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## REPUBLIC OF IRELAND START UP GUIDE FOR RIVERS TRUSTS

*Our start up guide is designed complement the guidance produced free of charge by the Charities Regulatory Authority, Companies Registration Office and the Revenue Commissioners on their websites.*

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## 1: Roles and Relationships

### What are Rivers Trusts?

Rivers trusts are community initiatives started by local people to care for their local rivers. River trusts have environmental charitable objects to deliver river improvements on a catchment management scale for the public benefit.

Rivers trusts concentrate on delivering practical improvements for their rivers. They get involved in education, flora, fauna, fisheries, biodiversity, habitat, access, pollution and any other issues that impact their river catchment, such as climate change, acid rain, litter and underlying social problems leading to environmental decline. They are bottom-up organisations and therefore focus on those issues that are important to them. They are not just interested in fish and they generally do not get involved in campaigning or single issues. They seldom, if ever, own or seek to own land or riverbank.

Rivers trusts operate for the public benefit, and can justifiably gain the privilege of charitable status, which confers several important benefits not always available to public bodies or vested interest groups.

### Evolution of a Rivers Trust

The trigger leading to the formation of a rivers trust may be a compensation payment for a pollution incident to be used for river restoration, a decline in fish numbers and species, deterioration in water quality and river flows, invasive species, urban degradation, seeing other people getting funding for their rivers or another issue. Whatever the reason, it is fundamentally an awareness or realisation that there is a problem, and that you, with others in the local community, can make a difference. In the inspirational words of Mahatma Gandhi [“Be the change you want to see in the world”](#).

Identifying the problems that exist on a river or in catchment is often reasonably well understood. Solutions are often more difficult to agree. Delivering improvements against the constraint of limited resources is even harder.

Before embarking on a formal start-up, there is a need to draw together a group of prospective trustees who will provide a strong balance of skills covering governance, finance and land management, as well as the more obvious environmental and operational knowledge. Enthusiasm is essential, but for sustainability and growth some of those involved at the outset may be better suited in due course to a part-time executive role. Start up is just the beginning, and running a successful rivers trust will require time, devotion, and, importantly, funding.

At the outset, it is therefore helpful to evaluate: -

- Priority activities
- Activities that can be funded
- Projects that can be achieved
- Timescales and strategy

In effect the above is a Business Plan. Be realistic and open to compromise, with the underlying objectives of achieving an improvement in the river “now” and using funding to build capacity for “tomorrow”. Modest achievements in the short term can lead to longer term strategic funding and recognition that the rivers trust is a sound and reputable delivery partner. [“Success breeds success.”](#)

Our practical advice is not to feel rushed or pressurised in starting up a rivers trust quickly. It is much better to take time and allow relationships to gel as people realise that there are more issues of common interest and concern than local differences. A strong but amiable board of Trustees is vital and our experience shows that it generally takes 2 years from initial concept to registration.



A strategic view at the outset is vital for coherent development and growth. It is natural at the beginning to think only of the immediate local river. Where the catchment is small there is a risk of the rivers trust not being accepted by the Charities Regulatory Authority or Revenue Commissioners as of public benefit, because of the vested interest of a few riparian owners. Further, there is a risk that the rivers trust will never be of sufficient size to attract the funding necessary to employ people and to make the real difference we aspire to. Accordingly, it is wise to contact acquaintances in neighbouring catchments to see if they have similar thoughts if no trust is in place, or to link up with an existing rivers trust if there is. One advantage of a charitable rivers trust is that funds raised for a particular catchment project can be legally restricted for that purpose, provided it meets the public benefit test, which overcomes the perfectly natural aversion of losing focus.

However, the fundamental principle of a bottom-up rivers trust is that size and scope should be determined locally to fit local needs, and not be driven by what The Rivers Trust or others might think. Your most important step on the journey is the first one. Direction can be changed later.

### **Role of Rivers Associations**

A useful vehicle prior to starting up a rivers trust is a riparian owners association or group of interests, including angling clubs and the like (here collectively called “Rivers Association”). One may already exist or one can be formed as an informal and unincorporated body.

We advocate that rivers trusts work in tandem with Rivers Associations.

- They are local and provide the foundation for a bottom up approach.
- Crucially important, through their members, they provide access to many parts of the river for research, demonstration sites and habitat improvement work.
- They are well placed to deal with any non-public benefit matters.
- They are well placed to identify problems throughout the catchment.
- They have a vested interest in the river.
- They can be a vociferous, powerful and highly effective lobbying and campaigning group to raise the profile of environmental problems faced by the river.

They are considered to be powerful allies of rivers trusts and provide a useful check and balance to keep them locally focused. A Rivers Association is therefore a “nice to have”, but it is not essential. If one doesn’t exist in a formal sense, there will probably be a group of angling interests who can act as an informal sounding board and provide a conduit for local communication on what you are trying to achieve.

In simple terms:

- Rivers Associations identify and highlight problems; and
- Rivers trusts deliver public benefit solutions.

### **Role of the Environmental Protection Agency (“Agency”)**

The regulatory agencies have generally been supportive of rivers trusts, particularly with cut backs in Government spending and a realisation that rivers trusts can assist the Agency to meet aspects the Water Framework Directive etc. The Agency is the only main organisation systematically working on a river catchment scale.

