

CONSTITUTION FOR AN INDEPENDENT CHURCH (UNINCORPORATED ASSOCIATION)

GUIDANCE NOTES

This model is designed for use in situations where the wider membership of the church has an involvement in the governance and decision-making processes of the church. If in your church the decision-making process does not generally involve the wider membership and authority is reserved to the church leaders then you should not use this model but rather you should consider using the model trust deed (charitable trust) or model memorandum and articles of association (charitable company).

An unincorporated association does not have a separate legal identity and consequently it cannot enter into contracts or hold property in its own name; such activities must be undertaken by the trustees in their personal capacity. This means that there is a degree of risk for the trustees if a liability is incurred which is beyond the extent of the association's assets. If, therefore, it is envisaged that the church will hold property, employ a number of staff, enter into significant contracts and/or engage in activities which might give rise to the risk of significant liability then you may wish to consider setting up as a charitable company (using the model memorandum and articles of association) rather than as a charitable unincorporated association since this would provide mechanisms which afford a greater degree of protection to the charity trustees than is the case under the unincorporated association model.

It should be emphasised that this model is intended to form the basis of a document tailored to the specific circumstances of your church and you will need to ensure that it is amended to properly reflect the reality of your particular circumstances. Using this model should speed up the process of registration with the Charity Commission since the Commission will apply a "light touch" approach where the model is used without significant amendment. This does not mean that the Commission will not ask questions and raise concerns about your registration application but it is hoped that the process will be much more straightforward than might be the case without the use of the model.

You should also note that once the Constitution is in place amendments can only be made in line with the amendment clause (clause 13 in this model) and that certain amendments require the prior written consent of the Charity Commission.

1. Interpretation

This clause defines key terms used in the Constitution all of which should be self-explanatory. Clause 1.2 should serve to avoid the need to amend the Constitution merely to reflect technical changes in the law.

2. Name

Clause 2 declares the name of the church. In choosing a name you should check the Register of Charities (via the Charity Commission website) to ensure that the name has not already been used by an existing registered charity. If it has you will not be able to use that exact name but you may be able to distinguish your church from the existing church by reference to a geographical location, eg ■ Church (Brighton).

It is possible to change the name in the future although proper procedures must be followed in this regard and advice should be sought. The Charity Commission must be advised of any change of name.

3. Objects

The objects (that is the main purposes) of the church must consist of exclusively charitable purposes under English law or the church will not be a charity and will be unable to register with the Charity Commission. Under the Charities Act 2006 a purpose must be for the public benefit in order to be a charitable purpose. It is important, therefore, that the objects clearly and accurately reflect the church's intended activities as, if it is not obvious, you may be asked to provide evidence of the public benefit of the purposes of the church. You should, therefore, consider whether or not all of the objects referred to in this model document are appropriate in your particular circumstances. If you know that you will be undertaking activities which you do not think are encompassed by the model objects then legal advice should be obtained as regards whether or not one or more additional objects need to be added. If your church does not intend to undertake activities in fulfilment of any of the model objects then that object should be deleted. The Commission has further guidance in relation to public benefit on its website www.charitycommission.gov.uk

In relation to educational activities, the Charity Commission makes a distinction between educational activities that are intended to promote the principles and doctrines of the religion and other education provided in schools, colleges and so on. The former activities are accepted as being in furtherance of the religion and are included in clause 3.1.1. Clause 3.1.3 is intended for use where the church wishes to provide facilities for the provision of other general education not restricted to religious education by establishing and running schools, colleges or other educational/training activities. Care should be exercised if changing the wording of the objects to ensure that the any new objects listed fit within the legal definition of what is charitable; once again you may well need to obtain advice on this point.

You should consider carefully whether or not you wish to include a Statement of Beliefs as a schedule to the Constitution. The advantage of doing so is that the theological basis of the Church is clear from the governing document itself. However, there may be good reasons why you would prefer not to include a Statement of Beliefs. There is technically no difficulty with such an approach although you should be aware that if the theological basis of the church were to

become a matter of dispute in the future then in extreme circumstances the issue might have to be resolved by the courts.

Once the charity is registered any change to the objects will require the Charity Commission's prior written consent.

4. Membership

Clause 4 sets out the basic provisions as regards who can be a member of the church, members' voting rights and how membership is terminated. You may wish to supplement these provisions with wider rules in relation to membership as allowed for in Clause 9.

5. General meetings

This clause contains the provisions in relation to meetings of the members. It provides that an annual general meeting (AGM) will be held each year (clause 5.1) and sets out the business to be transacted at each AGM (clause 5.2).

Clause 5.3 sets out how notice can be given for a general meeting and clause 5.4 sets the quorum for general meetings. You will need to decide the appropriate figure to insert in this clause which will, of course, depend to some extent upon the size of your membership.

