

# Choosing a legal structure

A toolkit for community organisations



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**RUSSELL-COOKE** | SOLICITORS





# Contents

Introduction	1
--------------	---

Background - Locality	3
-----------------------	---

<b>Module 1:</b>	<b>4</b>
------------------	----------

Understanding community organisations, checking that the group is an emerging community anchor organisation and choosing an appropriate legal structure

<b>Aims of the module</b>	<b>4</b>
---------------------------	----------

<b>SECTION 1.1: An introduction to community anchor organisations</b>	<b>4</b>
---	----------

What is a community anchor organisation?	4
--	---

What do community anchor organisations do?	5
--	---

<b>SECTION 1.2: Checking that the group is an emerging community anchor organisation</b>	<b>5</b>
--	----------

Exercise 1: Is the organisation a community anchor organisation?	6
--	---

<b>SECTION 1.3: A legal structure for a community anchor organisation</b>	<b>7</b>
---	----------

Understanding why you need a legal structure	7
--	---

What is a company limited by guarantee with charitable status?	7
--	---

What are the other possible structures for an organisation?	10
---	----

When and why might you consider a linked company limited by shares?	12?
---	-----

How do you choose the best structure for your organisation?	15
---	----

<b>Checklist</b>	<b>16</b>
------------------	-----------

<b>Module 2:</b>	<b>17</b>
------------------	-----------

Developing a governing document and incorporating your company limited by guarantee at Companies House and obtaining registered charitable status from the Charity Commission

<b>Aims of the module</b>	<b>17</b>
---------------------------	-----------

<b>SECTION 2.1: Developing a memorandum and articles of association for your company limited by guarantee with charitable status</b>	<b>17</b>
--	-----------

Understanding what a memorandum & articles of association is and why it is necessary have one	17
---	----

Understanding and choosing charitable objects to reflect the mission of the community anchor organisation	18
---	----

Exercise 2.1: Selecting the charitable objects for insertion into memorandum & articles of association	18
--	----

Exercise 2.2: Other key areas of the memorandum and articles of association	24
---	----

---

**SECTION 2.2: Incorporating the company limited by guarantee with Companies House and obtaining registered charitable status from the Charity Commission** **27**

Steps 1-10 27

**Checklist** **30**

**Module 3:** **32**

**Roles & responsibilities of company directors and charity trustees in a company limited by guarantee with charitable status**

**Aims of the module** **32**

**SECTION 3.1: What are the main duties of a company director?** **32**

Duty to act within powers 33

Duty to promote the success of the company 33

Duty to exercise independent judgement 34

Duty to exercise reasonable care, skill and diligence 34

Duty to avoid conflicts of interest 35

Duty not to accept benefits from third parties 36

Duty to declare interest in proposed transaction or arrangement 36

Duties in insolvency 37

Duty to attend meetings 38

**SECTION 3.2: What are the main duties of a charity trustee?** **39**

**SECTION 3.3: How do we run a company?** **39**

Register of members; annual returns and annual accounts 39

Changing directors; removing directors; keeping company records 40

Appointing a company secretary 41

Appointing auditors; role of auditor; directors' annual report 42

Place of business; registered office; company stationery; type of meetings 43

Notice of meetings 44

Conduct of general meetings; types of resolution; fines 44

**Checklist** **46**

**APPENDIX 1: Sources of further information & useful addresses** **47**

**APPENDIX 2: Model memorandum and articles of association** **49**

**APPENDIX 3: Suggested example objects** **81**

**APPENDIX 4: Guidance notes on promoting your work** **85**

**APPENDIX 5: Model governance documentation** **87**

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# Introduction

## About the resource pack

This pack is designed to be used in conjunction with training delivered by staff of Locality or other agencies that are familiar with the work of community development trusts, settlements, social action centres and community land trusts – collectively described in this pack as ‘community anchor organisations’. The resource pack will underpin the training and help to establish a successful organisational structure which is tailored to suit the needs and requirements of each group. Checklists at the end of each module will help to ensure that all the important issues related to establishing a community anchor organisation have been covered.

## Who should use it?

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This resource is designed for those involved in a local group who are considering establishing a community anchor organisation.

## How is it structured?

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The pack has three modules:

- **Module 1:** Understanding community anchor organisations, checking that the group is an emerging community anchor organisation and choosing an appropriate legal structure.
- **Module 2:** Developing a governing document and incorporating the company limited by guarantee with Companies House in a form that will also be able to obtain registered charitable status from the Charity Commission.
- **Module 3:** Roles and responsibilities of company directors and charity trustees in a company limited by guarantee with charitable status.

Each section is structured as follows:

- **Introduction:** outlining what is in the section.
- **Aims:** making clear what will be achieved.
- **Topics to be covered**
- **Self evaluation checklist**
- **Sources of further information and guidance** (contacts, web links and publications) are in Appendix 1.
- **Appendices including:**
  - [Appendix 1:](#) Sources of further information and useful addresses
  - [Appendix 2:](#) Model memorandum and articles of association for a company limited by guarantee with charitable status
  - [Appendix 3:](#) Suggested example objects for an urban/rural regeneration body (see Section 2, Issue 3)
  - [Appendix 4:](#) Guidance notes on promoting your work
  - [Appendix 5:](#) Model Governance documentation

## Preparation

Business planning: this pack assumes that the group have already undertaken some basic business planning for the organisation. The group should have a basic understanding of:

- **What** the organisation plans to do
- **Who** are the beneficiaries
- **How** does it propose to go about it

If this has not been done it is suggested that a separate session(s) is held before thinking about the structure of the organisation. Locality can help signpost the group to people and organisations that can assist them with this basic business planning.

## NOTE

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This is complicated territory and a resource pack of this kind can only cover the more common situations. If there are special circumstances that apply in relation to your organisation or any particular project which you are proposing to take forward - or if you are in any doubt for any other reason - please take advice from a solicitor, regeneration practitioner and/or an accountant with experience in this area of work. Locality can help you find someone who may be able to help.

Also, the details of company law, and charity law/practice, are subject to ongoing change. The material in this information pack reflects the position as at October 2015. Locality is committed to providing updates in relation to new forms of legal entities that might benefit community anchor organisations.

## Acknowledgements

This resource pack was first researched and prepared for our sister organisation DTA Scotland by Alan Caldwell of Alan Caldwell Associates and Stephen Phillips of Burness solicitors. Locality gratefully acknowledges the permission granted by DTA Scotland to use their product and 'anglicise' the content so that it meets the needs of emerging community anchor organisations in England and Wales.

Locality would also like to thank James Sinclair Taylor and Andrew Studd of the Charity & Social Enterprise Team at Russell-Cooke LLP who undertook the task of 'anglicising' and updating the DTA Scotland resource pack and subsequently updated it.

# About Locality

Locality is the national network of ambitious and enterprising community-led organisations, working together to help neighbourhoods thrive.

There is no typical Locality member. Our members are large and small, rural and urban, well-established and just starting out, individuals and organisations. What unites them is their ambition to make life better for people in their local communities.

We support our members with expert advice and hands-on support. We run regional meetings, national events and online training and organise highly successful peer-to-peer learning. We campaign on behalf of our members, and together the Locality network forms a powerful voice.

Locality also manages a range of major national projects, all designed to bring positive change to local neighbourhoods, including the Community Rights and Neighbourhood Planning programmes. Visit [mycommunity.org.uk](https://mycommunity.org.uk) to find out more.

Locality worked with James Sinclair Taylor and Andrew Studd, partners in the Charity & Social Enterprise Team at Russell-Cooke Solicitors LLP, to create this guidance.

## Locality membership

Join Locality and you'll be part of the network for the country's most ambitious and enterprising community-led organisations.

Together we can help you share knowledge, offer you expert advice, and connect you to the people, funding and programmes you need to be successful and sustainable.

As a Locality member we'll support you across the board – from guidance on day-to-day issues, to championing you to government and policy-makers.

To find out more and to join Locality visit [locality.org.uk/join](https://locality.org.uk/join) or email [joinus@locality.org.uk](mailto:joinus@locality.org.uk)

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# Module 1:

Understanding community anchor organisations, checking that the group is an emerging community anchor organisation and choosing an appropriate legal structure

## Introduction to the module

This module is an introduction to community anchor organisations. It explains the options for legal structures and offers guidance on the recommended structure which is a company limited by guarantee with charitable status.

### Aims of module:

The aims of this module are:

- To establish an understanding of what community anchor organisations are
- To check that the group is an emerging community anchor organisation
- To ensure that the group is clear what legal structure is best suited for its requirements.

## SECTION 1.1: An introduction to community anchor organisations

### What is a community anchor organisation?

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Community anchor organisations are independent community-led organisations operating in a local area, firmly rooted in a sense of place, and committed to positive economic, social or environmental change.

They are typically flexible and responsive organisations, providing multi-purpose and holistic solutions to local problems and challenges. They act as “anchors” because they are there for the long term, providing stability as the external environment changes, and finding new ways of working as circumstances change around them. Although independent organisations, they work interdependently with other agencies and organisations operating in the local area in the public, private and voluntary and community sectors. Community anchor organisations come in different forms: some are organisations with roots in the Settlement movement in the late Victorian age and have been providing local services for well over a century; others come from a social action centre tradition, or from the development trusts movement in the late 20th century; and others are long-standing charitable organisations, newer social enterprises or Community Interest Companies.

Community anchor organisations are community-led organisations that:

- Pursue aims which contribute to the regeneration of a community, and therefore are concerned with the economic, social and environmental and cultural needs of their community
- Are independent but seek to work in partnership with other private, public and voluntary sector organisations
- Are controlled and managed by the local community
- Aim to generate income through trading activity, rents and investment as well as grant support. All trading surpluses are principally (completely, in the case of a charitable community anchor organisation) reinvested in the organisation or community.

## What do community anchor organisations do?

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Local people set up community anchor organisations to tackle local issues and to improve the quality of life in their community. As a result, community anchor organisations become involved in a very wide range of activities, such as:

- Running the local shop and post office
- Developing play park and recreational facilities
- Managing housing developments
- Developing renewable energy projects
- Providing managed workspaces setting up training programmes
- Running childcare or youth services
- Preserving the local heritage
- Restoring and conserving historic buildings

This list is not exhaustive and it is important to remember that some of these areas of work are not necessarily charitable. Community anchor organisations may choose not to register as a charity or set up a trading subsidiary to undertake commercial activities. This is covered later in section 1.3.

Despite the diversity that is reflected in what they do, all community anchor organisations are underpinned by a strong ethos of self-help and self-reliance and a belief that community regeneration that is achieved through community-owned enterprise is the way to build strong and sustainable communities.

## SECTION 1.2: Checking that the group is an emerging community anchor organisation

Locality sees community anchor organisations as being concerned with locally led, sustainable community regeneration, using enterprise methods to generate their own sources of income.

The questions below are designed to help identify whether an organisation can be defined as a community anchor organisation.



## EXERCISE 1: IS THE ORGANISATION A COMMUNITY ANCHOR ORGANISATION?

INDICATOR	YES	NO
1) Objectives have been defined through community consultation/mapping exercise/evidence of need		
2) Objectives and planned activities cover social aims*		
3) Objectives and activities cover economic aims*		
4) Objectives and activities cover environmental aims*		
5) A geographical boundary of the area of benefit has been identified		
6) Any annual surplus(es) generated will be used solely for the public benefit		
7) The organisation will be 'needs led' and not funder-driven		
8) The community will be kept informed of, and involved in, activities		
9) The future direction and decisions of the organisation will be controlled/managed mainly by local community members		
10) The organisation will actively seek to work in partnerships with the voluntary, community, private and public sectors.		

### \*GLOSSARY

- **Social aims** - e.g. housing, childcare, youth facilities, elderly care, quality of life, the promotion of good mental/physical health and wellbeing, family support, social inclusion, participation and interaction.
- **Economic aims** - e.g. tackling unemployment, promoting and providing education and training, stimulating, promoting and providing support to enterprise, supporting and/or developing local community financial infrastructure.
- **Environmental aims** - e.g. tackling vandalism, pollution, recycling, care of green spaces, development of derelict areas, maintenance of communal areas, promotion and delivery of activities which increase the sustainability of the environment, encouragement of biodiversity.

If any of the responses are in the negative, the organisation being proposed may not be a community anchor organisation. Further clarification can be sought from Locality.

## SECTION 1.3: A legal structure for a community anchor organisation

### Understanding why you need a legal structure

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A voluntary group can sometimes carry out its work quite easily and happily at a practical level without being formally constituted and organised. If all is going well there often seems no real need to have rules and regulations to guide the work. However, it is all too easy to end up in difficult situations if your work is based on verbal agreements and loose understandings.

This situation is magnified when you establish an organisation and begin to consider the types of activities discussed in the previous section. As soon as you begin to talk about owning buildings, employing staff or entering into any major contracts it becomes clear that you need to consider some form of legal structure. This will help protect the individuals involved from personal liability and give your community anchor organisation clear governance procedures, an identity, continuity and credibility.

Taking on a legal structure in the form of a company is called 'incorporating'. This gives your community anchor organisation a separate legal identity from the people involved in running the organisation (i.e. the directors). It also provides the people involved in the community anchor organisation with the benefit of limited liability.

Incorporation should be considered if an organisation:

- Is likely to own land, buildings or investments or enter into leases
- Will have paid staff
- Will have long term financial commitments without adequate reserves or assets to cover them
- Will carry out activities or services which carry a financial risk
- Is finding it difficult to recruit people to the governing body (committee) because people are concerned about potential personal liability for the community anchor organisation's debts

In addition, if incorporation is being considered, the organisation should ensure that it:

- Has the administrative capacity to deal with the extra paperwork and requirements
- Has directors who understand that they are not totally protected from personal liability under certain limited circumstances (see note below\*)
- Has directors who understand enough about finance to ensure the organisation does not carry on operating when it is unlikely to meet its financial obligations when they're due (and who understand that if the organisation does carry on operating in this situation, they could be held personally liable if the organisation cannot meet its financial obligations)

### What is a company limited by guarantee with charitable status?

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It is a company, registered at Companies House and entered on the Register of Charities, having been recognised as a charity by the Charity Commission. Each member of the company undertakes (guarantees) to pay a nominal sum (normally £1) towards the company's debts should it go into liquidation –

and therefore the **liability** of the members is **limited** to the sum **guaranteed** – hence “limited by guarantee”. Company law governs the company and annual accounts must be submitted to Companies House. The articles of association (the governing document of the company) establish the company on a ‘not for profit’ basis; this means that payments cannot be made to members of the company. If it is to be a charity, all of its ‘objects’ (i.e. the aims which it says it will pursue) must be charitable in nature under the Charities Act 2006 and its activities must provide public benefit in line with those objects.

A company limited by guarantee is the most popular form of legal structure for a community anchor organisation in the UK. It is, however, by no means the only structure available. The other options are introduced in the next section.

### Advantages of being a company limited by guarantee

- **Legal entity.** A company is a clear legal entity separate from the people involved in it. It can therefore employ staff and enter into contracts to provide services or buy land and buildings. This also provides continuity as any legal relationship is with the company and would not be affected even if the whole board resigned.
- **Democratic control.** The articles of association specify that the company must be subject to the democratic control of its members. You can then define the membership to suit the geographical area or groups that you are covering.
- **Limited liability for members.** A company limited by guarantee does not have a share capital, but has members who are guarantors instead of shareholders. The guarantors give an undertaking to contribute a nominal amount (typically £1) towards the winding up of the company. This statement of liability is contained within the articles of association.
- **Limited liability for directors.** Directors are those people who run the company and are also its charity trustees. They are protected in most circumstances from personal liability.
- **Credibility.** Funders and partners are familiar with the structure of a company limited by guarantee and generally recognise it as a stable and well-organised organisational structure.

### Disadvantages of being a company limited by guarantee

- **Procedures.** There are formal and ongoing procedures (e.g. filing annual returns, notification of changes of directors etc). These are covered in Module 2: the roles and responsibilities of company directors.
- **Statutory requirements.** Along with the procedures there are various statutory requirements in company law regarding the running of meetings and making decisions. Many of these will be set out in your articles of association and are covered in Module 2.
- **Training.** Directors are likely to require training to equip them for their roles and responsibilities in the company.

- **Company structure.** This can appear intimidating for those considering becoming involved or putting themselves forward as a director despite the fact that it is a protective measure.
- **Cost.** The setting up and running costs are higher than establishing an unincorporated voluntary association.
- **Regulation.** If it is not a charity or a CIC there will be no regulatory oversight to ensure it sticks to its objects.

### The main advantages of charitable status are:

- **Tax relief.** You will qualify for relief from tax on surpluses and on any interest on sums held on deposit.
- **Funding.** You will have the ability to raise funds from charitable foundations that can only support charitable bodies.
- **Gift Aid on company donations.** You will have the ability to recover basic rate tax on donations from tax payers, whether individuals or companies and in addition individuals paying higher rate tax will be able to reclaim tax relief under the Gift Aid scheme for gifts of money to charities.
- **Maximising return (donations from individuals).** You will be able to maximise the benefit of donations and legacies from individuals, through Gift Aid and Payroll Giving.
- **Business rates relief.** Charities occupying premises can apply for rate relief of up to 80% and further discretionary relief of up to 100%.
- **VAT.** You will be able to access VAT concessions that only apply to charitable bodies – though there are only a small number of VAT concessions of that kind.
- **Guidance.** Availability of a wide range of guidance material from the Commission and other sources.
- **Stamp Duty Land Tax.** Charities are exempt from SDLT on most property transactions.
- **Credibility.** Charities are recognised as having both status and credibility with the community, your partners and funders.

### The main disadvantages of charitable status are:

- **Limitations** on what your organisation can do (or support financially – the same principles apply). You will be limited to activities that further your charitable purposes – however non-charitable activities can be carried on by subsidiary companies set up and owned by the organisation. A subsidiary company will typically take the form of a company limited by shares. The shares would be wholly owned by the community anchor organisation. See the Charity Commission's publication "CC35 Trustees Trading and Tax".



- **Obligations** to file accounts and annual returns with the Commission.
- **The possibility** of regulatory interventions.

### What are the other possible structures for your organisation?

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It may be that an alternative structure to a company limited by guarantee with charitable status may be more appropriate for your organisation. To check you should review the following:

- Voluntary association
- Community benefit society (formerly called industrial and provident society)
- Trust
- Company limited by shares
- Community interest company
- Charitable incorporated organisations

Although in the majority of cases, a company limited by guarantee with charitable status would be considered the most appropriate structure for an organisation, all of the structures listed above are legitimate structures for work in the field of regeneration.

The following is a brief overview of the advantages, disadvantages and main features of these different structures. More detailed information can be found in the Charity Commission's guidance "CC22a Charity types: how to choose a structure" or Chapter 1 of the Voluntary Sector Legal Handbook (see sources of further information).

#### Voluntary association:

This is an 'unincorporated' association. This has no legal status in its own right for most purposes e.g. for entering into contracts (although a voluntary association can be recognised as a charity). Organisations and/or individuals agree to work together for a common purpose. A simple constitution will generally be drawn up.

#### Advantages

- The possibility of rapid formation with low set up costs as there is no formal registration process (although if the voluntary association wants charitable status, an application to the Charity Commission must be made).
- There is no requirement to complete an annual return (other than the annual return to the Charity Commission if it is a charity).
- There are no detailed statutory procedures to be followed. You just need to set out procedures for AGMs etc in your constitution.

#### Disadvantages

- It is not a legal person or entity and therefore cannot enter into agreements, leases or hold property in its own name. It must use a trustee or a holding company to hold property and other assets.
- It may be seen as 'less professional' in the eyes of potential funders.
- It is not recognised in law as having a legal existence separate from its members. This means that contracts e.g. leases have to be entered into by individuals on behalf of the association.

For the same reason, if staff are employed, the “employer” will be the members of the management committee as individuals rather than the organisation.

- Members of the management committee are personally liable without any limitation for any debts and liabilities if the organisation is unable to meet them out of its own resources.
- It is best that it avoids any activity that potentially generates risk such as safely employing staff, since any award by an employment tribunal will have to be paid by the management committee personally if the organisation has insufficient funds to do so. Occasionally voluntary associations rely on a partner body to employ staff to reduce this risk.
- It may not be viewed as an appropriate structure to be an ‘accountable body’ by public agencies and so must rely on a partner to receive funds on its behalf.
- There is no statute governing unincorporated associations which means that if the constitution is not very well drafted, there are likely to be difficulties.

### Trust:

A trust is normally set up by a deed. It is not a legal entity and shares many of the disadvantages of a voluntary association. Many organisations are called ‘trusts’ but are not legally structured as trusts. A trust is a one-tier organisation i.e. the people taking the decisions are not generally answerable to a wider membership. Many trusts are set up by one person or by members of a family rather than by a steering group. Trusts are often set up for a limited purpose (e.g. the preservation of buildings at risk, or to distribute funds). It is possible to provide that certain trustees take office because they hold a particular post (the concept of “ex officio trustees”) and thus create an element of built-in connection with the local community (e.g. by stating that the minister of the local church will automatically be a trustee) but typically a trust is a non-democratic type of structure. It may be charitable or non-charitable.

