

**Charitable Incorporated Organisation:  
Model Constitution – ‘Association’ version**

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## **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 190,000 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 an 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](http://www.charitycommission.gov.uk), or by contacting Charity Commission Direct:

Telephone: **0845 300 0218**

Minicom: **0845 300 0219**

By post: **Charity Commission Direct**  
PO Box 1227  
Liverpool  
L69 3UG

## About the consultation on the Charitable Incorporated Organisation

This draft model constitution forms part of a consultation being conducted by the Commission and the Office of the Third Sector (OTS).

The CIO is a new legal form for registered charities, created by the Charities Act 2006 (the 2006 Act). The legal framework for CIOs is created by the 2006 Act together with regulations made by OTS and model constitutions drawn up by the Commission.

The Commission and OTS will be consulting on the form and content of the regulations and the model constitutions from 9 September 2008 to 9 December 2008.

Some of the Commission's guidance referred to in this model (e.g. *Registering as a Charity* (CC21) and *Choosing and Preparing a Governing Document* (CC22)) will need to be updated to include advice on CIOs once the provisions are finalised. Obviously, the Commission will not be able to consider any applications for registration as a CIO until the provisions have been implemented. For further information, please see the consultation documents.

For a copy of the full consultation document *The Charitable Incorporated Organisation (CIO): the new corporate form for charities*, or a summary *Guide to the Consultation*, please see the Commission's website [www.charitycommission.gsi.gov](http://www.charitycommission.gsi.gov) or OTS's website [http://www.cabinetoffice.gov.uk/third\\_sector.aspx](http://www.cabinetoffice.gov.uk/third_sector.aspx).

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## Charitable Incorporated Association: Model Constitution – 'Association' version

A Charitable Incorporated Organisation (CIO) is a form of organisation designed exclusively for registered charities. It may be suitable for a charity for a number of reasons, for example if it is expected to:

- own land in its own name;
- control substantial funds or assets;
- enter into contracts, for example by employing staff; or
- engage in charitable activities involving commercial risks.

A CIO is a corporate body (like a company), and its members will not be liable (or only liable up to a fixed amount) for any debts of the CIO if it winds up. Unlike a company, CIOs only register with the Commission; they do not also have to register with Companies House. The practical consequences of adopting the CIO structure are explained in our guidance *[to be drafted]*.

A new charity may be established in the form of a CIO. An existing charity may in certain circumstances convert to or transfer its property and operations to a CIO.

We have produced two model constitutions for CIOs - this one, the '**association**' version for charities that will have voting members other than the trustees and the '**foundation**' version for charities whose only voting members will be the trustees.

### Why you should use one of our CIO model governing documents?

A CIO **must** have a constitution and the Regulations *[to be drafted]* specify that they should be in the form of one of our model constitutions (or as near to that form as the circumstances admit). The constitution **must** be in English if the CIO's principal office is in England, but may be in English or Welsh if the principal office is in Wales.

Under the provisions of the Charities Act 1993 as amended by the Charities Act 2006 ('the 1993 Act'), and The Charitable Incorporated Organisations (General) Regulations 2008 ('the Regulations'), there are certain things that a CIO's constitution **must** state (but the Regulations do not prescribe an exact wording). There are other provisions that **must** be included if they apply, and in some cases **must** explain to what extent or how they apply, depending on the CIO's particular circumstances. Anyone preparing a constitution for a CIO should consider these provisions and how they will fit in with the model constitution.

We have included other provisions in this model constitution either because they reflect good practice that we recommend, or because the constitution would not function properly without them. The notes on each page explain whether a provision **must** be included, whether it **may** or **should** be amended to fit the circumstances, or whether it is optional.

In addition, using this model will reduce the time taken to assess your application and to complete charity registration.

You may find it helpful to begin by reading our publications *Registering as a Charity* (order reference CC21) and *Choosing and Preparing a Governing Document* (CC22). The checklist of questions referred to in *Registering as a Charity* will help you to decide how best to set up the Charity. *Choosing and Preparing a Governing Document* gives advice on the practicalities of completing the Charity's governing document and on the different provisions which may be needed. If you then propose to use this model constitution, please read it through carefully, including the guidance notes. The *Registration Application Pack* contains guidance and forms (APP1 and DEC1) to enable you to apply to us for charity registration.

If you want to include any special or complex provisions which are not contained in the model you should consider asking a solicitor to help you. We may require more time to consider any such specialist changes. It is important to make clear what changes you make, and why it is necessary in the circumstances to include these changes.

When you have completed this document please check that you have filled in all the gaps, deleted any clauses which are not appropriate and numbered all the remaining clauses in sequence.

You will need to send to the Commission:

- completed APP 1 and DEC 1;
- two copies of the constitution certified as a true and complete copy.

Completed applications should be sent to:

Charity Commission Direct  
PO Box 1227  
Liverpool  
L69 3UG

The Commission cannot guarantee that a proposed organisation which uses a model as its governing document will be accepted as charitable. Every case has to be considered separately.

