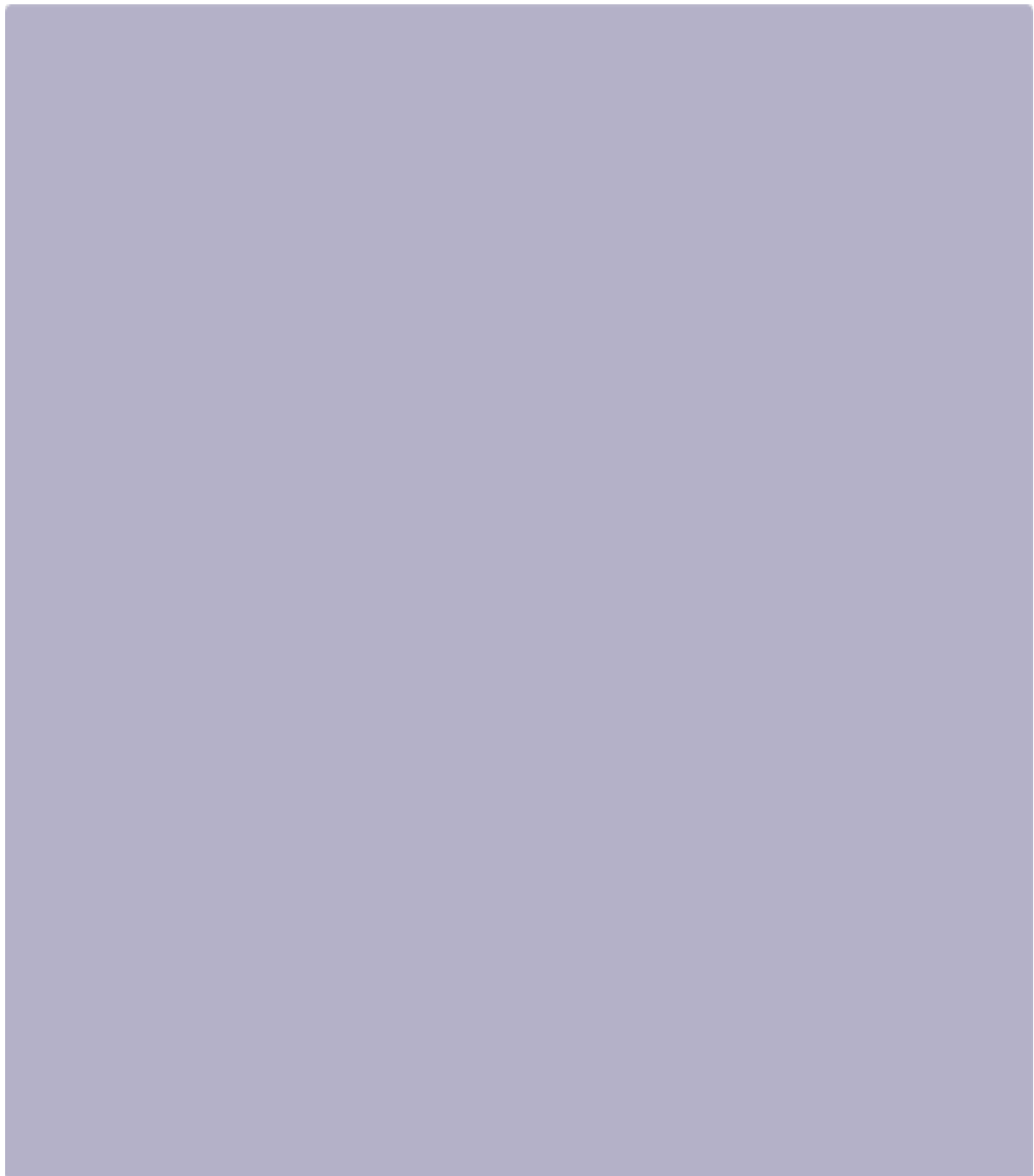




Constitution of a Charitable Incorporated Organisation with voting members other than its charity trustees



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Charitable Incorporated Organisation: Model Constitution for a CIO with a voting membership (in addition to the charity trustees)

('Association' model constitution)

This document is a Charity Commission model constitution for a Charitable Incorporated Organisation (CIO). If you want to set up a CIO, you will find it easiest to use one of our model constitutions.

This guidance briefly explains:

- What a CIO is
- How to decide whether the CIO is the right form for your charity
- How to choose the right model constitution
- How to complete the model constitution and register as a charity
- Where to get more information and advice

There are notes explaining key points about each clause in the model constitution, to help you decide how to complete it.

We also have more detailed guidance on CIOs available on our website.

What is a Charitable Incorporated Organisation?

The Charitable Incorporated Organisation (CIO) is a new legal form for a charity. It has been created in response to requests from the charitable sector. It is a new incorporated form of charity which is not a limited company or subject to company regulation.

The Charities Act 2011 creates the basic legal framework for the CIO. This framework is completed by regulations:

- the Charitable Incorporated Organisations (General) Regulations 2012 ('General Regulations'); and
- the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 ('Dissolution Regulations').

Is the CIO the right structure for our charity?

Choosing the right legal structure and governing document is one of the first and most important decisions that the founders of a charity need to make. It will affect:

- how easy it will be to set up and run the charity
- how easy it will be to make changes in the future
- whether the charity can have a voting membership
- whether the charity can itself own premises, employ staff or enter contracts, or whether the trustees will have to do this personally.

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With the introduction of the CIO, there are four main legal forms that charities may take. We produce model governing documents for each of these forms:

- Trust (governing document: trust deed; could also be created by a will)
- Unincorporated association (governing document: constitution or rules)
- Company limited by guarantee (governing document: memorandum and articles of association for company formed before September 2009; articles of association for company formed since then)
- CIO (governing document: constitution)

An incorporated form, CIO or company limited by guarantee, may be more suitable for a charity that will:

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

Some points to note about CIOs:

- A CIO is a corporate body (like a company) that can own property, employ staff and enter into other contracts in its own name (rather than in the names of the trustees).
- Members of a company limited by guarantee have limited liability for its debts if it winds up (they only have to pay a fixed amount).
Members of a CIO may either have no liability at all or (like a company) limited liability for its debts.
- Because they have additional legal protection, members of a corporate body (company or CIO) must comply with extra regulations.
- Unlike companies, CIOs do not have to register with Companies House.
- Unlike companies, CIOs will not be fined for administrative errors like late filing of accounts, but some breaches of the CIO Regulations are legal offences.
- All CIOs must register with the Commission, regardless of their income. This means that an exempt charity cannot be a CIO, and CIO may be unsuitable for other types of charity that don't have to register. (See our [guidance on types of charity that don't have to register](#).)
- CIOs must produce accounts under charity law, not company law. This allows smaller CIOs (income below £250,000) to produce simpler receipts and payments accounts.
- To simplify the CIO framework, there is currently no provision for CIOs to issue debentures, or for a register of charges (mortgages etc) over CIO property.

For more information on other legal forms, see our guidance on choosing your charity's governing document. Another useful source of advice is the Get Legal website and online decision tool (www.getlegal.org.uk).

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Why are there two different model constitutions for a CIO?

Like companies (which must have both members and company directors) all CIOs must have members and charity trustees. Some CIOs may want the only members to be the charity trustees; others may want a wider membership open to other people.

We have produced two model constitutions for CIOs:

- the **'foundation'** model is for charities whose **only** voting members will be the charity trustees
- the **'association'** model (this model) is for charities that will have a wider membership, including voting members other than the charity trustees

In practice a CIO using the 'foundation' model will be like an incorporated charitable trust, run by a small group of people (the charity trustees) who make all key decisions. Charity trustees may be appointed for an unlimited time and they will probably appoint new charity trustees.

