

Notes

The following notes are given by reference to the clause numbers of the constitution.

Notes in bold italics refer to the drafting of this particular constitution and are intended to explain the reasoning behind changes to the model constitutions on which this constitution is based, namely the ACRE Model Document Charitable Incorporated Organisation Constitution, and the Charity Commission Constitution of a Charitable Incorporated Organisation whose only voting members are its charity trustees.

The CIO constitution will be adopted by the first trustees at a duly constituted meeting of the trustees.

Objects
This clause is a slightly amended version of the wording recommended in the ACRE model constitution. Defining the area of benefit was problematic because Millennium House (being a relatively large facility) attracts users from well beyond the Parish boundaries.

Because the geographical area of benefit is not precisely defined, it is not then possible to hold elections where all residents of the area of benefit can choose trustees of the CIO, consequently clause 9 of the constitution covering the appointment of trustees has been amended.

Amendments to the ACRE objects reflect the fact that the CIO will organise community events of all sorts, not necessarily based at the community centre.

Section 3 CIO Constitution and Explanatory Notes

Constitution of **Pensilva Community Association CIO**

Date of constitution (last amended): **APRIL 13th, 2015**

1 Name

The name of the Charitable Incorporated Organisation (“the CIO”) is

Pensilva Community Association CIO

2 National location of principal office

The principal office of the CIO is in England.

3 Objects

The objects of the CIO are to provide facilities and organise activities in order to promote, for the benefit of the inhabitants of Pensilva, Cornwall, and the surrounding area (without distinction of sex, sexual orientation, age, disability, nationality, race or political, religious or other opinions) recreation or other leisure time occupation for individuals who have need of such facilities and activities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances, or for the public at large, in the interests of social welfare and with the object of improving the conditions of life of the said inhabitants.

4 Powers

The CIO has power to do anything which is calculated to further its objects or is conducive or incidental to doing so. In particular, the CIO has power to:

- 4.1 co-operate with other voluntary organisations, statutory authorities and individuals;
- 4.2 establish or support a local forum of representatives of community groups, voluntary organisations; statutory authorities and individuals involved in community work;
- 4.3 promote and develop or to assist in the promotion and development of community organisations and community social enterprises in the area of benefit;
- 4.4 acquire and distribute funds and to assist in the provision of grants to community organisations in the area of benefit;
- 4.5 arrange and provide for, either alone or with others, the holding of exhibitions, meetings, lectures, classes, seminars or training courses, and all forms of recreational and other leisure-time activities;

Notes

4.6 The charity trustees should have regard to the law applicable to any fundraising activities the charity is to undertake. The prohibition on 'substantial permanent non-charitable trading activity' is essential to avoid an objection from the Inland Revenue or a potential tax liability.

Where a charity will be relying on taxable trading to raise funds it is recommended that a separate, non-charitable trading company should be used for the purpose, and specialist legal or accountancy advice will be needed.

4.10 This clause covers employees, and enables salaries and pensions, or expenses (or none of these) to be provided. All necessary advice about Employment Law should be obtained.

A charity should not pay more than a reasonable rate for the task, but should aim to be a good employer.

4.11 This clause is designed to confer a wide power of investment but to ensure that it is exercised responsibly. An 'investment' is an asset which (i) is capable of producing income and (ii) may also increase in capital value. In setting an investment policy and selecting investments the charity trustees should have regard to the needs of the charity for both income and capital growth, and act prudently. They should avoid trading and speculation.

4.12 *This clause has been added specifically to give the CIO the power to form trading subsidiaries so as not to fall foul of the trading issue described in the note to 4.6 above.*

5. Application of income and property

This clause reflects the legal position that although a CIO is a legal person and owns its property in its own right, the assets are treated in many ways as though they were held

- 4.6 raise funds. In doing so, the charity must not undertake any substantial permanent non-charitable trading activity and must comply with any relevant statutory regulations;
- 4.7 borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The CIO must comply as appropriate with sections 124 to 126 of the Charities Act 2011, if it wishes to mortgage land;
- 4.8 buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- 4.9 sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must comply as appropriate with sections 117 to 123 of the Charities Act 2011;
- 4.10 employ and remunerate such staff as are necessary for carrying out the work of the CIO. The CIO may employ or remunerate a charity trustee only to the extent that it is permitted to do so by clause 6 (Benefits and payments to charity trustees and connected persons) and provided it complies with the conditions of that clause;
- 4.11 deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the CIO to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000.
- 4.12 establish and invest in one or more trading subsidiaries to carry out both primary and (where appropriate) non-primary purpose trading, without endangering the assets of the CIO. All or part of the profits from such trading activities may be transferred to the CIO and used for the benefit of the CIO in pursuit of its objects.

