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## Model constitution and guidance notes

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**Published October 2021**

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The Making Music model constitution, or legal governing document, has been developed with the Charity Commission for England and Wales, and is designed specifically to give a legal framework to leisure-time music groups that run as a charity. The Office of Scottish Charities Register (OSCR) has also approved our constitution for use by Scottish charities. If you are based in Northern Ireland, please contact the Making Music office for more information on using our model constitution.

Our model constitution was originally approved in 2015 and updated in October 2021.

This document includes the model constitution and some notes on specific clauses.

You should read our [guidance notes on using the model constitution](#) before you use this document.

If you are already using the 2015 version of our Model constitution, please see our [separate resource about the October 2021 updates](#).

# Model Constitution

**YOU SHOULD ADOPT THE ENTIRE CONSTITUTION WITHOUT VARIATION AND ONLY ADD YOUR PARTICULAR DETAILS WHERE INDICATED.**

## 1. Name

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

## 2. Objects (see note 1)

The objects of the Charity 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 events
2. [Optional] To provide facilities which promote the practice or enjoyment of the art of music for recreation or other leisure time occupation and to make them available in the interests of social welfare to individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large with the object of improving conditions of life.

## 3. Membership (see note 2)

- (1) Membership is open to individuals who are approved by the trustees.
- (2) The trustees may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the Charity to refuse the application.
- (a) The trustees must inform the applicant in writing of the reasons for the refusal within 21 days of the decision.
- (b) The trustees must consider any written representations the applicant may make about the decision. The trustees' decision following any written representations must be notified to the applicant in writing but shall be final.
- (3) Membership is not transferable to anyone else.
- (4) The trustees must keep a register of names and addresses of the members. This must be made available to any member upon request, assuming the relevant data protection permissions are in place.
- (5) Every member shall have one vote.

## 4. Termination of membership

- (1) Membership is terminated if:
  - (a) the member dies
  - (b) the member resigns by written notice to the Charity;
  - (c) any sum due from the member to the Charity is not paid in full within six months of it falling due;
  - (d) the member is removed from membership by a resolution of the trustees that it is in the best interests of the Charity that his or her membership is terminated. A resolution to remove a member from membership may only be passed if:
    - i. the member has been given at least 21 days' notice in writing of the meeting of the trustees at which the resolution will be proposed and the reasons why it is to be

- proposed;
  - ii. the member or, at the option of the member, the member's representative (who need not be a member of the Charity) has been allowed to make representations to the meeting;
  - iii. the decision to terminate the membership is communicated to the member in question in writing within seven days of the meeting taking place;
- (2) any decision made by the trustees to terminate a membership is final.

## **5. Officers and trustees (see note 3)**

- (1) The Charity and its property shall be managed and administered by a committee comprising trustees elected from and by the Charity's members (Elected Trustees) and trustees Co-opted by existing trustees (Co-opted Trustees).
- (2) All members of the committee are trustees.
- (3) The Charity shall have on the committee at least the following officers, appointed by the trustees:
  - i. A chair
  - ii. A secretary
  - iii. A treasurerMore officer roles can be appointed if deemed necessary by the trustees.
- (4) An Elected trustee must be a member of the Charity
- (5) No one may be appointed a trustee if he or she would be disqualified from acting under the provisions of clause 8.
- (6) The number of trustees shall be not less than three but shall not be subject to any maximum.
- (7) The first trustees (including officers) shall be those persons elected as trustees and officers at the meeting at which this constitution is adopted.
- (8) A trustee may not appoint anyone to act on his or her behalf at meetings of the trustees.

## **6. Payment of trustees (see note 4)**

- (1) Trustees can be paid legitimate expenses incurred on behalf of the Charity
- (2) Any other trustee payments, or payments to connected persons of trustees, must be with the approval and/or permission of the Charity Commission and in accordance with the Trustees Act 2000 and section 185 of the Charities Act 2011 where appropriate.

**[SCOTLAND:** payment of trustees must be in accordance with Section 67 of the Charities and Trustee Investment (Scotland) Act 2005] (See note for charities in Scotland)

## **7. Appointment of trustees (see note 5)**

- (1) Elected Trustees
  - (a) The Charity in a general meeting shall elect the trustees and may elect the officers.
  - (b) The trustees may appoint any person who is willing to act as a trustee. They may also appoint trustees to act as officers.
  - (c) At each annual general meeting a third of Elected trustees shall retire and be eligible for re-election up to a fixed number of three-year terms as set out in the Charity's rules and regulations.

