

Drafting your constitution – Voluntary Association

A clause by clause commentary

Once you are clear about the key features to be reflected in the structure, you can then turn your attention to the detail.

What follows is a clause-by-clause commentary on the model constitution. For many clauses, you will want to leave the wording as it stands and the comments are really intended only to explain what the clause is there for. In the case of other clauses, there are decisions to be made as between alternative possibilities.

Notes on specific clauses

1. See comments under [‘the name of your organisation’](#)
2. See comments under [‘the objects of your organisation’](#)
3. It is often useful - particularly in a case where the need to obtain charitable status limits the type of wording which can be used in clause 2 - to set out a brief outline here in paragraph (a) of the main activities which the association will be carrying on in practice.

The remainder of clause 3 sets out a range of powers which will be appropriate for most projects. The steering group may feel that there is no immediate prospect of certain of the powers being used in practice. Nevertheless it is usually best to keep the full set of powers, rather than delete items from the list, in case the power is needed at a future date. You should bear in mind that including reference to a particular power does not mean that the organisation **has** to exercise that power in practice e.g. the fact that clause 3 includes a power to accept gifts does not in any way force the organisation to accept a gift in the future where the management committee felt that this would be inappropriate in the circumstances for ethical or other reasons.

It should be borne in mind that it might be necessary in some cases to add in some further powers to clause 3.

4. This is really only intended as general guidance, to help people understand the distinction between the members and the management committee. It is not intended to list each and every

aspect of the respective roles of the members and management committee.

5. See comments in [‘Decide on membership’](#)
6. The prohibition on employees being members of the association is usual in the context of voluntary sector bodies. If you are applying for charitable status, it is likely to cause difficulty if you modify this clause; also, it might mean that certain grant funders will regard the organisation as ineligible for support. If, however, it is important for you that employees should be included within the membership, then that could be provided for, as long as the wording made clear that non-employees must always make up the majority of the membership.
7. It is important, by reference to the legal principles, that there should be some written record of people having agreed to become members. The application for membership could be kept very simple.
- 8, 9 See also comments under the heading of [‘should the board have power to veto any application for membership?’](#)
10. It is, of course, quite possible to include a set of provisions which cover the collection of an annual membership subscription, if that is felt appropriate. Some suggested provisions are included in the [additional clauses](#). Membership subscriptions do not normally represent a significant source of income for the association. However, requiring the members to pay an annual membership subscription does represent quite a useful way of ensuring that you do not build up a long list of “sleeping” members on the register of members who still have to be sent notices of the AGM who have not actually had any involvement with the association for a period of years. If people do not pay their membership subscription within a defined period they can be expelled from membership. An alternative arrangement might be to provide for annual re-registration i.e. where people have to send back a form re-registering as members, otherwise they will lose their membership.
11. This is a useful reminder of the need to maintain a proper register of members. It will be much easier to send out the notices of the AGM etc if there is an organised list. The list could be kept on a computer, rather than on paper, providing people are careful to keep back-ups. It should be noted that if you are holding more than basic name and address information about members or if sensitive data about members can be inferred from their membership (eg medical condition or religious affiliation) you may need to obtain specific permission from each member to process the data. For more information about the provisions of the Data Protection Act 1988, contact the [Information Commissioners Office](#) (ICO).
12. Again, the notice withdrawing from membership should be kept simple.

13. It would be possible to delete clause 13 to simplify the constitution. We would recommend, though, that it be retained, even where the steering group is fairly confident that the level of membership will be small. The procedure laid down by the model refers the question of expulsion to a meeting of the members, rather than this being something which the management committee can do itself. That is intended to reflect the possibility that the management committee might be wanting to expel someone specifically because s/he was raising legitimate points of concern. The requirement to specify the grounds for expulsion and to allow the member concerned to be heard on the resolution reflect the principles of natural justice and the procedure could (at least in theory) be subject to technical challenge if those elements were deleted.
14. Again, in most cases, it will not be particularly appropriate to have an AGM during the year in which the association is formed; but, if the steering group is being formed in the early part of a calendar year, or if the steering group feels that there should be an early AGM so that democratic elections to the management committee can be held, the wording in brackets could be omitted.
16. It may be felt that if sufficient people among the membership feel strongly that a special general meeting should be held, they should be able to **compel** the management committee to convene a special general meeting to consider that issue. A situation of that kind occurs only very infrequently and it is for that reason that provisions giving the members that right have been omitted from the model. If the steering group feels that provisions of this nature **should** be included in the constitution, the material in Supplement 8 of the [additional clauses](#) should be included.
20. The quorum for general meetings (meetings of members) should be set at a level which means that a reasonably representative sample of the membership would have to be present before the general meeting could proceed. Equally, though, it would be inadvisable to have too high a quorum, otherwise this can cause frustration and inconvenience where general meetings have to be reconvened, and people persuaded to attend, in order to make up the quorum. The quorum can be expressed as a specified proportion of the membership. If so, it may be appropriate to specify a minimum threshold (e.g. a quorum of one-third might seem appropriate if the steering group is anticipating 60 members, but it produces an inappropriate result where there are in fact only 6 members!). The other question is an upper threshold - e.g. if the membership were 600 members, it is quite unlikely that as many as 200 would turn up in person at the AGM.
22. If the association is to have a vice-chair (this could be added in to clause 35), then it would be possible for the provisions to be extended so as to refer specifically to the vice-chair taking the role of chairperson if the chair is not present. The provisions then become