## Notes

Insert the date on which the members agreed to adopt this constitution. This is good practice, and helps to ensure everyone is working from the same document.

**Clause 1** – You **must** include the name of the CIO in the constitution. In general, the Commission can accept any name unless it infringes the principles in section 6 of the 1993 Act, as explained in our publication *Registering as a Charity (CC21)* and in our Operational Guidance (*OG18 - 'Names'*) available on our website. The name should not be misleading, offensive or likely to be confused with the name of an existing Charity.

**Clause 2** – The CIO **must** have a principal Office in England and Wales. You **must** include the appropriate option in the Constitution.

**Clause 3** – The CIO **must** have exclusively charitable purposes (objects) which you **must** set out in the constitution. Guidance on appropriate wording is available in our publication *Choosing and Preparing a Governing Document (CC22)*. You can also find example objects on our website. The key elements to include are:

- the purpose itself (e.g. establishing and running a school);
- the people who can benefit (in our example, school age children); and, if appropriate;
- any geographic limits defining the area of benefit. *If you 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.*

**Clause 4** – The 1993 Act gives a CIO power to do 'anything which is calculated to further its purposes or is conducive or incidental to doing so'. Strictly speaking, this is the only power a CIO needs. We recommend that this is set out in the constitution (Option 1) for ease of reference.

In some circumstances, it can be helpful to state certain powers explicitly, for example power to borrow (which may reassure potential lenders). For this reason you **may** wish to choose Option 2. You **may** add other express powers here if you wish to.

You **may** include a constitutional

# Constitution of a Charitable Incorporated Organisation

Adopted on the .....

## 1. Name

The name of the CIO is ..... and in this document it is called the CIO.

## 2. National location of principal office

### Option 1

The principal office of the CIO is in England.

### Option 2

The principal office of the CIO is in Wales.

## 3. Purpose

The purpose of the CIO is .....  
.....  
.....  
.....  
.....

## 4. Operational Powers

### Option 1

The CIO has power to do anything which is calculated to further its purpose or is conducive or incidental to doing so.

### Option 2

The CIO has power to do anything which is calculated to further its purpose or is conducive or incidental to doing so, and in particular it has power:

- (1) [to borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed.]

## 5. Use and application of property

The CIO **must only** use and apply its property in furtherance of the purpose stated in clause 3, and otherwise in accordance with this constitution, and none of the CIO's property may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to any of its members.

provision restricting the general power in the 1993 Act. For example, a restriction of investment powers on ethical grounds could be added. But you **must only** include such a restriction if it is in the CIO's interests. You **must not** restrict the CIO's powers in a way that prevents it from disposing of its property.

**Clause 5** – This clause reflects the requirements of the 1993 Act. We recommend that you include it in the constitution, for clarity.

**Clause 6** –

**(1) Expenses** – The 1993 Act gives charity trustees of CIOs an automatic power to be repaid properly incurred expenses. We recommend for clarity that it be stated in the constitution. The constitution cannot override the statutory power.

**(2) Personal benefits** – This clause reflects the legal powers and restrictions governing personal benefits to charity trustees. In summary, charity trustees may only benefit from their charity if they have express legal authorisation to do so (such as a clause in the constitution). You **should** include this clause; otherwise the statutory provisions will apply anyway.

**(a)** As drafted, this clause includes some standard exceptions to the rules on trustee benefits, including some statutory powers.

You **may** add provisions authorising trustee benefits in other specific circumstances, but you **must not** add a provision which authorises inappropriate non-charitable payments, for example, the taking of bribes, or of payments which would amount to distributions of profit. If these provisions are altered inappropriately, it may make the CIO's constitution invalid and the Commission will not register it.

Once the constitution has been adopted, this clause cannot be altered without prior written approval from the Commission.

For further information about personal benefits to trustees see our guidance Payment of Charity Trustees (CC11)

## 6. Charity trustees: personal benefits and payments

### (1) Expenses

A charity trustee of a CIO is entitled to be reimbursed by the CIO, or may pay out of the CIO's funds, expenses properly incurred by him or her in the performance of his or her functions as such.

### (2) Personal benefits

No charity trustee of the CIO shall obtain any personal financial benefit from any transaction or arrangement into which the CIO has entered, or otherwise from his or her position as charity trustee -

(a) Except in the following circumstances -

- (i) where it is permitted in accordance with, and subject to the conditions in, section 73A or section 73F of the Charities Act 1993 (services provided by a charity trustee to the charity; trustee indemnity insurance); or
- (ii) where the benefit is permitted by the court or the Charity Commission; or
- (iii) where the charity trustee lends money to the charity on reasonable terms; or
- (iv) where the charity trustee leases property to, or allows the use of property by, the CIO on reasonable terms; or
- (v) where the benefit arises because of the interest of the charity trustee in a partnership or corporate body which enters into a transaction or arrangement with the CIO, so long as that interest does not exceed 1% of all the interests in the distributable profits of the partnership or corporate body; or
- (vi) where acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest, for example where the benefit is obtained as a beneficiary of the charity and is available on the same terms to other members of the beneficiary class,

**(b)(i)** This clause restates a prohibition contained in the 1993 Act. We recommend that it be stated in the constitution, for clarity. The constitution cannot override the statutory prohibition.