(2) Co-opted Trustees

- (a) In case of a vacancy arising on the committee, the trustees may co-opt a new trustee from the members of the Charity who shall then stand for election by members at the next annual general meeting.
- (b) Where relevant, the existing trustees may also appoint Co-opted trustees who are not a member of the Charity to provide additional expertise or experience, provided that:
  - i. any such Co-opted trustees do not represent more than one third of all trustees
  - ii. any such Co-opted trustees serve no more than two consecutive three year terms.
- (c) The trustees may appoint Co-opted Trustees as officers, provided that no more than one third of all officers are Co-opted Trustees.

**8. Disqualification and removal of trustees (see note 6)**

- (1) There must be at least three charity trustees. If the number falls below this minimum, the remaining trustees may act only to call a meeting of the Charity trustees or appoint a new charity trustee.
- (2) A trustee shall cease to hold office if he or she:
  - (a) is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision)
  - (b) ceases to be a member of the Charity as detailed in section 4
  - (c) in the written opinion, given to the Charity, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;
  - (d) resigns as a trustee by notice to the Charity
  - (e) is absent without the permission of the trustees from all their meetings held within a period of 12 consecutive months and the trustees resolve that his or her office be vacated.

**[SCOTLAND: A trustee shall cease to hold office if he or she:**

- (1) is disqualified from acting as a trustee by virtue of sections 69 and 70 of the Charities and Trustee Investment (Scotland) Act 2005 (or any statutory re-enactment or modification of that provision)] (See note for charities in Scotland)

**9. Powers (see note 7)**

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

- (1) 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;
- (2) 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;
- (3) power subject to any consents required by law to borrow money and to charge all or part of the property of the Charity with repayment of the money so borrowed;
- (4) power to employ such staff as are necessary for the proper pursuit of the objects and to make all reasonable and necessary provision for the payment of pensions and superannuation for staff and their dependents;
- (5) 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;

- (6) power to establish or support any charitable trusts, associations or institutions formed for all or any of the objects;
- (7) power to appoint and constitute such advisory committees as the Trustees may think fit;
- (8) power to do all such other lawful things as are necessary for the achievement of the objects.

#### **10. Meetings and proceedings of the committee (see note 8)**

- (1) The trustees may regulate their proceedings as they think fit, subject to the provisions of this constitution.
- (2) The Committee shall hold at least [2] ordinary meetings each year. A special meeting may be called at any time by the Chair, or by any 2 trustees, upon not less than four days' notice being given to the other trustees of the matters to be discussed, but if the matter includes the appointment of a Co-opted Trustee, then not less than 14 days' notice must be given.
- (3) Any trustee may call a meeting of the trustees.
- (4) The secretary must call a meeting of the trustees if requested to do so by a trustee.
- (5) The Chair shall act as chair at meetings of the trustees. If the Chair is absent from any meeting, the trustees present shall choose one of their number to chair the meeting before any other business is transacted.
- (6) There shall be a quorum when at least one third of all trustees for the time-being, or three trustees (whichever is the greater), are present at a meeting. Where the committee comprises only two trustees, they shall constitute a quorum in line with clause 8 (1)
- (7) No decision may be made by a meeting of the trustees unless a quorum is present at the time the decision is purported to be made.
- (8) A trustee shall not be counted in the quorum present when any decision is made about a matter upon which that trustee is not entitled to vote.
- (9) If the number of trustees is less than the number fixed as the quorum, the continuing trustees or trustee may act only for the purpose of filling vacancies or of calling a general meeting.
- (10) Questions shall be determined by a majority of votes of the trustees present and voting on the question, but in the case of equality of votes, the chair of the meeting shall have a second or 'casting' vote.
- (11) The committee shall keep minutes of the proceedings at meetings of the trustees and any sub-committee, and shall ensure that these are stored safely, and that they are available for inspection as required.
- (12) The trustees may appoint one or more sub-committees, consisting of three or more trustees, 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 Trustees.
- (13) Where the Charity has a conductor or music director, he or she may attend trustee meetings except when his/her position is being considered. He/she shall not be eligible to vote in a committee meeting.
- (14) Participation in meetings by electronic means;
  - (a) A meeting may be held by suitable electronic means agreed by the charity trustees

in which each participant may communicate with all the other participants.