- rather more complicated, though, since you still have to cover the possibility that neither the chair nor the vice-chair might be present.
24. It would be possible to provide for voting by proxy. Certainly, proxy voting would be appropriate where the “catchment area”, so far as the membership is concerned, is quite wide; and/or where it is felt that people with mobility difficulties should not be debarred from participating in general meetings. The disadvantages are that proxy voting introduces further complication and a greater amount of administration (particularly if proxy cards are sent out with the notices of meeting). Also, there is a risk that a particular faction might go round the members individually in advance of the meeting to collect proxy votes, without the members in question having the opportunity to hear the arguments for and against the resolutions at the general meeting. A set of provisions covering proxy voting is included as Supplement 9 in the [additional clauses](#).
25. It is quite possible, of course, to provide specifically that the chairperson will not have a casting vote, if that is preferred.
- 28-32 See comments in [Composition of the management committee](#). In relation to clause 29, there is no requirement here to state specifically that an employee of the association is not eligible to serve as a member of the management committee since an employee of the association cannot, in terms of clause 6, be a member of the association. If, however, alternative provisions are introduced (eg. some of the bolt-on provisions included in this module) whereby non-members may serve on the management committee, then, in the case of an association which is wanting to pursue registration as a charity, you should ensure that there is a prohibition on employees serving on the management committee. The same point applies if you have adjusted clause 6 (see comments on clause 6 above) so as to allow for employee-members. Appropriate wording for a prohibition of that kind is included in the relevant bolt-on provisions. It should be mentioned that in exceptional cases [OSCR](#) might be prepared to accept a key employee (eg. project director or equivalent) serving on the management committee providing this could be justified as being of significant benefit to the charity from the point of view of improving its management and administration (and providing the legal requirements in relation to this are observed) ...and if that were being pursued, then appropriate adjustments would require to be made to the draft constitution. It should be borne in mind, though, that certain grant funders will not provide support to a body which has any employees on its management committee/board.
33. If the association is not intending to pursue charitable status, then paragraph (a) could be omitted (although it may be felt that even though it would be legally permissible for someone debarred from acting as a charity trustee to serve on the management committee, that would be undesirable). The period in paragraph (b) could be adjusted to suit whatever the steering group felt was appropriate. The

same applies in relation to the reference to three consecutive meetings in paragraph (f). In relation to that latter point, it will be noted that, under the wording in the model, someone who is absent for more than three consecutive meetings will not **automatically** vacate office; rather, it is up to the management committee to decide whether or not to remove them.

34. See comments on clause 11
36. It would be possible to provide that someone who had held a particular office for a specified time (e.g. three successive years) would not be eligible for re-appointment until a further year had elapsed.
- 40-43 should be adjusted if the constitution will permit an employee to serve on the management committee (though this would be unusual – see comments on clauses 28 to 32 above).
- 40-45 Although the provisions here may seem fairly complicated, the question of conflict-of-interest is seen as increasingly important within the voluntary sector as in other sectors and it is useful to have clear guidance within the constitution. Indeed, as a matter of best practice, the management committee should develop a more detailed set of conflict-of-interest rules once the association is up and running. The steering group may also have its own views on how wide the scope should be in relation to conflict-of-interest e.g. they may feel that clause 41 should be extended so as to cover a situation where a person was a member of the management committee/board of another voluntary sector body which was competing for the same grant funding. It should also be noted that if any employee serves as a member of the management committee (which would be unusual; but see comments on clauses 28 to 32 above), the constitution would need to make it clear that they would not be entitled to vote on any matter concerning their terms and conditions of employment.
47. Again, it could be stated that the chairperson of the meeting would **not** have a casting vote.
48. A figure has to be stated in relation to the quorum for meetings of the management committee. As with the quorum for general meetings, a balance has to be struck between the objective of ensuring that decisions are not being taken by a very small number of people on the one hand, and, on the other hand, not paralysing the association through being unable to take valid decisions because of difficulties in gathering a quorum. The proposed figure for the quorum should be compared against the figure which has been decided upon in relation to the maximum number of committee members. Importantly, though, it should also be reviewed against people's expectations with regard to how many of the places on the management committee are likely to be filled at any given time, and the likely level of turnout.

50. Again, it would be possible to refer to the vice-chair if appropriate (see comments on clause 22).
- 52-53 See comments above in relation to clauses 40-44.
- 54 The provisions within clause 54 are included as a general guide to the duties which apply under the new charities legislation. It may be appropriate to omit (or modify) the provisions within clause 54 if the association does not intend to apply for registration as a charity.
- 58&59 For technical reasons, it is quite important to pin down in the constitution the arrangements which are to apply in relation to bank/building society accounts and holding title to property.
65. If the association itself is not a charity, then it would be possible to provide that the assets on a winding-up could be transferred to a non-charitable body i.e. the word “charitable” could be deleted.
66. The terms of clause 66 reflect one of the requirements for a body seeking registration as a charity and **should accordingly not be altered** where the association is to be a charitable body.
68. This clause should, of course, be omitted if the association will not in fact be a charity.
69. Again, this clause will not be applicable if there is no reference to “charitable” or “charity” within the wording of the constitution.