5 Application of income and property

- 5.1 The income and property of the CIO must be applied solely towards the promotion of the objects.
- 5.2 A charity trustee is entitled to be reimbursed from the property of the CIO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the CIO.
- 5.3 A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- 5.4 None of the income or property of the CIO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the CIO.

Notes

on trust for the Objects rather than belonging to the members (as would be the case in a non-charitable corporate body). It is therefore necessary to restrict the occasions on which a trustee may benefit from the charity, and avoid conflicts of interest and duty as far as possible. It cannot be amended without the Charity Commission's consent.

6. A charity trustee must not profit from his or her office and cannot be paid unless specifically permitted by the Court of the Charity Commission.

6 Benefits and payments to charity trustees and connected persons

6.1 General provisions

No charity trustee or connected person may:

- 6.1.1 buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;
- 6.1.2 sell goods, services, or any interest in land to the CIO;
- 6.1.3 be employed by, or receive any remuneration from, the CIO;
- 6.1.4 receive any other financial benefit from the CIO;

unless the payment or benefit is permitted by clause 6.2 or authorised by the court or the Charity Commission ("the Commission"). In this clause, a "financial benefit means a benefit, direct or indirect, which is either money or has a monetary value.

6.2 Scope and powers permitting trustees' or connected persons' benefits

6.2.1 A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that a majority of the trustees do not benefit in this way.

6.2.2 A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the CIO where that is permitted in accordance with, and subject to the conditions in, section 185 and 186 of the Charities Act 2011.

6.2.3 Subject to clause 6.3 a charity trustee or connected person may provide the CIO with goods that are not supplied in connection with services provided to the CIO by the charity trustee or connected person.

6.2.4 A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).

6.2.5 A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.

6.2.6 A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.

6.3 Payment for supply of goods only – controls

The CIO and its charity trustees may only rely upon the authority provided by clause 6.2.3 if each of the following conditions is satisfied:

- 6.3.1 The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the CIO and the charity trustee or connected person supplying the goods (“the supplier”) under which the supplier is to supply the goods in question to or on behalf of the CIO.
- 6.3.2 The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.
- 6.3.3 The other charity trustees are satisfied that it is in the best interests of the CIO to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.
- 6.3.4 The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the CIO.
- 6.3.5 The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.
- 6.3.6 The reason for their decision is recorded by the charity trustees in the minute book.
- 6.3.7 A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 6.

6.4 In clauses 6.2 and 6.3:

6.4.1 “the CIO” includes any company in which the CIO:

- (i) holds more than 50% of the shares; or
- (ii) controls more than 50% of the voting rights attached to the shares; or
- (iii) has the right to appoint one or more directors to the board of the company;

6.4.2 “connected person” includes any person within the definition set out in clause 28. (Interpretation);

7 Conflict of interest and conflict of loyalty

A charity trustee must:

- 7.1 declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the CIO or in any transaction or arrangement entered into by the CIO which has not previously been declared; and

Notes

Charity trustees

Following the usual village hall model, charity trustees comprise a number of elected charity trustees, a larger number of appointed charity trustees and a few co-optees. A village hall is intended for the use of every section of the community and national experience suggests that charity trustees should largely be made up of people from local organisations all of which, including those formed after the establishment of the hall, should be given an opportunity to appoint charity trustees. The charity trustees must maintain a list of appointing bodies and clause 9.5 gives the power to the charity trustees to enlarge the list of appointing bodies as required.

In this case, the fact that there is no precisely defined area of benefit makes it impossible to arrange for elections where all inhabitants of the area of benefit are entitled to vote. Also, the very large number of user bodies makes it impractical to give every user body the right to appoint a trustee. The process adopted is intended to give all stakeholders a voice on the board of trustees. In the case of the user groups this is accomplished by having a democratically elected committee of user groups which in turn has the right to appoint a number of trustees of the CIO.

Additional words added to 9.2.3 intended to minimise the chances of a trustee being appointed who might be hostile to the aims of the CIO.

9.2.4 16 is the minimum age for charity trustees of a CIO. This clause gives the CIO the opportunity to set the limit (if any – this clause can be removed if desired) on the number of charity trustees under 18.

