

The Brighton West Pier Trust (the Charity)

Report on the draft revised Articles of Association

Background

This document is a draft revised version of the Articles of Association of the Charity. The current Articles of Association are dated 14 November 1978, last amended on 20 May 2024 (the Articles).

This version of the Articles contains the provision that the only voting members of the Charity for company law purposes will be the current Trustees. There will then be a category of non-voting members, to be known as “Friends of the West Pier Trust” or just “Friends”. The reason for this change is that currently it is difficult to satisfy the quorum for members’ meetings, making governance difficult. Dealing with AGM requirements takes up a significant amount of administrative time, along with increasing postage costs, which could be used in furthering the purposes of the Charity. Non-voting members would continue to be invited to events and meetings, as well as receiving a package of benefits in exchange for an annual subscription. This is in line with the way in which many membership charities now operate.

General

This draft Articles of Association is based broadly upon the Charity Commission model precedent for charitable companies dated January 2017, adapted specifically for charities. It incorporates all provisions of Companies Act 2006 and the Charities Act 2011.

The terminology used in the current Articles is ‘Director’ for the trustees of the charitable company and ‘Board’ for the collective group. The charity is described as both ‘Trust’ and ‘Company’ in various places. In this revised draft the terms ‘Trustees’ and ‘Charity’ have been used.

Name

The name of the Charity has not been changed.

Limited liability

The liability of the company members is limited to one pound (£1) – Article 3.1. This is the ‘guarantee’ provided by the members as the amount that they are required to contribute upon an insolvent winding up of the charitable company. In the future this would only apply to the Trustees acting as company members. Non-voting members would have no liability.

Objects

The Charity’s objects or purposes must be charitable in law and worded in accordance with the statutory heads of charity in Charities Act 2011. The Charity’s objects have not been changed. The Objects are based upon the Preservation and Conservation of the Environment and Heritage.

The activities are restricted to the Area of Benefit which comprises the Pier, the foreshore around and below it and their immediate surroundings. This has not changed.

Powers

The powers (Article 5) contain all of the powers that are likely to be required by the Charity, particularly bearing in mind any plans for the future. They have been updated. These are exercisable by the Trustees on behalf of the Charity.

The current version of the Articles requires the express consent of the membership to any borrowing over £250,000, as well as for the disposal of property. This limitation will no longer be relevant if the Trustees are the only voting members. Any borrowing and disposal of property are restricted by provisions in the Charities Act 2011 in any event.

Company/Voting Membership

The Trustees are the only company members with voting rights (Article 9.1). As the Trustees are the only members, there are no corporate members.

The Trustees automatically cease to be members when they step down as a Trustee (Article 11).

The Trustees are responsible for keeping an up-to-date members' register which needs to be stored with the Charity's books.

Non-Voting Membership

The non-voting membership is referred to in Article 10.2. The detail of how this membership will work, including criteria, application for membership, annual subscription and benefits will be left outside the Articles and included in a separate document or set of documents, created under company Rules (Article 33).

Members' meetings

This draft does not contain the requirement for an annual general meeting (AGM). This is no longer required by company law and it is no longer necessary to present accounts and appoint auditors at the AGM. The accounts will be scrutinised by an independent examiner and approved by the Trustees. They will be available upon the Charity Commission website.

Because of the above, the provisions relating to members' meetings have been reduced and it is envisaged that most members' resolutions will be passed by written resolution (Article 17). However, the requirements of the Companies Acts still have to be observed if members' meetings do take place. It is not possible to use a written members' resolution to remove a Trustee or an auditor.

Members may be required to pass resolutions on winding up the Charity, removing Trustees using the Companies Act procedure or Amending the Articles, for example.

If a meeting is to take place, 14 clear days' notice must be given of members' meetings (Article 13.1), unless 95% of members agree to short notice (Article 13.2). This is the notice period even for meetings at which a special resolution is to be passed. However, meetings at which a Trustee or an auditor is to be removed will require special notice of 28 days.

Members' meetings may be virtual meetings (Article 14.1). They may be called to take place after a Trustee meeting, as long as the requisite notice has been given and separate minutes are kept. Notices may also be given electronically or placed upon a website (Article 31.5).

It is very important to notify members of their right to appoint a proxy to attend general meetings and to speak and vote in their absence.

The quorum for members' meetings has been reduced because the members will only be the Trustees. In this model the quorum for members' meetings and Trustees meetings are usually similar. The quorum for members meetings is here drafted as three members or one-third of the membership, whichever is the greater (Article 14.4). This form of wording allows for the quorum to reflect fluctuations in the number of Trustees/members.

Every member has one vote, but there is a casting vote for the Chair in the event of an equality of votes (Article 16.6). This has been carried over from the existing Articles.

Trustees

Trustees are both company directors and charity trustees.

In future the Trustees will be appointed by the Trustees for the time being, rather than being appointed by the membership at the AGM (Article 21).

The minimum age for company directors is now 16 (Article 18.1). Although this would involve young people who are below the age of majority, they are still capable of acting as a Trustee. The Charity itself has a legal identity and any assets will be held or legal papers signed in the name of the Charity, not the individual Trustees. 'Natural person' simply means not a corporate entity.

Trustees should be appointed for their skills, knowledge and experience, in line with good governance (Article 18.2). In the current Articles this is only required for co-opted Trustees.

The minimum number of Trustees is in Article 18.4 and is stated in this draft to be a minimum of eight Trustees. The maximum is here set at fifteen Trustees. The minimum number is taken from the current Articles, but the maximum has been reduced from twenty. In the current Articles this comprises fifteen Trustees elected by the membership and five Trustees co-opted by the Trustees.

