



GUIDANCE ON USING THE MODEL GOVERNING INSTRUMENTS

Introduction

1. Every charity registered in the Isle of Man under the [Charities Registration and Regulation Act 2019](#) ("the 2019 Act") is required to have a written governing instrument. This is the document which sets out the charity's objectives, provides the framework for its governance and administration.
2. A charity's governing instrument should make provision for those matters set out in regulation 8 of the [Charities Regulations 2020](#), namely:
 - (a) the charity's name;
 - (b) the objects of the charity;
 - (c) the powers to be exercised by the charity in the furtherance of the objects of the charity and any restrictions on the same;
 - (d) membership, where appropriate, including the categories of membership (if any), the keeping of membership records, the acceptance of persons as members and the removal of members;
 - (e) in the case of a charity with a membership, the holding of general meetings, including the calling of meetings, the giving of notice to members, the quorum and the business to be transacted at the annual general meeting;
 - (f) the appointment and retirement of the charity trustees;
 - (g) meetings of the charity trustees, including any stipulations as to frequency and the quorum;
 - (h) powers of the charity trustees;
 - (i) dealings with the charity's property;
 - (j) the keeping of financial and other records and the preparation of accounts and reports;
 - (k) amendment of the governing instrument; and
 - (l) dissolution of the charity.
3. The Attorney General may disapply any of the above provisions in relation to a charity or class of charities where he considers it appropriate to do so, taking account of the nature of the charity or any particular circumstances relating to it.
4. The form of governing instrument suitable for a particular charity will depend primarily on the legal nature of the charity. There may then be other factors which are relevant to the style and content of the final document.
5. Advice concerning the appropriate form of governing instrument for a particular charity can be sought from a Manx advocate or other legal practitioner experienced in that area of

practice. That does not mean, however, that legal advice must be sought in every instance, especially in those cases where it would be appropriate for the individuals concerned to make use of a suitable model. For this reason, the Attorney General has published a number of model governing instruments for use in appropriate cases.

6. Other models are available, for example from the [website of the Charity Commission for England and Wales](#). If the intention is to set up a charity under Manx law, however, be aware that a model which has been published by an entity outside the Island will not necessarily meet the requirements of regulation 8 and/or it may contain references to legislation, or to practices, which do not apply here. In such a case, the model may require to be adapted. In some cases, the model may be for a structure which is not provided for by Manx law, e.g. a charitable incorporated organisation (“CIO”), which is set up under the provisions of the Charities Act 2011 (of Parliament) and comes in existence on registration with, and is regulated by, the Charity Commission for England and Wales. Whilst a CIO is able to register as a charity in the Isle of Man, it is required to have its principal office in England or Wales, meaning that it will not be a suitable legal structure for a charity which is intended to be operated from, or primarily in, the Island.

Deciding on the appropriate legal nature for a proposed charity

7. It is not possible to provide an exhaustive list of types of institutions which can be established for charitable purposes and registered as a charity in the Isle of Man. However, the following are commonly found:-

- an unincorporated association: has members and is run by a committee but the association itself does not have separate legal existence;
- a company limited by guarantee: a body corporate established under legislation (e.g. the Companies Acts 1931 – 2004) which has separate legal existence to its members and which is managed by its directors;
- a trust: established by a declaration of trust (including one contained in a person’s will) and which is managed by trustees who are the “legal personality” of the trust;
- a foundation: a body corporate established under the Foundations Act 2011, which is essentially an incorporated trust which is managed by a council.

8. As to the type of institution which should be established in a particular situation, this is a matter on which those seeking to set up the charity should take appropriate advice as it does depend on the type of activities to be undertaken and the likely method of operation, which includes factors such as whether the charity will be undertaking activities which require it to employ staff and/or enter into contractual arrangements.

The model governing instruments published by the Attorney General

9. The following models can be found on the [Publications page](#) of www.gov.im/charities:-

- Constitution for an unincorporated association (adopted at the time of establishment)
- Constitution for an unincorporated association (adopted as a replacement)
- Declaration of trust (with a settlor)

- Declaration of trust (without a settlor)
- Memorandum and Articles of Association of a company limited by guarantee incorporated under the Companies Acts 1931 – 2004
- Memorandum and Articles of Association of a company limited by guarantee incorporated under the Companies Acts 1931 – 2004 (includes election to dispense with the audit requirement) Note: this model can only be adopted prior to incorporation)

10. In each case, the model has been drafted so that it contains all of the provisions which are required by regulation 8 of the [Charities Regulations 2020](#), which means that all that is required is to insert the charity's name, objects and, in the case of the constitution for an unincorporated association, some figures where indicated. Please note, though, that the fact that a model complies with the legislation does not automatically mean that it is suitable for a particular charity and confirmation of this should always be sought from an appropriate professional advisor.