**(b)(ii) (a) and (b)** These two conditions restate prohibitions contained in the Regulations governing conflicts of interest. We recommend that they be stated in the constitution, for clarity. The constitution cannot override these provisions in the regulations.

**Clause 7** – A CIO **must** have one or more members.

If the CIO will have no members except its trustees, you should use the **Foundation Model Constitution**.

**(2)** The Regulations require that the constitution **must** state the names of the first members. Alter this clause as applicable and insert the name(s) of the original member(s).

**(2)(a) and (b)** You **must** state in the constitution who is eligible to be a member and how a person becomes a member. Provided that the beneficiary class of the CIO is not defined by reference to its membership, more restrictive membership provisions (for example requiring prospective members to be “approved” by the charity trustees) could be adopted. In that case the membership refusal provisions (clause 7(3)(b)) would also need modification.

If there is to be more than one class of

**(b) And unless -**

- (i)** before the arrangement or transaction is entered into, the charity trustee discloses to all the other charity trustees any material interest in it, or in any other person or body party to it (whether that interest is direct or indirect); and
- (ii)** if the transaction or arrangement can reasonably be regarded as likely to give rise to a conflict of interest,

**(a)** the charity trustee takes no part in any decision by the members or charity trustees of the CIO whether the CIO enters into that transaction or arrangement or not; and

**(b)** he or she is not counted in the quorum necessary for the discharge of such business.

## **7. Membership of the CIO**

### **(1) Original members**

The original member[s] of the CIO [is the person][are the people] who applied to the Commission for the CIO to be constituted and for its registration as a charity. [He is] [She is] [They are] -

.....  
.....  
.....  
.....

### **(2) Admission of new members**

#### **(a) Eligibility**

Membership of the CIO is open to anyone who is interested in furthering its purposes, and who, by applying for membership, has indicated his or her agreement to become a member. A member may be an individual, a corporate body, or an individual or corporate body representing a body which is not incorporated.

#### **(b) Admission procedure**

## Annex E - Draft model constitution for a Charitable Incorporated Organisation (Association)

voting (i.e. formal) member, the regulations require that this **must** be set out in the constitution.

(It is possible for a CIO to have more than one class of voting member. This is not common in practice, and is not an organisational structure which the Commission would generally recommend.)

**(3)** We strongly advise inclusion of this provision, otherwise the charity's membership records could become unworkable and the charity would lose control over membership.

**(4)** This is the legal duty of each member of the CIO as set out in the 1993 Act (Schedule 5B, paragraph 9). You may find it helpful to set this out in the constitution. The constitution cannot alter the members' duty.

**(5)** The regulations state that the constitution **must** contain provision for retirement and termination of membership. The suggestions here are based on experience and good practice.

The charity trustees of the CIO -

- may require applications for membership to be made in any reasonable way that they decide,
- may only refuse an application for membership if they reasonably believe that it is in the best interests of the CIO for them to do so,
- shall, if they decide to refuse an application for membership, give the applicant their reasons for doing so, within a reasonable time of the decision being taken, and give the applicant the opportunity to challenge the refusal, and
- shall give fair consideration to any such challenge, and shall inform the applicant of their decision, but any decision to confirm refusal of the application for membership shall be final.

### **(3) Transfer of membership**

Membership of the CIO cannot be transferred to anyone else.

### **(4) Duty of members**

It is the duty of each member of the CIO to exercise his or her powers as a member of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO.

### **(5) Termination of membership**

Membership of the CIO comes to an end if -

- the member dies, or (in the case of a corporate member) it ceases to exist;
- the member sends a notice of resignation to the charity trustees;
- any sum of money owed by the member to the CIO is not paid in full within six months of its falling due; or
- the charity trustees decide that it is in the best interests of the CIO that the person in question should be removed from membership.

Before the charity trustees take any decision to remove

**(6)** The CIO **must** keep a register of members in accordance with the Regulations. This does not have to be stated in the constitution but is included to serve as a reminder.

The member's address is a service address (i.e. an address at which they agree to receive official correspondence); it need not be their home address. The register will be open to public inspection.

**(7)** This power is permissive. We recommend that it should be included for clarity, but charities automatically have this power and it is not essential to state it.

**(8)** This power is permissive. It does not need to be stated, but we would advise CIOs to include it if they contemplate having an informal (associate) membership.

Membership of this kind does **not** count as membership for legal purposes, for example in terms of voting rights, legal obligations to act in the interests of the charity or any liability to contribute to the assets of the CIO on dissolution.

