

Notes from PAVS

*The following Document is the **'Model Declaration of Trust for a Charitable Trust'** provided by the **Charity Commission for England and Wales (GD2) April 1998 edition.***

We have reproduced the whole document including all notes. The notes have been included in brackets and italics and should be deleted (including this page) once the final form of the document has been agreed. Alternative clauses not used should also be deleted.

Page numbers have not been included, however they could be added when the final document is agreed.

*Once a final form has been agreed the clauses should be numbered in sequence starting with clause **A**.*

*While the model is undergoing preparation and until a final form is agreed it is called a draft. If a number of drafts are prepared you should always mark them, for instance **'draft #2 dated 21/1/99'** to ensure that everyone involved in discussing the draft is using the same basic document.*

(Model Declaration of Trust for a Charitable Trust

A trust is appropriate where:

- *the charity will be administered by a small number of people (usually 3-9); or*
- *the charity will not employ many staff or carry on any kind of business.*

Please first read our publication “Starting and Registering a Charity” (CC21). The checklist of questions referred to in the publication will help you to decide how best to set up the charity. If you then propose to use this model constitution, please read it through carefully, including the guidance notes on the facing pages. (in fact these have been included before the relevant clause for convenience - PAVS)

The model constitution provides a number of alternative clauses. Which clauses you choose will depend on how you wish the charity to be structured and to work. The model is not comprehensive, however, and if you want to include any special or complex provisions which are not contained in the model you should consider asking a solicitor to help you. (alternatively PAVS could assist with this - PAVS)

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

The next steps after completing the model Trust Deed;

- *execute the deed;*
- *send it to your local Inland Revenue stamp office;*
- *after stamping, make two copies of the stamped Deed;*
- *send to the Charity Commission completed APP1 and DEC 1 with 2 copies of the stamped Deed.*

Registration procedure is explained in more detail in our publication “Starting and Registering a Charity”.

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

Crown copyright 1992

April 1998)

THIS DECLARATION OF TRUST IS MADE

the.....day of.....199.....by

((a) Insert the full names and addresses of as many people as are required by clause D, (see subsequent pages). There should be at least 3. These should be the same people whose signatures are witnessed at the end of this declaration of trust.)

(a).....
.....
.....
.....

(“the first trustees” who together with the future trustees or trustee of this deed are referred to as “the trustees”)

WHEREAS the first trustees hold

*((B) Insert a description of the property held. The charity cannot be registered until **some** property has been settled on trust but a nominal sum (e.g. £10) will be sufficient.)*

(b).....
.....
.....

on the trusts declared in this deed and it is contemplated that further money or assets may be paid or transferred to the trustees upon the same trusts.

(Each clause in this model is identified by a capital letter. The notes which follow indicate when a clause must be included and when a choice may be made between two or more clauses. When the constitution has been completed, number the clauses in sequence starting with clause A on this page.)

NOW THIS DEED WITNESSES AS FOLLOWS:

(Clause A Include clause A and insert the name by which the Charity will be known.)

A Administration.

The charitable trust constituted by this deed (“the Charity”) and its property (“the trust fund”) shall be administered and managed by the trustees under the name of
.....

or by such other name as the trustees from time to time decide with the approval of the Charity Commission for England and Wales (“the Commission”).

(Clause B Include clause B. If the Charity is to operate in a specific area, insert the details here. A local government area is usually the clearest and simplest to adopt. If it not to operate in a specific area, delete the words in square brackets. Set out the objects of the Charity clearly and concisely at the end of clause B.)

B Objects.

The trustees shall hold the trust fund and its income upon trust to apply them for the following objects (“the objects”)

[in.....
 (“the area of benefit”):
.....
.....
.....
.....

(Clause C Include clause C and any of the powers from the following sub-clauses which are considered necessary, numbered in sequence.)

C Powers.

In furtherance of the objects but not otherwise the trustees may exercise any of the following powers:

(Include sub-clause C(i) if the Charity will make appeals for money.)

- (i) to raise funds and invite and receive contributions: Provided that in raising funds the trustees shall not undertake any substantial permanent trading activity and shall conform to any relevant statutory regulations;

(Include sub-clause C(ii) and C(iii) if the Charity will acquire land, buildings or other property for use for its purposes.)

