

Notes

Clause 18 - Finding New Trustees: What charities need to know (CC30) provides guidance on effective methods of recruiting new charity trustees and of familiarising them with the charity.

- (5) The number of trustees shall be not less than three but (unless otherwise determined by a resolution of the charity in general meeting) shall not be subject to any maximum.
- (6) The first trustees (including officers) shall be those persons elected as trustees and officers at the meeting at which this constitution is adopted.
- (7) A trustee may not appoint anyone to act on his or her behalf at meetings of the trustees.

18. Appointment of trustees

- (1) The charity in general meeting shall elect the officers and the other trustees.
- (2) The trustees may appoint any person who is willing to act as a trustee. Subject to sub-clause 5(b) of this clause, they may also appoint trustees to act as officers.
- (3) Each of the trustees shall retire with effect from the conclusion of the annual general meeting next after his or her appointment but shall be eligible for re-election at that annual general meeting.
- (4) No-one may be elected a trustee or an officer at any annual general meeting unless prior to the meeting the charity is given a notice that:
 - (a) is signed by a member entitled to vote at the meeting;
 - (b) states the member's intention to propose the appointment of a person as a trustee or as an officer;
 - (c) is signed by the person who is to be proposed to show his or her willingness to be appointed.
- (5)
 - (a) The appointment of a trustee, whether by the charity in general meeting or by the other trustees, must not cause the number of trustees to exceed any number fixed in accordance with this constitution as the maximum number of trustees.
 - (b) The trustees may not appoint a person to be an officer if a person has already been elected or appointed to that office and has not vacated the office.

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Clause 19 - It is sensible to set out all the powers that the charity will commonly need, for the avoidance of doubt and to remind trustees of the conditions that have to be met when they exercise those powers. Some of these powers are implicit in a charity's objects (for example, if the object is to provide a school, the trustees have an implicit power to acquire premises). Other powers are given by statute, often only if specific conditions are met. For example, the Trustee Act 2000 gives trustees power to acquire and dispose of land, to borrow money in many circumstances, to delegate much of the running of the charity and to invest. However, there are some things that can be done only if the charity's governing document provides express power to do them.

Sub-clause 19(1)(a) - This sub-clause provides a general power to raise funds through a wide variety of methods. The only restriction here is that it does not allow the charity to engage in substantial permanent trading for the purpose of raising funds. (Trading on a small scale is allowed. HM Revenue and Customs provide guidance on the tax treatment of different sorts of trading). The terms of this power do not prevent trading in order to carry out the charity's object - for example, an educational charity can charge fees for the educational services it provides.

Sub-clause 19(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). *Acquiring Land (CC33)* contains further guidance on the issue. See also notes to sub-clause 19(1)(d) and clause 29.

Sub-clause 19(1)(c) - This power enables the trustees to dispose of property belonging to the charity (for example, by selling or leasing it). Sections 117 - 122 of the Charities Act 2011 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 guidance *Disposing of Charity Land (CC28)* provides more information about this.

Sub-clause 19(1)(d) - This provides the trustees with a power to borrow. It also makes clear that if this power involves securing the loan on land of the charity, it must comply with the requirements of sections 124 - 126 of the Charities Act 2011. Briefly, the Act requires that the trustees take advice and provide certain certificates/statements when they are borrowing money by way of mortgage.

19. Powers of trustees

- (1) The trustees must manage the business of the charity and have the following powers in order to further the objects (but not for any other purpose):
 - (a) to raise funds. In doing so, the trustees must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations;
 - (b) to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
 - (c) to sell, lease or otherwise dispose of all or any part of the property belonging to the charity. In exercising this power, the trustees must comply as appropriate with sections 117 - 122 of the Charities Act 2011;
 - (d) to borrow money and to charge the whole or any part of the property belonging to the charity as security for repayment of the money borrowed. The trustees must comply as appropriate with sections 124 - 126 of the Charities Act 2011, if they intend to mortgage land;
 - (e) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
 - (f) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects;
 - (g) to acquire, merge with or enter into any partnership or joint venture arrangement with any other charity formed for any of the objects;
 - (h) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
 - (i) to obtain and pay for such goods and services as are necessary for carrying out the work of the charity;
 - (j) to open and operate such bank and other accounts as the trustees consider necessary and to invest funds and to delegate the management of funds in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000;
 - (k) to do all such other lawful things as are necessary for the achievement of the objects.
- (2) No alteration of this constitution or any special resolution shall have retrospective effect to invalidate any prior act of the trustees.

