332 of the Charities Act 2011 sets out how notice may be given by post. In broad terms, the charity may send notice to each trustee at the UK address held in the charity's records: no notice is required for trustees living outside the UK.

Sub-clause 12(1) - This means that a quorum must be present when a matter is being discussed and voted on, in order for a decision on it to be validly made. If the meeting subsequently becomes inquorate, this will not invalidate earlier, quorate decisions.

Sub-clause 12(2)(a) - Insert the figure for the quorum. This should be set with care. If it is too high, any absences may make it difficult to have a valid meeting. If it is too low, a small minority may be able to impose its views unreasonably. Note that sub-clauses 12(4)-(6) set out the procedure for dealing with situations where the meeting is inquorate.

10. General meetings

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

11. Notice

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

12. Quorum

- (1) No business shall be transacted at any general meeting unless a quorum is present.
- (2) A quorum is:
 - (a) [3] members entitled to vote upon the business to be conducted at the meeting; or
 - (b) 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.

Notes

Sub-clause 12(6) - Note that this provision permits the re-scheduled meeting to proceed without a quorum being present within 15 minutes of the specified start time. It also means that the number of members present 15 minutes after the scheduled start of the meeting will form the quorum if the quorum required at sub-clause 12(2) is not achieved.

Clause 14 - This is a discretionary power for the members to adjourn a quorate meeting - when the meeting is reconvened it must be quorate. This provision differs from the adjournment provisions in Clause 12 which are not discretionary and must be used where a general meeting is not quorate.

- (4) If:
 - (a) a quorum is not present within half an hour from the time appointed for the meeting; or
 - (b) during a meeting a quorum ceases to be present,the meeting shall be adjourned to such time and place as the trustees shall determine.
- (5) The trustees must re-convene the meeting and must give at least seven clear days' notice of the re-convened meeting stating the date time and place of the meeting.
- (6) If no quorum is present at the re-convened meeting within fifteen minutes of the time specified for the start of the meeting the members present at that time shall constitute the quorum for that meeting.

13. Chair

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

14. Adjournments

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

Notes

Clause 16 - Organisations which are members ('corporate members') enjoy the same rights and duties as individual members. Our research report *Membership Charities (RS7)* provides advice and guidance on managing corporate members.

15. Votes

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

16. Representatives of other bodies

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

17. Officers and trustees

- (1) The charity and its property shall be managed and administered by a committee comprising the officers and other members elected in accordance with this constitution. The officers and other members of the committee shall be the trustees of the Charity and in this constitution are together called 'the trustees'.
- (2) The charity shall have the following officers:
 - (a) A chair,
 - (b) A secretary,
 - (c) A treasurer.
- (3) A trustee must be a member of the charity or the nominated representative of an organisation that is a member of the charity.
- (4) No one may be appointed a trustee if he or she would be disqualified from acting under the provisions of clause 20.