11. As referred to in paragraph 7, there are other legal structures which can be considered for a charity which it is proposed to establish in the Isle of Man. However, the Attorney General does not intend publishing model governing instruments for those structures. This is because the Attorney General considers that the choice of such a structure, and the drafting of the appropriate governing instrument, are matters on which appropriate professional advice should be taken in every instance.

Using the models

12. The notes in the following sections are intended to assist in the use of the individual models. Specific guidance concerning the choice of the charity's name and the drafting of its objects is set out in paragraphs 14 – 32 below.

13. There are a number of general principles which apply when using the models:-

13.1 They have been drafted as self-contained, internally coherent and comprehensive documents which comply with the relevant legislative requirements. This means that there is a reason why all of the provisions have been included, or phrased in a particular way.

13.2 As with all models, there may well be suitable alternatives to some provisions (e.g. the model constitution for an unincorporated association provides for the term of office of all of the trustees to come to an end at the following AGM but provision could instead be made for them to hold office for, say, three years, with the term of office of one third of the trustees coming to an end at each AGM), in which case the relevant clauses would have to be redrafted as appropriate.

13.3 If using one of the models, amendments should not be made merely for the sake of style and neither should parts of the model be omitted unless they are genuinely inappropriate for the particular charity concerned, in which case it is strongly recommended that further guidance be requested from Charities Administration, or legal advice be sought, as it is entirely possible in such a case that the model being considered relates to a different legal structure to that of the charity. Thus, for example, if consideration is being given to setting up an unincorporated charity which does not have a membership, this should be done by a declaration of trust rather than by seeking to adopt the model for an unincorporated association with the provisions relating to members removed.

13.4 It is not necessary to use the same terminology as that included in the model, e.g. “the Association” or “the Society” could be used in place of “the Charity” in the model for an unincorporated association. However, if different terminology is adopted, it should be used consistently throughout the model.

Choosing the charity’s name

14. The Attorney General pays particular attention to the name by which a charity is to be known. Not only is he required to consider at the time of an application to register a charity whether the name is undesirable or misleading, but he also has the power under section 20 of the 2019 Act to require a registered charity to abandon a name which gives a misleading indication as to the nature of its activities or is undesirable. As the Attorney General is required to be consistent in his approach, the principles apply equally to the consideration of a request for consent to change a charity’s name.

15. Accordingly, there are a number of considerations when choosing a charity name, or contemplating amending and existing name.

16. As the charity’s name is effectively its brand, it is often the primary method by which potential donors, or beneficiaries, are made aware of its purpose. This means that a name is likely to be misleading if it suggests that the charity is established for a different purpose. This also means that, if an established charity is widening its purposes, care must be taken to ensure that the name continues to be appropriate. For example, if a charity which is established to advance the welfare of animals by providing a sanctuary for abandoned donkeys widens its purposes to include looking after small animals which would usually be kept as domestic pets, it may well be misleading to continue to use a name which referred only to donkeys.

17. It is entirely permissible to name a charity after a person in whose memory the charity is being established. This is common in the case of charities which are established by a particular settlor, whether by a declaration of trust or as part of the disposition of an estate by a Will.

18. If a charity is being set up to commemorate someone other than the settlor or his or her immediate family, it would usually be expected that the purpose of the charity would have some connection with the individual whose name is being used. For example, in the case of a charity established as a memorial to a former motorcycle racer which used as its name the name of the individual concerned, but no other words which would indicate the nature of its activities, would be expected to be established for charitable purposes which were connected to motorcycle racing or to another activity for which the individual concerned was known to be involved during his or her lifetime. Thus, to seek to use the individual’s name for a charity established to promote animal welfare would be likely to be misleading unless he or she had been known to be involved with, or to support, such a cause.

19. If the proposed name includes a word which is in a language other than English, is a proper noun (including the name of an individual) or does not appear, at first sight, to have any relevance to the charity, an explanation of its choice and/or a translation into English will need to be provided when making application to the Attorney General for registration of the charity, or for a change of name in the case of an existing charity. Please note that, whilst it may be acceptable to include a word which, for example, makes reference to a person being commemorated through the work of the charity, this should not result in unusual spellings of common words which are used only in a particular sense. Thus, for

example, where the intention is to commemorate a person named “Ann”, “Mannin” would be acceptable but “Mannx” would not.

20. If the charity is a body corporate established, or to be established, under Manx legislation, the charity should also provide confirmation that approval for the proposed name has been sought from the Companies Registry.

21. As part of the decision making process, a check will be made of the charities register and other public registers, such as the register of charities kept by the Charity Commission of England and Wales and the Isle of Man Companies Register. The purpose of this is to avoid confusion with existing registered entities, which would be undesirable. It is recommended that the charity make its own checks as to whether the proposed name is already in use as part of the process of selecting, or deciding on amendments to, its name.

22. If the proposed name reflects that of a charity established in another jurisdiction, e.g. *name of charity* (Isle of Man), the charity making the application will be asked for written confirmation that it has permission to use that name. Similarly, if the proposed name includes the name of a dignitary, celebrity or well-known organisation, evidence will have to be provided of that person’s consent to such inclusion.