- (b) Any charity trustee participating at a meeting by suitable electronic means agreed by the charity trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting
- (c) Meetings held by electronic means must comply with rules for meetings, including voting by suitable electronic means.

## **11. Conflicts of interests and conflicts of loyalties (see note 9)**

A Charity trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Charity or in any transaction or arrangement entered into by the Charity which has not been previously declared; and
- (2) absent himself or herself from any discussions of the Charity trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Charity and any personal interest (including but not limited to any personal financial interest).
- (3) Any trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the trustees on the matter.

## **12. Rules (see note 10)**

- (1) The trustees may from time to time make rules or bye-laws for the conduct of their business.
  - (a) The bye-laws may regulate the following matters but are not restricted to them:
    - (b) the admission of members of the Charity (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
    - (c) the conduct of members of the Charity in relation to one another, and to the Charity's employees and volunteers;
    - (d) the setting aside of the whole or any part or parts of the Charity's premises at any particular time or times or for any particular purpose or purposes;
    - (e) the procedure at general meeting and meetings of the trustees in so far as such procedure is not regulated by this constitution;
    - (f) generally, all such matters as are commonly the subject matter of the rules of an unincorporated association.
  - (2) The trustees must adopt such means as they think sufficient to bring the rules and bye-laws to the notice of members of the Charity.
  - (3) The rules or bye-laws shall be binding on all members of the Charity. No rule or bye-law shall be inconsistent with, or shall affect or repeal anything contained in this constitution.

## **13. Finance (see note 11)**

- (1) The financial year shall end on.....
- (2) A banking account shall be opened in the name of the Charity and payments shall be authorised by any two trustees
- (3) The income and property of the Charity shall be applied solely towards promoting the objects of the Charity as set forth above. No portion thereof shall be paid or transferred either directly or indirectly to any trustee except in payment of legitimate expenses incurred on behalf of the Charity or with approval and/or permission from the Charity Commission

**[SCOTLAND:** Nothing in this constitution shall authorise an application of the property of the charity for purposes which are not charitable in accordance with section 7 of the Charities and Trustee Investment (Scotland) Act 2005.] (See note for charities in Scotland).

#### **14. Annual General Meeting (see note 12)**

- (1) The Charity must hold a general meeting within twelve months of the date of the adoption of this constitution.
- (2) An annual general meeting must be held in each subsequent year and not more than 15 months may elapse between successive annual general meetings.
- (3) At least 21 days' written notice of an AGM shall be given to all members of the Charity.
- (4) The committee shall present to each AGM the report and accounts of the Charity for the preceding year.
- (5) Nominations for Elected Trustees must be made by members of the Charity in writing. Should nominations exceed vacancies, an election shall be held.

#### **15. Special General Meeting (see note 12)**

- (1) All general meetings other than annual general meetings shall be called special general meetings.
- (2) The trustees may call a special general meeting at any time.
- (3) At least 21 days' written notice of an SGM shall be given to all members.
- (4) The trustees must call a special general meeting if requested to do so in writing by at least ten members or one tenth of the membership, whichever is the greater. Where the Charity has less than 30 members, the trustees must call a special general meeting if requested to do so in writing by at least five members. The request must state the nature of the business that is to be discussed. If the trustees fail to hold the meeting within 28 days of the request, the members may proceed to call a special general meeting but in doing so they must comply with the provisions of this constitution.

#### **16. Procedure at General Meetings (see note 12)**

- (1) No business shall be transacted at any general meeting unless a quorum is present.
- (2) A quorum is:
  - (a) Three members, excluding the charity trustees, who are entitled to vote upon the business to be conducted at the meeting; or
  - (b) one tenth of the total membership at the time, whichever is the greater.
- (3) If:
  - (a) a quorum is not present within half an hour from the time appointed for the meeting; or
  - (b) during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the trustees shall determine.
- (4) The trustees must re-convene the meeting and must give at least seven clear days' notice of the re-convened meeting stating the date time and place of the meeting.
- (5) If no quorum is present at the re-convened meeting within 15 minutes of the time specified for the start of the meeting the members present at that time shall constitute the quorum.
- (6) The secretary or other person specially appointed by the committee shall keep a full record of proceedings at every general meeting of the Charity.

- (7) Participation in General meetings by electronic means
- (a) A general meeting may be held by suitable electronic means agreed by the trustees in which each participant may communicate with all the other participants.
  - (b) Any member participating at a meeting by suitable electronic means agreed by the trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
  - (c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes and voting by suitable electronic means.