7.2 absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the CIO and any personal interest (including but not limited to any financial interest).

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

8 Liability of members to contribute to the assets of the CIO if it is wound up

If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

9 Charity trustees

9.1 Functions and duties of charity trustees

The charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO. It is the duty of each charity trustee:

9.1.1 to exercise his or her powers and to perform his or her functions in his or her capacity as a trustee of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO; and

9.1.2 to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:

(i) any special knowledge or experience that he or she has or holds himself or herself out as having; and,

(ii) if he or she acts as a charity trustee of the CIO in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

9.2 Eligibility for trusteeship

9.2.1 Every charity trustee must be a natural person.

9.2.2 No individual may be appointed as a charity trustee of the CIO:

(i) if he or she is under the age of 16 years; or

(ii) if he or she would automatically cease to hold office under the provisions of clause 10.4.6.

9.2.3 No one is entitled to act as a charity trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the charity trustees decide, his or her acceptance of the office of charity trustee. Such acknowledgement shall include a commitment that his or her involvement in the CIO while in office will at all times be aimed at the furtherance of the objects of the CIO.

9.2.4 The total number of trustees under the age of 18 years must not at any time be more than one third of the total number of trustees in office.

9.3.3.(i) As its owners, St Ive Parish Council has ultimate responsibility for Millennium House and therefore, for as long as the CIO manages Millennium House, the council has a direct interest in the conduct of the CIO. In addition, there are clear advantages to the CIO of having a direct line of communication with the Parish Council. It is right therefore that the council should have a strong representation on the board of trustees of the CIO.

9.3.3.(ii) The users of the CIO's services have the strongest single representation on the board of trustees.

9.3.3. (iii) Functions and events are expected to generate a large part of the income of the CIO. The group that will organise and co-ordinate these events has the right to appoint two trustees of the CIO.

9.3.3.(iv) The trustees may co-opt up to five trustees whose particular skills, qualifications, knowledge and experience will be beneficial to the CIO.

9.3.3.(v) The success of the CIO will depend in large part on voluntary assistance from members of the community. Therefore two places on the Board of Trustees are reserved for volunteers whose first hand knowledge and experience of the operations of the CIO would assist the trustees in their deliberations.

- 9.3 The charity trustees
- 9.3.1 There must be at least four charity trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee. The first charity trustees are:

Mr Jose M Bicarregui

Mrs Ruth Hicks

Mrs Jane Mann

Mr Martin Corney

who shall continue in office until the end of the first annual general meeting.

- 9.3.2 The maximum number of charity trustees that may be appointed to the CIO shall be eighteen in accordance with clause 9.3.3 below.
- 9.3.3 The first charity trustees shall have power to appoint further charity trustees who shall hold office until the end of the first annual general meeting. Such charity trustees shall have power to elect a chairman and vice-chairman. Subject to this, the charity trustees shall comprise:
 - (i) up to 3 charity trustees nominated by St. Ive Parish Council in accordance with clause 9.4;
 - (ii) up to 6 charity trustees nominated by the committee of user groups in accordance with clause 9.5.1
 - (iii) up to 2 charity trustees nominated by the events committee in accordance with clause 9.5.2.
 - (iv) up to 5 individuals co-opted by the charity trustees in accordance with clause 9.6.
 - (v) up to 2 additional individuals co-opted by the charity trustees in accordance with clause 9.6 from among the volunteers working for the CIO.Charity trustees in groups (i), (ii) and (iii) above are hereinafter referred to as nominated trustees and those in groups (iv) and (v) as co-opted trustees. For the avoidance of doubt, the rules for co-opted trustees apply also to the initial trustees for the period up to and including the first annual general meeting.
- 9.3.4 A co-opted charity trustee who is subsequently nominated by one of the nominating bodies, and is duly appointed, will cease to be considered as a co-opted trustee for the purposes of clause 9.3.3. above and will instead count as one of the appointed trustees for that nominating body. If a nominating body changes its nominees, the charity trustees may co-opt one or more of the outgoing appointed trustees if a suitable vacancy exists.

Notes

9.4 The automatic right of St Ive Parish Council to nominate trustees ceases if the CIO no longer manages Millennium House. If the trustees at such time felt that the presence of one or more Parish nominees on the Board of Trustees would be beneficial to the CIO, they could be co-opted under clause 9.6.

9.5.1 Describes the process whereby the user bodies will form a committee and democratically elect up to six trustees of the CIO.