Drafting the charity’s objects

23. In order for an institution to be deemed to be a charity, it must be established solely for one or more purposes which are charitable under Manx law and which are for the public benefit.

24. The list of purposes which are charitable under Manx law are set out in section 6(1) of the [Charities Registration and Regulation Act 2019](#), including:-

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health;
- the advancement of the arts;
- the advancement of heritage;
- the advancement of amateur sport; and
- the provision of facilities for recreation or other leisure-time occupation in the interests of social welfare.

25. Please be aware that a political object, i.e. one which expressly aims to change the law, or one which seems to promote either a particular theory or attitude which involves seeking a change in the law or a change in government policy, is incompatible with charitable status.

26. The public benefit requirement means that the potential beneficiaries should be from a sufficiently large section of the community that the charity can be deemed to provide a genuine benefit to the public. This means, for example, in the case of a charity which provides recreation facilities to its members, eligibility for membership must be across a broad category of the public.

27. Most charities are established for a single charitable purpose, or for a small number of allied purposes. Although it is possible for a charity to be set up for “any purpose which is charitable in Manx law”, in practice this more suitable for charities which are being wholly funded by a single donor, or group of donors, such as an individual, a family, or an

organisation, rather than ones which are seeking donations from the general public. This is because members of the public are more likely to donate to a specific cause that they have a personal connection with, or personal interest in, as well as wishing to know how their monies will be used.

28. When drafting the objects, in addition to identifying the purpose, or purposes, for which the charity is to be established, it is necessary to consider the activities by which it, or they, will be achieved. Identifying the general types of activities that are to be carried on assists in making sure that the way in which the charity intends operating will keep it within the intended purpose. It is not necessary to come up with an exhaustive list of activities, however, and, indeed, it is generally impossible to predict how the charity's activities may need to change over time. Also, if a charity is too prescriptive, this can impose limitations on the charity's operations which were not anticipated.

29. The objects should be worded in such a way as to make it clear:-

- (1) *what* charitable purpose your charity is set up to achieve;
- (2) *how* it will achieve that purpose;
- (3) *who* will benefit; and
- (4) *where* the benefits extend to.

Using the phrase "by, but not limited to," makes it clear that the activities described are examples, rather than being an exhaustive list.

30. The following are examples of objects which follow these principles:-

- The promotion of the education of children in Nepal by providing educational materials.
- The relief of poverty in the Isle of Man by providing financial assistance, including through the purchase of goods, for families in need.
- The promotion of the history and heritage of the Parish of German for the benefit of the public by, but not limited to, the publication of information, the giving of talks and the holding of exhibitions.
- The advancement of health in the Isle of Man and elsewhere by making grants to support research into the prevention, treatment and cure of pancreatic cancer.
- The relief of persons in the Isle of Man who are suffering from chronic heart disease, by, but not limited to, the provision of practical and emotional support to help them understand and live with their condition, including the provision of information as to treatment options available to them.
- The promotion of the visual and performing arts in the Isle of Man for the benefit of the public by the provision of an exhibition and performance space.
- The relief and assistance of people in need in any part of the world who are the victims of war or natural disaster or catastrophe by supplying them with medical aid.
- The advancement of animal welfare in the Isle of Man by the provision of financial assistance for meeting veterinary bills for pets and other domestic animals in circumstances where the owner is unknown or is of limited financial means.

31. When drafting objects, it is important to distinguish between the charitable purpose, and the principal activities which will deliver it, and the powers that the charity needs to be able to do so. For example, where the charitable purpose is to relieve poverty and the principal activity to do so is to provide meals to individuals suffering financial hardship, the raising of the funds to enable the charity to do so is not a charitable object but, instead, is a power. Other examples of powers are the power to acquire property, the power to dispose of property, the power to make grants, the power to insure the charity's property, etc. These powers should be set out separately in the governing instrument.

32. The Charity Commission for England and Wales publishes useful [guidance](https://www.gov.uk/government/organisations/charity-commission) concerning the drafting of objects on its website <https://www.gov.uk/government/organisations/charity-commission>.

The model constitution for an unincorporated association

33. It may be appropriate to establish an unincorporated association where the organisation:-

- is to be relatively small in terms of assets;
- has a membership;
- is to be run by charity trustees who will be elected by the members or appointed to hold office for fixed terms;
- wants to take account of the views of interested parties (e.g. local residents in the case of a heritage charity, patients and their families in the case of a charity set up to assist individuals suffering from a particular illness or disability or parents and teachers in the case of a charity set up to support a particular school) through membership or as users; and
- wishes to carry out its work wholly or partly through the voluntary effort and contribution of its members.

