
Incorporated 26th day of February 1996

The Companies Act 2006
ARTICLES OF ASSOCIATION
OF
Lough Neagh Rescue Limited

(INCORPORATED)
NI030528

I certify this to be
a true copy of the
Articles as
amended by
Special
Resolution of the
Company passed
on **[DATE]** 201**[3]**

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
Date:

THE COMPANIES ACT 2006
COMPANY LIMITED BY GUARANTEE
ARTICLES OF ASSOCIATION
OF
Lough Neagh Rescue Limited
Private Company Limited by Guarantee

Name

- (1) The name of the Company is **Lough Neagh Rescue Limited** ('the Company').

Interpretations

- (2) These articles are to be interpreted without reference to the model articles for private companies limited by guarantee prescribed by The Companies (Model Articles) Regulations 2008 which shall not apply to the Company.

In these Articles:

'address'	means a postal address or, for the purposes of electronic communication, a fax number, an e-mail or postal address or a telephone number for receiving text messages in each case registered with the company;
'the articles'	means the company's Articles of Association;
'bankruptcy'	includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;
'the Companies Act'	means the Companies Act 2006 (as defined in section 2 of the Companies Act 2006) insofar as they apply to the company and any statutory modification or re-enactment for the time being in force thereof;
'the Charities Act'	means the Charities Act (NI) 2008 and any statutory modification or re-enactment for the time being in force thereof;

'the Charity Commission'	means the Charity Commission for Northern Ireland;
'clear days'	in relation to the period of a notice means a period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
'the directors'	means the board of directors of the Company, and includes any person occupying the position of director regardless of whether they are referred to as 'the board', 'the directors', 'the management committee', 'the trustees' or by whatever other name they are called;
'document'	includes, unless otherwise specified, any document sent or supplied in electronic form;
'electronic form'	has the meaning given in section 1168 of the Companies Act 2006;
'member'	has the meaning given in section 112 of the Companies Act 2006;
'officers'	includes the directors and the secretary (if any);
'ordinary resolution'	has the meaning given in section 282 of the Companies Act 2006;
'the seal'	means the common seal of the company if it has one;
'secretary'	means any person appointed to perform the duties of the secretary of the company;
'special resolution'	has the meaning given in section 283 of the Companies Act 2006;
'subsidiary'	has the meaning given in section 1159 of the Companies Act 2006;
'the United Kingdom'	means Great Britain and Northern Ireland;
'writing'	means the representation of words, symbols or other information in a visible form by any method or combination of methods, whether

sent or supplied in electronic form or otherwise; and

Words importing one gender shall include all genders, and the singular includes the plural and vice versa.

Unless the context otherwise requires words or expressions contained in these articles shall bear the same meaning as in the Companies Act but excluding any statutory modification not in force when this constitution becomes binding on the Company.

Apart from the exception mentioned in the previous paragraph a reference to an Act of Parliament includes any statutory modification or re-enactment of it for the time being in force.

Liability of members

- (3) The liability of each member is limited to £1, being the amount that every member of the company undertakes to contribute to the assets of the company, in the event of the same being wound up while he or she or it is a member, or within one year after he or she or it ceases to be a member, for payment of the debts and liabilities of the company contracted before he or she or it ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

OBJECTS

- (4) The Company's objects are specifically restricted to the promotion of the public benefit by the relief of human suffering and distress from disaster on inland waters, the advancement of education and the protection and preservation of lives in the Lough Neagh area and its adjacent waterways and rivers and such other areas of Northern Ireland and other countries as the Directors may from time to time think fit (*hereinafter called the "area of benefit"*) without distinction of age, gender, disability, sexual orientation, nationality, ethnic identity, political or religious opinion, by associating the statutory authorities, emergency services, voluntary organisations and the inhabitants in a common effort to improve the conditions of life for the benefit of the inhabitants and in particular:
 - (a) to protect and preserve good health and life by the provision and maintenance of suitably trained specialist waterborne search and rescue teams to assist in the search and rescue of persons missing or endangered by accidents or natural hazards in the area of benefit and adjacent land both independently and in association with the full emergency services and other statutory and voluntary aid agencies;
 - (b) to provide and maintain apparatus, equipment, vehicles and

vessels for the saving of life and assistance of persons in distress within the area of benefit;

- (c) to advance the education of the public in all matters relating to inland water safety and awareness, waterborne rescue, first aid and the safe and appropriate use of outdoor environments;
- (d) to advance promote and further the conservation maintenance and protection of features of landscape in the area of benefit with geographical, physiographical or amenity value;

POWERS

- (5) The Company has power to do anything which is calculated to further its Objects or is conducive or incidental to doing so. In particular, the Company has power:
 - (a) to provide assistance to individuals and organisations in furtherance of the above objects;
 - (b) to provide and equip premises, boats, vehicles and centres required for the purposes of the Company;
 - (c) to accept gifts and to raise funds. In doing so, the company must not undertake any substantial permanent trading activity and must comply with any relevant statutory regulations;
 - (d) to enter into contracts to provide services to or on behalf of other bodies;
 - (e) to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip such buildings, premises and centres for use by the Company;
 - (f) to sell, lease or otherwise dispose of all or any part of the property belonging to the company. In the event that property to be disposed of is considered to be a substantial asset where its value exceeds 10% of the company's asset value and is more than £5,000, or exceeds £100,000, such an arrangement for disposal must have been approved by a resolution of the members of the company or is conditional on such approval being obtained. In exercising this power, the company must comply as appropriate with any provisions of the Charities Act for the time being in force;
 - (g) to borrow money and to charge the whole or any part of the property belonging to the company as security for a grant or the discharge of an obligation. The company must comply as appropriate with any provisions of the Charities Act for the time being in force, if it wishes to mortgage land;

