

*Oxford & District Federation of Allotment Associations
Model Memorandum and Articles of Association for Allotment Societies
being a company limited by guarantee
and not being a charity or a community interest company
July 2020*

MEMORANDUM AND ARTICLES OF ASSOCIATION

of

********* ALLOTMENT SOCIETY LIMITED

A Company Limited by Guarantee

********* Allotment Society Limited founded on *(insert date)*

Incorporated as a Company Limited by Guarantee on
(insert date of Certificate of Incorporation)

This Memorandum and Articles last amended on – not amended
(after first amendment delete final highlighted words and insert date of amendment)

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Words in **bold** on their first appearance are defined in the Interpretation

Companies Acts 1985 to 2006

Company Limited by Guarantee

MEMORANDUM OF ASSOCIATION

of

******* ALLOTMENT SOCIETY LIMITED**

Each subscriber to this Memorandum of Association wishes to form a company under the Companies Act 2006 and agrees to become a Member of the company.

Name of each subscriber

Authentication by each subscriber

Dated

Companies Acts 1985 to 2006

Company Limited by Guarantee

ARTICLES OF ASSOCIATION

of

***** ALLOTMENT SOCIETY LIMITED

1. Objects

The **objects** of the **Society** are:

- 1.1 To manage allotments, in particular in the district of *(insert local area name)* in Oxford.
- 1.2 To promote the art, science and practice of horticulture.
- 1.3 To promote the interests of gardeners.
- 1.4 To educate in the principles and practice of horticulture.

2. Powers

The Society has the following powers, which may be exercised only in promoting the objects:

- 2.1 To manage allotments and to make agreements with allotment holders on such terms, including rent and other charges, and subject to such rules as the Society shall determine from time to time.
- 2.2 To promote or carry out research, provide advice and publish or distribute information.
- 2.3 To join, affiliate to, co-operate with, support, administer or set up other bodies.
- 2.4 To raise funds, borrow money and give security for loans.
- 2.5 To acquire, hire, let or dispose of property of any kind.
- 2.6 To make grants or loans of money and to give guarantees.
- 2.7 To set aside funds for special purposes or as reserves against future expenditure.
- 2.8 To deposit or invest its funds in any manner and delegate the management of investments to a **Financial Expert**.
- 2.9 To arrange for investments or other property of the Society to be held in the name of a **nominee company** acting under the direction of the **Board** or controlled by a Financial Expert acting under their instructions, and to pay any reasonable fee required.

- 2.10 To deposit documents and physical assets with any company registered or having a place of business in England or Wales as **Custodian**, and to pay any reasonable fee required.
- 2.11 To insure the property of the Society against any foreseeable risk and take out other insurance policies to protect the Society, its officers and its volunteers.
- 2.12 Subject to sub-article 8.3, to employ paid or unpaid agents, staff or advisers.
- 2.13 To enter into contracts to provide services to or on behalf of other bodies.
- 2.14 To establish or acquire subsidiary companies.
- 2.15 To do anything else within the law which promotes or helps to promote the objects.

3. Membership

- 3.1 The **Company** must maintain a register of **Members**.
- 3.2 The Subscribers to the **Memorandum** are the first Members.
- 3.3 **Membership** is open to any person interested in furthering the objects and approved by the Board. Every person who holds an allotment which is managed by the Society shall be required to be a Member of the Society as a condition of holding such an allotment. A person relinquishes membership when they cease to hold an allotment.
- 3.4 The Board may establish different classes of Members and recognise one or more classes of supporters who are not Members (but who may nevertheless be termed 'members') and set out their respective rights and obligations.
- 3.5 The form and the procedure for applying for Membership is to be prescribed by the Board.
- 3.6 Membership is not transferable.
- 3.7 A Member whose subscription is three months in arrears ceases to be a Member but may be reinstated on payment of the amount due.
- 3.8 The Board may refuse Membership to any person if in their reasonable opinion that person being a Member would be harmful to the Society.
- 3.9.1 The Board may terminate the Membership of any Member on the ground that in their reasonable opinion the Member's continued Membership would be harmful to the Society. The Board may only pass such a resolution after notifying the Member **in writing** and considering the matter in the light of any **written** representations which the Member puts forward within 14 **clear days** after receiving notice. The Board shall offer the Member the opportunity to meet with the Board or such person or persons it may appoint for this purpose. At such a meeting the Member shall be entitled to be accompanied and assisted by one person of his or her choosing. Such a Member is not entitled to a refund of any subscription, allotment rent or other payment, but the Board may at its absolute discretion make a whole or partial refund.
- 3.9.2 Without prejudice to the powers of the Board or the process detailed in 3.9.1, when notifying a Member of a decision to terminate Membership the Board will inform the Member that within 30 days of the date of notification they may access the external appeal procedure applicable at the time as operated by ODFAA or its successor body.