Details of any informal members should not be included in the Register of Members.

someone from membership of the CIO they **must** -

- inform the member of the reasons why it is proposed to remove him or her from membership;
- give the member at least 21 clear days notice in which to make representations to the charity trustees as to why he or she should not be removed from membership;
- notwithstanding anything in clause 13, take the decision as to whether the person should be removed from membership or not at a duly constituted meeting of the charity trustees;
- consider at such meeting any representations which the member makes as to why he or she should remain a member; and
- allow the member, or the member's representative, to make those representations at that meeting, if the member so chooses.

#### **(6) Register of members**

The CIO must keep a register of its members, and the name and address of each member, and the date on which a person was registered as a member, and the date on which any person ceases to be a member, shall be entered in the register.

#### **(7) Subscriptions**

The charity trustees of the CIO may require members to pay reasonable subscriptions to the CIO.

#### **(8) Informal or associate (non-voting) membership**

The charity trustees may create associate or other classes of non-voting membership, and may determine the rights and obligations of any such members (including payment of subscriptions), and the conditions for admission to, and termination of membership of any such class of members.

Other references in this constitution to "members" and "membership" do not apply to non-voting members.

**Clause 8 (1)** These provisions reflect provisions in the Regulations that govern decision-making by members. We recommend that they be included in the constitution for clarity.

**(2)** This power (to take decisions other than by resolution at a general meeting) is optional, but if the CIO intends to use it, it **must** be included in the constitution.

The provisions set out here are an example and other provisions could be included instead.

## 8. Members' decisions

### (1) Decisions that must be taken in a particular way

The following types of decision must be taken by means of a resolution at a general meeting of the members of the CIO, unless the resolution is agreed to by all of the members of the CIO, –

- a decision to alter this constitution;
- a decision to amalgamate the CIO with one or more other CIOs;
- a decision to transfer the undertaking of the CIO to one or more other CIOs; or
- a decision to wind up or dissolve the CIO.

Any such resolution must be passed by a 75% majority of those voting at the meeting.

### (2) Other decisions

Any other decision of the members of the CIO may either be taken by means of a resolution at a general meeting, or in accordance with the following provisions –

The charity trustees may make a proposal for decision by the members.

- (a) If they do, they must either -
  - (i) at the same time (so far as is reasonably practicable) send copies of the proposal to all the members of the CIO; or
  - (ii) if it possible to do so without undue delay, send the same copy to each member of the CIO in turn, (or different copies to each of a number of members in turn).
- (b) The proposal shall indicate how, and by what date, a member is expected to give a response to the proposal.
- (c) The proposal becomes a decision of the members of the CIO on the date when more than 50% of the CIO's members have signified their agreement to the proposal, but if this has not occurred on or before the date referred to in

paragraph (iii), the proposal lapses.

- (d) Eligibility to vote on the proposal is limited to persons who are members of the CIO on the date when the proposal is first circulated in accordance with paragraph (ii) above.
- (e) Not less than 5% of the members of the CIO may request the charity trustees to make a proposal for decision by the members.
- (f) The charity trustees must within 21 days of receiving such a request comply with it if –
  - (i) The proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;
  - (ii) The proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the members; and
  - (iii) Effect can lawfully be given to the proposal if it is so agreed.
- (g) Sub-clauses (a) to (d) apply to a proposal made at the request of members.

## 9. Meetings of members

### (1) Types of meeting

There must be an annual general meeting of the members of the CIO. The first annual general meeting must be held within 18 months of the registration of the CIO, and subsequent annual general meetings must be held at intervals of not more than 15 months.

Other general meetings of the members of the CIO must be held in accordance with the following provisions.

### (2) Calling meetings

- (a) The charity trustees of the CIO -
  - (i) must call the annual general meeting of the members of the CIO in accordance with sub-clause (a) and may call any other general meeting of the members of the CIO at any time; and
  - (ii) must, within 21 days, call a general

**Clause 9** – The Regulations require charities to hold general meetings and state that the constitution **must** include provisions for the holding and calling of general meetings, and procedure at such meetings including the appointment of a Chair, the minimum number of members who shall form a quorum, whether members can demand a poll, and the procedure for conducting such a poll.

Except where indicated as legal or regulatory requirements, the provisions in clause 9 are examples based on recommended good practice. Members' meetings are an important method both of communicating with members and being accountable to them.

- meeting of the members of the CIO if -
- they receive a request to do so from not less than 10% of the members of the CIO; and
  - the request states the general nature of the business to be dealt with at the meeting, and is authenticated by the member(s) making the request.
- (b) If, at the time of any such request, there has not been any general meeting of the members of the CIO for more than 12 months, the preceding paragraph shall have effect as if 5% were substituted for 10%.
- (c) Any such request may include particulars of a resolution that may properly be moved, and is intended to be moved, at the meeting.
- (d) A resolution may only “properly” be moved if it is lawful, and is neither defamatory, frivolous nor vexatious.
- (e) Any general meeting called by the charity trustees of the CIO at the request of its members must be held within 28 days from the date on which it is called.
- (f) If the charity trustees fail to comply with this obligation to call a general meeting of the members of the CIO at the request of its members, then the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting.
- (g) A general meeting called in this way must be held not more than 3 months after the date when the members first requested the meeting.
- (h) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the charity trustees duly to call a meeting must be reimbursed by the CIO, but the CIO shall be entitled to be indemnified by the charity trustees who were responsible for such failure.