- (h) to arrange and provide for, either alone or with others, the holding of educational and training courses, conferences, exhibitions, meetings, outings, lectures, classes, seminars or training courses;
- (i) to collect and disseminate information on all matters relating to its objects, and to exchange such information with other bodies having similar objects whether in the United Kingdom or elsewhere;
- (j) to write, print or publish, in whatever form, such papers, books, periodicals, pamphlets or other documents, including films and recorded material, as shall further its objects, and to issue or circulate the same whether for payment or otherwise;
- (k) to promote and organise co-operation in the achievement of the above objects with other charities, voluntary bodies and statutory authorities and to that end to exchange information and advice with them and work in association with other charities, local authorities and voluntary organisations engaged in the furtherance of the above objects in the area of benefit;
- (l) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects;
- (m) to establish or acquire subsidiary companies;
- (n) to acquire, merge with or to enter into any partnership or joint venture arrangement with any other charity at law which has objects altogether or mainly similar to those of the Company and prohibits the payment of any dividend or profit to and the distribution of any of their assets amongst their members at least to the same extent as such payments or distributions are prohibited in the case of members of the Company by these Articles;
- (o) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
- (p) to employ and remunerate such staff, who shall NOT be directors of the company, as are necessary for carrying out the work of the company and to make all reasonable and necessary provisions for the payment of pensions and superannuation to or on behalf of such officers or servants (including former officers or servants), their widows and/or dependants;
- (q) to deposit or invest funds and to employ professional fund managers;

- (r) invest the moneys of the company not immediately required for its Objects in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions and such consents as may for the time being be imposed or required by law and these articles and in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act (NI) 2001;
- (s) to transfer (whether or not for valuable consideration) any part of the property or assets of the Company not required for the purposes for which it is formed to any charitable body or a charitable purposes having similar objects to those of the Company provided that such body is not carrying on business for profit or gain and does not distribute its income or property by way of dividend, bonus or otherwise amongst its members;
- (t) to provide indemnity insurance for the directors in accordance with, and subject to any conditions in, section 93 of the Charities Act;
- (u) to insure and arrange insurance cover for and to indemnify its officers, servants and voluntary workers from and against all such risks incurred in the course of the performance of their duties as may be thought fit;
- (v) to make regulations for the proper supervision, control and management of any property, which may be so acquired;
- (w) to enter into contracts to provide services to or on behalf of other bodies;
- (x) to make any charitable donation either in cash or assets for the furtherance of the objects of the company;
- (y) to pay out of the funds of the company the costs of forming and registering the company, both as a company and as a charity;
- (z) do all such other lawful things as may be necessary for or incidental to the attainment and furtherance of the above objects of the company.

PROVIDED THAT

- (i) in case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts;
- (ii) the Company shall not support with its funds any object, or endeavor to impose or procure to be observed by its

members or others, any regulation, restriction or condition which is an object of the Company would make it a trade union;

- (iii) and throughout this clause, the word 'body' includes any association, institution or aggregate of persons, whether incorporated or unincorporated.

APPLICATION OF INCOME AND PROPERTY

Universal clauses

- (6) The income and property of the company shall be applied solely towards the promotion of the Objects.
- (7)
 - (a) A director is entitled to be reimbursed from the property of the company or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the company;
 - (b) A director may benefit from trustee indemnity insurance cover purchased at the company's expense in accordance with, and subject to any conditions in, section 93 of the Charities Act;
 - (c) A director may receive an indemnity from the company in the circumstances specified in Article (97).

Members and Directors' benefits

- (8)
 - (a) A member, director or connected person may receive a benefit from the company in the capacity of a beneficiary of the company.
 - (b) None of the income or property of the company may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to any member, director or connected person, of the company. Provided that nothing herein shall prevent any payment in good faith by the company:
 - (i) Of reasonable and proper remuneration for any services rendered to the company by any member, officer or servant of the company who is not a director of the company.
 - (ii) Of interest on money lent by any member, director or connected person at a reasonable and proper rate per annum not exceeding 2% less than the base rate prescribed for the time being by a clearing bank selected by that board of directors or 3%, whichever is the greater.
 - (iii) Of reasonable and proper rent for premises demised or let by any member, director or connected person provided that

the director concerned shall withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.

- (iv) Of fees, remuneration or other benefit in money or money's worth to a company of which a member of the board of directors may be a member holding not more than one hundredth part of the capital of that company.
- (v) To any directors of reasonable and proper payment of out of pocket expenses.
- (c) No director or connected person may buy any goods or services from the company on terms preferential to those applicable to other members of the public;
- (d) "Company" shall include any other company in which the Company holds more than 50% of the shares; or controls more than 50% of the voting rights attached to the shares; or has the right to appoint one or more director to the board of the other company.

Connected person

- (9) In articles (8), (83) and article (85) "connected person" means:
 - (a) a child, parent, grandchild, grandparent, brother or sister of the director;
 - (b) the spouse or civil partner of the director or of any person falling within paragraph (a) above;
 - (c) a person carrying on business in partnership with the director or with any person falling within paragraph (a) or (b) above;
 - (d) an institution which is controlled:
 - (i) by the director or any connected person falling within paragraph (a), (b), or (c) above; or
 - (ii) by two or more persons falling within sub-paragraph (i), when taken together
 - (e) a body corporate in which:
 - (i) the director or any connected person falling within paragraphs (a) to (c) has a substantial interest; or
 - (ii) two or more persons falling within sub-paragraph (i) who, when taken together, have a substantial interest.

Members' Reserve Power

- (10) (a) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- (b) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Membership

- (11) Membership is open to individuals who:
 - (a) apply to the company in the form required by the directors; and
 - (b) are approved by the majority of the directors.
- (12) Every application for admission shall be considered by the directors at their first meeting after it was made, or as soon thereafter as is practicable. There shall be no unlawful discrimination between persons by reference to age, politics, religion, ethnic identity, nationality, gender, sexual orientation, physical or learning disability.
 - (a) The directors may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the Company to refuse the application.
 - (b) The directors must inform the applicant in writing of the reasons for the refusal within twenty-one days of the decision.
 - (c) The directors must consider any written representations the applicant may make about their decision. The directors' decision following any written representations must be notified to the applicant in writing and this decision shall be final.
- (13) Membership is not transferable.
- (14) The directors must keep a register of names and addresses of the members.