A CIO using the 'association' model will have a wider voting membership who must make certain decisions (such as amending the constitution), will usually appoint some or all of the charity trustees (who will serve for fixed terms), and may be involved in the work of the CIO.

There are not two different forms of CIO. A CIO with the 'foundation' model could change to the 'association' model if it wanted a wider voting membership. (This could also happen the other way around, but members who were not trustees would be giving up their membership.) Some of the changes would need our approval.

Why use one of the Commission's model CIO constitutions?

A CIO's constitution **must** be in the form to be specified by Commission regulations (or as near to that form as the circumstances allow). These regulations will specify that the constitution should be in the form of one of our model constitutions. This still allows some flexibility, as explained in the guidance notes on the model. The constitution **must** be in English if the CIO's principal office is in England, but may be in English or Welsh if the principal office is in Wales.

A CIO's constitution **must** include certain provisions to comply with the Charities Act 2011 (the 2011 Act) and the General Regulations. However the 2011 Act and General Regulations do not prescribe an exact wording.

There are other provisions that **must** be included **if** they apply to a particular CIO. If they do not fully apply, the constitution **must** explain to what extent or how they apply.

We have included other provisions in this model constitution because:

- they reflect good practice that we recommend
- they remind the trustees about a legal requirement
- the constitution would not work properly without them, or

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- charities have said that it would be a useful option and it would be helpful to have standard wording

Using one of the Commission's models will help to ensure that you include all of the constitutional provisions that your CIO will need:

- to meet the requirements of the law
- to comply with good practice, and
- to be practical and workable

The guidance notes will prompt you to think about whether you may need to include particular powers.

The 2011 Act and the General Regulations don't require you to use a particular wording, but the wording in our models has been carefully considered and also informed by specialists in the charity sector. Using one of our models will also mean that there will be fewer questions for us to ask and consider when you apply for charity registration.

How do we become a CIO?

i) New charities

To set up and register a new CIO, follow the procedure set out below under Next steps.

ii) Existing charitable trusts and unincorporated associations

An existing unincorporated charity can only change to a CIO by:

- setting up and registering a new CIO (in the same way as for a new charity), then
- transferring its property and operations to the CIO.

You should check whether your charity can transfer its property in this way, or whether you need authorisation from the Commission. Once the transfer is complete, the original charity can normally be wound up and removed from the register, but different arrangements may apply to charities with permanent endowment (see below).

iii) Existing charities with permanent endowment

Some charitable trusts have property (land or investments) that cannot be expended as income. Property restricted in this way is called permanent endowment. This may include land that must be used in a particular way for the purposes of the charity.

- Often, these charities have no power to wind up or transfer their permanent endowment.
- CIOs cannot hold permanent endowment as part of their own (corporate) property.

Notes	The General Regulations make special provision to enable charities with permanent endowment to transfer to a CIO. The trustees of the permanently endowed charity need to: • set up and register a new CIO with the Commission, then • make a vesting declaration under section 310 of the 2011 Act (as amended by the General Regulations), transferring all property of the original charity to the new CIO. The vesting declaration will: • transfer expendable property to the CIO as part of its corporate property • vest legal title to the permanent endowment in the CIO, to be held on its original trusts • appoint the CIO as trustee for the permanent endowment trust and give it the powers of a trust corporation for that trust • mean that the CIO and the permanent endowment trust are treated as a single charity for registration and accounting purposes (they won't need to register separately or produce separate accounts). If charities use a vesting declaration to carry out a merger, they must record it in the Register of Mergers. Vesting declarations are legal documents, so you may need advice from a solicitor or other professional. There are circumstances in which permanent endowment can be spent; it is not absolutely protected. For further information see our general guidance on CIOs. iv) Existing charitable companies and industrial and provident societies Once all of the provisions are in force, it will also be possible for an existing charitable company or charitable industrial and provident society to convert directly into a CIO; there are specific procedures for this. To manage demand, the Commission is phasing in the introduction of the CIO and not all of these options will be available immediately. Please see our general guidance on CIOs for details. What guidance should we consider before we begin? • There is comprehensive guidance on setting up and registering a charity on our website. • We also have more detailed guidance on CIOs. • <i>The Essential Trustee</i> sets out the basics that all charity trustees need to know. Next steps 1. Completing the constitution
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Please note – we are publishing the model constitutions in this format (PDF) to help charities and their professional advisers to prepare for the implementation of the CIO. We are currently looking into more flexible and user-friendly formats that will make it easier for promoters to complete the constitution.

Once you have decided to apply to register a CIO and have chosen the correct model constitution, please read the constitution and accompanying guidance notes carefully. In the guidance notes we say that something '**must**' be included in the constitution if it is a legal requirement in the 2011 Act or the Regulations. We say that something '**should**' be included if we consider it to be minimum good practice. We 'recommend' that you include other provisions to help ensure the smooth running of the CIO in future.

There are guidance notes on each clause explaining what it is for, and whether you **must** or **should** include (all or part of) it, and whether it **may** or **should** be amended to fit the circumstances. Even where clauses are completely optional, however, we advise you to follow the model provisions or suggested alternatives unless there is a particular need, in the interests of your charity, to do otherwise.

Some clauses contain options for you to choose from and blank spaces that you will need to fill in.

If you want to add any special or complex provisions that you have drafted yourself, you may need advice from a solicitor or other adviser. We may need more time to look at any specialist changes. Please make clear what changes you make, and why they are necessary. This will help us to consider your application as quickly as possible. We cannot guarantee to accept every organisation which uses one of our models as charitable. We must consider each case separately.

When you have finished, please check that you have:

- filled in all the blanks,
- deleted any clauses which you don't need; and
- numbered the remaining clauses (and sub-clauses) in sequence (including cross-references).

2. Applying to register

To register a new charity, apply online. If you cannot apply online, please contact us using the link from our website homepage.

3. How long will it take?

We can normally make a decision in 40 working days if an organisation:

- can use our model wording for its objects ([Example charitable objects](#) on our website);
- shows that its activities are or will be consistent with the objects;
- shows that any private benefit is only incidental and is properly managed; and

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These explanatory notes are for advice and reference only and do not form part of the text of the constitution.

Inserting the date of the constitution is good practice, and helps to ensure everyone has the same document.

The date to enter here is the date the constitution, or any amendment to it, has been registered by the Commission, as this is when it comes into effect. Leave this undated until the constitution has been registered.

Clause 1 - Name – You must include the name of the CIO in the constitution. In general, the Commission can accept any charity name unless it would be misleading, offensive or too similar to the name of an existing charity (unless the CIO is replacing that charity). The Commission has powers to require a charity to change its name if this happens. Further information on this is provided in our publication *Registering as a charity (CC21)* and in our Operational Guidance (OG330 - *Names of charities*), which are available on our website. There are also legal restrictions on using the same name as an existing company (unless it is a charitable company that is converting to a CIO) or as a former company or CIO that underwent insolvent liquidation – if in doubt seek professional advice.

Clause 2 - Principal office – The constitution must state whether the CIO's principal office is in England or Wales.

Clause 3 – Objects – The CIO must have exclusively charitable objects which you must set out in the constitution. Guidance on appropriate wording is available on our website. The key elements to include are:

the purpose or purposes for which the CIO is being established;

the people who can benefit; and, if appropriate;

any geographic limits defining the area of benefit. If you include an area of benefit, it is common to define it by reference to a local government area: this has the advantage of clarity and simplicity, but can create problems if the area is subsequently altered or abolished. If this happens in future, contact the Commission for advice on amending the objects.

