

CONSTITUTIONS

Any group of people who get together to carry out a common aim are, just by doing this, entering into a legal relationship. Whether they like it or not, the law will impose obligations and responsibilities on the group, and these responsibilities cannot be evaded by ignoring them. Many groups only start to think about their responsibilities when something goes wrong and this is usually too late. It is very important for groups to think about organising themselves before things go wrong, firstly because they may be able to prevent certain problems occurring by organising, and secondly even if the problems cannot be prevented, at least the group will have some kind of machinery for discussing the problem and attempting to deal with it. The usual problems are to do with money and these can arise either during the course of the group's operation, for example, if there is a dispute as to how the money should be spent, or after the group has been wound up and it turns out that there are still unpaid debts.

It is very important for groups to be aware of the fact that by joining a group they are accepting responsibility for everything that the group does. Some groups may leave all the responsibility with the full membership, and others may leave it to the Management Committee, but whichever way it is done the members of the group generally or the Management Committee will still be personally liable for whatever happens. It is therefore very important to consider at the outset of the group's activities, firstly exactly what the group has been set up for and how it will operate, and secondly whether or not the group wishes to register in such a way as to achieve limited liability. Registration will be dealt with later, as will charitable status.

The advantages of having a Constitution are that the group will be able to set out exactly how it wishes to operate and can put down in writing such things as membership, the holding of meetings and dealing with finances. The following is an outline of the sort of clauses that should be included in the Constitution. How the Constitution is written and what goes into it is entirely up to the members of the group since it simply sets out the relationship between the members. It is not necessary for the Constitution to be registered with anybody and if your group does not wish to have a Constitution then it does not need to do so. However, you may find that if you are grant aided then the grant making body may very well insist on you having a Constitution and may insist on checking it as a condition of giving the grant. Apart from this however no outside body will have the right to interfere in what goes in the Constitution.

What a Constitution should include

- (i) Name - this is entirely up to you. The only thing that you have to avoid is to give your group a name that is misleading or could be confused with another organisation. Otherwise it is simply a good idea to choose a name that gives an idea of what the group has been set up for.
- (ii) Aims/Objects - this means the purposes for which the group has been set up. They are extremely important because unless they are properly written you might find that they become the source of a lot of disputes within the group. They limit what your group can do so that you should make sure that they are reasonably flexible when you are writing them, but no so broad that they could allow abuse of the object by unscrupulous members. If you intend to register as a charity then your objects will need to be drafted to come within one of the charitable headings. These headings will be dealt with later.
- (iii) Powers - these are the means by which the group can achieve their objects. You could either make them very general, or you could be quite specific about it and give power to raise funds to employ staff and so on. However, if you are specifying things that the group can and cannot do, then make sure that you have a general phrase at the end allowing any other lawful thing to be done, or else you may find that you have to keep on altering your Constitution every time you want to extend your activities. The usual sort of general clause is along the lines of "the group shall have power to do all things necessary and expedient for the fulfilment of its objects".
- (iv) Membership - it is entirely up to you who you allow to join your group but you do need to specify who can join and how they can join. It is also important if you wish to be able to remove members to have a clause in allowing you to do that, and if you want to allow different classes of membership then you will need to spell this out.
- (v) General Meetings - you will need to set out here firstly when the Annual General Meeting is held and then special general meetings when the whole members get together for important issues, and then if you wish to have general meetings on a regular basis you will need to lay this down as well. For all the general meetings you will need to put in the length of notice which the membership must be given and the necessary quorum. For the Annual General Meeting as well you will need to specify that the audited accounts should be produced at the meeting and that the Officers will give reports. If you have election of committees at an Annual General Meeting, which is the usual way of electing a committee, then you will need to lay down the procedure for this as well.
- (vi) Executive or Management Committee - if your group is large enough to have a Management Committee as well as general meetings of the membership, then you will need to set out how the Executive Committee are appointed and removed, who the Officers are, and the powers of the Committee. As mentioned above the usual procedure for the election of the Committee is for this to take place at the Annual General Meeting, but some groups do this by postal ballots if there is difficulty in getting the membership together. The Officers that you have are entirely up to you, but it is usual to have a minimum of a Secretary and a Treasurer. There is no legal obligation on you to have a Chairperson, some groups have one and others simply have all the members of the Management Committee taking it in turns in Chairing meetings. You will also need to specify the procedure for running committee meetings such as the quorum, notices to

be given, and any other matters which you think are important.

