



Guidance on introducing the new model Memorandum and Articles of Association

Section 1 – Introduction and background

The purpose of this guidance is to introduce you to the new model memorandum and articles (mem and arts) for local support and development organisations, and to answer some questions that you might have about them. This guidance is also available in audio format.

Section 1 explains why we produce a model mem and arts, how we have produced this model, why we needed a new model, and whether local support and development organisations now have to adopt a new mem and arts.

Section 2 covers the two different models available, and who they are intended for.

Section 3 explains what your organisation should consider before adopting this new model mem and arts, and how to go about changing from your current organisational structure to the new model.

Section 4 provides explanations about some specific sections of the mem and arts. This should help you understand more about how to meet the requirements of this governing document.

After reading this guidance, if you still have any questions about how to use the new model mem and arts, you can join in our discussion group on [navcaboodle](http://navcaboodle.org). Navcaboodle is NAVCA's professional and social networking site, where you can network, discuss and share experiences with others. Go to www.navcaboodle.org.uk to register, browse the mem and arts discussion group, and post your question.

Why does NAVCA produce a model mem and arts?

There are four main reasons why we produce a model mem and arts for local support and development organisations.

The first reason is to save you time. We have thought about the activities that local support and development organisations carry out and created a model document that should fit the requirements of the majority of these organisations.

The second reason is to save you money. We have made sure that the model document complies with current charity and company law, so that you do not need to pay for legal advice to check this yourself.

The third reason is to provide you with a good foundation to carry out the work that your organisation needs to do. We have embedded good practice about how to carry out your work into the model document where appropriate. This should enable you to provide appropriate services to your beneficiaries and to operate effectively.

The fourth reason is to create an easy initial model for new local support and development organisations.

How have we produced NAVCA's new model mem and arts?

To produce NAVCA's new model mem and arts, we have taken the Charity Commission's own model mem and arts, called GD1, and adapted it to fit better with the work of local support and development organisations. It is not an update of the old NAVCA model mem and arts (25/4/17) which was based on a much older Charity Commission model. We have consulted on the content and good practice both with NAVCA's Trustee Board and also with NAVCA members who have a particular interest in the new model document. We used the services of Voluntary Action Sheffield's legal consultant, Bev Cross, to ensure that the NAVCA model document complies with current company and charity legislation. And finally, we have submitted the document to the Charity Commission to be approved as a model governing document that is recognised as charitable.

Why the changes to NAVCA's model?

There are a number of reasons why we have created a new model mem and arts.

Firstly, the age of the previous model means there are clauses that are no longer part of charity law, such as clauses 4.13.2 and 4.13.3 of the memorandum. Under the new legislation, these sections are no longer necessary.

Similarly, the previous model does not take into account the changes brought about by the Charities Act 2006 and the Companies Act 2006. If your organisation's governing documents are based on the old requirements for charities and companies, you now need to refer to three separate documents to understand your legal duties: the Charity Act, the Company Act and your governing documents. However, if you adopt the new model document that incorporates the new legal requirements, this can act as a single source of information on how to correctly and legally govern your organisation.

A second reason is that the new model is a better fit for charities and written in easier to understand English than the previous model. It is clearer about what your organisation can and should do, and what it cannot do. This will help your organisation's trustees understand their governing document. It also makes trusteeship easier for people who struggle with written English, supporting equal opportunities in your organisation.

Thirdly, the NAVCA membership has changed. These days, only a minority of our members have CVS in their name. The new document is suitable to a wider number of local support and development organisations, not just CVS. The majority of local support and development organisations also now do some work across a county or subregion, in particular if working in consortia. In section 4, we provide an explanation about how the model document copes with the different areas of benefit that these organisations might have these days. Organisations who adopt NAVCA's new model mem and arts will also automatically meet NAVCA's membership criterium that at least 60% of your trustees should be elected by your members.

Must local support and development organisations change their governing documents?

You might be wondering if the changes in legislation mean that local support and development organisations and other charities now *have to* change their governing documents. The answer is no, it remains optional. However, some of the explanations given in this section may make you think that updating your governing documents would be a good thing to do. If so, we hope that you find NAVCA's new model mem and arts a useful way to do this.

Section 2 – Who is this model for?

This section covers who our model documents are intended for, why we have produced two model documents, and the difference between the two versions.

Who are the new model documents suitable for?

These new model mem and arts are suitable governing document for local support and development organisations that need the legal structure of being a registered charity and a registered company. If you do not intend to register as a charity, you cannot use these model documents.

Why two model documents?

The reason for offering two model documents is because of the Companies Act 2006. From 1 October 2009, changes to an organisation's governing document have had to be presented in a new format, whereby the majority of the content of the old Memorandum of Association moves into the Articles of Association. The Memorandum of Association now only needs to contain the name of the organisation and the first subscribers.

Our 2006 model is named after the 2006 Companies Act and is produced according to this new format. Our 1985 model is named after the 1985 Companies Act and also includes a paragraph in the Memorandum to explain that the clauses have been moved into the articles.

