

# CONNSWATER COMMUNITY & LEISURE SERVICES

## REVIEWING THE COMPANY CONSTITUTION

**Phil Nicholls  
Phil Nicholls Associates  
54, Orchardville Gardens  
Belfast, BT10 0JX**

**Ph. 90618496  
e-mail: [philnicholls@nireland.com](mailto:philnicholls@nireland.com)**

# CONTENTS

<b>1.</b>	<b>New draft company constitution</b>	<b>3</b>
<b>2.</b>	<b>Notes to the new draft company constitution</b>	<b>29</b>
<b>Appendices:</b>		
<b>A</b>	<b>Twelve heads of charity</b>	<b>37</b>
<b>B</b>	<b>Payments to trustees</b>	<b>38</b>
<b>C</b>	<b>Conflicts of Interest</b>	<b>39</b>
<b>D</b>	<b>Reserves and risk management policies</b>	<b>42</b>
<b>E</b>	<b>Duties of directors</b>	<b>44</b>

**THE COMPANIES ACT 2006**  
**COMPANY LIMITED BY GUARANTEE**  
**ARTICLES OF ASSOCIATION OF**  
**CONNSWATER COMMUNITY & LEISURE SERVICES**

**COMPANY NAME**

1. The company's name is:

**Connswater Community & Leisure Services** (and in this document is called "the Charity").

**INTERPRETATION**

2. In the articles:

“**address**” means a postal address or, for the purposes of electronic communication, a fax number, an e-mail or postal address or a telephone number for receiving text messages in each case registered with the Charity;

“**the articles**” means the Charity's articles of association;

“**the Charity**” means the company intended to be regulated by the articles;

“**clear days**” in relation to the period of a notice means a period excluding:

- the day when the notice is given or deemed to be given; and
- the day for which it is given or on which it is to take effect;

“**the Commission**” means the Charity Commission for Northern Ireland;

“**Companies Act**” means the Companies Act 2006;

“**the Directors**” means the directors of the Charity. The Directors are charity trustees as defined by section 180(1) of the Charities Act (Northern Ireland) 2008;

“**document**” includes, unless otherwise specified, any document sent or supplied in electronic form;

“**electronic form**” has the meaning given in section 1168 of the Companies Act 2006;

“**the memorandum**” means the Charity’s memorandum of association;

“**officers**” includes the Directors and the secretary (if any);

“**the seal**” means the common seal of the Charity if it has one;

“**secretary**” means any person appointed to perform the duties of the secretary of the Charity;

“**the United Kingdom**” means Great Britain and Northern Ireland;

and words importing one gender shall include all genders, and the singular includes the plural and vice versa.

Unless the context otherwise requires words or expressions contained in the articles have the same meaning as in the Companies Act but excluding any statutory modification not in force when this constitution becomes binding on the Charity.

Apart from the exception mentioned in the previous paragraph a reference to an Act includes any statutory modification or re-enactment of it for the time being in force.

## **LIABILITY OF MEMBERS**

3. (1) The liability of the members is limited.
- (2) Every member of the Charity promises, if the Charity is dissolved while he or she or it is a member or within twelve months after he or she or it ceases to be a member, to contribute such sum (not exceeding £1) as may be demanded of him or her or it towards the payment of the debts and liabilities of the Charity incurred before he or she or it ceases to be a member, and of the costs, charges and expenses of winding up, and the adjustment of the rights of the contributories among themselves.

## **OBJECTS**

4. The Charity's objects ("Objects") are specifically restricted to the following:-
- (1) Provide facilities in the interests of social welfare for recreation and other leisure time occupation with the object of improving the conditions of life for the inhabitants of the Ballymacarrett area of East Belfast and its environs (the "area of benefit").
  - (2) The promotion of amateur sport, community participation in healthy recreation and the advancement of health.
  - (3) The advancement of community development in the area of benefit and in particular the promotion of the community and voluntary sector for the benefit of the public by providing support and facilities to community and voluntary groups.

## **POWERS**

5. The Charity has power to do anything which is calculated to further its Objects or is conducive or incidental to doing so. In particular, the Charity has power:
- (a) to raise funds. In doing so, the Charity must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations;
  - (b) to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
  - (c) to sell, lease or otherwise dispose of or mortgage all or any part of the property belonging to the Charity, having due regard to the requirements of, or conditions established by, statutory authorities or bodies providing funds or assistance of any kind to the Charity. In exercising this power, the Charity must comply as appropriate with sections 57 and 58 of the Charities Act (Northern Ireland) 2008;
  - (d) to borrow money and to charge the whole or any part of the property belonging to the Charity as security for repayment of the money borrowed or as security for a grant or the discharge of an obligation. The Charity must comply as appropriate with sections

60 and 61 of the Charities Act (Northern Ireland) 2008 if it wishes to mortgage land;

- (e) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- (f) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects;
- (g) to acquire, merge with or enter into any partnership or joint venture or arrangement with any other charity;
- (h) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
- (i) to employ and remunerate such staff as are necessary for carrying out the work of the Charity. The Charity may employ or remunerate a Director only to the extent it is permitted to do so by article 6 and provided it complies with the conditions in that article;
- (j) to:
  - deposit or invest funds
  - employ a professional fund-manager; and
  - arrange for the investments or other property of the Charity to be held in the name of a nominee;in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act (Northern Ireland) 2001;
- (k) to provide indemnity insurance for the Directors in accordance with, and subject to the conditions in, section 93 of the Charities Act (Northern Ireland) 2008;
- (l) to pay out of the funds of the Charity the costs of forming and registering the Charity as a company and as a charity.