4. General Meetings (AGM and EGM)

- 4.1 General meetings shall be called on at least 14 clear days' written notice indicating the business to be discussed and (if a **special resolution** is to be proposed) at least 28 clear days' written notice setting out the terms of the proposed special resolution. No business other than that explicitly set out in the notice shall be transacted at such a meeting.
- If it is not possible to hold a general meeting in person, the Directors may convene a meeting by suitable electronic means.
- 4.2 Except where otherwise provided by the **Articles** or the **Companies Act**, every issue is decided by **ordinary resolution**.
- 4.3 Except where otherwise provided by the Articles or the Companies Act, a **written resolution** (whether an ordinary or a special resolution) is as valid as an equivalent resolution passed at a general meeting. For this purpose the written resolution may be set out in more than one document.
- 4.4 There is a **quorum** at a general meeting if the number of Members present in person or by **Proxy** is at least ten percent of the membership.
- 4.5 The **Chair** or (if the Chair is unable or unwilling to do so) the **Deputy Chair** or (if the Deputy Chair is unable or unwilling to do so) some other Member appointed by the **Directors** who are present or failing that elected by those Members present, chairs each general meeting.
- 4.6 Members are entitled to attend general meetings in person or by Proxy. Proxies may only be validly appointed by a notice **in writing** which:
- (1) States the name and address of the Member appointing the Proxy.
 - (2) Identifies the person appointed to be that Member's Proxy and the general meeting in relation to which that person is appointed.
 - (3) Is signed by or on behalf of the Member appointing the Proxy, or is authenticated in such manner as the Board may determine, but if a Proxy (or Proxy revocation) notice is not executed by the Member appointing the Proxy, it must be accompanied by written evidence of the authority of the person who signed it to do so.
 - (4) Allows the Member to specify how the Proxy shall vote on each resolution.
 - (5) Will be treated as allowing the Proxy to vote on any ancillary or procedural resolutions put to the meeting, and appointing the proxy to any adjournment of the general meeting to which it relates.
 - (6) Is in a particular form if so specified by the Board.
 - (7) Is delivered to the Society before the commencement of the meeting.
 - (8) May be revoked by delivering a notice in writing to the Society signed by or on behalf of the Member which must arrive before the commencement of the meeting or adjourned meeting to which the Proxy relates.
- 4.7 Every Member present in person or by Proxy has one vote on each issue and the Chair does not have a second or casting vote.
- 4.8 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is

tendered, and every vote not disallowed at the meeting is valid. Any such objection must be referred to the chair of the meeting whose decision is final.

