

Constitutions – other types of charity

Checklist

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Contents

Introduction	3
Overview	3
Checklist	4
Procedure	7

If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact the SGA: **020 7612 7029 | info@sportsgovernanceacademy.org.uk**

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Constitutions – other types of charity

Introduction

This document provides guidance on the contents of constitutions for sport organisations that are ‘other types of charity’, such as trusts and members’ associations. Remember, a sport organisation is first and foremost an organisation that is subject to all national laws, legal guidance and regulations that other nonprofit, charitable, or other legal forms of organisation (public, private) are subject to.

Overview

A charity’s constitution is its governing document, sometimes called the governing instrument. The initial constitution is generally the charity’s founding document. It is important to recognise that over time alterations can and should be made to the original constitution. When dealing with the charity’s legal administration and internal management and when considering any action by or on behalf of the charity or any transaction involving the charity, it is essential to consider the constitution and to ensure you are viewing the current version, including all amendments made that remain in effect. Some types of restructuring can result in the substitution of an entirely new and different constitution (for example if an unincorporated charity transfers its funds and assets to a successor incorporated charity, such as a CLG, or converts itself into a CIO).

Constitutions – other types of charity

Checklist

Form and contents

- The form and contents of a charity’s constitution depend on:
 - the legal form of the charity (unincorporated members’ association, trust etc.);
 - any specific legal or regulatory rules that apply because of the nature of the charitable purposes and the activities of the specific organisation (e.g. if it is a registered social landlord); and
 - the choices made by the organisation’s members when the constitution was adopted (in membership charities) or the decisions of the founders and original trustees (in a trust).

Name of the constitution

- The name of the constitution varies depending on the legal form of the particular charity:

Type of charity	Name of constitution
Trust	Trust deed or trust document
Charitable company	Articles of association
Members’ association	Constitution or rules
CIO or SCIO	Constitution
Registered society	Rules

Notes:

1. A charitable trust may have been created under the terms of a will.
2. Companies incorporated prior to 1 October 2009 had a two-part constitution (memorandum and articles of association). The Companies Act 2006 provides that the memorandum of an old company is now to be treated as part of its articles.
3. Articles of association are often simply described as ‘articles’.

Constitution – trustees’ duties

- The trustees must ensure they govern and manage the charity in accordance with its constitution.
- In particular they must ensure that:
 - the charity does not go beyond its charitable purposes or its powers;
 - the board acts within its powers;
 - any limitations on the charity’s powers or the trustees’ powers are observed; and
 - other restrictions in the constitution are properly observed (e.g. restrictions on how the charity’s funds and assets may be used, limitations on its activities and how or where those can take place, restrictions and prohibitions on benefits and payments to, or transactions with, members or trustees of the charity).

Constitutions – other types of charity

- When using any powers that flow from the constitution, the trustees must be satisfied that the proposed course of action is a proper use of those powers and is in the best interests of the charity's charitable purposes.

Impact and effect

- Generally constitution is king and the provisions of the constitution must be strictly observed (for example if the constitution requires the appointment of an auditor and the audit of the charity's annual accounts).
- The constitution generally remains effective unless and until it is altered or the charity changes into another legal form (in which case the constitution of the successor charity will then apply).
- However, there are areas in which the law will override any inconsistent or contradictory provision in a charity's constitution, for example:
 - statutory accounting and reporting obligations;
 - deadlines for the filing of annual accounts and the trustees' annual report and for the filing of the charity annual return; and
 - statutory obligations relating to regulatory consents (for example the obligation to obtain prior consent from the relevant charity regulator(s) before altering the charity's charitable purposes).