#### **APPLICATION OF INCOME AND PROPERTY**

6. (1) The income and property of the Charity shall be applied solely towards the promotion of the Objects.

- (2) (a) A Director is entitled to be reimbursed from the property of the Charity or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the Charity.
  - (b) A Director may benefit from trustee indemnity insurance cover purchased at the Charity's expense in accordance with, and subject to the conditions in, section 93 of the Charities Act (Northern Ireland) 2008.
  - (c) A Director may receive an indemnity from the Charity in the circumstances specified in article 55.
  - (d) A Director may not receive any other benefit or payment unless it is authorised by article 7.
- (3) Subject to article 7, none of the income or property of the Charity may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the Charity. This does not prevent a member who is not also a Director receiving:
- (a) a benefit from the Charity in the capacity of a beneficiary of the Charity;
  - (b) reasonable and proper remuneration for any goods or services supplied to the Charity.

## **Benefits and Payments to Charity Directors and Connected Persons**

### **General Provisions**

7. (1) No Director or connected person may:
- (a) buy any goods or services from the Charity on terms preferential to those applicable to members of the public;
  - (b) sell goods, services or any interest in land to the Charity;
  - (c) be employed by, or receive any remuneration from, the Charity;
  - (d) receive any other financial benefit from the Charity;

unless the payment is permitted by sub-clause (2) of this article, or authorised by the court or the Charity Commission.

In this article a ‘financial benefit’ means a benefit, direct or indirect, which is either money or has a monetary value.

### **Scope and Powers Permitting Directors’ or Connected Persons’ Benefits**

- (2) (a) A Director or connected person may receive a benefit from the Charity in the capacity of a beneficiary of the Charity provided that a majority of the Directors do not benefit in this way.
- (b) A Director or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the Charity where that is permitted in accordance with, and subject to the conditions in, section 88 to 90 of the Charities Act (Northern Ireland) 2008.
- (c) Subject to sub-clause (3) of this article, a Director or connected person may provide the Charity with goods that are not supplied in connection with services provided to the Charity by the Director or connected person.
- (d) A Director or connected person may receive interest on money lent to the Charity at a reasonable and proper rate which must be 2 per cent (or more) below the base rate of a clearing bank to be selected by the Directors.
- (e) A Director or connected person may receive rent for premises let by the Director or connected person to the Charity. The amount of the rent and other terms of the lease must be reasonable and proper. The Director concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (f) A Director or connected person may take part in the normal trading and fundraising activities of the Charity on the same terms as members of the public.



### **Payment for Supply of Goods Only – Controls**

- (3) The Charity and its Directors may only rely on the authority provided by sub-clause (2)(c) of this article if each of the following conditions is satisfied:
- (a) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the Charity or its Directors (as the case may be) and the Director or connected person supplying the goods ('the supplier') under which the supplier is to supply the goods in question to or on behalf of the Charity.
  - (b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.
  - (c) The other Directors are satisfied that it is in the best interests of the Charity to contract with the supplier rather than with someone who is not a Director or connected person. In reaching that decision the Directors must balance the advantage of contracting with a Director or connected person against the disadvantages of doing so.
  - (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the Charity.
  - (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of Directors is present at the meeting.
  - (f) The reason for their decisions is recorded by the Directors in the minutes of their meeting.
  - (g) A majority of the Directors then in office are not in receipt of remuneration or payments authorised by article 7.
- (4) In sub-clauses (2) and (3) of this article:
- (a) 'Charity' includes any company in which the Charity:
    - (i) holds more than 50 per cent of the shares; or

- (ii) controls more than 50 per cent of the voting rights attached to the shares; or
  - (iii) has the right to appoint one or more directors to the board of the company.
- (b) 'connected person' includes any person within the definition in article 58 'Interpretation'.

## **DECLARATION OF DIRECTORS' INTERESTS**

8. A Director must 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 previously been declared. A Director must absent himself or herself from any discussions of the Directors 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).

## **CONFLICTS OF INTEREST**

9. (1) If a conflict of interest arises for a Director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the Articles, the unconflicted Directors may authorise such a conflict of interests where the following conditions apply:
- (a) the conflicted Director is absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting that other organisation or person;
  - (b) the conflicted Director does not vote on any such matter and is not to be counted when considering whether a quorum of Directors is present at the meeting;
  - (c) the unconflicted Directors consider it is in the best interests of the Charity to authorise the conflict of interest in the circumstances applying.
- (2) In this article, a conflict of interests arising because of a duty of loyalty owed to another organisation or person only refers to such a conflict which does not involve a direct or indirect benefit of any nature to a Director or to a connected person.

## **MEMBERS**

10. (1) The subscribers to the Memorandum are the first members of the Charity.
- (2) Membership is open to other individuals or organisations who:
  - (a) apply to the Charity in the form required by the Directors; and
  - (b) are approved by the Directors.
- (3) Membership is not transferable.
- (4) The Directors must keep a Register of names and addresses of members.

## **CLASSES OF MEMBERSHIP**

11. (1) The Directors may establish classes of membership with different rights and obligations and shall record the rights and obligations in the Register of Members.
- (2) The Directors may not directly or indirectly alter the rights or obligations attached to a class of membership.
- (3) The rights attached to a class of membership may only be varied if:
  - (a) three-quarters of the members of that class consent in writing to the variation; or
  - (b) a special resolution is passed at a separate General Meeting of the members of that class agreeing to the variation.
- (4) The provisions in these articles about General Meetings shall apply to any meeting relating to the variation of the rights of any class of members.