### (3) Notice of meetings

- (a) The charity trustees of a CIO, or, as the case may be, the members of the CIO, must give at least 14 clear days notice of any general meeting of the members of the CIO, to all of the members, and to any charity trustee of the CIO who is not a member.
- (b) If it is so agreed by a majority of not less than 90% of the members of the CIO, any resolution may be proposed and passed at the meeting even though the requirements of the preceding paragraph have not been complied with.
- (c) The notice of any general meeting must –
  - (i) state the time and date of the meeting,
  - (ii) give the address at which the meeting is to take place,
  - (iii) give particulars of any resolution which is to be moved at the meeting, and of the general nature of any other business to be dealt with at the meeting, and
  - (iv) if a proposal to alter the constitution of the CIO is to be considered at the meeting, include the text of the proposed alteration.

(4) The Regulations require that the constitution **must** provide for procedure at meetings. The provisions in this model are recommended good practice.

(b) The Regulations require that the Constitution **must** specify a quorum. We suggest that the quorum should be 5% of the members. You may choose a different figure. You should bear in mind that if it is set too high, any absences may make it difficult to hold a valid meeting; if it is too low, a small minority may be able to impose their views unreasonably.

### (4) Procedure at meetings

- (a) No business may be transacted at any general meeting of the members of the CIO unless a quorum is present when the meeting starts;
- (b) Subject to the following provisions, a quorum is not less than [5%] of the members of the CIO present in person. A corporate member who, in accordance with sub-clause (f) below, is represented by a person present at the meeting is present in person;
- (c) If a quorum is not present within 15 minutes of the time stated in the notice calling the meeting as the time of the meeting, the meeting, if called by or at the request of members, is closed.
- (d) In any other case the meeting is adjourned to such other time, date and place as may be

(f) This model constitution does not require formal notice to be repeated for an adjourned meeting, but provision for this **may** be made in the constitution.

(i) – (k) The Regulations provide that, if members are to have the right to demand a poll, this **must** be set out in the constitution, including provisions governing the manner in which it will be conducted.

determined by the chairman of the meeting.

- (e) If a quorum is not present within 15 minutes of the time so determined as the start of the adjourned meeting, the member or members present at the meeting is or are a quorum.
- (f) The chair (if any) of the CIO, or such other person as may be nominated for the purpose by the charity trustees of the CIO, must, if present at the general meeting and willing to act, preside as chair of the meeting. Subject to that, the members of the CIO who are present at a general meeting shall elect a chair to preside at the meeting.
- (g) Any of the following decisions must be taken by a 75% majority of those voting at the meeting -
  - (i) a decision to alter the constitution of the CIO;
  - (ii) a decision to amalgamate the CIO with one or more other CIOs;
  - (iii) a decision to transfer the undertaking of the CIO to one or more other CIOs; or
  - (iv) a decision to wind up or dissolve the CIO.
- (h) Any other decision shall be taken by a simple majority of those voting at the meeting.
- (i) A resolution put to the vote of a meeting shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is duly demanded. A poll may be demanded by the chair or by not less than 10% of the members present in person or by proxy at the meeting. A poll may not be demanded on the question of the election of a chair or on a question of adjournment.
- (j) A poll shall be taken, and the result of the poll shall be announced, in such manner as the chair of the meeting shall decide.
- (k) A poll may be taken -
  - (i) at the meeting at which it was demanded, or
  - (ii) at some other time and place specified by

**(k)(iii)** Where postal voting is to be used, the Regulations require that the constitution **must** set out the way in which members may vote by post.

**(5)** the Regulations require that if members are to be given the power to use proxy or postal votes, the procedure **must** be set out in the constitution.

We have only included provision for postal voting in this model constitution at clause 9(4)(k)(iii). Otherwise, the provisions of this model assume that decisions will be made by those present and voting (or voting by proxy) at a meeting.

**(6)** If the CIO will have corporate members, the Regulations require that this provision **must** be included.

the chair, or

(iii) through the use of postal or electronic communications.

(l) But the poll shall be taken, and the result of the poll announced, within 30 days of the demand for the poll.

(m) In the event of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall have a casting vote.

### **(5) Proxy voting**

Any member of the CIO is entitled to appoint another person as a proxy to exercise all or any of that member's rights to attend and to speak and vote at a general meeting of the CIO.

Any proxy shall, before admission to the meeting, provide the CIO with evidence of his authority to act as a proxy for a member at that meeting.