Spending cut backs tend to fall disproportionately on employee numbers, as major cost centres, and conversely other budget headings can have funds available for delivery of improvements on the ground. It is therefore vital for rivers trusts to meet and develop relationships with their local Agency

office. A small amount of funding in Government-scale terms can be a major boost to your rivers trust. Furthermore, consent is normally necessary for all in-river work, which is bound to be more readily obtainable if the Agency is familiar with the work and credentials of the rivers trust.

Our experience shows that Agency employees are overwhelmingly dedicated, hard working, conscientious, dedicated and well-qualified professionals. They too can be frustrated by the systemic difficulties typical of a large organisation and be open to constructive, practical offers of direct help, based on sound science, professional standards and ability to deliver in a cost effective/good value (not cheap!) manner.

### **Relationship with Environmental Groups**

We would advocate forging partnerships with other environmental groups. The Irish Environmental Network represents to government the capacity building and funding needs of its member organisations, all of whom are involved in one or another in the well-being, protection and enhancement of the environment. It may be that another group can cover an aspect of a project better than the rivers trusts, because of a wildlife reserve or a particular expertise. Rivers trusts should welcome such collaboration, particularly when starting up and capacity is limited. The environment is diverse and complex, and playing a part is fine. We believe that the most important object is river improvement, not the rivers trust's vanity.



## 2: Why be a Charity?

### Benefits of a Charity

The benefits of a rivers trust with charitable status are broadly that: -

- It enables the rivers trust to display its charitable credentials and not for commercial gain, so helping it to become a credible organisation worthy of attracting funds. Indeed many funding streams are limited to, or directed towards, charitable organisations.
- Charities are well placed to attract public funding grants. Further, private contributions to charitable organisations can be used as matched funding to lever down extra funding through grant aid, which can significantly add to the total amounts available to undertake environmental improvements. On a simple 50% match-funding basis, every £1 in grant couples with £1 from other sources to double the amount to be spent on the project.
- It is exempt from income/corporation tax (but not VAT) and can therefore make full use of its income.
- Exemption is also available on capital gains tax and stamp duty on conveyances.
- A charity can apply to the Valuation Office for exemption from rates on buildings and the Local Authority has additional discretionary right to waive rates.
- Charitable donations over €250 pa can attract tax relief. Subject to the detailed rules the approved charity can obtain a refund of the tax paid (currently the donation grossed up at 31%). Ref: Charitable donation scheme CHY3 Revenue Commissioners.

### Charitable purpose and the public benefit

To be charitable, an organisation's objects must be wholly and exclusively charitable, which means the activities must be wide enough to be of public benefit (and not to be of benefit to a handful of riparian or other private interests). What constitutes charitable is something that has evolved over centuries and eligibility for charitable status is still decided on the basis of case law and effectively the interpretation of the Charities Regulatory Authority.

The Charities Act 2009 Section 3 provides a list of charitable purposes, including the following that will apply to rivers trusts, either directly or under the generic "of benefit to the community"

- Advancement of education.
- Protection of the natural environment.
- Advancement of environmental sustainability.

It is not good enough to assume that because the words "environment" and "education" are used charitable status is a foregone conclusion. The Charity Commission in England has identified 2 key principles of public benefit, which rivers trusts can use to provide evidence their public benefit credentials to the Charities Regulatory Authority.

Principle 1: There must be an identifiable benefit or benefits:

- It must be clear what the benefits are.
- The benefits must be related to the aims.
- Benefits must be balanced against any detriment or harm.

Principle 2: Benefit must be to the public or a sufficient section of the public:

- The beneficiaries must be appropriate to the aims.
- Where benefits are to a section of the public, the opportunity to benefit must not be unreasonably restricted:
  - By geographical or other restrictions; or
  - By ability to pay any fees charged.
- People on poverty must not be excluded from the opportunity to benefit.
- Any private benefit must be incidental.

## Objects for rivers trusts

The stated objects of a rivers trust determine what it can do legally. To stray outside of them puts trustees at risk of legal action, notwithstanding the bad publicity or embarrassment associated with any challenge. It is therefore prudent to set the Objects Clause as wide as possible to cover all the activities rivers trusts would reasonably want to do.

The specimen clause below is extracted from the precedent Memorandum of Association. It is based on the relevant categories considered of public benefit to rivers trusts and follows the legal advice provided that In the Republic of Ireland the Revenue Commissioners are more comfortable with one main object and the remainder expressed as incidental thereto. In principle they are the same as the Objects that have adopted in many previous successful charitable status applications by river trusts to the Charity Commission in England.

Please resist the temptation to embellish the Objects. In the context of drafting the Objects, less is more! Otherwise the Charities Regulatory Authority and Revenue Commissioners are rightly obliged to seek clarification.

For example: -

- The term “water management” means flow and quality within rivers trusts’ context. However it can be construed as what “water companies do for profit”.
- Reference to research begs the question of selling the results for profit, whereas our thoughts are transfer of knowledge based on practical solutions to problems.
- Reference to seminars raises the potential for commercial training, whereas our events are designed to be inclusive and at best cover costs.