- (ii) to buy, take on lease or in exchange, hire or otherwise acquire any property necessary for the achievement of the objects and to maintain and equip it for use;
- (iii) subject to any consents required by law, to borrow money and to charge the whole or any part of the trust fund with repayment of the money so borrowed;

(Include sub-clause C(iv) if the Charity will need to borrow funds.)

(iv) subject to any consents required by law to sell, lease or otherwise dispose of all or any part of the property comprised in the trust fund;

(Most charities will find it useful to include sub-clauses C(v) and C(vi).)

(v) to co-operate with other charities, voluntary bodies and statutory authorities operating in furtherance of the objects or of similar charitable purposes and to exchange information and advice with them;

(vi) to establish or support any charitable trusts, associations or institutions formed for the objects or any of them;

(Include sub-clause C(vii) if the trustees will need to seek specialist advice from others on how to achieve the Charity's objects.)

(vii) to appoint and constitute such advisory committees as the trustees may think fit;

(Include sub-clause C(viii) if the trustees will employ paid staff.)

(viii) to employ such staff (who shall not be trustees) as are necessary for the proper pursuit of the objects and to make all reasonable and necessary provision for the payment of pensions and superannuation to staff and their dependants;

(Include sub-clause C(ix) if the Charity is to hold a substantial number of investments and it is not expected to have a custodian trustee.)

(ix) to permit any investments comprised in the trust fund to be held in the name of any clearing bank, any trust corporation or any stockbroking company which is a member of the Stock Exchange (or any subsidiary of such stockbroking company) as nominee for the trustees and to pay any such nominee reasonable and proper remuneration for acting as such;

(Include sub-clause C(x) if the trustees will need to delegate to others the doing of any acts.)

(x) to delegate to any one or more of the trustees the transaction of any business or the performance of any act required to be transacted or performed in the execution of the trusts of the Charity and which is within the professional or business competence of such trustee or trustees: Provided that the trustees shall exercise reasonable supervision over any trustee or

trustees acting on their behalf under this provision and shall ensure that all their acts and proceedings are fully and promptly reported to them;

(xi) to do all such other lawful things as are necessary for the achievement of the objects.

(Clause D contains three alternative sets of sub-clauses setting out the constitution of the body of trustees who will administer the Charity. The trustees body might consist of individual trustees appointed by themselves (see First and Second set) or of some combination of ex-officio, nominated and co-opted trustees (see Third set).)

(Note The charity trustees will be subject to a number of legal duties which are set out in our publication CC3 "Responsibilities of a Charity Trustee". All prospective charity trustees should read that publication before taking office.)

(First set

Use this set only if the trustee body is to comprise the first trustees and afterwards successors whom they appoint and the trustees are to hold office for fixed periods of years.)

Either

D Appointment of trustees.

(In clause (1) insert the number of the Determination of trusteeship clause. Set out the full names of the first trustees and their terms of office. Stagger the terms of office of the first trustees to ensure that they do not all go out of office at the same time. For example, if there are three trustees, one might be appointed for five years, one for four years and one for three years.)

(1) Subject to the provisions of clause..... the first trustees shall hold office for the following periods respectively:

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

(In clause (2) insert the number of years for which every future trustee is to be appointed and the number of the clause which concerns special meetings (see clause M on page 13).)

(2) There shall be at least three trustees. Every future trustee shall be appointed for a term of years by a resolution of the trustees passed at a

special meeting called under clause If a trustee is to be appointed to replace a trustee who is leaving office he or she may be appointed not more than three months before the other trustee leaves office but shall not take office until the other trustee has left office. In such a case the retiring trustee shall not be entitled to vote in favour of his or her own appointment.

(In clause (3) include the words in square brackets if the Charity has an area of benefit (see clause B above)

(3) In selecting persons to be appointed as trustees, the trustees shall take into account the benefits of appointing a person [who through residence, occupation, employment or otherwise has special knowledge of the area of benefit or] who is [otherwise] able by virtue of his or her personal or professional qualifications to make a contribution to the pursuit of the objects or the management of the Charity.

