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Guidance note

Changing academy trust articles of association: A how to guide

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Introduction

The articles of association (articles) are the governing document of an academy trust. They provide key information about the purpose of the organisation, how it is to be run and to whom it is accountable. They also provide a framework for academy trusts to act within company and charity law. The Department for Education (DfE) publish model articles for the academy trust sector. There are versions that are applicable to:

- Mainstream academies, special academies, 16 to 19 academies, alternative provision academies, free schools and studio schools;
- University technical colleges;
- Multi-academy trusts with one or more university technical colleges;
- Co-operative academy trusts;
- Church of England academies; and
- Catholic academies.

Academy trusts must abide by their articles, but sometimes due to internal and / or external changes the articles can become a barrier to enabling the organisation to perform effectively and efficiently, and to meeting the latest expectations for trust governance set out in DfE guidance.

Good governance practice means that trustees (known as directors in church trusts) and members, with the executive leadership team, should regularly review the academy trust's articles to ensure that the governing document remains relevant and provides the organisation with the necessary powers to fulfil its charitable objects. This is an activity encouraged by the DfE in many of its documents aimed at improving the sector's governance¹. Undertaking a regular review helps to ensure that an academy trust's articles align with the latest government expectations, take advantage of developments in good practice, and streamline internal administrative arrangements.

All trustees and members should have become familiar with the governing document when they joined the academy trust as part of their comprehensive induction. The trust board chair, members and the governance professional should include a regular review of the articles, particularly in light of any legal or regulatory changes, as an item to be considered on meeting agendas. The intention will be to ensure the governance arrangements within the academy trust are sufficiently robust, meet external expectations, yet are agile and proportionate to the needs and challenges of the organisation.

At whom is this aimed?

This guidance note is aimed at those responsible for the governance arrangements within an academy trust: the trustees. Trustees should be supported in their governance responsibilities by a suitably qualified and experienced governance professional. A governance professional should be able to work with the board of trustees in identifying the changes required to improve the governance of the academy trust by amending the articles.

¹ Articles of association for use by mainstream academies, special academies, 16 to 19 academies, alternative provision academies, free schools and studio schools, DfE, June 2021.

This guidance note is also useful for the members of an academy trust as it details their specific role and responsibilities in relation to the process required to change an academy trust's articles of association. The governance professional should be available to the members to help explain the reasons for the changes, the process to be followed and the responsibilities the members must perform in considering the proposed changes.

The DfE has updated the model articles for trusts over time, and so the governing document for each academy trust will differ. The governance professional should hold an in-depth knowledge of the key provisions in the academy trust's own articles, and how they compare to current good practice in the sector. It is recognised that academy trusts may have a Diocese, corporate, charity or individual as a sponsor, which will impact on both the model, and specific provisions in the articles, used by these academy trusts. This is referenced in more detail below, but reinforces the importance to readers of this guidance of being fully aware of the contents of the articles governing their own academy trust.

What does the guidance aim to achieve?

This guidance note provides a step-by-step approach for academy trusts to amend their articles. It covers the legislative issues affecting academy trusts derived from education, charity and company law and the oversight bodies with an interest in the regulation of academy trusts (as exempt charities and companies limited by guarantee).

For a maturing sector such as academy trusts, the specific steps required to change a fundamental document such as the articles can be daunting (especially given the different legal considerations involved under company and charity law). This can lead some boards to be reticent about making changes, leading them to operate their governance arrangements in a less than optimal manner.

The governance professional should be able to undertake many of the actions, project management and support that the trustee board and members require to make changes to the articles (subject to the specifics of the articles), and liaise with the trust's legal advisors, as required. The complexity of changes that need to be made will inform the extent of specialist legal support required. The engagement of the governance professional will make it easier, quicker and less expensive to implement amendments to the articles, both at the time and in the future. This will mean that the academy trust's governance arrangements remain responsive, flexible and effective in delivering the charitable purposes and public benefit for pupils and young people.

Having read this guidance note, trustees, members, governance professionals and other stakeholders should be better placed to understand and apply the legal, regulatory and ethical considerations involved in amending an academy trust's articles along with being able to identify the need for change and the benefits of updating articles. This should ultimately improve the ongoing governance arrangements in the academy trust.

What are the articles of association?

The Charity Commission for England and Wales's (Charity Commission) CC 22b 'How to write your charity's governing document'² describes a charity's governing document as the 'rule book' for the organisation. The articles of association are the 'governing document' of an academy trust and set out the guidelines for delivering governance procedures and practices. They are based on company and charity law, adapted for the education context.

² This can be downloaded from the Charity Commission website.

The DfE's model articles of association were last updated in June 2021³. The articles for each individual academy trust will feature on their Companies House page and must also be published on the trust's website.

For academy trusts, the articles should contain a range of information and powers to assist trustees and describe to members and other stakeholders the purpose of the academy trust and the activities it undertakes to fulfil its charitable aims. When questions arise about the trustees' powers to undertake a proposed action, the first point of reference should be the academy trust's articles.

Why review the articles?

The Charity Governance Code⁴ recommends that trustees periodically review their organisation's charitable purposes and regularly review policies and procedures concerning board strategies, functions and responsibilities, alongside other considerations. This should include ensuring key governance documents remain fit for purpose.

Academy trusts can fully adopt the latest DfE model that is relevant to their trust or in some cases might adopt particular clauses from the DfE model. For example, the DfE's new model articles introduced provisions to reflect the evolving good governance practice in the sector, including the introduction of members' annual general meetings (AGMs) and the power for boards to meet via videoconferencing facilities. Some of these new clauses will be beneficial to academy trusts in fulfilling their legal duties in an efficient manner for the benefit of students and the wider public.

Conversely, adopting new articles may mean having to say goodbye to some provisions that are no longer deemed good practice by the DfE and the Education and Skills Funding Agency (ESFA). It is to meet the need to balance these opportunities with the ability of the board to lead the academy trust better that good governance practice would see the articles reviewed regularly (by the governance professional in the first instance) and recommendations discussed by the board.