The CIO may rely on that evidence unless and until it is notified by the member that the authority has been terminated.

### **(6) Representation of corporate members**

If a corporate body is a member of the CIO it may, by a decision of its governing body, authorise a person to act as its representative at any general meeting of the CIO.

The representative is entitled to exercise the same powers on behalf of the corporate body as the corporate body could exercise if it were an individual member of the CIO.

### **(7) Adjournment of meetings**

The chair may with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.

**Clause 10 –**

**(1)** The Regulations require that the constitution **must** state this.

**(2)(a)** This clause reflects the trustees' legal duty to act in good faith contained in the 1993 Act. We recommend for clarity that it **should** be stated in the constitution. The constitution cannot override this legal duty.

**(2)(b)** The regulations require that the constitution **must** state the trustees' duty of care. This clause reflects the statutory duty of care which the 1993 Act places on the trustees of CIOs. The Regulations allow CIOs to disapply the statutory duty either in all cases or in specific cases or to specific individuals. If you choose to disapply the statutory duty of care, the constitution **must** specify what duty of care applies instead (either generally or in each specific case as applicable). The Regulations also stipulate the minimum standard of care that **must** apply: a trustee must not pursue a course of conduct where he or she knows that course of conduct is not, or does not care whether or not it is, in the best interests of the CIO.

If you decide to disapply the statutory duty of care (in all cases or in specific cases), you **must** alter this clause accordingly. Trustees should take appropriate advice before exercising this power.

**(3)** The Regulations require that the constitution **must** include the names of the first charity trustees.

**(4)** The 1993 Act requires that the constitution **must** make provision about the appointment of one or more persons to be charity trustees. The Regulations require that the constitution **must** also include provisions explaining how a trustee can retire from office. The provisions in this model constitution reflect recognised good practice. It also reflects when an individual would cease to be a trustee under provisions in law.

The Regulations also require that if it is intended that there will be power to remove trustees from office, the mechanism **must** be set out in the constitution. We have not included any provision for removal of trustees in this model.

If there are to be particular conditions for eligibility to serve as a charity trustee, these **must** be stated in the constitution.

**10. Charity trustees**

**(1) Functions**

The CIO's charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO.

**(2) Duties of charity trustees**

It is the duty of each charity trustee of the CIO -

- (a) to exercise his or her powers and to perform his or her functions as a trustee of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO; and
- (b) to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to any special knowledge or experience that he or she has or professes to have, and, if he or she acts as a charity trustee of the CIO in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

**(3) First charity trustees**

The first charity trustees of the CIO shall be –

.....  
.....  
.....  
.....  
.....

**(4) Termination of charity trusteeship and appointment of charity trustees**

- (a) At the first annual general meeting of the members of the CIO all the charity trustees of the CIO shall retire from office;
- (b) At every subsequent annual general meeting of the members of the CIO, one-third of the charity trustees of the CIO shall retire from office. If the number of charity trustees is not three or a multiple of three, then the number nearest to one-third shall retire from office, but if there is only one charity trustee, he or she shall retire;

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(Association)

We have not included any such conditions in this model.

- (c) The charity trustees to retire by rotation shall be those who have been longest in office since their last appointment or reappointment, but as between people who were last appointed or reappointed on the same day those to retire shall, unless they otherwise agree among themselves, be determined by lot;
- (d) The vacancies so arising may be filled by the decision of the members at the annual general meeting;
- (e) Subject to the preceding provisions of this clause, a charity trustee of the CIO ceases to hold office if –
  - (i) he retires by notifying the CIO accordingly;
  - (ii) he dies, or in the case of a corporate charity trustee, ceases to exist;
  - (iii) he becomes incapable by reason of mental disorder, illness or injury of managing and administering his own affairs; or
  - (iv) he becomes disqualified for acting as a charity trustee of the CIO, and has not obtained a waiver from the Charity Commission which would permit him to act in the administration of the CIO within 3 months of the date of the event which gave rise to the disqualification.
- (f) Either the members or the charity trustees of the CIO may at any time decide to appoint a new charity trustee, whether in place of a charity trustee who has ceased to hold office as the result of the preceding provisions of this clause, or as an additional charity trustee, provided that the limit specified in clause 10 on the number of charity trustees would not as a result be exceeded.
- (g) A person so appointed by the members of the CIO shall retire in accordance with the provisions of sub-clauses (b) and (c) above. A person so appointed by the charity trustees of the CIO shall retire at the conclusion of the annual general meeting next following the date of his appointment, and shall not be counted for the

(5) This provision reflects requirements in the Regulations. We recommend that it be stated in the constitution, for clarity.

**Clause 11** – The Regulations require that the constitution **must** state the minimum number of trustees (if more than one) that must be in office.

To meet minimum standards of good practice, a CIO **should** have at least two trustees. This clause reflects good practice and will allow a last remaining charity trustee to act to appoint new trustees.

