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Information

Sheet No. 12

Setting up a Society, Including a Model Constitution

1. Introduction

If a number of individuals wish to form a musical group, for example, a choir, instrumental band or a music club, that group will not be a body recognised in law until some specific formal action has been taken. This action is normally the adoption of a constitution. The attached model constitution has been approved by the Charity Commission for use by unincorporated voluntary music groups who wish to set up an association or society.

Until a group adopts a constitution and so becomes a legal entity, it cannot, for example, open a bank account, hire premises for concerts or rehearsals or effect insurance; such actions would have to be taken in the name of one or more individual members, which is usually not a suitable way of operating, except perhaps in the group's initial stages. Once the group has adopted a constitution, it can then call itself an unincorporated association or society.

The constitution must set out how the society is to operate - its objects, membership, the election of officers and committee members, etc.

If a society's constitution is such that its objects are charitable, then the society has to comply with charity law (which is different in England and Wales, Scotland and Northern Ireland). In England and Wales, charities are supervised by the Charity Commission.

The Charities Act 2006 defines a number of new charitable purposes, including the following:

- the advancement of education
- the advancement of health or the saving of lives
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science

Thus choirs, instrumental groups and music clubs normally have charitable status even if their constitutions do not specifically refer to it. **A charitable organisation with an income of £5000 or more MUST be registered with the Charity Commission**; those with a smaller income cannot be registered at the moment, though this may become possible at a later date.

As Making Music is a registered charity, the Charity Commission require us not to admit as Full Members groups whose purposes are not solely charitable. However such organisations can join as Associate Members.

Trustees

A charity must have trustees. "Charity trustees" are defined as "the persons having the general control and management of the administration of a charity", ie in normal circumstances the executive committee. It is possible to state in the constitution who the trustees are - for example, the officers - but in England & Wales this would be over-ridden in most circumstances by the Charities Act.

Trustees cannot be paid for being trustees. However, the Charities Act 2006 has created more flexibility in the remuneration of Trustees who undertake other tasks, eg performing as musical directors or accompanists. The following conditions apply:

- The number of trustees so remunerated must be a *minority* of all the trustees.
- The trustees must agree that such payment is in the best interests of the charity, ie that the remunerated trustee is the best person to undertake the job.
- The amount paid must be reasonable and set out in a written agreement between the trustee and the charity.
- The constitution must not have a clause specifically preventing the trustees from being paid.

Although the Charities Act 2006 allows trustees to be paid, Making Music is unable to admit into full membership organisations that allow the payment of trustees. For such organisations we have created a category of membership called **Associate Plus**. If a group adopts the attached model constitution, they can become full members of Making Music.

Charitable Incorporated Organisations (CIO)

Most societies will set up initially as an unincorporated association, as suggested in the Model Constitution attached. The Charities Act 2006 introduces a new type of governance structure for charities, the CIO. This will enable liability for the members of a charity to be limited in a similar way to a charitable company, but without the considerable bureaucratic burden that operating as a company entails. It is Making Music's belief that many of our members would benefit from becoming a CIO, or setting up as one. However, the CIO status will not be available until 2008, and further information will be provided before that time.

Scotland

The Charity Commission has no jurisdiction in Scotland, instead charities are regulated by the Office of the Scottish Charity Regulator. You may wish to visit their website www.oscr.org.uk for further information.

Another useful source of information is the Scottish Council for Voluntary Organisations (SCVO) - 18/19 Claremont Crescent, Edinburgh EH7 4QD - Tel: 0131 556 3882 - web: www.scvo.org.uk

Northern Ireland

As for Scotland, the Charity Commission has no jurisdiction in Northern Ireland, but English law again applies to those societies wishing to take advantage of tax concessions. There is no "registration" procedure, but HMRC Charities – 08453 020 203 – will provide a tax reclaim reference number on submission of your society's constitution or other governing document, providing your activities are thereby deemed charitable.