(It is essential that the property belonging to the Charity should be vested in the trustees at all times.

If the Charity is to own land (either freehold or on long lease) bear in mind that on every change of trustee the legal title will have to be vested in the new trustees. If the changes in the trusteeship are likely to be frequent, the trustees might wish to consider having the legal title vested in the Official Custodian for Charities who can hold it on the trustees' behalf. (See the Commissioners' leaflet CC13 "The Official Custodian for Charities" Land Holding Service"). Application for an order vesting title in the Official Custodian should be made to the Commissioners. Except in special circumstances the Official Custodian can no longer hold investments on behalf of charities. An alternative is to appoint a body corporate as Custodian Trustee. Such body is likely to charge for its services while the Official Custodian does not. However, if a Custodian Trustee is appointed for other reasons (for instance the holding of investments) the land would also be vested in it.

A Custodian Trustee is not essential to hold investments - a power to permit a nominee to hold them can be included instead. A suitable power is contained in Clause C(ix) above.)

(4) When any new trustee is appointed the trustees shall ensure that any land belonging to the Charity which is not vested or about to be vested in the Official Custodian for Charities or in a custodian trustee and all other property of the Charity which is not vested or about to be vested in the Official Custodian for Charities, a custodian trustee or a nominee is effectively vested in the persons who are the trustees following such appointment.

(5) If for any reason trustees cannot be appointed in accordance with the foregoing provisions, the statutory power of appointing new or additional trustees shall be exercisable.

(Second set

Use this set only if the first trustees are to appoint their own successors but fixed periods of office are not desired.)

Or D Appointment of trustees

(In clause (1) insert the number of the clause which concerns special meetings (see clause M)

- (1) There shall be at least three trustees. Every future trustee shall be appointed by a resolution of the trustees passed at a special meeting called under clause.....

(In sub-clause (2) include the words in square brackets if the Charity has an area of benefit (see clause B above)

- (2) In selecting persons to be appointed as trustees, the trustees shall take into account the benefits of appointing a person [who through residence, occupation, employment or otherwise has special knowledge of the area of benefit or] who is [otherwise] able by virtue of his or her personal or professional qualifications to make a contribution to the pursuit of the objects or the management of the Charity.

- (3) When any new trustee is appointed the trustees shall ensure that any land belonging to the Charity which is not vested or about to be vested in the Official Custodian for Charities or in a custodian trustee and all other property of the Charity which is not vested or about to be vested in the Official Custodian for Charities, a custodian trustee or a nominee is effectively vested in the persons who are the trustees following such appointment.

- (4) If for any reason trustees cannot be appointed in accordance with the foregoing provisions, the statutory power of appointing new or additional trustees shall be exercisable.

(Third set

Use or modify only if the trustee body is to comprise ex-officio trustees or nominees of certain organisations. An ex-officio trustee is one who is entitled to be a trustee for as long as he holds a particular office. If for any reason he ceases to hold that office he also ceases to be a trustee.)

Or D Appointment of trustees

(In clause (1) insert the total number of trustees and the intended number of ex-officio, nominated and co-opted trustees.)

(1) The body of trustees shall consist when complete of persons being:

- ex-officio trustee(s);
- nominated trustee(s); and
- co-opted trustee(s).

(In clause (2) insert the description of the office held by the ex-officio trustee, e.g. "the Vicar for the time being of the Ecclesiastical Parish of X".)

(2) The ex-officio trustee(s) shall be

(In clause (3) insert the full names of the appointing bodies.)

(3) The nominated trustee(s) shall be appointed by

Each appointment shall be made for a term of four years at a meeting convened and held according to the ordinary practice of the appointing body. The chairman of the meeting shall cause the name of each person appointed to be notified forthwith to the trustees. The person appointed may be, but need not be, a member of the appointing body.

(In clause (4) insert the full names of the first trustees with their terms of office, which should be staggered to ensure that they do not all go out of office at the same time.)