9.5.2 Organisation of social events will be an important part of the CIO's work. An events committee will be formed and will be entitled to elect up to two trustees of the CIO.

- 9.4 Trustees nominated by St. Ive Parish Council
- 9.4.1 For as long as the building owned by St Ive Parish Council and known as Millennium House is managed by the CIO as a Community Centre for the village of Pensilva, the said St Ive Parish Council shall have the right to nominate up to 3 charity trustees of the CIO.
- 9.4.2 If at any time the CIO ceases to manage the building known as Millennium House (see 9.4.1 above), the right of St Ive Parish Council to nominate charity trustees of the CIO shall cease and the maximum number of charity trustees described in clause 9.3.2 shall be reduced accordingly.
- 9.5 Trustees nominated by the user bodies and events committees.
- 9.5.1 User Bodies Committee
- (i) The charity trustees shall maintain a list of user bodies that they consider to be supportive of the CIO's objects. The user bodies on the list shall organise themselves into a committee, under a process satisfactory to the CIO, that is fair to all its component user bodies. The CIO may delegate some of its powers and functions to this committee under clause 12. The committee of user bodies thus constituted shall have the right to nominate up to 6 charity trustees of the CIO, using a democratic voting system satisfactory to the CIO.
- (ii) Where any application for the right to join the user body committee is received from an existing or newly-formed body operating in the area of benefit, the charity trustees may, with the approval of not less than two-thirds of all the charity trustees, add such body to the list of user bodies and the said user body shall then be eligible to put forward candidates to participate in the committee of user bodies.
- (iii) The charity trustees may, with the approval of not less than two-thirds of all the charity trustees, remove a body from the list of user bodies described in 9.5.1(i).
- (iv) A minute of the relevant resolution, authenticated by the chairman, should be (a) placed with the title deeds and (b) kept with the charity trustees' working papers.
- 9.5.2 Events committee.
- The CIO will promote the formation of an events committee whose function will be to organise social and other events or activities in the area of benefit and the CIO may then delegate some of its powers and functions to the said events committee under clause 12. For as long as the events committee remains active and performs its functions in a manner that is satisfactory to the CIO it shall have the right to nominate up to two charity trustees of the CIO, using a democratic voting system satisfactory to the CIO.
- 9.6 Co-opted charity trustees must be appointed at a duly constituted meeting of the charity trustees.

Notes

9.7 The CIO automatically accepts nominees as trustees as long as they meet the eligibility criteria.

9.8 A slight change from ACRE to accord with 9.7.

Retirement and removal of charity trustees

Various events can terminate trusteeship. Section 178 of the Charities Act 2011 lists disqualifications as:

- (i) an unspent conviction for an offence involving dishonesty or deception.
- (ii) an undischarged bankruptcy;
- (iii) an undischarged composition or arrangement with creditors;

- 9.7 The charity trustees of the CIO shall duly appoint each person nominated under 9.4.1, 9.5.1 and 9.5.2 as a charity trustee at their next meeting after the nomination is submitted unless a particular nominee fails to meet the eligibility criteria set out in clause 9.2, in which case the relevant nominating body may nominate another individual.
- 9.8 The period of office of all nominated charity trustees appointed at the annual general meeting in any year starts at the end of that meeting. In the case of a charity trustee nominated after such annual general meeting, or to fill a casual vacancy, the period of office begins on the day on which he or she is appointed by the CIO in accordance with clause 9.7. Subject to clause 10, the period of office of appointed charity trustees ends on the day on which notification of his or her removal is received by the CIO.
- 9.9 The period of office of co-opted charity trustees starts at the time when they are appointed by the charity trustees and ends at the end of the next following annual general meeting or at the time (if earlier) when they are removed by the charity trustees. Co-opted charity trustees may be reappointed by the charity trustees.
- 9.10 In the event of a casual vacancy among co-opted charity trustees, the charity trustees may appoint a person who is willing to act to be a charity trustee. A charity trustee so appointed shall hold office only until the next following annual general meeting. If not reappointed at such annual general meeting, he or she shall vacate office at the conclusion thereof.
- 9.11 Information for new charity trustees
The charity trustees will make available to each new charity trustee, on or before his or her first appointment:
- 9.11.1 a copy of this constitution and any amendments made to it; and
- 9.11.2 a copy of the CIO's latest Trustees' Annual Report and statement of accounts.
- 9.12 All charity trustees who are entitled to receive notice of a general meeting must be given not less than seven nor more than twenty-eight clear days' notice of any resolution to be put to the meeting to appoint a charity trustee.

