

BRITISH SOCIETY OF ECHOCARDIOGRAPHY

(“the Society”)

CHARITABLE COMPANY LIMITED BY GUARANTEE

EXPLANATORY NOTE REGARDING ARTICLES OF ASSOCIATION

We have set out an explanation of the key provisions, and points for consideration, below. Many of the provisions of the enclosed draft Articles will be self-explanatory, so we do not propose to comment on each Article.

1 TERMINOLOGY

- 1.1 You will see that we have referred to the trustees of the charity as the “Trustees” in the Articles and we have referred to the charitable company as the “Society”.
- 1.2 The current Articles refer to the Council, which includes the Trustees and a wider group of individuals who are not trustees of the Society. It is important that it is clear who are the charity trustees, because those individuals have certain legal duties and responsibilities under charity law and company law and are the individuals who are ultimately responsible for the charity.
- 1.3 It is important that the business of overseeing the running the charity is conducted by the Trustees and not the wider Council. The Council members who are not trustees should have a clearer role and you will see that we have recommended that the Society has an Advisory Council.

2 ARTICLE 3: POWERS

Pursuant to the Companies Act 2006 (the **2006 Act**), British Society of Echocardiography will have all the powers of a company of its type (i.e. a charitable company limited by guarantee), and this is reflected in Article 3.1. However, for ease of reference, we have set out a number of the Society’s powers.

3 ARTICLES 4 TO 8: TRUSTEES’ BENEFITS

- 3.1 These Articles reflect the charity law and company law position regarding benefits and remuneration to Trustees.
- 3.2 The ongoing charity law principle is that no charity trustee (including Trustees of charitable companies) should benefit from their position as a trustee unless expressly authorised to do so in the Articles or by the Charity Commission. Furthermore, they must always act with integrity, and avoid any personal conflicts of interest.
- 3.3 Articles 5.1 and 7 set out the permissible benefits to Trustees, including payment for the provision by a Trustee of services or goods to the Society. Please note, however, that with the exception of reimbursement of reasonable out-of-pocket expenses and premiums for indemnity insurance, the Trustees must comply with the provisions and

procedures set out in Articles 7 and 8 before any Trustee is remunerated or receives a benefit referred to in Article 5.

- 3.4 You will note that the provisions and procedures at Articles 7 and 8 include the fact the remuneration/benefit must be reasonable; the Trustee(s) who is/are to receive such benefit/remuneration must be absent from the relevant meeting at which the issue is discussed and must not vote on such matter; the remaining Trustees must be satisfied that such remuneration/benefit will be in the best interests of the Charity; any such arrangement must be in writing; and at all times the number of Trustees in receipt of remuneration/benefit must be in the minority.
- 3.5 Finally, we should add for clarification, that Article 7 does not permit Trustees to be remunerated simply for being a Trustee or in their capacity as an employee for the Society. If the Trustees want to remunerate a Trustee in either of these situations, they will need to seek the prior approval of the Charity Commission and in their application they will need to make a case as to why remunerating a Trustee in the manner proposed would be in the best interests of their Charity.
- 3.6 These Articles are regulated provisions and as such we will need to seek the Charity Commission's prior written consent to these changes.

4 ARTICLE 9: CONFLICTS OF INTEREST AND CONFLICTS OF LOYALTY

- 4.1 The position regarding conflicts of interest has become more complicated since the relevant provisions of the 2006 Act came into force. Article 9 reflects these provisions and sets out the procedures that must be followed in this regard.
- 4.2 Pursuant to the relevant provisions in the 2006 Act, the Trustees will have a duty to avoid all conflicts of interest unless (a) the conflict relating to a transaction or arrangement with the Society is authorised in the Articles or by the Charity Commission (e.g. Trustee remuneration) or (b) any other conflicts of interest (e.g. conflicts of loyalty) have been authorised by the Trustees. The Charity Commission's guidance CC 29 – Conflicts of Interest: A Guide for Charity Trustees should be complied with at all times.