If the number of Trustees falls below the minimum, replacement Trustees should be appointed as soon as possible as this is a breach of the Articles. If the number falls below the quorum, the Trustees cannot make any decisions other than relating to the appointment of further Trustees or calling a general meeting.

The powers available to the Trustees are the powers in Article 19, in addition to the general powers available in Article 5. Trustees can delegate those powers in a limited way – see Article 26.

Terms of Office for Trustees

This draft contains the provision that Trustees are appointed for a fixed term of three years, rather than retiring by rotation as to 1/3 of Trustees each year at the AGM (Article 20.1).

In order to ensure that all Trustees do not resign at the same time, there is a Schedule appended to the Articles showing when the current Trustees are due to retire.

Trustees may be re-elected and there is no limit on those re-elections (Article 22.2).

Trustee disqualification, resignation and removal

A Trustee's term of office will end after three years. They may also resign at any time, as long as a quorum of Trustees still remains (Article 22.1.4). There are other reasons for automatic disqualification as a Trustee in Article 22, all of which have been updated to reflect the current legal position.

Trustees can always be removed by ordinary resolution of the members, subject to providing special notice of 28 days of the meeting at which they will be removed, and allowing them the opportunity to respond to the proposal to remove them. This is not so relevant where the members and Trustees are the same people.

The Trustee body may remove a Trustee, as long as this is by majority vote at a meeting attended by at least 75% of the Trustees (Article 22.1.7). This is to ensure that Trustees cannot be removed on a whim or by a small faction of Trustees. This express power means that the Companies Act procedure is unlikely to be invoked.

Trustees' meetings

Usually Trustees' meetings are regulated by the Trustees.

The quorum for Trustees' meetings is in Article 24.9. It is here drafted as three members or one-third of the membership, whichever is the greater, in line with the quorum for members' meetings. When calculating the quorum, no account should be taken of any Trustees that are conflicted and they may need to leave the meeting in order to manage those conflicts.

If the number falls below the quorum, no resolutions may be passed at a meeting of the Trustees.

There is provision in Articles 24.7 and 24.8 for virtual meetings. They may also pass written resolutions (Article 24.12).

Trustees and conflicts of interest

It is very important for Trustees to manage potential conflicts of interest. It has been a long-standing principle of charity law that charity trustees should not derive a benefit from acting as a trustee unless it is authorised by law, by the Articles or by the Charity Commission, and they should be transparent about any conflicts of interest or duty. They must notify the Charity of any conflicts of interest (Article 7). The Companies Act 2006 places a statutory duty on directors to avoid conflicts of interest. They must declare the nature and extent of any interest relating to the company and this can extend beyond the idea of a 'benefit'. It can include where there is simply a conflict of duty or loyalty.

Any Trustee should declare their interests in writing or verbally at meetings. It is good practice to have this as a standard agenda item for Trustees' meetings and also to keep a 'conflicts of interest' register.

It is possible for the non-conflicted Trustees to 'authorise' the conflict – see Article 8 - but the conflicted Trustee will still need to retire from sections of the meeting and abstain from voting on that issue.

Remuneration of Trustees

Trustees may not be remunerated for acting as a Trustee of the Charity, but it is possible for them to receive certain benefits such as payments for rent and interest on loans. Article 6 contains the most basic form of Trustee remuneration and has not been changed from the current Articles, as this would require the prior written consent of the Charity Commission.

Trustees are able to claim basic expenses for carrying out their role as Trustee (Article 6.1.5).

It is not possible to employ a Trustee in a salaried role without an Order from the Charity Commission.

The restrictions on remuneration apply also to persons who are closely connected to the Trustees – see definitions section in Article 2 for further information. This also applies to connected companies and businesses. The Trustees could not therefore be remunerated by a subsidiary company of the Charity.

Trustee indemnity insurance is also considered to be a personal benefit to Trustees as Charity funds are used to pay the insurance premiums. However, the power to take out indemnity insurance is included here, as it was in the existing Articles (Article 5.1.25). They may also benefit from an express indemnity from the Charity (Article 32).

Officers/Delegation

Article 25 deals with appointment of Officers. The Charity must appoint a Chair of Trustees and may appoint a Deputy Chair. They shall be appointed by the Trustees, for such term of office as the Trustees deem fit. They will be drawn from the Trustee body.

A Secretary and Treasurer may be appointed, and may or may not be Trustees. As long as they are not Trustees, they may be remunerated. It is no longer a requirement that a Company Secretary be registered with Companies House.

The Trustees may also appoint persons to honorary roles such as President, Vice-President and Patron. Such honorary persons shall not be considered to be Trustees.

The powers and restrictions on delegation are in Article 26. This delegation may be to employees or to sub-committees. Such subcommittees may include Trustees and non-Trustees – the current Articles state Trustees only – but they must include at least two Trustees. It is important to put in place terms of reference for sub-committees, particularly referring to voting rights, whether or not non-Trustees may attend, and to what extent they may vote, if at all.

The Charity should have a very clear Scheme of Delegation specifying who is responsible for which decisions, particularly in relation to the senior staff, to the Chair of Trustees and to the Board of Trustees.

Finance/Accounts

Articles 29 and 30 specify the Charity Commission and Companies House requirements for preparation, oversight and filing of accounts. The wording has been updated.

Dissolution

Upon dissolution the Charity's net assets will not be made available to members. The net assets will be transferred to another charity with similar objects (Article 34).