There are many reasons why any organisation should keep their governance arrangements under review. For an academy trust, the reasons may come from within the organisation or from the external operating environment (including from regulatory expectations). These are detailed in Step 1.

What are the legal considerations to changing articles?

As a charitable company limited by guarantee (CLG), an academy trust will have to follow company and charity law and the clauses in the articles relating to amending governing documents. The guidance in this document details the most common steps required, but the reader should be certain of what is required of their organisation, as detailed in the articles and master funding agreement (MFA).

³ <https://www.gov.uk/government/publications/academy-model-memorandum-and-articles-of-association>

⁴ <https://www.charitygovernancecode.org/en/front-page>

In general, it is fairly straightforward to update administrative arrangements within a charitable CLG, however there are some aspects that require the prior approval of different regulatory bodies.

For instance, the DfE would wish to have prior sight and approval of changes to 'Governance Articles' (i.e. clauses that relate to governance requirements), or any particular changes that do not meet the current model, before any resolution is put before the academy trust's members.

It should also be noted that there are certain 'regulated alterations' which require the prior approval of the Charity Commission⁵ (see Step 3 and Appendix A for further details).

As noted above, for more complex revisions the input of a legal adviser may be beneficial. The governance professional should be able to advise when this is required.

What does the DfE expect of academy trusts looking to change their articles?

The DfE produces model articles of association for academy trusts which new academy trusts are expected to adopt, and which many existing trusts will also adopt. All proposed changes should be supported by a sound business case as to how they will improve the academy trust's governance and performance.

In terms of the process for seeking consent, for new trusts in the pre-opening stage the Secretary of State will sign a Funding Agreement once the DfE, on behalf of the Secretary of State, is content with the trust's articles of association.

For existing trusts, Secretary of State consent may be needed to make amendments to the articles of association, depending on the requirements in their funding agreement. Trusts must check the requirements set out in their individual funding agreements. If Secretary of State consent is needed for article changes, then the trust should submit their proposed articles to either the RSC at DfE or ESFA for approval. Trusts can reach the relevant ESFA delivery team by contacting academy.questions@education.gov.uk.

An approach should be made to the DfE to seek permission to change the articles when the document is in final draft form. There is no set template for this application, however it is helpful for trusts to provide:

- A copy of the current articles
- The proposed new articles in tracked changes
- A clean version of the proposed new articles
- A schedule of changes which sets out the rationale for each change

If the proposal to change is at the request of an RSC, the process is not significantly different to that outlined above, and the trust will be advised on the key steps to be taken.

⁵ Unless authorised to do so by the governing document, statute, or by the Charity Commission, trustees should not benefit from the position they occupy. The Charities Act 2011(ss.185–188) provides charities with powers to remunerate trustees for providing services or goods, over and above their normal trustee duties, subject to certain conditions being met. Further information can be found in the guidance note 'Payment of charity trustees (England & Wales)'. Also refer to the Charity Commission's see CC1 'Trustee expenses and payments'.

There is no set timeline for responses from the DfE or ESFA to approve changes and the time needed to review each trusts' articles will vary from case to case.

What is the role of members (and sponsors) in the process for changing articles?

Depending on the exact circumstances of the academy trust and the clauses contained within its articles, at a minimum, the members of the company will be required to pass a resolution at a meeting of the members (see Step 8).

If the academy trust is overseen by a Diocese, corporate, charity or individual sponsor the articles may provide that specific amendments (such as changing the values or ethos of schools) cannot be made (under any circumstances) or only with the additional approval of identified bodies. The articles of association should be clear as to what clauses are 'entrenched', along with any additional powers sponsors have in regard to specific and general changes to the articles.

What other stakeholders should be involved?

Where the academy trust runs a number of schools, it is not legally necessary to include the local school committee (such as a local governing body) of each school, or other committees of the board in the process for amending articles, unless the articles require it. However, to ensure the process is undertaken as smoothly as possible and to maintain good stakeholder relations, it would be advisable to consider and implement an appropriate communications plan for different stakeholder groups (see Step 3).

Who needs to be notified of changes (regulators/registrars/others)?

In terms of external notification, the process will require notifying the DfE and Companies House at different stages. The exact stage will depend on the trust's circumstances and changes being made and the trust can use its legal advisors, or key relationships held with representatives of the DfE/ESFA/RSC, to understand these steps and build them into the timeline for updating the articles.

As noted above, depending on the circumstances, if the Charity Commission for England and Wales has granted permission for a regulated alteration, they will need to be notified of when it was approved by the members.

It is helpful for trusts to think about whether they need Charity Commission permission as early as possible in the process. Trusts making alterations to their articles that require prior written consent from the Charity Commission under section 198 of the Charities Act 2011 should follow the same process as outlined above in liaising with the DfE/ESFA. The DfE/ESFA will indicate whether it is content with the changes proposed by academy trusts from its point of view as Principal Regulator and funder of academy trusts.

However, the DfE/ESFA is not the decision maker for regulated amendments; this is the role of the Charity Commission. Also, the DfE/ESFA cannot provide legal advice to trusts as to whether or not Charity Commission consent is needed for article changes. It is recommended that academy trusts seek independent legal advice where necessary.

In terms of internal communication within the trust, the academy trust's members are central to the process, so should be informed of the intention to amend the articles at an early stage in the process.

The academy trust may wish to inform local academy trust committee (such as local governing body) members, other committee members, relevant staff and other interested parties in communications aimed at explaining the need for change, the process involved and when the changes have been executed. All academy trusts are required to place their articles on the corporate website.

Overview of the steps detailed below

The following outlines the steps involved and the key information covered in each step within this guidance.

- Step 1: Identify the need for change
Why change the articles?
What are the catalysts for change?
Amendments supporting merger/acquisition
Key questions for the board of trustees
- Step 2: Being clear as to what to change and why
What is in the best interests of the academy trust in delivering its charitable purposes and why?
What are the intended benefits?
- Step 3: Stakeholder engagement
Who has an interest and why?
Role of members
Role of the DfE and Charity Commission
- Step 4: Setting out a calendar for change
Difference between an AGM and a members' general meeting
Benefits of using an AGM to pass the resolution
- Step 5: Agreeing the wording of the resolution
- Step 6: Notice to members
- Step 7: Model resolution wording
- Step 8: Members' (annual) general meeting
- Step 9: Notification of changes
- Step 10: Enacting the resolution
- Step 11: Review and reflect

Appendix A provides further details about the terms and processes outlined in the main body of the document, for those who would like to know more.