NB. If you cannot fit your objects in the space provided, please include them on a separate piece of paper and submit this with the constitution. If the CIO needs to be recognised as a charity in Scotland and/or Northern Ireland you will need to include the relevant parts of the wording in square brackets to meet the requirements of charity law in those countries

Constitution of a Charitable Incorporated Organisation with voting members other than its charity trustees

(‘Association’ Model Constitution)

Date of constitution (last amended):

1. Name

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

2. National location of principal office

The CIO must have a principal office in England or Wales. The principal office of the CIO is in England.

3. Object[s]

The objects of the CIO are to establish and run a village hall and to promote for the benefit of the inhabitants of the Parish of Tetbury, Tetbury Upton and surrounding area (“area of benefit”) without distinction of sex, sexual orientation, age, disability, nationality, race or political, religious or other opinions the provision of facilities for recreation, sport or other leisure time occupation of individuals who have need of such facilities 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.

Nothing in this constitution shall authorise an application of the property of the CIO for the purposes which are not charitable in accordance with [section 7 of the Charities and Trustee Investment (Scotland) Act 2005] and [section 2 of the Charities Act (Northern Ireland) 2008]

4. Powers

The CIO has power to do anything which is calculated to further its object[s] or is conducive or incidental to doing so. In particular, the CIO’s powers include power to:

(1) 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 and 125 of the Charities Act 2011 if it wishes to mortgage land;

(2) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;

(3) sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must

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If the CIO needs to be recognised as a charity in Scotland and/or Northern Ireland you will need to include the relevant parts of the wording in square brackets to meet the requirements of charity law in those countries

Clause 4 - Powers - The Charities Act 2011 ('2011 Act') gives a CIO power to do 'anything which is calculated to further its purposes or is conducive or incidental to doing so'. Strictly speaking, this is the only power a CIO needs. It can, however, be helpful to state certain powers explicitly in the constitution.

In particular, a stated power to borrow [(1)] may reassure potential lenders.

For this reason we recommend that you include the example powers set out in the model (these include powers to buy, sell and lease property, employ staff and delegate investment management to a professional fund-manager). You may add other express powers here if you wish to.

You may include a constitutional provision restricting the general power in the 2011 Act. You must only include such a restriction if it is in the CIO's interests. You must not restrict the CIO's powers in a way that prevents it from disposing of its property. Restrictions on the powers are not provided for in this model and we recommend that you seek appropriate advice if you are considering this.

Clause 5 - Application of income and property - We recommend that you include this clause.

(1) reflects the provisions in the 2011 Act about a CIO charity trustee's entitlement to reasonable expenses and that they may benefit from trustee indemnity insurance. We recommend that you include it in the constitution, to inform people involved with the charity.

(2) reflects charity law requirements that the income and property of a CIO must be applied solely to further its objects and not to benefit the members or charity trustees

comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;

(4) 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 those clauses;

(5) 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;

(6) co-operate with other voluntary organisations, sports clubs, statutory authorities and individuals;

(7) establish or support a local forum of representatives of community groups, voluntary organisations; statutory authorities and individuals involved in community work;

(8) promote and develop or to assist in the promotion and development of community organisations and community social enterprises in the area of benefit; including Football, Rugby and Cricket.

(9) acquire and distribute funds and to assist in the provision of grants to community organisations in the area of benefit;

(10) 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;

(11) raise funds. In doing so, the CIO must not undertake any substantial permanent non-charitable trading activity and must comply with any relevant statutory regulations;

5. Application of income and property

(1) The income and property of the CIO must be applied solely towards the promotion of the objects.

(a) 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.

(b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO's

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(except as permitted by the governing document (see clause 6) or other express power). The trustees have a duty to ensure that the funds are correctly applied in accordance with this principle.

Clause 6 - Benefits and payments to charity trustees and connected persons - Charity trustees may only benefit from their charity if they have express legal authorisation to do so (such as a clause in the constitution). This restriction extends to people closely connected to a trustee ('connected persons' - this term is defined in the interpretation clause). You should include this clause so that charity trustees are clear about the restrictions that apply to them; and unless you include it, the statutory provisions will apply. Even where trustees are allowed to benefit from the CIO, this must only happen where the benefit is in the interests of the CIO. Our guidance *Trustee expenses and payments* (CC11) provides more information about trustee benefits.

The model clause permits a minority of the charity trustees or connected persons to receive payments and other benefits in certain instances (such as for goods and services they supply to the CIO), subject to the stated controls. The option also allows other types of trustee benefit, subject to the Commission's prior consent.

You may restrict the benefits that the charity trustees will be allowed receive by altering these clauses, but if you later need to undo any of the restrictions it will require the Commission's consent to do so. Trustees do not have to use these powers just because they have them - we suggest you may find it simpler to keep to the model wording. None of these options allows trustees to receive payment for acting as a trustee.

(2)(a) If all of the trustees will benefit from the activities of the CIO (for example, by using facilities available to all inhabitants of the area, such as a community centre), you may wish to substitute the following wording: "A charity trustee or connected person may receive a benefit from the CIO as a beneficiary provided that it is available generally to the beneficiaries of the CIO"

(2)(d) - The CIO should document the amount of, and the terms of, the trustee's or connected person's loan.

expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.

(2) 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.

(3) Nothing in this clause shall prevent a charity trustee or connected person receiving any benefit or payment which is authorised by Clause 6.

6. Benefits and payments to charity trustees and connected persons

6(1) General provisions

No charity trustee or connected person may:

- (a) buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the CIO;
- (c) be employed by, or receive any remuneration from, the CIO;
- (d) receive any other financial benefit from the CIO;

unless the payment or benefit is permitted by sub-clause (2) of this clause, or authorised by the court or the prior written consent of the Charity Commission ("the Commission") has been obtained. 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

- (a) 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.
- (b) 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 to 188 of the Charities Act 2011.
- (c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the CIO with goods that are not

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supplied in connection with services provided to the CIO by the charity trustee or connected person.

(d) 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).

(e) 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.

(f) 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 sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

(a) The amount or maximum amount of the payment for the goods is set out in a written agreement between the CIO and the charity trustee or connected person supplying the goods ("the supplier").

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) The reason for their decision is recorded by the charity trustees in the minute book.

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Clause 7 – Conflicts of interest and conflicts of loyalty – The General Regulations provide that a charity trustee of a CIO must not take part in any decision from which they would directly or indirectly benefit personally, unless they cannot reasonably be regarded as having a conflict of interest. This clause reminds the trustees of this requirement and also reflects wider good practice

on managing conflicts of interest and conflicts of loyalty. We recommend that you include it.

Clause 8 – Liability of members – The constitution must state whether members of the CIO *either*

(a) have no liability to contribute to the assets of the CIO if it is wound up [option 1] *or*:

(b) will be liable to contribute up to a maximum amount each if the CIO cannot meet its financial obligations when it is wound up [option 2].

Choose one option and delete the other. There is no preference or requirement in the legal framework for members to be liable to contribute anything.

If you choose option 2, you must insert the maximum amount (normally a nominal sum such as £1 or £10) for which members will be individually liable.

(g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 6.

6(4) In sub-clauses (2) and (3) of this clause:

(a) “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;

(b) “connected person” includes any person within the definition set out in clause [30] (Interpretation);

7. Conflicts of interest and conflicts of loyalty

A charity trustee must:

- (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
- (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

- (1) If the CIO is wound up, each member of the CIO is liable to contribute to the assets of the CIO such amount (but not more than £1000) as may be required for payment of the debts and liabilities of the CIO contracted before that person or organisation ceases to be a member, for payment of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributing members among themselves.

