

MEMORANDUM AND ARTICLES OF ASSOCIATION FOR AN INDEPENDENT CHURCH

GUIDANCE NOTES

This model is designed for use in situations where a corporate structure is considered important for the reasons set out below. It can be used where the church is “leader-led”, ie the wider membership of the church does not have an involvement in the governance and decision-making processes of the church, or where the wider church membership are actively involved in decision-making processes. If you are not comfortable with the corporate structure in your church context then you should consider using the model constitution (charitable unincorporated association) or model trust deed (charitable trust) depending upon whether or not you have a formal membership and whether or not they share in the decision-making.

A company has a separate legal identity (unlike a trust and an unincorporated association). Consequently it can enter into contracts and hold property in its own name rather than such activities having to be undertaken by the trustees in their personal capacity. The liability of the members of a company is limited to a nominal amount (usually £1). The directors (trustees) are generally protected from liability to third parties by the fact that it is the company in its own right which enters into contracts and, therefore, if a third party liability arises it is (generally speaking) a liability of the company and not of the directors (trustees). Such liability must be settled from the assets of the company and only in very limited circumstances where the directors (trustees) are at fault can any liability pass to them. 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 the charitable company structure may well be the most appropriate structure in order to offer a greater degree of protection from liability for those church leaders who will serve as trustees.

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 Memorandum and Articles of Association are in place amendments can only be made by a special resolution of the members and legal advice should be obtained as regards the process needing to be followed. Certain amendments require the prior written consent of the Charity Commission.

A charitable company is regulated by Companies House as well as the Charity Commission. This means that information such as appointments/retirements of trustees, annual returns and annual accounts have to be filed at Companies House as well as at the Charity Commission.

ARTICLES OF ASSOCIATION

1. Interpretation

Article 1 defines various terms which are used in the Articles and sets out some general rules of interpretation.

2. Name

This Article declares the name of the church. Limited companies usually have to include the word “limited” or “Ltd” in their registered name but charitable companies can choose not to do so if they wish. In choosing a name you should check the Register of Charities (via the Charity Commission website) and the Register of Companies (via Companies House website) to ensure that the name has not already been used by an existing registered charity or limited company. 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 of the church clearly and accurately reflect its 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 carefully 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 Article 3.1.1. Article 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 within the Articles. 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. Powers

This Article 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 Article 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 Article 4.22 should be sufficient to deal with matters not specifically referred to elsewhere in the Article. 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.

The Trustees should have regard to the law applicable to any fundraising activities the charity is to undertake. The prohibition on "taxable trading" (see Article 4.8) is essential to avoid an objection from HM Revenue and Customs. 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 Article 4.9, 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.

Article 4.10 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 Article 4.11, 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.

Article 4.13 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.

Article 4.14 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.

Article 4.15 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.

Article 4.16 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 Article 4.17 (usually known as trustee indemnity insurance) requires a special Article because it provides a benefit to the Trustees. 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.

Article 4.19 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.

Special rules apply where any of the Trustees are employed by the church (see below).

5. Benefits to Members and Trustees

The general rule is that neither members nor Trustees may benefit financially from a charity of which they are members/Trustees. There are, however, some permissible exceptions to this rule which are set out in this Article.

Article 5.1 provides that members may receive reasonable interest on money lent to the church, may receive rent/hiring fees for property let/hired to the church and may receive benefits from participating in church activities in the same way as anyone else. A member who is not a Trustee may also be employed by the church or enter into a contract with the church for the provision of goods and services and be paid accordingly.

Articles 5.2 to 5.4 – 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. Articles 5.2 – 5.4 provide the exceptions to this general rule. Consequently, provided no payments are made to Trustees merely for acting as charity trustees, Articles 5.3 and 5.4 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.

Article 5.5 confirms that no more than half of the Trustees can benefit directly or indirectly under Articles 5.3 and 5.4 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).

Article 5.6 confirms that a person can be a Trustee even though he/she is employed by the church provided that the conditions in Article 5 are met.

Article 5.7 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.

Where it is proposed that more than 50% of the Trustees should receive some form of payment then this model Memorandum of Association 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.

6. Membership

Article 6 sets out the membership provisions for the church. These will need to be tailored to fit your particular circumstances. If your church is leader-led then it is likely that the only members will be those people who are also the Trustees. In this situation a person cannot become a member if they are disqualified from being a trustee. If you operate a membership system and members are involved in decision-making then you may need to have a much wider membership of the new company. Alternatively you may wish to have a membership which does not encompass the whole church but which is wider than just the Trustees in order to provide an additional level of accountability for the Trustees. This is quite a complex area and it is important that the way you operate in practice is properly reflected in the Articles. If you are in any doubt as to how the provisions should be drafted then you should obtain legal advice. Articles 6.8 and 6.9 confirm that the liability of the company members is limited to £1. This is the maximum amount a member can be required to pay if the company is wound up and its liabilities exceed its assets.