## **TERMINATION OF MEMBERSHIP**

12. Membership is terminated if:-
  - (1) the member dies or, if it is an organisation, ceases to exist;
  - (2) the member resigns by notice to the Charity unless, after the resignation, there would be less than two members;

- (3) such member is removed from membership by a resolution of the Directors that it is in the best interests of the Charity that his, her or its membership is terminated. A resolution to remove a member from membership may only be passed if:
  - (a) the member has been given at least twenty-one days' notice in writing of the meeting of the Directors at which the resolution will be proposed and the reasons why it is to be proposed;
  - (b) the member or, at the option of the member, the member's representative (who need not be a member of the Company) has been allowed to make representations to the meeting.

#### **GENERAL MEETINGS**

13. (1) The Charity must hold its first Annual General Meeting within eighteen months after the date of its incorporation.
  - (2) An Annual General Meeting must be held in each subsequent year and not more than fifteen months may elapse between successive Annual General Meetings.
14. The Directors may call a General Meeting at any time.

#### **NOTICE OF GENERAL MEETINGS**

15. (1) The minimum periods of notice required to hold a General Meeting of the Charity are:
  - (a) twenty-one clear days for an Annual General Meeting or a General Meeting called for the passing of a special resolution;
  - (b) fourteen clear days for all other General Meetings.
- (2) A General Meeting may be called by shorter notice if it is so agreed by a majority in number of members having a right to attend and vote at the meeting who together hold not less than ninety per cent of the total voting rights.
- (3) The notice must specify the date, time and place of the meeting and the general nature of the business to be transacted. If the meeting is to be an

Annual General Meeting, the notice must say so. The notice must also contain a statement setting out the right of members to appoint a proxy under section 324 of the Companies Act 2006 and article 21.

- (4) The notice must be given to all the members and to the Directors and auditors.
16. The proceedings at a meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the Charity.

### **PROCEEDINGS AT GENERAL MEETINGS**

17. (1) No business shall be transacted at any General Meeting unless a quorum is present.
- (2) A quorum is ten members present in person or by proxy and entitled to vote upon the business to be conducted at the meeting.
- (3) The authorised representative of a member organisation shall be counted in the quorum.
18. (1) If:
- (a) a quorum is not present within half an hour from the time appointed for the meeting; or
  - (b) during a meeting such a quorum ceases to be present;
- the meeting shall stand adjourned to such time and place as the Directors shall determine.
- (2) The Directors must reconvene the meeting and must give at least seven days' notice of the reconvened meeting stating the date, time and place of the meeting.
- (3) If no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting, the members present in person or by proxy at that time shall constitute the quorum for that meeting.

19.
  - (1) General Meetings shall be chaired by the person who has been appointed to chair meetings of the Directors.
  - (2) If there is no such person or he or she is not present within fifteen minutes of the time appointed for the meeting, a Director nominated by the Directors shall chair the meeting.
  - (3) If there is only one Director present and willing to act, he or she shall chair the meeting.
  - (4) If no Director is present and willing to chair the meeting within fifteen minutes after the time appointed for holding it, the members present in person or by proxy and entitled to vote must choose one of their number to chair the meeting.
20.
  - (1) The members present in person or by proxy at a meeting may resolve by ordinary resolution that the meeting shall be adjourned.
  - (2) The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution.
  - (3) No business shall be conducted at a reconvened meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.
  - (4) If a meeting is adjourned by a resolution of the members for more than seven days, at least seven clear days' notice shall be given of the reconvened meeting stating the date, time and place of the meeting.
21.
  - (1) Any vote at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded:
    - (a) by the person chairing the meeting; or
    - (b) by at least three members present in person or by proxy and having the right to vote at the meeting; or
    - (c) by a member or members present in person or by proxy representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

- (2) (a) The declaration by the person who is chairing the meeting of the result of a vote shall be conclusive unless a secret ballot is demanded.
- (b) The result of the vote must be recorded in the minutes of the Charity but the number or proportion of votes cast need not be recorded.
- (3) (a) A demand for a secret ballot may be withdrawn before the secret ballot is taken, but only with the consent of the person who is chairing the meeting.
- (b) If the demand for a secret ballot is withdrawn, the demand shall not invalidate the result of a show of hands declared before the demand was made.
- (4) (a) A secret ballot must be taken as the person who is chairing the meeting directs, who may appoint scrutineers (who need not be members) and who may fix a time and place for declaring the results of the secret ballot.
- (b) The result of the secret ballot shall be deemed to be the resolution of the meeting at which the secret ballot is demanded.
- (5) (a) A secret ballot demanded on the election of a person to chair a meeting or on a question of adjournment must be taken immediately.
- (b) A secret ballot demanded on any other question must be taken either immediately or at such time and place as the person who is chairing the meetings directs.
- (c) The secret ballot must be taken within thirty days after it has been demanded.
- (d) If the secret ballot is not taken immediately, at least seven clear days' notice shall be given specifying the time and place at which the secret ballot is to be taken.
- (e) If a secret ballot is demanded, the meeting may continue to deal with any other business that may be conducted at the meeting.