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Clause 9 - Charity trustees

(1) This clause explains the charity trustees' legal function, legal duty to act in good faith, and statutory duty of care. We recommend that these should be set out in the constitution. The trustees cannot adopt a lower duty of care.

(2) You should include provisions setting out who is eligible to be a charity trustee of the CIO.

Sub-clause (a) requires all trustees to be individuals. It is legally permissible for a corporate body to be a charity trustee, but we would advise against a trustee body including both individuals and one or more corporate bodies.

Clauses 9-13 are drafted on the basis that the CIO will be governed by a trustee body made up of a number of individuals. If there is a good reason why the CIO will be administered by a single trustee (eg a corporation) or have any other trusteeship arrangement, you will need to amend these clauses, and should seek your own professional advice.

The suggested provisions in (b) reflect the law and (c) is based on good practice. Note that there are offences under the General Regulations concerning legally disqualified individuals acting as trustees.

If there are to be additional conditions for eligibility to be a charity trustee (beyond the legal restrictions), these must be stated in the constitution. For example, some charities add requirements to ensure that trustees have particular knowledge or experience (eg of the locality in which the CIO operates or of issues relevant to the people that the CIO serves).

(2)(d) Contains an optional restriction on the proportion of charity trustees who are under 18. The Commission encourages charities to involve young people in their governance in whatever ways are appropriate in the circumstances, but advises against having a board made up entirely of people under 18. CIO trustees cannot be under 16.

(3) The General Regulations require that the constitution must state the minimum number of charity trustees, if more than one.

We recommend setting and including minimum and maximum numbers of charity trustees.

A CIO can have a fixed number of trustees or a range between a maximum and minimum (which will give the CIO more

(2) In sub-clause (1) of this clause "member" includes any person or organisation that was a member of the CIO within 12 months before the commencement of the winding up.

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

9. Charity trustees

(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:

(a) 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

(b) 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.

(2) Eligibility for trusteeship

(a) Every charity trustee must be a natural person.

(b) No individual may be appointed as a charity trustee of the CIO:

- if he or she is under the age of 18 years; or
- if he or she would automatically cease to hold office under the provisions of clause [12(1)(e)].

(c) 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.

[(d) At least one of the trustees of the CIO must be 18 years of age or over. If there is no trustee aged at least 18 years,

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flexibility). Option 1a provides for a specified maximum number. Option 1b provides for no maximum limit. Option

2 provides for other trustee appointment arrangements in accordance with clause 13 (see below).

Choose Clause 9(3) Option 1 (and Option 1a or b) and Clause 10 Option 1 or choose Clause 9(3) Option 2 and Clause 10 Option 2 (selecting the relevant parts of each section). Delete the options that you have not chosen.

For good practice, a CIO should have at least three charity trustees. If the number of trustees falls below the minimum specified in the constitution, the provisions in clause 12(3) will enable the remaining charity trustees to appoint new trustees and prevent the CIO from becoming inoperable.

A CIO should have enough charity trustees to effectively carry out their duties, but not too many so that it becomes impractical to hold effective trustee meetings where everyone can participate in decision making. We suggest a maximum of 12 trustees, but you may choose a higher or lower number depending on the CIO's needs.

(4) The General Regulations require that the constitution must state the names of the first charity trustees.

We recommend that you 'stagger' the terms of office of the first trustees to ensure that they do not all stand down at the same time. For example, if there are three trustees, one might be appointed for four years, one for three years and one for two years.

the remaining trustees may only act to call a meeting of the charity trustees, or appoint a new charity trustee.]

(3) Number of charity trustees

(a) There must be at least [three] 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. who shall continue in office until the end of the first annual general meeting.

(b) There is no maximum number of charity trustees that may be appointed to the CIO.

The 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 6 charity trustees elected in accordance with clause 9(4) & 9(5);

(ii) up to 8 charity trustees appointed in accordance with clause 9(6), and

(iii) up to 2 individuals co-opted by the charity trustees in accordance with clause 9(7).

(4) First/Elected charity trustees

The first charity trustees are as follows, [and are appointed for the following terms] –

..... [for 3 years]

..... [for 2 years]

..... [for 1 years]

The elected charity trustees must be elected at an annual general meeting at which all inhabitants of the area of benefit of 18 years and upward are entitled to attend and vote in accordance with clause 9(5). No person other than a charity trustee retiring in accordance with the constitution may be appointed a charity trustee at any general meeting unless:

(a) he or she is recommended for re-election by the charity trustees; or

Notes

(b) not less than seven nor more than thirty-five clear days before the date of the meeting, the CIO is given a notice that:

(i) is signed by an inhabitant of the area of benefit entitled to vote at the meeting;

(ii) states the individual's intention to propose the election of a person as a charity trustee;

(iii) contains the details that, if the person were to be appointed, the charity would have to file with the Charity Commission; and

(iv) is signed by the person who is to be proposed to show his or her willingness to be elected.

The period of office of elected charity trustees starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting relevant to their term of office in accordance with clause 9(5).

(5) Election system of Elected Trustees

Elected trustees are appointed on a three-year term. The six trustees will be elected for one of the following Seats; 'A', 'B', 'C', 'D', 'E' and 'F'. Two trustees shall be elected each year on the following Cycle;

Year 1	Trustee A & B elected
Year 2	Trustees C & D elected
Year 3	Trustee E & F elected

After 'Year 3' is over, the 'cycle' shall restart at Year 1. This 'cycle' shall continue infinitum. All general meeting and annual general meeting minutes shall clearly mark which 'cycle' period/year the meeting is taking place on.

(a) Year of CIO creation only... Year _____

In the first year of the CIO's creation, all six elected trustees will be elected, however, trustees A & B will be elected for the full three-year term. Trustees C & D will be elected for a one-year term and trustees E & F will be elected for a two-year term. The CIO's second annual general meeting will then align with 'Year 2' of the 'cycle'.

Notes

10 – Appointment of charity trustees - The constitution must make provision about the appointment of one or more persons to be Charity trustees.

This clause contains two options. Choose the corresponding options in Clause 9(3) and Clause 10.

Option 1 provides for new trustees to be appointed by the current trustees. This is the simplest, and likely to be the usual, arrangement for most foundation CIOs.

Option 2 provides for new trustees to be appointed in different ways including appointment by the current trustees, ex-officio (ie by virtue of holding a certain office, eg the local vicar) and nomination by another organisation. If you use option 2 you will need to amend it to meet the CIO's particular circumstances depending on the combination of different methods of appointment that will apply. These additional appointment methods are usually only appropriate for charities operating in particular local areas or with links to particular bodies, and where it is desired to involve members of local councils, local churches or other external organisations on the trustee body. It is good practice for trustees to be appointed for a fixed term, but you may instead provide for appointed trustees to be appointed indefinitely (ie for life or until they retire), in which case, delete the words in square brackets in clauses 9(4) and 10(1).

10. Appointed Trustees

The charity trustees shall maintain a list of user bodies that they consider to be supportive of the CIO's objects and which have indicated a wish to appoint a charity trustee of the CIO. Each listed user body shall have the right to appoint one charity trustee. Any such appointment must be made according to the ordinary practice of the appointing body and must be notified in writing to the secretary or chair.

(a) Where any application for the right to appoint a charity trustee is received from any 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 allow such body to appoint a charity trustee.