34. The following table contains notes regarding individual clauses in the model constitution for an unincorporated association, as numbered in the left hand column. The notes are intended to explain the reason for the inclusion of the clause and/or provide assistance in its application. Those clauses in respect of which notes have not been provided should be self-explanatory.

clause	note
1	The date of adoption is date of the meeting at which it was decided to adopt the constitution. If the charity is being established for the first time, the meeting is that of the people who have come together to set up the charity. If the constitution is being adopted in place of a former constitution, the meeting is that of the persons referred to in the former constitution as approving its amendment.
2 Name	See paragraph 14 – 22 above
3. Objects	See paragraph 23 – 32 above
4. Powers	Charities only have the powers that they are given by law; they do not automatically have the power to do what could legally be done by an individual. The powers are not themselves charitable objects but consist of the legal means by which the charity's objects may be achieved. The powers must not be exercised for any other purpose. The powers included in this clause are those most commonly used by charities but, if it is known that the charity will engage in specific activities which are not mentioned, it is advisable to insert additional provisions to cover them. Often, it is

4. Powers cont'd	suggested that powers not be included on the basis that the charity is not expected to use them. But the fact that a power has been included does not impose an obligation on the charity to use it and, as circumstances change, the charity could well find itself disadvantaged by not having the power available to it. So, it is recommended that powers only be omitted after careful consideration, in particular as to the effect on the charity's likely operations. Also, be aware that, if the charity is to own any property (which includes physical objects, such as equipment), it will also need the power to dispose of property.
4.4 & 4.5	The charity can only co-operate with other bodies, or support, administer or set up other charities, where this promotes, or achieves, its objects.
4.6	The trustees should have regard to the law applicable to any fundraising activities that the charity is to undertake. Where a charity will be relying on taxable trading to raise funds, it is recommended that a separate, non-charitable trading company be used for the purpose. Specialist legal and accounting advice will be required.
4.10	This clause sets out ways in which financial assistance can be given, whether to beneficiaries (where the charity is set up to help individuals) or to other bodies. If the charity's objectives are such that the way in which they will likely be achieved will not include providing financial assistance, this power can be omitted.
4.11	This clause 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 (e.g. 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 built up without a deliberate policy decision, or be excessive in relation to the amount known or reasonably estimated to be required.
4.12	This clause is designed to confer a wide power of investment but to ensure that it is exercised responsibly. An "investment" is an asset which (i) is capable of producing income and (ii) may also increase in capital value. In setting an investment policy and selecting investments, the Trustees should have regard to the needs of the charity for both income and capital growth, and act prudently. They should avoid trading and speculation.
4.13	If discretionary powers are to be given to investment managers, an express power to delegate the management of investments is required. It should always be accompanied by safeguards.
4.14	Charity property, whether buildings, equipment or other property should normally be insured up to its full reinstated value. Depending on the nature of the charity, other kinds of insurance may be necessary (e.g. public liability, employers liability).
4.15	This type of insurance requires a special clause because it provides a benefit to the trustees. It may be helpful where the charity is involved in particular commercial risks, but it does not protect the trustees from liability towards third parties, and the trustees must never commit the charity to expenditure that it cannot afford.
4.16	This clause covers employees, independent contractors and volunteers, and enables salaries and pensions, or fees, or expenses (or none of these) to be provided. All necessary advice about employment law should be obtained. A charity should not pay more than a reasonable rate for the tasks, but should aim to be a good employer. If there will be a significant number of employees, it is wise to consider incorporation as a charitable company instead. Special care is required if it is proposed to employ

	trustees.
4.18	This clause will be relevant in cases in which charities enter into contracts to provide services to Government Departments, e.g. the Social Services Division of the DHSC. A charity can only enter into a contract of this kind if the work it is doing will promote its objects. It may be wise to consider incorporation as a charitable company instead if the charity will be involved in significant contractual commitments.
4.19	This blanket provision is designed to cover any other power not expressly mentioned. It is still restricted to promoting the objects.
5. Membership	Members are essential to an unincorporated association: it cannot function without them.
5.1	If members are likely to benefit from the charity's activities, it is important that eligibility for membership is as wide as possible, so that there is no risk of the charity not being established for the public benefit. It is a matter for the individual charity whether organisations should be eligible for membership. If not, then "or organisation" should be omitted.
5.2	Apart from "individual" and "corporate" members, it may be considered helpful to provide for e.g. associate, junior or honorary members with different rates of subscription and voting rights.
5.3	<p>It is important that the charity keeps an up-to-date register of its members: failure to do so can result in a number of problems, including serious difficulties with the calling of annual and extraordinary general meetings as well as identifying those eligible to vote. The trustees must ensure that all personal data is handled in accordance with GDPR requirements.</p> <p>The reason that provision is included for the register of names and addresses to be "made available to any member upon request" is that an unincorporated association is comprised of its members and they should be able to contact each other to discuss matters relating to the charity outside of general meetings. Of course, only a vote at a general meeting would be effective but that does not mean that members cannot have discussions outside of such meetings which may, or may not, involved the Trustees. If there is a genuine difficulty posed in relation to a particular charity by members having access to the register of names and addresses, then an alternative means of ensuring communication between members must be provided. This could be done by amending clause 5.3 and adding a new 5.4 as follows:</p> <p><i>5.3 The Trustees must keep a register of names and addresses of the members.</i></p> <p><i>5.4 Although the register will not be disclosed to any member who is not a Trustee, should a member wish to contact any other member, or members, of the charity, this can be done by sending, or handing, the item of correspondence to any Trustee who will arrange for it to be forwarded promptly to the member, or members, concerned provided that any such item of correspondence must relate only to matters regarding the charity. The cost of forwarding any item will be borne by the member from whom it originates and any item received in a sealed envelope will be forwarded unopened.</i></p> <p><i>[Remaining sub clauses renumbered]</i></p>
5.8	It is uncommon for a member of a charity to be removed from membership, but if this happens it must be done for good reason. Any decision to remove a member must be justifiable.