Classes of membership

- (15) The rights and obligations of the different classes of membership shall be recorded in the register of members. There shall be three classes of membership:
 - (a) **Active Crew Members**

Any Person aged 18 years or over who has membership in and subscribes to the objects of Lough Neagh Rescue and whose application for Lough Neagh Rescue membership is approved by the Directors.

Active Crew Members shall be serving members of the Lifeboat and Station Crews at the following stations of the Company:

(i) **Kinnego Station;**

(ii) **Ardboe Station;**

(iii) **Antrim Station.**

Active Crew members shall be eligible to be elected to the Board of Directors and shall be subject to all provisions and controls of directors and shall have a vote at general meetings of the Company.

(b) **Honorary Membership**

Any person who has been an active crew member for five years or more and who stands down from active crew can, upon application to Directors, become an honorary member and be entitled to vote at General Meetings of the company.

An Honorary member shall so continue unless he/she resigns or is duly expelled from membership. An Honorary Member shall pay neither entrance fee nor subscription. In the construction of these Articles except such of them as provide for the payment of subscriptions and the consequences of non-payment, the term Active Crew Member or Member shall include 'Honorary Member'.

Honorary members shall be eligible to be elected to the Board of Directors and shall be subject to all provisions and controls of directors and shall have a vote at general meetings of the Company.

(c) **Associate Members**

(i) Any well-wisher or person who, in the opinion of the Directors, has special knowledge or experience to offer to the company.

(ii) Associate members have the right to attend and speak at General Meetings of the Company, but are not entitled to vote.

(iii) Associate Members shall NOT be eligible to be elected to the Board of Directors.

- (16) The directors may not directly or indirectly alter the rights or obligations attached to a class of membership.
- (17) The rights attached to a class of membership may only be varied if:
 - (a) three-quarters of the members of that class consent in writing to the variation; or
 - (b) a special resolution is passed at a separate general meeting of the members of that class agreeing to the variation.
- (18) The provisions in the articles about general meetings shall apply to any meeting relating to the variation of the rights of any class of members.

Termination of membership

- (19) Membership is terminated if:
 - (a) the member dies;
 - (b) the member resigns by written notice to the company unless, after the resignation, there would be less than two members;
 - (c) any sum due from the member to the company is not paid in full within six months of it falling due;
 - (d) a member fails or neglects to comply with these articles or commits conduct unworthy of membership of the company, shall render such member liable to expulsion from membership by a resolution of the directors that it is in the best interests of the company that his or her or its membership is terminated. A resolution to remove a member from membership may only be passed if:
 - (i) the member has been given at least twenty-one days' notice in writing of the meeting of the directors at which the resolution will be proposed and the reasons why it is to be proposed;
 - (ii) the member or, at the option of the member, the member's representative (who need not be a member of the company) has been allowed to make representations to the meeting.
 - (iii) a notice under this Article shall be held to have been duly given if sent by Recorded Delivery Post to the address of the Member appearing in the Company's Records.

Annual General Meetings

- (20) An annual general meeting must be held each year and not more than fifteen months may elapse between successive annual general meetings.
- (21) (a) The business of an annual general meeting shall comprise:
- (i) the adoption of the minutes of the preceding Annual General Meeting and of any General Meeting held since the preceding Annual General Meeting;
 - (ii) the receipt and consideration of an annual report from the Board on its proceedings and its progress in pursuit of the objects of the Company
 - (iii) the receipt and adoption of the Financial Report and the audited accounts;
 - (iv) the appointment and removal of Members (if necessary);
 - (v) the appointment and removal of Directors (if necessary);
 - (vi) the appointment of the Auditor(s) or Independent Examiner(s);
 - (vii) the consideration of the annual subscription fee for each category of member (if necessary);
 - (viii) consideration of and decision on any resolution of which due notice shall have been given
- (b) All other business transacted at an Annual General meeting shall be deemed special. No other business shall be discussed or transacted unless prior notice has been given to the secretary at least fourteen clear days before the meeting.
- (c) The Company may invite those public and statutory bodies having responsibility or functions in the area of benefit to nominate individuals (being employees of or otherwise involved with the work of any such public and/or statutory bodies responsible for the development and welfare of the area of benefit) to be consultative observers who shall be entitled to attend and receive notice of meeting of the Company but who shall NOT be entitled to vote at any such meeting.

Notice of General Meetings

- (22) (a) The directors may call a general meeting at any time.
- (b) (i) The directors are required to call a general meeting once the company has received requests to do so from

members who represent at least 20% of the total voting rights of all the members having a right to vote at general meetings, unless, more than twelve months has elapsed since the end of the last general meeting in which case the required percentage is 5%. The notice of such a meeting must be given in accordance with Article 23 below.

- (ii) A request must state the general nature of the business to be dealt with at the meeting, and may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
 - (iii) A resolution may properly be moved at a meeting unless—
 - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's articles or otherwise); or
 - (b) it is defamatory of any person, or it is frivolous or vexatious.
- (23) The minimum periods of notice required to hold a general meeting of the company are:
- (a) twenty-one clear days for an annual general meeting or a general meeting called for the passing of a special resolution;
 - (b) fourteen clear days for all other general meetings.
- (24) A general meeting may be called by shorter notice if it is so agreed by a majority in number of members having a right to attend and vote at the meeting, being a majority who together hold not less than 90% of the total voting rights.
- (25) The notice must:
- (a) specify the date, time and place of the meeting and the general nature of the business to be transacted. If the meeting is to be an annual general meeting, the notice must say so.
 - (b) The notice must also contain a statement setting out the right of members to appoint a proxy under section 324 of the Companies Act and article (47).
 - (c) The notice must be given to all the members and to the directors and auditors.
- (26) The proceedings at a meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the company.