2. The Constitution

In writing the Constitution for a society the following issues should be considered, although some are not essential and can be omitted:

- Name
- Aims and Objectives
- Powers
- Membership of the Society
- Honorary Membership
- Terminating Membership
- Subscriptions
- Management Committee Membership
- Election Procedure
- Co-opted Committee Members
- Casual Vacancies
- Dismissing Committee Members
- Society Officers.
- Authority of the Music Director
- Committee Meetings
- Minutes
- Observers at Committee Meetings
- Quorum
- Payments and Expenses
- Annual General Meeting
- Motions and Resolutions
- Extraordinary Meetings
- Voting
- Equal Opportunities
- Accounts
- Altering the Constitution
- Winding up the Organisation

A Model Constitution which incorporates all the essential issues is set out in Appendix 1. This Model Constitution has been approved by the Charity Commission. By basing its constitution on this model, a new group will probably save work in writing it and, if it has to register with the Charity Commission, obtain its agreement more easily. However societies wishing to join Making Music need not use the model. The model is not suitable for an incorporated society (ie one which is a company) - legal advice should be obtained when drawing up a constitution for such a society.

3. Charitable Status

The essence of charitable status is that:

- a) the society is set up for charitable purposes, and
- b) the constitution does not permit any of the society's money to be applied, in any circumstances, for a purpose which is not charitable. Amongst other things, this requires that the constitution states that on winding-up of the society any assets shall go for purposes which are charitable, for example to another charity.

Societies should note that buying goods with society funds may endanger your charitable status, even if these goods are to be sold at a profit. The Charity Commission have informed us that the sale of tapes and CDs will not normally cause a problem, but advice should be sought from the HMRC Charities if the society wishes to buy other merchandise, such as pens, badges, key-rings, items of clothing. The Inland Revenue may be contacted direct in this instance on 0151 472 6046. NB the sale of donated goods is not a problem.

4. Advantages of charitable status

Charitable status brings certain tax **advantages**; the following are those most relevant to Making Music member societies:

- a) They do not pay income and corporation tax, as long as any profits are used solely for

the purposes of the charity. Tax deducted from its income can be reclaimed.

- b) Tax can be recovered in respect of payments made to it under Deed of Covenant or Gift Aid. Subscriptions by performing members to choirs and orchestras (but not normally subscriptions to music clubs) can normally be Gift-Aided (see Information Sheet No 22).
- c) VAT may be waived on one-off charitable or fund-raising events.

In addition:

- d) Many local authorities and sponsors have a policy of grant aiding/sponsoring only registered charities.
- e) Charitable status gives credibility when raising money from public or private sources or from the general public.

5. Consequences of charitable status

- a) The charity must comply with the relevant charity legislation.
- b) No trustee may derive any personal gain from being a trustee. However, payments may be made to trustees (or, in the case of Making Music member societies, to committee or ordinary members) to reimburse them for out-of-pocket expenses incurred in carrying out their duties. Please see above for the circumstances under which trustees can be remunerated for carrying out other tasks.
- c) A charity may not trade specifically to generate income. It may, however, sell items that are ancillary to its normal activities, for instance publications, and may organise modest fund-raising events. To get round this difficulty some larger charities (including Making Music itself) have set up a trading subsidiary company.
- d) Should a society decide, as it often will, that it wants its musical staff to be present at committee meetings, it must decide on what basis they are to be present. Under the Charities Act 2006, this can be in a number of ways:
 - In an **ex officio** capacity. This means that although they are attending meetings and making contributions they are not entitled to vote, and consequently will not be regarded as trustees of the charity. They should be described in the minutes of the meeting as "in attendance" rather than "present" to make this clear.
 - Musical staff can of course be trustees. Under these circumstances they would either have to be completely unpaid, or their remuneration must be under the strict conditions set out in Section 1 above.
- e) Under the Charities Act 2006, any society in England and Wales with charitable status whose total annual income is £5,000 or more (before deducting expenditure) must register with the Charity Commission. Applications for registration should be made to the Charity Commission at the address given in Appendix 2. Regulations as to the reporting and accounting of charities in England and Wales were introduced for all accounting periods commencing on or after 1/3/96 (see Making Music Information Sheet No 41).

