

TRUST SCHOOLS

GUIDANCE NOTES AND MODEL FORM DOCUMENTS FOR REGISTRATION OF A TRUST COMPANY

I N D E X

1. Introduction
2. Memorandum of Association
3. Articles of Association
4. Registration at Companies House
5. Registration as a Charity

Annex - Model form Memorandum and Articles of Association

The information in this publication is intended as a guide only. The model documents supplied have not been tailored to suit the requirements of any particular school wishing to adopt or convert to trust status. Whilst the information contained in this publication is believed to be correct, it is not a substitute for appropriate legal advice. The publisher and the author take no responsibility for loss resulting from actions based on the information or the use of materials contained in this publication. Independent legal advice must be sought prior to use of the model form documents.

GUIDANCE NOTES AND MODEL FORM DOCUMENTS FOR REGISTRATION OF A TRUST COMPANY

1. Introduction

The following forms and documents are required to incorporate a trust company at Companies House:

- (i) Memorandum of Association
- (ii) Articles of Association
- (iii) Form 10 – Statement of first directors and secretary and intended situation of registered office
- (iv) Form 12 – Declaration on application for registration
- (v) Form 30(5)(a)

The Model Memorandum and Articles of Association have been drafted on behalf of the Department for Children, Schools and Families. This is not a prescribed format, but is intended to be used as a starting point. You will need legal advice on the content of the Memorandum and Articles of Association and the incorporation of the trust company generally.

The requisite forms can be obtained by telephoning Companies House (0870 33 33 636) or can be downloaded from their website (go to www.companieshouse.gov.uk and click on “Forms” at the top of the page).

The persons organising the incorporation of the trust company will need to agree who should become members and who should be appointed as directors of the company. The members and directors have separate roles which are explained in these notes. You will need to decide whether or not to give the directors authority to elect one of their number to act as Chairman.

Directors have the same function as trustees of a charity which is incorporated as a company: hence the terms directors and trustees are synonymous.

2. Memorandum of Association

2.1 Name

The name of the company should be consistent with the purposes of the charity and must not be misleading in any way. It is anticipated that the word ‘trust’ will feature in the name of the company.

In order to be able to use the word “trust” in its name, a company must meet the following three criteria:

- (i) it must have charitable objects (see clause 3);

- (ii) it must not be profit making; and
- (iii) it must have in its objects a clause that prevents the assets of the company from being distributed on dissolution except to an organisation with similar charitable objects (see clause 8).

If it is desired to use the words “Charity” or “Charitable” in the title, then the prior consent of the Charity Commission will be required. In such a case, the applications to Companies House and the Charity Commission (see Section 5 of these notes) will need to be run in tandem.

- 2.2 Companies that are charities are automatically exempt for the requirement to have the word ‘limited’ in their name.
- 2.3 When you have chosen a name, you should check at Companies House whether a company has already been registered with the same or a similar name.
- 2.4 You should also check with the Charity Commission whether another organisation (i.e. which is not a company) with the same or a similar name has been registered as a charity.
- 2.5 There are two ways to check if a company has already been registered with the same or a similar name – using the internet, or by telephone.

Please note: both Companies House and the Charity Commission would prefer users to make searches of the registers using the internet. In both cases, the process is very simple and quick. The telephone numbers given below may change, in which case you should visit the website of the relevant organisation for further information.

(i) **Using the Internet:**

Companies House – visit the Companies House website at www.companieshouse.gov.uk. At the bottom right of the screen, click on the box labelled “Click here for Webcheck”. In the box labelled “Company Name”, type in the name you wish to use for the company and click on the “Search” button. If a company has the same or a similar name, it will be listed on the next screen.

Charity Commission – visit the Charity Commission website at www.charity-commission.gov.uk. Use the option on the right hand side of the screen to “Go straight to...” and select “The Register of Charities”. Under the heading “How would you like to search” click on “Search for charities by name”. Type in the name you wish to use and click “Run Search”. The next screen will show you any charities with the same or similar names.

(ii) **By telephone:**

Companies House – telephone 0870 33 33 636 and ask if a company has been registered using the name you have chosen.

Charity Commission – telephone 0845 300 0218 and ask for a search of The Register of Charities.

3. **Articles of Association**

3.1 Name of company (see comments at paragraph 2.1 above)

3.2 Registered Office

The company must have a registered office in England or Wales. This address will be on the public register and used by anyone wishing to contact the company.

3.3 Objects

The objects of the charity should be specifically limited to those listed in the Articles of Association and they must be exclusively charitable. If there is a requirement to widen the objects that are set out in the model Articles, they will need to be amended or added to with the consent of the Charity Commission.

Please note the obligation to promote community cohesion is a statutory obligation.

3.4 Powers

The main purpose of the company is to act as the ‘foundation’ and as such it will acquire the land and buildings comprising school premises, which will then be held on trust for the benefit of the relevant school.

