



CHARITY COMMISSION
FOR ENGLAND AND WALES

Constitution of a Charitable Incorporated Organisation with voting members other than its charity trustees (association model constitution)

The Stragglers Running Club

Explanatory Notes to Draft Constitution

June 2024

This document has been adapted from one provided by the Charity Commission to explain its Model CIO Constitution.

Our notes to explain our own adaptations to the Model Constitution are shown in italics.

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).

What is a Charitable Incorporated Organisation?

The Charitable Incorporated Organisation (CIO) is a legal form for a charity. It is an 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?

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, may be 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 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. It follows 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.

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.

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.

Explanatory notes

Clause 3 – Objects

The CIO must have exclusively charitable objects which you must set out in the constitution. Guidance on [appropriate wording for objects](#) 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.

The draft Objects have been drafted following advice from the lawyers.

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. The Charity Commission recommend that we 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).

Clause 5 – Application of income and property

This Clause reflects the statutory provisions in the 2011 Act about a CIO charity trustee's entitlement to reasonable expenses and that they may benefit from trustee indemnity insurance. It also 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 (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.

For clause 5(2) two options were provided. The second option has been selected as it allows wider benefits for members and connected persons who are not also trustees.

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. Even where trustees are

allowed to benefit from the CIO, this must only happen where the benefit is in the interests of the CIO.

The trustees are not able to receive payment for acting as a trustee.

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.

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].

We have selected option 1.

Clause 9 – Membership of the CIO

This Clause sets out who is eligible to be a member and how someone becomes a member.

In (1) (a) we have retained the possibility of having corporate members of the club, as we might wish to have such members at some point in the future.

(1) (c) sets out two types of Members – Ordinary and Life. These are as set out in the existing club constitution. The existing one also has a third type – Honorary – but this in practice has not been used, and has not been built into the new constitution.

(3) This is the legal duty of each member of the CIO as set out in the Charities Act 2011. The constitution cannot change the members' legal duty. We have added a sentence to emphasise that we have disciplinary processes.

(5) Charities have discretion to set and charge membership fees. *The wording reflects our existing club constitution.*

(6) Power to create informal or 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. *This is included to reflect our existing "social" membership category, which is non-voting.*

Clause 10 – Members' decisions

These provisions reflect provisions in the General Regulations that govern decision-making by members. The Charity Commission recommend they are included in the constitution for clarity.

Clause 11 - General Meetings of members

The General Regulations state that the constitution must include provisions about the holding and calling of general meetings, including: procedure at general meetings; the appointment of a Chair; the minimum number of members who can form a quorum; whether members can demand a poll; and the procedure for conducting a poll. Whilst it is not a legal requirement, the Charity Commission strongly recommends that CIOs with a wider voting membership include provisions along these lines and do not include provisions allowing them to opt out of holding general meetings including an annual general meeting. Certain decisions (such as amendments to the constitution) must be made by the members rather than the trustees, and general meetings are the usual way that membership-based charities make such decisions. Members' meetings are also an important method both of communicating with members and being accountable to them.

(5)(b) The General Regulations require that the Constitution must specify a quorum. *The quorum is 5% (or twenty) of the members, in line with the existing constitution.*

(6)(b)-(d) The General Regulations require that, if members are to have the right to demand a poll, this must be set out in the constitution, including provisions governing the manner in which it will be conducted. The provisions suggested here reflect good practice. *We have included this.*

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.

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.

We have included provisions for both proxy and postal voting.

Clause 12 – 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) This sets out who is eligible to be a charity trustee of the CIO.

(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. The Charity Commission recommends setting and including minimum and maximum numbers of charity trustees. 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. The Commission suggest a maximum of 12 trustees.

We have selected a minimum of four and maximum of twelve.

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

Clause 13 - 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 12(3) and Clause 13.

Option 1 provides for new trustees to be appointed by the membership ('elected') and retire by rotation. This is the simplest, and likely to be the usual, arrangement for most association CIOs.

The mechanism for election and retirement in this clause reflects good practice. You may wish to include provision for all trustees to retire at the first AGM [(1)] but this is not essential.

(5) allows the existing charity trustees or the members to appoint additional trustees to temporarily fill vacancies or to bring additional skills and experience onto the trustee board. The Charity Commission recommend that we include this power.

Option 2 provides for new trustees to be appointed in different ways including election by members, ex-officio (ie by virtue of holding a certain office, eg the local vicar) and nomination by another organisation. *We have used this option and have specified that the members will elect trustees who also act as the four Honorary Officers of the club – Chairman, Club Captain, Treasurer and Secretary. These are as set out in the existing club constitution.*

(1)(e) allows the existing charity trustees or the members to appoint additional trustees to temporarily fill vacancies or to bring additional skills and experience onto the trustee board. The Commission recommend that we include this power.

Clause 14 – Information for new charity trustees

This clause represents good practice.

Clause 15 – Retirement and removal of charity trustees

(1) The General Regulations require that the constitution must contain provisions setting out how charity trustees may retire or otherwise cease to hold office. The provisions in the model follow recommended good practice.

(2) and (3) This is an optional power allowing the members to remove a charity trustee. The members may only remove trustees if a power to do so is included

in the constitution. This power should be exercised only in the interests of the charity, and it is important that the process is fair and transparent (as provided in (3)).

Clause 16 – Reappointment of charity trustees

This clause will help to ensure clarity about reappointing trustees who have retired. We recommend that you include it. There is an optional provision to limit the number of consecutive terms that a trustee can serve for, 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.)

Clause 17 - 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 18 – Delegation by charity trustees

This power is optional. The Commission recommend we include it as a matter of good practice. 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. *We have specified the role of the Management Committee in running the day-to-day activities of the club.*

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

Clause 19 – 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.

(3)(a) The Commission 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.

(4) – This clause is strongly recommended but will be required if one or more of the CIO’s trustees may from time to time participate in meetings by telephone or similar means.

Clause 20 – Saving provisions

We recommend that you include this clause to reduce the risk of trustees’ decisions being declared invalid for purely technical reasons.

Clause 21 – 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 22 – Use of electronic communications

The General Regulations include provisions governing the use of electronic communication, and we recommend that CIO trustees familiarise themselves with the requirements. Failure to comply with the requirement to provide a hard copy would constitute an offence.

The General Regulations state that if the CIO intends to automatically use electronic communication or a website to send formal communications to members, this must be stated in the constitution, which must also set out the circumstances in which this will happen.

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.

Clause 24 – 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. However, clause 24(1) should only be retained if the constitution includes other provisions on the appointment of officers.

Clause 25 – Accounting records (etc)

This clause reflects the trustees' duties under the Charities Act 2011. We recommend that this clause is included, to remind the trustees of their responsibilities.

Clause 26 - Rules

We recommend that this power should be included for clarity, but charities automatically have this power and an express power is not needed. It is important that members are made aware of, and can easily obtain, copies of any rules.

Clause 27 – 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 28 – Amendment of constitution

Before phase 3 of the Charities Act 2022 comes into force, this clause 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 override 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](#).

After phase 3 of the Charities Act 2022 comes into force, a regulated alteration of a CIO’s objects under s.226 and 227 of the Charities Act 2011 does not take effect until it has been registered or later if the resolution containing the amendment specifies this. Any other amendment to the CIO’s constitution takes effect on the date that the resolution containing the amendment is passed or a later date if the resolution containing the amendment specifies this.

Clause 29 – Voluntary winding up or dissolution

This clause reflects the provisions of the Charities Act 2011, 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 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 it could lead to personal liability for the trustees.

Clause 30 – Interpretation

This clause explains some terms used in the rest of the constitution.