

MADELEY RURAL COMMUNITY CHARITY

Explanatory Note re proposed New Articles of Association

1. Why is a full set of new articles being proposed?

With the benefits of practice and hindsight, your Trustees feel that there are provisions in the existing articles of association that can be improved upon. They do not represent mistakes in the drafting of the existing articles and are more in the nature of desirable refinements borne of experience. The provisions in question are described in more detail below under the heading "Principal changes".

At the time of incorporation of the charity there was in existence, but not yet enacted into law, a statutory set of model articles of association for a company limited by guarantee without a share capital (of which the charity is one.) These model articles represent an accepted standard and are widely used, particularly by newly incorporated charities. As it is proposed to change some of the existing articles of association of the charity, for which members' consent in general meeting is required, it is thought advantageous to use the opportunity of that meeting to adopt the model articles proposed by the Companies Act 2006 and to incorporate reference to relevant sections of the Charities Act 2011 which, obviously, was not in force at the time the existing articles were adopted. Effectively, therefore, it is proposed to adopt a set of articles which reflect experiences of recent years, are up to date, comply with statutory requirements and meet accepted best practice.

2. The charity's objects and powers

2.1. It was one of the objectives of the Companies Act 2006 to downgrade the importance of a company's memorandum of association by having a company's objects and powers set out in its articles of association, not its memorandum as hitherto. Advantage was not taken of this on registering our charity. It is proposed to adopt modern practice by setting out the charity's objects and powers (without amendment) in the new articles of association and deleting them from its memorandum of association. The result is that the articles become the only document to which reference need be made on constitutional issues.

3. Principal changes

3.1 In the existing articles, "area of benefit" is defined by reference to named parishes. The definition is important as it forms the basis of the right to membership. Reference to parishes might well have been of great importance in the successful funding applications which gave birth to the charity, but it is open to difficulties if parish boundaries change or parishes are merge. In addition, prospective users of the Centre are more likely to be concerned with geographical distance from the Centre rather than the specific parish in which they reside. Accordingly, your Trustees feel a more practical approach would be to define the area of benefit as being persons within a 10 mile radius from the Centre. As with parish boundaries, the 10 mile limit might cut out from membership someone just living the wrong side of the boundary but who has close connections with the Centre and much to offer. For that reason it is proposed to give Trustees a discretionary power to admit such a person to membership.

3.2 Affiliated associations presently have the right to apply for membership and, on becoming a member, the right to nominate a trustee of their choosing. Similarly, the Parish Council is a member as of right with power to appoint a trustee. With the benefit of experience it is not thought that either of these provisions is helpful. Membership for the Parish Council or an

affiliated association is of no great benefit by itself and numbers of appointed directors from these bodies could leave the board unbalanced if there is no great appetite for trusteeship among the membership. There is no experience of these bodies being particularly keen to have representatives on the charity's board. To that end it is proposed to abolish rights to membership of these bodies and their rights to appoint Trustees. That is not to say, however, that these bodies are not important (as evidenced by your trustees actively seeking a nomination from the Parish Council) and it is proposed to recognise this by permitting the Trustees in their discretion to appoint their nominees as Trustees.

3.3 At the moment the quorum for a meeting of members is set at one third of the membership. This is unusually high for a charity of the nature of the Centre and has already caused problems in practice. Even in thriving organisations attendance at general meetings of members can be notoriously low and failure to achieve a quorum (as recently happened to us) can be a major headache. The new articles propose a quorum of 15 members or 10% of the membership, whichever is the greater.

3.4 The existing articles permit anyone whose membership is terminated by the Trustees in pursuance of their power to do so to take their case to arbitration. The latter is time consuming and very expensive and this right is removed in the new articles. This would not stop an application to the court if a dissatisfied former member so chose.

3.5 Under the current articles **all** the Trustees must retire at each annual general meeting. This is highly unusual and very inconvenient. It is proposed to replace this with the more normal provision (found in the model articles referred to above) that at each annual general one third (or the number nearest one third) of the elected Trustees retire. Co-opted Trustees must retire at the annual general meeting following their co-option, though they may then offer themselves for election by the members.

3.6 At least 21 days notice of an annual general meeting must be given under the proposed new articles. At present, 14 days notice suffices.

3.7. The existing articles permit a nomination for trusteeship from the floor during an annual general meeting. This is thought to be unsatisfactory and potentially fraught with difficulties. The new articles require proper notice to be given of nominations for the appointment of elected trustees.

3.8. The existing articles state that the liability of members is limited to £1 if the Company is wound up. The new articles place the liability at £10, as this is currently thought to be a more realistic amount.

4 Anomalies, corrections and minor matters

4.1. The existing articles are unclear as to whether a co-opted Trustee must be a member (i.e. live within the area of benefit) to be able to vote at Trustees' meetings. Article 11.12 suggests they must whereas Article 8.6 expressly states that co-opted trustees do not necessarily have to be members. The new articles make it clear co-opted trustees do not have to be members but will nevertheless have the right to attend and speak (but not vote) at general meetings of the members.

4.2 The term “Extraordinary General Meeting” was abolished by the Companies Act 2006 and does not appear in the new articles. Meetings of members other than the Annual General Meeting are now called simply, “General Meetings”.

4.3. There are drafting errors in existing Article 9.5 (reference at the end to documents being signed by “trustees” should clearly be a reference to “members”, Article 11.2.3 (reference to Article 14 should be to Article 4) and Article 10.10 (the word “valid” is missing at the end of the first line and there should be no reference to “insanity”, a word dropped from the legal lexicon decades ago). All these matters disappear with the adoption of new articles.

As indicated above, the proposed new articles reflect experience to date, are modern and adopt best practice and your Trustees hope you will give them your approval at the forthcoming general meeting.

Steve Hurd
Chairman