## **CONTENT OF PROXY NOTICES**

22. (1) Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which –
- (a) states the name and address of the members appointing the proxy;
  - (b) identifies the person appointed to be that member’s proxy and the General Meeting in relation to which that person is appointed;
  - (c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the Directors may determine; and
  - (d) is delivered to the Charity in accordance with the articles and any instructions contained in the notice of the General Meeting to which they relate.
- (2) The Charity may require proxy notices to be delivered in a particular form and may specify different forms for different purposes.
- (3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (4) Unless a proxy notice indicates otherwise, it must be treated as -
- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - (b) appointing that person as a proxy in relation to any adjournment of the General Meeting to which it relates as well as the meeting itself.

## **DELIVERY OF PROXY NOTICES**

23. (1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a General Meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Charity by or on behalf of that person.
- (2) An appointment under a proxy notice may be revoked by delivering to the Charity a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.



- (3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointer's behalf.

## **WRITTEN RESOLUTIONS**

- 24. (1) A resolution in writing agreed by a simple majority (or in the case of a special resolution by a majority of not less than seventy-five per cent) of the members who would have been entitled to vote upon it had it been proposed at a General Meeting shall be effective provided that:
  - (a) a copy of the proposed resolution has been sent to every eligible member;
  - (b) a simple majority (or in the case of a special resolution a majority of not less than seventy-five per cent) of members has signified its agreement to the resolution; and
  - (c) it is contained in an authenticated document which has been received at the registered office within the period of twenty-eight days beginning with the circulation date.
- (2) A resolution in writing may comprise several copies to which one or more members have signified their agreement.
- (3) In the case of a member that is an organisation, its authorised representative may signify its agreement.

## **VOTES OF MEMBERS**

- 25. Subject to article 11, every member, whether an individual or an organisation, shall have one vote.
- 26. Any objection to the qualification of any voter must be raised at the meeting at which the vote is tendered and the decision of the person who is chairing the meeting shall be final.

27. (1) An organisation that is a member of the Charity may nominate any person to act as its representative at any meeting of the Charity.
- (2) The organisation must give written notice to the Charity of the name of its representative. The representative shall not be entitled to represent the organisation at any meeting unless the notice has been received by the Charity. The representative may continue to represent the organisation until written notice to the contrary is received by the Charity.
- (3) Any notice given to the Charity will be conclusive evidence that the representative is entitled to represent the organisation or that his or her authority has been revoked. The Charity shall not be required to consider whether the representative has been properly appointed by the organisation.

## **DIRECTORS**

28. (1) A Director must be aged sixteen years or older.
- (2) No one may be appointed a Director if he or she would be disqualified from acting under the provisions of article 37.
29. The number of Directors shall not be less than four or more than twelve.
30. A Director may not appoint an alternate Director or anyone to act on his or her behalf at meetings of the Directors.

## **POWERS OF DIRECTORS**

31. (1) The Directors shall manage the business of the Charity and may exercise all the powers of the Charity unless they are subject to any restrictions imposed by the Companies Act, the articles or any special resolution.
- (2) No alteration of the articles or any special resolution shall have retrospective effect to invalidate any prior act of the Directors.
- (3) Any meeting of Directors at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the Directors.

## **RETIREMENT OF DIRECTORS**

32. At each Annual General Meeting, one-third of the Directors or, if their number is not three or a multiple of three, the number nearest to one-third, must retire from office.
33. (1) The Directors to retire by rotation shall be those who have been longest in office since their last appointment. If any Directors became or were appointed Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (2) A retiring Director shall be eligible for re-election.
- (3) If a Director is required to retire at an Annual General Meeting by a provision of the articles, the retirement shall take effect upon the conclusion of the meeting.

## **APPOINTMENT OF DIRECTORS**

34. The Charity may by ordinary resolution:
- (a) appoint a person who is willing to act to be a Director; and
- (b) determine the rotation in which any additional Directors are to be retire.
35. (1) The Directors may appoint a person who is willing to act to be a Director.
- (2) A Director appointed by a resolution of the other Directors must retire at the next Annual General Meeting.
36. The appointment of a Director, whether by the Charity in General Meeting or by the other Directors, must not cause the number of Directors to exceed any number fixed as the maximum number of Directors.

## **DISQUALIFICATION AND REMOVAL OF DIRECTORS**

37. A Director shall cease to hold office if he or she:
- (a) ceases to be a Director by virtue of any provision in the Companies Act or is prohibited by law from being a director;

- (b) is disqualified from acting as a Trustee by virtue of section 86 of the Charities Act (Northern Ireland) 2008 (or any statutory re-enactment or modification of that provision);
- (c) becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;
- (d) resigns as a Director by notice to the Charity (but only if at least two Directors will remain in office when the notice of resignation is to take effect);
- (e) is removed from office by resolution of the Charity in General Meeting;
- (f) is absent from three successive meetings of the Directors without giving adequate reason to the Directors and the Directors resolve by a majority that his or her office is to be vacated.

#### **REMUNERATION OF DIRECTORS**

38. The Directors must not be paid any remuneration unless it is authorised by article 7.

#### **PROCEEDINGS OF DIRECTORS**

39. (1) The Directors may regulate their proceedings as they think fit, subject to the provisions of the articles.
- (2) Any Director may call a meeting of the Directors.
- (3) The secretary (if any) must call a meeting of the Directors if requested to do so by a Director.
- (4) Questions arising at a meeting shall be decided by a majority of votes.
- (5) In the case of an equality of votes, the person who is chairing the meeting shall have a second or casting vote.
- (6) A meeting may be held by suitable electronic means agreed by the Directors in which each participant may communicate with all other participants.