PROCEEDINGS AT GENERAL MEETINGS

Quorum

- (27) No business shall be transacted at any general meeting unless a quorum is present. A quorum is:
 - (a) 5 members, or one-fifth of the membership, present in person or by proxy and entitled to vote upon the business to be conducted, whichever is the greater.
- (28) If a quorum is not present within half an hour from the time appointed for the meeting or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the directors shall determine.
- (29) The directors must reconvene the meeting and must give at least seven clear days' notice of the reconvened meeting stating the date, time and place of the meeting.
- (30) If no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting the members present in person or by proxy at that time shall constitute the quorum for that meeting.

Chairperson

- (31) General meetings shall be chaired by the person who has been appointed to chair meetings of the directors or if there is no such person or he or she is not present within fifteen minutes of the time appointed for the meeting a director nominated by the directors shall chair the meeting. If there is only one director present and willing to act, he or she shall chair the meeting.
- (32) If at any meeting no director is willing to act as chairperson or if no director is present within fifteen minutes after the time appointed for holding it, the members present in person or by proxy and entitled to vote must choose one of their number to chair the meeting.

Adjournment

- (33) The members present in person, or by proxy, at a meeting may resolve by ordinary resolution that the meeting shall be adjourned. The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution.
- (34) No business shall be conducted at a reconvened meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.

- (35) If a meeting is adjourned by a resolution of the members for more than seven days, at least seven clear days' notice shall be given of the reconvened meeting stating the date, time and place of the meeting.

Attendance and Speaking at General Meetings

- (36) (a) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- (b) A person is able to exercise the right to vote at a general meeting when:
- (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
 - (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (c) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (d) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- (e) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.
- (f) Directors may attend and speak at general meetings, whether or not they are members.
- (g) The chairman of the meeting may permit other persons who are not members of the company to attend and speak at a general meeting.

Resolutions

- (37) Decisions at general meetings shall be made by passing resolutions:
- (a) Decisions involving an alteration of the articles and other decisions so required by statute shall be made by special resolution. A special resolution is one passed by a majority of not

less than 75% present (in person, or through an authorised representative or by proxy) and voting at a general meeting.

- (b) All other decisions shall be made by ordinary resolution requiring a simple majority of members present (in person, or through an authorised representative or by proxy) and voting.
- (38) Any vote at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll (a formal count of votes) is demanded:
- (a) by the person chairing the meeting; or
 - (b) by at least two members present in person, or by proxy, and having the right to vote at the meeting; or
 - (c) by a member or members present in person, or by proxy, representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.
- (39) A declaration by the chairperson of the result of a vote shall be conclusive unless a poll is demanded. The result of the vote must be recorded in the minutes of the meeting but the number or proportion of votes cast need not be recorded.
- (40) A demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairperson and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- (41) A poll must be taken as the person who is chairing the meeting directs, who may appoint scrutineers (who need not be members) and who may fix a time and place for declaring the results of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.
- (42) (a) A poll demanded on the election of a chairperson, or on a question of adjournment, must be taken immediately. A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs, and the meeting may continue to deal with any other business that may be conducted at the meeting.
- (b) If the poll is not taken immediately at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken provided that the poll shall be taken within thirty days after it has been demanded.

Votes of members

- (43) (a) Subject to article (15), every member, shall have one vote and is entitled to appoint a proxy to attend, speak and vote at a general meeting on their behalf. The chairperson of any general meeting shall NOT be entitled to a second or casting vote. No member shall be entitled to vote at any general meeting unless all monies presently payable and owed by that member to the company have been paid.
- (b) On a vote on a resolution on a show of hands at a meeting, a proxy has one vote for and one vote against the resolution if:-
- (i) the proxy has been duly appointed by more than one member entitled to vote on the resolution; and
 - (ii) the proxy has been instructed by one or more of those members to vote for the resolution and by one or more other of those members to vote against it. .
- (44) Any objection to the qualification of any voter must be raised at the meeting at which the vote is tendered and the decision of the chairperson shall be final.

Written resolutions

- (45) A resolution in writing agreed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective provided that:
- (a) a copy of the proposed resolution has been sent to every eligible member together with a statement informing the member how to signify their agreement to the resolution and the date by which the resolution must be passed if it is not to lapse;
 - (b) a simple majority (or in the case of a special resolution by a majority of not less than 75%) of members has signified its agreement to the resolution;
 - (c) A written resolution is not a special resolution unless it states that it was proposed as a special resolution;
 - (d) A members' resolution under the Companies Acts removing a Director or an auditor before the expiration of his or her term of office may not be passed as a written resolution.
 - (e) A member signifies their agreement to a proposed written resolution when the Company receives from them (or from someone acting on their behalf) an authenticated document which has been received at the registered office within the period of 28 days beginning with the circulation date identifying the

resolution to which it relates and indicating the member's agreement to the resolution.

- (f) it is contained in an authenticated document which has been received at the registered office within the period of 28 days beginning with the circulation date.
 - (g) A written resolution is passed when the required majority of eligible members have signified their agreement to it.
 - (h) A proposed written resolution lapses if it is not passed within 28 days beginning with the Circulation Date.
- (46) A resolution in writing may comprise several copies to which one or more members have signified their agreement.

Content of proxy notices

- (47) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which:
- (a) states the name and address of the member appointing the proxy;
 - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
 - (c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and
 - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (48) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes. Proxy notices must be delivered to the Company's registered office at least 24 hours prior to the start time of the meeting.
- (49) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions and unless a proxy notice indicates otherwise, it must be treated as:
- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
 - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

- (50) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (51) (a) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(b) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (52) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointer's behalf.