#### **17. Accounts (see note 13)**

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 trustees and then submitted to the members at the Annual General Meeting.

#### **18. Alterations to the constitution (see note 14)**

(1) The constitution may be altered by a two-thirds majority of the members present and voting at any General Meeting, provided that 14 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 Charity ceasing to be a charity.

(2) Amendments to any clauses will be carried out within the framework required by legislation. Where a charity is too small to register with the Charity Commission only sub clause (1) of this clause will be applicable.

#### **19. Dissolution (see note 15)**

In the event of the Charity 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 Charity.

# Notes on the model constitution

## Note for Charities in Scotland

If the charity will operate in Scotland you should include the wording in square brackets at clauses 6, 8 and 13 to meet the requirements of charity law in that country.

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### Note 1 (Clause 2. Objects)

**Objects (1):** this Object is mandatory and deliberately 'catch-all' for music groups. It is worded to comply with the key charitable criteria of public benefit and with charity law. As such you should not change the wording or add any additional wording.

**Objects (2):** The second clause is optional and should be included if your music group has a membership restricted to people who share a protected characteristic as provided for in the Charities exception in the Equality Act 2010 (provided membership is not based on someone's colour). For example, this could be a male voice choir or an LGBTQ+ orchestra. You can find out more about in the [Charity Commission's guidance on the Equality Act 2010](#).

It should also be used for a group whose membership is individuals from a disadvantaged socio-economic background or whose aims are to improve conditions of life for a particular socio-economic group(s). This could include, for example:

- A Samba band for homeless people
- A choir for ex-offenders
- An orchestra for disadvantaged young people

Although you can limit membership in this way your music group must still provide public benefit. Refer to the Charity Commission [guidance on public benefit](#) for more information.

**Expanding on Objects:** The object sets the charitable purpose in advancing education in and appreciation of music. The means to do that is a matter for the trustees' decision. Some groups have identified detailed and specific means to further the purpose, for example by 'encouraging the playing of traditional English folk music in Lancashire'.

The detail of the means to further the purpose does not need to be included in the constitution objectives. The means can be set out elsewhere such as in a separate 'Rules and regulation' document. This will allow you to go in to more detail about exactly what these are and how you aim to meet them, this could include a business plan and strategic approach for your charity and furthering charitable purpose.

In using our model constitution you should not make any alterations, additions or deletions to the objects other than in deleting object clause 2 if this is not required for your particular music group.

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## **Note 2 (Clause 3. Membership)**

**Sub clause 2 (a):** in “acting reasonably and properly” trustees must comply with the [discrimination guidance in the Equality Act 2010](#), ensuring they do not discriminate against individuals in the membership application process.

**Please note:** if you have included the optional Object in Clause 2 (Objects) for restricted membership then membership applications can be processed in accordance with the [Charities exception in the Equality Act 2010](#).

Sub clause 2 (a) will also cover you if you refuse membership on the grounds of an audition process.

**Expanding on membership and termination of membership:** the constitution sets out the general principles of membership and termination of membership, you may want to expand on these in a separate ‘Rules and regulation’ document. This might include things such as:

- Who is in charge of membership admin (e.g. membership secretary)
- The cost of subscription fees and how they are to be paid
- What is expected of members (attendance, payment of subs etc.)
- A code of behaviour
- How members can expect to be contacted by the committee

**Sub clause 4:** a full list of members' names and address should be kept on file by the trustees. The constitution states this information should be available to members. However this should only be done where individuals have given permission for their data to be shared

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## **Note 3 (Clause 5. Trustees and officers)**

The key point here is that all committee members are trustees and all trustees are committee members (i.e. it is not just the officers that are trustees). As such all committee members are responsible and liable for the management of the charity. You can find out more about the role of trustees in our [Trustee handbook](#) and on Charity Commission Guidance: [The essential trustee: what you need to know \(CC3\)](#).

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## **Note 4 (Clause 6. Payment of trustees)**

The issue of paying a trustee is one of the most common queries we receive from member groups. Specifically, the issue of having a paid Musical Director/Conductor (MD) who is also on the committee and therefore a trustee can lead to difficult and delicate situations and is one of the most frequent problems raised by leisure-time music groups.