This information sheet can be made available in large print and other formats on request. Please telephone 0870 903 3780.

We hope you find this Making Music document useful - it is intended to give a reasonable summary of the position at the time of writing. If you are aware of any changes to the situation described or have suggestions for further information to be included please contact the Membership Services Team at Central Office on 0870 903 3780 or info@makingmusic.org.uk. Please note that no responsibility for loss occasioned to any person or group acting or refraining from action as a result of any of the contents of this information sheet can be accepted by any of the authors or by Making Music, the National Federation of Music Societies. Members of Making Music can download this and other information sheets from our website, www.makingmusic.org.uk, where the latest version will always be available.

APPENDIX 1**MODEL CONSTITUTION**

Notes referred to in the text are given at the end. We have identified which clauses are "Mandatory", "Highly recommended" or just "Recommended" for Full members, however in practice none of these should really be omitted.

1. Name**[MANDATORY]**

The name of the Society shall be hereinafter referred to as the Society.

2. Objects**[MANDATORY – but see note 1 at the end]**

The objects of the society shall be:

1. to advance, improve, develop and maintain public education in, and appreciation of, the art and science of music in all its aspects by any means the trustees see fit, including through the presentation of public concerts and recitals;
2. to further such charitable purpose or purposes as the trustees in their absolute discretion shall think fit but in particular through the making of grants and donations.

3. Membership**[HIGHLY RECOMMENDED]**

Membership of the society shall be open to any person interested in furthering the objects of the society, and who has paid the annual subscription [or, in the case of promoting societies, those who pay for a season ticket] at the appropriate rate or rates as shall be determined by the Committee, all subscriptions being payable in advance.

Every member shall have one vote.

[VERY HIGHLY RECOMMENDED]

The committee has the power to terminate the membership of any individual, provided that the decision of the Committee (with the exception of (i) the individual concerned if a member of the Committee and (ii) any member of the Committee making or connected with the complaint against the individual) is unanimous both as to the termination and as to there being good reason for it, and provided that the individual concerned shall have the right to be heard by the Committee, accompanied by a friend if desired, before a final decision is made.

4. Officers and Committee**[MANDATORY]**

The management of the Society shall be in the hands of a Committee consisting of the following Officers [see note 2] and other members: the Officers and the other Committee members shall be elected by and out of the Society's members at the Annual General Meeting; they shall hold office until the next Annual General Meeting and be eligible for re-election [see note 3]. The committee are the charity trustees.

5. Management**[MANDATORY]**

All the arrangements for the concerts and other events and the control of finance shall be in the hands of the Committee.

6. Powers **[RECOMMENDED]**

In furtherance of the objects but not otherwise the Committee may exercise the following powers:

- i) power to raise funds and to invite contributions provided that in raising funds the Committee shall not undertake any substantial permanent trading activities and shall conform to any relevant requirements of the law;
- ii) power to buy, take on lease or in exchange any property necessary for the achievement of the objects and to maintain and equip it for use;
- iii) power subject to any consents required by law to borrow money and to charge all or part of the property of the Society with repayment of the money so borrowed;
- iv) power to employ such staff (who shall not be members of the Committee) as are necessary for the proper pursuit of the objects and to make all reasonable and necessary provision for the payment of pensions and super-annuation for staff and their dependents;
- v) power to co-operate with other charities, voluntary bodies and statutory authorities operating in furtherance of the objects or of similar charitable purposes and to exchange information and advice with them;
- vi) power to establish or support any charitable trusts, associations or institutions formed for all or any of the objects;
- vii) power to appoint and constitute such advisory committees as the Committee may think fit;
- viii) power to do all such other lawful things as are necessary for the achievement of the objects.