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Our Operational Guidance Borrowing and Mortgages on our website provides detailed information on this.

Sub-clause 19(1)(i) - This power cannot be used if the goods or services are being provided by a trustee: see Clause 5.

Sub-clause 19(1)(j) - Bank accounts - the trustees can make rules (under clause 32) to allow others associated with the operation of the charity such as employees or volunteers to sign cheques and other orders in relation to the charity's bank accounts so long as these activities are properly managed so as to reduce the risk of fraud. For example, the trustees might allow two senior volunteers to sign cheques up to a defined face value, with a limit on the total value of cheques which they are authorised to sign in any one month. For charities which operate electronic bank accounts, there is guidance on trustee duties and operational best practice in Internal Controls for Charities (CC8) on our website. With regard to the delegation and management of funds, the Trustee Act 2000 provides wide powers of investment and requires the charity to take advice and to consider the need to invest in a range of different investments. Our guidance 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 20 - Our guidance Finding New Trustees: What charities need to know (CC30) explains what sections 178 and 179 of this Act covers. In very broad terms, someone who has been convicted of offences involving deception or fraud, or who is an undischarged bankrupt or who has been removed from office as a charity trustee by us will be disqualified for acting as a trustee.

Clause 21 - We provide further guidance on meetings in Charities and Meetings (CC48).

Sub-clause 21(7) - Where the total number of trustees is the mid-point between two numbers which can be divided by three, we recommend rounding up to the next multiple of three.

- (3) Any meeting of trustees at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the trustees.

20. Disqualification and removal of trustees

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

- (1) is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision);
- (2) ceases to be a member of the charity;
- (3) in the written opinion, given to the charity, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;
- (4) resigns as a trustee by notice to the charity (but only if at least two trustees will remain in office when the notice of resignation is to take effect); or
- (5) is absent without the permission of the trustees from all their meetings held within a period of six consecutive months and the trustees resolve that his or her office be vacated.

21. Proceedings of trustees

- (1) The trustees may regulate their proceedings as they think fit, subject to the provisions of this constitution.
- (2) Any trustee may call a meeting of the trustees.
- (3) The secretary must call a meeting of the trustees if requested to do so by a trustee.
- (4) Questions arising at a meeting must be decided by a majority of votes.
- (5) In the case of an equality of votes, the person who chairs the meeting shall have a second or casting vote.
- (6) No decision may be made by a meeting of the trustees unless a quorum is present at the time the decision is purported to be made.
- (7) The quorum shall be two or the number nearest to one-third of the total number of trustees, whichever is the greater or such larger number as may be decided from time to time by the trustees.
- (8) A trustee shall not be counted in the quorum present when any decision is made about a matter upon which that trustee is not entitled to vote.

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Clause 22 - This reflects good practice on managing conflicts of interests and conflicts of loyalties.

Clause 23 - This reduces the risk of trustees' decisions being declared invalid for purely technical reasons.

- (9) If the number of trustees is less than the number fixed as the quorum, the continuing trustees or trustee may act only for the purpose of filling vacancies or of calling a general meeting.
- (10) The person elected as the Chair shall chair meetings of the trustees.
- (11) If the Chair is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the trustees present may appoint one of their number to chair that meeting.
- (12) The person appointed to chair meetings of the trustees shall have no functions or powers except those conferred by this constitution or delegated to him or her in writing by the trustees.
- (13) A resolution in writing signed by all the trustees entitled to receive notice of a meeting of trustees or of a committee of trustees and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the trustees or (as the case may be) a committee of trustees duly convened and held.
- (14) The resolution in writing may comprise several documents containing the text of the resolution in like form each signed by one or more trustees.