- 4.9 Voting is by show of hands but a poll must be allowed if demanded before or immediately after a show of hands for that resolution. A poll may be demanded by the Chair or two Members or their Proxies. A demand for a poll may be withdrawn. A poll must be taken immediately and in such manner as the Chair directs.
- 4.10 General meetings may be adjourned subject to the following:
- (1) The Chair must adjourn a meeting if within half an hour after the time the meeting was due to start there is no quorum, if during a meeting a quorum ceases to be present, if directed to adjourn by the Members present, if it appears to the Chair necessary to adjourn for the safety of anyone present, or to ensure orderly conduct of the business of the meeting.
 - (2) When adjourning a general meeting the Chair must specify the date, time and place of the adjourned meeting or state that it is to be continued at a date, time and place fixed by the Board.
 - (3) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' notice of it to the same persons to whom notice of the Company's general meetings is required to be given, and containing the same information which such notice is required to contain. No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.
- 4.11 The Company should, subject to exemptions for small companies, hold an **AGM** in every **year** as good practice and in support of accountability, and at an AGM the Members:
- (1) Approve the minutes of the previous AGM and any intervening **EGMs**.
 - (2) Receive a written annual report from the Board on the Company's activities since the previous AGM.
 - (3) Receive the written annual accounts of the Company for the previous **financial year** including the report of the auditor or the **Independent Examiner**.
 - (4) Appoint an Auditor or decide not to have an audit but appoint an Independent Examiner for the Society or delegate such appointment to the Board.
 - (5) Are informed of the retirement of those **Elected Directors** who are retiring.
 - (6) Elect Elected Directors to fill the vacancies arising, through an election process determined by the Board which must include all Members being invited to nominate themselves or other Members as candidates and all candidates' names being supplied to Members with the notice of the meeting, and
 - (7) Transact any other business put before them by the Board in the notice of the meeting.
- 4.12 A general meeting may be called by the Board at any time and must be called within 21 days of a written request from at least 5% of the Membership.
- 4.13 A technical defect in the appointment of a Member of which the Members are unaware at the time does not invalidate a decision taken at a general meeting or a written resolution.

5. Board of Directors

- 5.1 The Board of Directors has control of the Company and its property and funds.
- 5.2 The Subscribers to the Memorandum (being the first Members) are also the first Directors. Subsequent Directors are elected by the Members or co-opted by the Board.
- 5.3 The Board when complete consists of not less than three and not more than ten individuals, all of whom must be Members or **Authorised Representatives** and aged over eighteen. The Board consists of a maximum of eight Elected Directors and two **Selected Directors**.
- 5.4 All Elected Directors must stand down at each AGM but, if eligible, may re-stand for election.
- 5.5 A Member may be elected and serve as a Board member for a maximum of two terms of 5 years, whether they be continuous or with a break between. Any Member who has served two 5 year terms on the Board may be appointed as a selected Director (See 5.7), but may only serve for a maximum of another 12 months.
- 5.6 The Board may co-opt as a Director any Member to fill a casual vacancy amongst the Elected Directors.
- 5.7 Selected Directors are appointed by resolution of the Board to hold office until the end of the next AGM or for 12 months if there is no AGM held within a year of the appointment.
- 5.8 A Director's term of office automatically terminates if he or she:
 - (1) Has a registered medical practitioner who is treating that Director and who gives a written opinion to the Society stating that the Director has become physically or mentally incapable of acting as a Director and may remain so for more than three months.
 - (2) Is absent from three consecutive meetings of the Board.
 - (3) Ceases to be a Member of the Society (but such a person, on resuming Membership of the Society, may be reinstated by resolution of the Board before the next AGM).
 - (4) Resigns by written notice to the Board (but only if at least two Directors will remain in office).
 - (5) Is removed by a resolution passed by every one of the other Directors after they have invited the views of the Director concerned, given him or her fourteen clear days to state any views, and considered the matter in the light of any such views. The Board shall offer the Director the opportunity to meet with the Board and at such a meeting the Director shall be entitled to be accompanied and assisted by one person of his or her choosing.
 - (6) Is removed by the Members at a general meeting.
 - (7) Is prohibited by law from being a Director.
 - (8) Is the subject of a bankruptcy order or a composition with creditors.
- 5.8 A technical defect in the appointment of a Director of which the Board is unaware at the time does not invalidate decisions taken at a Board meeting.