The 1985 model used to contain a lot of repetition. What's changed?

When we released the new 1985 model mem and arts in the autumn of 2009, organisations could change clauses in their Memorandum, but not remove clauses. This meant that clauses had to be repeated in both the Memorandum and the Articles. This was unavoidable until the summer of 2010 when Companies House agreed a new paragraph to eliminate this repetition. We have therefore updated the 1985 model to include the new paragraph and get rid of the repetition.

For organisations that have used the 1985 model with the clauses repeated, this change should not cause you any problem. However, the next time you update your mem and arts, you can choose to copy the format of the updated 1985 model memorandum to remove the repetition from your memorandum.

How do we know which model document to use?

Both models are equally up to date, and you don't have a choice which model to use. You must choose the right model according to whether you are already a company or forming a new company. The 1985 model is for the majority of NAVCA members who were already registered companies before 1 October 2009. The 2006 model is for those organisations who register as

companies on or after 1 October 2009. The 2006 model is also for those organisations that need to create a new legal entity in order to merge into it.

If you are still unsure about which model to use, take a look at our information sheets about how to adopt the mem and arts, which are on the NAVCA website at www.navca.org.uk/memandarts. Each of the four information sheets is written for organisations with different legal statuses, and they signpost you towards the model that you need to use.

Is there difference in content between the two model documents?

No, there is no difference in the actual content of the two model documents, just small differences in the layout of the memorandums of association of the two models.

Section 3 – Adopting the new model

This section covers how to use the model mem and arts, how to make changes to the model, what your organisation should consider before adopting this new model mem and arts, and how to go about changing from your current organisational structure to the new model.

How to use a model mem and arts

There are several ways you can use the model mem and arts:

Firstly, you could simply adopt them as they are. To make the model document into your own governing documents, you would just need to make decisions about how to fill in the highlighted sections of the document. One of the advantages of a model document is that, if you don't make any other changes, the Charity Commission should be able to approve your new governing documents quickly. This method is most appropriate to small and newly forming local support and development organisations that do not have particularly complex structures and are unable to seek their own legal advice. You would need to indicate in the Charity Commission's registration application form that your document is based on the NAVCA model mem and arts.

Secondly it is possible to use the model as a template but make more significant changes than the highlighted sections. You can use our model and make changes to the rules in the model document, so that it better fits the specific needs of your organisation. Similarly, organisations that serve a specialist user group, such as BME organisations only, may want to adopt the majority of the model but tailor the objects.

If you decide to change sections of the model document other than the highlighted sections, the Charity Commission could take longer to approve your governing document. You should tell the Charity Commission that your document is based on the NAVCA model mem and arts, and clearly highlight the paragraphs that you have changed. Don't forget to make sure that your mem and arts still meet NAVCA's membership criteria.

Other considerations

There are a couple of important points to consider before adopting a new governing document. Firstly, if you are considering changing your organisation's legal status, for instance incorporation or merger, you should contact your pension provider at an early stage. You need to find out if your organisation would incur any debt from your pension scheme by changing your legal status.

Secondly, some funders, like the Lottery, want to know before you make any changes to your governing documents. Similarly, your local authority and other funders may well want to be notified. You should check the requirements of your current funders before making any changes to your governing documents.

How to adopt the new mem and arts

There are some particular steps that your organisation will need to go through in order to adopt the new mem and arts. These steps are different depending on the legal status of your organisation. To help you through this process, we have put together an information sheet setting out the procedures step by step. Download this from www.navca.org.uk/memandarts and find the right step by step guide for your organisation.

Section 4 – Definitions and explanations

This section provides explanations about some specific sections of the mem and arts. This should help you to understand the document and what you need to do to meet its requirements.

What are the changes from NAVCA's old model mem and arts?

If your organisation's current governing documents were based on NAVCA's old model mem and arts, you will be interested to know how the new models relates to the old model. To help you compare the two documents, we have put together a table which shows where the old clauses and articles can be found in the new models. To download this table, go to www.navca.org.uk/memandarts.

Trustees or directors?

For charitable companies, the words "trustee" and "director" are frequently used interchangeably to refer to the people who govern the charitable company. We have chosen to use the term, "trustee", throughout the model mem and arts, mainly because many members refer to their paid chief officer as Director and this could lead to confusion. Therefore we don't use the word, "director" in our model mem and arts. If your organisation prefers to use the term, "director", for the people who govern the organisation, you can continue to call those people directors without needing to change the terminology in the mem and arts. It would make sense for new trustees to have this and the rest of the mem and arts explained to them as part of their induction process.

Area of benefit

Traditionally, local support and development organisations operated exclusively within a particular local authority area. NAVCA believes that locally-focused support organisations deliver substantial benefits for the local voluntary and community sector. However, nowadays, many NAVCA members deliver benefits for their local area by working over a wider area, often in partnership, consortia or strategic collaboration with other bodies. Therefore the new area of benefit both clearly indicates the local area on which the organisation will mainly focus, whilst also allowing the organisation to operate throughout England.