6. General Meetings	A general meeting is a formal gathering of members.
6.1	This clause states who has the right to attend and vote at general meetings. The charity may invite other individuals to observe or participate but not to vote.
6.2	Where a number of clear days notice is specified, each “day” starts at midnight, and the day on which notice is given does not count.
6.3	This is the minimum number of members required to be present before any valid business can be transacted. The quorum chosen should be realistic.
6.5	It should be noted that the required majority is not a majority of the members present at the meeting, but of the votes cast.
6.6	The casting vote given to the person who presides at a meeting is intended to enable the meeting to proceed with its business. It is normal for the matter to be given in favour of the <i>status quo</i> to allow further debate on the matter on a future occasion.
6.8	An accountant (as defined in the Schedule to the Interpretation Act 2015), a person approved by the Attorney General under section 27(9) of the Charities Registration and Regulation Act 2019 or an independent examiner (a person with a qualification listed in the Schedule to the Charities Regulations 2020) may be required to audit or examine the charity’s accounts in accordance with section 27. A charity with a gross income of up to £25,000 is not required to have its accounts reviewed.
6.9	Where an urgent or important matter (such as an amendment of the constitution) which must be decided at a general meeting cannot conveniently be dealt with at an AGM, the meeting specially called for the purpose is an extraordinary general meeting (EGM)
7. The trustees	This clause sets out the composition of the charity’s governing body.
7.2	The maximum number of trustees should be enough to ensure that there are sufficient trustees for the charity to deliver its objectives but not so many that the decision making process becomes unwieldy.
7.3 (version adopted on establishment)	Appointment of the first trustees and the first chair. NB This clause is not included in the version adopted as a replacement because the charity will already have trustees in place, who continue to hold office until the next AGM
7.3 (version adopted as a replacement) 7.4 (version adopted on establishment)	Eligibility for re-election on retirement helps to ensure the continuity of the charity.
7.4 (version adopted as a replacement) 7.5 (version adopted on establishment)	This provision is important: it is designed to ensure as far as possible that everyone who takes on the task of being a trustee of the charity is aware of the legal responsibilities it entails. Note: any changes to the trustees must be notified, by using a notification form and Annex A, to the Attorney General within 28 days of the changes.
7.6 (version adopted as a replacement) 7.7 (version adopted on establishment)	This clause acts as a reminder of the general rule that the trustees are entitled to recover from the charity whatever funds they may be obliged to pay out as a consequence of running the charity, e.g. paying for goods or services ordered by them and supplied to the charity. Of course, the indemnity is of no value if the charity has no funds to meet it.

7.8 (version adopted as a replacement) 7.9 (version adopted on establishment)	Occasionally a mistake occurs in appointment procedures. If a mistake of this kind is discovered it does not retrospectively invalidate previous decisions but should be put right before further decisions are taken.
8 Trustee meetings	This clause deals with the meetings and proceedings of the trustees.
8.1	The number of meetings per year will depend on (i) the nature of the charity's activities and (ii) the extent to which work is delegated to sub-committees and/or staff.
8.2	Bearing in mind that, as decisions may be taken on majority vote, the quorum should normally be fixed at (at least) one more than the number nearest one third of the total trustees.
8.4	An alternative to a decision taken at a meeting is a written resolution, but this will not be valid unless signed by all of the trustees.
8.5	The casting vote given to the person who presides at a meeting is intended to enable the meeting to proceed with its business. It is normal for the matter to be given in favour of the <i>status quo</i> to allow further debate on the matter on a future occasion.
9. Powers of the trustees	
9.1	In this Constitution, the Chair is appointed by the AGM but other honorary officers are appointed by the Trustees from among their number. A treasurer is essential. There may be an Honorary Secretary, although it is often convenient for the Secretary's role to be undertaken by a paid employee. There may also be a Membership Secretary or holders of other specified offices, which may alter from year to year according to the charity's activities.
9.2	A specific provision is essential is to be able to delegate to sub-committees, such power to delegate being subject to the provisions of section 11 of the Trustee Act 2001 . The trustees will be legally responsible for the sub-committee's acts, and for this reason it is prudent for at least one trustee to be a member of each sub-committee. The trustees should also define the terms of reference of each sub-committee with care. It is essential in all cases to provide for reporting back, and this may have to be in writing.
9.3, 9.4 & 9.5	The trustees are allowed to make rules of various kinds to govern different aspects of running the charity. There is no need to call them "standing orders", "rules" and "regulations": they can all be called "rules" if preferred. The benefit of making standing orders (or rules) to provide for attendance in person at meetings to include attendance by means other than physical presence is to enable meetings to be attended virtually, either because of general restrictions on gatherings or to enable individuals to participate who are unable to attend in person for whatever reason.
9.6	This clause is designed to place the responsibility for finding a solution to internal disputes on the trustees, given the damage which can result to a charity from such arguments, especially when they become public.
10 Property and funds	This clause reflects the legal position that the property of a charitable unincorporated association is held on trust for the objects rather than belonging to the members or trustees.
10.2 & 10.3	These clauses reflect the legal principal that the trustees must not benefit from the charity except so far as expressly permitted by the Constitution. They prevent a trustee from being an employee although clause 10.2.6