### Co-operatives and community benefit societies:

Co-operative and community benefit societies, (previously known as industrial and provident societies) have similar advantages and disadvantages to a company limited by guarantee. They may be charitable or non-charitable. A community benefit society must operate for the benefit of the community, whilst co-operative societies must run for the mutual benefit of their members. This legal form may be appropriate if:

- The group is satisfied that it can fit the details of its proposed rules within an established set of model rules with minimal changes (otherwise the registration process is very expensive, compared with a company limited by guarantee).
- The facility to raise money in the form of shares is something that the group regard as useful (though a one-off membership subscription in a company limited by guarantee format could be a simpler way to do this).
- The group does not mind having a structure which will be less familiar to some funders, accountants and other professionals.
- The group does not mind paying additional registration fees for registering the organisation.
- The group is not too concerned about the additional timescales (as compared with a company) associated with the FCA processing matters such as a change of name.

### Company limited by shares:

A company limited by shares is a structure that is designed to suit a case where financial returns are to be given to its members through trading or other income-generating activities. The members are shareholders. The main difference between this structure and a company limited by guarantee is that membership brings with it a property right in the form of shares along with the right to participate in the decision-making process. Dividends will normally be paid on shares; assuming a buyer can be found for the shares, there is a possibility of receiving a significant sum if the shares increase in value. There are, therefore, personal financial gains for members of such a company.

**The main advantages** of a company limited by shares are the same as for a company limited by guarantee. As a non-charity, there are no restrictions on what it may do or how it distributes its funds or assets unless it is registered as a community interest company ("CIC").

**The main disadvantages** are:

- **Administration.** There is additional administrative work to comply with legal requirements.
- **Lack of privacy.** Details of the company are open to public inspection (e.g. annual accounts, names of directors etc).
- **Capital.** The withdrawal of equity capital can be difficult.
- **No access to charitable status.** A company limited by shares would not be granted charitable status except in exceptional circumstances – e.g. where all of the shares were, and could only be, owned by another charity or charities.
- With no Charity Commission or CIC oversight, there is no regulator to ensure it does not stray from its objectives or misuse its assets.

Established as 'not for profit' with community ownership and control, a company limited by shares is unlikely to be an acceptable legal structure for the main legal entity although it may be useful as a trading subsidiary of a charitable organisation.

Companies limited by guarantee and community benefit societies however, commonly use this structure for a wholly owned subsidiary trading company (see page 17).

### Community interest company (CIC):

A community interest company (CIC) is a type of company set up to achieve a "community benefit" objective which is registered with and regulated by the CIC regulator. It can be either a company limited by guarantee or a company limited by shares. The name of a CIC always ends with the words "Community Interest Company" or "CIC" - rather than "Limited" - so it is instantly recognisable.

The CIC model was developed specifically for social enterprises, and is intended to cover a situation where an organisation carries on trading activities, but is intended to operate for the benefit of the community - so it is closely aligned to the ethos that underlies community anchor organisations. The problem, though, is that a CIC cannot have charitable status, even if its objects are charitable.

That is a very significant drawback. Normally, if there is the prospect of gaining charitable status, a group would go for charitable status because of the advantages that that brings; if, however, charitable status is not going to be available (e.g because the aims do not fall within the charitable purposes set out in the Charities Act 2006, despite providing community benefit, or because the group wants to carry on non-charity trading without having a separate subsidiary company), then the option of using a CIC model should be considered.

Dividends may be paid to a shareholder of a CIC which is a company limited by shares. If that shareholder is not itself subject to an asset lock and named in the article for example, a charity or approved by the regulator the dividend is subject to a cap. If not the dividend is subject to a cap. All dividends must be approved by the membership by a resolution.

Another feature of CICs is the “asset lock” - which means that if the CIC is wound up, any assets must be transferred to a charity/charities or to another “asset-locked” body, which is identified in the articles.

It is important to note that CICs do not currently enjoy any of the tax benefits of a charity – and, accordingly, trading surpluses arising within the CIC (unless drawn off to a charity or charities through gift aid) will be fully taxable. Similarly CICs have no right to business rate relief (but may be eligible for discretionary rate relief), no stamp duty exemption and will be unable to benefit from Gift Aid.

If the decision is taken to have charitable status for the main organisation, it is still possible to form a wholly-owned subsidiary company (see page 17) as a CIC. The advantages of choosing a CIC rather than an unregulated company limited by shares in this context are that the subsidiary will be recognisable as being there for community benefit rather than a normal private sector company and certain funding sources may be more inclined to support a CIC than a subsidiary without CIC status. However, most trading subsidiaries of charities do not want to be engaged in the extra regulation involved in CIC regulation.

### Charitable incorporated organisations (CIO):

A charitable incorporated organisation (CIO) is legal structure which was specifically created for charities and is regulated solely by the Charity Commission. There are two types of CIOs – foundation and association. Foundation CIOs’ only members are the trustees, whilst association CIOs have bigger memberships.

### Advantages of being a CIO

- Legal entity: A CIO is a legal entity and exists independently of its members and trustees. It can enter into contracts, own property and employ staff.
- Limited liability: The liability of members will be limited. If a CIO is wound up, members will either have to contribute up to a maximum amount or not at all.
- Less regulation: Unlike charitable companies limited by guarantee, which are regulated by Companies House and the Charity Commission, CIOs are only regulated by the Charity Commission.
- Low cost: The Charity Commission has produced two model constitutions for CIOs which contain the provisions required by law.



- May prepare accounts in a simpler format.
- It will always have Charity Commission registration. Other small charities will not be eligible for registration with the Charity Commission if they do not have funds or promises of funds of at least £5,000.

### Disadvantages of being a CIO

- Relatively new: The CIO structure is still in infancy and some funders may still be unfamiliar with it.
- Loans: The Charity Commission does not keep a register documenting charges over property held by CIOs so banks may be less willing to make a loan and provide credit unless there is a property that can be mortgaged.
- Can't be set up as quickly as a company trust or asset.
- A CIO does not come into existence until it has been registered at the Commission which may take some time.
- Somewhat harder to amend the constitution.

### Membership organisation or partnership organisation?

The distinction between a membership organisation and a partnership organisation is not directly related to the type of legal structure; in either case, the legal structure could be a voluntary association, a CIC, a company limited by guarantee or an industrial and provident society.

A membership organisation is an organisation where all (or at least most) of the management committee or board is elected (and periodically re-elected) by a wider body of members (individuals and/or organisations) drawn from the local community (or community of interest). The wider membership also has input into constitutional decisions and ensures that such decisions are made in a forum, which integrates a wide range of views from the local community. Constitutional decisions include: change of name, amendments to the objects, other alterations to the governing document and passing a resolution to wind-up the organisation.

A partnership organisation, on the other hand, is used in a situation where two or more parties work together to pursue a particular project, without the intention of gaining a financial return for themselves. This is different from a traditional profit-making partnership. A partnership organisation often consists of corporate bodies that want to come together to pursue a joint project.

The features of such a partnership organisation would be:

- It is a two-tier organisation where those taking the decisions (board or committee) are answerable to the member bodies.
- The members consist of the main partner bodies (not the wider community or community of interest).
- Each member is entitled as of right to appoint one or more people to sit on the board or committee (rather than these people having to be elected).

A community anchor organisation should have community representation either through direct elections or through the representation of, say, a community forum with good democratic procedures of its own.

### How do you choose the best structure for the organisation?

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The structure that is chosen for the organisation needs to be able to:

- Reflect the principles and values of the organisation (e.g. if it wants to involve all the people who live and work in an area it may want an open membership base that reflects this).
- Allow the organisation to actually do what it wants to do (i.e. if you want to undertake profit-making enterprises, registering as a charity may not permit this unless you also have a non-charitable subsidiary).
- Enable the organisation to appoint staff and enter into contracts.
- Protect the members and board members of the organisation (i.e. if the organisation is going to develop new buildings for community use, it will want people to be protected against personal liability where building contracts go pear-shaped or staff make a claim in the tribunal).
- Enable the organisation to build the partnership it wants (i.e. it can actively involve different partners in the management of the organisation).
- Allow the organisation to raise the funds it will require from all the different sources available (e.g. charitable trusts, public sector grants, loan funds etc.).
- Be tax and rate efficient if possible.

### Further reading:

Voluntary Sector Legal Handbook

[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

<https://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>

## Checklist – Module 1

The purpose of this checklist is to help the organisation decide whether it has considered all the issues that are necessary to establish a community anchor organisation.

REF	TASK	CHECK
<b>Intro</b>	Has this training pack been distributed in advance of the training session?	
	Has the group carried out basic business planning before undertaking Module 1?	
<b>Section 1.1</b>	Does the group understand what type of a community organisation it wants to be?	
	Has the group decided what it wants the organisation to do?	
	Have you reviewed the what, whom and how questions?	
<b>Section 1.2</b>	Is the group confident that this is the right stage to formalise the structure for the organisation?	
	Does the group understand what a company limited by guarantee with charitable status is?	
	Does the group understand what the advantages and disadvantages of this legal structure are?	
	Does the group understand what the other possible structures are for your organisation?	
	Does the group understand when and why they might consider setting up a linked company limited by shares?	
	Has the group decided what the most appropriate structure for the organisation is?	
	Is this a company limited by guarantee with charitable status?	

# Module 2:

Developing a governing document and applying to the Charity Commission for recognition of the company limited by guarantee as a charity

## Introduction to the module

This module assumes that it has been agreed to structure the organisation as a company limited by guarantee with charitable status. If the organisation has decided to adopt a different legal structure, Locality may be able to signpost to other sources of help and advice.

This module introduces the governing documents required by a company limited by guarantee with charitable status. These documents are known as the memorandum and articles of association. The module will explain how to develop a set of memorandum and articles of association that fit the needs of the organisation and will clarify the difference between charitable and non-charitable activities. It will also set out a step-by-step guide as to how to register the company limited by guarantee with Companies House and how to obtain registered charity status from the Charity Commission.

Alternatively you can use this guide to develop your ideas and then ask a solicitor with experience in charity law to complete the process for you.

## Aims of module:

### Section 2.1

- Developing a memorandum and articles of association for a community anchor organisation. Understanding the difference between a charitable and non-charitable activity.

### Section 2.2

- Set out a step-by-step guide to registering a community anchor organisation as a company limited by guarantee and a charity.

## Section 2.1: Developing a memorandum and articles of association for a company limited by guarantee with charitable status.

### Understanding what a memorandum and articles of association is and why it is necessary to have one.

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Unincorporated organisations have constitutions; and incorporated companies limited by guarantee have articles of association. Both constitutions, and the articles of association, are the governing document of the organisation:



### The governing document of an organisation:

- Sets out a written description of what the organisation is.
- Gives a framework setting out the organisation's purposes, powers and rules.
- Is regarded as a type of contract enforceable through the courts

The model memorandum and articles of association set out in Appendix 2 has been produced by Russell-Cooke solicitors and is based on their experience of advising community anchor organisations that wish to be charities.

The articles of association:

- Describes the objects and powers of the company.
- Outlines the mechanisms for making decisions and the procedures for appointing people to the board.
- Sets out arrangements that are intended to ensure democratic accountability.
- Demonstrates to funders, users, partners and others, the legal structure and the law under which it is governed.

It is not possible to establish a company limited by guarantee with charitable status without them!

### Understanding, and choosing, charitable objects to reflect the mission of the organisation.

One of the most important aspects of developing the organisation's articles of association is choosing the objects. These objects define the types of activity that the community anchor organisation will work within and may also limit the geographical area of operation. The organisation will not be able to undertake any projects or work outside of the stated objects. Assuming the organisation wants charitable status, all of the objects must fall within the charitable purposes prescribed by the Charities Act 2006. If charitable status is not desired, the articles will need amending before use.

It is tempting for a steering group looking to form a company limited by guarantee with charitable status to only adopt the charitable objects that apply to the areas of work it plans to undertake. However, it is important to look ahead beyond immediate projects and make the objects broad enough to cover any areas of possible future work. Further objects can be added, with the Charity Commission's consent and 75% membership approval, as and when required, but this will take time and consent is not guaranteed.

### Exercise 2.1: Selecting the charitable objects for insertion into the articles of association.

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The table below outlines a range of charitable objects that are likely to be acceptable to the Charity Commission and lists some examples and issues related to each object. See also Charity Commission guidance "Charitable purposes" and "How to write charitable purposes" on the Commission's website.

You have a number of choices if your objective is the regeneration of an area of social and economic deprivation with activities such as the provision of recreation and education as a means to that end (see Appendix 3). If this is the case, please see Charity Commission guidance "RR2 Promotion of Urban and Rural Regeneration" on the Commission's website.

## CHARITABLE OBJECTS

OBJECT	ACCEPTABLE ACTIVITIES	PROBLEMATIC ACTIVITIES	MAIN ISSUES
To provide or assist in the provision of recreational facilities and/or other leisure time occupation in (name place) if such facilities are provided in the interests of social welfare	Community centre, village hall, multi-use sports facilities, play space for children, parks and community events	Community centres where membership requirements restrict community use. Bar facilities may need to be run by a trading subsidiary	A small café may be acceptable as an ancillary use if it is an essential part of overall project; more substantial trading of that kind is likely to point to need for non-charity subsidiary. The letting of part of a building to a non-charitable body is permissible if there is surplus space or it is part of an overall facility (e.g. a licensed bar) or if it can be regarded as providing investment income. Hiring out of rooms for private functions will constitute non-primary purpose trading but may fall below statutory threshold (i.e. such that there is no tax liability)
To advance education and in particular to promote opportunities for learning for the benefit of the general public	Educational events classes and courses; websites and leaflets etc which have a strong educational element; operation of a library; a community computer project which builds IT skills	Educational events which are made available only to a restricted group e.g. employees of a particular organisation; a visitor centre which is concerned primarily with supporting local tourism is not educating people by directing them to local attractions	Education must involve some real learning opportunity

OBJECT	ACCEPTABLE ACTIVITIES	PROBLEMATIC ACTIVITIES	MAIN ISSUES
To advance environmental protection and improvement in (name place) through the provision, maintenance and/or improvement of public open space and other public amenities and other environmental and regeneration projects (but subject to there being appropriate safeguards in place to ensure that the public benefits so arising clearly outweigh any private benefit thereby conferred on private landowners)	Developing parkland and public footpaths; clearing rubbish from public open space	Projects where the private benefit to the landowner outweighs the public benefit; projects on land to which there is no public access	Great care should be taken where works are carried out on private land; a careful judgement must be made on whether the public benefit test is satisfied; appropriate safeguards should also be put in place (e.g. 'clawback' of grant if public access is denied)
To provide or assist in the provision of housing for people in necessitous circumstances within (name place)	Housing for people who are on low incomes or those who have physical or other disabilities	Housing for people who are not "in need" in a charity sense	
To prevent or relieve poverty particularly among the residents of (name place)	Advice on benefits entitlements; supply of e.g. donated furniture to people in need		
To advance community development through the promotion of trade and industry within (name place) for the benefit of the general public	Promotion of a particular area as a good place for businesses to locate	One-to-one support to individual businesses	The category of "promotion of trade and industry", despite appearances, covers only a very restricted range of activities.
To relieve those in need by reason of unemployment, particularly among residents of the (name place), for the public benefit in such ways as may be thought fit, including assistance to find employment	Training, counselling, work experience, work placement programmes that help people into jobs	Activities that primarily benefit the employers. Trading activities where the training/work experience element is a by-product rather than the core element	

OBJECT	ACCEPTABLE ACTIVITIES	PROBLEMATIC ACTIVITIES	MAIN ISSUES
To relieve those in need by promoting training, particularly among residents of the (name place), and with particular reference to skills which will assist the participants in obtaining paid employment	As above	As above	
To help young people, particularly those resident in the (name place), to develop their physical, mental and spiritual capacities, such that they may grow to full maturity as individuals and as members of society	Work with young people, particularly courses which build teamwork skills and self-confidence etc; internet cafes if there is a strong educational element; youth project; after- school care club		
To advance heritage and/or preserve, for the benefit of the general public, the historical, architectural and constructional heritage that may exist in and around the (name place) in buildings (including any structure or erection, and any part of a building as so defined) of particular beauty or historical, architectural or constructional interest	Restoration of listed buildings (or buildings for which other independent evidence of architectural or historical value can be shown)	Works to a building which is not owned (or held on long lease) by the community anchor organisation or where public benefit is not secured by some means, i.e. access	Where the predominant benefit is to a private organisation
To advance the health of the residents of (name place), and to assist in the relief of ill health and the provision of health education for such residents	Projects which are directed towards health education or healthier living	Services where the charges exclude the poor	

OBJECT	ACCEPTABLE ACTIVITIES	PROBLEMATIC ACTIVITIES	MAIN ISSUES
To relieve the needs of people (and particularly those resident in the (name place) who suffer from mental and/or physical disability, illness or impairment or have particular needs by reason of old age or current or past drug, solvent and/or alcohol abuse, and their carers, families and dependents	Work with people with disabilities or particular needs; drugs abuse projects; community transport projects serving people with particular needs		
To advance citizenship by encouraging, stimulating and supporting volunteering principally in (name place)	Recruiting and placing volunteers		
To promote the rehabilitation of offenders and ex-offenders by the provision of education and training, the provision of assistance in finding work for such persons and the promotion or support of any project or scheme directed towards the prevention of crime or delinquency	Work with offenders and ex-offenders		
To advance education through (i) the provision and supervision of learning-orientated activities for school and pre-school children, (ii) the provision of care, guidance, instruction, activities and support directed towards addressing the special educational needs of school and pre-school	Childcare facilities where there is a strong educational element or which addresses needs associated with a difficult home environment or which is directed towards releasing parents/guardians to attend training courses to assist them into work etc	"Education" events where recreational or social activities dominate	Education in the conventional sense must dominate. A website may use social or recreational elements to hold attention but this must be incidental to the core educational purposes

OBJECT	ACCEPTABLE ACTIVITIES	PROBLEMATIC ACTIVITIES	MAIN ISSUES
children who come from a single parent family or other home environment where there are necessitous circumstances and/or to relieve poverty among the residents of the (name place), in particular by releasing poor individuals (whether parents or guardians) having the care of school and/or pre-school children to attend training courses and programmes which are directed towards the acquisition of skills which will assist such individuals in obtaining employment or by allowing poor individuals (whether parents or guardians) having the care of school and/or pre-school children to maintain themselves in paid employment			
To advance citizenship and/or community development (including the promotion of civic responsibility and the voluntary sector and/or the effectiveness or efficiency of charities)	<p>Work with young people in promoting good citizenship/ civic responsibility through award schemes</p> <p>Work that assists charities or other voluntary sector organisations such as recruiting volunteers</p>	Support for organisation that delivers significant private benefit.	
To further such other exclusively charitable purposes according to the law of England and Wales as the trustees in their absolute discretion from time to time determine	Other projects within the charitable field	Support for organisation that delivers significant private benefit.	Careful consideration should be given to the nature of any project which does not fall within the more specific objects. Would it require a change to the charitable objects, requiring the Charity Commission's consent?



It may be appropriate in the case of certain community anchor organisations to pursue recognition as a charity under the heading of “promotion of urban or rural regeneration”. It is important to note, however, that this approach would only be available if those setting up the company could demonstrate that the intended area of benefit was indeed an “area of social and economic deprivation” and were prepared to monitor the level of social and economic deprivation. This would involve testing the impact of the company in addressing such deprivation on an ongoing basis. In addition, there would need to be a reasonable spread of activities encompassing at least three or four of the model objects set out in Appendix 3. The issue of private benefit (i.e. as having to be clearly outweighed by the public benefit) is also of particular relevance in the case of bodies seeking charity recognition under this head.

The suggested objects for an urban/rural regeneration body are included in Appendix 3.

Geographical limitations: You will see that many of the draft objects are confined to a geographical area or place. If you are going to include such a limitation, it is important to remember that you must then operate exclusively for the benefit of that area. This can cause difficulties if funders want projects to cover a wider or differently defined area. A number of strategies can be used:

For example, “The inhabitants of X” can become “Those living, working or studying in X or neighbouring areas”, or wider still “Predominantly for those living, working or studying in X or a neighbouring or adjoining area or elsewhere in the region”.

The wider definition avoids later concerns that a project is outside the objects (“ultra vires”), or the necessity of amending the objects as the organisations grows, or setting up a trading company.

### Exercise 2.2: Other issues with the articles of association

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This exercise works through all those clauses in the articles which ought to be tailored to meet the needs of each individual community anchor organisation (cross referenced to model memorandum & articles - see Appendix 2). Other clauses may be adjusted as well, but care should be taken not to alter a clause if the effect would be to make the articles inconsistent with company law or unacceptable to the Charity Commission. Additional footnotes are included in the articles themselves.

### Memorandum of association

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This sets out the name of each subscriber to the memorandum of association. It is a statement confirming their intention to form a company and become a member of that company. The wording should not be altered, otherwise there is a risk that the incorporation documents will be rejected by Companies House.

**Signing the memorandum:** Once the final draft of the memorandum and articles of association has been agreed, the people who are going to be the first members (as mentioned below, generally these will be the same people who sign the form IN01 as the first directors) should write their full names (no initials) in capitals on the memorandum of association, and sign alongside. The articles of association should be attached - but there is no need for the articles of association to be signed.