5 ARTICLE 10: TRUSTEES' GENERAL AUTHORITY

Article 10 sets out the Trustees' general authority to manage the Society and to act on its behalf.

Trustees are responsible for setting the strategy of the Society and have overall responsibility to the Society. The Trustees are largely responsible for oversight, risk management and strategic planning and it is the executive team that are responsible for implementing the strategy and managing the day-to-day activities (including the staff and any volunteers (excluding the Trustees) of the Society).

It is important to remember that the Trustee board is responsible for all governance activities, including overseeing legal issues and financial issues. It is the board that ensures that the operations of the Society stay aligned with the charitable objectives of the Society.

6 **ARTICLES 11 AND 12: DELEGATION TO COMMITTEES**

6.1 The wording enables the Trustees to delegate powers to individual Trustees and/or employees of the Society and to committees. However, please note that although the Trustees can delegate their power to executives, managers and committees, they cannot delegate their responsibility. Also, just as the Trustees can delegate power to others, they can also take away that power. Each committee must contain at least one Trustee.

6.2 We have kept the provisions relating to committees generic and not specified (with the exception of the Nominations Committee) any particular committees or sub-committees which will be established, we can be more specific if thought necessary and desirable.

7 **ARTICLE 13: APPOINTMENT OF INVESTMENT MANAGERS**

These standard provisions allow the Trustees to appoint an investment manager.

8 **ARTICLE 15: MEETINGS OF TRUSTEES**

At Article 15.2, we have said that any Trustee or the Company Secretary shall call a meeting of Trustees. We could make the provision more flexible or restrictive. Please let me know if you would like to make any changes to this Article.

9 **ARTICLE 16: QUORUM FOR MEETINGS AND VOTING**

9.1 At Article 16.1, we have stated that quorum for Trustees' meetings will be fixed by the Trustees from time to time and, unless so fixed at any other number, shall be one third of the Trustees or two Trustees whichever is the greater.

9.2 Article 16.3 provides that in the event of an equality of votes, the Trustee chairing the meeting shall have a casting vote. This need not be the case and the Articles could provide otherwise, but having this voting mechanism is often useful so as to avoid a deadlock.

10 **ARTICLES 17 AND 18: REMOTE MEETINGS AND WRITTEN RESOLUTIONS**

For logistical reasons, we have proposed that resolutions of the Trustees can be passed by written resolution and that any of the Trustees or any committee can participate in meetings by telephone conference facility or other communications equipment that allows all persons participating in the meeting to hear and speak to each other (e.g. Zoom, or Microsoft Teams). These provisions are useful where Trustees are not available to meet in person.

11 **ARTICLE 19: APPOINTMENT OF A CHAIR**

We have provided here for the President or in their absence the President Elect or Vice President shall chair the Trustees' meetings. Please also note that we have included provisions to deal with the position whereby neither of them are willing or able to chair a particular meeting.