	allows a restricted number with specialist skills to be paid fees for work done, subject to the procedural safeguards in clause 10.3. Without express permission in the Constitution, a trustee cannot be a beneficiary of the charity (see clause 10.2.7).
10.4	“Trust corporation” is a technical legal term and “holding trustee” is defined as: An individual or corporate body responsible for holding the title to the property but not authorised to make any decisions relating to its use, investment or disposal.
10.5	It is obvious that prudent trustees do not allow significant amounts of money to be kept as cash, or leave funds in a current account unless they are likely to be applied in the near future.
10.6	The charity is not a legal person and cannot therefore hold the legal title of property or investments in its own name. It is often inconvenient for the trustees, who may change frequently, to hold property in their individual names. Yet it is important that the charity should retain control of its property. This clause provides several alternatives.
11 Records and accounts	
11.1	The keeping of adequate records is essential if a charity is to be properly run. Regulation 10 of the Charities Regulations 2020 sets out requirements concerning accounting records and accounting control systems of charities registered in the Island.
11.3	This provision is designed to ensure that the members of the charity have access to the published report and statements of account.
12 Amendments	Amendments to the Constitution may well be needed as the charity develops. It is a requirement of regulation 8 that provision be made for this. It is usual to require more than a simple majority for a vote on the matter.
12.1	The members must be given advance notice of proposed amendments to the Constitution. The period of notice should be the same as that included in clause 6.2. It is of the utmost importance that the Constitution should not be amended in a way that makes it impossible for the charity to continue to operate. Section 17 of the Charities Registration and Regulation Act 2019 provides that no amendment of a charity’s governing instrument is effective without the prior written consent of the Attorney General.
13 Dissolution	It is not unusual for unincorporated charitable associations to reach the end of their usual life and decide to dissolve. If so, the debts and liabilities must be provided for and there may be assets remaining. Those assets must be used in furthering the objects or for charitable purposes which are within or similar to the objects, and this clause sets out various alternatives.
14 (version adopted on establishment)	In order to make this an official document, it must be signed and witnessed. The Constitution should be signed by all the persons who are to be the first trustees, who should print their full names above their signatures. The witness, who should print their full name and address above their signature, cannot be one of the trustees. Add additional lines as required. NB This clause is not included in the version adopted as a replacement because the adoption occurs as the result of the vote of the members, which should be recorded in the minutes of the meeting concerned.

31. If anyone proposing to establish a charitable unincorporated association is uncertain as to whether it is a suitable legal structure for the intended activities, appropriate professional advice should be taken.

The model declarations of trust

32. Charities established by declarations of trust are unincorporated, i.e. they do not have separate legal personality, meaning that the charity's property is held in the names of the trustees. A trust does not have a membership. Accordingly, a charitable trust may be an appropriate legal structure for an organisation which:-

- is likely to undertake the majority, if not all, of its charitable activities by the giving of financial assistance (e.g. by making grants, giving bursaries or by purchasing and donating items) or through actions which require occasional steps to be taken (e.g. providing housing for individuals of limited financial means) or which can be undertaken by the trustees without requiring too much assistance;
- may hold (or lease) property which is intended to be used for the delivery of the charitable objectives, but the trustees will not be entering into frequent contractual or transactional arrangements;
- may be funded by a particular individual, group of individuals or an organisation or, if it raises funds from the public, does not intend providing the charity's supporters with any voting rights as regards the charity's management, administration or direction of travel.
- may employ staff, but not in significant numbers.