10 Retirement and removal of charity trustees

- 10.1 At the first and at each subsequent annual general meeting all charity trustees shall retire from office unless by the close of the meeting the members have failed to elect sufficient charity trustees to hold a quorate meeting of the charity trustees.
- 10.2 Re-appointment of charity trustees
- 10.2.1 Nominated charity trustees
The appropriate nominating body must notify the charity trustees in writing in advance of each annual general meeting of any changes to its then current list of nominees. In the absence of such notification the incumbent nominees will be duly re-appointed. Nominees who are not re-appointed shall retain office until the meeting appoints someone in their place, or if it does not do so, until the end of the meeting.

Notes

(iv) the removal of the person concerned from his/her office as a charity trustee by the Charity Commission or the High Court;

(v) he/she is subject to a disqualification order under the Company Directors Disqualification Act 1986.

It should be noted in this connection that the Charity Commission is empowered, on application, to waive some of these disqualifications in the case of particular trustees.

Appointed charity trustees can be replaced by their appointing body.

Embarrassing problems can arise when a charity trustee becomes too ill or infirm to be expected to take full responsibility for the task. The charity trustees may wish to make a rule under clause 24 to require a charity trustee who appears incapable to undergo a medical examination. Such a request would in most cases lead to a voluntary resignation. The length of absence which gives rise to automatic termination of a charity trustee's term of office will depend on the normal frequency of meetings. The law does not allow charity trustees to walk away from their responsibilities leaving no-one in charge of the charity (clause 10.4.1).

10.4.5 This clause is included because there is nothing worse for charity trustees than to be forced to do business with someone they despise or who causes business problems.

10.2.2 Co-opted charity trustees

A co-opted charity trustee who retires at an annual general meeting may, if willing to act, be re-appointed. If the CIO does not fill the vacancy created by his or her resignation, he or she shall, if willing to act, be deemed to have been re-appointed unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the re-appointment of the charity trustee has been put to a meeting and lost. If he or she is not re-appointed he or she shall retain office until the meeting appoints someone in his or her place, or if it does not do so, until the end of the meeting.

10.3 If a charity trustee is required to retire at an annual general meeting by a provision of the constitution the retirement shall take effect upon the conclusion of the meeting.

10.4 A charity trustee ceases to hold office if he or she:

10.4.1 retires by notifying the CIO in writing (but only if enough charity trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);

10.4.2 is absent without the permission of the charity trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated;

10.4.3 dies;

10.4.4 becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs; or

10.4.5 is removed by ordinary resolution of the members of the CIO present and voting at a general meeting after the meeting has invited the views of the charity trustee concerned and considered the matter in the light of any such views.

10.4.6 is disqualified from acting as a charity trustee by virtue of section 178 - 180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).

11 Taking of decisions by charity trustees

Any decision may be taken either:

11.1 at a meeting of the charity trustees; participating at such a meeting shall qualify as being present at the meeting; or

11.2 by a resolution in writing or in electronic form agreed by a simple majority of all the charity trustees entitled to receive notice of a meeting of charity trustees or of a committee of charity trustees and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the charity trustees or (as the case may be) a committee of charity trustees duly convened and held provided that:

11.2.1 a copy of the resolution is sent or submitted to all the charity trustees eligible to vote; and

11.2.2 a simple majority of charity trustees has signified its agreement to the resolution in an authenticated document or documents which are received at the principal office within the period of 28 days beginning with the circulation date.

Notes

12. Delegation

A specific provision is essential if the charity trustees are to be able to delegate to committees. The charity trustees will be legally responsible for the acts of committees, and for this reason it is prudent for at least one charity trustee to be a member of each committee.

The charity trustees may wish, for this reason, to define the terms of reference with care. It is essential in all cases to provide for reporting back.

Although

the power of delegation is not limited to specific functions it is generally appropriate for decisions on major matters of policy or resources to be reserved to the charity trustees themselves. It is perfectly permissible, and indeed to be encouraged, for the charity trustees to appoint a sub-committee of young people under 18, or to appoint young people as voting members of other sub-committees, so as to ensure their views can be expressed to the charity trustees.

13.3.3 Unlike a company's Articles of Association, a CIO constitution may allow the chairman to have a second or casting vote. This clause is optional.

The resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one trustee has signified their agreement.

