

Notes from PAVS

*The following Constitution is the ‘**Model Constitution for a Charitable Unincorporated Association**’ provided by the **Charity Commission for England and Wales (GD3) 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.*

If you have any queries concerning preparing the Constitution please do not hesitate to contact PAVS.

(Model Constitution for a Charitable Unincorporated Association

An unincorporated association is appropriate where:

- *the people who will control the organisation are democratically elected from time to time; or*
- *the organisation will have a membership; or*
- *the organisation's original objects and policies may need to be modified from time to time.*

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 can of course 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 the remaining clauses in sequence.*

After completing the model constitution a meeting should be called to formally adopt the constitution. You should then send to the Commission:

- *completed APP 1 and DEC 1;*
- *two copies of adopted constitution; and*
- *copy minutes of the meeting at which the constitution was adopted.*

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.

(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 must be made between two clauses. When the constitution has been completed, number the clauses in sequence starting with clause A on page 3.)

Constitution

adopted on the.....day of.....199.....

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

A Name.

The name of the Association is

.....
.....
..... (“the Charity”)

(Clause B Include clause B. When the draft is complete, insert the number of the clause which provides for the constitution of the Executive Committee.)

B Administration.

Subject to the matters set out below the Charity and its property shall be administered and managed in accordance with this constitution by the members of the Executive Committee, constituted by clause.....of this constitution (“the Executive Committee”)

(Clause C Include clause C and set out the objects of the Charity clearly and concisely. 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.)

C Objects.

The Charity’s objects (“the Objects”) are

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

D Powers.

In furtherance of the objects but not otherwise the Executive Committee may exercise the following powers:

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

- (i) power to raise funds and to invite and receive contributions provided that in raising funds the Executive Committee shall not undertake any substantial permanent trading activities and shall conform to any requirements of the law;

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

- (ii) power to buy, take on lease or in exchange any property necessary for the achievement of the objects and to maintain and equip it for use;

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

- (iii) power subject to any consents required by law to sell, lease or dispose of all or any part of the property of the Charity;

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

- (iv) power subject to any consents required by law to borrow money and to charge all or any part of the property of the Charity with repayment of the money so borrowed;

(Include sub-clause D(v) if the Charity will employ staff.)

- (v) power to employ such staff (who shall not be members of the Executive Committee) 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 for staff and their dependants;

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

- (vi) power 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;

- (vii) power to establish or support any charitable trusts, associations or institutions formed for all or any of the objects;

(Include sub-clause D(viii) if the Executive Committee is likely to need to seek specialist advice from others on how to achieve the Charity's objects.)

(viii) power to appoint and constitute such advisory committees as the Executive Committee may think fit;

(Include sub-clause D(ix) if any of the other powers listed above has been included.)

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

(Clauses E and F are alternative clauses. Choose only **one** of them.)

(Clause E Use clause E only if the Charity's membership will comprise interested individuals only.)

E Membership.

- (1) Membership of the Charity shall be open to any person over the age of 18 years interested in furthering the objects and who has paid the annual subscription laid down from time to time by the Executive Committee.
- (2) Every member shall have one vote.
- (3) The Executive Committee may by unanimous vote and for good reason terminate the membership of any individual: Provided that the individual concerned shall have the right to be heard by the Executive Committee, accompanied by a friend, before a final decision is made.

(Clause F Use clause F only if the Charity's membership will consist of interested individuals and organisations such as companies and other associations.)

F Membership.

- (1) Membership of the Charity shall be open to:
 - (i) individuals (over the age of 18 years) who are interested in furthering the work of the Charity and who have paid any annual subscription laid down from time to time by the Executive Committee, and
 - (ii) any body corporate or unincorporated association which is interested in furthering the Charity's work and has paid any annual subscription (any such body being called in this constitution a "member organisation").