The company is also given certain rights under Statute e.g. to appoint foundation governors to the governing body of the qualifying school.

The directors will need to understand the legal function of the company, but the overriding principle is that the company can only exercise its powers to achieve its charitable objects.

3.5 Benefits to Members and Directors

Various safeguards are required to ensure that members and directors do not benefit from the company’s resources. The directors will not for instance be entitled to any remuneration in respect of this role. Paid professional advisers of the company may become members, provided they are not also directors.

3.6 Membership

At least one person will need to be nominated as the initial member of the company. That person will sign the Memorandum and Articles of Association before they are sent to Companies House.

Members do not need to pay any monies in order to become a member. The extent of a member's liability (as a member) is limited to the amount that each member guarantees to pay towards the costs and liabilities of dissolution. This will be a nominal amount of £10 as stated in clause 7 of the Memorandum of Association.

You will need to decide whether the admission of new members of the company will be controlled by the members or by the directors.

A person's membership will terminate if s/he resigns or dies (or, in the case of an organisation, ceases to exist) or if the directors consider that the member should no longer be associated with the company.

3.7 General meetings

The members will need to hold a general meeting at least once a year. Matters usually dealt with at general meetings include approval of the company accounts and appointments of the company's auditors.

Most matters will be resolved by a majority vote and each member normally has one vote on each matter. However, under the Companies Acts some matters require a special resolution (which is a 75% vote of members) e.g. changes to the Memorandum and Articles of Association.

3.8 Chairman

The Chairman of the board of directors also sits as Chairman at general meetings. You will need to decide whether the Chairman should have a casting vote at both general meetings and board meetings.

3.9 Directors

The board of directors effectively manage the company and its property and funds. There must be at least two directors at all times. Members may be given the right to appoint a director to the Board.

You will need to decide who should be appointed as directors when the company is incorporated. Additional directors may then be appointed at a later stage.

Directors must hold at least two board meetings a year. Matters will be resolved by a majority vote each director having one vote (except the Chairman who may have a casting vote).

3.10 Records and Accounts

Every company must keep proper records and accounts. The company may be required to file audited accounts and advice should be sought in this respect.

Every year, the company must file an Annual Return at Companies House. This form records any changes in the directors or membership. Companies House will send the Annual Return to the company's registered office shortly before it is due to be submitted.

Records must be kept of all financial matters and this information must be available to the directors. Generally members are only entitled to see the annual accounts.

The directors must also keep proper records of their proceedings, including minutes of their meetings, decisions they have made and professional advice obtained.

4. **Registration at Companies House**

When the format of the Memorandum and Articles has been finalised, the application for registration of the company will need to be sent Companies House. The company will be allocated with a unique company number when it has been registered.

When the company has been incorporated at Companies House, you will then need to apply for its registration as a charity.

5. **Registration as a charity**

Section 5 of these notes only applies to companies which are required to register, or volunteer to register, as a charity with the Charity Commission. The company may be an **excepted charity** in which case the company will not be required to be registered with the Charity Commission unless its annual income exceeds £100,000.

5.1 Introduction

An application to register the company at the Charity Commission will need to be submitted, for which two forms need to be obtained from the Charity Commission. These can be obtained by telephoning the Charity Commission's contact centre (0845 300 0218) or can be downloaded from their website (www.charity-commission.gov.uk/registration/regpack.asp).

The two forms are :-

- (i) Form APP 1 – Application for Registration as a Charity
- (ii) DEC 1 – Declaration by Charity Trustees

As with the format of the company, it is recommended that you take advice on the registration process with the Charity Commission.

Application for Registration

This document falls into six parts:-

- (i) Part 1 relates to the eligibility for registration as not all charities need to register.
- (ii) Part 2 seeks to obtain basic information about the company, its constitution and those who will be initially involved in its governance.
- (iii) Part 3 is aimed at ascertaining that the company's objects are indeed charitable.
- (iv) Part 4 is designed to establish that the company and its affairs will be administered in accordance with the charity law.
- (v) Part 5 seeks confirmation that where relevant, the appropriate checks have been made with the Criminal Records Bureau.
- (vi) Part 6 is a checklist that is designed to ensure that **all** information and documents have been supplied with the application.

The Application Form will need to be signed by one of the initial Trustees or their professional adviser on their behalf.

Declaration by Charity Trustees

Each individual director of the company will have to provide their full name, address, occupation and date of birth, as well as other information aimed at verifying their identity.

Next Step

The completed forms must then be submitted to the Charity Commission who charge no fee. They aim to respond within 15 working days of receipt of the application but that does not mean that registration will be completed within that timeframe. The Charity Commission currently estimate that on average this takes about 3 months, because of various checks that the Charity Commission carry out.

However, it is expected that use of the Memorandum & Articles in the form attached will help speed up the process, as it is in a model form that has been approved by the Charity Commission.

The company will also be given a unique charity number.

<p>These notes have been prepared on the basis of current law and practice as at October 2009.</p>