12 Delegation by charity trustees

- 12.1 The charity trustees may delegate any of their powers or functions to a committee or committees, and, if they do, they shall determine the terms and conditions on which the delegation is made. The charity trustees may at any time alter those terms and conditions, or revoke the delegation.
- 12.2 This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the charity trustees, but is subject to the following requirements:
 - 12.2.1 a committee may consist of two or more persons, but at least one member of each committee must be a charity trustee;
 - 12.2.2 the acts and proceedings of any committee must be brought to the attention of the charity trustees as a whole as soon as is reasonably practicable;
 - 12.2.3 no expenditure may be incurred on behalf of the CIO except in accordance with a budget previously agreed with the charity trustees and
 - 12.2.4 the charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

13 Meetings of charity trustees

- 13.1 Calling meetings
 - 13.1.1 Any charity trustee may call a meeting of the charity trustees.
 - 13.1.2 Subject to that, the charity trustees shall decide how their meetings are to be called, and what notice is required.
- 13.2 Chairing of meetings

The charity trustees may appoint one of their number to chair their meetings and may at any time revoke such appointment. If no-one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time of the meeting, the charity trustees present may appoint one of their number to chair that meeting.
- 13.3 Procedure at meetings
 - 13.3.1 No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is three charity trustees, or the number nearest to one third of the total number of charity trustees, whichever is greater, or such larger number as the charity trustees may decide from time to time. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.
 - 13.3.2 Questions arising at a meeting shall be decided by a majority of those eligible to vote.
 - 13.3.3 In the case of an equality of votes, the person who chairs the meeting shall have a second or casting vote.

14. Membership of the CIO

Although all corporate bodies must have members, only charity trustees are members in the village hall model CIO constitution.

15. General meetings and the annual general meeting

The law relating to CIOs requires certain types of decisions to be made only by the CIO members, as stated in clause 15.1. This may appear to be an unnecessary process as the only members of a village hall CIO will be its charity trustees. However, due process must be followed and any matter covered by this clause must be decided by a members' resolution and minuted as such.

15.3 The CIO will be required to have a set financial year (e.g. 1 April to 31 March). Ideally, this should be decided, perhaps in consultation with local grant making bodies, prior to setting up the CIO. If the CIO appoints external accountants then the accountants may suggest an appropriate financial year. The annual general meeting should be set for a date roughly two months after the expected production of the annual accounts, in order that the accounts can be put before the meeting. It is best not to insert fixed dates. It is recommended that, in rules issued under clause 24, a month is specified in which the AGM will normally be held, rather than specifying it in the constitution itself.

13.4 Participation in meetings by electronic means

13.4.1 A meeting may be held by suitable electronic means agreed by the charity trustees in which each participant may communicate with all the other participants.

13.4.2 Any charity trustee participating at a meeting by suitable electronic means agreed by the charity trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.

13.4.3 Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

14 Membership of the CIO

14.1 The members of the CIO shall be its charity trustees for the time being. The only persons eligible to be members of the CIO are its charity trustees. Membership of the CIO cannot be transferred to anyone else.

14.2 Any member and charity trustee who ceases to be a charity trustee automatically ceases to be a member of the CIO.

15 General meetings and the annual general meeting

15.1 Any decision to:

15.1.1 amend the constitution of the CIO;

15.1.2 amalgamate the CIO with, or transfer its undertaking to, one or more other CIOs, in accordance with the Charities Act 2011; or

15.1.3 wind up or dissolve the CIO (including transferring its business to any other charity)

must be made by a resolution of the members of the CIO at a general meeting (rather than a resolution of the charity trustees).

15.2 Any decision specified in clause 15.1 must be made in accordance with the provisions of clause 26 (Amendment of constitution), clause 27 (Voluntary winding up or dissolution), or the provisions of the Charities Act 2011, the General Regulations or the Dissolution Regulations as applicable. Those provisions require the resolution to be agreed by a 75% majority of members of the CIO voting at a general meeting.

15.3 The CIO must hold its first annual general meeting within eighteen months after the date of its registration.

15.4 An annual general meeting must be held in each subsequent year and not more than fifteen months may elapse between successive annual general meetings. The charity trustees may call a general meeting at any time.

Notes

16 & 17 As there are no elected trustees, the procedure for holding general meetings of members is much simpler than in ACRE. PCA follows FM here (clauses 19(1) to 19(3)). As an annual general meeting is required for reasons of the term of office of appointed trustees (clauses 9.8 to 9.10 and 10.1 to 10.3) some additional words have been added in clause 16.1.