BOARD OF DIRECTORS

- (53) A director must be a natural person aged 18 years or older. No one may be appointed a director if he or she would be disqualified from acting under the provisions of article (71).
- (54) The board shall consist of a minimum of 9 and maximum of 15 directors (unless otherwise determined by special resolution) all of whom must support the objects of the company. The directors shall be elected in accordance with the procedure for the nomination and appointment of directors.
- (55) The directors shall be those persons notified to Companies House as the directors of the company.
- (56) A director may not act as a director of the company unless he/she is a member of the company. Appointments made under article (68) are subject to, or conditional upon, the successful appointees becoming members of the company before serving as a director. This does not apply to a co-opted director appointed under the provisions of article (69).
- (57) All Directors shall be chosen on their readiness to support the objects of the Company, their suitability, general experience and willingness to serve. All directors must sign a written declaration of willingness to act as a director of the company.
- (58) A director may not appoint an alternate director or anyone to act on his or her behalf at meetings of the directors.

Powers of directors

- (59) The directors shall manage the business of the company and may exercise all the powers of the company unless they are subject to any restrictions imposed by the Companies Act, the articles or any special resolution.
- (60) Every Director shall use his/her best endeavours to promote the objects and interests of the Company and shall observe all of the Company's regulations affecting him/her.
- (61) No alteration of the articles or any special resolution shall have retrospective effect to invalidate any prior act of the directors.
- (62) Any meeting of the directors at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the directors.

Retirement of directors

- (63) At each annual general meeting one-third of the directors or, if their number is not three or a multiple of three, the number nearest to one-third, must retire from office. If there is only one director he or she must retire.
- (64) (a) The directors to retire by rotation shall be those who have been longest in office since their last appointment. If any directors became or were appointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
 - (b) If a director is required to retire at an annual general meeting by a provision of the articles the retirement shall take effect upon the conclusion of the meeting.

Appointment of directors

- (65) (a) The company shall actively promote a board of directors which includes a range of skill, experience and knowledge in keeping with the pursuance of its Objects and to this end it is entitled to advertise and interview eligible candidates to be potential directors of the board.
 - (b) Successful candidates arising from interviews under this article shall be eligible for nomination to the board under the provisions of article (68) or appointment under article (69).
- (66) The directors shall be elected at the annual general meeting by the members present (in person, or through an authorised representative or

by proxy) and shall be drawn from the classes of membership in the proportion or number as the case may be specified below:

- (a) As to Active Crew Members
 - (i) 3 shall be Kinnego Station Members;
 - (ii) 3 shall be Ardboe Station Members;
 - (iii) 3 shall be Antrim Station Members.
 - (b) As to the remainder drawn from within the categories of membership of the Company.
 - (c)
 - (i) The Kinnego Station Crew Members shall be entitled to nominate three Kinnego Station Crew Members to be appointed Directors by an Annual General Meeting and/or nominate from time to time any replacements of such Directors nominated by the Kinnego Station Crew Members for the life of the Company.
 - (ii) The Ardboe Station Crew Members shall be entitled to nominate three Ardboe Station Crew Members to be appointed Directors by an Annual General Meeting and/or nominate from time to time any replacements of such Directors nominated by the Ardboe Station Crew Members for the life of the Company.
 - (iii) The Antrim Station Crew Members shall be entitled to nominate three Antrim Station Crew Members to be appointed Directors by an Annual General Meeting and/or nominate from time to time any replacements of such Directors nominated by the Antrim Station Crew Members for the life of the Company.
- (67) A retiring director shall, subject to Article (68) below, be eligible for re-nomination and election provided that no director shall serve more than three consecutive three year terms on the board. In the case of a retiring director who has served for a total period of nine consecutive years, he/she shall not be eligible for re-election to serve as a director for any further period until at least 12 months has expired since the end of his/her sixth year in office.
- (68) No other person other than a retiring director may be appointed a director at any general meeting unless:
- (a) not less than fourteen nor more than thirty five clear days before the date of the meeting, the company is given a notice that:

- (i) is signed by a member entitled to vote at the meeting;
 - (ii) states the member's intention to propose the appointment of a person as a director;
 - (iii) contains the details that, if the person were to be appointed, the company would have to file at Companies House;
 - (iv) is signed by the person who is proposed to show his or her willingness to be appointed.
- (b) All members who are entitled to receive notice of a general meeting must be given not less than seven nor more than twenty one clear days' notice of any resolution to be put to the meeting to appoint a director other than a director who is to retire by rotation.
 - (c) the board of directors is entitled to nominate those candidates selected in accordance with article (65).
 - (d) If the number of nominations exceeds the number of vacancies, election shall be by show of hands or secret ballot if requested.
 - (e) If the number of nominations is less than the number of vacancies, further oral nominations may with the approval of the annual general meeting be invited from members at the said annual general meeting.

Co-option of directors

- (69) The directors shall have the power at any time to appoint any person, who need not be a member of the company, by co-option:
 - (a) to be a director to fill a casual vacancy. Any director so appointed shall hold office only until the next following annual general meeting and shall then be eligible for election.
 - (b) as additional directors with particular skills and/or knowledge up to but not exceeding a number equivalent to one third of the elected directors for the time being. Directors so appointed shall hold office only until the next following annual general meeting and shall then be eligible for re-appointment.

Office bearers

- (70) The directors so appointed shall at the first meeting of the board of directors after the annual general meeting elect by ballot from among their number a chairperson and other office bearers who shall hold office for one year. The position of chairperson shall rotate annually with a director taking the office of chairperson rotating from each of the three

crew stations in turn. The order of appointment shall be Ardboe, Kinnego, Antrim in that order (unless otherwise determined by a resolution of the directors).