**The official position:** it is possible for trustees to be employed by a charity or to be paid for providing a service. Our model constitution does allow for the possibility of this happening. It must be with the permission of the Charity Commission (whether you are a registered charity or not) and in line with the

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**The Making Music position:** we strongly advise that you do not have a paid MD on the committee. Our experience has taught us that it can lead to difficult situations for committees and groups. We encourage you to avoid it as far as possible.

**Why do we advise this so strongly?** there is a very clear conflict of interest in having a paid MD on the committee. Trustees are responsible for the best interests of the charity; a trustee being paid by the charity creates a conflict of interest between their duties as a trustee and their own personal interests. It can also lead to problems relating to how the committee functions and how the group is run from both an administrative and musical point of view.

**Don't make it any harder than it has to be:** safeguards and checks can of course be put in place to avoid conflicts of interest. However, by far the best way to deal with conflict of interests is to avoid them in the first place. You are all leisure-time musicians, giving up your own time to run a music group - it should be enjoyable and as stress-free as possible. Avoiding conflict of interest issues and having clear lines around who is responsible for what will make your life easier and the management of the charity simpler. Why give yourselves the headache? The more straightforward it is to run, the better for everyone concerned - and the more you can focus on making music.

**What we recommend:** the ideal situation is to have a MD who is:

- contracted on a freelance basis,
- not a trustee,
- allowed to sit in on certain committee meetings in an advisory capacity,
- is not allowed to vote at committee meetings,
- not present when their role/contract is being discussed (or indeed at any other meetings/agenda items the trustees see fit).

These terms and conditions should be laid out clearly in your contract with them. This approach keeps it simple, easy and fair. It avoids any conflict of interest issues, draws clear lines of power and responsibility but also allows the MD to contribute their knowledge and experience in an advisory capacity – which can only be good for the group.

However, as mentioned, it is possible for an MD to be paid and also be a trustee of the committee, and we do realise that sometimes it might be in the best interests of the group to do so. If you think this might be the case for your group here is what you need to think about and do:

- Make sure that it is necessary and in the best interests of the group.
- What in particular will the MD bring to the committee that other trustees can't or the MD can't in an advisory capacity?
- Is there a viable alternative?
- If you are an MD starting up your own group and you want to be on the committee you should ask yourself if a charity structure is the right one for you.
- A charity structure inherently means giving up control. A charity must be run by a committee of trustees and not an individual, who act in the best interests of the charity and to fulfil its objectives. You will also be subject to charity regulation. Maybe a non-charity structure is better suited to your needs.

If you are happy that a charity structure is right for you, and you can justify having a paid MD as trustee then the next step is to get permission from the Charity Commission (see next page).

## Getting Permission from the Charity commission

The constitution does allow for payments to be made to trustees, with permission from the Charity Commission:

*Any other trustee payments, or payments to connected persons of trustees, must be with the approval and/or permission of the Charity Commission and in accordance with the Trustees Act 2000 and section 185 of the Charities Act 2011 where appropriate.*

If you are engaging an MD on a freelance basis then you are 'paying a trustee for providing a service to the charity'. The Charity commission has:

- Guidance on [paying trustees for providing a service](#) that you should read
- An [online tool for getting permission to pay a trustee](#) – in most cases it will give permission immediately within the online form and will only take a few minutes:
  - Select 'Pay a trustee for providing goods or a service to a charity'
  - There are a few questions to answer.
  - When it asks 'Does the charity's governing document prohibit trustee benefit' you should say 'no'.

The form should then give you permission to pay a trustee for providing services as long as you meet conditions detailed in the Section 185 of the charities Act:

- there is a written agreement which sets out the exact maximum amount to be paid
- the trustee to benefit (directly or indirectly) will play no part in decisions about the arrangement
- the payment is reasonable in relation to the goods or services to be provided
- the trustees are satisfied that making the payment is in the best interests of the charity
- the total number of trustees benefiting directly or indirectly are in the minority on the board
- the trustees follow the duty of care set out in the Trustee Act 2000, and have regard to the Commission's guidance

If you will not meet these conditions of if you want to employ an MD (as opposed to engage them on a freelance basis) please [contact Making Music](#) for more help.