It should be noted that while the company is normally formed with a small number of initial members, other members can be easily added after the company is formed provided that the requirements in the articles are complied with. Membership details must be carefully recorded in a register of members. Real difficulties arise if an organisation does not know very clearly who its voting members are.

### Articles of association

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**Name:** Before choosing a name, search the Commission and Companies House websites and the web for similar names. Ensure that you insert the name of your community anchor organisation where necessary in the memorandum and the first page of the articles, thereafter it will be referred to throughout as 'the company'.

**Articles 4: Objects:** You should insert the objects relevant to the mission of the organisation and any geographical limitation as agreed in exercise 2.1. You should define the geographical area of benefit. This is likely to include, for example the name of the area defined by appropriate boundaries (boroughs, local authority etc). You will see an alternative, a much wider object given at Article 4.1.3.

**Article 5: Powers:** Article 4 sets out a range of powers which will be appropriate for most organisations. The organisation may feel that there is no immediate prospect of certain powers being used in practice. Nevertheless, it is usually best to keep the full set of powers, rather than delete items from the list, in case the power is needed at a future date. One of the points which should be borne in mind is that including reference to a particular power does not mean that the company has to exercise that power in practice.

**Article 11: Indemnity:** See the footnotes for an explanation as to whether to choose 'shall or may' here.

**Articles 14 – 18: Membership:** As currently drafted, the articles allow unrestricted membership. You may register individuals or organisations as members. This does not mean that you must register everyone who asks to be a member. The directors have discretion as to whether to allow a person or organisation to join. The articles allow the directors to create criteria for membership should they wish. Some organisations reserve a portion of the places on the board for election by individual members and a separate portion to be elected by organisations. Some have more complex arrangements with weighted voting rights according to organisational size or other factors or reserve places for persons with particular characteristics e.g. race or gender.

The articles also allow you to admit associate members, who are not members for the purposes of company law and therefore do not have the right to attend, speak or vote at general meetings. Classes of associate members could include supporters, friends or corporate members and will be appropriate for people or organisations who you do not wish to have voting status but who you would like to be associated with the company. Some organisations may feel that this is not relevant but take a long term view that it might be useful later.

**Article 14.4: Membership subscription:** Differing levels of fees can relate to possible different categories of membership if you wish:

- Individual membership: this is usually fairly low (£1 - £10). You may also want to write in to the articles the ability for the board to reduce fees for those in necessitous circumstances.

- Organisations: there is often a two-tiered fee structure here, one for voluntary sector organisations and one for private sector organisations.
- Associate membership: can be set at any level.

You do not have to be more specific than the general nature of Article 14.4.

It is necessary to decide whether fees are annual or one-off. Fees are unlikely to be a big money spinner and it may be more appropriate to encourage as many members as possible. It is important to remember that if you have fees they have to be collected!

**Article 23: Quorum for general meetings:** The quorum needs to be decided on. Examples include:

- 10% of the total number of members or 10 persons, whichever is the greater
- One third of the membership subject to a minimum of five

Too large a quorum can be an embarrassment if you are unable to achieve the quorum at each meeting.

**Article 37: Number of directors and co-opted directors**

It is sensible to decide the minimum and maximum numbers of directors. In fixing the number, think about the style of board you would like. Examples include:

- Not fewer than three and no more than 12 persons elected by the members of the organisation (a smaller, executive board)
- Not fewer than ten and no more than 25 persons elected by the members of the organisation (a larger, representative board)

The minimum number should never go below three. The minimum number of directors should be considered when deciding on the level of quorum for Board meetings.

Along with directors elected from the membership, it is common to have a power to co-opt directors. This allows the directors elected by the membership to co-opt people with specific expertise (or clout!).

Selected organisations that have a crucial role in your partnership (e.g. the local authority or community council) may be given the right to nominate people for appointment as directors (though, as charity trustees, they will need to act in the best interests of the charity, rather than the body which has appointed them – see Module 3). The decision on the number of appointed directors should therefore be based upon:

- Generally choosing a number less than the elected directors
- Considering whether some organisations should have the right to nominate a director
- What type of expertise or connection it may be useful to have and who might bring it

It should be noted, for the avoidance of doubt, that all directors – including appointed directors – have voting rights. If people are to attend board meetings in a non-voting capacity, they should be described as advisers or observers, and not as directors; they must not participate actively in decision-making, or else they could become shadow directors.

**Articles 38: Rotation of directors**

You should state how elected directors retire at the AGM. The model has been drafted to allow each director a three year term, after which point he or she must retire. The model suggests two three year

terms, and one possible extra term on the recommendation of the Board. This can be varied according to your preferences. If you wish to have more complex retirement provisions you may wish to take legal advice.

#### **Article 46: Quorum for directors' meetings**

In light of your decision regarding the maximum number of directors it is necessary to decide what the quorum should be for a directors' meeting. Asking the question "What is the minimum number of directors required to take a credible and defensible decision?" should set it.

Once you have made all necessary amendments to your model articles, and subject to any comments by interested parties, you will now have a governing document to register at Companies House and, once registered with Companies House, to submit to the Charity Commission.

## **SECTION 2.2: Registering the company limited by guarantee with Companies House and obtaining registered charitable status from the Charity Commission**

The group will now be in the position of having a draft memorandum and articles of association. A copy of this should be circulated to everyone on the steering group and any interested organisations (e.g. organisations with nomination rights) for their comments. On receipt of comments you can prepare a final draft of your memorandum and articles of association.

- **Step 1:** Establish who will be the signatories to the memorandum of association as the initial subscribers. These people are the first members of the company and must be included in the list of members on the IN01 (see step 3). They can be the same people as the first directors, but do not have to be. It is usual to keep the signatories to the memorandum of association quite low in number for convenience (often just three/four key members of the steering group). More members (and directors) can be easily added after incorporation.
- **Step 2:** The memorandum of association should be signed by the subscribers (first members); each of the subscribers should insert his/her name in block capitals on the memorandum of association and sign alongside. There is no need for a witness. The articles of association should be attached to the memorandum of association, but do not need to be signed.
- **Step 3:** Complete form IN01 (Application to form a company).

This form can be obtained from Companies House or downloaded from [www.companies-house.gov.uk](http://www.companies-house.gov.uk). The details that are required to complete this form are as follows:

In relation to the proposed first directors (who will normally also be the signatories (subscribers) to the memorandum of association:

- Full name (no initials)
- Any former name
- Residential address (this does not have to appear on the public record if the person provides a service address that is different to their residential address)

- Service address (If the service address is the registered business address you must indicate this)
- Date of birth
- Nationality
- Country/state of residence
- Business occupation

In relation to the proposed company secretary, if it has been confirmed that the company should have a company secretary (see Module 3 Roles and Responsibilities):

- Full name (no initials)
- Any former name
- Service address (this does not need to be the person's usual residential address. If the service address is the registered business address you must indicate this)
- In relation to the registered office:
- Proposed address of the registered office (including postcode)

It is important that sufficient people sign the IN01 as the first directors so that they can form a quorum for the first meeting of the board.

Form IN01 should be signed by each of the proposed first directors as vouching his/her consent to act as a director. The company secretary (assuming there is to be a company secretary) should do the same. If you are submitting the form through a solicitor they will sign as agent and advise you on procedures.

- **Step 4:** Once everything is signed and ready you should send the following to Companies House (see useful addresses):
  - The signed memorandum of association (the original, not a copy), with the articles of association attached
  - Completed form IN01
  - A cheque for £40 to meet the incorporation fees

**IMPORTANT:** Do not forget to take copies of the memorandum and articles of association and all forms as Companies House will retain what you send them.

- **Step 5:** Once you receive your certificate of incorporation from Companies House with your company registration number, you can apply online to the Charity Commission for registration as a charity at [www.gov.uk/government/organisations/charitycommission](http://www.gov.uk/government/organisations/charitycommission). Before completing the online application form, each director must read and sign the trustee declaration form. You will then need to complete the online application form and upload your memorandum and articles of association in PDF format (certified as a true copy by the company secretary or any director), your certificate of incorporation, proof of income of more than £5,000 (this could be a bank statement, accounts, or a pledge letter if you are yet to receive the required funds) and a scanned PDF file of your trustee declaration form. The company can but usually won't start its activities prior to the completion of the Charity Commission registration. This can happen when for example a lease or agreement needs signing urgently.
- **Step 6:** Once you have submitted your online application you will be sent an automated email, confirming your application has been received.

If there is an existing unincorporated association with charitable status from which this new company is taking over, then the Charities Act 2011 provides that a resolution can be passed to transfer all property to the new company. A resolution will be passed if two thirds of members agree.

The trustees of the unincorporated association must be satisfied that:

- (a) It is expedient in the interests of furthering purposes for which the property is held by the unincorporated association for the property to be transferred in accordance with the resolution and
- (b) The purposes of the new company to which the property is being transferred under the resolution are substantially similar to the purposes of the transferor unincorporated association

To rely on the provisions within the Charities Act 2011, the unincorporated association's gross income in its last financial year must not have exceeded £10,000 and it must not hold designated land. A copy of the resolution must be sent to the Charity Commission once it has been passed, along with a statement of reasons for passing it. The resolution transferring the property takes effect once 60 days have elapsed, beginning with the date on which a copy of the resolution was received by the Commission.

- **Step 7:** The company should receive a response from the Charity Commission, within approximately 30 working days. The Commission may ask you further questions about the activities you will be doing, and any other issues that they wish to raise as a result of the answers you provide in your application.
- **Step 8:** Once the Commission is satisfied that you comply with the requirements for registering a charity you should receive a charity registration number. Your charity will be entered on the register of charities and each director, who has provided an email address, will be emailed a list of guidance which is relevant to their role.
- **Step 9:** You should then apply to HMRC for recognition as a charity for tax purposes. See [www.hmrc.gov.uk/charities/tax/recognition.htm](http://www.hmrc.gov.uk/charities/tax/recognition.htm)
- **Step 10:** The company limited by guarantee with charitable status will now be formed and a range of 'start up' tasks can now be taken forward such as opening of a bank account, VAT registration (if applicable), the appointment of auditors, and so on. At the first board meeting, in addition to giving formal authority for these matters, it would be usual to deal with the admission of additional members and appointment of additional directors (following the procedures in your articles of association), the appointment of the chair and other office bearers, and the fixing of the accounting reference date (financial year end). See Appendix 5 for typical drafting. The board will need to consider adopting a range of other policies and will also need to resolve how to deal with any conflict of interest (see Part 4 of Appendix 5). Forms will need to be filed with Companies House in relation to the additional directors (form AP01) and the accounting reference date (form AA01). See module 3 for further information.



## Checklist – Module 2

The purpose of this checklist is to help ensure that all the relevant issues relating to this module have been addressed

REF	TASK	CHECK
<b>Module 2</b>	Has training pack been distributed in advance of the training session?	
	Is the group confident about all the issues raised in Module 1?	
<b>Section 1</b>	Do you understand what a memorandum and articles of association is and why you must have one?	
	Do you understand the importance of choosing charitable objects that reflect the mission of your community anchor organisation?	
	Do you understand the range of charitable objects that are available to you?	
	Do you understand the issues relating to each of the objects?	
	Have you decided which of the charitable objects you wish to use for your articles of association?	
	Have you considered and completed all the other key areas of your articles of association?	
	Have you completed the draft articles of association from the model attached in appendix 2?	
	Does the group understand what the other possible structures are for your organisation?	
	Does the group understand when and why they might consider setting up a linked company limited by shares?	
	Has the group decided what is the most appropriate structure for their organisation?	
	Is this a company limited by guarantee with charitable status?	
	Do you have enough individuals with the time and skills to form an initial board?	

REF	TASK	CHECK
<b>Section 2</b>	Have you circulated the draft to all the important individuals and organisations for their comment?	
	Have you finalised your memorandum and articles of association?	
	Have you followed all the steps to successfully register your company limited by guarantee with charitable status?	
	Have any issues arisen from consultation with key stakeholders that need to be addressed?	
	Have you developed appropriate governance documentation including those in Appendix 5?	

# Module 3:

Roles and responsibilities of company directors in a company limited by guarantee with charitable status

## Introduction to the module

Those running a company limited by guarantee with charitable status are both directors under the Companies Act and charity trustees under charity legislation. This means that they are subject to both company law and charity law in addition to general law. Remember a duty is a legal obligation. Failure to carry out duties as a director can result in **finances and in some cases personal liability**. It is therefore essential that anyone considering becoming a director of a community anchor organisation is clear about their role and responsibilities. This module offers an overview of the main duties of a director/charity trustee. While these may seem extensive it is worth bearing in mind firstly that the Board of a charity is normally much better protected if they are also directors and secondly that thousands of ordinary people carry out these roles successfully and without personal liability.

Remember - the articles of association may impose additional obligations to those set out in this module.

For sources of more detailed advice please see 'Guidance and Further Information' at the end of this module. If a director has any doubt about his/her duties or a particular issue arises in the course of being a director, he/she should not hesitate to seek advice from Companies House, the Charity Commission and/or a lawyer with specialist experience in the charity field.

## Aims of module:

- Highlight that the duties of a company director involve legal obligations (and possibly legal liabilities).
- Understand the main duties of a company director.
- Understand the additional duties under charity law.

## SECTION 3.1: What are the main duties of a company director?

The Companies Act 2006 sets out a statement of directors' duties; the seven key elements (focussing on companies limited by guarantee) are as follows.

Note: It is usually the case in community anchor organisations that the majority of directors are also members of the company. The duties outlined below do not apply in your role as a member; for example, at a general meeting directors (in their capacity as members) may vote as they wish.

It is also worth noting that company directors cannot delegate any of their duties or other responsibilities under company law to another person (for example staff or independent advisors). This does not mean they cannot delegate the functions of the company (i.e. work that the Board have agreed is required) but that responsibility for the overall management and smooth operation of the company remains with the directors.

In practical terms, this means that directors must take reasonable care in ensuring any person they delegate work to has the appropriate skills, qualifications and experience to carry this out to an appropriate standard.

## 1. Duty to act within objects and powers

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Directors have an obligation to act within the objectives and powers as set out in the governing document of the company, and to only exercise these powers for the furtherance of the company's purposes as set out in the articles of association.

## 2. Duty to promote the success of the company

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Directors of a company with charitable status (or other public benefit objectives) must act in a way that they consider, in good faith, would most likely promote the success of the company in furthering its purposes.

The directors must exercise this duty whilst having regard to the following list of factors (amongst others):

- The likely consequences of any decision in the long term (e.g. on the long-term value of the company or on it achieving its purpose in the long-term)
- The interests of the company's employees
- The need to foster the company's business relationships with suppliers, customers and others (e.g. other community organisations or partners)
- The impact of the company's operations on the community and environment
- The desirability of the company maintaining a reputation for high standards of business conduct
- The need to act fairly as between members of the company.

It should be noted that the list of factors to which the directors of the company must have regard in exercising this duty, is **non-exhaustive**; for example, when a company becomes (or is becoming) insolvent a director's first duty is to act in the best interests of the company's creditors (the persons to whom it owes money) and to minimise the potential loss to them.

**This duty is to the company.** This means that a director must not place the interests of any individual members, employees or beneficiaries above the interests of the company.

This duty can be of particular relevance in a situation where directors have "**divided loyalties**" or a conflict of duties due to their association with another organisation. Each director of a community anchor organisation must always ensure that when he/she is taking a decision in his/her capacity as a director of the community anchor organisation, he/she is voting in such a way as he/she considers, in good faith, is most likely to promote the achievement of the company's purposes (and not necessarily in the manner which best serves the interests of any other body with which he/she is connected).

In practice, one way of enabling directors to comply with this duty is to ensure they are presented with papers at board meetings that allow them to consider the above factors. For example, if a decision could have environmental consequences then papers setting out information relevant to this should be made

available to the directors. Where a decision is made which involves the Board considering particular factors, or competing factors, the Board may want to record its consideration of those factors and the conclusions reached.

For community anchor organisations, it is usually the case that the majority of directors are also members of the company. The duties outlined above do not apply in your role as a member; for example, at a general meeting, directors (in their capacity as members) may vote as they wish.

### 3. Duty to exercise independent judgment

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The directors have a duty not to act in accordance with the will of others i.e. not to act as a representative of some other interest or body even if nominated by them. Instead they must exercise independent judgement on matters affecting the company.

This does not prevent directors from properly delegating matters to committees or appropriate individuals or taking account of the views of other stakeholders. Directors are also able to seek independent expert advice.

This duty does not prevent directors from relying on the judgement of others when considering matters which they do not have expertise in. In fact, in certain circumstances, it would be irresponsible (and a breach of directors' duties) for the directors to proceed without first obtaining external professional advice. It is important, however, that the directors should not blindly follow the advice of third parties; they should exercise their own independent judgement in deciding whether to follow the advice, which has been given, as responsibility for decisions ultimately rests with them. For example, if the company encounters an employment law issue, it would be good practice for the directors to seek expert advice.

### 4. Duty to exercise reasonable care, skill and diligence

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This duty is of particular relevance in relation to the directors' role in monitoring the activities of the company, and especially the company's financial position.

A director of a company must exercise the care, skill and diligence that would be exercised by a reasonably diligent person with both:

- the general knowledge, skill and experience that may be expected of a person in that role, and
- any general knowledge and skills that that director has.

This means directors must **act carefully and responsibly or they may be considered negligent**.

As a general guide, directors should:

- ensure that the company is run properly, responsibly and lawfully, complying with relevant legislation (e.g. that covering companies, health & safety, employment, equal opportunities, data protection)
- ensure the company is solvent when trading
- ensure the Board is fit for purpose and working together for the benefit of the company as a whole
- apply care, skill and diligence in matters relating to paid staff and volunteers
- exercise good business sense, and consider taking appropriate professional advice as and when is necessary.

For example, the Board should, in terms of best practice:

- agree a scheme of financial delegation, set annual and project budgets, and monitor financial performance on a regular basis
- agree and implement a programme of training for directors
- agree and monitor a framework for managing and supporting paid staff and volunteers.

## 5. Duty to avoid conflicts of interest

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A director of a company must avoid a situation in which he/she has, or can have, a direct or indirect interest that conflicts, or might conflict, with the interests of the company. This applies in particular to the **exploitation of any property, information or opportunity** (regardless of whether the company could take advantage of that property, information or opportunity). This is slightly different from declaring interests (see below), although it is usually treated in a similar way.

Directors must not allow their personal interests or the interests of any other body to override the interest of the company (even where they were appointed as a director on the basis that they had been nominated by that other body).

This duty could come into play where there are particular pieces of information available to the company (for example, information about a forthcoming development opportunity) that might be exploited by a director for personal financial gain or the benefit of any other organisation with which he/she is involved.

It also relates to a situation where a director is proposing to take on a directorship (or other similar role) with another organisation which might, for example, be competing with the company for grant funding.

It is possible that difficulties could arise where a director sits on the Board of more than one company and is therefore subject to a duty of confidentiality to two or more companies. Directors should be encouraged to seek independent legal advice if in any doubt as to whether a conflict of interest may exist.

A director may be associated with another organisation and this may give rise to 'divided loyalties', but they may not stand to gain financially. If this is the case, the director should declare it and ensure that it is minuted, and when taking the decision in his/her capacity as a director must always vote in such a way as he/she feels will be **in the best interests of the company**, and not the other organisation on whose governing body he/she also sits.

Some companies' articles of association will state that, even where the issue is one of divided loyalties rather than conflict of interest in the narrower sense referred to above, the director is still debarred from voting.

This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement between the director and the company (that type of conflict is covered by other principles).

Further, this duty is not infringed: -

- 1) If the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 2) If the matter has been authorised by the directors. Board authorisation may be given only if: Nothing in the company's articles of association would invalidate Board authorisation



- Any quorum requirement is met without counting the interested director(s)
- Authorisation is given excluding any vote(s) cast by the interested director(s).

Please also refer to the guidance below on the duty to declare an interest in a proposed transaction or arrangement.

## 6. Duty not to accept benefits from third parties

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A director must not accept any benefits from third parties that arise because of his/her office as a director, or equally through his/her doing, or not doing, anything in his/her capacity as a director. This does not apply to any transaction approved by the members of the company or one for which the company's governing document states that approval is not needed.

In this context, a "third party" means a person other than:

- the company
- an associated corporate body, or
- a person acting on behalf of the company or an associated corporate body.

Of course as a charity trustee there are charity law restrictions on any benefit to trustees (see Charity Commission publication CC11 on Trustee Expenses and Payments which is available on the Commission's website).

This obligation continues beyond the point where a director ceases to hold office, and a person can be held liable as regards to things she or he did, or did not do, during his/her past office as a director.

There is no minimum threshold (in terms of financial value) above which directors must not accept a benefit from a third party, but the duty is not infringed if accepting the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. It is worth considering whether it would be appropriate for the company to issue guidance to directors on what would be regarded as acceptable levels of benefits that may be received.