(b) The charity trustees may, with the approval of (i) the body concerned and (ii) not less than two-thirds of all the charity trustees, remove a body from such list of user bodies. The circumstances in which this may take place is for example when an organisation is no longer a user group of the facilities of the charity. In the event that a 'body' (9(a)(i)) is either (1) no longer in existence and therefore unable to approve, or (2) is being, by any reasonable persons standard, obstructive or uncooperative, the charity trustees may, by a unanimous vote (excluding that of the vote of the relevant appointed body representative) remove a body from such list of user bodies.

(c) A minute of the relevant resolution, authenticated by the chairman, should be (i) placed with the title deeds and (ii) kept with the charity trustees' working papers.

The period of office of charity trustees appointed by listed user bodies at the annual general meeting in any year starts at the end of that meeting or, in the case of a charity trustee appointed after such annual general meeting, or to fill a casual vacancy, on the day on which notification of his appointment is received by the secretary or chair. Subject to clause 10, the period of office of appointed charity trustees ends, either, (1) on the day on which notification of his or her removal is received by the secretary or chair or (2) at the end of the next annual general meeting.

Summary

Notes

- (a) Each appointing body (9(6)) ("the appointing body") may appoint 1 charity trustees.
- (b) Any appointment must be made at a meeting held according to the ordinary practice of the appointing body.
- (c) Each appointment will finish at the end of the following annual general meeting of the Dolphins recreation Centre charity.
- (d) The appointment will be effective from the later of:
 - (i) the date of the vacancy; and
 - (ii) the date on which the charity trustees or their secretary or clerk are informed of the appointment.
- (e) The person appointed need not be a member of the appointing body.
- (f) A trustee appointed by the appointing body has the same duty under clause 9(1) as the other charity trustees to act in the way he or she decides in good faith would be most likely to further the purposes of the CIO]

10.5 Co-opted Trustees

- (a) Co-opted charity trustees must be appointed at a duly constituted meeting of the charity trustees on a majority vote basis.
- (b) 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 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.
- (c) In the event of a casual vacancy among elected or co-opted charity trustees, the charity trustees may appoint a person who is willing to act to be a charity trustee on a majority vote basis. A charity trustee so appointed shall hold office only until the next following annual general meeting. If not elected or reappointed at such annual general meeting, he or she shall vacate office at the conclusion thereof.
- (d) 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.

Clause 11 – Information for new charity trustees - This clause represents good practice; we recommend that you include it. It is vital for new trustees to have easy access to the information and training that they need in order to become effective members of the trustee body.

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:

Notes

Clause 12 – Retirement and removal of charity trustees - The General Regulations require that the constitution must contain provisions setting out how charity trustees (and members) may retire or otherwise cease to hold office. The provisions in the model follow recommended good practice. There is an optional provision (sub clause (3)) to ensure that trustees do not serve for more than three consecutive terms, which may help to encourage regular turnover and change on the trustee board. (It is good practice to aim for a balance between continuity and change.)

(a) a copy of the current version of this constitution; and

(b) a copy of the CIO's latest Trustees' Annual Report and statement of accounts.

12. Retirement and removal of charity trustees

(A) At the first and at each subsequent annual general meeting relevant (as to the above 'cycle', clause 9(5)) elected 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.

(B) If an elected trustee has retired early, a new trustee is to be elected for the remainder of the elected 'seats' term at the next annual general meeting. If there is a sufficient period before the next annual general meeting, the remaining trustees can co-opt a temporary trustee (as per the same terms stipulated in section 9 of this document) to fill the 'seat' until the next annual general meeting where they shall retire for the election to take place.

(C) A charity trustee who retires at an annual general meeting may, if willing to act, be re-elected. 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-elected unless at the meeting it is resolved not to fill the vacancy or unless a resolution for the re-election of the charity trustee has been put to a meeting and lost. If he or she is not re-elected he or she shall retain office until the meeting elects someone in his or her place, or if it does not do so, until the end of the meeting.

(D) 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.

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

1. (a) 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);
- (b) 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;
- (c) dies;
- (d) in the written opinion, given to the company, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a director and may remain so for more than three months;

Notes

Clause 13 - Taking of decisions by charity trustees - The power to take decisions by resolution in writing or electronic form outside meetings is optional, but if the trustees intend to use it, it must be included in the constitution. This sub-clause sets out the procedure for written resolutions

Clause 14 - Delegation by charity trustees - This power is optional. We recommend you include it for the smooth-running of the CIO. The General Regulations give charity trustees of a CIO automatic power to delegate tasks to sub-committees, staff or agents; but without this additional constitutional power, the trustees will be unable to delegate any power to make decisions.

Sub-clauses (2)(a)-(c) reflect minimum good practice and are safeguards that should not be removed or diminished.

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

Any person retiring as a charity trustee is eligible for reappointment.

13. Taking of decisions by charity trustees

Any decision may be taken either:

- at a meeting of the charity trustees; or
- by resolution in writing [or electronic form] agreed by a majority of all of the charity trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to which the majority of all of the charity trustees has signified their agreement. Such a resolution shall be effective provided that
 - a copy of the proposed resolution has been sent, at or as near as reasonably practicable to the same time, to all of the charity trustees; and
 - the majority of all of the charity trustees has signified agreement to the resolution in a document or documents which has or have been authenticated by their signature, by a statement of their identity accompanying the document or documents, or in such other manner as the charity trustees have previously resolved, and delivered to the CIO at its principal office or such other place as the trustees may resolve [within 28 days of the circulation date].

14. Delegation by charity trustees

(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.

(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:

- (a) a committee may consist of two or more persons, but at least one member of each committee must be a charity trustee;
- (b) 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

Notes

Clause 15 – Meetings of charity trustees – The General Regulations require that the Constitution must include provisions for the calling and running of meetings including the minimum number of trustees who shall form a quorum, appointment of a chair and, if trustees will be able to demand a poll (a counted vote, normally with voting papers), the procedure for conducting such a poll. The provisions in this model are good practice recommendations.

We have not included provision for trustees to demand a poll in this model constitution as feedback from our consultations suggested that most charities did not feel it was appropriate.

(3)(a) We recommend that the quorum for trustee meetings should not be less than one third of the number of trustees.

(3)(c) It is common, but not obligatory, for the Chair to have a casting vote. You may include or delete this power.

(4) – This clause is optional, but will be required if one or more of the CIO's trustees may from time to time participate in meetings by telephone or other electronic means where participants may not all be able to see and hear each other.

(c) no expenditure may be incurred on behalf of the CIO except in accordance with a budget previously agreed with the charity trustees and

(d) the charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

15. Meetings of charity trustees

(1) Calling meetings

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

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

(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.

(3) Procedure at meetings

(a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is two charity trustees, or the number nearest to one third of the total number of charity trustees, whichever is greater, or such larger number as the charity trustees may decide from time to time. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.

(b) Questions arising at a meeting shall be decided by a majority of those eligible to vote.

(c) In the case of an equality of votes, the person who chairs the meeting shall have a second or casting vote.

(4) Participation in meetings by electronic means

(a) 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.

(b) 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

Notes

Clause 16 – Membership of the CIO – A CIO must have one or more members. In this model constitution the charity trustees are the only members and become members automatically. If the CIO is going to have a wider voting membership you will need use the Association Model Constitution.

The constitution must set out who is eligible for membership and how someone becomes a member. The constitution must contain provision for retirement and termination of membership. This model clause fulfils these requirements.

The General Regulations have been drafted on the basis that all members of a 'foundation' CIO will be charity trustees, and they will cease to be members of the CIO when they cease to be trustees.