(vii) Control of Funds or Finance - you need to specify here that firstly all the finance raised or given to your group will be used only for the objects, and then that proper books and records will be produced, a bank account opened, and accounts will be audited and presented to the general meeting. It is usually the Treasurer's responsibility for doing this and this should be set out in the Constitution. It is also quite common to have along with the finance, an indemnity clause which basically states that any Officers or members of the committee who carry out any activities on behalf of the group will not be personally liable for group's debts, but will be entitled to be indemnified from the group's funds. Of course this only applies as long as the group has funds. If the group's funds are not sufficient to meet the group's debts then all the members of the group will have to get together to pay the balance. Having an indemnity clause simply spells out for the benefit of the members the fact that one member is not accepting any extra responsibility over the other members. It does not in any way limit the members' liability for debts. The only way to do this is to register the group in such a way as to achieve limited liability. This will be dealt with later.

(viii) Alteration of the Constitution - you will have to specify in your Constitution how it may be altered. This is usually done by the members at a general meeting, and it is usual to specify more than a simple majority, i.e., two thirds or three quarters of the members have to decide whether or not to make a specific alteration. It is also usual to give a reasonably long notice of the meeting at which the Constitution will be altered, specifying the proposed alteration.

(ix) Dissolution - again this is something that is usually done by the members in a general meeting, and again the clause should set out the notice to be given and the majority required to dissolve the organisation. You will also need to specify here what happened to the group's property on dissolution, i.e., it should not be divided among the members but should be given to some other similar group. If you register as a charity then you will need to specify firstly that any surplus property can only go to another charity, and that the Charity Commissioners have to approve of this.

If you do not register the group in such a way to give it separate legal identity, then you will also need to specify in your Constitution that Trustees should be appointed so that any property and investments are in their name. This means not just property that is bought, but property that is leased. We will deal with Trustees and Trust Deeds below.

#### TRUSTS

Groups usually think of appointing Trustees when they have to lease property. This is because the law says that leases and conveyances can only be given to individuals or to organisations with their own separate legal status. An ordinary group, which in law is called an un-incorporated association, cannot have a lease in its own name, but must select one or more people to sign the lease on its behalf. These people then become Trustees, which means that they hold the lease not for their own benefit but for the benefit of the group. Although Trusts can be verbal, it is a good idea to get the Trustees to sign a Trust Deed because the Deed will spell out what their obligations to the group are, and if they do something wrong, then it is easier to prove that they are Trustees and hence to sue them.

This type of legal status is not ideal because it means that the Trustees have undertaken a special responsibility on behalf of the group, for example, they have signed a lease and, therefore, agreed to pay the rent, and they are the ones who will be sued if the rent is not paid and will be personally liable for the rent and any other of the group's liabilities which they have agreed to cover by signing the Trust Deed. The Trustees can, of course, use the group's property to meet the group's debts, and they can, of course, sue all the members of the group for reimbursement of what has had to be paid out. It is, therefore, a good idea if your group has substantial assets or is undertaking activities which may prove to be expensive for your group to consider registering in a way which gives the group separate legal identity and limits the liability of the members for paying the debts of the group.

Against this must be set the advantages of staying as a Trust and not registering as anything else which are that the Trust is quick to do compared to having to register, it does not have to be registered with anybody to be valid, there are no registration fees and unless you choose to pay a solicitor to write the Trust Deed it will not cost you anything, and there will be no outside interference in how the group is run.

#### FRIENDLY SOCIETIES

A Friendly Society is really a kind of registered Trust. It has certain advantages over a Trust, but it does not have as many advantages as the next two options. There are a number of different types of Friendly Societies, among them Societies which are for "any benevolent or charitable purposes". This means that the purposes for which the group has set up must be to provide benefits for people other than the members of the group.