6. Board Proceedings

- 6.1 The Board must hold at least two meetings each year.
- 6.2 A quorum at a meeting of the Board is three Directors, but if the total number of Directors is below three then the remaining Directors may act but only to co-opt additional Directors.
- 6.3 A Board meeting may be held either in person or by suitable **electronic means** agreed by the Board in which all participants may communicate with all other participants.
- 6.4 The Chairman or (if the Chairman is unable or unwilling to do so) the Deputy Chairman or (if the Deputy Chairman is unable or unwilling to do so) some other Director chosen by the Directors present chairs each meeting of the Board.
- 6.5 Except where otherwise provided by these Articles every issue may be determined by a simple majority of the votes cast at a meeting of the Board but a **resolution in writing** which is signed by 75% of all the Directors is as valid as a resolution passed at a meeting and for this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature.
- 6.6 Every Director has one vote on each issue but, in case of equality of votes, the Chairman of the meeting has a second or casting vote.
- 6.7 A procedural defect of which the Board is unaware at the time does not invalidate decisions taken at a meeting of the Board.

7. Board Powers

The Board has the following powers in the administration of the Society:

- 7.1 To appoint and remove any person (who may be a Director) as **Secretary** in accordance with the Companies Act.
- 7.2 To appoint and remove a Chairman, a Deputy Chairman and other officers from among their number, and to appoint and remove other individuals with specific duties (including representing the Society) on such terms as the Board from time to time decide.
- 7.3 To grant to or withdraw from any individual (with his or her consent) and on such terms as the Committee from time to time decide, such honorary titles as Patron, President or Vice-President of the Society.
- 7.4 To delegate (and to revoke such delegation of) any of the Board's functions to committees consisting of two or more individuals appointed by the Board but at least one member of every committee must be a Director and all proceedings of committees must be reported promptly to the Board. The Board may arrange for some or all of the members of committees to be elected by some or all of the Members of the Society. The Board may set and alter the terms of any committee.
- 7.5 To make standing orders consistent with the Memorandum, the Articles and the Companies Act to govern proceedings at general meetings.
- 7.6 To make rules consistent with the Memorandum, the Articles and the Companies Act to govern their proceedings and proceedings of committees.
- 7.7 To make regulations consistent with the Memorandum, the Articles and the Companies Act to govern the administration of the Society and the use of its seal (if any).

- 7.8 To establish procedures to assist the resolution of disputes or differences within the Society.
- 7.9 To exercise any powers of the Society which are not reserved to a general meeting.

8. Benefits and Conflicts

- 8.1 The property and funds, including income, of the Society, from wherever derived, must be used only for promoting the objects and may not be distributed to the Members or the Directors.
- 8.2 No Director may receive any payment of money or other **material benefit** (whether direct or indirect) from the Society except:
- (1) Under sub-article 8.3 (contractual payments).
 - (2) Reimbursement of reasonable out-of-pocket expenses (including travel costs) actually incurred in the administration of the Society.
 - (3) Interest at a reasonable rate on money lent to the Society.
 - (4) A reasonable rent or hiring fee for property let or hired to the Society.
 - (5) The benefit of **indemnity insurance**.
 - (6) An indemnity in respect of any liabilities properly incurred in running the Society (including the costs of a successful defence to criminal proceedings).
 - (7) Payment to a company in which a Director has no more than a one per cent shareholding.
 - (8) Benefits in his or her capacity as a Member. (ie as plot holder)
- 8.3 A Director may not be an employee of the Society, but a Director or **Connected Person** may enter into a contract with the Society to supply goods or services in return for a payment or other material benefit, but only if:
- (1) The goods or services are actually required by the Society.
 - (2) The nature and level of the benefit is no more than reasonable in relation to the value of the goods or services and is set by the Board in accordance with the procedure in sub-article 8.4.
 - (3) Not more than half of the Directors are interested in any such contract in any one financial year.
- 8.4 Whenever a Director has a personal interest in a matter to be discussed at a meeting of the Board or a committee, he or she becomes a **Conflicted Director** and must:
- (1) Declare an interest before the meeting or at the meeting before discussion begins on the matter, and, in the event that a Director disagrees with other Directors as to whether he or she is a conflicted Director, the decision of the Board is final.
 - (2) Be absent from that part of the meeting unless expressly invited to remain in order to provide information.
 - (3) Not be counted in the quorum for that part of the meeting.
 - (4) Be absent during the vote and have no vote on the matter.