Step 1: Identifying the need for change

Why is it good governance to amend the articles?

Alongside an expectation from the DfE that articles should be reviewed regularly and amended accordingly, there are operational reasons too. It helps to ensure that the governance framework of the academy trust relates to the ability for the trustees to respond to the opportunities and challenges facing the organisation and to ensure that oversight and accountability is robust and effective.

What are the major drivers for making amendments?

As mentioned above, the reasons a trustee board may decide to amend the articles, with approval from the members, could derive from internal or external stimuli. Some of the more common reasons for amending an academy trust's articles include:

- updating clauses within the articles to reflect legal/regulatory requirements detailed in relevant legislation and/or statutory guidance (e.g. changes in the Academy Trust Handbook or the DfE's model articles);
- taking advantage of developments in good governance practice (e.g. to introduce the use of videoconferencing facilities for trustee or member meetings);
- streamlining internal administrative arrangements in order to improve the functioning of the board (and its committees or other delegated authorities) with the aim of improving the performance of the academy trust;
- protecting certain aspects of the academy trust's operations which are integral to its ethos, vision or values (such as entrenching the powers of specific members);
- changes in the status and/operational activity of the academy trust, such as expansion or reduction in multi-academy trust size, moving from a single academy trust to a multi-academy trust, and being requested to make the changes by the DfE/ESFA/RSC as part of a major transition in the academy trust's evolution; and
- generally strengthening the governance arrangements of the academy trust.

The trustees are responsible for the governance of the academy trust. It is imperative that they are fully aware of their roles and responsibilities and understand the implications of the process they are about to undertake. A governance professional, alongside any DfE contacts, should be able to advise the board on the outline of the process. However, in some circumstances, external professional advice may be required subject to the complexity of changes that need to be made.

Depending on when an academy trust was incorporated, its articles will be based on different models of these documents, as the DfE has updated them periodically over time. This means that academy trusts with older versions will not be aligned with the latest DfE expectations of practice. The DfE often request that academy trusts update their articles during direct discussions with academy trusts.

Amendments supporting merger/acquisition

Where the academy trust is reviewing its articles with a view to working jointly with another academy trust, or to merge with another academy trust, trustees should be reminded to declare any associations with potential partners. It does not necessarily present a drawback where such associations exist, as the trustee could be the most appropriate person to make an initial approach to the prospective partner. Some academy trusts may have a conflicts of interest policy that does not permit such an approach. Either way, the parties involved should clearly address the conflict and manage the situation transparently, as detailed in their conflicts of interests policy.

Key questions for the board

In assessing whether the articles continue to support the academy trust in its purposes, or are creating a hindrance to the governance of the organisation, the following questions might be helpful:

- Is the academy trust meeting its stated charitable and public benefit objects?
- Are its objects out of date and do they need revising?
- Is the academy trust working outside the scope of its objects or powers (ultra vires)?
- Are the articles inflexible and inhibiting the way the trustees govern the academy trust, particularly in instances where the academy trust's practices are no longer in line with DfE guidance?
- Do the articles give the members power to amend?
 - If yes, exactly what is the extent of those powers, and are they compatible with current charity, company and education legislation?
 - Are there any clauses that are 'entrenched' and therefore subject to a higher number of votes in favour than other changes?
 - If no, will it be necessary to approach the DfE/ESFA and the Charity Commission for guidance?
- Is the academy trust's governance framework up-to-date?
- Is there the right mix of skills and experience among the trustees and members necessary to achieve the proposed action?
- Do the articles expressly permit the academy trust to merge with another academy trust with similar objects, dissolve or transfer assets, or is there an implied permission?
- Is the academy trust required to gain approval from any other body for changes to the governing document, such as the DfE/ESFA or the Charity Commission? If so, in what circumstances?

Any queries or concerns arising from any of these questions should be discussed with the academy trust's governance professional, and/or professional advisers, so that trustees gain a clear understanding of the full powers at their disposal and how they should be used. In some instances it may be necessary to discuss the issues with the DfE, ESFA, RSC or the Charity Commission.

Embedding governance processes to support updates to the articles

As at all other times, official records and minutes of meetings should be kept and stored properly.

A tracked change version of the articles may be useful to highlight the changes and to see how the proposals will improve the governance of the academy trust. This may involve taking the current model version of the articles and tracking the changes against that version before submitting to the DfE.

Step 2: Being clear as to what to change and why

What changes would be in the best interests of the academy trust and why?

Each academy trust is different and will require a governance framework that supports the organisation in meeting the opportunities presented in its operating environment. The trustees should be aware of the changes that need to be made and should be able to explain them in terms that will ultimately aid them in their duties and support the organisation deliver its strategic aims.

A rationale for the changes will therefore be helpful when talking to different stakeholder groups about the proposed changes. For example, what the DfE will want to understand is likely to be different from what parents and staff will want to know about the proposals.

The board and members, with support from the governance professional, should be able to identify the key messages to communicate to different stakeholder groups as a result of board papers recommending changes and the discussions arising from those papers.

What benefits should the changes bring to the academy trust?

It is likely that the proposed changes will:

- result in articles that follow the DfE's model version and reflect good practice in the academy trust, and other sectors;
- ensure the academy trust complies with funding or other regulatory requirements;
- make the governance and leadership of the academy trust more effective, agile and efficient, in turn creating more/better opportunities for the organisation to deliver for pupils and young people;
- promote characteristics of the academy trust that are key to the organisation's ethos and values; and
- strengthen the governance arrangements of the academy trust and provide better assurance, transparency and accountability for the use of public funds and educational performance.

It should also be noted that the DfE may use the opportunity of changes to the articles to review the academy trust's Master Funding Agreement and revise that at the same time, if necessary. This may require guidance and support from professional advisers.