Once a group has registered as a Friendly Society then it will get the following advantages:- (1) where property is in the name of Trustees and one dies or retires, it will automatically pass to the new Trustees without having to write a new Trust Deed. (2) legal proceedings can be brought by the Trustees in their own names rather than all the members of the group having to do it. (3) there is a simplified procedure for amalgamating with other Societies or registering as a Limited Company. (4) there is a special court procedure for recovering property from dishonest Officers which is much quicker. (5) there is an arbitration procedure whereby the Registrar of Friendly Societies can arbitrate on internal disputes, instead of them having to go through the courts. (6) Friendly Societies who are set up for "benevolent or charitable purposes" are exempt charities under the 1961 Charities Act. This means that provided they fulfil the definition of "charitable" to the Registrar of Friendly Societies satisfaction, they will not need to register with the Charity Commissioners as well. However, there are a number of disadvantages to registering. These are:- (1) Friendly Societies do not have their own separate legal identity for all purposes. (2) registering as a Friendly Society does not confer limited liability on the members of the Friendly Society, i.e., they or the Management Committee are still personally responsible for all the group's debts and liabilities. (3) there are registration fees to pay, and you may need to pay a solicitor for help with registering as well. (4) you will have to comply with the Model Rules laid down by the Registrar of Friendly Societies which may not be consistent with how you would like to write your Constitution. (5) your rules will be publicly available and you will have to have your accounts professionally audited and make financial returns to the Registrar and pay fees for doing so. There are also fines for non-compliance with these and other formalities.

If your group is prepared to go to the trouble and spend money on registering then it would be unwise to register as a Friendly Society

because it does not have enough advantages compared to the cost and the trouble that needs to be taken. However, if your group does decide that it wishes to register, then Model Rules can be obtained from the Registrar of Friendly Societies. You will need to copy these, have them printed up and send two copies of them together with the application form and the fee to the Registrar. You will need to have a list of seven founding members, the Secretary, Trustees and any members authorised to handle litigation. The address of the Registrar is, The Chief Registrar of Friendly Societies, 17 North Audley Street, London W1Y 2AP. Telephone number 01 629 7001.

### INDUSTRIAL AND PROVIDENT SOCIETIES

This type of registration is also suitable for voluntary organisations and it has two big advantages, firstly it confers legal identity on the group and limited liability on the members, and one type of Industrial and Provident Society is an exempt charity. There are two types of Industrial and Provident Society. Probably the best known is what is called a "bona fide co-operative". This is the type of registration most commonly used by workers co-operatives and housing co-operatives. However, the second type of Industrial and Provident Society is a Society "for the benefit of the community". This is the type that is an exempt charity and like the benevolent or charitable Friendly Society if you are a group who is carrying on activities for the benefit of people other than the members of the group, then you will be an exempt charity under the Charities Act and will only need to register as an Industrial and Provident Society rather than having to register with the Charity Commissioners as well. There are a number of technical rules which have to be complied with to register as an Industrial and Provident Society, but most of these should be no problem for voluntary organisations, for example, one of the rules is that there has to be a limitation on the distribution of profits to the members. As voluntary organisations will usually not be doing this in any event, this should be no problem. Another rule is that Industrial and Provident Societies have to be democratically organised so that no one person in the group can have a major share holding, but again this should be no problem for voluntary organisations.

If you decide to register as an Industrial and Provident Society then the advantages are as follows:- (1) registration as an Industrial and Provident Society gives your group a legal identity separate to that of its members. This means that the lease and any other property can be in the name of the group, regardless of any change in membership, and you will not need to have Trustees or to bother with a Trust Deed. It can also sue and be sued in its own name and again does not need to use Trustees or to have all the members taking legal proceedings in their names. (2) limited liability for the group's debts is given to the members of the group. This means that if the group does not have enough money of its own to pay for its debts, then the members cannot be asked to pay for the debts personally. They are only responsible for paying for the amount of shares which they have agreed to buy. In most voluntary organisations members on joining will usually agree to buy one £1. share and this is the limit of their liability. (3) like a Friendly Society, an Industrial and Provident Society can use the Registrar for arbitration of disputes rather than having to go to the courts. (4) like a Friendly Society, provided your group's objects come within the definition of charitable, then you will be an exempt charity under the Charities Act and will not need to register as a charity with the Charity Commissioners. There are obviously some disadvantages to registering to balance out the advantages. These are as

follows:- (1) like Friendly Societies there are formalities to comply with on registering, such as, having to have certain things in your rules, and having to send annual returns and audited accounts to the Registrar and having your rules publicly available. (2) there are fees to be paid on registering, although there are no fees payable on filing returns. There are however quite expensive fees on altering the rules once they are registered. (3) the group must use the word 'limited' in its title, although permission can be given by the Registrar to dispense with this and there is usually no problem in obtaining permission.