16 General meetings of members

16.1 Calling of general Meetings

The charity trustees may designate any of their meetings as a general meeting of the members of the CIO. The purpose of such a meeting is to discharge any business which must by law be discharged by a resolution of the members of the CIO as specified in clause 15.1. Subject to the timings stipulated in clauses 15.3 and 15.4, any general meeting of the members may be designated as an annual general meeting.

16.2 Notice of general meetings

16.2.1 The minimum period of notice required to hold a general meeting of the CIO is fourteen clear days.

16.2.2 Except where a shorter period of notice is strictly required by another clause of the constitution, by the Charities Act 2011 or by the General Regulations, a general meeting may be called by shorter notice if it is so agreed by a majority of the members of the CIO.

16.2.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted; or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.

17 Proceedings at general meetings

The provisions in clauses 13.2 to 13.4 governing the chairing of meetings, procedures at meetings and participation in meetings by electronic means apply to any general meeting of the members, with all references to trustees to be taken as references to members.

18 Decisions of the members

18.1 Decisions of the members may be made either by resolution at a general meeting or, subject to clause 18.2, by resolution in writing, in accordance with clause 18.3. A resolution in writing must be agreed by all the members.

18.2 Except in the case of any decision specified in clause 15.1, such a resolution may be agreed by a simple majority of all the members who are entitled to vote on it at a general meeting.

18.3 A resolution in writing shall be effective provided that:

18.3.1 a copy of the proposed resolution has been sent to all the members eligible to vote; and

18.3.2 all the members have signified their agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature, by a statement of their identity accompanying the document, or in such other manner as the CIO has specified.

The resolution in writing may comprise several copies to which one or more members has signified their agreement. Eligibility to vote on the resolution is limited to members who are members of the CIO on the date when the proposal is first circulated. The date on which a resolution in writing is passed is that of the date of the last signatory.

19 Execution of documents

- 19.1 The CIO shall execute documents by signature.
- 19.2 A document is validly executed by signature if it is signed by at least two of the charity trustees.

20 Use of electronic communications

20.1 General

The CIO will comply with the requirements of the Communications Provisions in the General Regulations and in particular:

- 20.1.1 the requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form;
- 20.1.2 any requirements to provide information to the Commission in a particular form or manner.

20.2 To the CIO

Any member or charity trustee of the CIO may communicate electronically with the CIO to an address specified by the CIO for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the CIO.

20.3 By the CIO

- 20.3.1 Any member or charity trustee of the CIO, by providing the CIO with his or her email address or similar, is taken to have agreed to receive communications from the CIO in electronic form at that address, unless the member has indicated to the CIO his or her unwillingness to receive such communications in that form.

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

- (i) provide the members with the notice referred to in clause 16.2 (Notice of general meetings);
- (ii) give charity trustees notice of their meetings in accordance with clause 15 (General meetings and the annual general meeting); and
- (iii) submit any proposal to the members or charity trustees for decision by written resolution in accordance with the CIO's powers under clause 18 (Decisions of the members), and clause 11 (Taking of decisions by charity trustees)

- 20.3.3 The charity trustees must –

- (i) take reasonable steps to ensure that members and charity trustees are promptly notified of the publication of any such notice or proposal; and
- (ii) send any such notice or proposal in hard copy form to any member or charity trustee who has not consented to receive communications in electronic form.

21 Keeping of Registers

The CIO must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, a (combined) register of its members and charity trustees.

Accounting records, accounts, annual reports and returns, register maintenance

The keeping of adequate records is essential if a CIO is to be properly run. In addition, there is detailed legislation in the Charities Act 2011, as well as guidance in the Charity SORP, about accountability. The rules cover accounting records and the provision of an annual report, statement of account and an annual return, all of which have to be sent to the Charity Commission.

22 Minutes

The charity trustees must keep minutes of all:

- 22.1 appointments of office made by the charity trustees;
- 22.2 proceedings at general meetings of the CIO;
- 22.3 meetings of the charity trustees and committees of charity trustees including:
 - 22.3.1 the names of the trustees present at the meeting;
 - 22.3.2 the decisions made at the meetings; and
 - 22.3.3 where appropriate the reasons for the decisions;
- 22.4 decisions made by the charity trustees otherwise than in meetings.