12 **ARTICLES 20 AND 21: APPOINTMENT AND RETIREMENT OF TRUSTEES**

- 12.1 Article 21.2 provides that, with the exception of Trustees being able to co-opt/appoint a person on to the Board, future Trustees (Elected Trustees) shall be appointed/re-appointed by an ordinary resolution of the members, either to fill a vacancy or as additional Trustees.
- 12.2 It is best governance practice as set out in the Charities Governance Code for there to be no more than 12 Trustees. The existing Articles provide for 16 Trustees and we would suggest that you gradually reduce this and have, as a way forward, suggested no more than 13 Elected Trustees and 3 Appointed Trustees. Please do let us know if you need to change this, but we would recommend working towards a position where you can adopt best practice in accordance with the Charities Governance Code.
- 12.3 The current Articles set out a lot of the detail relating to the election process and inserting these provisions in the Articles means the process is too rigid and you don't have any flexibility to change the process in the future (without another change to the Articles). We have therefore suggested that the process is set out in secondary regulations rather than in the Articles and Article 21.3 provides the power to do this.
- 12.4 The three year term of office is set out in Article 21.4 and it provides that a Trustee does not usually serve more than two consecutive terms in office (i.e. six years), with the exception that Trustees may be permitted to serve longer if they have been elected as an Honorary Officer as this is required to tie in with the Honorary Officer term of office.
- 12.5 Article 21.6 contains transitional provisions to regulate how time already spent serving in office will be dealt with on the adoption of the new Articles.
- 12.6 Article 21.7 deals with the Trustees' power to fill casual vacancies. Those filling casual vacancies will only hold office until the next AGM but shall be eligible to be re-elected.
- 12.7 You will note that we have included provision for the appointment of Appointed Trustees. It is considered good practice for a charity with a professional membership to be able to co-opt/appoint trustees to the board to ensure diversification including a breadth of skills. Ideally there should be people on the board who are not medical professionals, for example financial experts, lawyers and any other type of professional representative that would be deemed helpful in this case. Any such Appointed Trustees should be appointed on the same terms as an Elected Trustee, to have the same standing and obligations in respect of the Society. However, we have specified that Appointed Trustees cannot be appointed as Honorary Officers.
- 12.8 Article 21.13 sets out the provisions in relation to the terms of office for the Honorary Officers.

13 **ARTICLE 22: TERMINATION OF TRUSTEE'S APPOINTMENT**

In particular, please note Article 22.5 which provides that a person's office as a Trustee will terminate if they are absent from three consecutive meetings of the Trustees, and

Article 22.9, which allows a Trustee's appointment to be terminated if they damage the reputation of the Society, its Trustees or its Members. Please confirm whether or not you are happy with these provisions, and let me know if you would like to make any changes.

14 ARTICLE 23: INDEMNITY

14.1 These provisions reflect the current position under company law and charity law. In respect of article 23.1, you may choose whether the Trustees (and other officers) have a definite right to be indemnified out of the assets of the Society or whether they may be indemnified out of the assets of the Society. We have inserted the word "may" for the time being. Please note that a Trustee can only be indemnified against costs, liabilities etc., where the claim is made by a third party (i.e. not the Society itself) and where, for example, it is not a fine imposed by criminal proceedings or a judgement given against the person seeking to be protected in civil proceedings.

15 ARTICLE 24: INDEMNITY INSURANCE

This provision is not strictly necessary as the Charities Act 2011 contains a power enabling charities to purchase indemnity insurance for the benefit of its officers (including the Trustees). However, the inclusion of such a provision expressly authorising the Trustees to use the Society's assets to buy indemnity insurance is useful, as it is a guide for the Trustees regarding the extent of their legal powers in relation to purchasing such insurance and what such insurance can cover.

16 ARTICLES 25 TO 27: MEMBERSHIP

16.1 As you will be aware, the members of a charity limited by guarantee play a role similar to that of shareholders in a company limited by shares (without the right to receive any profits). Amongst other company law rights and responsibilities they have the right to vote at general meetings, and they must pass a resolution before any changes can be made to the Articles.

16.2 We understand that all the Members of the Society are voting members. Notwithstanding that there are various membership classes, they are all statutory members for the purpose of the Companies Act 2006.

16.3 We have drafted the Articles to provide that all members have a right to vote in a general meeting. Article 26.1 provides that the Trustees may establish different classes of membership and this includes levying subscriptions (see Article 26.3).

17 ARTICLE 28: TERMINATION OF MEMBERSHIP

These provisions, to a large extent, mirror those relating to termination of a Trustee's appointment. Please would you let me know if you would like to make any amendments to this section.