### **3. The objects for which the Company is established are: -**

**3.1 To conserve, protect, rehabilitate and improve the rivers, streams, watercourses and water impoundments of the catchments comprising the rivers #Geographical Area#, including adjacent estuarine and coastal areas, for the advancement of environmental protection or improvement for the benefit of the public.**

**3.2 To do all such things as are incidental or conducive to the attainment of the above objects provided that such things are exclusively subsidiary and ancillary to the objects and any income generated therefrom is to be applied for the objects only and such things shall include, without prejudice to the generality of the foregoing: -**

**To advance the education of the public, or any association, institution, voluntary organisation, company, local authority, administrative or governmental agency or public body or representative body in: -**

**(a) The understanding of rivers, river corridors and river catchments, including their fauna, flora, biodiversity, economic or social activity, and river catchment management.**

**(b) The need for, and benefits of, conservation, protection, rehabilitation and improvement of aquatic environments.**

**The objects cover delivery of work on the ground in the geographical area chosen, including impoundments, estuaries and coastal waters.**

## Geographical spread of activities

In the precedent Objects above, the river catchment or geographical area to be covered is required to be inserted.

In practical terms, we would recommend a balance between too local and too wide for 3 reasons:



- The wider the geographical area the easier it is to justify public benefit. The pitfall is when the geographical area is a small single catchment or perhaps a single tributary where interest is concentrated on too small a group. The Charities Regulatory Authority and/or Revenue Commissioners would then need to be convinced that the trust is for public benefit and not the personal gain of a few riparian owners or others.
- Over time and with success, the area of activities tends to expand naturally. The trick is to start wide and allow the area to be filled later. It does not mean that the rivers trust must work right across the area at any time. It means that it could if it so desired, and it avoids the administration in amending the Objects later.
- Most importantly, on-going funding is generally easiest if there is a balance between a local need and a wider and more sustainable natural geographical area. For charities, the best of both can be achieved because individual funds can legally be restricted for a particular charitable purpose by simple statement. In the context of starting up river trusts, it means that existing organisations covering different parts of the catchment or prospective geographical area to be covered can effectively ring fence funds previously raised, without fear of losing them in a general pot. Thereafter, issues of common interest can be addressed in parallel with local differences and achieve sensible economies of scale.

The objects also cover education, which is not limited geographically. Advancement of education is wide ranging and, in addition to mainstream activities, covers informal liaison on public interest environmental matters and informal education open to the public like river walks.

### **Political purposes and Campaigning**

There are restrictions on charities taking part in political campaigning and lobbying to change or oppose changes to laws or government policy.

Our recommendation for all rivers trusts is to avoid campaigning and focus on delivery of solutions on the ground. This recommendation has stood the test of time and creates a unique selling point.

Rivers Associations and other organisations, e.g. WWF are brilliant at campaigning and it is better to leave it to them. Rivers Associations in particular are well placed to campaign on local rivers. They can have a vested interest and are therefore better placed to highlight deficiencies and identified problems, real or perceptive, more single-mindedly and vociferously. However, it is crucial to differentiate between political objects and activities that educate the public, including government agencies, on the benefits of clean water and issues relating to environmental improvement or protection of, say, spring salmon. These may have political undertones, but they are non-partisan and subservient to the wider public benefit.

### **Tax and Fundraising**

There are some tax advantages for charities. For example a charity does not pay corporation tax on its surplus charitable activity income, it can reclaim tax paid on donations made by Irish resident taxpayers and there are a few special concessions for charities. However, please note that this does not extend to recovering VAT unless the charity is VAT registered. Even then it relates only to taxable supplies: with grants being outside of the scope of VAT.

Although Tax, Grants, Trading, VAT, Fundraising Events, Gifts, Donations, Legacies and Loans are issues that trustees will need to be aware of in the start-up phase, they will become critical once the trust has been set up and is operational. Accordingly, The Rivers Trust has produced a follow on Governance Guide (albeit for England, Wales and Northern Ireland) to cover those issues, which is available on request. It is intended to complement this Start Up Guide and is in a similar format.

## 3: Form and Structure

### Form

The Companies Act 2014 introduced on 1 June 2015 several different forms of company. For rivers trusts we recommend that a Charitable Company - a Company Limited by Guarantee (CLG) incorporated under Part 18 of the Act is the most suitable option. It does not have a share capital and a simple one member: one vote format, with no ability to distribute any profit or pay salaries to trustees. It emulates the format recommended in England and Wales; has longstanding tried and tested credentials; and works. For completeness, it is possible to establish a Designated Activity Company limited by guarantee (DAC), but this has a share capital and appears to be more applicable to a group of bodies setting up a combined public benefit organisation, e.g. a tourist information company. It does not appear to offer any advantage over a CLG for rivers trusts and is not considered further here.