7. General Meetings

This Article sets out the position in relation to members' meetings. Following the Companies Act 2006 annual general meetings for private companies are now optional. You can, therefore, choose either to impose an obligation to hold an AGM each year or to give the Trustees the choice in each year whether or not to hold an AGM.

This Article also sets out the notice period for general meetings and how notice is to be given. It also sets out how many members need to attend for there to be a valid quorum so that the meeting can proceed. You will need to decide what is an appropriate figure in your particular circumstances.

Article 3.8 confirms that it is possible for members to take decisions in writing. These are called written resolutions and, as with a resolution at a meeting, they require the appropriate percentage of members (depending upon the nature of the resolution) to give their approval to the proposal. This will be less relevant where there is a wide membership than where membership is restricted to the Trustees.

As well as the annual general meeting it is possible to hold other members' meetings (known as extraordinary general meetings) if there is urgent business needing to be addressed and such meetings can be called by the Trustees or can be required by the members themselves.

8. The Trustees

Article 8.1 confirms the Trustees' legal responsibility for the management and administration of the church.

The minimum number of Trustees should be at least three (Article 8.2) 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.

Article 8.4 deals with the appointment of new or additional Trustees. If the only Trustees are the members then a person will automatically become a Trustee upon becoming a member. If there is a wider membership then the responsibility for appointing new Trustees rests with the Trustees themselves.

Article 8.6 sets out the circumstances in which a person will cease to be a Trustee.

Article 8.6.1 – This refers to disqualification as a company director under the Companies Act 2006.

Article 8.6.2 - 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.

Article 8.6.3 - Embarrassing problems can arise when a Trustee becomes too ill or infirm to be expected to take full responsibility for the task.

Article 8.6.4 - The number of meetings missed by a Trustee before this Article comes into play would depend upon the frequency of the meetings and is a matter for the Trustees to decide.

Article 8.6.5 – If the only members are the Trustees then it is appropriate to include a provision which confirms that a Trustee ceases to hold office upon ceasing to be a member.

Article 8.6.6 - 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.

Article 8.6.7- 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.

Articles 8.9 – 8.11 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 Articles or the general law. The Trustees must bear in mind the spiritual direction of the church and the views of the spiritual leaders. This Article 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.

9. Duty of Care and Extent of Liability

This Article 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.

10. Proceedings of Trustees

The number of Trustees' meetings per year (Article 10.1) will depend upon the nature of the church's activities and the extent to which matters are delegated to committees under Article 11.3. 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 (Article 10.2). 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.

Article 10.3 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 (Article 10.4).

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

(Article 10.5). 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.

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 (Article 10.6).

11. **Powers of Trustees**

Article 11 provides specific powers for the Trustees in relation to the administration of the church. Article 11.3 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.

Articles 11.4 and 11.5 allow the Trustees to make standing order and rules of various kinds to govern different aspects of the running of the church.

12. **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. Article 12 sets out the information which must be retained.

Article 12.4 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.

13. **Notices**

Article 13 sets out how notices for general meetings can be served and when notices served in different ways are deemed to be received by the person receiving the notice.

14. **Dissolution**

This Article 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. An application would also need to be made to remove the church from the Register of Companies at Companies House and legal advice would need to be taken as to the process to be followed.

If a Statement of Beliefs is to be included in the Articles then it should appear at Article 15.

Amendments to the Articles may well be necessary as the church develops in the future. Whilst Trustees may recommend appropriate changes it is a legal requirement that these changes be approved by the members (even if these people are the same as the Trustees!) Approval can be at a general meeting or by written resolution. In both cases a 75% majority would have to vote in favour of the changes for them to be approved. Details of the changes have to be filed with both Companies House and the Charity Commission. It is important that the correct process is followed when amending Articles of Association (including obtaining Charity Commission consent in some cases) and if amendments are required then it is recommended that advice be taken.

These notes are provided merely as guidance on the provisions of the Articles and do not represent an exhaustive statement of the law in relation to any of the areas covered by the Articles. 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 Articles do not deal with every aspect of church life and it is likely, therefore, that other rules and regulations (as provided for in Article 11) 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)