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### Note 5

#### (Clause 7. Appointment of trustees)

**Sub clause (1):** The constitution sets out that members must elect trustees at an AGM. The wording in the constitution allows for two possible approaches for electing officers to be taken. Either:

- a) the membership may appoint someone directly to an officer role on the committee – i.e. the membership elect a chair, treasurer etc.
  - b) the membership appoint committee members – the committee then decide which committee members will fill which officer roles
  - c) A combination of both could be used – i.e. members elect the chair (for example) directly but other officer roles are decided by the committee from those elected to the committee
- We recommend setting out how this process will work in the separate 'Rules and Regulation' document.

**Sub clauses (2 and 3):** this clause allows for trustees to be co-opted; this is when individuals are appointed as a trustee without being elected by the membership. The clause allows for co-option in two different ways.

1. If an elected trustee resigns before their term ends. In this instance:
  - The new trustee must meet the criteria in clause 5 (4) and (5).
  - The wider membership must also be notified of the decision and a Co-opted trustee must
  - Stand for formal election at the next AGM.
2. If the existing trustees think there is a skills gap on the committee they can co-opt an individual who is not a member of the charity if they have the relevant expertise and experience to fill that skills gap. The decision about what constitutes the relevant expertise and experience is up to the trustees. A trustee co-opted in this way must meet the criteria in clause 5 (5). The total number of trustee co-opted in this way must:
  - Not be more than one third of all trustees – this is to ensure the balance of power remains with elected trustees and so also with the members
  - Not serve more than two consecutive three year terms.

Any co-opted trustee can be an officer, but the total number of Co-opted trustees must not be more than one third of all the officers.

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#### **Note 6**

#### **(Clause 8. Disqualification and removal of trustees)**

Sub clause (2): You can find more details on who is disqualified from being a trustee in:

- [Charities Act 2011 – section 178](#)
- Our [Trustee handbook](#).
- The Charity Commission's [Trustee Eligibility Form](#).

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#### **Note 7**

#### **(Clause 9. Powers)**

This clause sets out the powers that the trustees can use in promoting the charity's objects. It may be that not all of the powers are relevant to your charity at the time of writing. However all clauses should be included as it means that if the powers are needed your constitution allows for their use and sets out the conditions trustees must meet in exercising the powers.

**Sub clause (1):** This sub-clause provides a general power to raise funds through a variety of methods. The clause does not prevent trading in order to carry out the charity's object (known as primary purpose trading) - for example, the sale of concert tickets.

Trading profits and some other forms of charity income may be liable for tax. Charity trustees need to ensure that they understand their responsibilities. Further information is available from the Charity Commission web site - [how charities may lawfully trade](#)

Detailed information on the taxation of trading profits earned by charities can be obtained from the HMRC website - ['Detailed Guidance notes for Charities'](#) with particular reference to [Annex iv: trading](#)

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[and business activities - basic principles.](#)

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#### **Note 8**

##### **(Clause 10. Meetings and proceedings of the committee)**

**Sub clause (11):** inspection here refers to inspection from a professional body (e.g. auditors). Minutes of committee meetings do not have to be made available to the wider membership or for public inspection.

**Sub clause 13:** this refers to paid Conductors/Music Directors who are not trustees. See Notes on Clause 6 – Payment of Trustees for a full explanation of this.

**Subclause 14:** The clause allows for committee meetings to be held online. The key aspect for an online meeting is that all trustees present must be able to communicate effectively with each other, and that there is a robust and transparent voting system.

Further guidance can be found in the Charity Commission guidance Charities and meetings (CC48)

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#### **Note 9**

##### **(Clause - 11. Conflicts of interests and conflicts of loyalties)**

Further guidance can be found in

- The Making Music [Conflict of interest guidance](#)
- Charity Commission guidance [Conflicts of interest: a guide for charity trustees \(CC29\)](#)

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#### **Note 10**

##### **(Clause 12. Rules)**

We know that all music groups are different and have their own ways of doing things that are important to them. A constitution is not the right place for these sorts of specific details and if you are using our model, you should not change anything.

Instead, we recommend having a separate 'Rules and Regulation Document' (this could also be known as a Members Handbook) to go along side your constitution.

This can set out the particular rules of your group and could expand on some of the constitution clauses. A big advantage of a separate 'Rules and Regulation' document is that it can be easily changed by the committee, unlike amending the constitution which requires a member vote at an AGM/SGM. By keeping the specifics out of the constitution and including them in a 'Rules and Regulation' document, you have more flexibility in the day to day running and administration of your group.