If you do decide that you want to register then you will need to contact The Chief Registrar of Friendly Societies who also deals with Industrial and Provident Societies. There are at present no model rules available for Societies for the benefit of the community and the Registrar will simply send an application form and a list of the matters that have to be included in your rules. If you already have a Constitution then you will have most of these matters already dealt with, such as membership and meetings and so on, but you will need to add some others to do with shares, auditors and other technical matters. The quickest and easiest way to register is to get hold of the rules of a Society who is already registered and use those as a basis for writing your own. Otherwise if you draft your rules from scratch and send them in draft form to the Registrar he will check them and suggest alterations. Once these draft rules have been agreed then you will need to print them up and send them to the Registrar with two copies of the rules, the application forms and the fee. The application form will need to be signed by seven founding members and the Secretary. Hopefully societies for the benefit of the community will eventually have model rules which they copy as is the case at the moment with co-operatives. Because each group's rules have to be checked individually at the present time the procedure can be slow and this may put people off registering. Once you are registered then as said above you are an exempt charity under the Charities Act, and to claim the charitable status you will simply need to write to the Rating Authority or Inland Revenue informing them that you are registered as an Industrial Provident Society and quoting the number.

#### COMPANY

This is the type of registration that most groups think of when they reach a stage in their development when they feel the need to obtain limited liability for members and separate legal identity for the group. Like Industrial and Provident Societies, there are two types of Company, i.e., Companies limited by shares which is the common commercial type of registration, and Companies limited by guarantee which is designed for non-profit making bodies. The difference between the two types of Companies is that in a Company limited by shares, the members agree to buy a share or more than one share, whereas in a Company limited by guarantee the members simply guarantee that they will pay a certain amount in the event of the Company being wound up and there not being sufficient money available out of the Company's assets to pay its debts. The sum guaranteed by the members is usually £1 each. In both cases this is the limit of the member's liability, i.e., if they guarantee to pay £1. on winding up then they cannot be asked to pay any more.

The advantages of registering are as follows:- (1) once a group is registered as a Company then it will have its own separate legal identity and can have property in its own name and can take legal proceedings in its own name. (2) the limited liability is conferred on the members so that the members are not personally responsible for any of the Company's debts.

There are however certain disadvantages in registering as a Company. (1) like Friendly Societies and Industrial and Provident Societies, certain formalities will have to be complied with, i.e., there is a set pattern for Companies to follow in drafting their Memoranda and Articles of Association so that you cannot simply use your Constitution as a basis for registration and there are fairly detailed annual returns that have to be filed together with the audited accounts. (2) Company Law is fairly complicated and restrictive because it is designed to protect members of the public from unscrupulous Company operators. (3) there are fees to pay on registering and on filing returns, and you will also need to use a solicitor to register your group as a Company. (4) you must use the word 'limited' in your name although it is possible to get permission to dispense with this.

If you do need to register as a Company then you could do this in two ways, (1) you can buy a ready made Company and pay for the Company's name to be changed. The advantages of doing this are that it is very quick, but it does mean that you would be left with a set of rules which you had not been involved in writing and which might not suit the way in which you wish your group to operate.

(2) You can prepare a Memorandum and Articles of Association or have it prepared for you and send it with the application form to the Registrar of Companies together with the fee. Again the Memorandum and Articles must be printed up and you must have the application signed by at least two members and the Secretary together with other details such as the list of the Directors, the address of the Registered Office and so on. The Registrar of Companies is at Companies House, Crown Way, Maindy, Cardiff. Telephone number 0222 388588.