### Advantages of Incorporation

The main advantages of a Charitable Company over an unincorporated charity or bare trust (Bare Trust) are: -

- The Directors (Trustees) of a Charitable Company are not liable for its debts in normal circumstances, whereas the Trustees of a Bare Trust are. This is perhaps most relevant for the Trust in public grant funded projects, where the funding source commonly includes a contractual clause in its offer letter reserving the right to claw back claims paid if it later determines that the claim was ineligible or the project fails to deliver. Given the magnitude of project funding, the way in which the “goalposts” can seem to move, and the possibility of third party events (e.g. another partner failure or foot & mouth) creating difficulties, it is evident that the Trustees are potentially at risk.
- The corporate funds of a Charitable Company belong to it absolutely and not on trust, as are the unrestricted funds of a Bare Trust. This gives the Charitable Company more latitude on the way it uses its corporate funds - especially as regards the justification of reserves’ levels.
- A Charitable Company can hold assets in its own right. Corporate status is particularly useful in the case of leasehold or freehold land and investments. A Bare Trust commonly needs either to appoint nominees or transfer the charity’s assets from the outgoing/remaining trustees each time there is a change.
- A Charitable Company can contract in its own name without concern regarding nominees.
- In the rare event of legal action being taken against the Bare Trust, a Charitable Company has the writ against it served on the Company Secretary at its Registered Office, rather than the individual home addresses of the trustees in the case of a Bare Trust. Although Trustees (Directors) of a Charitable Company do not escape liability for negligent management or breaches of trust, it is nevertheless comforting to have the corporate shield to deflect attention and focus it into one “defence” communication channel.

### Legislative Framework

The legislative framework is the: -

- Companies Act 2014
- Charities Act 2009

### Company Limited by Guarantee (CLG)

A CLG cannot have shares and is unable to distribute any profit. It is the normal, well known, tried and tested “not-for-profit” corporate vehicle, and the liability of the members is restricted to the sum (commonly €1) guaranteed.



The company is registered at Companies Registration Office, and charitable status subsequently sought from the Charities Regulatory Authority. Tax exemptions are granted by the Revenue Commissioners. Compliance issues are no more onerous than a well-run charity or its members would want (or expect), and are not considered a burden. A company limited by guarantee is a legal person in its own right and is consequently able directly to enter into agreements in its own name or own shares or property, without the complication of custodian or property trustees.

Ultimate liability for the company rests with the Directors, who are also the charity Trustees, but in the unhappy event of litigation, it is the company that is sued, rather than each Trustee, with the "benefit" to them of the Company Secretary receiving the writ! Indemnity insurance is permitted under the Charities Act 2009 (Section 91) as a further level of protection for the Trustees.

Generally the main disadvantage of a Charitable Company is that it has more onerous statutory filing - with Companies Registration Office (CRO), the Revenue Commissioners and the Charities Regulatory Authority (CRA) to contend with. However, it is understood that the intention is for documents filed at CRO to be automatically forwarded to CRA. It is unclear how the role of the Revenue Commissioners will change over time and how the CRA, which only came into existence in 2014, will interact with it. At worst, if duplication is required it is considered a marginal burden in practice. One forms the precedent for the other (s).

### **Governing Documents - Memorandum and Articles of Association**

For a Company Limited by Guarantee, the governing documents are the combined Memorandum and Articles of Association. Together they form the Constitution. The legal framework is the Companies Act 2014 Part 18 and Schedule 10. A copy is attached as [Appendix 1](#).

#### **Memorandum of Association**

The Memorandum covers the Objects and key information of the company. The form should be in accordance with the form set out in Schedule 10 of the Companies Act 2014 or as near thereto as circumstances permit. Our precedent does just that.

#### **Articles of Association**

Section 1176 of the Companies Act 2014 also says that the Articles of Association, which set out the administrative regulations, should be in accordance with Schedule 10 or as near thereto as circumstances permit. This has only one mandatory clause and one optional additional sentence.

The mandatory clause is: -

1. The number of members with which the company proposes to be registered is [4\*].

\* or whatever number is relevant

The optional sentence is: -

The provisions of the Companies Act 2014 are adopted.

Section 1177 (3) however goes on to say that the Articles of a CLG may contain regulations in relation to the CLG. It also provides for regulations to amend the default position where the Act allows for options. Our own precedent takes the approach of including bespoke rivers trusts regulations and procedures for two principal reasons: -

(1) Given that hitherto the Revenue Commissioners have required four standard clauses as mandatory in constitutional documents submitted to them (a) the non-distribution of income assets or profits to member; (b) the keeping of accounts; (c) the non payment of directors/trustees; and (d) the transfer of assets to some other charitable body on dissolution, it is considered sensible to include such clauses in the Articles.

(2) Inclusion of issues relating to procedures, such as procedures for members' meetings and directors, are considered helpful in providing practical advice on the running of the charity and compliance in one document. Otherwise cross-reference would constantly be needed to the Companies Act 2014 itself - all 1400 clauses thereof - and the Charities Act 2009, which is time consuming and best avoided.

It may be that the authorities will determine that the minimalist approach is to be adopted and most of the Articles bar the first two are rejected. If so, the rejected Articles can effectively be taken into a separate internal set of rules. In all probability, given that the Articles have been checked for compliance against the two abovementioned Acts, they will be accepted as being good practice.

It should go without saying, but the Memorandum and Articles are the absolute point of reference, and time needs to be spent on ensuring that it covers local circumstances and needs. They can be amended later (by special resolution of the Members), but it is better to think about future eventualities and plan ahead to avoid constantly making changes and having to register them with the authorities.



