

Explanatory notes to accompany the proposed Constitution of the Mendip Caving Group, a Charitable Incorporated Organisation with voting members other than its charity trustees

Introduction

This document summarises the main differences between the proposed CIO constitution and the current constitution, the sources of the wording used, the reasons for the inclusion of each clause and what each is intended to achieve. In addition to these explanatory notes members may also wish to consult the following documents, either online or via request to the Honorary Secretary. The Charity Commission's advice and Statutory Instrument provide clear guidance on what must be included in a CIO constitution and what is recommended.

The Charity Commission's advice and model constitution:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562468/Association_Model_Constitution.pdf

The Statutory Instrument of 2012, No. 3012 upon which the Charity Commission's advice is based, The Charitable Incorporated Organisations (General) Regulations 2012:

https://www.legislation.gov.uk/uksi/2012/3012/pdfs/uksi_20123012_en.pdf

The Charities Act 2011 which consolidates all previous enactments:

https://www.legislation.gov.uk/ukpga/2011/25/pdfs/ukpga_20110025_en.pdf

The current constitution and rules, dated October 2020, is available in the member's area of the Mendip Caving Group's website

Members are encouraged to read the new constitution and explanatory notes in advance of the general meeting at which the constitution will be considered to help expediate the discussion. Be warned: this new constitution is much longer than our current constitution, but this is a requirement of CIO legislation.

Explanatory notes

The clause names and numbers in bold are listed in the same order as in the proposed constitution document. Old clause numbers refer to the clause numbers in the current constitution & rules.

Date

This has deliberately been left blank. A date will be entered when the constitution has been agreed by the Charity Commission and registered by them. The date is not the earlier one of the MCG's General Meeting at which the constitution has been voted upon.

1. Name

No change from the current constitution (old clause 1).

2. National location of principal office

A requirement of a CIO constitution and a direct copy from the model constitution.

3. Object

No change from the current constitution (old clause 2).

4. Powers

The powers of the CIO are directed towards the object of the Group. Specific powers regarding borrowing money, purchasing property, staff employment and investment management are explicitly stated in line with the recommendation of the model constitution.

5. Application of income and property

Included as recommended by the model constitution, with a few minor wording changes, to affirm that income and property are direct towards the object of group. Charity trustees may be entitled to claim reasonable expenses when acting on behalf of the MCG.

6. Benefits and payments to charity trustees and connected persons

Clearly defines the very restricted circumstances in which the charity trustees and those closely connected to them may receive a payment or benefit. Taken from the model constitution with a few minor wording changes.

7. Conflicts of interest and conflicts of loyalty

Summarises the process for managing a situation when a charity trustee has a personal conflict of interest with the interests of the MCG. A direct copy from the model constitution.

8. Liability of members to contribute to the assets of the CIO if it is wound up

In the unlikely event of dissolution of the charity the Members have no liability to contribute towards the MCG's debts.

9. Membership of the CIO

Captures the essence of MCG membership, privileges and subscriptions outlined in the current constitution (clauses 3, 4, 5 and 6). The structure and scope of the clause is taken from the model constitution but where possible the content and wording reflects closely that used in the current constitution and workings of the Group.

The new constitution defines three classes of membership – Probationary, Full and Affiliate.

- The term "Affiliate", as opposed to "Associate", was chosen as a means of distinguishing our

requirement for such a class of membership from that of the Charity Commission's definition of "Associate". The latter envisaged as an informal class of membership that does not count towards the membership total of the Group nor provides such members with any rights or obligations.

- The concept of Honorary status remains, and its definition remain as in the current constitution, but it is no longer a separate class of membership. The class of membership for those with Honorary status will derive from whether they were previously a Full or an Affiliate member.
- Only Full members will have voting rights and be able to stand as a charity trustee. The current constitution allows for a maximum of one Associate member to hold office on the Committee but see clause 18 for how the charity trustees may delegate their powers.

10. Members' decisions

Governs decision making by members. Included as recommended by the model constitution but with a few minor wording changes to reflect MCG historical practice.

11. General meetings of members

Reflects MCG procedures for calling, running and voting at general meetings as outlined in the current constitution (old clause 9). The structure and scope of the clause is taken from the model constitution and is thus considerably more comprehensive but where possible the content and wording reflect that used in the current constitution and our Group's workings. Far more detail is included to cover who can call a general meeting and how, what happens if certain processes are not followed, if a quorum is not achieved, how voting should be conducted and how to adjourn a meeting.

There are some new elements:

- Processes have been refreshed to include electronic communication, virtual attendance and virtual voting at general meetings.
- General meetings must take place at a location which is within reasonable travelling distance of the Group's headquarters.
- The nomination process and role of the chair has been clarified including the provision for a casting vote if there is an equality of votes.

12. Charity trustees

A new clause to replace clause 14 of the current constitution, the primary objective being to create a clause that addresses the function and role of charity trustees to meet the requirements of a CIO. Where possible the wording matches that of the model constitution but with wording changes made to reflect MCG historical practice and, where appropriate, provisions in the current constitution & rules.