It is worth noting that with Companies you will not obtain charitable status unless you also register as a Charity with the Charity Commissioners, so you will be dealing with two types of registration. If your group has already registered as a Charity with the Charity Commissioners and then decides to become a Company then you will need to get the permission of the Charity Commissioners to alter your Constitution in order to register as a Company. The Directors of the Company will be responsible to the Charity Commissioners as well as to the Registrar of Companies.

#### LIMITED LIABILITY

It must be pointed out that if you obtain limited liability by registering either as an Industrial and Provident Society or as a Charity then you may find that people who you wish to make contracts with, such as a landlord or supplier of goods, because they know that you have limited liability because it has to appear on your notepaper, may very well ask for personal guarantees from some of the members of the group that the contact will be complied with. This is because they know that if, for example, the rent is not paid and the group does not have any money then there is no way that they could obtain the rent except by getting a personal guarantee.

#### CHARITABLE STATUS

Registering as a Charity gives certain financial advantages to a group, but it does not give any other advantages such as limited liability. If you register as a Charity then you will be a Charity as well as one of the other types of legal status outlined above, i.e., you will be a Charity and an Unincorporated Association, or a Charitable Trust, or a Charity and a Company. The same rules apply to all Charities no matter what their legal status, and the people responsible for running the group will be responsible to the Charity Commissioners as well. Groups register with Charities either because they wish to reduce their financial liability, for example, so they will not have to pay income tax or to reduce their rates, or in order to make fund raising easier.

In order to be a Charity you have to satisfy the Charity Commissioners that your objects come within the definition of "charitable purposes". This is very strictly defined and you will have to come within one or more of the following headings:- (1) the relief of poverty. This does not necessarily mean giving away money directly, for example, it could cover giving advice on benefits, or providing facilities for an area which would not otherwise have them.

(2) the advancement of education. This does not have to be through a school and it could be education on a variety of matters.

(3) the advancement of religion.

(4) other purposes beneficial to the community. This is the heading under which, for example, community centres and community associations register and also includes what are known as recreational charities.

In addition to coming within at least one of those headings you will need to show that you are going to benefit a substantial section of the public. There is no set figure for the definition of "substantial" but the Charity Commissioners tend to be fairly restrictive on this point and you will need to show that the catchment area of your group is fairly wide. The only exception to this is if you were set up to relieve sickness which is one of the sub-headings under the relief of poverty section, in which case you will be able to register even if you are only benefitting a fairly small number of people.

The advantages of registering as a Charity are as follows:- (1) there is an exemption from most taxes. (2) Charities are entitled to at least a 50% reduction in rates and some local authorities give more than a 50% reduction. (3) some large organisations who are Charities themselves will only be able to give grants to groups who are Charities.

The disadvantages of registration are as follows:- (1) you will have to comply with the Charity Commissioners' views on what is charitable, and they will scrutinize your Constitution and are entitled to insist on any alterations that they wish as a condition of registering. (2) once registered the group's objects cannot be changed without the consent of the Charity Commissioners and they are entitled to Annual Returns together with the right to scrutinize what your group is doing with its money. If the Charity Commissioners decide that you are not carrying out the objects for which you were registered then they can take the management of your group from your present management and hand it over to another management. (3) the Charity Commissioners will interfere in the selling of any land which your group owns, and can considerably delay such a sale. They will also decide on how your property is disposed of if your group winds up. (4) the Charity Commissioners will not register you as a charity if they think any of your activities are "political". They define the term "political" very widely and this will include any suggestion of campaigning, and a number of groups have fallen foul of the Charity Commissioners because they have mentioned to them the fact that they have been involved in campaigning over local issues.

If you do decide to register as a charity then you will need to send a draft Constitution to the Charity Commissioners together with details of what your group does and how it raises its income. The Charity Commissioners will then consider your Constitution and write back with any alterations or queries. Once it has eventually been agreed then they will send you an application form to be signed, which should be returned with the final copy of the Constitution. There is no fee on registering. If you have a Trust Deed as well then you will need to send this with the Constitution. Because the Charity Commissioners scrutinize every application with great care, this can be a slow process. The address of the Charity Commission for the North of England and Wales is, Graeme House, Derby Square, Liverpool L2 7SB. Telephone number 051 227 3191.