## 7. Duty to declare interest in proposed transactions or arrangements

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This duty relates to a situation where a director of a company **has a financial interest in or stands to gain (or lose) financially** from a contract, transaction or arrangement entered into by the company. Financial interest or gain can apply not only to money but also to anything with a monetary value (e.g. information). Examples could be where the company is looking to buy a service or goods from a director or an organisation that a director is involved with in any way (e.g. partner, director, etc).

This duty is not infringed where:

- 1) the director is not aware or ought reasonably to be aware of the interest or of the transaction or arrangement in question
- 2) the matter cannot reasonably be regarded as giving rise to a conflict of interest
- 3) the other directors are aware or ought reasonably to be aware of the interest
- 4) it concerns his/her service contract which has been considered at a Board (or committee) meeting.

If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or

arrangement with the company, he/she must declare the nature and extent of that interest to the other directors at any time before the company enters into the transaction or arrangement. (However, directors do not have any duty to avoid such an interest, as they have in relation to transactions or arrangements with third parties).

Directors should also be aware of an additional obligation under section 182 of the Companies Act 2006 whereby directors must declare an interest in any existing transaction or arrangement with the company (whether legally binding or not). Failure to make such a declaration is a criminal offence.

This duty also applies where any person connected to the director has a financial interest in or stands to gain (or lose) financially from a contract, transaction or arrangement entered into by the company (known as indirect interests). Under the Companies Act 2006, the people that a director is considered to be connected to includes their spouse, civil partner, parents, children or step-children of any age, a partner in an enduring family relationship and a partner's children or step-children (if under 18 years and living with the director).

All conflicts of interest must be declared at the earliest possible opportunity. They can be declared:

- (a) at a full meeting of the directors (not a sub-committee), or
- (b) by way of a notice to the directors (either in relation to a specific matter or by way of a general notice)

Any declaration of interest under this duty must be made before the company enters into the transaction or arrangement. Further, if a declaration of interest in accordance with this duty proves to be, or becomes, inaccurate or incomplete, a further declaration must be made (but only if the company has not yet entered into the transaction or arrangement at the time that the director becomes aware, or ought reasonably to have become aware, of the inaccuracy or incompleteness of the statement).

A director must not take part in any decision relating to an issue in which they have a conflict of interest, and does not count as part of the quorum at a Board meeting where such a decision is to be taken.

There are various special rules for substantial property and other transactions involving directors - legal advice should be sought in these circumstances.

Such a transaction or arrangement is also very likely to be subject to charity law rules (see CC11 Trustee Expenses and Payments on the Charity Commission's Website) in particular that no trustee may obtain a benefit other than one authorised by the articles or the Commission or some legal provision. The main legal provision is contained in the Charities Act 2006 which allows payments to trustees for services in some circumstances.

## 8. Duties in insolvency

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This is of particular importance! The duties of a director change and the risk of personal liability increases when a company is, or is becoming, insolvent. Essentially the duty changes from advancing the organisation to one of protecting the organisation's creditors.

The main statutory provisions in this area (referred to as the "wrongful trading provisions") are fairly complicated, but the basic principle is that a director could be ordered to pay a contribution (out of

his/her own funds) to help to satisfy the debts of the company if it had gone into liquidation but only if he/she allowed the company to increase the loss to creditors (normally by running up more debt) beyond the point where there was no longer a reasonable prospect of the company pulling through. It is important to note that the obligation to take steps to minimise further loss to creditors is not something which arises only at the point when the company runs out of money. The directors' duty to take steps to address the situation (and normally that would involve closing down) is likely to have arisen much earlier, at the point when it became clear that there was no realistic hope of financial survival. If directors are becoming in any way concerned about the financial position of the company it is worth consulting a solicitor and/or accountant. There are, however, two tests that are useful (though not conclusive) in determining whether there is a significant issue of solvency:

- Cash flow test: If the company cannot pay the money it owes when payment is due, or if this is likely to occur within the foreseeable future (generally the next 12 months).
- Balance sheet test: If the value of its total assets is less than its total liabilities. This includes prospective liabilities.

If an organisation is able to pay its debts as they fall due but fails the balance sheet test it is said to be **'technically insolvent'**. Advice in this case should be sought – but as noted above, if there is ever a question mark over the ability of the company to avoid insolvent liquidation, it is important to:

- Carefully weigh up the positive and negative factors (including savings that you might make, as well as potential additional income). Ensure that you have full and reliable financial information. Decide on whether the prospect of pulling through is a reasonable prospect (not merely an outside chance). Try to obtain firm written commitments from funders or others if there is a reliance on these. Ensure that the discussions at board level are carefully minuted to show that the issues were recognised and that any decision to allow the company to continue its activities was made after due consideration by the board.

A director is expected to act on the basis of:

- The general knowledge, skills and experience that might reasonably be expected of a person carrying out that particular director's function.
- The general knowledge skills and experience that the director actually possesses.

Ignorance is not a defence! At the very least this means that all directors have a duty to ensure they receive proper financial information and have the skills to identify problems that could lead to insolvency. If any director feels they lack the appropriate skills the company should be asked to arrange training and /or seek advice from a solicitor and/or accountant.

## 9. Duty to attend meetings

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The articles of association make reference to the number of missed meetings that could result in directors being asked to stand down from that role. Directors have a duty to attend whenever 'reasonably able to do so'. A director who does not attend over an extended period of time could be held in breach of their duty of care. If the company becomes insolvent, a director who has consistently failed to attend could be disqualified for failing to discharge his or her duties. This would prevent that director becoming a company director of any other company for a period of years.

## SECTION 3.2: What are the main duties of a charity trustee?

Charity law imposes similar, but slightly wider, duties on trustees. These duties are based on common law and reflect the fact that trustees are in a position of trust and have “fiduciary” duties.

1. The overriding duty of all charity trustees is to seek to advance the charitable objects
2. Trustees are responsible for the proper administration of the charity and must accept ultimate responsibility for its activities. The implementing of certain decisions may be delegated but certain decisions must be made by the trustees.
3. Trustees must act reasonably and prudently in all matters relating to the charity
4. Trustees must safeguard and protect the assets of the charity
5. Trustees must act collectively
6. Trustees must act to the best interest of their charity
7. Trustees must avoid any conflict between their personal interests and those of the charity.

Charity trustees must comply with the charity’s constitution and, in particular, ensure that all of its activities are undertaken within, and all assets applied to, its charitable objects and for the public benefit. Trustees must take account of the Charity Commission’s guidance on public benefit and if they have not followed it, they must explain why.

## SECTION 3.3: How do we run a company?

The Board needs to ensure the company is properly run as one of the key requirements of the Companies Act is to ensure compliance with any applicable laws.

**Register of Members:** The following details must be recorded:

- Full name and address of each member
- The date on which they became a member and the eventual date when they ceased to be a member
- If there are more than 50 members the register must record them in alphabetical order
- The register must be kept in a safe place where it cannot be amended without proper authority
- The register must be open for inspection by members free of charge. You cannot have effective democracy if who can vote is in doubt.

**Annual returns and annual accounts:** The company must file an annual return at Companies House on the relevant form each year. Companies House will send a letter or email to your company’s registered office, reminding you when your annual return is due. You can download a paper form (ARO1) which must be returned to Companies House. A small filing fee will be payable. Either a director or the company secretary may sign the form. It is also possible to file annual returns electronically, and a reduced fee is payable if that facility is used.

Directors (and the company secretary) could be held personally liable for a fine if an annual return is late.

Annual accounts have to be filed with Companies House, normally within nine months after the accounting reference date (financial year end) (though special rules apply in relation to the first accounts). This is taken very seriously by Companies House; a series of reminders are issued, but if accounts are late the company will automatically be liable for a civil penalty of £150 to £1500 depending on the length of delay. Directors and the company secretary could also find themselves personally liable for fines.

In addition to the annual return to Companies House, a company which is recognised as a charity is also required to file documents with the Charity Commission:

- Charities with a gross annual income of £10,000 or less must file an annual update. A simplified version of the annual report can be filed and only needs to be sent to the Charity Commission if it is requested.
- Charities with a gross annual income of more than £10,000 must complete an annual return. A simplified version of the annual report can be filed and only needs to be sent to the Charity Commission if it is requested.
- Charities with a gross annual income of between £25,000 to £500,000 and total assets not exceeding £3.26m must submit a simplified annual report, annual return and accounts. Both the annual return and accounts must be signed by a charity trustee and dated at the meeting they were approved. Charities with a gross annual income exceeding £500,000 (or whose gross assets exceed £3.26m if its gross annual income does not exceed £250,000) must submit a full annual report, annual return, accounts and financial information form. Charities with more than £1,000,000 annual gross income must also submit a Summary Information Return.

**Changing directors:** You must notify Companies House within 14 days of any change of directors (or a change in a director's details) on the relevant form - form AP01 for the appointment of a director, form TM01 for the resignation of a director (or someone ceasing to be a director for any other reason), and form CH01 for a change in a director's details (e.g. change of home address). This must be signed by a new director or new company secretary but does not need to be signed by a departing director (or departing company secretary). It is also possible to file these forms electronically with Companies House. New directors can either be co-opted by the board or elected at the AGM, in accordance with the procedures set out in the articles.

**Removing directors:** The articles set out certain circumstances in which a director can be removed or will automatically cease to hold office. This may be, for example, because the director has missed more than a specified number of Board meetings. There is also a statutory right for members to remove a director; a fairly convoluted procedure is involved, but ultimately the resolution will be passed if a majority of the votes cast at the EGM or AGM are in favour. Where the majority of the Board are not in favour of removal, the members can still force the issue – 5% of the membership can formally request the Board to convene an EGM for this purpose – and the Board is legally obliged to give effect to a requisition of that kind.

**Keeping company records:** in addition to the register of members you must keep a register of directors showing:

- Full name
- Former names (not maiden)
- Date of birth
- Nationality
- Residential address
- Business occupation (if any)
- Particulars of directorships (including a former directorship – identified as such – if held within the preceding five years)
- The date on which each person became a director – and the date when he/she ceased to be a director.

You must also keep a register of company secretaries (if you have a company secretary - see below), showing

- Full name
- Former names (not maiden)
- Residential address
- The date on which each person became secretary – and the date when he/she ceased to be secretary.

In each case, the register must be available for inspection by the membership.

Charities have to keep accounting records for at least six years from the end of the financial year to which they relate.

**Appointing a company secretary:** It is no longer a statutory requirement for a company (other than a PLC) to have a company secretary; but almost all community anchor organisations do continue to have a company secretary - as it helps to ensure that important administrative requirements under the Companies Acts and the articles are not overlooked, and generally contributes to good governance. The duties of a company secretary normally include:

- Being present at meetings
- Taking minutes (unless you appoint a minute secretary)
- Issuing notices of meetings to directors and members
- Maintaining the register of members, register of directors, register of secretaries, minute books and other company records
- Making all necessary returns to Companies House, the Charity Commission and HM Revenue & Customs.

The company secretary is not a voting position on the board unless the company secretary is also a director. It is possible to appoint an employee or pay someone to carry out the role of the company secretary.

The company secretary can be changed by the directors whenever they wish. This is in contrast to the chair, vice chair (if any) and treasurer for whom there are normally special provisions for their appointment; occasionally, appointment is by way of election at the AGM but more commonly in a company context, it is for the Board to elect their own office-bearers from their own number.



**Appointing auditors:** You may have auditors or an independent examination of your accounts if your gross income is between £25,000 and £500,000 or where gross income exceeds £250,000 but the charity's gross assets do not exceed £3,260,000. You must have auditors if your gross income exceeds £500,000 or if your gross assets exceed £3,260,000 and your gross income exceeds £250,000, or if your articles or a funder requires this. Only certified or chartered accountants can be auditors. The first auditors are appointed by the directors and will normally continue in office from year to year unless steps are taken to change them. It should be noted that the requirement to re-appoint auditors at the annual general meeting no longer applies unless this is specifically required under the articles of association; the Companies Act 2006 provides that (in general terms - the detailed provisions are fairly complex) unless the directors appoint a different firm as auditors during the 28-day period that follows the filing of the annual accounts with Companies House, the existing auditors will be deemed to be re-appointed.

If you wish to change auditors, this is normally dealt with via the resignation of the existing auditors – with the Board then filling the vacancy by appointing another firm as auditors. If auditors resign, they must make a written statement of any circumstances connected with their resignation that ought to be brought to the attention of the members or creditors. If the existing auditors refuse to resign, a more complicated procedure can be followed, involving removal at a general meeting.

**Role of an auditor:** Auditors have the right to free access to any documents, books or other records which they consider necessary to conduct the audit. They are entitled to proper explanations and information from the Board to enable them to perform their duties; and to receive notices, as if they were members, of all general meetings of the company. They can attend and be heard - but not vote - at general meetings of the company on any business with which they are concerned.

The auditors will normally prepare a balance sheet and income and expenditure account. Once the audit process is completed, the accounts must be approved by the directors, and the balance sheet signed and dated by a director; the auditors then sign their audit certificate on the accounts, and the report and accounts are then normally put before the AGM. A copy of the audited accounts is usually sent to all members along with the notice of each AGM (in terms of the statutory requirements, the accounts must be sent to the members on or before the last date on which it has to file accounts with Companies House or (if earlier) the date on which it actually files the accounts with Companies House).

Auditors have a duty to report to the Charity Commission anything of material significance to the Charity Commission carrying out its role as the charity regulator. They may report anything that may be of interest to the Charity Commission.

**Directors' annual report:** The directors must prepare a report each year that is attached to the annual accounts. This must:

- Give a fair review of the developments that have gone on in the company during the financial year
- Give the names of all the directors
- Set out details of all the activities of the company for the year
- Identify any significant change in the activities or in the fixed assets of the company

It must also give details of any important events that occurred after the financial year-end and any likely future developments. Finally it must set out the charitable contributions made by the company.

The report of a charitable company must comply with the special requirements set out in the Statement of Recommended Practice. An annual report must also be filed with the Charity Commission within 10 months of the end of the financial year. See the Charity Commission guidance "Charity reporting and accounting: the essentials (CC15b)" for further details.

**Place of business:** The name of the company must appear clearly outside the place of business.

**Registered Office:** The company must, at all times, have a registered office. This is an office where all formal communications and notices to the company will be addressed. This is why it must appear on all company stationery, emails and websites and there should be a notice outside your office saying that this is the registered office of the company. This does not prevent you from having another address (say that of the company secretary) where you want day-to-day correspondence to be sent.

You can change the registered office whenever you like by a decision of the directors but the necessary form (form AD01) must be lodged within 14 days with the Registrar of Companies. If you are operating from a different office you must have a notice of your registered office displayed outside your business address.

**Company stationery:** As a charitable company all letterheads, invoices, orders and publications must contain:

- The full company name
- The place of registration (i.e. England and Wales) and your company registration number (from your certificate of incorporation)
- The address of the registered office
- The fact that you are a charity (and your charity number)
- If the word "Limited" (or "Community Interest company"/"CIC") does not appear in the company name, the fact that you are a company
- The names of all directors or none of them (but not only some of them).

All chequebooks must state the full name of the company. If they do not, any person signing a cheque on the company's behalf may be found personally liable if the company does not pay.

As a charitable company all the above documents must state that the company is a charity.

**Types of meetings:** General meetings are meetings of the membership of the company. Prior to the Companies Act 2006, any general meeting that was not the annual general meeting (AGM) was referred to as an "extraordinary general meeting" (EGM) - although that terminology is not now used in the Companies Act 2006. The rules in relation to calling of general meetings are as follows:

- AGMs: The statutory requirement to hold an AGM was removed by the Companies Act 2006, but for virtually all community anchor organisations it is important generally that AGMs continue to be held, in the interests of democratic accountability. The model articles at Appendix 2 are drafted to require you to hold AGMs. Articles of association usually follow the position that applied prior to the Companies Act 2006 coming into force, which required the first AGM to be held no later than 18 months after the company was incorporated, with subsequent AGMs not being held more than 15 months apart. However, this is no longer obligatory.

- Other general meetings: are either called by the directors at any time they feel one is required or, as set out earlier, they must be called at the request of 5% of the membership.

The membership, via a general meeting, has the ultimate control of the company; some important decisions such as a change to your name or articles of association and a winding-up resolutions can only be made at general meetings (or through a written resolution signed by 75% or more of the total membership). However, the Board has full power to make day-to-day decisions about the running of the company. They are, however, bound to follow a specific direction issued by the members at a general meeting; that would normally involve a special resolution, with due notice of the resolution being given, and in practice is extremely rare.

**Notice of meetings:** The articles of association set out who should be notified of a general meeting and how they should be notified. The minimum period of notice is 14 clear days. It is important to note that many articles of association (reflecting the statutory requirements that applied before the Companies Act 2006 came into force) state that 21 clear days' notice is required for an AGM (or any other general meeting at which a special resolution is to be passed) - and if that is what is stated in your articles, you must give that longer period of notice. The model articles at Appendix 2 give a minimum notice period of 14 clear days.

Every notice of a general meeting must give the following information:

- The place, time and date of the meeting
- The manner in which members can vote by proxy (even if your articles do not allow for proxy voting, that is now overridden by the Companies Act 2006 ie all members have the right to vote by proxy even if the articles say otherwise)
- If it is an AGM it must say so
- If it is proposed to move a special or extraordinary resolution the notice must state that, and set out the exact words of the resolution
- If it is a notice of an AGM, it is usual to send out the audited accounts and directors' report with the notice.

**Conduct of general meetings:** The quorum specified in the articles of association must be present at all times. A chair must properly conduct the meeting and preserve order and may insist that a member leaves if they become disorderly or abusive.

The chair has no power to dissolve or adjourn meetings unless agreed by the majority of members present, except where he/she needs to do so to preserve order.

It is the chair's duty to make sure that the meeting only discusses matters which fall within the scope of the notice convening the meeting. This need not prevent a free and general discussion after the completion of formal business - although that sort of discussion cannot involve the passing of formal resolutions.

A member may propose an amendment to a resolution without advance notice but only if it does not completely alter the original nature of the proposal. Special or extraordinary resolutions must not, however, be amended - other than to correct a typographical error.

**Types of resolution:** There are two different types of resolution that vary according to the size of majority required and the amount of notice to be given. They are:

- Ordinary resolution - which is passed by a simple majority
- Special resolution - which needs a 75% majority i.e. 75% of the votes actually cast must be in favour.

Special resolutions are required, for example, to change the name, objects or articles of association of the company.

In calculating the 75% majority only the votes cast for and against are counted and those who are absent (without having appointed a proxy to vote in their place), or abstain, are disregarded.

Within 15 days of a special resolution being passed, a typed copy of the resolution must be sent to the Registrar of Companies.

There are two kinds of resolution which require 'special notice' to be given. These are:

- A resolution to remove a director
- A resolution to remove an auditor.

The members who are intending to propose the resolution must give 28 clear days' notice to the company of that intention. The company, having received the notice, then gives 14 clear days' notice of the resolution to the members (where possible, at the same time as it gives notice of the meeting), and that notice must be circulated within 21 days of receiving the members' notice.

**Fines:** To ensure that the various duties of a company secretary and directors are complied with, there are penalties in the form of fines. However, in practice, it is extremely rare for fines to be levied – other than in relation to annual returns and annual accounts. If the offences are really persistent and numerous the person may be disqualified from acting as a director – but again, that is very rare in practice.

## Checklist – Module 3

The purpose of this checklist is to ensure that all the issues that will help an individual undertake duties as a director have been addressed.

REF	TASK	CHECK
<b>Intro</b>	Has this training pack been distributed in advance of the training session?	
	Is the group confident about all the issues in Modules 1 & 2?	
<b>Section 1</b>	Is the group clear about the duties of a director of a company limited by guarantee?	
	Does the group understand the duties of a director of a charity and a charity trustee?	
	If required, has advice from a solicitor with experience of community anchor organisations been sought?	

## APPENDIX 1: Sources of further information & useful addresses

### Helpful organisations

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#### **Locality**

33 Corsham Street, London, N1 6DR

Tel: 0345 458 8336

[www.locality.org.uk](http://www.locality.org.uk)

#### **Companies House**

Crown Way, Maindy, Cardiff, CF14 3UZ

Tel 0303 1234 500 (helpline)

[www.companies-house.gov.uk](http://www.companies-house.gov.uk)

#### **Co-operatives UK**

Holyoake House, Hanover Street, Manchester, M60 0AS

Tel: 0161 246 2900

[www.uk.coop](http://www.uk.coop)

#### **HM Revenue & Customs (Charities)**

St Johns House, Merton Road, Liverpool L75 1BB

Tel: 0845 302 0203

[www.hmrc.gov.uk/charities](http://www.hmrc.gov.uk/charities)

#### **Law Society**

The Law Society's Hall, 113 Chancery Lane, London, WC2PA 1PL

Tel: 020 7242 1222

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

#### **Charity Commission**

Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG

Tel: 0845 3000 218

[www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)

#### **National Council for Voluntary Organisations**

Society Building, 8 All Saints Street, London, N1 9RL

Tel: 020 7713 6161

[www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)

## Useful reading

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### **Hallmarks of an Effective Charity**

Charity Commission

Available from:

[www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)

### **The Essential Trustee**

Charity Commission

Available from:

[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

[www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)

### **The Good Trustee Guide, 5th Edition**

By Peter Dyer, London: NCVO, 2008.