The board of trustees should agree the proposed revisions, in principle, as it will be the board that recommends the resolution to the members at the (annual) general meeting. The board minutes should therefore record the proposals, discussions and decision of the board, in the usual manner.

Step 3: Stakeholder engagement

Who has an interest in the proposed changes and why?

Depending on the nature of the proposed changes, a range of people will be interested in the suggested amendments to the articles and the academy trust should tailor messages for each stakeholder group.

A simple FAQ format can be helpful in articulating why the changes are required and the intended benefits. For example, any proposals that impact local schools within a multi-academy trust should be communicated along with the benefits and an overview of what will change in practice.

Engaging with key stakeholder groups early in the process should make the entire process easier to undertake and complete in a timely fashion. The stakeholder engagement plan and accompanying communications plan should be signed off by the board.

Role of members

As academy trusts have a membership structure, the governance professional will need to spend some time looking at its register of members, which should always be kept accurate and up-to-date and compliant with GDPR requirements. Given that membership in academy trusts is generally small, this should not be an unwieldy process. Members have the right to vote on any resolution to amend the academy trust's articles or charitable purposes (a regulated alteration) or to agree to a merger.

If the academy trust has a sponsor or corporate member (such as a co-operative or church body) it is likely that different voting rights and powers will be contained within the articles that limit some administrative freedoms that may be available to other academy trusts (so as to protect important characteristics about the ethos or values of the academy trust, sometimes called entrenched clauses). The governance professional and the trustees should be aware of these additional powers of members, maintain regular communications with sponsor or corporate members about proposed changes, and ensure they follow the process in their articles when considering amendments.

Changes to the articles will require the approval of the academy trust's members at a (annual) general meeting. Keeping members informed of proposals, and the reasons behind them, will assist in gaining understanding and positive support from the members. With appropriate foresight and planning, this should be accommodated within the general meeting business cycle, but there may be circumstances where this is not possible (see Step 4).

Role of the DfE

As outlined above, the DfE/ESFA will usually be involved in approving changes to the articles, and have the power to veto any proposed changes. The academy trust should engage with their DfE/ESFA/RSC contact at a suitably early opportunity to ensure they are happy with the proposals, and share the articles once they are in final draft stage, in order to have sufficient time to resolve any issues ahead of any planned members' meeting (where the resolution is put to the vote).

Step 4: Setting out a calendar for change

The difference between an AGM and a members' general meeting

General meetings are where the formal business of the academy trust is conducted and the trustees held to account by the members for their stewardship of the organisation.

All members of the academy trust are entitled to attend and vote on certain matters.

Historically, under company law, there have been two types of members' meetings: the annual general meeting (AGM) and the extraordinary/special general meeting (EGM/SGM). The Companies Act 2006 introduced significant changes in this area for private companies by removing the requirement to hold an AGM. However, the DfE's new model articles make it clear that they expect an academy trust to hold an AGM for members. Many academy trusts will probably not have this requirement in their current articles.

AGMs

At the AGM, the trustees may be questioned by the members and called to account for their handling of the affairs of the academy trust throughout the year. The scrutiny and examination of the trustees at the AGM can be comprehensive.

The normal business of the general meeting should be specified in the academy trust's articles but will usually include:

- Election of officers. All trustees must comply with any requirements in the articles as to who may stand for election, as well as the voting process. The articles should state when trustees will need to be re-elected (in other sectors good practice would see one-third of the trustees normally stand for re-election each year). General practice in the academy trust sector is for each trustee to stand for re-election every four years. This provides a degree of continuity and, if managed carefully, avoids all the trustees retiring at once. Any trustees co-opted onto the board since the last AGM must also stand for election or stand down. Separate resolutions should be put for the election of each trustee, unless they have met the maximum number of years of tenure permitted, in which case they cannot be re-elected;
- Presentation of accounts;
- Appointment of auditors (if applicable). The meeting will usually confirm the reappointment of the auditors for the coming year unless new auditors are to be appointed. If so, the meeting will be asked to approve the appointment;
- Remuneration of the auditors. It is usual practice for the AGM to authorise the trustees to set the remuneration of the auditors;
- Trustees reports. In addition to the formal report required by the Companies Act, members and the board may wish to provide more detailed information about activities during the year.

The notice and any resolutions should be drafted in plain language. Any technical resolutions (such as changes to the articles or to authorise the trustees to proceed with some unusual transaction) should be clearly explained in a covering letter or similar document.

General meetings

Since the introduction of the Companies Act 2006, there are no longer extraordinary general meetings (EGMs), and all members' meetings are simply referred to as general meetings. The procedures and rules for general meetings are similar to those for an AGM but the business is limited to the specific resolution(s) to be put to the meeting, as spelt out in the notice of the meeting.

A general meeting is normally called to approve changes to the articles or a change of name of the company between AGMs. It is preferable to plan these changes so that they can be dealt with as special business at the next AGM but, sometimes, it may be desirable to make changes to the articles more quickly.

A general meeting in other sectors can be an expensive exercise, involving communications with all members and, possibly the cost of hiring a venue. For academy trusts with the recommended five members, these factors should not be so difficult to manage.

Benefits of using an AGM to present the resolution

While the academy trust is required to present the annual report and accounts to members each year, the recent DfE model articles included a new clause setting out its expectations that academy trusts hold an AGM. It might therefore be possible that an academy trust has never held an AGM.

Where academy trusts do hold AGMs, there are benefits in presenting the resolution to change the articles at that meeting. This avoids the need for holding a separate meeting to deal with the resolution and the administrative work required to organise and hold a second meeting. However, in some circumstances there may be a need to make the changes more quickly and a general meeting of members will be required.

If the decision is made to hold a general meeting of members, the governance professional should consider whether other changes that require the members' approval could be presented at the same meeting.

If there are other governance changes that would be beneficial to the academy trust, the governance professional should discuss these with the chair and present a paper to the board, where the chair agrees the other changes would benefit from an expeditious introduction. Considering other issues to present to members at the same meeting will maximise the opportunity to make improvements in a timely and efficient manner.