If there is a good reason why the CIO will be administered by a single trustee (e.g. a corporation), you will need to amend clauses 11, 12 and 13 accordingly.

**Clause 12** – A CIO **should** have enough charity trustees to effectively carry out their duties, but not too many so that it becomes impractical to hold effective trustee meetings where everyone can participate in decision making. We suggest a maximum of 12 trustees, but you may choose a higher or lower number. If there is to be a maximum

purpose of determining which of the charity trustees is to retire by rotation at that meeting.

- (h) Any person retiring from office under sub-clauses (b), (c) or (g) above is eligible for reappointment.

## (5) Register of charity trustees

The CIO must keep a register of its charity trustees, and the following particulars of each charity trustee must be entered in the register-

- (a) In the case of an individual -
- (i) the trustee's name, and any former name;
  - (ii) an address at which documents may be effectively served on the trustee;
  - (iii) the country or state (or part of the United Kingdom in which the trustee is usually resident);
  - (iv) the trustee's nationality;
  - (v) the trustee's business occupation; and
  - (vi) the trustee's date of birth;
- (b) and in the case of any other charity trustee, the particulars which are set out in Regulation 58 of The Charitable Incorporated Organisations (General) Regulations 2008.

## 11. Minimum number of charity trustees for the effective transaction of business

There shall be a minimum of [two] charity trustees of the CIO required for the effective transaction of any business other than –

- calling a meeting of the charity trustees or the members of the CIO;
- appointing a new charity trustee of the CIO; or
- admitting new members of the CIO.

## 12. Maximum number of charity trustees who may be appointed

Neither the members of the CIO nor the charity trustees may

number of trustees, it **must** be stated in the Constitution.

**Clause 13** – This power is optional, but if the trustees intend to use it, it **must** be included in the constitution.

**Clause 14** – This power is optional. We recommend you include it as a matter of good practice. The General Regulations give charity trustees of a CIO automatic power to delegate tasks to sub-committees, staff or agents; but without this additional constitutional power, the trustees will be unable to delegate executive (decision-making) powers.

The bullet points reflect minimum good practice and are safeguards that should not be removed or diminished.

**Clause 15** – The Regulations require that the Constitution **must** include provisions for the calling and running of meetings including the minimum number of trustees or members who shall form a quorum, whether trustees or members can demand a poll, and the procedure for conducting such a poll. The provisions in this model are good practice recommendations.

appoint a charity trustees at any time when the effect of an appointment would be that there were more than [12] charity trustees.

### 13. Taking of decisions by charity trustees

Any decision may be taken either at a meeting of the charity trustees or in some other way agreed to by all of the charity trustees.

### 14. Delegation by charity trustees

The charity trustees may delegate any of their powers to a committee or committees, and, if they do, they must determine the terms and conditions on which the delegation is made. The charity trustees may at any time alter those terms and conditions, or revoke the delegation.

This power is in addition to any other power of delegation available to the charity trustees of the CIO, but is subject to the following requirements -

- a committee may consist of one or more persons, but at least one member of each committee must be a charity trustee;
- the acts and proceedings of any committee shall be brought to the attention of the charity trustees as a whole as soon as is reasonably practicable; and
- the charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

### 15. Meetings of charity trustees

#### (1) Calling meetings

Any charity trustee may call a meeting of the charity trustees.

Subject to that, the charity trustees shall decide how their meetings are to be called, and what notice is required.

#### (2) Procedure at meetings

- (a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is two charity trustees, or the number nearest to one third of the total number of charity trustees, whichever is greater, or such larger number as the charity trustees may

decide from time to time. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.

- (b) Questions arising at a meeting shall be decided by a majority of those eligible to vote.[ A poll may be demanded by any trustee.
- (c) A poll shall be taken, and the result of the poll shall be announced, in such manner as the chairman of the meeting shall decide. A poll may be taken -
  - (i) at the meeting at which it was demanded, or
  - (ii) at some other time and place specified by the chairman, or
  - (iii) through the use of postal or electronic communications.
- (d) But the poll shall be taken, and the result of the poll announced, within 30 days of the demand for the poll.]
- (e) In the case of an equality of votes, [whether on a show of hands or on a poll,] the person who chairs the meeting shall have a second or casting vote.
- (f) The charity trustees may appoint one of their number to chair their meetings and may at any time revoke such appointment. If no-one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time appointed for the meeting, the charity trustees present may appoint one of their number to chair that meeting.

**Clause 16** – The Regulations state that if the CIO intends to use electronic communication, or a website, to send formal communications to members, this **must** be stated in the constitution.

## **16. Use of electronic communications**

### **(1) To the CIO;**

Any member of the CIO may communicate electronically with it, so long as the communication is authenticated in a manner which is satisfactory to the CIO.

### **(2) By the CIO;**

Any member of the CIO is to be taken, by admission to

**Clause 17** – This clause reflects the requirements of the Regulations regarding record keeping. We recommend that it be stated in the constitution, to inform trustees of their duty. The constitution cannot override this duty.