Unincorporated members' association

- Unincorporated members' associations are heavily dependent on their individual constitutions (largely because there is no overall statute that governs and regulates such associations).
- The constitution will set out the charitable purposes. It is also likely to deal with some or all of these areas:
 - Minimum and any maximum number of trustees.
 - Appointment of trustees and cessation of office.
 - Officers, including how they are appointed and perhaps some aspects of their role and functions.
 - Trustees' powers.
 - Procedures for meetings and decisions of trustees.
 - Admission and cessation of membership.
 - Members' rights and responsibilities/obligations.
 - Procedures for meetings and decisions of members.
 - Administrative provisions for the internal management of the association.
 - Provisions for the holding, management and application of the association's funds and assets to further its charitable purposes.
 - Alteration of the constitution.
 - Dissolution of the organisation and the transfer of its assets to similar charitable purposes.

Constitutions – other types of charity

Trust

- Charitable trusts can be established by will, in which case the terms of the charitable trust set out in the will are the constitution. They take effect on the death of the testator.
- A trust established during the founder's lifetime will be established under a trust deed (or a declaration of trust). That document, which takes effect on execution, is the trust's constitution.
- Trust law provides some of the governance framework for charitable trusts in England and Wales and there are also some relevant specific statutory provisions, in particular the Trustee Act 2000. That Act provides a range of statutory powers for the trustees, as well as various obligations and duties, in particular with regard to investment powers, the management of investments and land transactions.
- However, the powers of trustees and the requirements and procedures for the governance and management of the trust are to a large extent dependent on the terms of the trust deed. That deed will set out the charitable purposes. It is also likely to deal with:
 - minimum and any maximum number of trustees;
 - appointment of trustees and cessation of office;
 - trustees' powers;
 - procedures for meetings and decisions of trustees;
 - administrative provisions for the management of the trust and its property;
 - alteration of the trust deed; and
 - dissolution of the trust and the transfer of its assets to similar charitable purposes.

Orders and schemes

- It is now rare to have to seek a Charity Commission order or scheme to make changes to the constitution of an unincorporated charity, largely because of the Charities Act powers and procedures described above. However, if the charity has land that is subject to trusts or there are other forms of legal restrictions on the charity's assets (such as endowment provisions or other special trusts) the Charities Act powers will not be available. It may then be necessary to seek a formal order or scheme, agreed with the Charity Commission. In such situations legal advice should be taken.

Registered society

- A registered society is a particular type of corporate body, registered under the Co-operative and Community Benefit Societies Act 2014. Charitable registered societies in England and Wales are exempt from registration with the Charity Commission. They are, however, registered with the Prudential Regulation Authority. The rules of a registered society are filed with the PRA.
- The form and contents of the constitution must comply with relevant provisions in the 2014 Act.

Constitutions – other types of charity

Royal Chartered body (incorporated by Royal Charter)

- Royal Chartered bodies are rare and only a very small number of charities are in this legal form.
- The principal governing document of such a charity is its Royal Charter (granted by Her Majesty the Queen using her Royal prerogative powers, based on advice from the Privy Council).
- Those appointed to the Privy Council mostly comprise ministers, other parliamentarians and members of the judiciary, although only serving Government ministers are involved in Privy Council matters for the purpose of recommending and granting a Royal Charter.
- A Royal Chartered body also usually has rules and bye-laws that provide additional and complementary constitutional provisions (dealing with lower level administrative matters).
- Amendments to Royal Charters can be made only with the agreement of the Queen in Council.
- Amendments to a Royal Chartered body's bye-laws require the approval of the Privy Council (though not normally of the Queen).

Procedure

Altering the constitution of an unincorporated members' association

- Generally, the constitution will contain a power of amendment. This is likely to require changes to be approved by resolution of the members, passed at a general meeting of the members. There will usually be detailed additional procedural requirements, such as a particular period of notice. There will also usually be a requirement for a particular majority vote in favour, in order for the resolution to be passed (typically two-thirds of the votes cast or two-thirds of the total number of members in the association).
- Note that some alterations will require prior regulatory consent from the relevant charity regulator(s) – for example any alteration to the charitable purposes.
- Alterations take effect as the members' resolution is passed. However if the alteration required the prior consent of one or more charity regulators, the resolution has no effect if that consent has not been obtained.
- If there is no power of amendment, the statutory powers of alteration in the Charities Act may be available.