Disqualification and removal of directors

- (71) A director shall cease to hold office if he or she:
- (a) ceases to be a director by virtue of any provision in the Companies Act or is prohibited by law from being a director;
 - (b) is disqualified from acting as a trustee by virtue of section 86 of the Charities Act (or any statutory re-enactment or modification of that provision);
 - (c) ceases to be a member of the company (but such a person may be reinstated by resolution passed by all the other directors on resuming membership of the company before the next annual general meeting);
 - (d) in the written opinion, given to the company, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a director and may remain so for more than three months;
 - (e) resigns as a director by notice to the company (but only if at least two directors will remain in office when the notice of resignation is to take effect);
 - (f) is absent without the permission of the directors from all their meetings held within a period of six consecutive months and the directors resolve that his or her office be vacated;
 - (g) a bankruptcy order is made against that person, or an order is made against that person in individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;
 - (h) a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - (g) is removed by ordinary resolution at a meeting to remove a director before the expiration of his period of office, notwithstanding anything in any agreement between the Company and him under section 168 of the Companies Act 2006. Special notice is required of a resolution to remove a director under this section and to appoint somebody instead of a director so removed at the meeting at which he is removed. A vacancy created by the removal of a director under this section if not filled

at the meeting at which he is removed, may be filled as a casual vacancy under the co-option provision in article 69.

Remuneration of directors

(72) The directors must not be paid any remuneration unless it is authorised by article (8).

Proceedings of directors

- (73) (a) The directors may regulate their proceedings as they think fit, subject to the provisions of the articles and provided that they hold at least 4 meetings each year.
- (b) Any director may call a meeting of the directors.
- (c) The secretary must call a meeting of the directors if requested to do so by a director.
- (d) A Directors' meeting must be called by at least seven Clear Days' notice unless either:
- (i) all the Directors agree; or
 - (ii) urgent circumstances require shorter notice.
- (e) Notice of any directors' meeting must indicate:—
- (i) its proposed date and time;
 - (ii) where it is to take place;
 - (iii) the general particulars of all business to be considered at such meeting;
 - (iv) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting
 - (v) Notice of a directors' meeting must be given to each director, but need not be in writing; and
 - (vi) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

- (f) Questions arising at a meeting shall be decided by a majority of votes.
- (g) In the case of an equality of votes, the person who is chairing the meeting shall have a second or casting vote provided that he or she is not prohibited from participating in the decision making process in accordance with article (81).
- (h) A meeting may be held by suitable electronic means as agreed by the directors in which each participant may communicate with all the other participants.
- (i) A director is able to exercise the right to speak at a meeting of the directors when that director is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- (j) In determining attendance at a meeting of the directors, it is immaterial whether any two or more directors attending it are in the same place as each other.

Quorum for directors' meetings

- (74) No decision may be made by a meeting of the directors unless a quorum is present at the time the decision is purported to be made. 'Present' includes being present by suitable electronic means agreed by the directors in which a participant or participants may communicate with all the other participants.
 - (a) The quorum shall be five or the number nearest to one-third of the total number of directors, whichever is the greater, or such larger number as may be decided from time to time by the directors.
 - (b) A director shall not be counted in the quorum present when any decision is made about a matter upon which that director is not entitled to vote.
- (75) If the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

Chairperson

- (76) The chairperson elected in accordance with article (70) shall chair all meetings of the directors but if no such chairperson is elected, or if at any meeting the chairperson is not present within ten minutes after the time appointed for holding the same, the directors may choose one of their number present to chair that meeting.

Directors' written resolutions

- (77) A resolution in writing or in electronic form agreed by a simple majority of all the directors entitled to receive notice of a meeting of directors or of a committee of directors and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the directors or (as the case may be) a committee of directors duly convened and held provided that:
- (a) a copy of the resolution is sent or submitted to all the directors eligible to vote; and
 - (b) a simple majority of directors has signified its agreement to the resolution in an authenticated document or documents which are received at the registered office within the period of 28 days beginning with the circulation date.
- (78) The resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one or more directors has signified their agreement.

Delegation

- (79) (a) The directors may delegate any of their powers or functions to any person or committee but the terms of any delegation must be recorded in the minute book. The directors have the power to revoke or alter any such delegation in whole or in part, or alter its terms and conditions.
- (b) The resolution making the delegation must specify those who shall serve or be asked to serve on the committee (although the resolution may allow the committee to make co-options up to a specified number).
- (c) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.
- (d) The Directors may authorise further delegation of the relevant powers, functions, implementation of decisions or day to day management by any committee to whom they are delegated to such an extent as they think fit.
- (e) The composition of any committee shall be entirely in the discretion of the Directors and may include such of their number (if any) as the resolution may specify.
- (80) The directors may impose conditions when delegating, including the conditions that:

- (a) the relevant powers are to be exercised exclusively by the committee to whom they delegate;
- (b) no expenditure may be incurred on behalf of the Company except in accordance with a budget previously agreed with the directors.
- (c) all acts and proceedings of any committees must be fully and promptly reported to the directors and any resolution passed or decision taken by any committee must be reported promptly to the Directors and every committee must appoint a secretary for that purpose.

Declaration of directors' interests

- (81) The Directors shall cause a register of Directors' interests to be kept. A director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the company or in any transaction or arrangement entered into by the company which has not previously been declared. A director must absent himself or herself from any discussions of the directors in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the company and any personal interest (including but not limited to any personal financial interest).

Conflicts of interests

- (82) If a conflict of interests arises for a director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the articles, the unconflicted directors may authorise such a conflict of interests where the following conditions apply:
- (a) the conflicted director is absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting that other organisation or person;
 - (b) the conflicted director does not vote on any such matter and is not to be counted when considering whether a quorum of directors is present at the meeting; and
 - (c) the unconflicted directors consider it is in the interests of the company to authorise the conflict of interests in the circumstances applying;
 - (d) in authorising a conflict of interest, the Directors can decide the manner in which the conflict of interest may be dealt with and, for the avoidance of doubt, they can decide that the Director with a conflict of interest can participate in a vote on the matter and can be counted in the quorum;

- (e) the decision to authorise a conflict of interest can impose such terms as the Directors think fit and is subject always to their right to vary or terminate the authorisation; and
 - (f) nothing in this Article shall have the effect of allowing the Directors to authorise a benefit that is not permitted in accordance with Article 8.
- (83)
- (a) In article (82), a conflict of interests arising because of a duty of loyalty owed to another organisation or person only refers to such a conflict which does not involve a direct or indirect benefit of any nature to a director or to a connected person.
 - (b) When a Director has a conflict of Interest which he or she has declared to the Directors, he or she shall not be in breach of his or her duties to the Company by withholding confidential information from the Company if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her.