7. Meetings and Proceedings of the Committee **[MANDATORY]**

- i) The committee shall hold at least 2 ordinary meetings each year. A special meeting may be called at any time by the chairman, or by any 2 members of the committee, upon not less than 4 days' notice being given to the other members of the committee of the matters to be discussed but if the matter includes the appointment of a co-opted member then not less than 21 days' notice must be given.
- ii) The chairman shall act as chairman at meetings of the committee. If the chairman is absent from any meeting, the members of the committee present shall choose one of their number to be chairman before any other business is transacted.
- iii) There shall be a quorum when at least one third of the number of members of the committee for the time-being, or three members of the committee (whichever is the greater), are present at a meeting.
- iv) Every matter shall be determined by a majority of votes of the members of the

committee present and voting on the question, but in the case of equality of votes, the chairman of the meeting shall have a second or 'casting' vote.

- v) The committee shall keep minutes of the proceedings at meetings of the committee and any sub-committee, and shall ensure that these are stored safely, and that they are available for inspection as required.
- vi) The committee may from time to time make and alter rules for the conduct of their business, the summoning and conduct of their meetings, and the custody of documents. No rule may be made which is inconsistent with this constitution.
- vii) The committee may appoint one or more sub-committees, consisting of three or more members of the committee, for the purpose of making any enquiry or supervising or performing any function or duty which, in the opinion of the committee, would be more conveniently undertaken or carried out by a sub-committee: provided that all acts and proceedings of any such sub-committee shall be fully and promptly reported to the committee.

8. Equal Opportunities **[HIGHLY RECOMMENDED]**

No individual shall be excluded from membership of the Society or de-barred from any official capacity on the Committee on the grounds of sex [see note 4], race, colour, age, religion, sexual orientation, disability or political affiliation.

9. Finance **[RECOMMENDED]**

- i) The financial year shall end on
- ii) A banking account shall be opened in the name of the Society and cheques shall be signed by [see note 5].
- iii) The Society shall receive donations, grants in aid and financial guarantees. Tickets for any or all of its concerts and other events shall be offered for sale to the public.

[MANDATORY]

- iv) The income and property of the Society whencesoever derived shall be applied solely towards promoting the objects of the Society as set forth above and no portion thereof shall be paid or transferred either directly or indirectly to any member or members of the Society [see note 6] except in payment of legitimate expenses incurred on behalf of the Society.

10. Annual General Meeting **[HIGHLY RECOMMENDED]**

Within[see note 7] of the end of each financial year the members shall be summoned to an Annual General Meeting of which at least 21 days' notice in writing shall be given to all members.

The committee shall present to each AGM the report and accounts of the society for the preceding year.

Nominations for election to the committee must be made by members of the society in writing and must be in the hands of the secretary of the committee at least 14 days before the AGM. Should nominations exceed vacancies, an election shall be held.

11. Special (Extraordinary) General Meeting
[HIGHLY RECOMMENDED]

A Special General Meeting (also known as an Extraordinary General Meeting), of which at least 21 days' notice in writing must be given to members, may be called for by the Committee **or** upon written request to the Secretary signed by at least members of the Society. The notice must state the business to be discussed.

12. Procedure at General Meetings
[MANDATORY]

The secretary or other person specially appointed by the committee shall keep a full record of proceedings at every general meeting of the charity.

There shall be a quorum when at least 10% of the members of the society at the time or 10 members, whichever is the greater, are present at any general meeting [see note 8].

13. Accounts
[MANDATORY]

The financial accounts shall be audited or examined to the extent required by legislation or, if there is no such requirement, scrutinized by a person who is independent of the Committee and then submitted to the members at the Annual General Meeting [see note 9].

14. Alterations to the Constitution
[RECOMMENDED]

The constitution may be altered by a two-thirds majority of the members present and voting at any General Meeting, provided that fourteen days' notice of the proposed alteration has been sent to all members and provided that nothing herein contained shall authorise any amendment which shall have the effect of the Society ceasing to be a charity.

No amendment may be made to clause 1 (the name of the charity), clause 2 (the objects), clause 9 iv) (distribution of assets), or clause 15 (dissolution), without the prior written consent of the charity commission.

The committee shall send the Charity Commission a copy of any amendment made under this clause.