Altering a trust deed

- Generally, the deed will include a power of amendment, which will specify the procedures to be followed. That will provide for at least some changes to be made by decision of the trustees (provided certain formalities are followed, for instance execution of a deed of amendment).

Constitutions – other types of charity

- Certain alterations, including any change to the charitable purposes (i.e. the charitable trusts themselves) will require the prior consent of relevant charity regulator(s).
- If the trust deed does not contain a suitable power of amendment, the statutory powers of alteration in the Charities Act may be available.
- However if not, the alteration will require a Charity Commission scheme.

Charities Act 2011 power to alter constitutions (unincorporated charities)

- Where the constitution of an unincorporated charity does not provide a power of amendment (or the power is inadequate to enable the proposed change to be made), it may be possible for the trustees to use one of the statutory powers of amendment provided by the Charities Act 2011 (sections 275 and 280).

Small charity – alteration of purposes (ss. 275–279)

- The power is available to an unincorporated charity if:
 - its gross income in the last financial year did not exceed £10,000; and
 - the charity does not hold any designated land.
- ‘Designated land’ means land held on trusts which stipulate that it is to be used for the purposes of the charity (or some particular purposes amongst its purposes).
- The trustees must be satisfied that:
 - it is expedient in the interests of the charity for its current purposes to be replaced; and
 - so far as reasonably practicable, the proposed new purposes are similar to those they will replace.
- If the charity has a membership, the trustees would need to obtain approval from the members (a vote in favour by two-thirds of the total number of members is required).
- A copy of the relevant trustees’ resolution (and members’ resolution, if applicable) and a statement from the trustees providing their reasons for making the changes must be provided to the Charity Commission.
- The Commission can require the proposed changes to be advertised or, if it does not think the proposed changes are appropriate, it can prevent them from becoming effective. Otherwise, the changes
- will take effect 60 days after the documents are provided to the Commission.

Alteration of administrative powers and procedures (s. 280)

- The trustees of an unincorporated charity may alter its constitution in relation to their administrative powers and procedures (for example the quorum at trustees’ meetings). No income threshold applies.
- If the charity has members, the trustees must obtain approval from the members (a vote in favour by two-thirds of the total number of members is required).
- The change takes immediate effect as the relevant resolution of the trustees (or the members, in a membership charity) is passed.
- The change must be notified to the Charity Commission.

Constitutions – other types of charity

Altering the rules of a registered society

- Any changes to the rules of a charitable registered society must be made in accordance with that legislation and in accordance with relevant provisions of the particular organisation's rules. The procedures will include the passing of a resolution of the members and the filing of required forms and documents with the Prudential Regulation Authority.

Amending a Royal Charter

- Proposed changes to administrative provisions in a Royal Charter should be sent to the Clerk to the Privy Council. The Charity Commission does not need to be notified.
- The Privy Council Office will then evaluate the amendments proposed and consult with appropriate advisers, chosen according to the nature and functions of the Charter body, to establish if they have any comments on the proposed changes.
- The Office will raise any queries directly with the applicant charity.
- If a draft of proposed amendments can be agreed with the Privy Council Office, the organisation then presents a Petition to the Sovereign in Council for a Supplemental Charter. The Petition should state the authority under which it is submitted (for example a resolution passed at a meeting of the members) and should contain sufficient information to enable the Privy Council to make a recommendation to Her Majesty.
- The Petition should be submitted in the name of the body concerned and be under its corporate seal, duly attested.
- The applicant must pay fees to the Crown Office with regard to the sealing of the Supplemental Charter.
- Note that if any regulated changes are proposed, such as changes to the name, charitable purposes, powers to pay trustees (other than re-imbursment of out-of-pocket expenses) or the dissolution provisions, the Privy Council Office will consult with the Charity Commission.
- The process of change may only proceed if the Commission provides confirmation it has no objections to the proposed changes.

Filing requirements

- The relevant charity regulator(s) should be notified of all changes to the constitution of a charity. A copy of the relevant resolution (not the meeting minutes) and a copy of the altered constitution should be provided.