ISBN 978 0719917677

### **The Russell-Cooke Voluntary Sector Legal Handbook, 3rd edition**

Directory of Social Change, 2009.

ISBN 13 9781903991879

[www.dsc.org.uk](http://www.dsc.org.uk)

## Other contacts

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This training pack was researched and prepared for by DTA Scotland and reviewed for the use of English and Welsh community anchors by Russell-Cooke LLP (solicitors), specialists in charity law.

### **Russell-Cooke LLP**

2 Putney Hill, London, SW15 6AB

[www.russell-cooke.co.uk](http://www.russell-cooke.co.uk)

Tel: 020 8789 9111

Fax: 020 8394 6535

### **James Sinclair Taylor (partner)**

[James.Taylor@russell-cooke.co.uk](mailto:James.Taylor@russell-cooke.co.uk)

(020 8394 6480)

### **Andrew Studd (partner)**

[Andrew.Studd@russell-cooke.co.uk](mailto:Andrew.Studd@russell-cooke.co.uk)



## APPENDIX 2: Memorandum and articles of association.

**These can be tailored to suit the requirements of each organisation by following Module 2 in the training pack.**

NOTE – The wording has been tailored to fit the requirements applicable to a company that wishes to be eligible to register as a charity with the Charity Commission of England and Wales. It should not be assumed that a company adopting this model memorandum and articles will necessarily be accepted by the Charity Commission as a registered charity.

## MODEL MEMORANDUM OF ASSOCIATION

THE COMPANIES ACT 2006

COMPANY LIMITED BY GUARANTEE AND NOT  
HAVING A SHARE CAPITAL

MEMORANDUM of ASSOCIATION  
of  
*[insert organisation's name]*

## THE COMPANIES ACT 2006

### COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

#### MEMORANDUM of ASSOCIATION

of

*[insert organisation's name]*

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

NAME OF EACH SUBSCRIBER	SIGNATURE OF EACH SUBSCRIBER

Date:

## MODEL ARTICLES OF ASSOCIATION

### THE COMPANIES ACT 2006

### COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

**Articles of association of**  
*[insert organisation's name]*

## THE COMPANIES ACT 2006

### COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE

#### CAPITAL Articles of Association of

*[insert organisation's name]*

CONTENTS		
<b>GENERAL</b>	constitution of the company, defined terms, objects, powers, restrictions on use of assets, limit on liability, general structure, conflicts of interest	articles 1 - 13
<b>MEMBERS</b>	qualifications, application, subscription, register, withdrawal, expulsion, termination/transfer	articles 14 - 18-
<b>GENERAL MEETINGS (meetings of members)</b>	general, notice, special/ordinary resolutions, procedure, written resolutions	articles 19 - 33 -
<b>DIRECTORS</b>	maximum number, eligibility, election/ retiral/ re-election, termination of office, register, office bearers, powers, personal interests	articles 34 - 43 -
<b>DIRECTORS' MEETINGS</b>	procedure, conduct of directors	articles 44 - 51
<b>ADMINISTRATION</b>	committees, operation of bank accounts, secretary, minutes, accounting records and annual accounts, notices	articles 52 - 64
<b>MISCELLANEOUS</b>	winding-up	article 65

## 1. Name of Charity and meaning of words

1.1 The name of the charity is [insert organisation's name], called in this document "the company".

1.2 In these articles the words in the first column of the table below will have the meanings shown opposite them in the second column, as long as this meaning is consistent with the subject or context:-

1.3	Words	Meanings
	Act	The Companies Acts 1985, 1989 and 2006 (to the extent in force) including any statutory modification or re-enactment thereof from time to time.
	Articles	These articles of association.
	Board	The Board of Directors of the company, the members of which are the directors of the company and are the charity trustees.
	Chair	The Chair of the Board of Directors or any person discharging the functions of the Chair.
	Charities Act	The Charities Acts 1992, 2006 and 2011 (to the extent in force) including any statutory modification or re-enactment thereof from time to time.
	Charity Commission	The Charity Commission of England and Wales;
	Clear days	In relation to a period of notice, the period excluding the day on which notice is given or deemed to be given and the date of the event to which the notice relates.
	Connected	A person is connected to a director if they have any common interest such that he or she may be reasonably regarded as being likely to benefit directly or indirectly from any material benefit received by that person including a child, parent, grandchild, grandparent, brother, sister, spouse or civil partner of the director or any person living with the director as his partner or in a company trust or partnership in which the director has an interest.
	Directors	The trustees of the company.
	Month	Calendar month.

Objects	The objects of the company as defined in Article 3.
Office	The registered office of the company.
Regulations	Any rules, standing orders or regulations made in accordance with these articles.
Signed	Shall include faxes of signatures and other forms of authentication that are permitted by law.
Taxable trading	Carrying on a trade or business for the principal purpose of raising funds and not for the purpose of actually carrying out the objects, the profits of which are subject to corporation tax.
United Kingdom	Great Britain and Northern Ireland.
In writing	Written, printed or lithographed or partly one and partly another, and other ways of showing and reproducing words in a visible form including by e-mail, or fax (to the extent legally permissible).

- 1.4 Words in the singular form include the plural and vice versa.
- 1.5 The words "person" or "people" include corporations and unincorporated associations, and the words "he", "his" and "him" shall include the female equivalent.
- 1.6 Apart from the words defined above, any words or expression defined in the Act will have the same meanings in these articles, provided they are consistent with the subject or context.
- 1.7 Headings are not part of the articles.
- 1.8 These articles exclude any model articles created under the Companies Acts, including under section 19 of the Companies Act 2006.
2. [Nothing in these articles shall authorise the application of funds for purposes which are not charitable in accordance with section 7 of the Charities and Trustees Investment (Scotland) Act 2005 and/or section 2 of the Charities Act (Northern Ireland) 2008.]<sup>1</sup>

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1 Only needed for charities expecting to need to register with OSCR or the Charity Commission in Northern Ireland. This might be needed for example a charity operating close to the Scottish border but otherwise the clause should generally be on. As it restricts freedom some what not advisable for English/Welsh charities. Note that the OSCR guidance note requires some slightly different wording where you have general objects or objects that don't meet the Scottish charity test. See OSCR website. Always check guidance before selecting OSCR wording. The alternative wording is "Where the word "charitable" is used in the Charity's Objects and throughout these articles it means charitable in accordance with the law of England and Wales provided that it will not include any purpose which is not charitable in accordance with section 7 of the Charities and Trustee Investment (Scotland) Act 2005. For the avoidance of doubt, the system of law governing the constitution of the Charity is the law of England and Wales." If the charity is registered/registering in Northern Ireland please check any guidance by Charity Commission Northern Ireland for additional requirements.



### 3. Registered office

- 3.1 The registered office of the company will be in England and Wales.

### 4. Objects of the company

- 4.1 The objects of the company (the “objects”) are for the public benefit:-
- 4.1.1 [insert objects – see main body for sample objects]
  - 4.1.2 [     ]
  - 4.1.3 [to further such other exclusively charitable purposes according to the law of England and Wales as the directors in their absolute discretion from time to time determine].

### 5. Powers of the company

- 5.1 The company has the following powers which may be used only to promote the objects:-
- 5.1.1 *[insert any additional powers that the company may require;]*
  - 5.1.2 to buy, take on lease, share, hire or otherwise acquire property of any sort;
  - 5.1.3 to sell, lease or otherwise dispose of all or any part of the property belonging to the company in exercise of this power but the company must comply as appropriate with sections 117 to 123 of the Charities Act 2011:
  - 5.1.4 to borrow money and to charge the whole or any part of the property belonging to the company as security for the repayment of money borrowed, grant given or any other obligation but the company must comply as appropriate with sections 124 to 126 of the Charities Act 2011 if it wishes to mortgage land;
  - 5.1.5 to construct, alter, provide, manage, maintain, furnish and fit with all the necessary furniture and other equipment any buildings and any other premises or structures or land;
  - 5.1.6 to employ and pay any employees, officers, servants and professional or other advisers;
  - 5.1.7 subject to any restrictions in the Charities Act, to borrow money, invite and receive contributions or grants, enter into contracts, seek subscriptions or raise money in any way including carrying on trade but not by means of taxable trading;
  - 5.1.8 to give or receive guarantees or indemnities;
  - 5.1.9 to promote or undertake study or research and disseminate the results of such research;
  - 5.1.10 to produce, print and publish anything in any media

- 5.1.11 to provide or procure the provision of services, education, training, consultancy, advice, support, counselling, guidance, grants, scholarships, awards or materials in kind;
- 5.1.12 to make social investments in pursuance of the objects by any means
- 5.1.13 to promote and advertise the company's activities and to seek to influence public opinion and policy and regulation implemented or proposed to be implemented by government, local authorities or other public bodies by undertaking campaigning and, to the extent permitted by law, political activities;
- 5.1.14 to invest any money in any investments, securities or properties; and to accumulate and set aside funds for special purposes or as reserves; and to accumulate expendable endowment;
- 5.1.15 to undertake any charitable trust;
- 5.1.16 to make provision for the payment of pensions and other benefits to or on behalf of employees and their dependants;
- 5.1.17 to establish, promote and otherwise assist any limited company or companies or other bodies for the purpose of acquiring any property or of furthering in any way the objects or to undertake trading and to establish the same either as wholly owned subsidiaries of the company or jointly with other persons, companies, government departments or local authorities and to finance such limited company or companies or other body by way of loan or share subscription or other means;
- 5.1.18 to undertake any trade to generate income to fund charitable activities provided such trade does not create income which is subject to income or corporation tax;
- 5.1.19 to transfer or dispose of, with or without valuable consideration, any part of the property or funds of the company not required for the purpose of the company in furtherance of the company's objects;
- 5.1.20 to establish, support, federate with or join or amalgamate with any corporate body, institutions, trusts, societies or associations;
- 5.1.21 to transfer to or to purchase or otherwise acquire from any charities, institutions, societies or associations any property, assets or liabilities, and to perform any of their engagements;
- 5.1.22 to open and operate bank accounts and other banking facilities including by using internet banking or other electronic authentication methods;
- 5.1.23 to accept any property upon or on any special trusts or for any purposes either specified or to be specified by some person other than the directors;

- 5.1.24 to co-operate and enter into any arrangements with any governments, authorities or any person, company or association;
- 5.1.25 to insure any risks arising from the company's activities;
- (a) To purchase indemnity insurance out of the funds of the company to indemnify any of the directors against any personal liability in respect of:
    - (i) any breach of trust or breach of duty committed by them in their capacity as charity trustees or directors for the company;
    - (ii) any negligence, default, breach of duty or breach of trust committed by them in their capacity as directors or officers of the company or of any body corporate carrying on any activities on behalf of the company; and
    - (iii) any liability to make contributions to the assets of the company in accordance with section 214 of the Insolvency Act 1986.
  - (b) Any insurance must be so framed as to exclude the provision of an indemnity for a person in respect of:
    - (i) any liability incurred by a director to pay a fine imposed in criminal proceedings or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);
    - (ii) any liability incurred by a director in defending any criminal proceedings in which he or she is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by him/her; and
    - (iii) any liability incurred by a director to the company that arises out of any conduct which he or she knew (or must reasonably be assumed to have known) was not in the interests of the company or in the case of which he or she did not care whether it was in the best interests of the company or not.
  - (c) Any insurance shall not extend to any liability to make such a contribution where the basis of the director's liability is his or her knowledge prior to the insolvent liquidation of the company (or reckless failure to acquire that knowledge) that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and
  - (d) To purchase out of the funds of the company any additional indemnity insurance cover for the benefit of the directors that is permitted by law from time to time.
- 5.1.26 To pay all the expenses and costs of establishing the company;

- 5.1.27 to delegate upon such terms and at such reasonable remuneration as the company may think fit to professional investment managers ("the managers") the exercise of all or any of its powers of investment (an "investment" is an asset which is capable of producing income and may also increase in capital value);

Provided always that:-

- (a) the managers are properly authorised to carry on investment business;
  - (b) the delegated powers shall be exercisable only within clear policy guidelines drawn up by the company;
  - (c) the managers are under a duty to report promptly to the company any exercise of the delegated powers and in particular to report every transaction carried out by the managers and report regularly on the performance of investments managed by them for the company;
  - (d) the company is entitled at any time to review, alter or terminate the delegation or the terms thereof; and
- 5.1.28 the company reviews the arrangements for delegation at intervals but so that any failure by the company to undertake such reviews shall not invalidate the delegation; to arrange for investments or other property of the company to be held in the name of a nominee company (being a corporate body registered or having an established place of business in England and Wales) acting under the control of the directors or of a financial expert acting under their instructions, and to pay any reasonable fee required; and
- 5.1.29 to do anything else within the law which helps promote the objects.

## 6 Use of income and property

- 6.1 The income and property of the company shall be applied solely towards the promotion of the objects and no part of it shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to members of the company or directors, and no director may be appointed to any office of the company paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the company except as permitted by law or by the Charity Commission or as permitted below under 'allowed payments' and then only after complying with any requirements of the Act and the Charities Act, PROVIDED this shall not prevent a member of the company or a director receiving any benefit as a beneficiary.

## 7 Allowed payments

- 7.1 The company may pay:-
- 7.1.1 reasonable and proper payment to any member, officer, servant, employee, professional or other adviser of the company who is not a director or a person connected to a director for any goods or services to the company;

## Payments for services and goods connected to those services

- 7.1.2 reasonable and proper remuneration of a director or a person connected to a director for services actually rendered to the company or a subsidiary of the company (save for services rendered in his capacity as a director) and for goods that are supplied PROVIDED THAT:-
- (a) the number of directors so remunerated in any accounting period shall not exceed a minority of the Board of Directors;
  - (b) that no resolution to approve such remuneration to a director shall be effective unless it is passed at a meeting of the Board of Directors;
  - (c) such director shall not vote on any resolutions relating to his or her engagement by the company or a subsidiary (as defined in the Act) of the company; and
  - (d) the remuneration or maximum remuneration payable to the director shall be set out either in the resolution approving such remuneration or in a written agreement between the director and the company;
  - (e) the directors are satisfied it is in the best interests of the company for the services to be provided by that director to the company or on behalf of the company for the remuneration or maximum remuneration agreed.
- 7.1.3 reasonable interest on the money lent by any director;
- 7.1.4 reasonable out-of-pocket expenses to any director;
- 7.1.5 reasonable and proper payment to a company of which a member of the company or a director holds not more than a hundredth of the capital;
- 7.1.6 reasonable and proper rent of premises demised or let by any director;
- 7.1.7 to the extent permitted by law, reasonable and proper premiums in respect of any indemnity insurance policy taken out pursuant to article [5.1.24](#) above;
- 7.1.8 any payment to a director under the indemnity provisions in the articles of association;
- 7.1.9 a director to be employed by, or receive any remuneration from the charity which is not authorised in this article, provided the remuneration is authorised by court or the Charity Commission and
- 7.1.10 in exceptional cases other payments or benefits but only with the prior written approval of the Charity Commission.

PROVIDED THAT no director shall vote on or be present during the discussion of or voting on any decision to borrow money from or pay rent or make a payment or give any remuneration or a benefit to that director other than the approval of any permitted indemnity insurance or the payment of an indemnity where such payment is to be made to a majority of the directors.

## 8 Alterations to these articles

- 8.1 No alterations to these articles may be made which would cause the company to cease to be a charity in law. Other alterations to these articles may only be made by a special resolution at a general meeting or by a written special resolution. A special resolution will be validly passed at a general meeting if the company gives the members at least 14 clear days' notice of the intention to pass a special resolution at the meeting and at least 75% of those voting at the meeting vote in favour of the resolution. Such a special resolution may be passed on shorter notice if 90% of the total number of members having the right to vote agree to such short notice. Such a resolution may also be passed by written agreement to the resolution in accordance with Article 33.
- 8.2 Alterations may only be made to:
- 8.2.1 the objects; or
  - 8.2.2 to any clause in these articles which directs the application of property on dissolution; or
  - 8.2.3 to any clause in these articles which gives directors any remuneration or benefit, with the Charity Commission's prior written consent where this is required by law.
- 8.3 The company shall inform the Charity Commission and Companies House of any alterations to the articles and all future copies of the issued must contain the alterations.

## 9 Limited liability

- 9.1 The liability of the members is limited.

## 10 Guarantee by members of the company

- 10.1 Each member of the company undertakes that, if the company is wound up while he or she is a member, or within one year after s/he ceases to be a member, s/he will contribute a sum not exceeding £1 to the assets of the company for:-
- 10.1.1 payment of the debts and liabilities of the company contracted before he ceases to be a member;
  - 10.1.2 payment of the costs, charges and expenses of winding up; and
  - 10.1.3 adjustment of the rights of the contributories among themselves.

## 11 Indemnity of directors

- 11.1 To the extent permitted by law from time to time, but without prejudice to any indemnity to which a director or other officer may otherwise be entitled the company may indemnify every director or other officer out of the assets of the company against all costs and liabilities incurred

by him which relate to anything done or omitted or alleged to have been done or omitted by him or her as a director or other officer save that no director may be entitled to be indemnified:

- 11.1.1 for any liability incurred by him or her to the company or any associated company of the company (as defined by the Act for these purposes);
- 11.1.2 for any fine imposed in criminal proceedings;
- 11.1.3 for any sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature howsoever arising;
- 11.1.4 for any liability which he or she has incurred in defending any criminal proceedings in which he is convicted and such conviction has become final;
- 11.1.5 for any liability which he or she has incurred in defending any civil proceedings brought by the company or an associated company in which a final judgment has been given against him; and
- 11.1.6 for any liability which he or she has incurred in connection with any application under the Act in which the court refuses to grant him relief and such refusal has become final.

11.2 To the extent permitted by law from time to time, the company may provide funds to every director or other officer to meet expenditure incurred or to be incurred by him or her in any proceedings (whether civil or criminal) brought by any party which relate to anything done or omitted or alleged to have been done or omitted by him or her as a director or officer, provided that s/he will be obliged to repay such amounts no later than:

- 11.2.1 if s/he is convicted in proceedings, the date when the conviction becomes final; or
- 11.2.2 if judgment is given against him or her in proceedings, the date when the judgment becomes final; or
- 11.2.3 if the court refuses to grant him or her relief on any application under the Act, the date when refusal becomes final.

## 12 Conflicts of interest

- 12.1 To the extent required by law every director shall fully disclose to the Board the circumstances giving rise to any conflict or potential conflict including any direct or indirect interest in a proposed or existing transaction.
- 12.2 Where the duty of a director to avoid a situation in which he or she has or can have a direct or indirect interest or duty that conflicts or possibly may conflict with the interests of the company including a wish or duty to exploit any property, information or opportunity (as specified by section 175(1) of the Companies Act 2006) would otherwise be infringed in relation to a



particular situation, transaction or arrangement, the duty is not infringed if the procedure set out below is followed:

- 12.2.1 the matter in relation to which that duty exists has been proposed to the directors at a meeting of the directors and has been authorised by them; and
- 12.2.2 any requirement as to the quorum of such meeting is met without counting the director in question, or any other interested director, subject to articles [12.3](#) and [12.4](#); and
- 12.2.3 the matter was agreed to without any such director voting, or would have been agreed to if the vote of any such director had not been counted, subject to articles [12.3](#) and [12.4](#).

12.3 In such a conflict of interest situation (including any authorisation of non-disclosure of information), where there are insufficient unconflicted directors present at the meeting to constitute a quorum, the unconflicted directors present shall be deemed to constitute a quorum for the purposes of authorising the conflict under Article [12.2](#) and the manner of dealing with the conflict, provided that<sup>2</sup>:

- 12.3.1 they may only give such authorisation where they are satisfied that the conflicted director or directors will not receive any direct or indirect benefit other than one permitted by these articles; and
- 12.3.2 the total number of directors at the meeting (whether conflicted or unconflicted) is equal to or higher than the quorum of the Board.

12.4 In the event that all of the directors present at the Board meeting are conflicted in respect of a particular conflict of interest situation, the conflicted directors present at a meeting may authorise the conflict and the manner of dealing with the conflict and shall constitute a quorum for the purposes of such authorisation, provided that they satisfy the requirements set out in article [12.3.1](#) and [12.3.2](#) above.

12.5 The duty to deal with conflicts referred to in article [12.2](#) applies in the case of the exploitation of property, information or opportunity even if the company is not taking, or could not take, advantage of the opportunity.

12.6 The directors shall observe the other duties and rules in the Act, and such other rules as the Board adopts, as to the management of conflicts of duty or interest.

12.7 The Board may by resolution passed in the manner set out in this article, authorise a director not to disclose to the Board confidential information relating to a conflict of interest provided that it may not authorise the withholding of information relating to a direct or indirect personal benefit for the director.

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<sup>2</sup> This sub-article is required where there is a possibility of so many of the directors sharing a conflict of interest situation that the quorum cannot be achieved.

- 12.8 Nothing contained in this article shall authorise a director to receive any benefit not permitted elsewhere in these articles.

### 13 Rights of inspection

- 13.1 A copy of the articles and any regulations must be available for inspection by the members of the company at the office or at a single alternative inspection location if applicable. Any member who requests a copy of the articles of association must be sent a copy.