## 4: Setting Up and Registration Process

### Name Check

Companies and charities with the same name are not permitted and cannot be registered. Care is also needed to avoid having a name too similar to another more established organisation. At best this will cause confusion. At worst it can lead to potential litigation through passing off infringements. Fortunately, for rivers trusts there should not be a problem, particularly if using “rivers trust” in the name, unless there happens to be two major rivers with the same name!

The Companies Registration Office (CRO) and the Charities Regulatory Authority therefore need to be approached at the outset, both of which can be easily done on-line via a search of names on their respective websites. CRO allows you to reserve a name for a period up to 28 days on the payment of a €25 fee, and can be offset against the registration fee if the reserve name certificate is submitted with the application form to register within this period.

The proposed name should also be checked on the Internet to ensure that the preferred domain name for the rivers trust can be registered.

### Drafting Memorandum & Articles of Association

There is a catch 22 situation, whereby registration as a Company Limited by Guarantee precedes the application to register as a Registered Charity, but the latter is more onerous in terms of demonstrating public benefit etc. Our precedent helps, but the failsafe solution is to submit the draft Memorandum & Articles to the Companies Registration Office, the Charities Regulatory Authority and the Revenue Commissioners in advance for their approval in principle. Once approved, the trust can be registered as a company at Companies Registration Office quite quickly and the formal Registered Charity registration process begun later.

Whatever procedure adopted it is essential to agree the Memorandum & Articles before registration can occur. The following notes refer to our precedent Memorandum & Articles and their numbering, which is attached as [Appendix 2](#). Once the draft is finalised, we are obliged, for good order, to advise that it should be run past a local solicitor, particularly given the uncertainty related to the new Companies Act 2014. By adopting the precedent you should at least reduce the legal costs of setting up from scratch.

### Memorandum of Association

The drafting is in the form of Schedule 10 of the Companies Act 2014.

#### Name (Clause 1)

Under Section 1180 of the Companies Act 2014, the company may dispense with the requirement to use the words “company limited by guarantee” as a (proposed) charity and, during registration, one of the first Directors or Secretary delivers to the Registrar of companies a statement in the prescribed form (Form G5 from Companies Registration Office). In England most rivers trusts have taken advantage of the equivalent dispensation, but others haven’t. It is down to personal preference and whether you believe fund-raising is improved by dispensing with the “CLG” in the name.

#### Objects (Clause 3)

The rationale regarding Objects, including geographical area, have been covered in the section on Why be a Charity? The principal object must not have more than 40 additional words to the precedent in Schedule 10, which our precedent complies with.

Suffice here to say that they have been expressly drafted to be wide ranging and, in principle, have been accepted over many years by the Charity Commission in England & Wales on broadly similar interpretations of public benefit and charitable purpose. They cover work on the ground in the geographical area chosen, including impoundments, estuaries and coastal waters. Subject to the previous comments on making the area sufficiently wide to be of demonstrable public benefit, the geographical area is however very much a local judgement issue. The objects also cover education in its widest and informal sense (like demonstration sites and unlike commercial training enterprises), which is not limited geographically.

#### Members' liability (Clause 5)

It is acceptable for the amount to be guaranteed to be a nominal €1.

#### Articles of Association

NB Yellow highlighted wording is a cosmetic way to make cross-referencing of Articles easy to spot if anyone wants to make changes. Highlighting should be removed before final printing.

#### Number of Members (Article 1)

This is the mandatory provision set out in Schedule 10. The blue highlighted figure in the precedent is for local adaptation as circumstances dictate. Assuming that the Directors and Members will be the same people at the outset, we suggest a minimum of 5 to show that the Board and the membership is not concentrated on 1 or 2 individuals, which would attract greater scrutiny of public benefit credentials.

#### Defined Terms (Article 3)

Unfortunately, some of the terms used regarding companies are confusing when trying to match legal formality with everyday terminology. The common ones are:

- Directors and Trustees are one and the same for our purposes – and are not paid! The Companies Act refers throughout to Directors. The Charity Act 2009 refers to Trustees. We are advised that the Revenue Commissioners prefer the term Directors, so we have used the term Director throughout to fall into line.
- Members are those who are registered as members and are able to vote at a General Meeting. They are entitled to receive notices of meetings and Annual Accounts.

#### Income and Property (Article 4)

This is the clause that satisfies the Revenue Commissioners requirement for an express provision not allowing the distribution of income assets or profit to Members and the payment of salaries to Directors. You will note that reimbursement of expenses and payment for professional services are allowed, subject to the conditions set out. It is payment for being a Director that is not permitted.

#### Members (Articles 5-9)

There is no right or wrong answer on membership structure and it is dependent upon local circumstances. The draft is in the form that the Revenue Commissioners normally accept.

In most local rivers trusts the Directors and Members will be one and the same group of people. For other trusts a completely open membership may be preferable, which is the other end of the scale. The disadvantage of a wide membership is that notices of general meetings and annual accounts must legally be sent to all Members, which can add time and cost, although there is provision in Article 79 for the use of electronic communication. Closed Membership is recommended to start with in that one can always extend thereafter, whereas the opposite is not a viable option.



The drafting therefore provides for the subscribers to the Memorandum to be the first Members and for Directors/Trustees automatically to become Members upon appointment – i.e. closed Membership.

