



Do you have the right governing document?



You may be thinking about setting up an organisation, joining a new Board or think it is time to review your organisation's governing document; but where do you start? What should you have in it? And how do you know if you have the right document?

A governing document is extremely important to an organisation. Alongside charity law, and for some, company law the governing document is the rule book by which you operate. The governing document may start its life as some rules scribbled down as you go along but as your organisation grows and develops you will need to formalise these rules – especially if you are applying for funding; funders very often ask you to send them your governing documents with any bids submitted.

What type?

The legal form your organisation takes will determine what type of governing document you have:

- Unincorporated Associations will have a Constitution or Rules;
- Companies (including incorporated charity, Community Interest Company (CIC), Company Limited by Guarantee (CLG)) will have a Memorandum and Articles of Association;
- Charitable Incorporated Associations (CIO's) will have a Constitution;
- Industrial and Provident Societies (IPS) will have Rules; and
- Charitable Trusts will have a Trust Deed.

The fact that an organisation is charitable affects the content of the governing document, in particular the objects clause, but does not affect the type of governing document that is suited to each legal form of organisation.

Legal Purposes

It is important to remember that charitable organisations are fundamentally constrained by their legal purposes, or objects. In other words your objects determine what you can and cannot do in the future. Everything else comes from these; therefore it is vital to get this right at the start.

Purposes: To be a charity an organisation must have purposes (or aims or objects) all of which are exclusively charitable; a charity cannot have some purposes which are charitable and others which are not (Charity Commission). The Charities Act 2011 sets out 13 charitable purposes under which your charities objects must fall.

Objects: what the organisation has been set up to do, as set out in the governing document. They describe who the beneficiaries are and within what geographical area. I.e. the objects are the purposes for which an organisation has been set up.

The legal structure is the vehicle for carrying these out and not the purpose in itself. The legal form should facilitate the work of the charity, not unduly restrict the assets or liabilities the charity can take on, nor leave its trustees unacceptably exposed to risk.

Therefore, there is no need to rush into unsuitable legal forms or incorporation, especially if your organisation is small with no staff or premises etc. that create greater risks.

Governing document templates can be found on the [Charity Commission](#) and [Companies House](#) websites.

Your Governing Document Should contain...

- Organisation's name
- Location
- Purpose or 'objects' – what was the organisation set up to do?
- Powers – how can the organisation do what it was set up for?
- Membership Provisions (Foundation model, moderately restricted membership or Association Model) – if relevant
- Provisions around who can be a trustee and how they are elected, appointed, min and max trustee numbers, conflicts of interest etc.
- Procedures for calling meetings (general and trustee board)
- Provisions for amending the governing document and closing the organisation

The governing document should be written for your organisation and what it is doing as well as what you may want your organisation to do in the future. Once it is written, your governing document should be looked at and amended as needed to ensure it is appropriate to your organisation as it develops. To change your objects, you will need consent from the charity commission.

You should never have more than one governing document for your organisation (if you do please contact CAS), and if the organisation changes its legal form the governing document will also change accordingly.

Memorandum and Articles of Association for Charities which are also Companies

Memorandum: Company's name, registered office, objects, powers and liability

Articles: Contract between the members and the charity and essentially deals with the internal organisation of the company

(Russell-Cooke Solicitors)

Common problems arising with governing documents are:

- Having more than one governing document
- Rushing into a legal form and therefore a governing document that is ill-suited to the organisation
- For Memorandums of Association the Objects are too narrow
- Language used is archaic and/or full of jargon making it hard to read and understand
- Insufficient powers given to the governing body
- Not updated to include Charities Act 2006 i.e. around trustee indemnity provisions or payment of trustees for services and goods provided to the charity

- Memorandum and Articles of Association have not been amalgamated
- Overly complex joining rules
- Quorums for members meetings and board meetings too low or too high
- Inconsistent with current law i.e. proxy voting
- No conflict of interest provisions
- Unclear procedures for delegating powers
- Complicated, unclear or non-existent nomination procedures

Resources

The following resources are useful in keeping up to date and understanding your governing document:

- Starting up a charity: <http://www.charitycommission.gov.uk/start-up-a-charity/setting-up-a-charity/about-charities/>
- CIC Constitution Guidance: <http://www.bis.gov.uk/cicregulator/forms-introduction/constitution-guidance>
- Companies House: <http://www.companieshouse.gov.uk/about/modelArticles/modelArticles.shtml>
- Governing Documents for charities: <http://www.charitycommission.gov.uk/start-up-a-charity/setting-up-a-charity/setting-rules-for-your-charity-governing-documents/>

Support

If you would like any support with governance or any other issues facing your organisation, please contact the Development Team at Community Southwark: development@communitysouthwark.org.uk or 020 7358 7020.