Charitable objects

The charitable objects have been agreed with the Charity Commission as a modern way of explaining what local support and development organisations do. They have been loosely expressed to allow for the variety of work that these organisations do or can be asked to do. The danger of narrowing these objects is that this could unnecessarily restrict what you could do in response to changing circumstances. NAVCA's performance standards explain NAVCA's views on what local support and development organisations should do and where the focus of their work should be. These also serve as a tool for organisations to guide the work that they do.

Guarantee

Both the old NAVCA model memorandum and the new models give the guarantee as £1. However, if your company has already been registered with a different sum as the guarantee, then you cannot alter the amount. This is why it is highlighted yellow in both models.

NAVCA's view on payment of trustees

NAVCA strongly believes in the non-payment of trustees and does not believe that trustees should benefit financially from being the trustee of an organisation. This model sets stricter limits on the benefits that trustees could gain than are required by current legislation, but more relaxed than in NAVCA's previous model mem and arts for CVS.

Membership

Article 31(2) makes provision for both organisational members and individual members. However, this does not necessarily mean that you have to have individual members.

The provision for individual members should be used if the trustee board appoints trustees under Article 18(1) who are not already part of a member organisation. In this case, they will need to become individual members of the organisation in order to be a trustee.

Article 31(2) also says that only non-profit organisations are eligible for organisational membership, which means being able to vote at general meetings and elect people to the trustee board. Statutory organisations and private businesses are not eligible.

If you wish to offer membership to statutory organisations and private businesses, this is made possible under "Classes of membership" in Article 32. You can write a membership policy to set out arrangements for full membership for organisations and individuals, associate membership and corporate membership. The membership policy can detail the benefits of the different forms of "membership" and eligibility criteria. All members would have the right to be invited to and attend general meetings, but only full organisational members and individual members would have the right to vote and elect to the trustee board as is set down in the Articles, and only full members would be counted as part of the quorum at a general meeting. Associate members and corporate members would not have the membership benefits as described in the Articles, but the organisation could give them other benefits, such as receiving the newsletter and being kept informed and involved.

We would advise against extending the full membership in Article 30(2) to statutory sector or private sector organisations. This would give those organisations the right to vote and elect to the trustee board in the same way as non-profit organisations, and it would mean that people from the statutory sector could become trustees, regardless of what any membership policy

said. We don't think that this is good practice for local support and development organisations, as it would pose a risk to your organisation's independence.

Proxies: Appointments and voting

There is a new regulation in the Companies Act 2006 which gives every member the right to vote by proxy at general meetings. You have a duty to notify all members of this right. The regulations on proxy votes are attached as an appendix to the mem and arts and includes wording that you can send out together with the invitations to your general meeting. Your members who want to vote by proxy would fill in the gaps and submit this form back to your organisation as outlined in the regulations.

How to deal with quorums at general meetings

The quorum for general meetings is stated in Article 38(2). This is set to be reasonable and achievable for most members. However, if you have a particularly large membership and feel that the percentages would not be achievable, you would need to select a new percentage, and when applying to the Charity Commission, you should indicate that it is an amendment to the NAVCA model.

Number of trustees

NAVCA has set the maximum number of trustees as 15. We think it is important to keep trustee numbers manageable. When you consider how many trustees to have, think about how many trustees you need for the right mixture of skills and perspectives from different types of members. You will also need to think about the number of trustees you need in order to get a quorum at your trustee meetings. Do also consider the dynamics of your trustee meetings. As a general rule, the more trustees you have, the longer it will take for them to have their say and to reach a consensus. With too many trustees, you may find that smaller decision-making groups form, which undermines the collective coherence of your board. Another danger of a board that is too large is that the commitment of trustees could suffer if they perceive that they are not particularly needed at meetings and there are enough other trustees to make the right decisions without them.

Chair's casting vote

The paragraph that gives the chair a casting vote in the event of an equality of votes in a general meeting is entirely highlighted. This is Article 45(2). This paragraph is fully optional and it can be removed without needing to draw this to the attention of the Charity Commission.

It is important to know that at the moment, this article is problematic under company law. There has not yet been a ruling on whether the Companies Act 2006 allows this provision in organisations where the articles require the chair to be a voting member (or the authorised representative of a voting member organisation). This position will not be clarified until either we have a definitive statement from Companies House or a court ruling. Therefore, the current

advice is not to use the article until the position has been officially clarified. If you want to keep this article in your mem and arts, we would suggest that you seek separate legal advice on this point.

In any case, if a general meeting is that divided on an issue, the matter should be adjourned until more of a consensus can be reached. Please also be aware that this article only relates to general meetings, and does not relate to trustee meetings.

Social audit

The paragraph on social audit is inherited from our previous model and is retained in case members that have used the previous models conduct such audits. This paragraph allows a social audit as an option if the organisation decides it wants to do one, but this is *not* a requirement. If you particularly do not want this paragraph included, you will need to indicate that it is an amendment to the NAVCA model when applying to the Charity Commission.

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September 2010

For further questions or support, join in the Mem and Arts discussion group on www.navcaboodle.org.uk.