Validity of directors' decisions

- (84) Subject to article (85), all acts carried out at a meeting of directors, or of a committee of directors, shall be valid notwithstanding the participation in any vote of a director:
- (a) who was disqualified from holding office;
 - (b) who had previously retired or who had been obliged by the articles to vacate office;
 - (c) who was not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise;

if without:

- (d) the vote of that director; and
- (e) that director being counted in the quorum;

the decision has been made by a majority of the directors at a quorate meeting.

- (85) Article (84) does not permit a director or connected person to keep any benefit that may be conferred upon him or her by a resolution of the directors or of a committee of directors if, but for article (84), the resolution would have been void, or if the director has not complied with article (81).

Seal

- (86) If the company has a seal it must only be used by the authority of the directors or of a committee of directors authorised by the directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless so determined it shall be signed by a director and by the secretary or by a second director.

RECORDS AND ACCOUNTS

Minutes

- (87) The directors must keep minutes of all:
- (a) appointments of officers made by the directors;
 - (b) proceedings of all meetings of the company;
 - (c) meetings of the directors and all meetings of committees of directors including:
 - (i) the names of the directors present at each meeting;
 - (ii) the decisions made at the meetings; and;
 - (iii) where appropriate the reasons for the decisions.
 - (d) professional advice obtained.

Accounts

- (88) The directors must prepare for each financial year accounts as required by the Companies Act and the Charities Act as to keeping records, the audit or independent examination of accounts and preparation and transmission to the Registrar of Companies and the Charity Commission of information required by law. Proper accounting records shall be deemed to be kept if they give a true and fair record of the state of the company's affairs and explain its transactions.
- (89) The accounting records shall be kept at the registered office of the company, or subject to the Companies Act, at such other places as the directors think fit, and shall be open to inspection by the directors at any reasonable time during usual working hours.
- (90) The directors shall present the annual accounts to the members in the annual general meeting. A copy of every balance-sheet (including every document required by law to be annexed thereto) which is to be laid before the company in annual general meeting, together with a copy of the auditors or independent examiner's report, shall be sent or delivered to the auditor and independent examiner and every member before they are sent to Companies House .

Audit

- (91) Once at least in every year the accounts of the company shall be examined and correctness of the income and expenditure account and balance-sheet ascertained by one or more properly qualified auditors or independent examiner or examiners who is/are a member(s) of the Institute of Chartered Accountants in Ireland or such other recognised supervisory body as the company shall from time to time decide appointed by the annual general meeting and their duties regulated in compliance with the requirements of the Companies Act and of the Charities Act.

Annual Report and Return and Register of Charities

- (92) The directors must comply with any requirements of the Charities Act (or any statutory re-enactment or modification for the time being in force thereof) with regard to the preparation of an annual report and annual return and its transmission to the Charity Commission.

Means of communication to be used

- (93) Subject to the articles:
- (a) anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.
 - (b) any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- (94) Any notice to be given to or by any person pursuant to the articles must be in writing or must be given in electronic form. The company may give any notice to a member either:
- (a) personally; or
 - (b) by sending it by post in a prepaid envelope addressed to the member at his or her address; or
 - (c) by leaving it at the address of the member; or
 - (d) by giving it in electronic form to the member's address

A member who does not register an address with the company or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the company.

- (95) A member present in person at any meeting of the company shall be deemed to have received notice of the meeting and of the purposes for which it was called.
- (96) Subject to the articles:
- (a) Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.
 - (b) Proof that an electronic form of notice was given shall be conclusive where the company can demonstrate that it was properly addressed and sent, in accordance with section 1147 of the Companies Act 2006.
 - (c) In accordance with section 1147 of the Companies Act 2006 notice shall be deemed to be given:
 - (i) 48 hours after the envelope containing it was posted; or
 - (ii) In the case of an electronic form of communication, 48 hours after it was sent.

Indemnity

- (97) The company shall indemnify every director against any liability incurred in successfully defending legal proceedings in that capacity, or in connection with any application in which relief is granted by the Court from liability for negligence, default, or breach of duty or breach of trust in relation to the company.

In this article a "relevant director" means any director or former director of the company.

- (98) The company may indemnify an auditor against any liability incurred by him or her or it:
- (a) in defending proceedings (whether civil or criminal) in which judgment is given in his or her or its favour or he or she or it is acquitted; or
 - (b) in connection with an application under section 1157 of the Companies Act (power of Court to grant relief in case of honest and reasonable conduct) in which relief is granted to him or her or it by the Court.

Rules

- (99) The directors may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the company. The directors must adopt such means as they think sufficient to bring the rules and bye laws to the notice of members of the company. The bye laws may regulate the following matters but are not restricted to them:
- (a) the admission of members of the company and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
 - (b) the conduct of members of the company in relation to one another, and to the company's employees and volunteers;
 - (c) the setting aside of the whole or any part or parts of the company's premises at any particular time or times or for any particular purpose or purposes;
 - (d) the procedure at general meetings and meetings of the directors in so far as such procedure is not regulated by the Companies Acts or by the articles;
 - (e) generally, all such matters as are commonly the subject matter of company rules.
- (100) The rules or bye laws shall be binding on all members of the company. The company in general meeting has the power to alter, add to or repeal the rules or bye laws provided that no rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the articles.

Dissolution

- (101) The members of the company may at any time before, and in expectation of, its dissolution resolve that any net assets of the company after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the company be applied or transferred in any of the following ways:
- (a) directly for the Objects; or
 - (b) by transfer to any charity or charities for purposes similar to the Objects; or
 - (c) to any charity or charities for use for particular purposes that fall within the Objects.