40. (1) No decision may be made by a meeting of the Directors unless a quorum is present at the time the decision is purported to be made. 'Present' includes being present by suitable electronic means agreed by the Directors in which a participant or participants may communicate with all the other participants.
- (2) The quorum shall be four Directors or such other number as may be decided from time to time by the Directors.
- (3) A Director shall not be counted in the quorum present when any decision is made about a matter upon which that Director is not entitled to vote.
41. If the number of Directors is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of filling vacancies or of calling a General Meeting.
42. (1) The Directors may appoint a Director to chair their meetings and may at any time revoke such appointment.
- (2) If no-one has been appointed to chair meetings of the Directors or if the person appointed is unwilling to preside or is not present within fifteen minutes after the time appointed for the meeting, the Directors present may appoint one of their number to chair that meeting.
- (3) The person appointed to chair meetings of the Directors shall have no functions or powers except those conferred by the articles or delegated to him or her by the Directors.
43. (1) A resolution in writing agreed by a simple majority of all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the Directors or (as the case may be) a committee of Directors duly convened and held provided that:
  - (a) a copy of the resolution is sent or submitted to all the Directors eligible to vote; and
  - (b) a simple majority of Directors has signified its agreement to the resolution in an authenticated document or documents which are received at the registered office within the period of twenty-eight days beginning with the circulation date.

- (2) The resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one or more Directors has signified their agreement.
- 44. (1) The Directors may delegate any of their powers or functions to a committee of two or more Directors and members but the terms of any delegation must be recorded in the minutes.
- (2) The Directors may impose conditions when delegating, including the conditions that:
  - (a) the relevant powers are to be exercised exclusively by the committee to whom they delegate;
  - (b) no expenditure may be incurred on behalf of the Charity except in accordance with a budget previously agreed with the Directors.
- (3) The Directors may revoke or alter a delegation.
- (4) All acts and proceedings of any committees must be fully and promptly reported to the Directors.

#### **VALIDITY OF DIRECTORS' DECISIONS**

- 45. (1) Subject to paragraph 45(2), all acts done by a meeting of Directors, or of a committee of Directors, shall be valid notwithstanding the participation in any vote of a Director:
    - (i) who was disqualified from holding office;
    - (ii) who had previously retired or who had been obliged by the constitution to vacate office;
    - (iii) who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;
- if without:
- the vote of that Director; and
- that Director being counted in the quorum;

the decision has been made by a majority of the Directors at a quorate meeting.

- (2) Paragraph 45(1) does not permit a Director or a connected person to keep any benefit that may be conferred upon him or her by a resolution of the Directors or of a committee of Directors if, but for paragraph 45(1), the resolution would have been void, or if the Director has not complied with article 8.

## **THE SEAL**

46. If the Company has a Seal, it shall only be used by the authority of the Directors or of a committee of Directors authorised by the Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and by the secretary (if any) or by a second Director.

## **MINUTES**

47. The Directors must keep minutes of all:
  - (1) appointments of Officers made by the Directors;
  - (2) proceedings at meetings of the Charity;
  - (3) meetings of the Directors and committees of Directors including:
    - (a) the names of the Directors present at the meeting;
    - (b) the decisions made at the meetings; and
    - (c) where appropriate the reasons for the decisions.

## **ACCOUNTS**

48. (1) The Directors must prepare for each financial year accounts as required by the Companies Act. The accounts must be prepared to show a true and fair view and follow accounting standards issued or adopted by the Accounting Standards Board or its successors and adhere to the recommendations of applicable Statements of Recommended Practice.

- (2) The Directors must keep accounting records as required by the Companies Act.

#### **ANNUAL REPORT AND RETURN AND ACCOUNTS**

- 49. (1) The Directors must comply with their obligations under the Charities Act (Northern Ireland) 2008 with regard to:
  - (a) the transmission of the statements of account to the Commission;
  - (b) the preparation of an Annual Report and its transmission to the Commission;
  - (c) the preparation of an Annual Return and its transmission to the Commission.
- (2) The Directors must notify the Commission promptly of any changes to the Charity's entry on the Register of Charities.

#### **MEANS OF COMMUNICATION TO BE USED**

- 50. (1) Subject to the articles, anything sent or supplied by or to the Charity under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Charity.
  - (2) Subject to the articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.
51. Any notice to be given to or by any person pursuant to the articles:
- (1) must be in writing; or
  - (2) must be given in electronic form.
52. (1) The Charity may give any notice to a member either:
- (a) personally; or



- (b) by sending it by post in a prepaid envelope addressed to the member at his, her or its address; or
  - (c) by leaving it at the address of the member; or
  - (d) by giving it in electronic form to the member's address.
- (2) A member who does not register an address with the Charity or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the Charity.
- 53. A member present in person at any meeting of the Charity shall be deemed to have received notice of the meeting and of the purposes for which it was called.
- 54. (1) Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.
- (2) Proof that an electronic form of notice was given shall be conclusive where the company can demonstrate that it was properly addressed and sent in accordance with section 1147 of the Companies Act 2006.
- (3) In accordance with section 1147 of the Companies Act 2006, notice shall be deemed to be given:
  - (a) forty-eight hours after the envelope containing it was posted; or
  - (b) in the case of an electronic form of communication, forty-eight hours after it was sent.

## **INDEMNITY**

- 55. (1) The Charity shall indemnify every Director against any liability incurred in successfully defending legal proceedings in that capacity, or in connection with any application in which relief is granted by the Court from liability for negligence, default, or breach of duty or breach of trust in relation to the Charity.
- (2) In this article a "relevant Director" means any Director or former Director of the Charity.