### 14 Register of members

- 14.1 The company must keep at the office a register of members showing their name, postal address and dates of becoming a member and ceasing to be a member.
- 14.2 Subject to any restrictions permitted by the Act, the register is available for inspection by the members of the company without charge and any other person on payment of a fee prescribed by the company, subject to any maximum fee imposed by law. Subject to the Act, where a person seeks to inspect the register, the company must within five working days either comply with the request or apply to the Court for permission not to comply with the request.
- 14.3 The Board may establish classes of associate membership with such description and with such rights and obligations (including without limitation the obligation to pay a subscription) as the Board thinks fit, and may admit and remove such associate members in accordance with regulations made by the Board, provided that an associate member shall not be a member of the company for the purposes of the articles or the Act.
- 14.4 All members must pay the subscriptions (if any) that the Board decides from time to time. The Board may fix differing rates for subscriptions for different members or categories of members.

### 15 Membership

- 15.1 The number of members of the company is unlimited. They remain members until they cease to be members in accordance with these articles.
- 15.2 The subscribers to the memorandum and such other persons who are admitted to membership in accordance with these articles shall be the members of the company.
- 15.3 Membership is open to:-
- 15.3.1 Any individuals aged 18 or over whom the Board decides to admit to membership; and
  - 15.3.2 Any organisations whether incorporated or unincorporated which the Board decides to admit to membership.

The directors may determine criteria for membership but are not obliged to admit any person satisfying such criteria as members and may decline in their absolute discretion any person's application and need not give reasons for such decision.

- 15.4 **[All directors shall automatically become members of the company and their names shall be entered into the company's register of members.]<sup>3</sup>**
- 15.5 A member which is an organisation must, if asked, give a copy of its constitution to the company.
- 15.6 Each member which is an organisation has the right to appoint one representative. At any time by giving notice in writing to the company, that member can cancel the appointment of its representative and appoint another instead. The member must confirm the name of its representative at the company's request. The representative has the right to attend, vote and speak at general meetings of the company and any vote given shall be valid unless prior to the vote the company receives written notice ending the representative's authority.
- 15.7 Members which are organisations stop being members in the same way as individual members stop being members.
- 15.8 The Board may delegate the power to admit members.

## 16 No transfer of membership

- 16.1 None of the rights of any member of the company may be transferred or transmitted to any other person.

## 17 Ending of membership

- 17.1 A member stops being a member of the company if:
- 17.1.1 the member resigns from membership by giving notice in writing to the company; or
  - 17.1.2 membership is ended under article 18; or
  - 17.1.3 the member's subscription (if any) remains unpaid six months after it is due and the Board resolves to end that member's membership; or
  - 17.1.4 the member fails to respond in writing within 60 days of being sent a notice in writing requesting confirmation that they wish to remain a member and the Board resolves to end membership. The notice must contain a warning that membership may be ended; or
  - 17.1.5 **[in the case of a member who is a member by virtue of being a director, membership ceases automatically when that member ceases to be a director [unless prior to that the Board resolves to allow that person to continue to be a member; or]<sup>4</sup>**
  - 17.1.6 the member dies or, in the case of a member organisation, if the organisation ceases to function or is wound up.

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<sup>3</sup> This is optional.

<sup>4</sup> This is optional. If you keep Article 15.4, then this should be kept

## 18 Removal from membership

- 18.1 The Board may terminate membership by giving the member notice in writing.
- 18.2 No later than 28 days after receiving that notice the member can appeal in writing to the company against the termination. If an appeal is received within the time limit, the termination must be considered by the Board or a committee appointed by the Board. The member has the right to be heard at the meeting or may make written representations. The meeting shall either confirm the termination or reinstate the member.

## 19 Annual general meetings <sup>5</sup>

- 19.1 Subject to Article 19.2, the company shall hold an annual general meeting in addition to any other general meeting in every calendar year. The annual general meeting must be specified as such in the notices calling it.
- 19.2 [The first annual general meeting must be held within [18] months of the incorporation of the company.] <sup>6</sup>
- 19.3 [Not more than 15 months may pass between one annual general meeting and the next.]

## 20 Calling of other general meetings

- 20.1 The Board may call a general meeting whenever they wish. Such a meeting must also be called if not less than five per cent of the members of the company request it in accordance with the Act.

## 21 Notice of general meetings

- 21.1 An annual general meeting or a general meeting must be called by giving at least 14 clear days' notice in writing (for the purposes of this article "in writing" includes notice given by website in accordance with Article 61.4). These notices must specify the place, date, time and the general nature of any business and, in the case of a special resolution the exact wording of the resolution must be set out in the notice. The notice must also include a statement informing the members of their right to appoint a proxy to exercise their rights to attend, speak and vote at the meeting. Notice of the meeting must be given to everyone entitled by these articles to receive it and must be given in accordance with these articles. A meeting may be held on shorter notice if it is agreed by not less than 90% of the members entitled to attend and vote at it.
- 21.2 At an annual general meeting the business usually conducted will be the election of directors in place of those retiring, the election of directors appointed to fill a vacancy since the last annual general meeting, and where necessary the appointment of auditors and the fixing of the remuneration of the auditors.

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<sup>5</sup> AGMs are not required by law and this clause may be omitted. If so you will need to make different provisions for elections of directors.

<sup>6</sup> This clause presumes you will hold an AGM. Companies are no longer required to hold AGMs, if you wish to remove this obligation, consequential changes will be needed to these Articles, for example in relation to Director elections and retirement. We recommend that you seek legal advice if you wish to do this.

- 21.3 Where the company's auditors are deemed reappointed in accordance with the Act, the directors shall fix the auditors' remuneration.

## 22 Quorum for general meetings <sup>7</sup>

- 22.1 Business may be transacted at a general meeting only if a quorum of members is present when the meeting begins to deal with its business. A quorum is **[X%]** of the total number of members, or **[number]** persons, whichever is the greater. A person present in person, and any person present who is appointed as proxy of a member in relation to the meeting, may count towards the quorum. No person may count more than once towards the quorum.

## 23 Adjournment if no quorum

- 23.1 If the meeting is called by the demand of members, it must be dissolved if, within half an hour after the appointed starting time, a quorum is not present. If called in any other way, the meeting may be adjourned to another day, time and place as the Board may decide. Articles 26.2 and 26.3 shall apply to such an adjourned meeting.
- 23.2 If at the adjourned meeting a quorum is not present within half an hour after the appointed starting time, the members present will be a quorum.

## 24 Chairman of a general meeting

- 24.1 The Chair (if any) of the Board should normally preside as chairman at every general meeting of the company. If there is no Chair, or if he is not present within 15 minutes after the appointed starting time or is unwilling to take the chair, the Board shall select the chairman of the meeting and in default the members at the meeting shall select a chairman.

## 25 Adjournment of a general meeting

- 25.1 The chairman of the meeting may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place.
- 25.2 No business may be transacted at any adjourned meeting except business left unfinished at the meeting from which the adjournment took place.
- 25.3 When a meeting which was called by the Board is adjourned because of a lack of quorum, the quorum for the adjourned meeting shall be the same as the quorum for a Board meeting.
- 25.4 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for the original meeting. Apart from that, it is not necessary to give any notice of an adjourned meeting nor of the business to be done at it.

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<sup>7</sup> Choose a quorum according to the predicted size of your membership.

## 26 Voting on resolutions

- 26.1 At any general meeting a resolution put to the vote of the meeting is decided by a show of hands by members unless a poll is demanded (before or after the result of the show of hands is declared). A poll may be demanded by the chairman of the meeting or a member who is present save that no poll may be demanded on the election of a chairman of a meeting or on any question of adjournment. Members may vote by proxy.
- 26.2 Members may appoint a proxy who need not be a member of the company. The proxy may be appointed by the member to exercise all or any of the member's rights to attend, speak vote and demand a poll at a meeting of the company.

## 27 Proxies

- 27.1 A person holding a proxy may vote on any resolution.
- 27.2 An instrument appointing a proxy shall be in writing executed by or on behalf of the appointer and shall be in the form set out below or in any usual or common form or in such other form as the directors may approve. If the appointer does not direct the proxy how to vote on a particular resolution, the proxy may vote as he or she thinks fit. The instrument of proxy shall, unless the contrary is stated in such instrument of proxy, be valid for any adjournment of the meeting as well as for the meeting to which it relates. The instrument appointing a proxy and any authority under which it is executed shall be deposited at the office or such other place or person as the notice for the meeting shall specify at least 48 hours prior to the general meeting or adjourned meeting (excluding any day that is not a working day).
- 27.3 A vote given or poll demanded by proxy or by the duly authorised representative of a body corporate shall be valid notwithstanding the previous termination of the authority of the person voting or demanding a poll unless notice of the termination was received by the company at the office or at such other place at which the instrument of proxy was duly deposited at least 48 hours before the commencement of the meeting or adjourned meeting (excluding any day that is not a working day).
- 27.4 A proxy in the following form will be acceptable:

"I .....  
of a member of *[insert organisation's name]*

hereby appoint the Chair of the company or if he is not present the chairman of the Meeting\*

.....  
as my proxy to vote for me on my behalf at the [annual] general meeting of the company to be held on the day of and any adjournment thereof.

Signed..... on the day of ....."

***\*If you do not wish to appoint the Chair or the chairman of the meeting, please delete the reference to the Chair/chairman of the meeting and insert the name and address of your appointee in the space that follows.***

The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll and may contain directions as to how the proxy is to vote on any resolution.

## 28 Postal or electronic voting <sup>8</sup>

28.1 The Board may by a resolution approved by 75% of the current membership of the Board authorise the use of a postal or electronic ballot for [the election of directors] [the passing of any resolution]. In the event that the Board so elects to hold a postal or electronic ballot, it must inform the members that they have the right to choose whether to cast their votes electronically or by post.]

28.2 [If the Board decides to hold a postal or electronic ballot:

28.2.1 members must be informed of the method and time limits for submitting nominations not less than [63] clear days before the relevant general meeting. Such notice may be in any communication including a publication sent to members;

28.2.2 nominations signed by a member must be submitted in writing to the company no later than 42 clear days before the date of the relevant general meeting;

28.2.3 ballot papers or directions for electronic voting shall be sent to all the members of the company no later than 21 clear days before the date of the relevant general meeting;

28.2.4 the ballot papers or directions for electronic voting shall include details of the deadline by which ballots must be returned to the company or electronic votes cast and shall inform the members that they have the choice as to whether to cast their votes electronically or by post;

28.2.5 the counting of the ballots will take place at or prior to the relevant general meeting but after the deadline referred to in 28.2.4 above;

28.2.6 the election of directors shall be carried by a simple majority of the votes cast and in case of equality of votes the Chair shall decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote; and

28.2.7 if the vote of any member voting by post or electronically is uncertain or spoilt, or if doubt arises as to the intention of the member so voting the Chair shall have an absolute discretion to reject the vote.]

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<sup>8</sup> This article may be omitted if not required



## 29 Declaration of chairman is final

- 29.1 Unless a poll is demanded, the chairman of the meeting's declaration that a resolution has been carried by a particular majority or lost on a show of hands and an entry saying so in the minute book is conclusive evidence of the result. The number or proportion of the votes need not be entered in the minute book.
- 29.2 The demand for a poll may be withdrawn.

## 30 When a poll is taken

- 30.1 Polls will be taken whenever the chairman of the meeting says so or whenever 10% or more of those present in person or by proxy require it. Business which is not the subject of a poll may be dealt with before or during the poll.
- 30.2 The chairman of the meeting will decide how a poll will be taken. The result of a poll will be treated as a resolution of the meeting.

## 31 Voting and speaking

- 31.1 Every member including the chairman of the meeting (if he or she is a member) has one vote at general meetings. The chairman of the meeting does not have a casting vote at general meetings.
- 31.2 The auditor or reporting accountant has the right to attend and speak at general meetings on any part of the business of the meeting which concerns him or her as auditor or reporting accountant.
- 31.3 A director shall have the same rights as members to attend and speak at general meetings but shall not be entitled to vote at general meetings, unless the director is also a member.

## 32 Written agreement to resolution

- 32.1 Except in the case of a resolution to remove a director or the auditors before the expiry of their term, members may pass a valid resolution without a meeting being held. But for the resolution to be valid:
- 32.1.1 it must be in writing;
  - 32.1.2 in the case of a special resolution it must be stated on the resolution that it is a special resolution, and it must be signed by at least 75% of all those members (or their duly authorised representatives) entitled to receive notice of and to attend general meetings;
  - 32.1.3 in the case of an ordinary resolution it must be signed by a majority of all those members (or their duly authorised representatives) entitled to receive notice of and to attend general meetings;

32.1.4 it may consist of two or more documents in identical form signed by members; and

32.1.5 the passing of the resolution must comply with any other requirements of the law from time to time.

32.2 A written resolution is passed when the required majority of eligible members have signified their agreement to it.

32.3 A written resolution passed in accordance with this Article 33 has effect as if passed by the company in general meeting.

### 33 Management by the Board

33.1 The business of the company is managed by the Board. They may pay all the expenses of promoting and registering the company. They may use all powers of the company which are not, by the Act or by these articles, required to be used by a general meeting of the company.

### 34 Payment of reasonable expenses to directors

34.1 The directors may be paid reasonable out-of-pocket expenses that they have properly incurred in connection with the business of the company but shall not be paid any other remuneration except as permitted by law or by these articles.

### 35 The keeping of minutes

35.1 The Board must have minutes entered in the minute books:-

35.1.1 of all appointments of officers by the Board;

35.1.2 of the names of the directors present at each of its meetings and of any committee of the Board; and

35.1.3 of all resolutions and proceedings at all meetings of:

(a) The members;

(b) The Board; and

(c) Committees of the Board.

### 36 The make-up of the Board

36.1 The first Board consists of those people named in Form IN01 filed under Section 9 of the Companies Act 2006 and sent to the Registrar of Companies, and those people subsequently appointed by them at any time prior to the first annual general meeting. They hold office until the first annual general meeting at which they may be elected. After that, the Board consists of:-

36.1.1 not fewer than **[three]** and no more than **[maximum number]** <sup>9</sup> persons elected by members of the company; and

36.1.2 not more than **[number]** additional individuals co-opted at any time by the Board in accordance with Article 41; and

36.2 no person under the age of 16 may be appointed as a director.

36.3 Where there are no more candidates than vacant posts the candidates shall be [declared elected at the annual general meeting without the necessity of a ballot] or

**[declared elected at the annual general meeting without the necessity of a ballot provided that a majority of the Board has approved the appointment of any such candidate]** or

**[elected only if he receives more than 50 per cent. of the votes cast].**

## 37 Retirement of members of the Board <sup>10</sup>

37.1 At the **[third]** annual general meeting after his/her last election or appointment a director (other than any co-opted director), shall retire. He or she shall be eligible for re-election or re-appointment provided that no director may continue to serve after **[six]** years in office without a period of at least **[a year]** out of office **[unless on the recommendation of the Board the director is elected for [one] further consecutive term of a maximum of [three] years]** <sup>11</sup>. **[No director may serve for more than [nine] years in total.]**

For the purposes of this Article a “year” shall mean a complete period of service between two annual general meetings.

37.2 At the second and third annual general meetings of the company one-third of the directors (other than any co-opted directors) shall retire. In the absence of agreement those to retire shall be selected by lot but shall be entitled to stand for re-election or be re-appointed.<sup>12</sup>

37.3 [For the purposes of calculating whether a director is due to retire under this article, account shall not be taken of any time served by the director as a trustee of [insert name of unincorporated association].] <sup>13</sup>

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<sup>9</sup> Choose a maximum and minimum number of directors according to the size of your proposed Board. The minimum number should not be lower than three.

<sup>10</sup> It is recommended good practice that directors be required to retire by rotation and that you impose a maximum term of office for directors. Many charities opt for two or three year terms with a six to eight or nine year maximum term in office.

<sup>11</sup> This sentence in bold is optional.

<sup>12</sup> This Article ‘kick starts’ the rotation, to ensure that where directors are all elected at the same time, they do not all retire at the same time.

<sup>13</sup> This Article need only be included if you are setting up a company to take over the business of an unincorporated association or trust.

**38 [Where the charity does not hold an annual general meeting in any year and the trustees would have been due to retire in that year, the trustee shall retire at the end of the first Board meeting in the following year and election shall be [by Board resolution.<sup>14</sup>] [Postal or electronic ballot]<sup>15</sup>**

### **39 Change in composition of the Board**

**39.1** The make-up and number of the Board may be varied by amendment to these articles but at no time may the number of the Board be reduced to below three.

### **40 Notification of change of members of the Board to the Registrar of Companies**

**40.1** All appointments, retirements or removals of directors and the company secretary (if appointed) must be notified to the Registrar of Companies.

### **41 Filling vacancies in the Board and co-option**

**41.1** The Board can appoint anyone as a director to fill a vacancy in the membership of the Board. They will hold office until the next annual general meeting where they may be elected by the members. For the purposes of this article the Board shall decide how many vacancies there are, subject to the maximum and minimum numbers given in Article 36.1.1.

**41.2** The Board may also co-opt up to **[number]**<sup>16</sup> additional persons onto the Board at any time in excess of the maximum number of directors set out in Article 36.1.1 who shall hold office until the next annual general meeting unless they cease to be a director prior to that by virtue of Article 42 or 43. A co-opted director may be removed by the Board at any time and may not be co-opted more than **[nine]**<sup>17</sup> times. In the event that a co-opted director goes on to be elected by the members, for the purposes of the maximum terms of office referred to in Article 38 his or her initial appointment shall be the date on which s/he was first co-opted.

**41.3** Such appointees or co-optees may vote at meetings of the Board.

### **42 Ending of Board Membership**

**42.1** A director ceases to hold office if he or she:-

**42.1.1** becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or

**42.1.2** becomes barred from membership of the Board because of any order made under the Act, the company directors Disqualification Act 1986 (or any regulations made under it) or the Charities Act 2011; or

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<sup>14</sup> Omit if you hold a general meeting each year. If you are not going to include provisions requiring the Charity to hold an AGM (Article 19), check the rest of the articles carefully as the implications of this Article (38) have not yet been thought through. For example, how will elections take place

<sup>15</sup> Included only if you have included provision for postal or electronic vote.

<sup>16</sup> Ensure that the number inserted is consistent with the number used in Article 35.1.2.

<sup>17</sup> Whilst this can be any number you choose, it is recommended that the maximum number of co-options ties in with any maximum term for elected directors.

- 42.1.3 is considered by the Board to have become incapable whether mentally or physically of managing his or her own affairs and a majority of the other directors resolve that s/he must cease to hold office; or
- 42.1.4 resigns the office by notice in writing to the company but only if at least three directors will remain in office when the resignation takes effect; or
- 42.1.5 is absent from **[number] [consecutive]** meetings of the directors **[and is asked by [a majority] of the other directors to resign] [and it is resolved by [a majority] of the other directors to remove him or her]<sup>18</sup>**; or
- 42.1.6 breaches his or her duties under the Act and in particular the duties for the proper management of conflicts of interest and the Board resolves to remove him or her by a resolution by 75% of the other directors present and voting at a meeting and that prior to such a meeting the director in question has been given written notice of the intention to propose such a resolution at the meeting; or
- 42.1.7 is removed from office under Article 43; or
- 42.1.8 is a co-opted director and is removed by the Board; or
- 42.1.9 **[is removed from office by a resolution of at least 75% of the other directors present and voting at a Board meeting at which at least half of the serving directors are present provided that prior to such a meeting the director in question has been given written notice of the intention to propose such a resolution at the meeting];** or
- 42.1.10 dies <sup>19</sup>

### 43 Removal of a director by a general meeting

Five per cent of the members may require the Board to call a general meeting by following the procedure set out in the Act. They may propose a resolution to remove a director before the end of his or her period of office at that meeting, in accordance with the procedure set out in the Act.

### 44 Meetings of the Board

- 44.1 The Board may meet, adjourn and run its meetings as it wishes, subject to the rest of these articles.
- 44.2 Questions arising at any meeting must be decided by a majority of votes. Every director has one vote including the Chair. If the votes are equal, the Chair has a second or casting vote.
- 44.3 The company, if requested by the Chair or **[a director] [any three directors]<sup>20</sup>**, must summon a meeting of the Board.

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<sup>18</sup> This Article is optional but recommended. Adjust the wording in brackets according to your preferences if you wish to include it.

<sup>19</sup> This Article is optional but recommended.

<sup>20</sup> Select as appropriate for your organisation.

44.4 Notice of a Board meeting need not be given to any director who is out of the United Kingdom.

44.5 Meetings may be held in person, by telephone, or by suitable electronic means agreed by the Board in which all participants may communicate with all other participants.

## 45 Officers of the Board

45.1 The Board may elect or remove the Chair or any other officers that it wishes. Officers shall be appointed from among the directors.

## 46 Quorum for the Board<sup>21</sup>

46.1 The quorum necessary for business to be done at a Board meeting is a **[third]** of the directors subject to a minimum of **[three]** and where **[one third]** does not produce a whole number the quorum shall be the next **[higher/lower]** whole number. A director shall not be counted in the quorum at a meeting in relation to a resolution on which he is not entitled to vote. This is subject to Article 12.