Whether the academy trust decides to hold an AGM or general meeting to pass the resolution to change the articles, the board will need to approve a timetable for the process and it is recommended that members be aware of the plans to update the articles and the timeline for their approval. This should take into account discussions with stakeholders, most importantly the DfE and members, notice periods for meetings and other administrative issues identified in the academy trust calendar/ corporate calendar. If the intention was to use the AGM to present the resolutions, it may become clear during this planning phase that the date is unrealistic and a general meeting later in the year is required.

Step 5: Agreeing the wording of the resolution

What is a resolution?

A resolution is formal record of a decision of trustees or members. There are two types of resolution: special and ordinary.

A special resolution must have the support of at least 75% of the votes cast by members if passed at an (annual) general meeting, or where proposed as a written resolution. Certain actions can only be carried out by special resolution, such as amendment of the articles.

All special resolutions must be notified to Companies House within 15 days of being passed. Depending on the nature of the resolution, a specific Companies House form may need to be filed, as well as the text of the resolution itself.

Unless legislation or the academy trust's articles specify that a special resolution is required, wherever the approval of members is required an ordinary resolution will suffice. This will need to be passed by a simple majority of the votes cast if passed at a general meeting.

The articles may state that amendment or deletion of certain entrenched provisions requires more than 75% of the votes cast at a general meeting. An entrenched provision may relate to the ethos or values of the academy trust (such as belonging to a specific faith or moral/ethical code) or the role of a corporate or other influential sponsor.

If it is intended to propose a resolution to effect such a change, the same procedure should be followed as for a special resolution, but applying the higher approval threshold. As well as notifying Companies House of the text of the resolution, a form CC03 will also need to be filed.

Almost any resolution which can be passed by members in general meeting can also be passed in writing without a general meeting by following the procedure under the Companies Act 2006, even if this is not permitted in the articles. The only exceptions are resolutions to remove a director or auditor before the end of their term of office, which must always be dealt with at a general meeting.

Given the importance of members in the academy trust governance framework, a meeting may be preferential to a written resolution to fully explain the need and impact of the proposed changes to articles.

What should be included in the resolution?

A resolution must be circulated to every member in the same way as notices of general meetings (see Step 6). A member who is registered after the resolution is circulated will not be entitled to vote on it.

The resolution to amend the articles to be voted on at a general meeting should include:

- a) The amended wording of one or more clauses in the existing articles;
- b) Any additional new clauses to the existing clause and/or the clauses/text to be removed from the existing articles; or
- c) An entirely new set of articles (completely replacing the previous set of articles). This is generally the preferred approach of the DfE, as academy trusts are encouraged to adopt the most recent model articles published.

Written resolutions and electronic acceptance

DfE's model articles permit members to approve a written resolution. A written resolution may be easiest where there are only a few members as it avoids the need to call and hold a meeting of all members. Where this is the case, a copy of the articles to be adopted can be circulated to every member along with the resolution approving the changes which can then be executed by the member signing the document.

Electronic acceptance of a written resolution may mean that certain decisions, such as resolving to adopt amended articles could be taken outside a meeting without the need to obtain physical signatures on the written resolution document during the social distancing period. However, given the maturing nature of the sector and the evolving role of members in academy trusts, it may be more appropriate that wherever possible, changes to the articles are approved through a formal members' meeting.

Role of trustees (to recommend resolution to members)

As the board of trustees will generally be the ones proposing the changes to the members to vote to approve, the recommendation to approve the resolution should be agreed by the board and minuted accordingly.

Of course, the members may not agree with the recommendation and vote the resolution down. Early and frequent communications with the members to ensure that the planned changes are understood are therefore advisable to avoid the costs and unnecessary administrative burden of a failed general meeting.

Step 6: Notice of meeting to members

What is a notice and what should it contain?

When informing relevant parties of a members' meeting, the members should receive a formal notice of the date, time, place and business of the meeting, in line with provisions in the academy trust's articles. The notice must contain the following:

- that the meeting is an AGM/general meeting of members;
- time;
- date;
- place (for a hybrid meeting this will include both the physical place and the videoconferencing platform. For a virtual meeting it will be the videoconferencing programme used. However, given that the DfE's model articles have only just included this power, it is likely that the academy trust will need to hold a physical AGM/general meeting to pass the resolution to permit hybrid/virtual meetings, if that is the resolution);
- the business to be covered (for example, the resolution and any other business such as the annual report and accounts, auditor appointment, trustee appointments);
- full text of the 'special' resolution or copies of the annual report and accounts or other documents to support the business to be transacted at the meeting;
- information about the rights of members to appoint a proxy or postal vote arrangements; and
- the date of the notice and signature of the person authorised to call the meeting.

How can it be delivered?

The notice is served on all members, trustees and the auditors of the company. The articles usually define the method of service, for example, deeming notices sent by post to be delivered 48 hours after posting. The Companies Act 2006 made a number of important changes making it easier for companies to use electronic communications to communicate with members and others. It is now possible for a company to meet its obligations to provide certain information, such as the report and accounts, by placing it on its website providing the member is sent a notice to advise them that the information has been made available in this manner. The articles may specify that notice of an AGM/general meeting can be given by post, by email or other electronic means, or by posting the details on a website and sending each member a link⁶.

Notice period

The academy trust must give proper notice of the members meeting. For academy trusts, every member of the charity and every trustee must be given notice. Unless the articles provide otherwise, notice should be given at least 21 clear days before the date of the AGM. This is reduced to 14 days clear notice for academy trusts, under the current model articles, or less if 90% of members agree (known as 'short notice')⁷.

The Court's definition of 'clear days' has not always been consistent but many sets of articles contain their definition which should, of course, be observed by the academy trust concerned. Where the articles do not define 'clear days', it is usually taken to mean the day on which the notice is given (or deemed to be given under any notice provisions in the

⁶ Before deciding how to communicate with members it is worth checking the governing document to ensure it permits the use of electronic communications.