Thereafter, it permits the Board to extend or open up Membership as it sees fit. Additionally, it allows for different classes of Membership. This gives the Board flexibility to do what it believes is in the best interests of the Rivers Trust, both at the outset and in the future.

Pursuant to Section 1199 of the Companies Act 2014 the Articles must state the number of Members with which it proposes to be registered (as set out above) and may state the maximum number of persons who may be Members. This is suggested to be 20 to give headroom for new Members, unless you are anticipating open a membership open to all, in which case 50 might be better. Otherwise every increase beyond the initial number registered would need to be notified to the Registrar of Companies within 15 days, giving particulars thereof. It is unclear if the Revenue Commissioners and/or the Charities Regulatory Authority are required to give prior approval to the increase and a call is recommended as a default.

It is possible for the Directors to establish a non-voting category of “membership”, which in England we have termed as “Supporters”. They have no formal rights, and are not Members (as defined), but they can be approached for a subscription or donation to build funds for the rivers trust and provide a community group for the rivers trust to deal with and share events with.

#### [Patrons or President \(Article 10\)](#)

This is a simple way to permit an honorary post to be created, without impacting on governance. It is critical that they have no voting rights.

#### [General Meetings \(Articles 11 -13\)](#)

Under the Companies Act 2014, a CLG with more than 1 Member (i.e. all rivers trusts) must have an AGM. Where there is a closed membership, with the Members and the Trustees/Directors being the same group of people, the requirement to hold an Annual General Meeting to receive the Accounts and transact related formal business is somewhat contrived. Normal practice is for the Trustees to meet as a Board and then move seamlessly to the business of the Annual General Meeting. If you later decide on Supporters (see Article 5 commentary above) it is a good annual event to which to invite them, but they cannot vote on any formal matter and have no formal powers.

#### [Notice of General Meetings \(Articles 14-15\)](#)

The Companies Act 2014 prescribes notice periods, which are include here for expediency.

#### [Proceedings at General Meetings \(Articles 16-37\)](#)

Much of the wording is fairly standard practice and self-explanatory. Under Article 17 a quorum has been set at 3 members or 10% of the membership, whichever is the greater, as a practical level. Although the Companies Act 2014 provides for one member; one vote, it is permitted for the Articles to allow the Chairman to have a second and casting vote and this option has been included in Article 25. There is a requirement to allow proxy voting and the instrument is included for expediency.

#### [Bodies Corporate \(Article 38\)](#)

This some standard legal wording, which is unlikely to have any relevance to local rivers trusts, unless corporate members are sought. It is just a contingency measure.

#### [Annual Subscriptions \(Article 39\)](#)

The drafting is standard and gives the Directors the flexibility to increase subscriptions from time to time or, as we do in The Rivers Trust, give free membership to all the Directors, as a token of recognition of the time they freely give. It also helps re the quorum for general meetings in a practical manner.

#### [Resignation, Cessation and Expulsion of Membership \(Article 40-41\)](#)

This is fairly standard wording and necessary in case there is an awkward circumstance at some time in the future.

#### [Directors \(Article 42\)](#)

The Companies Act 2014 provides that a CLG must have at least 2 Directors. The Act further provides that a Director must not be a Director of more than 25 companies. Given the time and effort put in by rivers trust Directors, it is considered extremely remote for rivers trusts, and it is not included in the draft Articles!

Otherwise, Article 43 sets out the basic Board structure, with minimum and maximum. The latest Charity Commission recommendation in England is for a minimum of 3, which is the minimum included here. Our practical minimum is 5 to demonstrate that power is not vested in too small a group, which is likely to be a concern of the Charities Regulatory Authority and the Revenue Commissioners. The practical maximum should be no more than 12, on the basis that if 12 cannot sort out the issues, a greater number is unlikely to do so, but the drafting gives headroom for additional flexibility and, for expediency, corresponds with the maximum number of Members. Note that the Article does not permit alternate Trustees.

#### [Powers and Duties of Directors \(Articles 43-46\)](#)

The Article provides express comfort to Directors in support of the general power to do all things incidental to the promotion of the company in accordance with the Objects.

Other powers and duties are self-explanatory.

#### [Rotation and Appointment of Directors \(Articles 47-54\)](#)

Retirement by rotation of Directors is a matter of choice. The Companies Act 2014 provides for one-third to retire by rotation each year, but allows it to be modified by the Articles. In the context of rivers trusts and major projects often lasting 3 years, the drafting puts forward one-fifth to retire each year by rotation to maintain a pragmatic balance between continuity and freshness.

The other related Articles are standard practice, and, for example, give time for the Notice and Agenda of the Annual General Meeting to be sent out after the last date for the receipt by the Company of a notice to appoint a new Director.

#### [Disqualification and Removal of Directors \(Article 55\)](#)

The Articles need to make provision for these circumstances and follows the Companies Act 2014 and the Charities Act 2009.

#### [Proceedings of Directors \(Articles 56-64\)](#)

The Articles in this section are standard ones to codify how the Directors should regulate their meetings, and to give them the flexibility to operate.

#### [Directors' Interests & Voting on Contracts \(Articles 65-68\)](#)

The rigid and robust management of conflicts of interest for Directors of a charity are important to maintain reputational integrity as well as meet the requirements of the law.