There are some important changes:

- Charity trustees are responsible for managing the affairs of the MCG. They are not synonymous with the definition of the current Committee nor the custodian trustees.
- There can be between eight and twelve charity trustees.
- A minimum core of ten roles that they must cover as a collective has been defined in the constitution. The classification of these new roles differs to how they are listed in the current constitution and rules at clause 7. The new roles to be fulfilled are: Secretary, Treasurer, Recorder, Caving Secretary, Investment Administrator, Cottage Warden, Social Secretary, Tackle Master, Editor, and Librarian. One charity trustee may perform more than one role.

- Only a Full Member may be a charity trustee.
- The first charity trustees of the new CIO must be listed in the new constitution in line with the model constitution to enable a seamless transition from the current constitution.

13. Appointment of charity trustees

A new section to replace the committee and custodian trustee appointment processes in clauses 9 and 14 in the current constitution. Option 1 in the model constitution has been selected whereby the charity trustees are elected by the membership and retire by rotation. The process for co-option of new (custodian) trustees by a Committee nomination and secretary's appointment has changed.

There are some new elements to the current practice:

- At every annual general meeting one-third of the charity trustees shall retire from office although retiring Trustees may stand for re-election.
- Either the members or the charity trustees may decide to co-opt a new charity trustee if an additional or replacement post is required before the next annual general meeting.

14. Information for new charity trustees

Included as recommended by the model constitution and a direct copy of the wording therein. It affirms an existing, yet informal, MCG practice.

15. Retirement and removal of charity trustees

A new section to replace relevant sections of clause 14 of the current constitution. The structure and scope of this new clause is taken from the model constitution and is thus more comprehensive than the current provision.

A change has been made to the process of removing a charity trustee at general meeting to follow the model constitution. It is now based upon a two-thirds majority of the members eligible to vote at that general meeting rather than a four-fifths majority of members present and voting at an Annual General Meeting.

16. Reappointment of charity trustees

A new clause taken directly from the model constitution clause to provide clarity about reappointing trustees who have retired.

17. Taking of decisions by charity trustees

A new clause taken from the model constitution with a few minor wording changes. Decisions can be taken at a meeting or by resolution in writing or electronically as agreed by the majority of the charity trustees. Charity trustee decisions can be varied by a majority vote at a general meeting.

18. Delegation by charity trustees

An entirely new clause which succinctly summarises how the charity trustees may delegate their powers. This is different to the current delineation of the trustees as being eight Committee members and four custodian trustees.

Thus, there are some important changes:

- The charity trustees can delegate any of their powers and functions.
- They may delegate to one or more committees.
- Each committee consists of two or more persons, one of whom must be a charity trustee.
- The charity trustees may also nominate one or more full members to represent the MCG in

its dealings with other organisations or at events. Examples here might be at a CSSS meeting or Hidden Earth conference.

- For all acts of delegation there are clear requirements for record keeping and reporting.

19. Meetings and proceedings of charity trustees

A new clause taken from the model constitution with a few minor wording changes. Meetings of the charity trustees must be called, chaired and held in accordance with the provisions of the Constitution. Provision for electronic communication and participation virtually has been made.

20. Saving provisions

A clause taken directly from the model constitution. Its inclusion minimises the risk of trustees' decisions being declared invalid for purely technical reasons.

21. Execution of documents

A new clause taken from the model constitution with a few minor wording changes. It affirms the existing MCG practice of documents requiring the signatures of at least two charity trustees.

22. Use of electronic communications

An entirely new clause that brings the constitution up to date regarding the use of electronic forms of communication between the members and the charity trustees, provided there is compliance with statutory regulations. The clause removes the ambiguity of the current constitution. The structure is taken from clause 22 of the model constitution and supplemented by suggested wording in the appendix with a few minor wording changes to meet our needs.

23. Keeping of registers

A requirement of a CIO constitution and a direct copy from the model constitution.

24. Minutes

Included as recommended by the model constitution to remind charity trustees of their obligations. A few minor wording changes made to reflect MCG historical practice.

25. Accounting records, accounts, annual reports and returns, register maintenance

The MCG formally agrees to observe statutory rules of registration and accounting and to keep records of its meetings. It reflects the current MCG requirements of appointing two independent examiners at the AGM and for the Treasurer to keep proper accounting records as outlined in clauses 9 and 10 of the current constitution.

26. Rules

Included as recommended by the model constitution, with a few minor wording changes. The Trustees are empowered to make rules such as those relating to cottage use provided that they are reasonable, expedient and made readily accessible to the Members. A draft copy of the MCG rules will be available for review and discussion but agreement on the rules is not required to continue the process of converting to a CIO.

27. Disputes

A new clause included as recommended by the model constitution and a direct copy of the wording therein. In the absence of agreement, disputes are to be referred to mediation before legal action.

28. Amendment of the constitution

A new clause to replace clause 11 of the current constitution & rules. Where possible the wording matches that of the model constitution but with wording changes made to reflect MCG historical practice. As with the current constitution, any amendment requires a four fifths majority in favour as voted on at a general meeting.

Any constitutional change must be sent to the Charity Commission within 15 days of being voted upon at the General Meeting and only takes effect when it has been recorded in their Register of Charities.

29. Voluntary Winding up or Dissolution

A new clause to replace and update clause 15 of the current constitution. Where possible the wording matches that of the model constitution but with slight wording changes.

30. Interpretation

A new clause has been added to explain some of the terms used in the rest of the constitution, and most notably the meaning of a “connected person” as referred to in clause 6.