33. The model declarations of trust are intended to provide a governing instrument for a relatively simple charitable trust which is not intended to have a permanent endowment and is likely to have trustees who are not legal or trust professionals. If more complex arrangements are desired, or if the intention is for the charitable trust to have a permanent endowment, advice as to the drafting of the governing instrument should be sought from a Manx advocate or other experienced trust law practitioner. If the intention is to establish a charity as part of the disposition of an estate under a will, appropriate professional advice should be sought.

34. There are two versions of the model, the first with a settlor and the second without.

35. The version with a settlor is suitable for use where a particular individual or organisation wishes to establish a charitable trust by transferring money, land or other assets to other persons (the trustees) to hold on trust in order to carry out specified charitable objectives. In those circumstances the charity will often be funded entirely by the settlor, meaning that the trustees would not carry out any fundraising activities. The choice of the charity's name and objects will usually be made by the settlor, who would also have input into the drafting of the declaration. However, once the charity is established, the settlor would take no further part unless appointed as a trustee.

36. The version without a settlor is suitable for use where a group of people (the first trustees) come together to establish an unincorporated charity for which they will raise funds, which may be sourced from individual donors or from the public at large. Decisions such as the charity's name and objects and the other provisions to be included in the declaration would usually be made by the first trustees.

37. The model declarations require the insertion of the names and addresses of the first trustees and the settlor, if any, together with the name and objects of the charity and the description of the general object of any charity which could be a recipient of the charity's remaining property on dissolution, per clause 22.1. Guidance as to the choice of the charity's name and the drafting of the objects is set out above at paragraphs 14 – 22 and 23 – 32 respectively.

38. If any other changes to the model are being considered, or if the intended signatories have any queries about the purpose or effect of any of the provisions, it is recommended that legal advice be taken or that guidance be sought from Charities Administration, albeit the extent of such guidance may be limited.

39. The declaration should be signed by the first trustees (and settlor, if any) in the presence of a witness, who should be unconnected with the signatories. The first trustees (and settlor, if any) should sign to the right hand side of the vertical dots using their usual signatures. The witness should sign to the left of the vertical dots and print their full name and address below their signature. If the first trustees (and settlor, if any) do not all sign the declaration at the same time, the signatures of any of them signing later will have to be witnessed separately.

The model Memorandum and Articles of Association of a company limited by guarantee incorporated under the Companies Acts 1931 – 2004

40. A charitable company has its own legal identity, meaning that all contractual dealings and ownership of assets are in its name. A company has members, whose liability is limited under company law, and is run by directors who are appointed by the members. The directors are the trustees for the purpose of charity law.

41. A company may be the preferred legal structure in cases where it is anticipated that the charity will:-

- be a large organisation;
- own property;
- employ staff;
- provide charitable services under contractual agreements; and
- enter into commercial contracts

42. As charitable companies are subject to regulation under company law, as well as under charity law, it is recommended that professional advice is taken before deciding to incorporate a charitable company so that the legal framework under which the charity would be operating is clearly understood.

43. In the Isle of Man, there are two different company structures, namely:-

- those incorporated under the Companies Acts 1931 – 2004, the traditional company model; and
- those incorporated under the Companies Act 2006, a model which is substantially different to that of the traditional company.

44. The vast majority of charitable companies established in the Isle of Man have been incorporated under the Companies Acts 1931 – 2004 (“a 1931 Act company”). This does not mean that a 2006 Act company model cannot be used for a Manx charity but, if it is, some of its characteristics may have to be modified or dis-applied. For this reason, anyone considering incorporating a 2006 Act company with charitable objectives should take appropriate advice. The Attorney General has not published a model Memorandum and Articles of Association for a 2006 Act company, and does not intend doing so. Accordingly, the remainder of this guidance relates to 1931 Act companies.

45. There are a number of structures for a limited company incorporated under the Companies Acts 1931 – 2004, including companies limited by shares and companies limited by guarantee.

46. In the case of a company limited by shares, the shareholders (or members) are the “owners” of the company and, thus, the beneficial owners of the company’s property. Their financial liability as far as the company is concerned is limited to the extent of their shareholding. This type of company is not able to be used for a charity because a charity’s property cannot belong to its members or, indeed, to anyone else.

47. In the case of a company limited by guarantee, the members give a undertaking that they will contribute an amount specified in the company’s Memorandum of Association (usually not exceeding £1 or £10) for payment of the liabilities, debts and certain other of the company in the event of its winding up. They do not hold shares in the company and

are not entitled to any of its profits. Accordingly, this type of company is used primarily for non-profit organisations and is the usual model for a charitable company.

48. There are two model Memorandum and Articles of Association provided for a 1931 Act company. Both are for companies limited by guarantee and are based on the provisions of Table C of the [Companies \(Memorandum and Articles of Association\) Regulations 1988](#) (available from the website of the Isle of Man Companies Registry). It must be noted, however, that the Memorandum and Articles of Association of a 1931 Act company are not stand alone constitutional documents and must be read together with the Companies Acts 1931 – 2004.

49. Both models include standard provisions which are necessary for the company being incorporated to comply with charity law.