22. Conflicts of interests and conflicts of loyalties

A charity trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not been previously declared; and
- (2) absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the charity and any personal interest (including but not limited to any personal financial interest).

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

23. Saving provisions

- (1) Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of the charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:
 - (a) who is disqualified from holding office;
 - (b) who had previously retired or who had been obliged by this constitution to vacate office;

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- (c) who was not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise;

if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.

- (2) Sub-clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for sub-clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 22 (Conflicts of interests and conflicts of loyalties).

24. Delegation

- (1) The trustees may delegate any of their powers or functions to a committee of two or more trustees but the terms of any such delegation must be recorded in the minute book.
- (2) The trustees may impose conditions when delegating, including the conditions that:
 - (a) the relevant powers are to be exercised exclusively by the committee to whom they delegate;
 - (b) no expenditure may be incurred on behalf of the charity except in accordance with a budget previously agreed with the trustees.
- (3) The trustees may revoke or alter a delegation.
- (4) All acts and proceedings of any committees must be fully and promptly reported to the trustees.

25. Irregularities in proceedings

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

if, without:

- (d) the vote of that trustee; and
- (e) that trustee being counted in the quorum,

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

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Sub-clause 25(2) - see clause 5 (and in particular sub-clauses 5(2) and 5(3)) which sets out the restrictions on trustee benefits and the procedures to be followed if a benefit is to be allowed to a trustee.

Clause 26 - Using the power to make rules at clause 32, the trustees can decide in what format the minutes should be kept and how to validate them.

Clause 27 - The key accounting requirements for charities are set out on our website. All registered charities with incomes over £10k must send accounts, Annual Report and Annual Return to us within 10 months of the end of their financial year.

Sub-clause 27(1)(e) - The Annual Return provides a summary of key financial data and is used by us for monitoring purposes to detect issues which might require our attention or guidance.

Sub-clause 27(2) - The Statement of Recommended Practice for charities (SORP 2005) is available as a free PDF download, but you can also buy a printed copy:

- Download the SORP as a PDF file
- Find out how to order a printed copy of the SORP

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

(3) No resolution or act of

- the trustees
- any committee of the trustees
- the charity in general meeting

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

26. Minutes

The trustees must keep minutes of all:

- appointments of officers and trustees made by the trustees;
- proceedings at meetings of the charity;
- meetings of the trustees and committees of trustees including:
 - the names of the trustees present at the meeting;
 - the decisions made at the meetings; and
 - where appropriate the reasons for the decisions.

27. Accounts, Annual Report, Annual Return

- The trustees must comply with their obligations under the Charities Act 2011 with regard to:
 - the keeping of accounting records for the charity;
 - the preparation of annual statements of account for the charity;
 - the transmission of the statements of account to the Commission;
 - the preparation of an Annual Report and its transmission to the Commission;
 - the preparation of an Annual Return and its transmission to the Commission.

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Clause 28 - A charity's entry includes its name, correspondence address, objects, governing document (and any amendment) and names of its trustees. The Commission issues to every charity an Annual Update form and Annual Return on which these details can conveniently be supplied, although changes to the correspondent details should be provided as soon as possible.

Clause 29 - When the trustees acquire land for the charity, the ownership of the land cannot rest with the charity directly as it has no separate legal identity. The trustees will therefore need to ensure that title to the charity's land is held in the name of individuals ('holding trustees') or a company, in trust on behalf of the charity. Typically this can be some or all of the trustees, the Official Custodian for Charities (see our guidance *The Official Custodian for Charities' Land Holding Service* (CC13)) or a nominee.

Clause 30 - These are the minimum requirements and trustees should consider if any other forms of insurance are needed.