Additional members' meetings (known as extraordinary general meetings (EGMs)) may be needed from time to time to deal with special business which cannot wait until the next AGM. EGMs may be called at any time by the Trustees and must be called within 21 days if requested by a specific number of members. You will need to decide how many members should be needed to call for an EGM.

6. The Trustees

Clause 6.1 confirms the Trustees' legal responsibility for the management and administration of the church.

The minimum number of Trustees should be at least three (clause 6.2) although you could impose a higher minimum if you so wished. You may wish to make it a requirement that all Trustees accept and abide by an agreed statement of beliefs. You should consider whether or not a reference to lifestyle is appropriate and if so you may wish to provide some explanation of what will be expected in practice.

Clause 6.3 provides for the first Trustees to be elected by the members at the meeting at which the Constitution is adopted and Clause 6.4 provides for new or additional Trustees to be elected by the members at an AGM. One-third of the Trustees must retire from office each year but a retiring Trustee may be re-elected (Clause 6.5).

Clause 6.6 is designed to ensure that as far as possible everyone who takes up the task of being a Trustee of the church is aware of the legal responsibilities it entails. Before an individual is appointed as a Trustee they should also be asked to confirm that they are not in any way disqualified from serving in a trusteeship capacity. Again, legal advice should be obtained if necessary.

Clause 6.7 sets out the circumstances in which a person will cease to be a Trustee.

Clause 6.7.1 - Disqualification occurs under Section 72 of the Charities Act 1993 as amended if a Trustee is removed from office by the Court or the Charity Commission in the event of bankruptcy or the like, where the Trustee is disqualified under the Company Directors Disqualification Act or the Insolvency Act or where the Trustee has an unspent conviction for an offence involving dishonesty.

Clause 6.7.2 - Embarrassing problems can arise when a Trustee becomes too ill or infirm to be expected to take full responsibility for the task. The Trustees may wish to make a rule to require a Trustee who appears incapable to undergo a medical examination. Such a request would in most cases lead to a voluntary resignation.

Clause 6.7.3 - The number of meetings missed by a Trustee before this clause comes into play would depend upon the frequency of the meetings and is a matter for the Trustees to decide.

Clause 6.7.4 – It will usually be appropriate for any Trustee who ceases to be a member to also cease to hold office as a Trustee.

Clause 6.7.5 - The law does not permit Trustees to walk away from their responsibilities leaving no-one in charge of the charity and consequently a resignation will not be valid if it would leave only one serving Trustee.

Clause 6.7.6 - This provision provides a mechanism for the removal of a disruptive Trustee or one whose conduct is felt to be detrimental to the best interests of the church whilst ensuring that the principles of natural justice are observed.

Clauses 6.11 and 6.12 highlight that responsibility and authority for spiritual leadership rests with the recognised spiritual leaders within the church. The Trustees and the Spiritual Leadership must work in partnership. The Spiritual Leadership cannot require the Trustees to do anything which is in breach of either the Constitution or the general law. The Trustees must bear in mind the spiritual direction of the church and the views of the spiritual leaders. This clause will need to be amended if in your case members of the Spiritual Leadership are not appointed directly by the Spiritual Leadership themselves. The process for appointing members of the Spiritual Leadership should be clearly documented as should all changes in the membership of the Spiritual Leadership.

7. Duty of Care and Extent of Liability

This clause emphasises the care which should be taken by Trustees when exercising their trustee responsibilities and that they will not be held liable for any liabilities arising as a result of their actions unless they have acted negligently or recklessly.

8. Proceedings of Trustees

The number of Trustees' meetings per year (clause 8.1) will depend upon the nature of the church's activities and the extent to which matters are delegated to committees under clause 9.2. However, the Trustees should hold a sufficient number of meetings each year to enable them to exercise proper control and in practice this is likely to mean a minimum of four meetings.

In relation to a Trustees' meeting one-half of the Trustees is a sensible quorum (clause 8.2). An alternative, which would provide slightly more flexibility, would be for the quorum to be set at one-third of the Trustees for the time being, subject to a minimum of two trustees.

Clause 8.3 provides additional flexibility by enabling Trustees to participate in Trustees' meetings by means of a telephone conference call or other similar means, for example, video conferencing. The same rules about notice of meetings, the quorum, chairmanship, voting, minutes and so on apply to a telephone or video-conference meeting as to a meeting in person.

It will be usual for the Trustees to elect one of their number as chair of Trustees and that person will usually preside at all Trustees' meetings at which they are present (clause 8.4).

Where a consensus is not achieved on a particular matter and it is necessary for a vote to be taken the issue is determined by a simple majority of votes (clause 8.5). If a decision needs to be taken and a meeting of the Trustees is impossible or impractical then the decision can be taken by means of a written resolution but it should be noted that such a resolution is only valid if it is signed by all of the Trustees; a simple majority is not sufficient.