⁷ Clause 21 of the Model articles of association for academy trusts – Model 1, Department for Education, June 2021 update.

articles) and the day on which the meeting takes place are excluded. Failure to observe the required notice period will render the meeting invalid.

Proxies

The Companies Act 2006 gives members of CLGs, which includes academy trusts, the right to appoint a proxy, whatever the academy trust's articles of association say⁸. Where a member is entitled to appoint someone to act as a proxy at the AGM this permits the proxy to speak and vote at the meeting on behalf of the member. In most cases, the chair is appointed the proxy at an AGM. This gives certainty that the vote will be counted as there will always be a chair of the meeting. If a specific individual is nominated as a proxy, but is then unable to attend, the vote cannot be counted. Details of how to appoint a proxy must be included in the AGM notice.

A 'proxy' is appointed when a member of a company, being unable to attend personally, confers formally upon the chair (or another named individual) the right to vote on his/her behalf. If the member, after submitting a proxy, subsequently attends the AGM they are entitled to vote and the proxy is effectively revoked.

The form for appointing a proxy should allow the member to issue an instruction on how the proxy should vote on a particular resolution or allow the proxy to use their discretion. Under the Companies Act 2006, a proxy can be appointed to exercise all or any of the member's rights to attend, speak and vote at the meeting. It is therefore important that the member makes clear on the form of appointment any limit to the rights extended to the proxy. If no such restrictions are mentioned, the chair would normally assume there to be none.

Keeping members engaged

Academy trusts should give all members the opportunity to ask questions and receive responses to those questions prior to voting.

⁸ S.372 of the Companies Act 1985 allowed any member of a company with share capital to appoint a proxy but the same right did not apply to a CLG (i.e. without a share capital) unless specific provision is made in the memorandum and articles. The Companies Act 2006 s324 has simplified this and provides that any member with a right to attend and vote has the right to appoint a proxy.

Step 7: Model resolution wording

Suggested wording

The following provides a template for the presentation of the resolution to members to approve the amendment of the academy trust's articles.

THE COMPANIES ACT 2006
SPECIAL RESOLUTION
[ACADEMY TRUST NAME]

CHANGE OF ARTICLES OF ASSOCIATION

At [*an annual general meeting/general meeting*] of the members of the above-named company, duly convened and held at [*Insert location of meeting*] on [*insert date and time of meeting*].

The following Special Resolution was duly passed:

That the Articles of Association of the company be modified as follows:

1. By removing articles [*insert number*] [*and/to*] [*insert number*] and altering the subsequent numbering accordingly. OR / AND
2. By the implementation of the new attached articles numbered [*insert number*] [*and/to*] [*insert number*]⁹.

DATED: [*insert date on which the resolution was passed*]

SIGNED:

[*Insert designation of authorising officer, e.g. chair, governance professional etc.*]

This resolution must be filed with Companies House along with the new articles.

⁹ It may be easier to propose new articles that follow the most recent model versions available from DfE.

Step 8: The (annual) general meeting

To recap: for a special resolution to be passed at a general meeting, the directors of a charitable CLG, such as an academy trust will need to:

- Have discussions with DfE (and possibly the Charity Commission) to ensure you have their approval for the changes.
- Hold a board meeting and resolve to convene a general meeting and approve a circular to send to the members. (On occasion a member, including sponsor or diocese, may use their power to convene a members' meeting). The circular should have set out the reasons that the articles need to be changed and should summarise the main provisions/changes in consequence of the new articles. It is best to include the full text of the new articles or instructions about where they can be viewed.
- Hold the general meeting. The special resolution to amend the articles of association will be passed by a majority of 75% or more.
- The directors/trustees note that the special resolution has been passed and resolve to send a copy to Companies House alongside the new articles (for regulated alterations, the Charity Commission will require notification too).
- A certified copy of the special resolution must be sent by post to Companies House within 15 days of the general meeting.

Chair's script

It is common practice in commercial enterprises for the governance professional to work with the chair and other key executive members/senior leaders to develop a script for the chair for ensuring the effective and smooth running of the general meeting. This could include key information such as: the major changes to the articles; the intended benefits to the academy trust of adopting the changes; the role of members in the meeting; answers to any key questions members are likely to raise. If the trustee board has been in regular conversation with the members about the proposed changes, it is likely the meeting will not see new questions being raised. However, the governance professional should be prepared to provide the answers to the chair, if possible.

Venue considerations for in person meetings

As with any meeting, due consideration should be given to the timing and venue of a members meeting to ensure maximum attendance within an environment suitably conducive to the business to be transacted.

Quorum

For academy trusts, the articles will stipulate the minimum number of members required to attend an AGM/general meeting of members in order for it to be valid – the quorum. Any AGM/general meeting that does not have a quorum when it starts cannot continue, and if it stops being quorate at any point during the AGM/general meeting, the meeting must stop, unless the articles state otherwise. If that happens, subject to the articles, the chair may adjourn the meeting and, where the articles permits, the chair may set a new time and date for the adjourned meeting.

The governance professional should record details of those attending the meeting and advise the chair whether or not a quorum is present, and maintained throughout the meeting.

Any decisions made without the quorum being met are unlikely to be valid and open to legal challenge.

Votes (proxies)

An academy trust will need to consider how it will count votes of members in practice. Where there are few members, a show of hands may be easiest. However, where proxy votes are being relied upon (and particularly where members are being required to vote by proxy), or in other circumstances (such as where there are weighted voting rights for specific members of the academy trust) a poll seems more appropriate.

The method of conducting a poll depends on the technology being used and the size of the meeting. Where only a small number of members are in attendance, such as an academy trust, it may be appropriate for the chair to call on each participating member to say how they vote (with the governance professional taking a note of this).

Minutes

Minutes of general meetings must be kept for at least 10 years and must be available for inspection by any member¹⁰, but not the general public. They record attendance at the meeting, the proceedings and any resolutions passed. Minutes normally record the conclusions and not the discussions and may be signed by the chair of the meeting or the chair of the next general meeting¹¹.

¹⁰ Companies Act 2006 ss355-359.

¹¹ Companies Act 2006 s356(4).

