

## Summary of Articles of Association

### Membership

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1. The Articles of Association are the rules which deal with the charity's status, and regulate its internal management.

#### Interpretation

2. Article 1 cross refers to the Schedule which contains the definitions which are used throughout the document.

#### Objects and Powers

3. The objects of the charity are set out in Article 2. Everything the charity does must be in pursuance of its objects, so it is important that they are accurate, and encompass everything which you anticipate that the charity will be doing during its lifetime. Note that it can be difficult to change the objects once a charity has been registered with the Charity Commission, so it is important that they are as flexible as possible.
4. Article 3 sets out the powers which the charity may exercise in order to achieve its objects. In Article 3.30 there is a "sweep-up" power to do anything which is lawful and promotes the charity's objects.
5. Articles 3.19 and 3.20 contain powers to trade and to incorporate subsidiary companies to carry on trade. The powers are stated fairly simply, but the law relating to the ability of charities to trade is quite complex, so you should take legal advice before carrying out any form of trading activity.
6. Article 3.29 allows the charity to pay premiums in respect of indemnity insurance on behalf of the trustees and other officers of the charity. Such insurance can protect trustees against the possibility of personal liability arising as a result of acts of negligence or default, where they have been acting in good faith.

#### Limitation on Private Benefits

7. Article 4 contains important provisions about the application of the charity's funds. There is a general principle of charity law that payments to trustees or certain persons connected to trustees are prohibited unless either there is a statutory power to make the payments, the Charity Commission or the court authorises the payment, or the Articles provide for the payment to be made.
8. In Articles 4.2 and 4.4, there is a full list of the types of payments you might want to make to members and trustees respectively.
9. Note that Article 4.4 also includes a reference to "Connected Persons" (this term is defined in the Schedule), since the Charity Commission's view is that those with connections to

trustees, such as spouses, children and businesses in which a trustee has an interest, are also prohibited, unless specifically allowed in the Articles. The benefits which trustees and connected persons can receive from the charity are:

- 9.1 payments made to them as beneficiaries;
- 9.2 reasonable expenses (this would cover, for example, travel expenses and childcare cover for trustees while attending trustees' meetings, but would not cover any form of payment for a trustee's time in attending the meeting);
- 9.3 remuneration for goods and services supplied to the charity. This would allow, for instance, payments to a trustee who was a fund raising expert for fund raising services rendered to the charity. It does not, however, cover payments to anyone for acting as a trustee, nor services performed by a trustee under a contract of employment with the charity.

Note that this clause is subject to certain safeguards, essentially requiring the trustee concerned to withdraw from the relevant decision making process, and ensuring that no more than half of the trustees, in any year, can benefit;

- 9.4 interest on money lent to the charity;
  - 9.5 rent on premises let to the charity;
  - 9.6 premiums for trustee indemnity insurance as referred to above;
  - 9.7 payments under the indemnity provisions in Article 6; and
  - 9.8 payments expressly authorised by the Charity Commission.
10. Article 4.6 has been included to take advantage of provisions in the Companies Act 2006 which allow charitable companies to make it clear that a trustee's duty to avoid a conflict of interest (which applies under the 2006 Act), does not apply to certain transactions. However, a trustee should still comply with the conflict of interest procedures in Articles 21 to 23.

#### **Liability of members, indemnity and winding up**

11. Article 5 establishes the limited liability for individual members of the company. The maximum liability of any member is to pay £1 towards the charity's debts and liabilities on winding up.
12. Article 6 provides a general indemnity to the trustees and officers out of the assets of the charity against certain costs they might incur in fulfilling their functions.
13. Article 7 provides that should the charity be wound up, its assets must be transferred to a charity or charities with similar objects.

## **Trustees**

### **Trustees' powers and responsibilities**

14. Articles 8 and 9 formally entrust the management of the charity to the trustees acting in their capacity as trustees.
15. Article 10 allows the trustees to appoint a chair, and to set his or her term of office. They can also remove the chair.
16. Articles 11 to 13 contain provisions concerning delegation of the trustees' powers. It is a general principle that trustees must manage their charity personally and may only delegate their functions in accordance with the provisions of the constitution. These Articles give fairly wide powers to delegate, but in exercising these powers (as with all their powers), the trustees must act reasonably and prudently.
17. Article 12 provides for the establishment of committees, and covers the functions and reporting requirements of those committees.
18. Article 13 deals with delegation of investment management.

### **Decision-making by Trustees**

19. Articles 14 to 24 regulate the decision-making of the Trustees.
20. Articles 21 and 22 set out a framework for dealing with trustee conflicts of interest. Under both charity law and company law, trustees of charitable companies must take careful steps to disclose interests and to manage conflicts of interest. In particular, in October 2008 the Companies Act 2006 introduced new statutorily defined duties to avoid conflicts of interest and to disclose interests. As well as introducing the new duties, the Companies Act allows charitable companies to include some limited provisions in their Articles which protect trustees from claims for breach of the duty to avoid a conflict of interest. Articles 21 and 22 reflect these.

### **Appointment and retirement of Trustees**

21. Articles 24 to 26 deal with the appointment and retirement of trustees.
22. Article 24 provides for a minimum of three trustees. Any maximum may be set as a matter of policy or the Articles could be amended to include a reference to a maximum.
23. Article 25 deals with how individuals become trustees. Charities typically adopt a variety of methods of appointing trustees: the method suggested in this draft is commonly used.
24. Under Article 25.1, the first trustees will be those individuals who are notified to Companies House as the first company directors. Thereafter, trustees can be appointed by ordinary resolution, which is a majority decision of the members, or by the trustees, under Article 25.2.
25. Under Article 25.3.1, at every annual general meeting one-third of the trustees appointed by the members must retire automatically. This mechanism ensures that there is a regular

opportunity to change the trustees if desired. Note that in practice this means that one-third of the trustees will retire one year after the charity has been set up, and some trustees may serve longer than others before they are forced to retire. If the vacancy created by a trustee retiring automatically in this way is not filled, the retiring trustee will be deemed to be reappointed unless the members specifically resolve to the contrary, under Article 25.5.

26. Trustees appointed by the trustees must retire automatically at the next annual general meeting under Article 25.3.2.
27. Articles 25.7 to 25.9 set out prerequisites and procedures for appointments, including notice which must be given before an appointment is made.
28. Article 25.10 clarifies the timing of automatic retirement.
29. Article 26 sets out when trustees will cease to act.

## **Members**

### **Becoming and ceasing to be a Member**

30. Articles 27 and 28 deal with members. A company is required to have directors (in the case of a charitable company these are called the trustees) and members. Company law and the Articles entrust certain powers to the trustees, and certain powers to the members.
31. Article 27 explains who the members will be. Under Article 27.1 the members will be the individuals who subscribe to the Memorandum of Association which will be filed with Companies House when forming the company. After that, it is up to the trustees to decide who will become members.
32. Article 27 requires members to complete an application form for membership.
33. Article 28 sets out when membership ceases.

### **Organisation of General Meetings**

34. Articles 29 to 45 deal with general meetings of the members. To a large extent these repeat statutory provisions regarding the calling and holding of members' meetings.

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