Each Trustee has one vote but in the case of an equality of votes the chair of the meeting has a second or casting vote (clause 8.6).

9. Powers of Trustees

This clause sets out the powers which may be exercised by the trustees in promoting the objects. The powers are not themselves charitable objects but rather are the means by which the objects in clause 3 may be achieved. It must be stressed that the powers cannot be exercised for any purpose which is beyond the scope of the objects. The powers are widely drawn to provide a good deal of flexibility and the "catch all" power at clause 9.27 should be sufficient to deal with matters not specifically referred to elsewhere in the clause. However, if it is known that the church will be engaged in specific

activities which are not mentioned it may be appropriate to insert additional provisions in this regard.

Clause 9.2 is essential if the Trustees are to be able to delegate certain responsibilities to committees. The Trustees will remain legally responsible for the committees' acts and for this reason it is generally prudent for at least one Trustee to be on each committee. The Trustees should define the terms of reference for each committee and determine its composition, who is to be its chair and so on. It is essential in all cases to provide for committees to report back to the Trustees in such manner as the Trustees require. It is important to emphasise that in delegating to committees the Trustees remain ultimately responsible for all that goes on and must, therefore, maintain sufficient control to properly fulfil that responsibility.

Clause 9.3 allows the Trustees to make rules of various kinds to govern different aspects of the running of the church.

The Trustees should have regard to the law applicable to any fundraising activities the charity is to undertake. The prohibition on "taxable trading" (see clause 9.13) is essential to avoid an objection from HM Revenue and Customs (ie the Inland Revenue). Where a charity engages in trading activities in order to raise funds it may well be that a separate, non-charitable trading company should be used for the purpose and specialist legal and/or accountancy advice will be needed.

In relation to clause 9.14, the restrictions on mortgaging charity land are contained in Sections 38 and 39 of the Charities Act 1993 as amended. In most cases the Charity Commission's consent is not required provided that certain procedures are properly followed. Legal advice may well be required.

Clause 9.15 gives the power to acquire property, including land and buildings. If you are considering acquiring residential property for occupation by a minister or other employee and it is proposed that part of the purchase should be met by the minister or employee concerned (creating a shared ownership arrangement) then you will need to obtain legal advice or seek guidance from the Charity Commission.

As regards clause 9.16, the restrictions on sales, exchanges and leases of charity land are contained in Sections 36 and 37 of the Charities Act 1993 as amended. In some cases the Commission's consent is required whilst in others a special procedure must be followed. Legal advice would normally be required.

Clause 9.18 enables the Trustees to designate funds for particular purposes or as reserves. It is prudent for a charity to maintain reserves to cover planned expenditure (for example, repairs to buildings) and to meet the kind of expenditure which may be required at short notice but reserves are not an end in themselves and should not be accumulated without a deliberate policy decision nor should they be excessive in relation to the amount known or reasonably believed to be required.

Clause 9.19 is intended to confer a wide power of investment but such power must be exercised responsibly. An investment is an asset which (1) is capable of producing income and (2) may also increase in capital value. The Trustees should formulate an investment policy (the detail of which will vary dependent upon the amount of funds available for investment) and in selecting investments the Trustees should have regard to the needs of the church for both capital and income growth and should act prudently. They should avoid trading and speculation.

Clause 9.20 confirms that it is possible for the management of investments to be delegated by Trustees to an agent provided that the requirements set out in the Trustee Act 2000 are observed.

Clause 9.21 deals with insurance. Charity property, whether buildings, equipment or other property, should normally be insured up to its full reinstatement value. Depending on the nature of the charity, other kinds of insurance may be necessary or prudent (for example, public liability and employer's liability).

The insurance referred to in clause 9.22 is usually known as trustee indemnity insurance. This form of insurance may be helpful in some circumstances but it does not provide absolute protection from liability for the Trustees and proper advice should be obtained before such insurance is purchased.

Clause 9.24 covers employees, independent contractors and professional advisors and enables appropriate payments to be made in this regard. All necessary advice concerning employment law should be obtained as required. If there will be a significant number of employees it will be wise to consider establishing the church as a charitable company rather than a charitable trust. Special rules apply where any of the Trustees are employed by the church (see clause 10).

10. Application of Funds and Property

Clauses 10.1, 10.2 and 10.5 – the general position in law is that a Trustee must not benefit from his/her trusteeship and there is a common consensus that the voluntary principle of trusteeship ought to be upheld in all but exceptional circumstances. Clauses 10.1, 10.2 and 10.5 provide the exceptions to this general rule. Consequently, provided no payments are made to Trustees merely for acting as charity trustees, clauses 10.1 and 10.2 enable reasonable payments to be made to Trustees and persons connected to Trustees as employees of the church or for goods and services supplied to the church i.e. for goods and services provided otherwise than in their capacity as Trustees. In any other instance if the church wishes to make a payment or provide benefits to a trustee or a person connected to a trustee then the trustees must seek the prior written authority of the Commission.