Step 9: Notification of changes

Who needs to be notified and by when and in what format?

Once the resolution has been passed, notification should be provided to the DfE/ESFA and Companies House.

The governance professional will need to file a signed copy of the special resolution and amended articles with Companies House within 15 days, and with the DfE/ESFA.

If the resolution is a 'regulated alteration', which has the prior approval of the Charity Commission, the Charity Commission will also need to be notified that the resolution has been effected.

Who else should be informed (why/when)?

Those key stakeholders previously identified with an interest in the changes to the articles should be informed of the revisions as soon as practicable.

When will the changes become effective?

If the resolution did not require the prior approval of the Charity Commission (regulated alterations), the changes will become effective at the time the resolution was passed by the members.

Step 10: Enacting the resolution

What needs to be done to implement the changes?

Done well and with sufficient planning, it is likely that the governance professional has already identified key governance documents that will need to be revised as a consequence of the amended articles.

A schedule of work, attached to the trust calendar/corporate calendar, should identify those documents that need to be revised as a matter of priority and those that can be delayed. Changes that may arise could include altering the composition of members and trustees, or introducing virtual members' meetings. Those board policies and other documents affected by the revised articles should be presented to the appropriate body (board or committee) and approved in the usual manner.

Stakeholder communications (website)

A copy of the revised articles should be posted on the academy trust's website, as required by the DfE/ESFA.

Adding the next review to the trust calendar/ corporate calendar

The revised articles should have adequately anticipated future potential changes and incorporated clauses to accommodate and meet those developments. This should mean that the articles do not require substantial revision for some time. However, as detailed at the start of this guidance, it is good practice to review the articles and other key governance documents regularly to ensure they remain fit for purpose.

Step 11: Review and reflect

How did the process go? What could be improved next time?

After a given period of time (3-6 months for example), it may be beneficial for the chair, a member, key executive team members and the governance professional to review the exercise and identify those aspects of the process that worked well and those that could be improved next time.

A note of that discussion should be made and retained to inform future planning arrangements for meetings of the members and/or the process for revising the articles.

When/how will you know the amendments have had the desired effect?

Having identified the intended benefits of revising the articles, it should be easy for the governance professional to identify whether those benefits have been realised. A governance review or board evaluation is also likely to include an assessment of the effectiveness of the governance arrangements and flag up any areas of concern or processes to be praised.

Final observations

In September 2017 a Law Commission Report on the Technical Aspects of Charity Law and Regulation made several recommendations relating to charities changing their governing documents. At the moment, depending on how a charity's legal structure, the rules governing changes to governing documents can vary in complexity. Parliament is currently considering the recommendations of the Law Commission as part of a Charities Bill, which if/when implemented will significantly reduce the complexity involved in changing the governing documents of charities.

For charitable companies limited by guarantee, the Charity Commission's approval for 'regulated alterations' will continue to apply. However, a new statutory test will be attached which the Charity Commission will have to apply when considering requests to amend charitable purposes. This is likely to require trustees provide more information when requesting approval for a 'regulated alteration'.

Appendix A: Glossary/further information

Greater explanations of the terms used and the legal source for some requirements.

Articles of association (articles)

The articles of association are the governing document of an academy trust. They provide key information about the purpose of the organisation, how it is to be run and to whom it is accountable. In well-written articles for a charitable company (such as an academy trust), the following information is usually provided:

- objects – what the charitable purpose of the academy trust is, e.g. to deliver education and public benefit. These tend to be a brief description of the charity's aims reflecting the charitable definition used to obtain charitable status¹²
- area of benefit – the geographical area to be covered by the academy trust's operations
- beneficiaries – details as to who can benefit from the academy trust's activities
- powers – ways in which the academy trust can fulfil its objects, the activities it may or may not undertake
- trustees – requirements as to the number of trustees and who may or may not qualify to act as a trustee
- amendment provision – the authority to change administrative arrangements, thereby providing a mechanism by which the academy trust can remain flexible to the needs of its beneficiaries, without the added burden of having to wind up the charity and start again or undertaking lengthy correspondence with the DfE, ESFA or the Charity Commission. However, there is no need to include such specific powers in the articles of an academy trust, as company law provides a general power to amend¹³. It should be noted that there are some parts of a charity's articles which cannot be changed without the prior approval of the Charity Commission, such as changes to the charitable objects or provisions about the remuneration of trustees¹⁴.
- dissolution provision – power to wind-up or merge the academy trust and transfer the assets (after all liabilities have been satisfied) to another academy trust with similar objects.
- governance arrangements – how the trustees will run the academy trust, the internal processes of trustee meetings, general meetings, voting, financial reporting etc.
- membership arrangements including eligibility and disqualification criteria, powers and general meetings.

Further provisions might include:

- the academy trust's name, and the authority to change the name in the future;
- powers to provide trustees with the ability to raise funds, borrow, purchase equipment and property, and sell equipment. The powers should provide trustees

¹² The objects must fall within one of the 'purposes' defined as charitable in s.3 of the Charities Act 2011.

¹³ Further guidance can be found in the Charity Commission's CC36 'Changing your charity's governing document'.

¹⁴ Unless authorised to do so by the governing document, statute, or by the Charity Commission, trustees should not benefit from the position they occupy. The Charities Act 2011(ss.185–188) provides charities with powers to remunerate trustees for providing services or goods, over and above their normal trustee duties, subject to certain conditions being met. Further information can be found in the guidance note 'Payment of charity trustees (England & Wales)'. Also refer to the Charity Commission's see CC1 'Trustee expenses and payments'.

with the ability to undertake all the activities required for them to fulfil the charitable objects¹⁵;

- procedures for appointing trustees, who can be trustees, their re-appointment, tenure, co-option of trustees and the removal of trustees¹⁶;
- how trustee meetings will be run¹⁷, the quorum needed to transact business, frequency of meetings/minimum number each year, and appointment of the chair;
- systems by which the academy trust's financial arrangements comply with ESFA's funding agreement, the current Charities SORP (Statement of Recommended Practice) and company law accounting requirements¹⁸;
- the power to set up bank accounts and arrangements for authorising banking transactions;
- a statement prohibiting the trustees from benefiting personally from their position, unless they are the CEO/Headteacher
- a clause indemnifying trustees out of academy trust funds; and
- details for managing conflicts of interest.