## 47 Board's right to act despite vacancies on the Board

47.1 The Board may act despite any vacancy on the Board, but if the number of directors falls below the quorum, it may act only to summon a general meeting of the company or to appoint further directors.

## 48 A resolution may be approved by signature without a meeting

48.1 A resolution in writing signed by all of the directors or any committee is as valid as if it had been passed at a properly held meeting of the Board or committee. The resolution may consist of several documents in the same form signed by one or more members of the Board or committee.

## 49 Validity of acts done at meetings

49.1 If it is discovered that there was some defect in the procedure at a meeting or the appointment of a director or that he was disqualified, anything done before the discovery at any meeting of the Board is as valid as if there were no defect or disqualification.

## 50 Delegation by the Board

50.1 The Board may delegate the administration of any of its powers to **[individual directors or]**<sup>22</sup> committees of directors and any such **[director or]** committee must conform to any rules that the Board imposes on it.

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<sup>21</sup> Select a quorum that is suitable for the number of proposed directors on your board. Using a fraction or percentage of the total board, subject to a minimum number allows the board to fluctuate in size.

<sup>22</sup> Include the wording in both sets of brackets

50.2 The Board may co-opt any person or people who are not directors to serve on the committee, but any such committee must have at least [number] director[s] on it at all times.

50.3 All acts and proceedings of the committee or directors must be reported to the Board as soon as possible.

## 51 Chair of committees

51.1 A committee may elect a chair of its meetings if the Board does not nominate one.

51.2 If at any meeting the committee's chair is not present within 10 minutes after the appointed starting time, the members present may choose one of their number to be chair of the meeting.

## 52 Meetings of committees

52.1 A committee may meet and adjourn whenever it chooses.

52.2 Questions at the meeting must be decided by a majority of votes of the members present. In the case of an equality of votes, the chairman of the committee meeting shall have a casting vote.

52.3 A committee must have minutes entered in minute books.

52.4 If it is discovered that there was some defect in the procedure at a meeting of a committee, or in the appointment of a committee member, or that he was disqualified, anything done before such discovery at any meeting of the committee is as valid as if there were no defect or disqualification.

## 53 Appointment and removal of the company secretary

53.1 The Board may but, subject to the Act, need not appoint a company secretary and may decide his or her period of office, pay and any conditions of service, and may remove him or her from office.

## 54 Honorary officer

54.1 The Board may appoint or remove any [member] [person]<sup>23</sup> for such terms as they think fit as the President, Vice President or Patron of the company. Such posts are honorary only and carry no vote or other rights.

## 55 Actions of directors and company secretary<sup>24</sup>

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<sup>23</sup> Use 'member' if you will only recruit honorary officers from within your membership, use 'person' if such an officer could be someone other than a member.

<sup>24</sup> This Article can be deleted if you do not intend to have a company secretary.

- 55.1 The Act says that some actions must or may be taken both by a director and by the company secretary. If one person is both a director and company secretary, that one person may not act in the capacity of both director and company secretary for any business that requires the action of both a director and the company Secretary.

## 56 Proper accounts must be kept

- 56.1 Accounts shall be prepared in accordance with the Act and the Charities Act.

## 57 Books must be kept at the office

- 57.1 The accounts must be kept at the office or at other places decided by the Board. The accounts must always be open to inspection by directors.

## 58 Inspection of books

- 58.1 The directors must decide whether, how far, when, where and under what rules the accounts may be inspected by members who are not directors. A member who is not a director may only inspect the accounts or a document of the company if the right is given by law or authorised by the directors or a general meeting.

## 59 Accounts and returns

- 59.1 The Board must, for each financial year, send a copy of its annual accounts and reports (or summary financial statements where appropriate) to every person who is entitled to receive notice of general meetings.
- 59.2 Copies need not be sent to a person for whom the company does not have a current address (as defined in the Act).
- 59.3 The deadline for sending out the accounts and reports (or summary financial statements) is as follows:
- 59.3.1 the deadline for filing the company's accounts and reports with Companies House, as prescribed by the Act ; or
  - 59.3.2 if earlier, the date on which the company actually files the accounts and reports (or summary financial statements) with Companies House.
- 59.4 To the extent required by law, the Board must file the accounts and reports (or summary financial statements) with Companies House and with the Charity Commission within any deadlines specified by law or by the Charity Commission.
- 59.5 The Board must file with Companies House and the Charity Commission all annual returns and other documents that are required to be filed, within any deadlines specified by law or by the Charity Commission.



## 60 Appointment of reporting accountants or auditors

- 60.1 The company must appoint properly qualified reporting accountants or properly qualified auditors if the level of the company's income or assets from time to time makes this a legal requirement.

## 61 Service of notices

- 61.1 The company may give notices, accounts or other documents to any member either:
- 61.1.1 personally; or
  - 61.1.2 by delivering them or sending them by ordinary post to the member's registered address; or
  - 61.1.3 if the member has provided the company with a fax number, by sending them by fax to that member. This is subject to the member having consented to receipt of the notice, documents or accounts in this way, where this is a legal requirement; or
  - 61.1.4 if the member has provided the company with an email address, by sending them by email to that address. This is subject to the member having consented to receipt of the notice, documents or accounts in this way, where this is a legal requirement; or
  - 61.1.5 in accordance with the provisions for communication by website set out below.

If the member lacks a registered postal address within the United Kingdom, the notice, accounts or documents may be sent to any postal address within the United Kingdom which s/he has given the company for that purpose or in accordance with article [61.1.1](#), [61.1.3](#), [61.1.4](#) or [61.1.5](#) above. **[However, a member without a registered postal address in the United Kingdom who has not provided a postal address in the United Kingdom for that purpose shall not be entitled to receive any notice, accounts or other documents served by the company, irrespective of whether they have consented to receiving notices by email or fax]<sup>25</sup>.**

If a notice, accounts or other documents are sent by post, they will be treated as having been served by properly addressing, pre-paying and posting a sealed envelope containing them. If sent by fax or email they will be treated as properly sent if the company receives no indication that they have not been received.

- 61.2 If sent by post in accordance with this article, the notice, accounts or other documents will be treated as having been received 48 hours after the envelope containing them was posted if posted by first class post and 72 hours after posting if posted by second class post. If sent by fax or email, the notice, accounts or other documents will be treated as having been received 24 hours after having been properly sent.

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<sup>25</sup> Include this restriction if you do not want to be forced to use electronic communications. If you delete this sentence, you will need to amend [63.1.1](#) to add "and have not consented to receiving notice by email or fax" after the words "United Kingdom" and before the closed bracket.

- 61.3 The company may assume that any fax number or email address given to it by a member remains valid unless the member informs the company that it is not.
- 61.4 Where a member has informed the company in writing of his or her consent, or has given deemed consent in accordance with the Act, to receive notices, accounts or other documents from the company by means of a website, such information will be validly given if the company sends that member a notification informing him that the documents forming part of the notice, the accounts or other documents, may be viewed on a specified website. The notification must provide the website address, and the place on the website where the information may be accessed and an explanation of how it may be accessed. If the information relates to a general meeting the notification must state that it concerns a notice of a general meeting and give the place, date and time of the meeting. The notice must be available on the website throughout the notice period until the end of the meeting in question <sup>26</sup>.

## 62 Accidental omission of notice

- 62.1 Sometimes a person entitled to receive a notice of a meeting does not receive it because of accidental omission or some other similar reason. This does not invalidate the proceedings of that meeting.

## 63 Who is entitled to notice of general meetings

- 63.1 Notice of every general meeting must be given to:-
- 63.1.1 every member (except those members who lack a registered address within the United Kingdom and have not given the company a postal address for notices within the United Kingdom);
  - 63.1.2 the reporting accountants or auditor of the company;
  - 63.1.3 all directors;
  - 63.1.4 **[any person having the right to nominate a director]<sup>27</sup>** ; and
  - 63.1.5 any President or other honorary position
- 63.2 No one else is entitled to receive notice of general meetings.

## 64 Regulations

- 64.1 The **[company in general meeting] [Board]<sup>28</sup>** may make such regulations, by-laws or standing orders as it sees fit. These must not be inconsistent with the articles or such that they would otherwise need to be made by a special resolution. No regulation may be made which invalidates any prior act of the Board which would otherwise have been valid.

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<sup>26</sup> If you do not want to use websites for notices and other documents, delete this article. Also delete Article 61.1.5 and the "or" at the end of 61.1.4.

<sup>27</sup> Delete unless a non-member or any other third party has a right to appoint a director.

<sup>28</sup> Choose 'Board' if you wish the directors to create and amend regulations (recommended), choose 'Trust in general meeting' if you wish to leave this responsibility with the members.

## 65 Winding-up of the company

- 65.1 A general meeting may decide at any time to dissolve the company. If the company is wound up or dissolved, and there remains any property after all debts and liabilities have been met, the property must be given or transferred to some other charitable institution or institutions. This other institution(s) must have objects which are the same as or similar to those of the company.
- 65.2 The institution or institutions will be chosen by the directors of the company at or before the time when the company is wound-up or dissolved.

## APPENDIX 3: Suggested objects for an urban/rural regeneration body

**The suggested objects for an urban/rural regeneration body are as follows (NB you must select at least 3 from subclauses (i) – (xiii)) (You should also consider the Charity Commission guidance “RR2 Promotion of Urban and Rural Regeneration”):**

The promotion for the public benefit of urban/rural regeneration in areas of social and economic deprivation (and in particular in [specify area]) by all or any of the following means:

- i) the relief of financial hardship;
- ii) the relief of unemployment;
- iii) the advancement of education, training or retraining, particularly among unemployed people, and providing unemployed people with work experience;
- iv) the provision of financial assistance, technical assistance, or business advice or consultancy in order to provide training and employment opportunities for unemployed people in cases of financial or other charitable need through help:
  - (i) in setting up their own business, or
  - (ii) to existing businesses;
- v) the creation of training and employment opportunities by the provision of workspace, buildings and/or land for use on favourable terms;
- vi) the provision of housing for those who are in conditions of need and the improvement of housing in the public sector or in charitable ownership (provided that such power shall not extend to relieving any local authorities or other bodies of a statutory duty to provide or improve housing);
- vii) the maintenance, improvement or provision of public amenities;
- viii) the preservation of buildings or sites of historic or architectural importance;
- ix) the provision or assistance in the provision of recreational facilities for the public at large and/or those who, by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances, have need of such facilities;
- x) the protection or conservation of the environment
- xi) the provision of public health facilities and childcare;
- xii) the promotion of public safety and prevention of crime; and
- xiii) such other means as may from time to time be determined, subject to the directors having satisfied themselves that such other means can reasonably be regarded as being in direct furtherance of the main charitable purpose of urban or rural regeneration (within the meaning of the Charities Act 2006 or any statutory modification or re-enactment which is in force at the time).

OBJECT	ACCEPTABLE ACTIVITIES	UNACCEPTABLE ACTIVITIES	MAIN ISSUES
(i) the relief of financial hardship;	Advice on benefits entitlements; supply of e.g. donated furniture to people in need	Financial support for someone with substantial capital	
(ii) the relief of unemployment;	Training; counselling; work experience; work placement programmes that help people into jobs	Activities that primarily give a private benefit the employers. Trading activities where the training/work experience element is a by-product rather than the core element	
(iii) the advancement of education, training or retraining, particularly among unemployed people, and providing unemployed people with work experience;	As above	As above	
(iv) the provision of financial assistance, technical assistance, or business advice or consultancy in order to provide training and employment opportunities for unemployed people in cases of financial or other charitable need through help: <ul style="list-style-type: none"> <li>○ In setting up their own business</li> <li>○ To existing business</li> </ul>	Help for unemployed people in setting up their businesses providing this is directed towards relief of poverty. Assistance to existing businesses (either direct grant or assistance in applying for grants or other forms of help) if it is to secure training or employment for unemployed people and if the assistance is not disproportionate to what is achieved in terms of those objectives	Help for a career move to self-employed status for someone who is already in reasonable paid employment. Assistance to a well established business where increased profitability rather than increased local employment is the outcome.	
(v) the creation of training and employment opportunities by the provision of workspace, buildings and/or land for use on favourable terms;	Workspace project – but only if the link with provision of training/employment for unemployed people is sufficiently strong	A project which is no different in its aims and impact from a normal commercial property development	The balance of private as compared with public benefit is particularly critical. Any private benefit must be a necessary incidental outcome of pursuing the charitable objective

OBJECT	ACCEPTABLE ACTIVITIES	UNACCEPTABLE ACTIVITIES	MAIN ISSUES
(vi) the provision of housing for those who are in conditions of need and the improvement of housing in the public sector or in charitable ownership (provided that such power shall not extend to relieving any local authorities or other bodies of a statutory duty to provide or improve it );	Provision of low-cost rented housing for people on low incomes – but only if it is clear that this will contribute significantly to the regeneration of the area. Also, assistance to other bodies (e.g. housing associations) to enable them to provide such housing	Rehousing people who have the ability to secure housing without the charity's assistance	
(vii) the maintenance, improvement or provision of public amenities;	Improvement of transport facilities, libraries, museums, public halls, parks, street lighting, CCTV. Possibly provision of mains water, or electricity/gas supplies to outlying areas to encourage investment		The community anchor organisation must not simply relieve a local authority or other public body of a statutory duty; also issues of private benefit may be a problem if the amenity is not available to the poor because of cost.
(viii) the preservation of buildings or sites of historic or architectural importance;	Restoration of listed buildings		Again, issue of benefit to owner of building is critical; extent of public access to the building is relevant
(ix) the protection or conservation of the environment	Reclamation of derelict land as part of a regeneration project		The benefit to the landowner must be clearly outweighed by the public benefit
(x) the provision of public health facilities and childcare;	This would need to be linked with the needs of the regeneration programme		
(xii) the promotion of public safety and prevention of crime; and	Neighbourhood watch schemes; measures taken to reduce the incidence of vandalism etc.		

OBJECT	ACCEPTABLE ACTIVITIES	UNACCEPTABLE ACTIVITIES	MAIN ISSUES
(xiii) such other means as may from time to time be determined, subject to the directors having satisfied themselves that such other means can reasonably be regarded as being in direct furtherance of the main charitable purpose of rural and urban regeneration charitable purpose (within the meaning of the statutory provisions referred to above).			Any activities not falling within paragraphs (i) to (xiii) should be explored fully with your legal advisers or the Charity Commission. If a particular object cannot reasonably be regarded as advancing the overriding charitable purpose of urban/rural regeneration, but furthers another charitable purpose under the Charities Act 2006, it may be included as an independent paragraph within the objects clause

## APPENDIX 4: Guidance notes on promoting your work

### Introduction & aims

It is essential for an organisation to promote itself and its work to partners, funders and the local community. If you aim to obtain, or already have charitable status, it is important that you show your understanding of the difference between a charitable and a commercial trading activity in your promotional material (Ref: Module 2, section 2.1).

This understanding is fundamental for everyone involved in the running of a community anchor organisation with charitable status, particularly the company directors. It will ensure that they are seen to be fulfilling their duties as directors of a charity and, in particular, making it clear that there is no intention of the charitable company directly carrying on activities which fall outside the charitable field.

It will ensure that they fulfil their duties as the directors of a registered charity. This note offers guidance on the main points to cover in your promotional material.

What promotional material are we talking about?

This guidance applies particularly to development plans for your community and the business plan for your community anchor organisation. It is recommended that you consider whether other promotional material (brochures, websites etc) should also show your understanding of the difference between a charitable and a commercial trading activity.

### What do we mean by a development plan?

Many community anchor organisations act as the focal point for developing a long term, strategic plan for the future of their community (geographical or of interest). Such a plan will often contain:

- An introduction to the community
- A profile of the current situation
- A vision for the future
- The main themes linking the present with the future (housing, employment etc)
- The projects and actions that will help achieve the vision.
- The organisation that will lead the work (e.g. the community anchor organisation)
- The partners who will deliver the plan.

### What do we mean by a business plan?

This is the document that sets out the operational side of the community anchor organisation. It will explain exactly what the community anchor organisation will be doing over a defined time period (often three years). It sets out exactly what role the community anchor organisation will play in delivering the development plan and which projects it will pursue.



### Key issues to reflect in promotional material

- **Charitable activity vs. commercial trading activity:** It is important to show your understanding of the difference between a charitable and a commercial trading activity. It is useful to indicate that you are committed to the ongoing training of company directors and staff in this area.
- **Establishing trading subsidiaries** (Ref Module 1, section 1.3): Companies limited by guarantee with charitable status can establish a wholly owned subsidiary company to undertake 'commercial activities' falling outside of its charitable status. It is useful to indicate that you understand that a separate structure may be required to undertake projects falling into this category.
- **Development plan vs. business plan:** it is important to acknowledge the distinction between these plans in each respective document. This must be reflected in the wording of the documents. This will ensure that a reader does not think, for example, that the community anchor organisation is going to do everything detailed in the development plan. The business plan can then clearly set out the actual work the community anchor organisation plans to undertake in any given year.
- **Establishing the status of a project:** It may take some feasibility work on a project to judge whether or not it can be carried out within your charitable status. It is acceptable to do such initial feasibility work. When it comes to a point where the project needs serious resources (human or financial), or requires you to enter into a contract or legal agreement, you must make a judgement on whether or not it is appropriate to continue the work under your charitable status.

## APPENDIX 5: Model governance documentation

### Introduction & aims

It is essential for a community anchor organisation to develop and maintain useful and accurate governance documentation to ensure that it is working effectively. Part 1 of this appendix contains a list of possible governance documentation that you should consider developing. Part 2 contains a list of suggested induction materials for new directors. Part 3 provides a template for the first Board meeting's minutes which can be used to provide a checklist of the types of issues that should be considered once the company has been established. Part 4 contains detail on the procedures required for conflicts of interest to be dealt with appropriately.

1. List of possible governance documents
2. Suggested induction materials for the directors
3. Draft for first Board meeting minutes
4. Conflicts of Interest
  - (a) Introduction
  - (b) Policy and Appendix A on connected persons
  - (c) Declaration of interests form
  - (d) Example resolution to approve actual or potential conflicts

## 1. List of useful governance documents

- Model letter of appointment for directors
- Trustee declaration of eligibility
- Induction procedures
- Actions for new trustees
- Trustee job descriptions
- Chair job description
- Company secretary job description
- Treasurer job description
- Directors' code of conduct Register of interests
- Conflict of interest policy

Any delegation agreed e.g. to committee, chair, etc and list of matters reserved to the Board

- Skills audit form
- Annual cycle of business

## 2. Suggested induction materials for directors

Good practice dictates that every director in every organisation should receive a thorough, well administered induction before assuming responsibility. Induction offers a unique director development opportunity. A good induction prepares the new director to be effective, supplying him or her with key information about the organisation and about the responsibilities of directorship and trusteeship. Set out below are suggestions on the information to be supplied to each new director.

### 1. Constitutional documents

- 1.1 Summary of key constitutional provisions.
- 1.2 Memorandum and articles of association.
- 1.3 Any standing orders, regulations or by-laws.

### 2. Governance

- 2.1 Copies of all governance policies. These will include:
  - 2.1.1 Job descriptions for directors, chair, secretary, treasurer and CEO.
  - 2.1.2 Directors' code of conduct including forms for declaration of interests and the conflict of interest policy.
  - 2.1.3 Details of any committees, sub-committees and working groups and their terms of reference.
  - 2.1.4 Detail of any other delegation e.g. powers to officers.
  - 2.1.5 List of matters reserved to the Board and annual Board cycle or calendar.
- 2.2 Suggested actions for new directors.
  - 2.2.1 Minutes and papers of recent Board and committee meetings (possibly the last three meetings).

### 3. Guidance

- 3.1 Charity Commission leaflets in particular:
  - 3.1.1 CC3 The Essential Trustee: what you need to know
  - 3.1.2 CC10 Hallmarks of an Effective Charity.

These can be printed off the Charity Commission's website.

3.2 Good Governance: A Code for the Voluntary and Community Sector [www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)

3.3 HMRC's guidance on the "Fit and Proper Persons Test"

#### **4. Finance**

4.1 Current strategic plan, cash flow projection and budget.

4.2 Most recent management accounts.

4.3 Last three years' accounts and annual reports.

4.4 Financial policies

#### **5. Organisation**

5.1 Brief summary of the history of the organisation and mission statement.

5.2 Copies of key publications, research documents and other background material.

5.3 Organisational chart and full details and job descriptions for key staff and details of other staff.

5.4 Contact details for all other directors, biography and results of last skills' audit.

5.5 Copy of last Risk Management Report and Legal Risk and Compliance Review by solicitors.

5.6 Other document explaining the organisation's history, aims and current activities.

#### **6. Administration**

6.1 Expense claims forms and information.

6.2 List of upcoming events including dates of Board and sub-committee meetings.

6.3 Details of honorary presidents, patrons, etc (if applicable).

6.4 Details of training and sources of support and further information available to directors.

6.5 Agenda for directors' induction programme or director support arrangements (for example, nominated "buddy").

6.6 Procedures for Board meetings e.g. when papers are sent out, location, duration, how to raise issues for consideration.