18 **ARTICLES 30 TO 33: GENERAL MEETINGS**

- 18.1 These Articles deal with the procedure for calling general meetings, including Annual General Meetings (AGMs). It is customary in Articles drafted after the 2006 Act came into force for any general meetings other than AGMs to simply be referred to as general meetings.
- 18.2 At Article 31.1, we have said that a general meeting shall be called by at least 14 days' clear notice as this is the current period specified in the 2006 Act and allows more flexibility.
- 18.3 For logistical reasons, as with the Trustees, we have included at Article 32 a provision to allow for general meetings (including AGMs) to be held virtually. In addition participation in general meetings can be by telephone or other communication equipment which may be useful if members are not able to attend a physical meeting (not a virtual meeting) in person.
- 18.4 At 33.1, we have said that a quorum for a general meeting is one tenth of the members entitled to vote upon the business to be transacted or, if the total number of members exceeds one hundred, ten such persons shall constitute a quorum.

19 **ARTICLES 37 TO 43: VOTING**

- 19.1 There is now a statutory requirement to allow a member to appoint a proxy to attend, speak and vote on his/her behalf and proxies are now able to vote on a show of hands and on a poll.
- 19.2 Article 43 mirrors the provisions in the 2006 Act to enable the Society to pass resolutions without the need to hold general meetings, provided that the procedures set out in the 2006 Act (as replicated in this Article) are complied with.
- 19.3 You will note that we have provided that the chair of a general meeting shall have a casting vote but please do let me know if this is not correct. Please note that pursuant to the 2006 Act, in order to have a casting vote the chair must also be a member of the Society.

20 **ARTICLE 44: LIABILITY OF MEMBERS**

The maximum liability per member for the debts of the Society is limited to £10.00. The articles of every company limited by guarantee must include this provision. However, the amount to be paid (the guarantee) can vary from company to company.

21 **ARTICLE 45: DISTRIBUTION OF ASSETS ON WINDING UP/DISSOLUTION**

The Articles of every charitable company must include a dissolution provision.

22 **ARTICLES 46 AND 47: NOTICE PROVISIONS**

The notice provisions reflect the provisions of the 2006 Act and enable the Society to send notices and other documents electronically including posting notices and other documents on the Society's webpage.

22.1 **ARTICLE 50: ADVISORY COUNCIL**

We have included a provision for an Advisory Council. The Advisory Council are not trustees but may be asked by the Trustees to perform certain duties from time to time as set out in Article 50.3.

It may be the case that the Trustees would decide to appoint recently retired trustees to the Advisory Council, so that they can continue to support the Trustees as an Advisory Council member without the duties, responsibilities and liability of being a Trustee.

In addition, I would recommend that those individuals who are currently Council members of the Society, but not Trustees, become members of the Advisory Council on the adoption of the new Articles.

23 **ARTICLE 52: COMPANY SECRETARY**

It is no longer obligatory for a company, (including a charitable company), to have a company secretary. The company secretary need not be a Trustee. Where a charity has a paid executive, as in this case, it is usual for the company secretary to be a paid employee and not a trustee, as they will then become responsible for ensuring that the relevant filings are made to Companies House and the Charity Commission.

24 **ARTICLES 54 AND 55: ACCOUNTS AND AUDIT**

Since the repeal of section 241 of the Companies Act 1985, private companies are no longer required to lay accounts before the annual general meeting (or circulate the accounts prior to the meeting). However, sections 423 and 424 of the 2006 Act now require members, holders of debentures and every person entitled to receive notice of general meetings to receive a copy of the accounts, no later than the end of the accounting period for filing the reports and accounts (i.e. nine months after the end of the accounting reference period) or if earlier, no later than the date on which the Annual Report and Accounts are actually delivered to Companies House. The draft Articles reflect these provisions.

25 **ARTICLE 56: RULES AND BYELAWS**

25.1 This provision is useful in that it allows the Trustees to make rules, bye-laws or regulations which are subject to the Articles but which can be repealed or altered more easily (the requirements in order to make amendments are less procedural). Charitable companies limited by guarantee often have bye-laws rules or regulations which are used as a means of fleshing out the detail of certain provisions in the articles. They have the advantage of not needing membership approval (but they cannot contradict the provisions in the Articles).