- (2) Accounts must be prepared in accordance with the provisions of any Statement of Recommended Practice issued by the Commission, unless the trustees are required to prepare accounts in accordance with the provisions of such a Statement prepared by another body.

28. Registered particulars

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

29. Property

- (1) The trustees must ensure the title to:
 - (a) all land held by or in trust for the charity that is not vested in the Official Custodian of Charities; and
 - (b) all investments held by or on behalf of the charity, is vested either in a corporation entitled to act as custodian trustee or in not less than three individuals appointed by them as holding trustees.
- (2) The terms of the appointment of any holding trustees must provide that they may act only in accordance with lawful directions of the trustees and that if they do so they will not be liable for the acts and defaults of the trustees or of the members of the charity.
- (3) The trustees may remove the holding trustees at any time.

30. Repair and insurance

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

31. Notices

- (1) Any notice required by this constitution to be given to or by any person must be:
 - (a) in writing; or
 - (b) given using electronic communications.
- (2) The charity may give any notice to a member either:
 - (a) personally; or
 - (b) by sending it by post in a prepaid envelope addressed to the member at his or her address; or

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Clause 32 - Rules are effectively the internal procedures adopted by the trustees for the proper administration of the charity. They cannot be used to change any of the provisions in this constitution. Clause 7 of this constitution sets out the procedure for amending the provisions of this constitution.

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

32. Rules

- (1) The trustees may from time to time make rules or bye-laws for the conduct of their business.
- (2) The bye-laws may regulate the following matters but are not restricted to them:
- (a) the admission of members of the charity (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
 - (b) the conduct of members of the charity in relation to one another, and to the charity's employees and volunteers;
 - (c) the setting aside of the whole or any part or parts of the charity's premises at any particular time or times or for any particular purpose or purposes;
 - (d) the procedure at general meeting and meetings of the trustees in so far as such procedure is not regulated by this constitution;

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Sub-clause 32(2)(e) - The Electronic Communications Act 2000 and the Electronic Signatures Regulations 2002 permit electronic signatures to be accepted as evidence, subject to certain conditions. This sub-clause summarises those conditions.

Clause 33 - It is good practice to include provisions for dealing with any disputes that arise between members of the charity. Litigation can be expensive, and litigation about the internal affairs of a charity would almost certainly constitute 'charity proceedings', which can be taken only with the Commission's authority. We would usually require the parties to a dispute to have tried mediation first.

- (e) the keeping and authenticating of records. (If regulations made under this clause permit records of the charity to be kept in electronic form and requires a trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.)
 - (f) generally, all such matters as are commonly the subject matter of the rules of an unincorporated association.
- (3) The charity in general meeting has the power to alter, add to or repeal the rules or bye-laws.
 - (4) The trustees must adopt such means as they think sufficient to bring the rules and bye-laws to the notice of members of the charity.
 - (5) The rules or bye-laws shall be binding on all members of the charity. No rule or bye-law shall be inconsistent with, or shall affect or repeal anything contained in, this constitution.

33. Disputes

If a dispute arises between members of the charity about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

34. Interpretation

In this constitution 'connected person' means:

- (1) a child, parent, grandchild, grandparent, brother or sister of the trustee;
- (2) the spouse or civil partner of the trustee or of any person falling within sub-clause (1) above;
- (3) a person carrying on business in partnership with the trustee or with any person falling within sub-clause (1) or (2) above;
- (4) an institution which is controlled -
 - (a) by the trustee or any connected person falling within sub-clause (1), (2), or (3) above; or
 - (b) by two or more persons falling within sub-clause (4)(a), when taken together
- (5) a body corporate in which -
 - (a) the charity trustee or any connected person falling within sub-clauses (1) to (3) has a substantial interest; or

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- (b) two or more persons falling within sub-clause (5)(a) who, when taken together, have a substantial interest.
- (6) Sections 350 - 352 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this clause.

Signatures

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