

Revision of Plantlife's governing documents

Background:

Plantlife was instituted as a charitable trust by Trust Deed on 15 March 1990 and incorporated as a company limited by guarantee on 29 February 1996. Our 'constitution' or governing documents are therefore the company Memorandum and Articles of Association ("M&A") (which incorporate the key terms and conditions of the original Trust Deed). These remained largely unchanged since 1996 apart from minor administrative amendments including two changes of name (1996 and 2002) and incorporation of Scottish Charity Regulator requirements.

At Plantlife's Annual Members' Day on 12 June 2010 the following changes to the M&A were approved by our Supporter Members:

1. That the maximum term of office for members is to be 7 years
2. That a member's term of office is usually to be served as an initial period of 4 years with the option to retire and stand again for election for a further 3 years
3. That members who are appointed as Honorary Officers may serve up to 3 additional years making a maximum term on the Board of 10 years
4. That the Board have the power to appoint members to additional terms on the Board in exceptional circumstances as the Board deems necessary
5. That there should be a minimum of 8 and a maximum of 12 members on the Board

These changes then formed the basis of a full review of the M&A which was undertaken with the support and advice of Plantlife's solicitors, Blake Laphorn. The review was completed in 2011 at a meeting of the Trustees/Directors of Plantlife held on 5th October 2011 when the following material changes to the Memorandum and Articles together with other technical changes, for example, updating the names of the legislative instruments/Acts which govern the operation of the Charity such as the Companies Act 2006, were approved.

Summary of amendments

The main governing legislation for our organisation comes from The Charities Act 2006 and The Companies Act 2006. For the purposes of our governing document the Companies Act is our main reference. The proposed amendments listed below are the most significant, purely technical or minor tweaks have not been noted in this paper, but are available for review in the attached document.

- a) Until the introduction of the Companies Act 2006 most charitable companies, Plantlife included, had two documents that comprised the constitution - a Memorandum and a set of Articles. The Memorandum recorded the 'objects' of the charity *ie* the purposes for which it was established together with the powers the charity had to act in particular ways *eg* to buy land, lend money *etc*. With the introduction of the 2006 Act the Memorandum is now effectively a 'birth certificate' with all information previously contained in it now set out in the Articles. It is important to note that no changes were made to the objects which remain as set out in Article 3.1.
- b) Article 4.20 and 4.21 referred to old regulations and have now been summarised in article 4.19. These state that if we own property we will "deal with it" in accordance with the law (*ie* obtaining the permission of the Charity Commission for mortgages *etc*.)
- c) Article 9 now refers to the fact that the formal 'members' *ie* share holders of the charitable company are the Trustees/Directors and article 9.5 clarifies when someone stops being a member by either giving 7 days written notice, dying or ceasing to be a director.
- d) Articles 10 - 12 refer to members' meetings which are either 'general' or 'special'. The 2006 Act has done away with the need for a formal AGM each year and simply requires there to be

a general meeting every calendar year to receive the annual report and accounts and to appoint auditors.

The quorum for a members' meeting is now half the Trustees/Directors in post at the time plus one Honorary Officer and the numbers are to be rounded up in the event of there being an odd number of Trustees/Directors on the Board at any time.

- e) Article 13 relates to the appointment of Trustees/Directors and there are a number of points for us to consider here:
Article 13.1 sets out the maximum (12) and minimum (8) number of Trustees/Directors there can be as previously agreed by the Board.
Article 13.8.1 refers to the reappointment of Officers who can now be reappointed to different posts.
Article 13.10 refers to the appointment of our President but no longer refers to the appointment of Vice Presidents. Article 15.4.2 now gives the Trustees/Directors the power to confer the Honorary title of President "or Vice President".
- f) Article 16.2 provides the option for the Trustees/Directors to hold Board meetings electronically with the proviso that at least one meeting every year is held in person.
- g) Articles 16.6-7 set out the number of Trustees/Directors required for a Board meeting to be quorate when half the number of Board members serving at the time plus at least one Officer are present. In addition, the quorum for meetings of sub-committees is set at 3 Trustees/Directors and it is only Trustee/Director members of our sub-committees who vote.
- h) Article 16.11 confirms the validity of resolutions passed in writing as if passed at a Board meeting so long as they are signed by all Trustees/Directors. This allows Board members to pass resolutions even if they are not all physically together at the time of the meeting.
- i) Article 17 brings in new requirements from the 2006 Companies Act relating to Directors' conflicts of interest.
- j) Articles 20 and 21 refer to the 'technical' requirements for keeping appropriate records of finances, meetings and statutory returns and how legal communications *eg* notices of members meetings, are to be served.
- k) Articles 22 - 23 are standard references to indemnity provisions and definitions.