### 3. Draft first Board meeting minutes

These minutes can be used as a checklist to help ensure key issues are dealt with at the first board meeting. Further detail can be inserted to deal with practical issues relevant to the directors.

*[insert company's name]*

**Minutes of a Meeting of the Directors held at [ ] on [•] 2015 at [•] am/pm (the "Meeting")**

**PRESENT:** [•] (in the Chair)  
[•]  
[•]

**IN ATTENDANCE:** [•]  
[•]

#### 1. Quorum

1.1 [•] took the Chair and declared that a quorum was present.

#### 2. Notice and apologies

2.1 [It was noted that notice of the meeting had been properly given in accordance with the articles of association.]

#### 3. Report of incorporation of the company and the appointment of first directors.

#### 4. Appointment of officers and any further directors.

4.1 The Chair laid the register of interests completed by each director before the meeting and each director confirmed that he or she had no other interests or involvement in the assets of the company that might give rise to a conflict and that so far as he or she was aware no person or organisation connected with him or her had any such conflicts which had not been declared.

#### 4.2 The Chair proposed:

4.2.1 That in respect of the conflicts declared in respect of directors [A], [B], [C] that since the conflicts were insubstantial they be approved on the basis that these directors would remind any meeting of the Board or its committee of the nature of the conflict at any meeting when an issue related to it is on the agenda or arose during the course of the meeting. The resolution was duly passed with [A], [B], [C] abstaining from voting.

4.2.2 That in respect of directors [D], [E], [F] that as the conflicts were more significant they should be approved on the basis that those directors would remind any meeting of the nature of the conflict and would withdraw from that part of any meeting relation to the issue and to take no part in the discussion. The resolution was duly passed with [D], [E], [F] abstaining from voting.

4.2.3 That in respect of director **[G]** the conflicts listed **[1] – [4]** should be dealt with as for directors **[A], [B], [C]**, that conflicts listed **[5]-[9]** would be dealt with as for directors **[D], [E], [F]** but that for the conflict listed **[10]** was of such significance that in addition to withdrawing from the room, he or she would not be provided with any minutes or papers relating to the issue and that the director should be asked to confirm that no information obtained as a director of the Trust would be disclosed to the other **[body]/[person]** on the basis that the Board accepted that any information the director obtained from the other **[body]/[person]** would not be disclosed to the Trust.

5. Appointment of auditors.
6. Appointment of solicitors.
7. **[Appointment of company secretary]<sup>1</sup>.**
8. Approved admission of any new members to the company.
9. Confirm the registered office of the organisation as **[insert address]**.
10. Appoint bankers and approve terms of resolution as to the signing of cheques.
11. **[Authorise the entering into a deed to transfer the assets and liabilities from the unincorporated charity.]<sup>2</sup>**
12. Instruct secretary **[or other person]** to:
  - 12.1 ensure the company's details appear on fundraising material, email, and website and on all stationery;
  - 12.2 Ensure all members' details are entered in a register of members.
  - 12.3 To arrange to display the company's name outside address of registered office;
  - 12.4 to record any change of membership, directorship [or company secretary] in the company Registers;
13. Ensure all directors had completed declarations and/or that recommended checks) had been undertaken.
14. Ensure that a Trustee Induction Pack outlining the duties and responsibilities of trustees and directors is distributed to all directors.
15. Decide when the company's financial year will end and instruct filing of form AA01 at Companies House.
16. Consider and adopt any rules, policies, and procedures including setting up any sub- committees and any delegated powers for the Chair or other officers.
17. Any other business (e.g. approve budget/business plan, complete VAT registration, approve staff contracts, take out insurance etc)

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1 Appointing a company secretary is now a legal requirement.

2 Only necessary if you have set up the company to replace an existing unincorporated association or trust.

## 4. Conflicts of interest

### 4(a) Introduction

#### 1. Constitutional power to manage conflicts of interest

The articles of association include in them a provision to allow the Board to comply with the duties to avoid conflicts of interest under the Act.

#### 2. What is a conflict of interest?

The Act places a series of what are known as “general duties” on all directors. Three of these duties deal explicitly with conflict of interest situations.

A director must avoid situations in which he or she has or can have a direct or indirect conflict of interest that conflicts or possibly may conflict with the interests of the company (section 175 of the Act). Because avoiding conflicts is not always possible where they occur, they must be managed.

A director must not accept a benefit from a third party given by reason of him or her being a director or because he or she does or omits to do something as a director (Section 176 of the Act).

A director must declare the nature and extent of the interest where s/he is directly or indirectly interested in any proposed transactional arrangement with the company (section 177 of the Act).

It is important when considering conflicts of interest to remember that the duties do not simply apply to financial benefit or pecuniary interests, but apply to any form of duty, transaction, interest, situation, or receipt of information which creates a conflict.

#### 3. Charity law

The Charity Commission is particularly concerned about direct or indirect financial benefit and sees conflicts of interest as most commonly arising:

- Where a trustee could obtain a direct financial benefit whether it is a payment for services or some other benefit, for example, as a beneficiary receiving services;
- Where a trustee might obtain an indirect financial benefit, for example, a close relative or partner or spouse works for the charity or receives financial assistance or a business colleague may provide a service to the charity;
- Where a trustee’s loyalty to a charity conflicts with their loyalty to another organisation such as their employer or another charity they support or are a trustee of.

Trustees have a legal duty to make decisions on behalf of their charity objectively and free from bias which means that they need to avoid putting themselves in a position where they have a conflict of duty. In practice, however, this is not possible and therefore the conflicts of interest need to be managed.



There can be situations where a conflict is so substantial that it cannot be managed and the trustee will have to consider giving up their trusteeship or eliminating the source of the conflicts of interest.

Examples of such a serious conflict would be where the charity is in significant dispute with another organisation and a trustee is a member of that organisation's governing body or where the interests of one or more trustees is regularly in competition with those of the charity or a large proportion of trustees have interests which conflict.

Here the Commission suggests that taking independent expert advice or advice from the Commission or seeking the resignation of the relevant trustees and appointing unconflicted trustees.

### 4. Connected parties

A conflict may arise not just because of the interests or duties of the director himself but because of "a connected party". The term "connected party" is broadly interpreted and includes people who share an economic interest such as business partners, a company or trust to which the trustee is connected or has a significant interest (over 20%) and family members which includes anyone they live with, stepchildren and stepchildren of partners, as well as parents.

### 5. Charities and insignificant conflicts of interest

The Act says that an interest does not have to be declared if it could not reasonably be seen as giving rise to a conflict. However, in the main, charities prefer to adopt a policy of requiring complete transparency. Declaring all interests, even if they might appear trivial, is the safest method of operation.

### 6. Types of conflict of interest

In dealing with the management of conflicts it is vital to identify what the nature of the conflict is. The Companies Act splits conflicts of interest into:

#### Conflicts from proposed transactions

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"Transactional conflicts": These arise because of a transaction or a proposed transaction between the company and the director or someone connected with the director. An example of this would be where the director or his or her relative or partner is to provide services to the company under a contract. The duty also applies if the transaction is ongoing when the director joins the Board.

Here, the company law duty is to declare to the whole board the nature and extent of the conflict. It is very important that the full nature and extent of the conflict is disclosed. Otherwise that will not count as an adequate disclosure for the Act. So, for example, it would not be adequate for a trustee who was a solicitor who was going to advise the charity to disclose that he worked for that firm of solicitors. He would need to disclose the fact that he was a partner and the fact that his remuneration would be affected by the overall level of fees of the firm. With someone who declared that they were employed by a company, the details of their role and anything relevant, for example, responsibilities or bonus arrangements linked to acquiring new work, would also need to be disclosed.

Once declared, the director can enter into the transaction provided it is permitted under the articles. The rules set out in the articles must strictly follow. Good practice and the rules in the articles are likely

to provide that the person should withdraw from any discussion about the award and the contract and the person should take no part in voting on the issue. It is important to carefully minute compliance with these arrangements. This duty is governed by section 177.

Any form of payment direct or indirect to trustees is very strictly regulated. You need to be absolutely clear that either your articles permit the transaction or that specific consent for it has been obtained from the Charity Commission.

### Conflicts arising from situations

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The second type of conflicts are known as “situational conflicts”. The most common example of this is where the director faces a conflict of duty arising from involvement in another organisation. An example would be where the director or a connected person is also on the Board or an employee of another organisation. This could be a charity working in a related field, a funder or a public body. It can also arise when a director obtains information as a result of being on the Board which he might be in a position to exploit elsewhere.

This duty not to exploit information gained as a director applies even if the company is not going to take advantage of the information itself and even if the trustee obtains no personal benefit. Where the director wants to use such information, s/he should seek to obtain authority from the board for him or her to do so in the form of a resolution.

## 7. Procedures for managing conflicts of interests

The key to the management of conflicts of interest is to “pre-declare” them. Situational conflicts must be declared when the situation could generate a conflict. The director cannot wait until an actual conflict arises. More serious conflicts will require more extensive measures to manage the conflict.

Following the adoption by the Board of the conflict of interest policy and completion by all directors of the Register of Interests:

- a. The person responsible for managing conflicts of interest, who in most cases would be the chair, should review all the conflicts disclosed on the Register and decide what form of resolution to manage those conflicts would be appropriate.

What most organisations are doing is to group the conflicts of interest together and pass a resolution that these can be managed by the director making a further declaration of interests at the meeting at which a decision is made and the conflicted director withdraws from the meeting, and does not participate in any decision.

Three levels of seriousness:

- (a) Minor conflicts not likely to have real impact;
- (b) More serious conflicts of interest, for example, where a director faces a conflict because he is an employee of the funder or a competitor or a partner organisation, may require further steps which

could include, for example, agreeing with the other party to whom the director owes the duty, that the director will not disclose to them anything that he learns with the charity which is confidential (or vice versa).

- (c) In other situations it may be sensible to impose further obligations in the resolution which appear to be appropriate to that situation, for example, that that director will not receive any information or board papers relating to the area where the conflict arises.

Having agreed the forms of resolutions and made sure that each director and any third party involved is agreeable, then the next board meeting would pass those resolutions in respect of each director.

It would then not be necessary to pass further resolutions unless the director became involved in a new situation creating a conflict of interest which has not been dealt with by the first resolution.

Directors need to declare any new situations or where the underlying facts change, for example, a new directorship with a third party which might create a conflict of interest situation, as they arise. However, to ensure that nothing gets missed, an annual review by all directors of the declaration they made and confirmation that they have no further conflicts and that there are no changes in the circumstances surrounding those conflicts is recommended.

It is important not to just declare the conflict but the full circumstances surrounding the conflict. So, for example, a change such as where a director had been an employee of a firm and subsequently became a partner in that firm, would need to be declared.

- (d) Each Board agenda should contain an initial item as a prompt to remind people to declare any interests arising from the agenda for that day.

### **Review of Board performance**

The Charity Commission encourages Boards to review their performance as a Board. As part of that process, the Board should consider looking at how well compliance with their conflict of interest duties has been handled.

## 4(b) CONFLICTS OF INTEREST POLICY

### Register of Interests

The company will maintain a Register of Interests. The information should be current and should be updated as it changes, and be stored according to the Data Protection Act 1998. It is important to remember that conflicts of interest arise because of the interest of persons connected with the directors' "connected persons" as well as those of the directors (see Appendix A of this policy for more details).

The register will be kept at the company's registered address and will be open to scrutiny by directors and senior staff unless the Board believes reasonably that some or all of the information shall remain confidential to the directors.

### Declaration of interests

All directors must fill in a Declaration of Interest form (see 4(c)).

### Authorising conflicts of interests

At the beginning of a Board meeting each director should declare:

- any interests that he or she has, directly or indirectly, in any items to be discussed at the meeting, even where these interests have already been declared on the Register of Interests; and
- any other potential conflicts of interest, whether direct or indirect, of which he or she has become aware which have not already been declared.

The information as described below should be supplied by each director and for "connected persons" (see Appendix A of this policy for definition) of the director:

- Current employment, self-employment or volunteer work and any previous employment in which the director continues to have a financial interest;
- Appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority membership, tribunals etc;
- Membership of any professional or other bodies, campaigning or special interest groups or mutual support organisations;
- Investments in companies, partnerships and other forms of business, major shareholdings, beneficial interests where these are or could be perceived to constitute an actual or potential conflict of interests. (Investments where the director's holding constitutes not more than a hundredth of the capital of the company may generally be omitted);
- Any contractual relationship with the company (or its subsidiary, or any other organisation within the same group, or any of its funders, contractors, staff or advisors);
- Any other conflicts that are not covered above where there could be perceived to be conflicts of interests.

Where the interest relates to a matter under discussion, the Chair of the meeting must decide whether the interest:

- is not significant and does not create a real danger of bias or conflict of duty or the appearance of bias (Category A);
- creates a significant but not substantial danger of bias, or conflict of duty or might reasonably cause others to think it could influence a decision (Category B); or
- creates a substantial danger of bias or conflict of duty (that is, the interest affects him/her, or a person or business connected to him/her, more than the generality affected by the decision) (Category C); or
- is an actual conflict of duty.

If it is the Chair of the meeting who has the interest, the rest of the directors who are present at the meeting must make the above decision.

In the event that the interest falls into:

- Category A, the director must declare the interest but not vote;
- Category B, it shall be at the discretion of the other Chair or directors (who do not themselves have an interest in the matter) whether the director may remain in the meeting, but the director must not participate in the discussion, or vote on the matter;
- Category C, the director must leave the meeting, not participate in the discussion or vote on the matter.
- Category D, other steps will need to be taken to manage the conflict. An example of such a step could include:
  - The director agreeing to obtain consent from the other party creating the conflict, for example his client or employer that the director be relieved of his or her obligation to disclose relevant information to that other party where the information was obtained from the company.
- Withholding all other papers that relate to the conflict from that director.

### **Managing conflicts**

The Board should endeavour to ensure that a director with a conflict of interest is not provided with information in that capacity which enables him or her to obtain any advantage. In particular, the person who is responsible for sending information to the directors prior to a Board meeting should check the register of interests and take any other reasonable steps to ensure that no information is sent to a director who may have a conflict of interest relating to that information.

Where a director faces persistent or critical conflicts of interest, he or she will need to consider whether to withdraw and not vote is sufficient. He or she may need to resign.

Directors must comply with any provisions in the company's articles relating to conflicts of interest.

## APPENDIX A:

### CONNECTED PERSONS: PART 1

#### Connect persons under Companies Act 2006

##### 1. s252 Persons connected with a director

- 1) This section defines what is meant by references in this part to a person being “connected” with a director of a company (or a director being “connected” with a person).
- 2) The following persons (and only those persons) are connected with a director of a company—
  - (a) members of the director’s family (see section 253);
  - (b) a body corporate with which the director is connected (as defined in section 254);
  - (c) a person acting in his or her capacity as trustee of a trust -
    - (i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with him or her, or
    - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person,other than a trust for the purposes of an employees’ share scheme or a pension scheme;
  - (d) a person acting in his or her capacity as partner—
    - (i) of the director, or
    - (ii) of a person who, by virtue of paragraph (a), (b) or (c), is connected with that director;
  - (e) a firm that is a legal person under the law by which it is governed and in which—
    - (i) the director is a partner,
    - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the director, or
    - (iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director.
- 3) References in this part to a person connected with a director of a company do not include a person who is him or herself a director of the company.

## 2. s253 Members of a director's family

- 1) This section defines what is meant by references in this part to members of a director's family.
- 2) For the purposes of this part the members of a director's family are—
  - (a) the director's spouse or civil partner;
  - (b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship;
  - (c) the director's children or step-children;
  - (d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18;
  - (e) the director's parents.
- 3) Subsection (2)(b) does not apply if the other person is the director's grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece.

## 3. s254 Director "connected with" a body corporate

- 1) This section defines what is meant by references in this part to a director being "connected with" a body corporate.
- 2) A director is connected with a body corporate if, but only if, s/he and the persons connected with him or her together—
  - (a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or
  - (b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.
- 3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.
- 4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him/her.
- 5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.
- 6) For the avoidance of circularity in the application of section 252 (meaning of "connected person") —
  - (a) a body corporate with which a director is connected is not treated for the purposes of this

section as connected with him/her unless it is also connected with him/her by virtue of sub section (2)(c) or (d) of that section (connection as trustee or partner); and

- (b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.

## CONNECTED PERSONS: PART 2

### Connected persons under the Charities Act 1993

#### 1

- 1) In Schedule 5 of the Act "connected person" in relation to a charity means any person who is
  - (a) a charity trustee or trustee for the charity;
  - (b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity);
  - (c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor;
  - (d) an officer, agent or employee of the charity;
  - (e) the spouse or civil partner of any person falling within any of sub-paragraphs (a) to (d) above;
  - (ea) a person carrying on business in partnership with any person falling within any of sub-paragraphs (a) to (e) above;
  - (f) an institution which is controlled -
    - (i) by any person falling within any of sub-paragraphs (a) to (ea) above, or
    - (ii) by two or more such persons taken together; or
  - (g) a body corporate in which -
    - (i) any connected person falling within any of sub-paragraphs (a) to (f) above has a substantial interest, or
    - (ii) two or more such persons, taken together, have a substantial interest.



## 2

- 1) In paragraph 1(1)(c) above "child" includes a stepchild and an illegitimate child.
- 2) For the purposes of paragraph 1(1)(e) above a person living with another as that person's husband or wife shall be treated as that person's spouse.
- 3) Where two persons of the same sex are not civil partners but live together as if they were, each of them shall be treated for those purposes as the civil partner of the other.

## 3

For the purposes of paragraph 1(1)(f) above a person controls an institution if he is able to secure that the affairs of the institution are conducted in accordance with his wishes.

## 4

- 1) For the purposes of paragraph 1(1)(g) above any such connected person as is there mentioned has a substantial interest in a body corporate if the person or institution in question -
  - (a) is interested in shares comprised in the equity share capital of that body of a nominal value of more than one-fifth of that share capital, or
  - (b) is entitled to exercise, or control the exercise of, more than one-fifth of the voting power at any general meeting of that body.

#### 4(c) DECLARATION OF INTERESTS FORM

I *[insert name]* as a Director of *[insert name of company]* have set out the detail of the nature and extent of my interests relationships or involvements or other matters and those of which I am aware of any connected party, which may or might be perceived to give rise to conflicts of interest or conflicts of duty

CATEGORY OF INTEREST	Please give details of the interests, relationships, involvements and duties and whether they apply to yourself or to a member of your immediate family or some other close personal, business or financial relationship or connection (a connected person)
Current business, activity, employment or professional activity and any previous activity in which you continue to have an interest.	
Appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority roles, memberships, tribunals etc.	
Memberships of any professional bodies, groups, political parties or other organisations.	
Investments in companies, partnerships and other forms of business, or beneficial interests in trusts unless you have less than 1% of issued share capital.	

CATEGORY OF INTEREST	
Gifts or hospitality or other inducements offered to you by external bodies and whether this was declined or accepted in the last twelve months.	
Any use by you of the services of the Charity or any body funded by the Charity?	
Any transactions or contractual relationships with the Charity?	
Any other conflicts of interest or duty that are not covered by the above	

To the best of my knowledge, the above information is complete and correct. I undertake to update as necessary the information provided, and to review the accuracy of the information on an annual basis.

Signed .....

Dated .....

#### 4(d) EXAMPLE RESOLUTION TO APPROVE POTENTIAL CONFLICTS

"The Board recognises the statutory duties imposed on directors (trustees) by the Companies Act 2006 and specifically the s.175 duty to avoid a conflict of interest.

It was noted that the company's articles of association comply with the provisions of s.181 Companies Act 2006. This requires a specific provision to be included in the company's articles of association to permit the directors to authorise actual and potential conflicts of interest. It was noted that the articles satisfied that condition and permitted the directors to authorise actual or potential conflicts, if appropriate.

It was further noted that the articles of association required that a particular conflict issue should be proposed to the directors at a meeting and authorised by them. In providing such authorisation the quorum of the meeting must be satisfied without counting the director in question (or any other interested director) and without counting the vote of that director (or any other interested director). It was noted that there are provisions within the articles to address conflict of interest situations where either a quorum of non-conflicted directors could not be formed, or where all the directors are conflicted, and that these articles could be relied upon where appropriate.

The purpose of these resolutions was for the Board to authorise the actual and / or potential conflicts of interest set out in the declarations of interests produced to the meeting.

1. There was produced to the meeting, a declaration of interests form in respect of **[insert name of directors without interests]**. It was noted that there were no interests to declare.
2. There was produced to the meeting, a declaration of interests form in respect of **[insert name of director]**. The interested director left the meeting and it was noted that the quorum for the meeting was still satisfied notwithstanding **[his / her]** departure. The Board considered the interests disclosed on the declaration of interests **[and subject to the following conditions, [                      ]**, authorised the ongoing potential conflict.
3. **[repeat as necessary for other directors]**

It was noted that where a potential conflict of interest became an actual conflict the particular relationship would have to be reconsidered, and where there was an actual conflict of interest, the interested director should not participate in the decision making process in relation to that matter save as to provide relevant information to the board in relation to that particular matter. The Board were reminded that as they or their connected persons obtained new interests they should be disclosed to the Board."