- (2) Every member shall have one vote.
- (3) Each member organisation shall appoint an individual to represent it and to vote on its behalf at meetings of the Charity; and may appoint an alternative to replace its appointed representative at any meeting of the Charity if the appointed representative is unable to attend.
- (4) Each member organisation shall notify the name of the representative appointed by it and of any alternative to the secretary. If the representative or alternate resigns from or otherwise leaves the member organisation, he or she shall forthwith cease to be the representative of the member organisation.
- (5) The Executive Committee may unanimously and for good reason terminate the membership of any individual or member organisation: Provided that the individual concerned or the appointed representative of the member organisation concerned (as the case may be) shall have the right to be heard by the Executive Committee, accompanied by a friend, before a final decision is made.

(Clause G Include clause G.)

G Honorary Officers.

At the annual general meeting of the Charity the members shall elect from amongst themselves a chairman, a secretary and a treasurer, who shall hold office from the conclusion of that meeting.

*(Note: The members of the Executive Committee will be the **charity trustees** and as such will be subject to a number of important legal duties which are set out in our publication CC3 "Responsibilities of Charity Trustees". All prospective charity trustees should read that publication before taking office.)*

(Clause H Include clause H and modify it as necessary.)

(Insert in sub-clause H(1) the intended minimum and maximum number of members of the Executive Committee. The minimum number must be not less than three.)

H Executive Committee.

- (1) The Executive Committee shall consist of not less than..... members nor more than.....members being:
 - (a) the honorary officers specified in the preceding clause;

(Insert in sub-clause H(1)(b) the intended minimum and maximum number of elected members of the Executive Committee.)

(b) not less than..... and not more than.....members elected at the annual general meeting who shall hold office from the conclusion of that meeting;

(Include sub-clause H(1)(c) if the Executive Committee is to include members nominated by specific organisations. Insert the number of nominated members there are to be and the full names of the organisations which will appoint them, e.g. "One by Basset County Council".)

(c) nominated members appointed as follows:

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*(In sub-clause H(2) insert the maximum number of co-opted members that the Executive Committee may appoint. The number should not exceed one-third of the total number of members of the Executive Committee. At point * Insert the number of the clause which concerns special meetings (see clause K(1) later).)*

(2) The Executive Committee may in addition appoint not more than..... co-opted members but so that no-one may be appointed as a co-opted member if, as a result, more than one third of the members of the Executive Committee would be co-opted members. Each appointment of a co-opted member shall be made at a special meeting of the Executive Committee called under Clause(*)..... and shall take effect from the end of that meeting unless the appointment is to fill a place which has not then been vacated in which case the appointment shall run from the date when the post becomes vacant.

(3) All the members of the Executive Committee shall retire from office together at the end of the annual general meeting next after the date on which they came into office but they may be re-elected or re-appointed.

(4) The proceedings of the Executive Committee shall not be invalidated by any vacancy among their number or by any failure to appoint or any defect in the appointment or qualification of a member.

(5) Nobody shall be appointed as a member of the Executive Committee who is aged under 18 or who would if appointed be disqualified under the provisions of the following clause.

- (6) No person shall be entitled to act as a member of the Executive Committee whether on a first or on any subsequent entry into office until after signing in the minute book of the Executive Committee a declaration of acceptance and of willingness to act in the trusts of the Charity.

(Clause I Include clause I.)

I Determination of Membership of Executive Committee.

A member of the Executive Committee shall cease to hold office if he or she:

- (1) is disqualified from acting as a member of the Executive Committee 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 Executive Committee from all their meetings held within a period of six months and the Executive Committee resolve that his or her office be vacated; or
- (4) notifies to the Executive Committee a wish to resign (but only if at least three members of the Executive Committee will remain in office when the notice of resignation is to take effect).

*(Clause J Include clause J but delete the words in square brackets at the beginning of the clause **unless** sub-clause J(2) is to be included.)*

J Executive Committee Members not to be personally interested.

- (1) [Subject to the provisions of sub-clause (2) of this clause] no member of the Executive Committee 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 member of the Executive Committee) in any contract entered into by the Executive Committee.

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

- (2) Any member of the Executive Committee for the time being who is a solicitor, accountant or other person engaged in a 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 members of the Executive Committee to act in a professional capacity on behalf of the Charity: Provided that at no time shall a majority of members of the Executive Committee benefit under this provision and that a member of the Executive Committee shall withdraw from any meeting at which his or her own instruction or remuneration, or his or her firm, is under discussion.

(Clause K Include clause K.)