**Clause 18** – This clause reflects the trustees' duties under the 1993 Act. We recommend that this clause is included, to inform trustees of their duty. The constitution cannot override the trustees' accounting and reporting duties.

**Clause 19** – We recommend that this power should be included for clarity, but charities automatically have this power and an express power is not needed.

**Clause 20** - CIOs have a statutory power of amendment in paragraph 14 of Schedule 5B of the 1993 Act, which also

membership, to have agreed to the receipt of communications from the CIO in electronic form, unless the member has indicated to the charity trustees of the CIO their unwillingness to receive such communications in that form.

The charity trustees of the CIO may, subject to compliance with any legal requirements, by means of publication on its website -

- provide its members with the notice referred to in clause 9(3) above [general meetings]; and
- submit any proposal to its members under clause 8(2) above.

## **17. CIO records**

The charity trustees must keep adequate records of their own proceedings, of the proceedings of any committee, and of the proceedings of the members of the CIO, whether those proceedings take place at meetings or not.

The records should include details of any appointments made and of other decisions taken in the course of those proceedings.

## **18. Accounting records, accounts, annual reports and returns, register maintenance**

The charity trustees of the CIO shall comply with the requirements of Part 6 of the Charities Act 1993 with regard to the keeping of accounting records, to the preparation and scrutiny of accounts, and to the preparation of annual reports and returns. The accounts, reports and returns shall be sent to the Charity Commission, regardless of the income of the CIO.

The charity trustees of the CIO must notify the Commission promptly of any change in the particulars of the charity entered on the Central Register of Charities.

## **19. Rules**

The charity trustees of the CIO may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the CIO, but no such rules or bye laws shall be inconsistent with any provision of this constitution.

prescribes a procedure for constitutional amendment. We recommend that, for ease of reference, a CIO's constitution should include provisions that reflect that power. The constitution of a CIO cannot extend the statutory power of constitutional amendment, but the Regulations provide that you **may** include additional restrictions.

**Clause 21** – This reflects the provisions of the 1993 Act, and of the Regulations. We recommend that it is included in the constitution for ease of reference.

**Clause 22** – The constitution **must** state whether members of the CIO **either**:  
(a) have no liability to contribute to the assets of the CIO if it is wound up [option 1] **or**:  
(b) will be liable to contribute up to a maximum amount each [option 2].

You **must** decide whether members will have any liability and then and insert choose the appropriate option.

If you choose option 2, you **must** insert the maximum amount for which members will be individually liable.

## 20. Amendment of constitution

- (1) This constitution can only be amended by the unanimous resolution of the members of the CIO or by a resolution passed by a 75% majority of those voting at a general meeting of the members of the CIO.
- (2) Any alteration of clause 3 (Purpose), of clause 23 (Destination of the CIO's assets on dissolution) or of any provision where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them, requires the prior written consent of the Charity Commission.
- (3) A copy of the resolution, together with a copy of the CIO's constitution as amended must be sent to the Commission by the end of the period of 15 days beginning with the date of passing of the resolution, and the amendment does not take effect until it has been registered by the Commission.

## 21. Winding up and dissolution

Any decision to wind up or dissolve the CIO can only be taken by the unanimous resolution of the members of the CIO, or by a resolution passed by a 75% majority of those voting at a general meeting of the members of the CIO.

## 22. Liability of members to contribute to the assets of the CIO if it is wound up

### *Option 1*

The members of the CIO have no liability to contribute to its assets if it is wound up, and accordingly have no personal responsibility for the settlement of its debts and liabilities.

### *Option 2*

- (1) The members of the CIO are, if the CIO is wound up, each liable to contribute to the assets of the CIO such amount (but not more than £[...]) as may be required for payment of the debts and liabilities of the CIO contracted before that person ceases to be a member, for payment of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves.
- (2) In sub-clause (a) "member" includes any person who was a member of the CIO within 12 months prior to

**Clause 23** – The constitution **must** contain directions about how its property will be applied if it is wound up.

Any assets remaining after the payment of debts **must** be applied for charitable purposes that are similar to those of the CIO.

If neither the members nor the charity trustees decide how the net assets are to be applied, the Regulations contain saving provisions which will enable the Commission to deal with any remaining assets

the commencement of the winding up.

- (3) But subject to that, the members of the CIO have no liability to contribute to its assets if it is wound up, and accordingly have no personal responsibility for the settlement of its debts and liabilities beyond the amount that they are liable to contribute.

### **23. Destination of the CIO's assets on dissolution**

- (1) Any resolution for the winding up of the CIO, or for the dissolution of the CIO without winding up, may contain a provision directing how any assets of the CIO remaining after the payment of all its debts shall be applied.
- (2) If the resolution does not contain such a provision, the charity trustees must decide how any assets of the CIO remaining after the payment of all its debts shall be applied.
- (3) In either case the assets must be applied for charitable purposes the same as or similar to those of the CIO.