Charitable companies limited by guarantee (CLG)

All academy trusts are constituted as CLGs; a legal structure derived from company law and used for organisations which do not have a share distributing focus. Academy trusts are also exempt charities (in England and Wales).

(Charity) trustees

The people responsible for leading and governing a charity are called charity trustees. In this document we have used the term trustee, however, within church schools they are more likely to be called 'directors' to differentiate from the charity trustees who are responsible for the governance of the charitable trust that owns the land on which the academy trust operates.

Company directors

As academy trusts are CLGs, those responsible for their governance and direction are company directors under company law and charity trustees under charity law. This guidance uses the term 'trustee' to cover both terms unless there is a specific need to use one term rather than the other.

Exempt charity

An exempt charity is one that does not have to register with the Charity Commission for England and Wales. However, an exempt charity is still required to abide by charity legislation and regulation to a large degree. The Charity Commission can also investigate any charity, even if not registered with it; this power is likely to be used on the invitation of the Principal Regulator of academy trusts – the Department for Education.

Local school committees (including Local Governing Bodies)

Local school committees are committees of the board and represent a way in which the trustee board can exercise appropriate oversight of different schools within a multi-academy trust. Local school committees operate under the delegated authorities of the trustee board and the board can change those delegations as they see fit.

¹⁵ Further guidance can be found in the Charity Commission's CC20 'Charity fundraising: a guide to trustee duties'.

¹⁶ See Charity Commission CC30 'Finding new trustees' and the guidance note, 'Charity trustee recruitment'.

¹⁷ More information can be found in CC48, 'Charities and meetings' from the Charity Commission.

¹⁸ More information on the Charities SORP is available at www.charitySORP.org.

Members

Under the CLG model, the 'owners' of the academy trust are the members. While members of a charity do not actually 'own' any assets of the charity, they do have a number of rights and responsibilities that they must¹⁹ exercise in the best interests of the charitable purposes.

Some members will be interested but independent individuals, others may be appointed by a specific body (such as a corporate entity or religious body) that acts as a sponsor to the academy trust. This member may have greater powers than the other members by reason of protecting certain characteristics of the school. The specific powers of members should be included in the academy trust's articles of association.

Regulated alterations

It should be noted that there are some parts of a charity's articles which cannot be changed without the prior approval of the Charity Commission, such as changes to the charitable objects or provisions about the remuneration of trustees. A charity incorporated as a company limited by guarantee, such as an academy trust, will usually have the power under the Companies Act 2006 to alter its (memorandum and) articles of association and similar powers are contained within the DfE's model articles, but there are limitations on this power²⁰. For instance, the Charities Act 2011²¹ states there are some 'regulated alterations' that will be 'ineffective' without the prior written agreement of the Charity Commission for England and Wales. These 'regulated alterations' include:

- changes to charitable objects;
- alterations to the powers of amendment;
- amendments to the powers of dissolution;
- introducing/removing benefits to trustees²²; and
- plans to spend any permanent endowment²³.

For charitable companies, the Charities Act 2011 s.198 provides details for making 'regulated alterations' to the (memorandum and) articles of association. The section is detailed below:

"Section 198 Alteration of objects by companies and Commission's consent

(1) Any regulated alteration by a charitable company—

- (a) requires the prior written consent of the Commission, and
- (b) is ineffective if such consent has not been obtained.

(2) The following are regulated alterations—

- (a) an amendment of the company's articles of association adding, removing or altering a statement of the company's objects,
- (b) any alteration of any provision of its articles of association directing the application of property of the company on its dissolution, and

¹⁹ The DfE's model articles places this responsibility (fiduciary duty) on members. The Lehtimaki case also provided interesting insight into the fiduciary duties of members in CLGs, although the judgment of that case is limited to that specific instance. The potential for further case law development in this matter is not unforeseeable.

²⁰ Charities Act 2011 s.280.

²¹ See section 198 of the Act.

²² Charities Act 2011 s.189 provides trustees with the opportunity to purchase trustee indemnity insurance out of charity funds, without the prior permission of the Charity Commission. If, however, there is an express prohibition contained within the governing document against the purchase of such trustee indemnity insurance, then the charity is still unable to purchase such cover out of charitable funds.

²³ Specific guidance on the application of permanent endowment by small charities can be found in Charities Act 2011 s. 281.

(c) any alteration of any provision of its articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.

(3) Where a company that has made a regulated alteration in accordance with subsection (1) is required—

(a) by section 26 of the Companies Act 2006 to send to the registrar of companies a copy of its articles as amended,

(b) by section 30 of that Act to forward to the registrar a copy of the special resolution effecting the alteration, or

(c) by section 31 of that Act to give notice to the registrar of the amendment, the copy or notice must be accompanied by a copy of the Commission's consent.

(4) If more than one of those provisions applies and they are complied with at different times, the company need not send a further copy of the Commission's consent if a copy was sent on an earlier occasion.

(5) Subsections (2) to (4) of section 30 of that Act (offence of failing to comply with section 30) apply in relation to a failure to comply with subsection (3) as in relation to a failure to comply with that section.”

Where trustees are uncertain about whether or not they require Charity Commission for England and Wales approval, it would be prudent to consult the Commission before putting in place any actions to make any such amendments.

About Trust Governance Professionals

Trust Governance Professionals is an organisation on a mission to support academy trust governance professionals. We were established by a team of governance professionals motivated by the knowledge that the governance role in academy trusts is unique, multi-faceted and broad-ranging.

We have experience of directly delivering academy trust governance across the full range of aspects of this role – from board and committee support to local governance, risk, compliance, policies, admissions, exclusions, data protection, and freedom of information. We leverage this in-depth knowledge of the demands and complexities of the role in order to provide expert support to trusts in training, recruiting and developing governance professionals across the country. www.tgpltd.co.uk