K Meetings and proceedings of the Executive Committee.

- (1) The Executive Committee shall hold at least two ordinary meetings each year. A special meeting may be called at any time by the chairman or by any two members of the Executive Committee upon not less than 4 days notice being given to the other members of the Executive Committee of the matters to be discussed but if the matters include an appointment of a co-opted member then not less than 21 days notice must be given.
- (2) The chairman shall act as chairman at meetings of the Executive Committee. If the chairman is absent from any meeting, the members of the Executive Committee present shall choose one of their number to be chairman of the meeting before any other business is transacted.
- (3) There shall be a quorum when at least one third of the number of members of the Executive Committee for the time being or three members of the Executive Committee, whichever is the greater, are present at a meeting.
- (4) Every matter shall be determined by a majority of votes of the members of the Executive Committee present and voting on the question but in the case of equality of votes the chairman of the meeting shall have a second or casting vote.
- (5) The Executive Committee shall keep minutes, in books kept for the purpose, of the proceedings at meetings of the Executive Committee and any sub-committee.
- (6) The Executive Committee may from time to time make and alter rules for the conduct of their business, the summoning and conduct of their meetings and the custody of documents. No rule may be made which is inconsistent with this constitution.
- (7) The Executive Committee may appoint one or more sub-committees consisting of three or more members of the Executive Committee for the purpose of making any inquiry or supervising or performing any function or duty which in the opinion of the Executive Committee would be more conveniently undertaken or carried out by a sub-committee: provided that all acts and proceedings of any such sub-committee shall be fully and promptly reported to the Executive Committee.

(Clause L Include clause L.)

L Receipts and expenditure.

- (1) The funds of the Charity, including all donations contributions and bequests, shall be paid into an account operated by the Executive Committee in the name of the Charity at such bank as the Executive Committee shall from time to time decide. All cheques drawn on the account must be signed by at least two members of the Executive Committee.
- (2) The funds belonging to the Charity shall be applied only in furthering the objects.

(Clause M Include clause M.)

It is essential that the property belonging to the Charity should be vested in suitable individuals or a body corporate at all times. As the members of the Executive Committee will fluctuate from year to year it is not practicable for property to be held in their names. If the Charity is to own land (either freehold or a long lease) then the Executive Committee might wish to consider having the legal title vested in the Official Custodian for Charities who can hold it on the Executive Committee's behalf (see our publication 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.

A second possibility is to appoint a body corporate as Custodian Trustee. Such a body is likely to charge for its services which the Official Custodian does not. However, if a Custodian Trustee is appointed to hold the investments of the Charity, the land would also be vested in it.

A third possibility is to appoint at least three individuals to hold the title to both the land and the investments of the Charity as holding trustees.

Sub-clause M(2) permits the investments of the Charity to be held by a nominee.)

M Property.

- (1) Subject to the provisions of sub-clause (2) of this clause, the Executive Committee shall cause the title to:
 - (a) all land held by or in trust for the Charity which is not vested in the Official Custodian for Charities; and
 - (b) all investments held by or on behalf of the Charity;

to be vested either in a corporation entitled to act as custodian trustee or in not less than three individuals appointed by them as holding trustees. Holding trustees may be removed by the Executive Committee at their pleasure and shall act in accordance with the lawful directions of the Executive Committee, the holding trustees shall not be liable for the acts and defaults of its members.

- (2) If a corporation entitled to act as custodian trustee has not been appointed to hold the property of the Charity, the Executive Committee may permit any investments held by or in trust for the Charity to be held in the name of a clearing bank, trust corporation or any stockbroking company which is a member of the International Stock Exchange (or any subsidiary of any such stockbroking company) as nominee for the Executive Committee, and may pay such a nominee reasonable and proper remuneration for acting as such.

(Clause N Include clause N.)

N Accounts.

The Executive Committee 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 account for the Charity;
- (3) the auditing or independent examination of the statements of accounts of the Charity; and
- (4) the transmission of the statements of account of the Charity to the Commission.

(Clause O Include clause O.)

O Annual Report.

The Executive Committee 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 report and its transmission to the Commission.

(Clause P Include clause P.)

P Annual Return.