9. Property and Funds

- 9.1 The Society must have one or more bank accounts and all bank accounts which hold the Society's funds must be in the name of the Society and require at least two signatures on every payment including payments authorised by electronic means.
- 9.2 Funds which are not required in the near future may be placed on deposit or invested in accordance with article 2.8 until needed.
- 9.3 Documents and physical assets may be deposited with any company registered or having a place of business in England and Wales as Custodian and any Custodian may be paid reasonable fees.

10. Records and Accounts

- 10.1 The Board must comply with the requirements of the Companies Act and any requirements for small companies as to keeping records, to the audit or independent examination of accounts, and to the preparation and transmission to the Registrar of Companies of information required by law including:
 - (1) annual returns / confirmation statement
 - (2) annual reports and
 - (3) annual statements of account
- 10.2 The Board must also keep records of:
 - (1) all proceedings at Board meetings
 - (2) all resolutions in writing
 - (3) all reports of committees and
 - (4) all professional advice obtained
- 10.3 The Board must comply with the requirements of the Companies Act as to keeping of registers including:
 - (1) Register of Members in accordance with sub-article 3.1
 - (2) Register of Directors
 - (3) Register of Secretaries (if any)
 - (4) Register of Directors' residential addresses
 - (5) Register of people with significant control
- 10.4 Accounting and all other records relating to the Society must be made available for inspection by any Director at any time during normal office hours and may be made available for inspection by Members if the Board so decides.
- 10.5 A copy of the Company's **Memorandum and Articles of Association** and latest available statement of account must be supplied on request to any Director or Member.

11. Limited Liability

The liability of Members is limited.

12. Guarantee

Every Member promises, if the Company is dissolved while he or she remains a Member or within one year after he or she ceases to be a Member, to pay a contribution of up to £1 towards:

- 12.1 Payment of those debts and liabilities of the Company incurred before he or she ceased to be a Member
- 12.2 Payment of the costs, charges and expenses of winding up and
- 12.3 The adjustment of rights of contributors among themselves.

13. Notices

- 13.1 Notices and other documents to be served on Members or Directors under these Articles or the Companies Act may be served by hand, by post, by suitable electronic means or with or within any journal distributed by the Society.
- 13.2 The only address at which a Member is entitled to receive notices sent by post is an address in the **UK** shown in the Register of Members.
- 13.3 Any notice given in accordance with this Memorandum and Articles of Association is to be treated for all purposes as having been received:
 - (1) 24 hours after being sent by electronic means or delivered by hand to the relevant address,
 - (2) Three clear days after being sent by first class post to that address,
 - (3) Four clear days after being sent by second class post or overseas air mail post to that address,
 - (4) On being handed to the Member or its Authorised Representative personally or, if earlier,
 - (5) As soon as the recipient acknowledges actual receipt.
- 13.4 A technical defect in the giving of notice of which the Members or the Board are unaware at the time does not invalidate decisions taken at a meeting.
- 13.5 The accidental failure to deliver a Member's notice on time or at all does not invalidate decisions taken at a meeting.

14. Amendment

- 14.1 The Members at a general meeting may by special resolution amend the Articles including changing the name of the Society.

15. Transfer

- 15.1 The Members at a general meeting may by special resolution authorise the Board to transfer the assets and liabilities of the Society to another incorporated or unincorporated body (including an Industrial and Provident Society and an unincorporated association) established within, the same as or similar to the objects and of which the Members of the Society will be entitled to be members.

- 15.2 On a transfer under article 15.1 the Board must ensure that all necessary steps are taken as to the transfer of land and other property and the novation of contracts of employment and transfer of pension rights.

16. Dissolution

- 16.1 If at any time Members at a general meeting decide by special resolution to dissolve the Society, the Directors will remain in office and will be responsible for the orderly winding up of the Society's affairs.
- 16.2 After making provision for all outstanding liabilities of the Society, the Board must apply the remaining property and funds in one or more of the following ways:
- (1) By transfer to one or more other bodies established for purposes within, the same as or similar to the objects or
 - (2) Directly for the objects or purposes within or similar to the objects.