Victoria Chester, Company Secretary
June 2012

APPENDIX A

NOTE OF ADVICE ON DIRECTORS CONFLICTS OF INTEREST

Provided by Blake Laphorn Solicitors.

1. The Directors of Plantlife are obliged to act in the best interests of the charity and not for their own private interest or gain. However, there may be situations where a Director's own interests or those of a Connected Person and the interests of Plantlife arise simultaneously or appear to clash. The issue is not the integrity of the Director concerned, but the management of any potential to profit from or otherwise abuse the position of being a Director generally.
2. The law imposes strict limits on the benefits which may be conferred on Directors. Directors and those connected with them must not receive any benefit from Plantlife, whether direct or indirect, unless there is an express provision in the constitution or specific authority from the court or the Charity Commission.
3. Plantlife's Articles of Association allow benefits to Directors, in certain circumstances, as set out in Article 5 - no changes have been made to this article in the revised version (it is worth noting that any changes to this article require Charity Commission consent)
4. Even where benefits are permitted under the constitution, the appropriate procedures must be observed in order to ensure that the conflict of interest is properly managed.
5. Under the Companies Act 2006, a Director of a charitable company must avoid a situation in which he/she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of his/her charity.
6. The reference to "indirect interest" is interpreted as including an interest of those connected to a Director (e.g. members of a director's family and companies controlled by a director - please see definition below). Consequently, any relevant interests of those connected to a director will also need to be addressed.
7. All Directors should declare their interests and that of Connected Persons, and any benefits, gifts or hospitality received in connection with their role in Plantlife.
8. The Companies Act has changed the way in which directors of charitable companies must deal with a particular type of conflict of interest - generally referred to as a conflict of loyalty. Where Directors have a conflict of loyalty they must now either:
 - abstain from voting on the relevant matter, provided that there are sufficient Directors who are not conflicted Directors to achieve a quorum to enable those non-conflicted directors to vote on the matter; or
 - obtain authorisation by the non-conflicted Directors to vote on the matter, subject to prescribed conditions.
9. New Articles 17.4 - 17.6 allow the Directors (subject to a list of conditions) to authorise an otherwise conflicted Director to continue to act as a Director even if he/she is affected by a conflict of loyalties or even a potential personal interest, or allow him or her to breach confidentiality.
10. The decision for the Directors is always one which should be considered with particular care, bearing in mind that the safest position is to exclude from decision-making any Director who can possibly be thought to have a contrary interest or a conflicting duty which could therefore either affect his/her judgment on the issue or be perceived as doing

so, and to strictly apply the rules on confidentiality.

Definitions:

A "conflicted Director" means a Director in respect of whom a conflict of interest arises or may reasonably arise because the conflicted Director or a Connected Person is receiving or stands to receive a benefit that is authorised by the company's Articles of Association or by law (other than payment of a premium for indemnity insurance) from the company, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Academy.

A "Connected Person" means, in relation to a Director, a person with whom the Director shares a common interest such that he/she may reasonably be regarded as benefiting directly or indirectly from any material benefit received by that person, being either a member of the Director's family or household or a person or body who is a business associate of the Director, and (for the avoidance of doubt) does not include a company with which the Director's only connection is an interest consisting of no more than 1% of the voting rights.