23 Accounting records, accounts, annual reports and returns, register maintenance

- 23.1 The charity trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of account, and to the preparation of annual reports and returns. The statements of account, reports and returns must be sent to the Charity Commission, regardless of the income of the CIO, within 10 months of the financial year end.
- 23.2 The charity trustees must inform the Commission within 28 days of any change in the particulars of the CIO entered on the Central Register of Charities.

24 Rules

The charity trustees may from time to time make such reasonable and proper rules or byelaws as they may deem necessary or expedient for the proper conduct and management of the CIO, but such rules or bye laws must not be inconsistent with any provision of this constitution. Copies of any such rules or bye laws currently in force must be made available to any member of the CIO on request.

25 Disputes

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

26 Amendment of constitution

- 26.1 As provided by sections 224 to 227 of the Charities Act 2011 this constitution can only be amended by a resolution passed by a 75% majority of those members of the CIO voting at a general meeting of the CIO called in accordance with clause 15 (General meetings and the annual general meeting).
- 26.2 Any alteration of clause 3 (Objects), clause 27 (Voluntary winding up or dissolution), this clause, or of any provision where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them, requires the prior written consent of the Commission.

- 26.3 No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.
- 26.4 A copy of every resolution amending the constitution, together with a copy of the CIO's constitution as amended must be sent to the Commission by the end of the period of 15 days beginning with the date of passing of the resolution, and the amendment does not take effect until it has been recorded in the Register of Charities.

27 Voluntary winding up or dissolution

- 27.1 As provided by the Dissolution Regulations, the CIO may be dissolved by resolution of a general meeting. Any decision to wind up or dissolve the CIO can only be made at a general meeting of the CIO called in accordance with clause 16.2 (Notice of general meetings), of which not less than 14 days' notice has been given to members of the CIO:
- 27.1.1 by a resolution passed by a 75% majority of those members voting, or
- 27.1.2 by a resolution passed by decision of members taken without a vote and without any expression of dissent in response to the question put to the general meeting.
- 27.2 Subject to the payment of all the CIO's debts:
- 27.2.1 Any resolution for the winding up of the CIO, or for the dissolution of the CIO without winding up, may contain a provision directing how any remaining assets of the CIO shall be applied.
- 27.2.2 If the resolution does not contain such a provision, the charity trustees must decide how any remaining assets of the CIO shall be applied.
- 27.2.3 In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO.
- 27.3 The CIO must observe the requirements of the Dissolution Regulations in applying to the Commission for the CIO to be removed from the Register of Charities, and in particular:
- 27.3.1 the charity trustees must send with their application to the Commission:
- (i) a copy of the resolution passed by the members of the CIO;
 - (ii) a declaration by the charity trustees that any debts and other liabilities of the CIO have been settled or otherwise provided for in full; and
 - (iii) a statement by the charity trustees setting out the way in which any property of the CIO has been or is to be applied prior to its dissolution in accordance with this constitution;
- 27.3.2 the charity trustees must ensure that a copy of the application is sent within seven days to every member and employee of the CIO, and to any charity trustee of the CIO who was not privy to the application.
- 27.4 If the CIO is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

Notes

Unlike a Trust Deed used by an unincorporated trust (as in ACRE's models) the constitution does not require signing.

28 Interpretation

In this constitution: "connected person" means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the charity trustee;
- (b) the spouse or civil partner of the charity trustee or of any person falling within paragraph (a) above;
- (c) a person carrying on business in partnership with the charity trustee or with any person falling within paragraph (a) or (b) above;
- (d) an institution which is controlled –
 - (i) by the charity trustee or any connected person falling within paragraph (a), (b), or (c) above; or
 - (ii) by two or more persons falling within sub-paragraph (d)(i), when taken together
- (e) a body corporate in which –
 - (i) the charity trustee or any connected person falling within paragraphs (a) to (c) has a substantial interest; or
 - (ii) two or more persons falling within sub-paragraph (e)(i) who, when taken together, have a substantial interest.

Sections 249 and 352 of the Charities Act 1993 apply for the purposes of interpreting the terms used in this constitution.

"General Regulations" means the Charitable Incorporated Organisations (General) Regulations 2012.

"Dissolution Regulations" means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

The "Communications Provisions" means the Communications Provisions in [Part 9,] of the General Regulations.

"charity trustee" means a charity trustee of the CIO.

A "poll" means a counted vote or ballot, usually (but not necessarily) in writing.

"clear day" does not include the day on which notice is given or the day of the meeting or other event.