The important thing to remember is that your separate 'Rules and Regulation' document should not contradict anything in your constitution, as the constitution is the legal governing document. A 'Rules and Regulation' document could (but doesn't have to) include such things as:

- Membership admission and termination rules
- Subscription fees and other payments to be made by members
- What members can expect as part of their membership
- What is expected of members (e.g. rehearsal rules, timekeeping, concert dress, absence or illness policies etc.)
- A code of conduct – how members should behave towards one another
- Details of any instrument/property loan between the society and its members
- Rules about borrowing music for practice
- How the Society's property and premises are to be used
- Expanding on the specific aims and objectives of the society
- Expanding on the specifics of how income is to be used.
- Rules around the trustee election process
- How the committee will communicate with the membership
- Mechanisms for the membership communicating with the committee – including committee contact details
- Policies for safeguarding, volunteer management, health and safety
- Rules about how, how often and by whom the 'Rules and Regulation' document will be updated
- Where the document, and any changes made, can be found and/or will be disseminated.

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#### **Note 11**

#### **(Clause 13. Finance)**

**Sub clause (1):** enter your financial year end date here

**Sub clause (3):** this is a key clause in terms of setting up as charity and establishing the not for profit status of the charity. The clause reflects charity law requirements that income and property of the charity must be applied solely towards the promoting the objects as detailed in clause 2 (objects) and not to benefit the members and trustees. The clause also allows for the possible payment of trustees in line with clause 6 (Payment of trustees).

The trustees have a duty to ensure that the funds are used correctly and applied in accordance with the principle.

**Expanding on finance;** this clause sets out the principle of not for profit and how income is to be applied. You may want to expand on this in a membership handbook by detailing how income will be used and what it will be spent on. This could be specific details or general principles. It is important to remember to justify how the use of income is promoting the charity's objects.

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## **Note 12**

### **(Clauses 14. Annual General Meeting, 15. Special General Meeting and 16. Procedure at General Meetings)**

Further guidance can be found in the Charity commission guidance [Charities and meetings \(CC48\)](#)

#### **Procedure at General Meetings**

**Sub clause (6):** Note that this provision permits the re-scheduled meeting to proceed without a quorum being present within 15 minutes of the specified start time. It also means that the number of members present 15 minutes after the scheduled start of the meeting will form the quorum if the quorum required at sub-clause 12(2) is not achieved.

**Sub clause (7):** This allows for General meetings to be held online. The key aspect for an online General meeting is that all those present must be able to communicate effectively with each other, and that there is a robust and transparent voting system.

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## **Note 13**

### **(Clause 17. Accounts)**

**Gross annual income up to £25,000:** no formal external scrutiny is required by legislation. However, accounts should be scrutinised by someone independent of the committee. This does not have to be an accountant but should ideally be someone with some financial knowledge and experience. It could be someone from the wider membership or someone a member knows, or you could find another local music group and arrange to swap accounts – you can use our [Find a Group tool](#) to do this.

**Gross annual income above £25,000 and up to £500,000 and gross assets up to £3.26m:** external scrutiny is required by legislation. This can be an Independent Examination of accounts by an approved person or a full audit. If you require an Independent Examination, the best thing to do is contact a local charity accountant.

**Either gross income above £500,000 or gross assets above £3.26m (and income above £250,000):** a full audit is required.

You can find out more about accounting in the Charity Commission Guidance: [Charity reporting and accounting: the essentials \(CC15b\)](#)

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#### **Note 14**

##### **(Clause 18. Alterations to the constitution)**

- Some changes will need prior permission from the regulator.
- All changes you make need to be notified to the regulator

Changes to clause 1 (the name of the charity), clause 2 (the objects), clause 13 (finance), or clause 19 (dissolution) could have the effect of the Charity ceasing to be a Charity.

If you want to make any changes to your constitution, we recommend you contact Making Music first, but especially for changes to clauses 1,2,13 and 19.

You can also find out more in the Charity Commission Guidance: [How to make changes to your charity's governing document](#).

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#### **Note 15**

##### **(Clause 19. Dissolution)**

This is an important clause for setting up a charity – the key point being that assets are transferred to an organisation with similar objects – i.e. music for the public benefit. You can expand on this in your separate 'Rules and Regulations document' if you would like – either establishing a process of how this will be decided or naming an organisation.

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**If you would like us to make this document more accessible, please phone Making Music on 0207 939 6030.**

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 Making Music 0207 939 6030 or [info@makingmusic.org.uk](mailto: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](http://www.makingmusic.org.uk), where the latest version will always be available.