The Executive Committee 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 Commission.

(Clause Q Include clause Q.)

Q Annual General Meeting.

(In sub-clause Q(1) insert the month in which the annual general meeting will be held.)

- (1) There shall be an annual general meeting of the Charity which shall be held in the month of in each year or as soon as practicable thereafter.
- (2) Every annual general meeting shall be called by the Executive Committee. The Secretary shall give at least 21 days notice of the annual general meeting to all the members of the Charity. All the members of the Charity shall be entitled to attend and vote at the meeting.
- (3) Before any other business is transacted at the first annual general meeting the persons present shall appoint a chairman of the meeting. The chairman shall be the chairman of subsequent annual general meetings, but if he or she is not present, before any other business is transacted, the persons present shall appoint a chairman of the meeting.
- (4) The Executive Committee shall present to each annual general meeting the report and accounts of the Charity for the preceding year.
- (5) Nominations for election to the Executive Committee must be made by members of the Charity in writing and must be in the hands of the secretary of the Executive Committee at least 14 days before the annual general meeting. Should nominations exceed vacancies, election shall be by ballot.

(Clause R Include clause R.)

R Special General Meetings.

The Executive Committee may call a special general meeting of the Charity at any time. If at least ten members request such a meeting in writing stating the business to be considered the secretary shall call such a meeting. At least 21 days notice must be given. The notice must state the business to be discussed.

(Clause S Include clause S.)

S Procedure at General Meetings.

- (1) The secretary or other person specially appointed by the Executive Committee shall keep a full record of proceedings at every general meeting of the Charity.
- (2) There shall be a quorum when at least one tenth of the number of members of the Charity for the time being or ten members of the Charity, whichever is the greater, are present at any general meeting.

(Clause T Include clause T.)

T Notices.

Any notice required to be served on any member of the Charity shall be in writing and shall be served by the secretary or the Executive Committee on any member either personally or by sending it through the post in a prepaid letter addressed to such member at his or her last known address in the United Kingdom, and any letter so sent shall be deemed to have been received within 10 days of posting.

(Clause U Include clause U.)

Powers enabling the members of the Charity to amend the administrative provisions of the constitution and to amend the objects can be very useful. Without these powers the Executive Committee may have to apply to the Commission 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.)

U Alterations to the Constitution.

- (1) Subject to the following provisions of this clause the Constitution may be altered by a resolution passed by not less than two thirds of the members present and voting at a general meeting. The notice of the general meeting must include notice of the resolution, setting out the terms of the alteration proposed.

(When the draft constitution has been completed and the clauses numbered in sequence, insert in sub-clause U(2) the number of each of the four clauses referred to.)

- (2) No amendment may be made to clause..... (the name of charity clause), clause (the objects clause), clause (Executive Committee

members not to be personally interested clause), clause (the dissolution clause) or this clause without the prior consent in writing of the Commissioners.

- (3) No amendment may be made which would have the effect of making the Charity cease to be a charity at law.
- (4) The Executive Committee should promptly send to the Commission a copy of any amendment made under this clause.

(Clause V Include this clause which enables the Charity to be wound up if it is considered that it no longer fulfils a useful function.)

V Dissolution.

If the Executive Committee decides that it is necessary or advisable to dissolve the Charity it shall call a meeting of all members of the Charity, of which not less than 21 days notice (stating the terms of the resolution to be proposed) shall be given. If the proposal is confirmed by a two-thirds majority of those present and voting the Executive Committee shall have power to realise any assets held by or on behalf of the Charity. Any assets remaining after the satisfaction of any proper debts and liabilities shall be given or transferred to such other charitable institution or institutions having objects similar to the objects of the Charity as the members of the Charity may determine or failing that shall be applied for some other charitable purpose. A copy of the statement of accounts, or account and statement, for the final accounting period of the Charity must be sent to the Commission.

(Clause W Include clause W.)

W Arrangements until first Annual General Meeting.

Until the first annual general meeting takes place this constitution shall take effect as if references in it to the Executive Committee were references to the persons whose signatures appear at the bottom of this document.

This constitution was adopted on the date mentioned above by the persons whose signatures appear at the bottom of this document.

Signed

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