## **RULES**

56. (1) The Directors may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the Charity.
- (2) The bye laws may regulate the following matters but are not restricted to them:
- (a) 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;
  - (b) the conduct of members of the Charity in relation to one another, and to the Charity's employees and volunteers;
  - (c) 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 purposes;
  - (d) the procedure at General Meetings and meetings of the Directors in so far as such procedure is not regulated by the Companies Act or by the articles;
  - (e) generally, all such matters as are commonly the subject matter of company rules.
- (3) The Charity in General Meeting has the power to alter, add to or repeal the rules or bye laws.
- (4) The Directors must adopt such means as they think sufficient to bring the rules and bye laws to the notice of members of the Charity.
- (5) 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 the articles.

## **DISPUTES**

57. If a dispute arises between members of the Charity about the validity or propriety of anything done by the members of the Charity under these articles, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

## **DISSOLUTION**

58. (1) The members of the Charity may at any time before, and in expectation of, its dissolution resolve that any net assets of the Charity after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the Charity be applied or transferred in any of the following ways:
- (a) directly for the Objects; or
  - (b) by transfer to any charity or charities for purposes similar to the Objects; or
  - (c) to any charity or charities for use for particular purposes that fall within the Objects.
- (2) Subject to any resolution of the members of the Charity, the Directors of the Charity may at any time before, and in expectation of, its dissolution resolve that any net assets of the Charity after all its debts and liabilities have been paid, or provision has been made for them, shall on dissolution of the Charity be applied or transferred:
- (a) directly for the Objects; or
  - (b) by transfer to any charity or charities for purposes similar to the Objects; or
  - (c) to any charity or charities for use for particular purposes that fall within the Objects.
- (3) In no circumstances shall the net assets of the Charity be paid to or distributed among the members of the Charity (except to a member that is itself a charity) and, if no such resolution in accordance with article 58(1) is passed by the members or the Directors, the net assets of the Charity

shall be applied for charitable purposes as directed by the Court or the Commission.

## **INTERPRETATION**

59. In article 7, sub-clause (2) of article 9 and sub-clause (2) of article 45 ‘connected person’ means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the Director;
- (b) the spouse or civil partner of the Director or of any person falling within paragraph (1) above;
- (c) a person carrying on business in partnership with the Director or with any person falling within paragraph (1) or (2) above;
- (d) an institution which is controlled -
  - (i) by the Director or any connected person falling within paragraph (1), (2), or (3) above; or
  - (ii) by two or more persons falling within sub-paragraph d(i), when taken together;
- (e) a body corporate in which -
  - (i) the Director or any connected person falling within paragraphs (a) to (c) has a substantial interest; or
  - (ii) two or more persons falling within sub-paragraph (e)(i) who, when taken together, have a substantial interest.
  - (iii) Section 89(5) and paragraphs 2 to 4 of Schedule 5 of the Charities Act (Northern Ireland) 2008 applies for the purposes of interpreting the terms used in this sub-clause.

# NOTES TO DRAFT CONSTITUTION FOR CONNSWATER COMMUNITY & LEISURE SERVICES

(GUARANTEE COMPANY WITH CHARITABLE STATUS)

## MEMORANDUM

Under the new Companies Act, the Memorandum is now just a list of the subscribers (members) of the company.

## ARTICLES

1. Name of Company: article 1, page 1

**Connswater Community & Leisure Services**

O.K. as it is.....

Needs changing to .....  
.....

2. Objects: article 4, page 3

“The Charity’s objects (“Objects”) are specifically restricted to the following:-

- (1) Provide facilities in the interests of social welfare for recreation and other leisure time occupation with the object of improving the conditions of life for the inhabitants of the Ballymacarrett area of East Belfast and its environs (the “area of benefit”).

- (2) The promotion of amateur sport, community participation in healthy recreation and the advancement of health.
- (3) The advancement of community development in the area of benefit and in particular the promotion of the community and voluntary sector for the benefit of the public by providing support and facilities to community and voluntary groups.”

➤ See Appendix A

➤ The objects clause in your existing constitution is as follows:-

“The objects of the Company shall be to promote the benefit of the inhabitants of the Mersey Street/Connswater areas of East Belfast and their environs (the “area of benefit”) without distinction of age, gender, race or political, religious or other opinions by associating with the statutory authorities, voluntary organisations and inhabitants in a common effort to advance education, relieve unemployment, preserve and protect health and provide facilities in the interests of social welfare for recreation and other leisure time occupations with the object of improving the conditions of life for the said inhabitants.”

**O.K. as it is in the new draft.....**

**Needs changing to .....**  
.....

**3. Powers: article 5, page 3**

The powers clause gives the Company power to:

- (i) accumulate reserves; and
- (ii) provide indemnity insurance for directors.

**O.K. as it is.....**

**Needs changing to.....**

**4. Directors Receiving Remuneration for Services or Goods Provided: articles 6 and 7, pages 4 - 8**

The new charity legislation gives two options with regard to payments to directors:

- (i) payments to directors are restricted to claims for expenses and indemnity insurance can be paid for by the company; or
- (ii) directors can also receive payments for services or goods provided to the charity – so long as certain procedures are followed.