Clause 17 – Informal or associate (non-voting) membership – We advise CIOs to include this power if they contemplate having an informal (associate) membership. Membership of this kind does not count as membership for legal purposes, for example in terms of voting rights, legal obligations to act in the interests of the charity or any liability to contribute to the assets of the CIO on dissolution.

other participants shall qualify as being present at the meeting.

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

16. Disposal of Designated Land

(a) Following its registration as a charitable incorporated organisation, the charity trustees of the Original Charity will execute a pre-merger vesting declaration in accordance with s.310 of the Charities Act 2011 in favour of the CIO.

(b) As a consequence of such pre-merger vesting declaration:

(i) the CIO will acquire the legal title to the Designated Land and will hold the Designated Land on the trusts that originally applied thereto;

(ii) the CIO will become the sole trustee of the Designated Land and will have the powers of a trust corporation for that trust; and

(iii) the CIO and the Original Charity will be treated as a single charity for registration and accounting purposes.

(c) If the charity trustees decide at any time to dispose of any part or parts of the Designated Land, the charity trustees must comply with clause 13 of the First Schedule to the Original Charity's Governing Document.

(d) If the charity trustees propose to amend clause 13 of the First Schedule to the Original Charity's Governing Document, they must not pass any resolution to amend that clause unless:

(i) the consent of the Charity Commission has been obtained thereto; and

(ii) the proposed amendments are confirmed by a resolution passed at a meeting of the inhabitants of the age of 18 years and upward of the area of benefit and

(iii) such resolution is passed by a majority of such inhabitants present and voting at such meeting

17. Membership of the CIO

(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.

Notes

Clause 18 – Decisions which must be made by the members of the CIO – we recommend that you include these powers and provisions in full

(1) This sub-clause acts as a reminder that certain decisions must be made by the members, rather than by the trustees (although in practice they are the same persons).

(2) This sub-clause allows decisions of the members to be made at a general meeting or by written resolution.

(3) The decisions specified in (1) are subject to special requirements; this sub-clause acts as a reminder of those requirements.

(4) This sub-clause sets out the procedure for written resolutions

(2) Any member and charity trustee who ceases to be a charity trustee automatically ceases to be a member of the CIO.

18. Decisions which must be made by the members of the CIO

(1) Any decision to:

(a) amend the constitution of the CIO (excluding that of the rules designated in section 16 of this constitution where those rules must be abided by);

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

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

must be made by a 75% majority of those members voting at a general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted) or unanimously by the members, otherwise than at a general meeting (rather than a resolution of the charity trustees).

(2) Decisions of the members may be made either:

(a) by resolution at a general meeting; or

(b) by resolution in writing, in accordance with sub-clause (4) of this clause.

(3) Any decision specified in sub-clause (1) of this clause must be made in accordance with the provisions of clause [29] (amendment of constitution), clause [30] (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 those members voting at a general meeting, or agreed by all members in writing.

(4) Except where a resolution in writing must be agreed by all the members, such a resolution may be agreed by a simple majority of all the members who are entitled to vote on it. Such a resolution shall be effective provided that:

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

(b) the required majority of members has signified its 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,

Notes

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.

19. Annual General Meetings

(a) 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.

(b) All inhabitants of the area of benefit of 18 years and upward must be entitled to attend and vote on the election of charity trustees as specified in clause 9.4 at annual general meetings. The charity trustees may allow inhabitants who are under 18 to attend (but not vote at) the meeting.

(c) Public notice of every annual general meeting must be given in the area of benefit of at least fourteen days before the date thereof by affixing a notice to some conspicuous part of the property occupied by the CIO or other conspicuous place in the area of benefit and by such other means as the convenors think fit.

(d) The business of each annual general meeting shall be:

(i) to receive the annual report of the charity trustees, which shall incorporate the accounts of the CIO referred to below, and give an account of the work of the CIO and its activities during the preceding year;

(ii) to receive the accounts of the CIO for the preceding financial year;

(iii) to note the names of the persons appointed, and co-opted, to serve as charity trustees under clauses 9(6) and 9(7) and to elect persons to serve as charity trustees under clause 9(5);

(iv) for the members of the CIO only to appoint one or more qualified auditors or independent examiners for the coming year to audit or examine the accounts of the CIO in accordance with the Charities Act 2011;

(v) to consider any other business of which due notice has to be given.

Notes

Clause 20 - General meetings of members – The General Regulations state that the constitution must make provision about the holding and calling of general meetings, and procedure at such meetings including the minimum number of members who shall form a quorum, whether members can demand a poll, and the procedure for conducting such a poll. The provisions in this clause are good practice recommendations.

(1) In a CIO with the 'foundation' model constitution, all of the members are trustees, so the trustees may decide which of their meetings should be treated as a general meeting of the members (subject to the notice requirements in (2)).

(2)(a) The minimum period of notice for general meetings should be reasonable in the CIO's particular circumstances, to enable as many members (trustees) as possible to participate in such decisions. For the decisions mentioned in clause 18(1) the period of notice is specified as 14 days in the General Regulations.

(3) This sub-clause means that the usual procedural provisions for trustees' meetings will also apply when they meet as members.

Proxy voting – The General Regulations stipulate that members can only vote by proxy if there is a specific provision in the constitution, which must set out:

(a) how a member appoints a proxy; (b) the rights of the proxy; and
(c) how the appointment is terminated.

For recommended wording (which does not form part of this model), please see the Appendix to this constitution.

Postal voting – The General Regulations stipulate that members can only use postal votes if there is a specific provision in the constitution, which must make provision about the circumstances in which, and the way in which, such votes may be given.

For recommended wording (which does not form part of this model), please see the Appendix to this constitution.

For the avoidance of doubt, inhabitants of the area of benefit of 18 years and upward attending an annual general meeting of the CIO shall only have the right to vote on the election of charity trustees.

20. General meetings of members

(1) Calling of general meetings of members

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 [18] (Decisions which must be made by the members of the CIO).

(2) Notice of general meetings of members

(a) The minimum period of notice required to hold a general meeting of the CIO is seven clear days.

(b) In the case of an annual general meeting, in addition to giving notice to members, the CIO shall post the notice, in a conspicuous place or places in the area of benefit and/or advertised in a newspaper circulating in the area of benefit.

(c) The notice must specify the date, time and place of the meeting, the details of anyone being nominated as a charity trustee under clause 9.4 and the general nature of the business to be transacted. If the meeting is to be an annual general meeting, the notice must say so.

(d) The notice must be given to all the members and auditors.

(e) Except where a specified period of notice is strictly required by another clause in this 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.

(f) The proceedings at a meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the CIO.

(2) Proceedings at general meetings

(a) No business shall be transacted at any general meeting unless a quorum is present.

(b) A quorum is five members present in person and entitled to vote upon the business to be conducted at the meeting.

Notes

(c) If:

(i) a quorum is not present within half an hour from the time appointed for the meeting; or

(ii) during a meeting a quorum ceases to be present

the meeting shall be adjourned to such time and place as the charity trustees shall determine.

(d) The charity trustees must reconvene the meeting and must give at least seven clear days' notice of the reconvened meeting stating the date, time and place of the meeting.

(e) If no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting the members present in person at that time shall constitute the quorum for that meeting.

(f) General meetings shall be chaired by the person who has been appointed to chair meetings of the charity trustees.

(g) If there is no such person or he or she is not present within fifteen minutes of the time appointed for the meeting a charity trustee nominated by the charity trustees shall chair the meeting.

(h) The members present at a meeting may resolve by ordinary resolution that the meeting shall be adjourned.

(i) The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution.

(j) No business shall be conducted at a reconvened meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.