Clause 10.3 confirms that no more than half of the Trustees can benefit directly or indirectly under clauses 10.1 and 10.2 at any given time. An indirect benefit would arise from a payment to the spouse or a dependent relative of the

Trustee. If you wish a greater number of Trustees to benefit then you will need to put forward a case for such payments to the Charity Commission (see below).

Clause 10.6 sets out the procedure which must be observed where a Trustee or a person connected with a Trustee has a personal interest in a matter to be discussed at a meeting of the Trustees or any committee. It is important that this procedure is followed on every occasion so as to avoid a Trustee or a person connected with a Trustee who has a conflict of interests being involved in the decision-making process.

Conflicts of interest (that is, situations where the personal interests of the trustee conflict or may conflict with the interests of the church) may arise in other situations too. The Trustees must be aware of the potential conflicts and where such conflicts arise the Trustee concerned must declare his or her interest and should ideally play no part in the discussion and decision in relation to that particular matter. Proper management of conflicts of interest is essential in order to show that the Trustees have at all times fulfilled their duty to act in the best interests of the church.

Clause 10.8 allows for the investment of church funds not immediately required for day-to-day use.

Since the church as a charitable unincorporated association does not have a legal identity of its own it is unable to hold land and investments (other than bank accounts) in its own name. Clause 10.9 sets out the options for the holding of land and investments in these circumstances.

Where it is proposed that more than 50% of the Trustees should receive some form of payment then this model Constitution will need to be amended to reflect the position and the proposal will require detailed discussions with the Charity Commission. Where the Charity Commission are not satisfied that the position can be justified the church will have to consider other options, one of which may be to establish itself as a Community Interest Company rather than a registered charity. In such circumstances legal advice should be obtained.

11. Records and Accounts

The Trustees must keep financial and administrative records in order to comply with the requirements of the Charities Act 1993 as amended. Clause 9 sets out the information which must be retained.

Clause 11.4 reflects Section 47(2) of the Charities Act 1993 as amended which requires a charity to provide within two months a copy of the latest statement of accounts to anyone who requests it in writing and pays a reasonable fee to cover the charity's costs.

12. Notices

Clause 12 sets out how notices may be served upon members and at what point a notice served in a particular way is deemed to have been received by the person receiving the notice.

13. Amendments

Amendments to the Constitution may well be necessary as the church develops in the future. Whilst these amendments will first be considered by the Trustees, the decision as to whether or not changes are made lies with the members. It is usual to require more than a simple majority of the members to vote in favour of amendments and in this case a two-thirds majority of the members present and voting at the meeting at which the changes are considered is required.

It is of the utmost importance that the Constitution should not be amended in a way which makes it impossible for the church to continue to operate. Therefore, clause 13 provides that certain amendments are not valid and that certain clauses cannot be amended without the prior written consent of the Charity Commission. Additionally, proposed amendments must be confirmed by the Spiritual Leadership.

14. Incorporation

As the church grows and develops it may be decided that it is necessary for the church to incorporate, in other words become a charitable company or a charitable incorporated organisation (when this structure becomes available). This decision must be taken by the members and all members must have the opportunity to become members of the new corporate entity. It is the Trustees responsibility to deal with the transfer of assets and liabilities from the unincorporated association to the new corporate entity.

Complications will arise if any property of the church is permanent endowment property. Generally speaking, permanent endowment property is property which is restricted in its use such that the trustees cannot sell it and use the sale proceeds however they wish. This is a complex issue and a church wishing to incorporate is strongly recommended to obtain legal advice.

15. Dissolution

This clause allows for the possibility of the church dissolving at some stage in the future. Such action would need to be approved by at least three-quarters of the members (at a General Meeting) and a simple majority of the Spiritual Leadership. If a decision to dissolve is taken then the Trustees are responsible for the orderly winding-up of the church's affairs and once all debts and liabilities are provided for any surplus assets would have to be applied directly for the objects or alternatively transferred to another charity having the same or similar objects.

The Trustees would not be relieved of their responsibilities as charity trustees until they had completed this task and sent in a final report and statement of

accounts to the Charity Commission. At that stage the Commission would then remove the church from the Register of Charities.

These notes are provided merely as guidance on the provisions of the Constitution and do not represent an exhaustive statement of the law in relation to any of the areas covered by the Constitution. If the Trustees have any concerns in relation to the interpretation or application of specific provisions they should obtain legal advice. Equally, it should be noted that the Constitution does not deal with every aspect of church life and it is likely, therefore, that other rules and regulations (as provided for in clause 9) will be required from time to time to provide additional detail on particular matters.

General advice and guidance on a variety of issues is available from the Charity Commission (www.charitycommission.gov.uk)