15. Dissolution
[MANDATORY]

In the event of the Society being wound up, any assets remaining upon dissolution after the payment of proper debts and liabilities shall be transferred to a charitable institution or institutions having similar objects to those of the Society.

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Notes on the Model Constitution

1. The objectives must be such that they would be deemed to be charitable under English law, which depends on what the objectives are, and NOT on whether or not the society has been in touch with the Charity Commissioners to become registered. It is not necessary to use the exact wording given above, however Making Music has phrased this to cover most of the purposes of amateur music groups, and has the confirmation of the Charity Commissioners that it would be considered charitable under English Law. If alternative wording is used, Making Music must be satisfied that the activities are charitable in order to admit a group into full membership. The Charity Commission will also need to be satisfied that the proposed wording is charitable in law. The legal tests are complex and have been built up over many years of case law. To avoid difficulties the wording used in this document is strongly recommended for any organisation that wishes to become a registered charity. The wording determines whether the society is a Charity, although not necessarily a registered charity (which is where the charity registers with the Charity Commissioners). There are certain rules dictating when a charity has to register or whether it is exempt from registration, but in general (as described above) a charity with income in excess of £5,000 must apply to the Charity Commission for registration.

2. It is usual to have a Chairman (or Chair or Chairperson), a Secretary and a Treasurer; a Society may wish to have other posts as well. Instead of specifying the exact number of other members of the Committee, it may be preferred to say "not fewer than...nor more than...".

3. Instead of requiring all members of the Committee to retire each year, the Constitution can provide that some or all of the appointments shall be for a longer period and/or that after a specified period, eg three or five years, of continuous service a member may not immediately be re-elected.

The Constitution can also provide for a certain number of members to be co-opted or to be members of the Committee "ex officio" (ie by virtue of an office held), but unless otherwise provided they are full members of the Committee with voting rights and so they must not be paid. A Society with a paid conductor could add "The Conductor may attend all Committee meetings except when his position is being considered" (or similar wording).

Making Music expects the Making Music Representative to be a member of the Committee. This is commonly achieved by the Committee appointing one of its members to take this responsibility - either one of the Officers or one of the other Committee members - but the Making Music Representative can be included as an Officer.

4. A single-sex group such as a ladies' or a male voice choir may omit the word "sex". Likewise other restrictions may be appropriate, such as an age restriction for a youth choir.

5. There should be more than one signature on all cheques and it is usual to specify two. It is important to have more individuals empowered to sign than are required for each cheque so that cheques can be drawn if one signatory is not available; "any two of the Officers" is a suitable wording.

6. The payment of conductors or musical directors, accompanists, hired musicians and any other persons is of course permitted, provided that they are not members of the committee or, if they are, the remuneration is authorised under the legislation described above. None of this need prevent them from attending committee meetings, as long as they have no voting rights and ultimate decision making lies with the committee appointed by the legal members.

7. The period should be long enough to enable the Accounts to be prepared and scrutinised. Six months might be a suitable maximum period.

8. The society may decide upon a more appropriate minimum, depending on the number of members. For a society of 50, it may be thought that 10 members is too high a level at which to set the quorum, for instance.

9. Regulations made under the Charities Act require an audit or an "independent examination" if the charity's annual income or expenditure exceeds £10,000 (for fuller details please see Making Music Information Sheet 41). We have been advised that if the regulations or a society's constitution require an audit, it must be carried out by a Registered Auditor. The wording here avoids the necessity of an audit or examination (both terms now have particular meanings under the regulations) except where required by the regulations, whilst also providing that some form of independent scrutiny must be carried out.

APPENDIX 2**Contact Details**

Groups in England and Wales wishing to obtain further information should contact:

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

Tel: 0845 3000 218 or
0845 3000 219 for hearing impaired callers

www.charitycommission.gov.uk

Groups in Scotland should contact:

Office of the Scottish Charity Regulator (OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

Tel: 01382 220446

www.oscr.org.uk

Groups in Northern Ireland wishing to claim tax benefits should contact:

HMRC Charities

Tel: 08453 020 203.