(k) If a meeting is adjourned by a resolution of the members for more than seven days, at least seven clear days' notice shall be given of the reconvened meeting stating the date, time and place of the meeting.

(l) Any vote at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded:

(i) by the person chairing the meeting; or

Notes

(ii) by at least two members present and having the right to vote at the meeting.

This poll shall be done as a closed ballot, with the chair, and one other designated person from the meeting, counting the votes.

(m) The declaration by the person who is chairing the meeting of the result of a vote shall be conclusive unless a poll is demanded.

(n) The result of the vote must be recorded in the minutes of the CIO but the number or proportion of votes cast need not be recorded.

(o) A demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the person who is chairing the meeting.

(p) If the demand for a poll is withdrawn the demand shall not invalidate the result of a show of hands declared before the demand was made.

(q) A poll must be taken as the person who is chairing the meeting directs, who may appoint scrutineers (who need not be members) and who may fix a time and place for declaring the results of the poll.

(r) The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

(s) A poll demanded on the election of a person to chair a meeting or on a question of adjournment must be taken immediately.

(t) A poll demanded on any other question must be taken either immediately or at such time and place as the person who is chairing the meeting directs.

(u) The poll must be taken within thirty days after it has been demanded.

(v) If the poll is not taken immediately at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

(w) If a poll is demanded the meeting may continue to deal with any other business that may be conducted at the meeting.

21. Saving provisions

Notes

Clause 21 – Saving provisions – We recommend that you include this clause, to reduce the risk of trustees' decisions being declared invalid for purely technical reasons. This is, however, also covered in the General Regulations.

Clause 22 – Execution of documents – We recommend that you include this clause, for clarity about how documents may be validly executed on behalf of the CIO. It includes provision for use of a seal, which the General Regulations stipulate must be included if the CIO is to have a seal (but there is no requirement to have one). The General Regulations require the full name of the CIO to be clearly written on the seal, and failure to comply with this is an offence.

Clause 23 – Keeping of registers – This clause reflects the requirements in the General Regulations that the CIO keeps registers of members and charity trustees and makes this information available for inspection by interested persons. This does not have to be stated in the constitution but is included to serve as a reminder.

(1) Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:

- who was disqualified from holding office;
- who had previously retired or who had been obliged by the constitution to vacate office;
- who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;

if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.

(2) Sub-clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for sub-clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 7 (Conflicts of interest).

22. Execution of documents

(1) The CIO shall execute documents either by signature or by affixing its seal (if it has one)

(2) A document is validly executed by signature if it is signed by at least two of the charity trustees.

(3) If the CIO has a seal:

(a) it must comply with the provisions of the General Regulations; and

(b) the seal must only be used by the authority of the charity trustees or of a committee of charity trustees duly authorised by the charity trustees. The charity trustees may determine who shall sign any document to which the seal is affixed and unless otherwise so determined it shall be signed by two charity trustees.

23. Use of electronic communications [(1) General]

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

(a) 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;

(b) any requirements to provide information to the Commission in a particular form or manner.

Notes

Clause 25 – Minutes - This clause reflects the requirements of the General Regulations regarding record keeping. We recommend that this clause is included, to remind the trustees of their responsibilities.

Clause 26 – Accounting records (etc) - This clause reflects the trustees' duties under the 2011 Act. We recommend that this clause is included, to remind the trustees of their responsibilities

Clause 27 - Rules – We recommend that this power should be included for clarity, but charities automatically have this power and it does not have to be stated in the constitution. It is important that members are made aware of, and can easily obtain, copies of any rules.

24. 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.

25. Minutes

The charity trustees must keep minutes of all:

- (1) appointments of officers made by the charity trustees;
- (2) proceedings at general meetings of the CIO;
- (3) meetings of the charity trustees and committees of charity trustees including:
 - the names of the trustees present at the meeting;
 - the decisions made at the meetings; and
 - where appropriate the reasons for the decisions;
- (4) decisions made by the charity trustees otherwise than in meetings.

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

- (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.
- (2) The charity trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the CIO entered on the Central Register of Charities.

27. 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.

28. 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

Notes

Clause 28 – Disputes – It is good practice to include provisions for dealing with any disputes that arise between members of the CIO. Litigation can be expensive, and litigation about the internal affairs of a charity would almost certainly constitute “charity proceedings”, which can be taken only with the Commission’s authority.

We would usually require the parties to a dispute to have tried mediation first.

Clause 29 – Amendment of constitution - This reflects the CIOs’ statutory power of amendment in sections 224-227 of the Charities Act 2011. A CIO’s constitution should include these provisions for ease of reference. The constitution of a CIO cannot extend the statutory power of constitutional amendment, but the General Regulations provide that you may include additional restrictions in some or all cases, for example requiring a longer period of notice before the meeting, or a higher majority, for certain changes. Additional restrictions are not provided for in this model and if you are considering this, we recommend that you take appropriate advice. To request the Commission’s consent to an amendment or to inform the Commission of an amendment, please complete our online form.

Clause 30 - Voluntary winding up or dissolution - This clause reflects the provisions of the 2011 Act and the General Regulations and Dissolution Regulations. We recommend that it is included in the constitution for ease of reference. It also highlights that there are other requirements in the Dissolution Regulations that

must first try in good faith to settle the dispute by mediation before resorting to litigation.

29. Amendment of constitution

As provided by sections 224-227 of the Charities Act 2011:

(1) This constitution can only be amended:

(a) by resolution agreed in writing by all members of the CIO; or

(b) by a resolution passed by a 75% majority of those voting at a general meeting of the members of the CIO called in accordance with clause 19 (General meetings of members).

(c) and must be in accordance with any specific procedures specified within clauses within this constitution.

(2) Any alteration of clause 3 (Objects), clause [30] (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 Charity Commission.

(3) No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.

(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.

30. Voluntary winding up or dissolution

(1) As provided by the Dissolution Regulations, the CIO may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the CIO can only be made:

(a) at a general meeting of the members of the CIO called in accordance with clause 19 (General meetings of members), of which not less than 14 days’ notice has been given to those eligible to attend and vote:

(i) by a resolution passed by a 75% majority of those voting, or

Notes

the trustees must comply with, as there are offences for non-compliance. To inform the Commission of your CIO's dissolution, please complete our [online form](#).

(2) The constitution must contain directions about how its property will be applied if it is wound up. Any assets remaining after the payment of debts must be applied for charitable purposes that are similar to those of the CIO.

(4) It is essential for trustees to be aware that if the CIO is unable to meet its financial obligations in full when it is wound up, the provisions in sub-clauses (1)-(3) do not apply, and the relevant provisions of the Dissolution Regulations must be followed. Failure to do so is not only an offence, but could lead to personal liability for the trustees.

(ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or

(b) by a resolution agreed in writing by all members of the CIO.

(2) Subject to the payment of all the CIO's debts:

(a) 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.

(b) If the resolution does not contain such a provision, the charity trustees must decide how any remaining assets of the CIO shall be applied.

(c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO.

(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:

(a) 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;

(b) 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.

(4) If the CIO is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

31. Interpretation

Notes

Clause 30 - Interpretation – this clause explains some terms used in the rest of the constitution.

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 sub-clause (a) above;
- (c) a person carrying on business in partnership with the charity trustee or with any person falling within sub- clause (a) or (b) above;
- (d) an institution which is controlled –
 - (i) by the charity trustee or any connected person falling within sub-clause (a), (b), or (c) above; or
 - (ii) by two or more persons falling within sub-clause (d)(i), when taken together
- (e) a body corporate in which –
 - (i) the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
 - (ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

Section 118 of the Charities Act 2011 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, Chapter 4] 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.