**Option (ii)** has been included in the draft.

- See Appendices B and C

**O.K. as it is.....**

**Substitute Option (i) clause.....**

5. **Members: article 10, page 8**

- *The members of a company are the ‘owners’ of the company and have certain powers, including:*
  - (i) *the power to appoint and dismiss the directors;*
  - (ii) *the power to make changes to the constitution;*
  - (iii) *the power to dissolve the company.*
- *The directors are accountable to the members (at General Meetings).*
- *Do you want to set any specific criteria for who can become a member?*  
*For example, in your existing constitution it says:*

*“**Group Membership** shall be open to all Community and Voluntary Groups that operate within the Mersey Street / Connswater or East Belfast area and that support the aims and objects of the Company and whose application for membership is approved by the Directors.*

***Individual Membership** shall be open to persons aged eighteen years or over who live in the Mersey Street / Connswater area, who support the aims and objects of the Company and whose application for membership is approved by the Directors.”*

- *Do you want different categories of members? – for example voting / non-voting members.*
- *There has to be proof of membership – i.e. to be a member your name must appear either on the subscribers’ page or in the Board minutes.*
- *The Company is required by law to set up and maintain a Register of Members.*

Membership is open to individuals and organisations. But the directors have the power to approve or turn down an application for membership.

Directors can create different classes of membership with different rights and obligations if they wish (article 11(1)), for example, non-voting associate members.



O.K. as it is.....

Needs changing to.....

6. **Annual General Meetings: article 13, page 10**

Under the new Companies Act, companies no longer need to hold AGM's. However, the charitable authorities regard it as good practice for a charity – so provision has been made in the draft to hold AGMs.

O.K. as it is.....

Needs changing to.....

7. **Notice Required for General Meetings: article 15(1), page 10**

The new Companies Act allows all General Meetings (including the AGM) to be called at 14 days notice – unless the articles state a longer period. However, It is considered good practice for charities to give 21 days notice for AGMs, so 21 days is given as the period of notice in 14 (1).

O.K. as it is.....

Change to 14 days.....

8. **Quorum for Members' Meetings (e.g. the AGM): article 17(2), page 11**

Quorum = 10 members (as in your existing constitution)

O.K. as it is.....

Needs changing to.....

**9. Provision for Proxy Voting: articles 22 and 23, pages 14 - 15**

The new Companies Act states that all members are entitled to vote by proxy. You have no choice about this.

**10. Number of Directors: article 29, page 16**

Minimum = 4  
Maximum = 12

O.K. as it is.....

Needs changing to.....

**11. Appointment of Directors: articles 32, 33, 34, and 35, page 17**

Directors are elected / appointed by the members at the AGM (34(a)). One-third of the directors stand down each year (32) (as in your existing constitution), but can seek re-election (33(2)).

New directors can also be co-opted onto the Board by the existing directors (35(1)).

- Is one-third rotation OK, or do you want to alter the proportion (half, quarter) or change to a system where *all* directors stand down each year?

O.K. as it is.....

Needs changing to.....

**12. Quorum for Directors' Meetings: article 40(2), page 19**

Quorum = **4 Board members** (as in your existing constitution)

**O.K. as it is.....**

**Needs changing.....**

**13. Casting Vote of Chairperson: article 39(5), page 18**

In event of split vote, Chair has casting vote at Board Meetings.

**O.K. as it is.....**

**Needs changing.....**

**14. No Specific Mention of an Executive Committee**

Your existing constitution specifically provides for delegation of decision-making by the Board to an Executive Committee. This is not included in the new draft.

➤ Do you want it included?

**Yes.....**

**No.....**

**15. Indemnity for Directors: article 55, page 23**

The charity **shall** indemnify every director.

**O.K. as it is.....**

**Needs changing.....**

**16. Rules: article 56, page 24**

The directors have the power to make rules or bye-laws “as they may deem necessary” so long as they are consistent with the articles.

**O.K. as it is.....**

**Needs changing.....**

**17. Net Assets after Dissolution: article 58, page 25**

Go to charitable organisation with similar aims.

**O.K. as it is.....**

**Needs changing to.....**

## Appendix A

# TWELVE HEADS OF CHARITY

The traditional 'four heads' of charity have been replaced by twelve headings:

1. The prevention or relief of poverty
2. The advancement of education
3. The advancement of religion
4. The advancement of health or the saving of lives
5. The advancement of citizenship or community development
6. The advancement of the arts, culture, heritage or science
7. The advancement of amateur sport
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
9. The advancement of environmental protection or improvement
10. The relief of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage
11. The advancement of animal welfare
12. Any other purposes recognised as charitable

## Appendix B

# PAYMENTS TO TRUSTEES

Unless prohibited by a clause in the constitution, trustees will have the power to pay one or more trustees – or individuals or businesses connected with them – to provide specific goods and services to their charity. The following conditions must be met:

- there must be a written agreement between the charity and the trustee (or connected person) concerned
- the trustees must be satisfied that payment is no more than is reasonable for the service provided, and that paying one of their number is in the best interests of the charity
- a trustee who receives payment may not take part in decisions of the trustees about the agreement, and should withdraw from meetings in which the terms of the agreement are discussed
- the power cannot be used if there is an express prohibition against such a payment in the constitution
- the power cannot be used if the number of trustees who are being paid will then be half or more than half of the trustee board

Examples of the kind of services covered by this power:

- secretarial duties
- the delivery of a lecture
- a piece of research work
- legal or accountancy work
- providing timber for a building
- use of a trustee's firm for a building job
- entering into a maintenance contract
- providing decorating materials for premises
- expert services: design consultants, computer specialists, electricians, graphic designers

Charities that prepare accounts on an accruals basis must give details of payments and other benefits to charity trustees and connected persons in their accounts.