50. The models also include provisions in the Memorandum of Association which refer to a licence granted by the Attorney General under section 18 of the [Companies Act 1931](#). This is a licence which enables the company to dispense with the use of the word "Limited" in its name, which many charitable companies seek to do. Such a licence can only be granted before the company is incorporated.

51. If your charity has already been incorporated without a section 18 licence and you are considering adopting the model as a replacement for its existing Memorandum and Articles of Association, the clause in the Memorandum which refers to such a licence having been granted must be omitted.

51. If the company has not yet been incorporated and you wish to obtain a licence under section 18, once you have prepared a draft of the Memorandum and Articles of Association, you should make a request by e-mail to Charities Administration to which is attached an editable Word version of the draft.

52. When using the models, it must be remembered that the effect of the Companies Act 1986 is that a company incorporated on or after 1 June 1988 is deemed to have the capacity and, subject to the 1986 Act, the rights, powers and privileges of an individual. As a result, the 1986 Act prohibits the inclusion in the Memorandum, or Articles, of Association of any provision with respect to the rights, powers and privileges of a company except a provision that restricts or prohibits the exercise by the company of certain rights, powers or privileges which are specified in that Act. The only exception to this is that a company which is a charity must state its charitable objects in its Memorandum of Association. The models have been drafted in accordance with the requirements of the 1986 Act.

53. If your charity is a company which was incorporated prior to 1 June 1988, its Memorandum of Association will have included lengthy provisions detailing its objects and powers. In such a case, the charity may amend its Memorandum, and Articles, to reflect those of a company incorporated on or after that date, provided it passes a special resolution as provided for by section 1(3) of the 1986 Act. If you are considering passing such a special resolution, it is recommended that you take appropriate professional advice.

54. Two versions of the model are available on the [Publications page](#) of www.gov.im/charities:-

- (1) Memorandum and Articles of a company limited by guarantee incorporated under the Companies Acts 1931 – 2004; and

- (2) Memorandum and Articles of a company limited by guarantee incorporated under the Companies Acts 1931 – 2004 (includes an election to dispense with the audit requirement)

55. Company law requires that the accounts of a company be audited, irrespective of its income. This requirement overrides that in section 27 of the [Charities Registration and Regulation Act 2019](#), namely that a charity is only required to have its accounts audited if its gross income for the accounting year in question exceeds £250,000. A company which is an “audit exempt company” for the purposes of the [Companies \(Audit Exemption\) Regulations 2007](#) (a copy of which is available on the website of the Isle of Man Companies Registry) is able to make an election to dispense with compliance with the requirements of the Companies Acts 1931 – 2004 (copies of which can be found on the [Isle of Man Legislation website](#)) which relate to the audit of the accounts of companies. Such an election is made by a resolution passed by 100% of the company’s members, and rescission of an election can be required by a member of the company depositing a notice in writing to that effect at the company’s registered office.

56. On the basis that the subscribers to the Memorandum and Articles of Association represent 100% of the membership at that time, the Attorney General has agreed that a provision in the Articles of Association which reflects the election provisions in the 2007 Regulations constitutes the making of such an election. However, such a provision can only be included in the Articles prior to the company’s incorporation. Thus, version (2) of the model cannot be adopted as a replacement for the Memorandum and Articles of an existing company.

57. Although the models include both the Memorandum and Articles of Association, it is possible just to replace the Articles of an existing company using the Articles included in version (1). Alternatively, individual Articles included in version (1) can be used as model wording for the amendment or replacement of individual Articles in the existing Articles of Association. However, if replacing individual Articles, care must be taken to ensure that the Articles of Association remains a coherent document which continues to meet the requirements of company law. In the case of any doubt, appropriate advice should be sought from a legal professional.

58. The name and objects of the charity, or proposed charity, need to be inserted into the model being used. Guidance as to the choice of the charity’s name and the drafting of charitable objects is set out above at paragraphs 14 – 22 and 23 – 32 respectively.

59. If any other changes to the model are being considered, or if there are any queries about the purpose or effect of any of the provisions, it is recommended that legal advice be taken or that guidance be sought from Charities Administration, albeit the extent of such guidance may be limited.

Further information

60. If there are any queries concerning the use of the model governing instruments which are not dealt with above, or in any of the information available on www.gov.im/charities, please contact Charities Administration, preferably by e-mail.

61. Please note that the Charities Administration team cannot give legal advice and neither can they give any further guidance than is set out above concerning the choice of a legal structure for a proposed charity or whether a particular model governing instrument will be suitable for a specific charity. Charities Administration can, however, provide suggestions as

to appropriate wording for a charity's objects and also comment as to whether a proposed name may be considered to be misleading or undesirable. The extent to which guidance can be given on other matters may be limited.

Contact details

Charities Administration

Attorney General's Chambers
Belgravia House
Circular Road
Douglas
Isle of Man
IM1 1AE

Telephone: +44 1624 687318

Email: charities@gov.im