(4) The first trustees shall be the first co-opted trustees and shall hold office for the following periods respectively

-
-
-
-
-

(In clause (5) include the words in square brackets if the Charity has an area of benefit (see clause B above)

(5) Future co-opted trustees shall be persons [who through residence, occupation, employment or otherwise have special knowledge of the area of

benefit or] who are [otherwise] able by virtue of their personal or professional qualifications to make a contribution to the pursuit of the objects or the management of the charity. They shall be appointed for a term of five years by a resolution of the trustees passed at a special meeting of which not less than 21 days' notice has been given.

- (6) If for any reason trustees cannot be appointed in accordance with the foregoing provisions, the statutory power of appointing new or additional trustees shall be exercisable.

(Please remember to delete the two sets of sub-clauses which have not been used.)

(Clause E Include clause E.)

E Eligibility for trusteeship.

- (1) No person shall be appointed as a trustee:
- (a) unless he or she has attained the age of 18 years; or
 - (b) in circumstances such that, had he or she already been a trustee, he or she would have been disqualified from office under the provisions of the following clause
- (2) No person shall be entitled to act as a trustee whether on a first or on any subsequent entry into office until after signing in the minute book of the trustees a declaration of acceptance and willingness to act in the trusts of the Charity.

(Clause F Include clause F.)

F Determination of trusteeship.

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

- (1) is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision);

- (2) becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
- (3) is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated; or
- (4) notifies to the trustees a wish to resign (but only if at least two trustees will remain in office when the notice of resignation is to take effect).

(Clause G Include clause G.)

G Vacancies.

If a vacancy occurs the trustees shall note the fact in their minute book at their next meeting. Any eligible trustee may be re-appointed. So long as there shall be fewer than two trustees none of the powers or discretions hereby or by law vested in the trustees shall be exercisable except for the purpose of appointing a new trustee or trustees.

(Clause H Include clause H.)

H Ordinary meetings.

The trustees shall hold at least two ordinary meetings in each year.

(Clause I Include clause I and insert the name of the trustee who is to call the first meeting.)

I Calling meetings.

The first meeting of the trustees shall be called by

.....
or if no meeting has been called within three months after the date of this deed by any two of the trustees. Subsequent meetings shall be arranged by the trustees at their meetings or may be called at any time by the chairman or any

two trustees upon not less than ten days' notice being given to the other trustees.

(Clause J Include clause J.)

J Chairman.

The trustees at their first ordinary meeting in each year shall elect one of their number to be the chairman of their meetings until the commencement of the first ordinary meeting in the following year. The chairman shall always be eligible for re-election. If the chairman is not present within ten minutes after the time appointed for holding a meeting or there is no chairman the trustees present shall choose one of their number to be chairman of the meeting.

(Clause K Include clause K and include the words in square brackets only if the deed is to contain a power of amendment (see clause X later).)

K Special meetings.

A special meeting may be called at any time by the chairman or any two trustees upon not less than four days' notice being given to the other trustees of the matters to be discussed, but if the matters include an appointment of a trustee [or a proposal to amend any of the trusts of this deed] then upon not less than 21 days' notice being given. A special meeting may be called to take place immediately after or before an ordinary meeting.

(Clause L Include clause L.)

L Quorum.

There shall be a quorum when at least one third of the number of trustees for the time being or two trustees, whichever is the greater, are present at a meeting.

(Clause M Include clause M.)

M Voting.

Every matter shall be determined by a majority of votes of the trustees present and voting on the question. The chairman of the meeting shall have a casting vote whether he or she has or has not voted previously on the same question but no trustee in any other circumstances shall give more than one vote.

(Clause N Include clause N.)

N Minutes.

The trustees shall keep minutes, in books kept for the purpose, of the proceedings at their meetings.

(Clause O Include clause O.)

O Accounts.

The trustees shall comply with their obligations under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to:

- (1) the keeping of accounting records for the Charity;
- (2) the preparation of annual statements of accounts for the Charity;
- (3) the auditing or independent examination of the statements of account of the Charity; and
- (4) the transmission of the statements of account of the Charity to the Commissioners.

(Clause P Include clause P.)

P Annual Report.

The trustees shall comply with their obligations under the Charities Act 1992 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Commissioners.

(Clause Q Include clause Q.)

Q Annual Return.

The trustees shall comply with their obligations under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual return and its transmission to the Commissioners.

(Clause R Include clause R.)

R General power to make regulations.