## Appendix C

# CONFLICTS OF INTEREST

### Definition

A conflict of interest exists when a director has any interest, duty or obligation which may directly or indirectly conflict with the duty owed to the company.

Directors of a charitable company have a statutory duty under both company and charity law to avoid conflicts of interest.

### Different Types of Conflict of Interest

The Companies Act distinguishes between situations where:

- the conflict is **transactional** – arising from a transaction or arrangement with the company
- the director is receiving **benefits from a third party** (e.g. free gifts)
- the conflict is **situational**:
  - where there is a conflict of interest between their role as a director and some other role or situation; or
  - where information or opportunities arise from a person's role as a director and are used by that director or connected person for a purpose unrelated to the company itself

**Transactional Conflicts:** Can be approved by the unconflicted directors, but only if the transaction / arrangement is allowed by the Articles (or CCNI).

**Benefits from third parties:** Not allowed, but lunches and small gifts (pens) are OK.

**Situational Conflicts:** Can be approved by the unconflicted directors, but only if the Articles permit this. Authorisation must be properly made at a quorate meeting with the conflicted directors not

counted in the quorum and not taking part in the decision-making.

## **Authorising Conflicts of Interest**

### **A. Constitutional authorisation**

Anything done by the directors of a charitable company in accordance with the provisions in its Articles will not amount to a breach of the trustees' statutory duties as directors.

The Articles may authorise specific categories of conflicts and therefore will have the effect of disapplying the trustees' duty to avoid conflicts of interest with regard to those categories.

### **B. Trustees authorisation**

A trustee of a charitable company will not be in breach of the duty to avoid conflicts of interest if the specific conflict of interest in question has been authorised by the trustees (or members). However, the Articles must not prevent the trustees from authorising conflicts.

Any decision to authorise a conflict should be made in the interests of the charity. Any authorising resolution should state clearly the conflict which is being authorised, the duration of the authorisation and any circumstances in which authorisation may need to be reviewed.

## **Connected Persons**

- The rules on financial gain apply to persons **connected with** a director.

## **Managing Conflicts of Interest**

There are three key aspects:

1. Ensuring that any trustee benefits are properly authorised.
2. Ensuring that conflicts of interest are properly identified and disclosed.
3. Ensuring that any trustee who has a conflict of interest does not participate in any decision by the board of trustees that relates to it.



## Responses to Conflicts of Interest

Typically there are three levels of response after a declaration of a conflict of interest:

1. **Minor conflicts:** member should not take part in the decision-making process or in discussions relating to it.
2. **More Serious conflicts:** member may be required to withdraw from the meeting while the issue is being discussed or decided.
3. **Very serious or persistent conflicts of interest:** resignation or withdrawal for a period may be appropriate.

## Appendix D

# RESERVES AND RISK MANAGEMENT POLICIES

### Reserves

Definition: that part of the charity's general purpose funds which do not need to be spent immediately and which are not committed or designated.

The policy should cover:

- the reasons why the charity needs reserves
- what level (or range) of reserves the trustees believe the charity needs
- what steps the charity is going to take to establish or maintain reserves at the agreed level (or range)
- arrangements for monitoring and reviewing the policy

A charity's reserves policy should take into account:

- its forecasts for levels of income in future years, taking into account the reliability of each source of income and the prospects of opening up new sources
- its forecasts for expenditure in future years on the basis of planned activity
- its analysis of any future needs, opportunities, contingencies or risks which are not likely to be met out of income if and when they arise

### Risk Management

Trustees need to identify, assess and manage risk, including:

- governance risks  
inappropriate organisational structures; difficulties recruiting trustees with relevant skills; conflict of interest
- operational risks  
service quality and development; contract pricing; employment issues; health and safety issues; fraud and misappropriation

- financial risks  
accuracy and timeliness of financial information, adequacy of reserves and cash flow; diversity of income sources
- external risks  
public perception and adverse publicity; demographic changes; government policy
- compliance with law and regulation  
charity and company law; employment law

## Appendix E

# DUTIES OF DIRECTORS

### 1. Duty to Promote the Success of the Company

A director must act in the way he/she considers, in good faith, would be most likely to promote the success of the company for the benefit of its beneficiaries / members as a whole. In doing so, a director should have regard (among other matters) to:

- the long term consequences of their decisions
- the interests of the company's employees
- the desirability of the company maintaining a reputation for high standards of business conduct
- the need to act fairly

### 2. Duty to Act Within the Powers They are Given

A director must act in accordance with the company's constitution.

### 3. Duty to Exercise Independent Judgement

A director must exercise independent judgement.

### 4. Duty to Exercise Reasonable Care, Skill and Diligence

This means the care, skill and diligence that would be exercised by 'a reasonably diligent person', and, in addition, any specific skills (for example financial / legal) that the director has.

### 5. Duty to Avoid Conflicts of Interest

This duty is not infringed:

- (i) if the situation cannot be reasonably be regarded as likely to give rise to a conflict of interest;

(ii) if the matter has been authorised by the directors.

**6. Duty Not to Accept Benefits from Third Parties**

A director must not accept a benefit from a third party given to him/her because:

- (i) he/she is a director; or
- (ii) he/she does (or does not do) something as a director.

**7. Duty to Declare Interest in Proposed Transaction**

A director must declare to the other directors the nature and extent of any interest in a proposed transaction or arrangement with the company.