



Commentary on revised Articles of Association

Marine Conservation Society

November 2021

1 Introduction

- This note accompanies the proposed revised articles of association (the "**revised Articles**") for the Marine Conservation Society (the "**Charity**").
- The Charity was incorporated on 23 October 1990 and is governed by memorandum and articles of association dated 23 October 1990, as amended by a number of subsequent special resolutions ("**existing Articles**"). The board of Trustees of the Charity now proposes a number of changes to the existing Articles. The initial prompt to review and amend the existing Articles was the need to include provisions allowing the Charity to hold meetings of the members electronically so that we can continue to hold members' meetings when it is not possible to hold in person meetings safely and to enable the greatest number of members to participate without travelling long distances. The resulting changes can be found in the new article 20. Having embarked on the process of amending the existing Articles, the Trustees have taken the opportunity to make a number of other changes to bring aspects of the Charity's governance up to date and to reflect changes to the law brought about by the Companies Act 2006. These changes are described in more detail below.
- The purpose of this note is to highlight the changes contained in the revised Articles and to confirm what remains the same. This note should be read alongside the revised Articles which can be found at the link sent to all of the Charity's members with the notice of the Annual General Meeting ("**AGM**").

2 Adopting the revised Articles

- In order to adopt the revised Articles, the current members of the Charity need to pass a special resolution in accordance with the Companies Act 2006. A special resolution to adopt the revised Articles will be presented for the members' consideration at the Charity's AGM, notice of which all members will have received.
- A special resolution must be passed by at least 75% of the members attending and voting at the AGM.

3 What has not changed?

- The fundamental elements of the governance of the Charity have not been changed. The revised Articles make no material change to the following important aspects of the Charity's governance arrangements:
 - 3.1 The Charity's Objects
 - 3.2 The board of Trustees
 - 3.3 The membership
 - 3.4 Trustee benefits
 - 3.5 Dissolution
- Like all companies, the Charity has a "two tier" governance structure comprising:
 - (i) the board of trustees (who are also the company's directors), who are responsible for the day to day management and control of the Charity, and

(ii) The Charity's members, who have the rights under company law which enable them to alter the Articles, to remove trustees and wind up the Charity.

This structure has not been changed. None of the proposed changes to the Articles are 'regulated alterations'. A regulated alteration is an amendment to the articles of a charitable company that requires the prior consent from the Charity Commission, before the change can be adopted. These are changes to:

3.6 a charity's objects;

3.7 rules on paying a trustee or someone connected to them from the charity's funds (i.e. trustee benefits); and

3.8 a charity's dissolution clause.

- As there will be no such regulated alterations to the revised Articles, the Charity Commission will not need to provide consent before the Charity can adopt these Articles.

4 **Summary of changes**

- The revised Articles include the following changes from the existing Articles:
 - 4.1 updates to the provisions governing members' and trustees' meetings, specifically the power for meetings of the members to be held by electronic means;
 - 4.2 updates to reflect changes in the Companies Act 2006; and
 - 4.3 updates necessary to streamline the language used.
- Below you will find a table that lists the changes made to the existing Articles and explains in each case why the change is proposed.
- If you have any questions or comments about the revised Articles that you would like to make before the AGM, please raise these with Nicola Spencer, Company Secretary on info@mcsuk.org.

5 Table of proposed changes

Article	Proposed change	Why?
1	Definition of Companies Act	Updated to simplify and reflect the enactment of the Companies Act 2006
1	Definition of Memorandum	Definition introduced as although the Companies Act 2006 moved most of the contents of the memorandum of association into the articles, some references to the Memorandum remain within the existing Articles. There is still a memorandum, although it is limited to little more than a list of the original members of the Charity (the 'subscribers').
1	Definition of Taxable Trading	Updating the definition to reflect current law and practice.
1	Definition of Written or in Writing	Streamlining the definition for clarity.
4.1.8	Additional text	A clarification to ensure the scope of this power is limited by the lawful restrictions in clause 5.
11.1	Additional text	A clarification to ensure the trustees are managing the appropriate conflicts.
20	Revised article	Modernising provisions on holding Charity meetings to reflect modern methods of communication. A company can lawfully hold its meetings (of trustees and/or members) by electronic means where its articles of association provide for such meetings.
21	Small updates to particular wording	Updated to reflect changes to article 20 (see above).
32.1	Additional text	Clarification of decisions reserved to members
36.1	Trustee appointment conditional upon membership approval at an AGM	Updated to reflect the Charity's practices.
41.2	Additional text	To reflect the rights afforded to a director in the Companies Act to make representations if they are subject to removal.
General	<ul style="list-style-type: none"> • Correcting all references to the 'Company' • Ensuring all pronouns are gender-neutral • Capitalising defined terms • Updating cross references • Removing defined terms that are not used in the articles 	General tidying up of the existing Articles.