

## The Charity Commission model memorandum and articles of association

This note is a summary of the main defects in the Charity Commission model memorandum and articles of association.

Despite its defects, the Charity Commission model is a good starting point for charitable company constitutions. We have prepared an amended version of the Charity Commission model, which rectifies the problems identified below. Please contact us if you would like further information.

### Memorandum of association

- The registered office statement in clause 2 conflicts with the Companies Act 1985.
- The prohibition on permanent trading goes further than necessary.
- Various statutory references are out of date.
- There are various arbitrary and unnecessary references to compliance with good practice.
- There is no power to issue guarantees (such a power cannot be implied for charitable companies).
- There is no express power to act as a trust corporation.
- Clause 5 prohibits directors from buying goods or services from the charity, even on arm's length terms - so no sales of Christmas cards or fundraising merchandise to directors.
- The maximum limit on interest paid on loans to directors (2% under base) is unrealistically low.
- Various other provisions are too narrowly drawn.

### Articles of association

- The current (2003) version of the Charity Commission model articles contains an obligation to admit applicants as members unless the directors consider it to be in the best interests of the charity to refuse the application, in which case they have to give reasons to the applicant.

While this appears to be a sensible and democratic provision, it is flawed since the directors will rarely have available to them the information which they need in order to reach a decision on suitability. Even if they do, there

may be good reasons why they should not have to give reasons to the applicant.

The Charity Commission wording assists pressure groups in gaining control of charities and leads to the type of problems experienced by the RSPCA when the Countryside Alliance encouraged its supporters to apply to become members of the RSPCA.

For these and other reasons, we normally favour the use of the previous (1993) edition of the Charity Commission model articles.

Both the 1993 and 2003 editions have a number of defects, such as not permitting proxy voting. Our amended version of the Charity Commission model rectifies these problems

We can provide all of the necessary legal documentation required to form a charitable company, including Companies House incorporation papers, statutory registers, pro forma minutes of first board meeting, company secretarial services, guidance on duties of company officers and documentation requirements and Charity Commission registration documentation.