Within the limits of this deed the trustees shall have full power from time to time to make regulations for the management of the Charity and for the conduct of their business, including the calling of meetings, the deposit of money at a bank and the custody of documents.

(Clause S Include clause S.)

S Bank account.

Any bank account in which any part of the trust fund is deposited shall be operated by the trustees and shall be held in the name of the Charity. All cheques and orders for the payment of money from such account shall be signed by at least two trustees.

(Clause T Include clause T.)

T Trustees not to be personally interested.

*(In sub-clause T(1) delete the words in square brackets **unless** sub-clause T(2) is to be included.)*

[(1) Subject to the provisions of sub-clause (2) of this clause]. No trustee shall acquire any interest in property belonging to the Charity (otherwise than as a trustee for the Charity) or receive remuneration or be interested (otherwise than as a trustee) in any contract entered into by the trustees.

(Include sub-clause T(2) only if there is a real need for the trustee body to include a professional person who will charge a fee for his or her professional services.)

[(2) Any trustee who is a solicitor, accountant or other person engaged in any profession may charge and be paid all the usual professional charges for business done by him or her or his or her firm when instructed by the other trustees to act in a professional capacity on behalf of the Charity: Provided that at no time shall a majority of the trustees benefit under this provision and that a trustee shall withdraw from any meeting of the trustees at which his or her own instructions or remuneration, or that of his or her firm, is under discussion.]

*(**Clause U** Include clause U only if the charity is to own freehold or long leasehold land.)*

U Management of land.

Subject to any consents which may be required by law, the trustees shall either sell or let any land belonging to the Charity which is not required to be retained or occupied in the furtherance of the objects.

*(**Clause V** Include clause V only if the charity is to own freehold or long leasehold land.)*

V Leases.

The trustees shall ensure that on the grant by them of any lease the tenant shall execute a counterpart lease. Every lease shall contain a covenant on the part of the tenant for the payment of rent and a proviso for re-entry on non-payment of rent or non-performance of the covenants contained in the lease.

(Clause W Include clause W only if the charity is to own freehold or long leasehold land.)

W Repair and insurance.

The trustees shall keep in repair and insure to their full value against fire and other usual risks all the buildings of the Charity which are not required to be kept in repair and insured by the tenant and shall also insure suitably in respect of public liability and employer's liability.

(Clause X Include or modify clause X as appropriate.

Clause X.

*Powers enabling the trustees to vary the administrative provisions of the deed and to amend the objects can be very useful. Without these powers the trustees may have to apply to the Commissioners for a scheme to enable any amendments to be made. A scheme inevitably involves the publication of statutory notices which could involve the Charity in expense. However, do **not** include a power to amend the objects if, for example, there has been a public appeal for a specific charitable purpose, or the Charity is to have objects expressed in very wide terms unlikely ever to become impossible to be carried out effectively.)*

X Amendment of Trust Deed.

(1) The trustees may amend the provisions of this deed, provided that:

*(In sub-clause X(1)(a) insert the number of the Objects clause. Delete the words in square brackets if the trustees are **not** to have a power to amend the objects.)*

(a) no amendment may be made to clause (the objects clause) [unless it appears to the trustees that the objects can no longer provide a suitable and effective method of using the trust fund];

*(In sub-clause X(1)(b) delete the words in square brackets if the trustees are **not** to have a power to amend the objects. Insert the number of the Objects clause if the trustees **are** to have such a power. Insert the number of the Trustees not to be personally interested clause.)*

(b) no amendment may be made to [clause (the objects clause),] clause (trustees not to be personally interested clause) or this clause without the prior consent in writing of the Commissioners; and

(c) no amendment may be made which has the effect of the Charity ceasing to be a charity at law.

(2) Any amendment shall be made by deed under the authority of a resolution passed at a special meeting of the trustees.

(3) The trustees should promptly send to the Commissioners a copy of any amendment made under this clause.

IN WITNESS whereof the parties hereto have hereunto set their respective hands the day and year first before written.

(Repeat the whole of the following signing clause for each party to the deed.)

Signed as a deed by the said:

.....

In the presence of:

.....

Witness's name:

.....

Witness's address:

.....

.....

.....

.....