Note that under Article 68, reference has been made to the Charities Act 2009 to make sure that a Director is not only working in the best interests of the rivers trust, but is seen to be so doing.

The Charities Regulatory Authority will closely scrutinise this section as it goes to the heart of demonstrating that the rivers trust is acting for the public benefit and not for the personal gain of its Directors.

#### Officers (Article 69)

This is a self-explanatory power to appoint staff in due course when funding permits.

As an aside, technically no officer, other than the (Company) Secretary has the right to attend Directors' meeting - in order to take minutes, unless a Director does so. Good practice however dictates that the chief executive should have a standing invitation and be required to attend to brief the Directors on progress and answer questions.

#### Accounts (Articles 70-75)

The Revenue Commissioners unsurprisingly expect to see an express provision relating to keeping proper accounts and these Articles cover the key aspects of both the Companies Act 2014 and the Charities Act 2009.

#### Audit (Article 76)

The Charities Act 2009 allows for the Directors of small charities to elect to appoint an approved independent examiner, rather than a qualified person as an auditor. Under Section 360 of the Companies Act 2014 the rivers trust may be eligible as a small company for audit exemption.

It is strongly recommended that a qualified person be appointed as the rivers trust's statutory auditor for professional integrity and to provide expert advice and support. In practice the Directors will make the first casual appointment to last until the next AGM, at which stage the Members will re-appoint on an annual basis.

#### Notices (Articles 77-80)

These are self-explanatory and non-contentious provisions. In Article 79 provision has been made for electronic communication to Members. Communication for Directors is much more relaxed and is determined in their general power to regulate their business as they see fit.

#### Indemnity (Articles 81-82)

Traditionally it was frowned upon for a charity to hold Trustees' Indemnity/Directors' and Officers' Liability insurance, but in more recent times it has become an important safeguard for all Directors and the Staff to have the insurance in place. The inclusion of the Articles removes any ambiguity on disputing its validity. For rivers trusts potentially engaged in publicly funded partnership projects with grant claw-back provisions that may be invoked through no fault of the rivers trust, the indemnity insurance is recommended for peace of mind and to attract prospective Trustees/Directors.

#### Winding Up (Article 83)

The Revenue Commissioners require that any surplus at the end of a winding up is not distributed to its members, but is given another similar charity, and is normal charity practice. It is unlikely to be of more than passing interest at the start up stage, but may become useful later should the rivers trust wish to merge with a neighbouring trust.

#### Amendments or Approvals (Articles 84-86)

Generally speaking the Revenue Commissioners have wished to approve any changes to the constitution to ensure that charitable status was not prejudiced. In England the Charity Commission performs this

function and it is unclear if the Charities Regulatory Authority is taking over this mantle or if both it and the Revenue Commissioners need to be approached.

The final signature page is in the prescribed format. For completeness, the subscribers become the first Members upon incorporation, and hence are not termed Members at this application stage.

It is expected that each subscriber will sign his/her name rather than rely on authentication.

### **Registering the Company at Companies Registration Office**

Because the State is in a transitional phase, with the new Companies Act 2014 effective from 1 June 2015 and the Charities Regulatory Authority operational from October 2014, it is unclear in practice if the Revenue Commissioners will take the same interest as before and if its scrutiny will be additional to the Charities Regulatory Authority or not. To be safe, it is suggested that you send drafts to both bodies for their approval in principle.

The Companies Registration Office website states that it does not provide advice, although clearly it will scrutinise the submitted Memorandum and Articles for compliance. Summary Guidance and the Statutory Forms are available on the Companies Registration Office website ([www.cro.ie](http://www.cro.ie)). Forms A1 (Application for incorporation) and G5 (Dispensation of "CLG" in the name) are appended as Appendix 3 and Appendix 4 respectively. In addition CRO guidance Leaflet 1 (Company Incorporation) and Leaflet 2 (6 things a company director should know about registration) are attached as Appendix 5 and Appendix 6 respectively.

### **Memorandum and Articles of Association**

The subscribers (prospective member) must sign the final constitution.

### **Statutory Form A1- Application to register a company**

The (latest version) form can be downloaded from the Companies Registration Office website and completed on your own computer. It includes some explanatory notes and you may find the following ones to be of further practical help.

- Company name - The name must be in full, so either has Company Limited by Guarantee or, if you are going for a dispensation, none of those words. Note that the word "Trust" is considered to be a sensitive company name word in England, and, at your discretion, in your covering letter you may wish to point out that:
  - The company will be a company limited by guarantee, and not for commercial gain.
  - The charitable objects have been adopted by many similar rivers trusts in England and Wales who have previously been registered with the word "Trust" in their names and have subsequently become registered charities.
  - As soon as practicable the company intends to apply to the Charities Regulatory Authority to be a registered charity.
- Company type - Tick the CLG box.
- Presenter - This is the person filling out the form. Leave the DX number blank, unless you are a solicitor.
- Constitution - Leave this blank on the assumption that you filling this out for yourself (and fellow subscribers).
- Registered Office - Leave the Registered Office Agent box and related name and address box blank.
- Type Exemption - Assuming you are going for the dispensation, please tick the Exemption 1 box and complete Form G5.
- Name restriction - Leaflet 1 gives information on prohibited names. The word "Trust" may be considered sensitive (see above), but is not on the restricted list and so leave this box blank.