17. Interpretation

- 17.1 The Articles are to be interpreted without reference to the model articles under the Companies Act, which do not apply to the Society.

- 17.2 In these Articles, unless the context indicates another meaning:

'AGM' means an annual general meeting of the Society.

'Articles' means the Company's Articles of Association and **'Article'** refers to a particular Article.

'Authorised Representative' means an individual who is authorised by a Member organisation to act on its behalf at meetings of the Society.

'Board' means the Directors collectively acting as the governing body of the Society.

'Chair' means the Chair appointed by the Board.

'Company' means the Society governed by these Articles.

'clear day' means 24 hours from midnight and does not include the day on which notice is served or the day of the meeting or other event.

'Companies Act' means the Companies Acts 1985 to 2006.

'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 (other than payment of a premium for indemnity insurance) from the Society, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Society.

'Connected Person' means, in relation to a Director, a person with whom the Director shares a common interest such that the Director 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.

‘Custodian’ means a person or body who undertakes safe custody of assets or of documents or records relating to them.

‘Deputy Chair’ means the Deputy Chair appointed by the Board.

‘Director’ means a person appointed to act as a Director under the Memorandum and Articles of Association or under the Companies Act and includes any person occupying the position of Director, by whatever name called.

‘EGM’ means an extraordinary general meeting of the Society, being a general meeting of the Members of the Society which is not an AGM.

‘Elected Directors’ means those Directors who are elected at the AGM and Directors who are co-opted by the Board into casual vacancies amongst the Elected Directors.

‘electronic means’ refers to communications sent by telephone, fax, email or via the internet or, in relation to meetings, by telephone conference call or video conference.

‘Financial Expert’ means an individual, company or **firm** who is authorised to give investment advice under the Financial Services and Markets Act 2000.

‘financial year’ means the Society’s financial year.

‘firm’ includes a limited liability partnership.

‘indemnity insurance’ means insurance against personal liability incurred by any Director for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the act or omission amounts to a criminal offence or the Director concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty.

‘Independent Examiner’ means an independent person who is reasonably believed by the Board to have the requisite ability and practical experience to carry out a competent examination of the accounts.

‘material benefit’ means a benefit, direct or indirect, which may not be financial but has a monetary value.

‘Member’ and **‘Membership’** refer to Company Membership of the Society.

‘Memorandum’ means the Society’s Memorandum of Association.

‘Memorandum and Articles of Association’ means this governing document of the Society.

‘nominee company’ means a corporate body registered or having an established place of business in England and Wales which holds title to property for another.

‘ordinary resolution’ means a resolution agreed by a simple majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold a simple majority of the voting power. Where applicable, **‘Members’** in this definition means a class of Members.

‘objects’ means the objects of the Society as defined in Article 1.

‘Proxy’ means a person appointed by a Member to attend, speak and vote on behalf of that Member at a general meeting in accordance with the Companies Act. A Proxy form is the document making such an appointment.

‘quorum’ means the minimum number of people who must be present in person or (in the case of general meetings) by Proxy at a meeting and entitled to vote for any decision taken by the meeting to be valid.

‘resolution in writing’ means a written resolution of the Board.

‘Secretary’ means a company secretary.

‘Selected Directors’ means those Directors who are selected by the Board and co-opted as Directors.

‘Society’ means the Company governed by this Memorandum and Articles of Association.

‘special resolution’ means a resolution of which at least 28 days’ notice has been given, agreed by a 75% majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold 75% of the voting power. Where applicable, **‘Members’** in this definition means a class of Members.

‘UK’ means the United Kingdom of Great Britain and Northern Ireland.

‘written’ or **‘in writing’** refers to a legible document on paper or a document sent by electronic means which is capable of being printed out on paper.

‘written resolution’ refers to an ordinary or a special resolution which is in writing.

‘year’ means calendar year.

17.3 Expressions not otherwise defined which are defined in the Companies Act have the same meaning.

17.4 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.