Notes

Appendix

The following provisions do not form part of the 'Foundation' model constitution but are available as options under clauses 19 (General meetings of members) and 22 (Use of electronic communications). For CIOs intending to include these powers in their constitutions, we recommend that you use the following wording. Notes on these clauses are included with the explanatory notes accompanying the clauses in the model.

General meetings of members

Notes

(4) Proxy voting

(a) Any member of the CIO may appoint another person as a proxy to exercise all or any of that member's rights to attend, speak and vote at a general meeting of the CIO. Proxies must be appointed by a notice in writing (a "proxy notice") which:

(i) states the name and address of the member appointing the proxy;

(ii) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;

(iii) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the CIO may determine; and

(iv) is delivered to the CIO in accordance with the constitution and any instructions contained in the notice of the general meeting to which they relate.

(b) The CIO may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(c) Proxy notices may (but do not have to) specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(d) Unless a proxy notice indicates otherwise, it must be treated as:

(i) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

(ii) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

(e) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the CIO by or on behalf of that member.

(f) An appointment under a proxy notice may be revoked by delivering to the CIO a notice in writing given by or on behalf of the member by whom or on whose behalf the proxy notice was given.

(g) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(h) If a proxy notice is not signed or authenticated by the member appointing the proxy, it must be accompanied by written evidence that the person who signed or authenticated it on that member's behalf had authority to do so.

(5) Postal Voting

(a) The CIO may, if the charity trustees so decide, allow the members to vote by post or electronic mail ("email") to elect charity trustees or to make a decision on any matter that is being decided at a general meeting of the members.

(b) The charity trustees must appoint at least two persons independent of the CIO to serve as scrutineers to supervise the conduct of the postal/email ballot and the counting of votes.

(c) If postal and/or email voting is to be allowed on a matter, the CIO must send to members of the CIO not less than [21] days before the deadline for receipt of votes cast in this way:

(i) a notice by email, if the member has agreed to receive notices in this way under clause [22] (Use of electronic communications), including an explanation of the purpose of the vote and the voting procedure to be followed by the member, and a voting form capable of being returned by email or post to the CIO, containing details of the resolution being put to a vote, or of the candidates for election, as applicable;

(ii) a notice by post to all other members, including a written explanation of the purpose of the postal vote and the voting procedure to be followed by the member; and a postal voting form containing details of the resolution being put to a vote, or of the candidates for election, as applicable.

(d) The voting procedure must require all forms returned by post to be in an envelope with the member's name and signature, and nothing else, on the outside, inside another envelope addressed to 'The Scrutineers for [name of CIO]', at the CIO's principal office or such other postal address as is specified in the voting procedure.

(e) The voting procedure for votes cast by email must require the member's name to be at the top of the email, and the email must be authenticated in the manner specified in the voting procedure.

(f) Email votes must be returned to an email address used only for this purpose and must be accessed only by a scrutineer.

(g) The voting procedure must specify the closing date and time for receipt of votes, and must state that any votes received after the closing date or not complying with the voting procedure will be invalid and not be counted.

Notes

(h) The scrutineers must make a list of names of members casting valid votes, and a separate list of members casting votes which were invalid. These lists must be provided to a charity trustee or other person overseeing admission to, and voting at, the general meeting. A member who has cast a valid postal or email vote must not vote at the meeting, and must not be counted in the quorum for any part of the meeting on which he, she or it has already cast a valid vote. A member who has cast an invalid vote by post or email is allowed to vote at the meeting and counts towards the quorum.

(i) For postal votes, the scrutineers must retain the internal envelopes (with the member's name and signature). For email votes, the scrutineers must cut off and retain any part of the email that includes the member's name. In each case, a scrutineer must record on this evidence of the member's name that the vote has been counted, or if the vote has been declared invalid, the reason for such declaration.

(j) Votes cast by post or email must be counted by all the scrutineers before the meeting at which the vote is to be taken. The scrutineers must provide to the person chairing the meeting written confirmation of the number of valid votes received by post and email and the number of votes received which were invalid.

(k) The scrutineers must not disclose the result of the postal/email ballot until after votes taken by hand or by poll at the meeting, or by poll after the meeting, have been counted. Only at this point shall the scrutineers declare the result of the valid votes received, and these votes shall be included in the declaration of the result of the vote.

(l) Following the final declaration of the result of the vote, the scrutineers must provide to a charity trustee or other authorised person bundles containing the evidence of members submitting valid postal votes; evidence of members submitting valid email votes; evidence of invalid votes; the valid votes; and the invalid votes.

(m) Any dispute about the conduct of a postal or email ballot must be referred initially to a panel set up by the charity trustees, to consist of two trustees and two persons independent of the CIO. If the dispute cannot be satisfactorily resolved by the panel, it must be referred to the Electoral Reform Services.

Use of electronic communications

(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.

Notes**(3) By the CIO**

(a) 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.

(b) 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 19(2) (Notice of general meetings);

(ii) give charity trustees notice of their meetings in accordance with clause 15(1) (Calling meetings); [and

(iii) submit any proposal to the members or charity trustees for decision by written resolution or postal vote in accordance with the CIO's powers under clause 18 (Members' decisions), 18(4) (Decisions taken by resolution in writing), or [[the provisions for postal voting] (if you have included this optional provision, please insert the correct clause number here)].

(c) 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.

Section 3

Addendum

Clause 13 of the First Schedule to the Original Charity's Governing Document

13. If the Committee by a majority decides at any time that on the ground of expense or otherwise it is necessary or advisable to discontinue the use of the Trust Property in whole or in part for the purposes herein before indicated it shall call a Meeting of the inhabitants of the age of 18 years or upwards of the beneficial area of which meeting not less than 21 days' notice (stating the terms of the Resolution that will be proposed thereat) shall be posted in a conspicuous place or places on the Trust Property and advertised in a newspaper or newspapers circulating in the beneficial area and if such decision shall be confirmed by a majority of such inhabitants present at such Meeting and voting the Committee may with the consent of the Charity Commissioners for England and Wales let or sell the Trust Property or any part thereof. All moneys arising from such letting or sale (after satisfaction of any liabilities properly payable thereout) shall with such consent as aforesaid be applied either in the purchase of other property approved by the Committee and to be held upon the trusts for the purposes and subject to the provision hereinbefore set forth (including this power) or as near thereto as circumstances will permit or towards such other charitable purposes or objects for the benefit of the inhabitants of the beneficial area as may be approved by the Charity Commissioners for England and Wales and meanwhile such moneys shall be invested in the name of the Official Custodian for Charities and any income arising there from shall either be accumulated (for such time as may be allowed by law) by investing the same and the resulting income thereof in like manner as an addition to and to be applied as the capital of such investments or shall be used for any purpose for which the income of the Trust Property may properly be applied.

Note:

1. Clause 13 can only be changed with the Charity Commission's consent (as there is no power of amendment in the original Charity's Governing Document).
2. For 'Committee' read 'charity trustees'
3. *Purposes herein* (of the original Charity's Governing Document) reads:

The Parish Council shall hold the property hereby conveyed as Trustee upon trust for the provision and maintenance thereon of a recreation ground and village hall for the "benefit of the inhabitants of the Parishes of Tetbury and Tetbury Upton and the neighbourhood" (hereinafter called "the beneficial area") " without distinction of political religious or other opinions including use for meetings lectures and classes and/or other forms of recreation and leisure-time occupation with the object of improving the conditions of life for the said inhabitants"
4. For 'Property' read 'Designated Land'