- Directors - Our precedent Articles do not allow Alternate Directors and so filling out the form should be easier.
- Subscribers to the Constitution - please remember to get this signed at the same time as the Constitution for practical purposes and tick the subscribers' boxes.
- Company capital - Leave blank. You don't have a share capital.
- Declaration - This is straightforward, other than the NACE Code. CRA should be able to advise if you are stuck, but it will be towards the end of the list if England is anything to go by.

### Registration Fee

The registration fee is €100, with the cheque made payable to "Companies Registration Office". NB The cheaper electronic filing option does not appear to be available unless you have the appropriate software.

Within a week or so of applying to Companies Registration Office, assuming that the documentation has been completed properly, it issues a Certificate of Incorporation that confirms your legal name, company registration number and date of incorporation. If there are any mistakes or queries, Companies House will write to resolve the issues and subsequently issue the Certificate. Keep the Certificate safe and insert a copy behind a front cover of the Articles, which can now include the company registration number and date of incorporation.

### Registering a Website

A website and email are essential ways of modern communication.

Once the company name is confirmed it is therefore wise to register a web address and set up web hosting. Choosing and registering a domain name is a simple and inexpensive procedure and an Internet search will reveal many commercial providers. An Internet search will also reveal the top web hosting companies and guidance on choosing the right package. There is a bewildering choice and a continually changing environment.

Accordingly, The Rivers Trust uses a local web-designer and web-master for specialist help and advice. It is likely that you will have someone knowledgeable locally to provide a similar service, but we can always make an introduction to our specialist if necessary.

### Registering with the Charities Regulatory Authority (CRA)

Once a rivers trust has adopted charitable objects and registered as a company limited by guarantee, it can consider applying to register as a charity. Please note that post 16 October 2014, any charitable organisation that intends to operate or carry on activities in the State must apply to CRA to be registered in the Register of Charities. The Registered Charity Number is a number assigned to charities by CRA. It is not the same as a CHY number issued by the Revenue Commissioners.

Registering with the Charities Regulatory Authority is primarily an online process via its website [www.charitiesregulatoryauthority.ie](http://www.charitiesregulatoryauthority.ie). It is suggested that you log on to the site at the earliest opportunity and follow the tab "What We Do" to the section on "Registering Charities".

Please note that the webpage "Register your Charity", appended as Appendix 7 sets out the steps to follow and "Data for registration application", appended as Appendix 8, sets out the information required. Once draft answers have been prepared, application can be made online and the documents completed.

Please be forewarned that the Charities Regulatory Authority is obliged to act rigorously and solely on the evidence you provide. It cannot second-guess you and may have no empathy with, or knowledge of, rivers or rivers trusts.

Our experience is that you should be prepared for further questions or explanation in due course. Although this is deflationary, please be assured that we are always happy and willing to give independent help in formulating further answers or clarification, and the final outcome has always been positive.

In terms of charitable purpose and public benefit, a rivers trust should have no fear "in telling it as it is".

### **Registering with the Revenue Commissioners**

A comprehensive set of documents are available for download from the Revenue Commissioners website ([www.revenue.ie](http://www.revenue.ie)). From the home page, click the tab for "Business and Self-Assessment" and then the Charities link on the left hand menu. The list is appended as Appendix 9.

Please note that the standard form of Memorandum and Articles of Association on the list of documents relates to the old Companies Acts. The section referred to at the top of Appendix 9 - "Frequently Asked Questions - Charities" does not appear to make any reference to the Charities Regulatory Authority, but helpfully it does reply in the affirmative re questions submitted to it.

In other words, until we are advised to the contrary our advice is to submit to both the Revenue Commissioners and the Charities Regulatory Authority.

The document CHY 1 is appended as Appendix 10 and, being dated April 2015, suggests that though the Charities Regulatory Authority is the prime regulator, application still needs to be made to the Revenue Commissioners to obtain tax exemption reliefs available to charities.



## 5: Other Formalities and On-going Compliance

Upon its incorporation the rivers trust becomes a legal person in its own right. It therefore has no history and all formalities in connection with start up need to be recorded. This is conveniently wrapped up via the Minutes of the First Board Meeting.

There is also an on-going compliance and governance requirement. The Rivers Trust has therefore produced a follow on [Governance Guide](#) to take the trust through the next stage of being operational and sufficiently well established to have its own governance regime. Although, like the following guides, it is drafted for rivers trusts in England, Wales and Northern Ireland, the principles are similar and all the guides provide a starting point for local review.

Other Rivers Trust guidance freely available: -

- Employment and Staff Handbook
- Insurance
- Pensions
- Trustees Induction
- Volunteers

**We strongly advise that you check the relevant websites below for the latest guidance and versions of documents. Whilst we try to keep up to date, we have insufficient resources to be continuously monitoring them.**

[www.cro.ie](http://www.cro.ie)

[www.revenue.ie](http://www.revenue.ie)

[www.charitiesregulatoryauthority.ie](http://www.charitiesregulatoryauthority.ie)