(102) Subject to any such resolution of the members of the company, the directors of the company may at any time before and in expectation of its dissolution resolve that any net assets of the company after all its debts and liabilities have been paid, or provision made for them, shall on or before dissolution of the company be applied or transferred:

- (a) directly for the Objects; or
- (b) by transfer to any charity or charities for purposes similar to the Objects; or
- (c) to any charity or charities for use for particular purposes that fall within the Objects.

(103) In no circumstances shall the net assets of the company be paid to or distributed among the members of the company (except to a member that is itself a charity) and if no resolution in accordance with article (101) is passed by the members or the directors the net assets of the company shall be applied for charitable purposes as directed by the Court or the Charity Commission.

Section 96 Summary Report	
Application number	CW/13/015
HPRM reference	CC1-13-1043
Summary Report HPRM document number	CC1/20/6277
Organisation name	Lough Neagh Rescue Limited
Charity registration number	101051
Applicant name	XXXXXXXXXXXXXXXXXXXX
Casework type	Section 96
Risk level	High
Presenting officer	XXXXXXXXXXXXXXXXXXXX
Date of Schedule 1 Meeting	10 March 2020
Recommended decision	Provide consent under Section 96
Decision maker	Schedule 1 Committee

Criteria for case to be escalated to Board/Schedule 1 Committee

This case falls under criterion 13 to allow a charity to amend its governing document lawfully.

Introduction/background

Lough Neagh Rescue Limited ('the charity') is a company (NI030528) and is registered with the Charity Commission for Northern Ireland under NIC101051.

In August 2013, the charity submitted an application under section 96 in the Charities Act (NI) 2008 ('the Act') seeking the Commission's written consent to regulated alterations in its current governing document. Following the company consents process, and in line with the law as it was then understood, a 'decision' to grant consent was made by a member of staff and a letter of consent was issued by email and post to the charity on 3rd September 2013.

In a recent judgment of the Court of Appeal relating to the authority of staff to discharge the Commission's statutory powers, and directly relating to this case, the 'decision' of September 2013 was overturned. The decision ought properly to have been made by the Commissioners collectively or a Committee formed under Schedule 1 of the Act.

The effect of this judgment is that the regulated alterations purported to have been made in 2013 were ineffective.

The charity has, however, acted in good faith and in the honest belief that these alterations were effective and now seeks that these alterations are regularised as soon as possible.

The charity, therefore, proposes various regulated alterations to its articles of association and requires the Commission's consent to alter the relevant provisions. The specific alterations proposed are set out in the 'regulated alterations' section below.

It is useful to note at this point that the Charity Tribunal has previously considered the specific regulated alterations proposed¹; it found them to be charitable as that term is understood within

¹ Decision issued in April 2017: McKee & Hughes and Charity Commission for Northern Ireland (refs: 21/14 and 25/14). Linked: www.justice-ni.gov.uk/charity-commission

section 2 of the Act and opined that it was prudent for the charity to modernise and update its articles and thus in its interests to do so. That finding has not since been contested by any party or been the subject of any later judgment.

The charity's application

In line with the current Charitable Companies Manual (version 3.0), before consent will be provided the Commission will seek to be satisfied that:

- The proposed alteration is a 'regulated alteration' under section 96 in the Act, and;
- That the alteration will not affect the charitable nature of the company, and;
- That the proposed regulated alteration is in the best interests of the charity.

Objects

The charity wishes to amend its objects as follows:

[Current]

3. The Company's objects are as follows:

(i) To provide and maintain apparatus, equipment, vehicles and vessels for the saving of life and assistance of persons in distress within Northern Ireland (the area of benefit);

(ii) to provide adequate arrangements for the secure and efficient search and rescue of any person or persons endangered by accidents or natural hazards within Northern Ireland; and

(iii) to train members to achieve these objectives.

[Proposed]

(4) The Company's objects are specifically restricted to the promotion of the public benefit by the relief of human suffering and distress from disaster on inland waters, the advancement of education and the protection and

preservation of lives in the Lough Neagh area and its adjacent waterways and rivers and such other areas of Northern Ireland and other countries as the Directors may from time to time think fit (hereinafter called "the area of benefit") without distinction of age, gender, disability, sexuality, orientation, nationality, ethnic identity, political or religious opinion, by associating the statutory authorities, emergency services, voluntary organisations and the inhabitants in a common effort to improve the conditions of life for the benefit of the inhabitants and in particular:

(a) To protect and preserve good health and life by the provision and maintenance of suitably trained specialist waterborne search and rescue teams to assist in the search and rescue of persons missing or endangered by accidents or natural hazards in the area of benefit and adjacent land both independently and in association with the full emergency services and other statutory and voluntary aid agencies;

(b) To provide and maintain apparatus, equipment, vehicles and vessels for the saving of life and assistance of persons in distress within the area of benefit;

(c) To advance the education of the public in all matters relating to inland water safety and awareness, waterborne rescue, first aid and the safe and appropriate use of outdoor environments;

(d) To advance promote and further the conservation maintenance and protection of features of landscape in the area of benefit with geographical, physiographical or amenity value.

The reframing of, and addition to, the objects as proposed by the charity in this instance plainly falls within the scope of section 96, being an amendment of a statement of the company's objects (S 96(3)(a) Charities Act (NI) 2008). Accordingly, such a change will require the prior written consent of the Commission in order to take effect.

Are the proposed objects capable of being charitable? Would the new objects undermine or work against the current objects?

The proposed new objects are exclusively charitable as drafted and would have the effect of clarifying and enhancing the purposes of

the charity. Their net effect would be to broaden the possible charitable work and potential beneficiaries.

There is no evidence to suggest that the proposed objects would undermine or work against the current objects of the charity, or adversely affect its charitable nature.

The charity also proposes to update its governing document to include modern and up-to-date wording in other areas. In doing so it has proposed amendments to the dissolution provisions and director/member benefits provisions;

Dissolution

The charity wishes to amend its dissolution provisions as follows:

[Current]

7. If, upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other body, institution or institutions charitable in law and having objects similar to the objects of the Company which shall prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as hereinbefore mentioned as may be determined by the members of the Company at or before the time of dissolution and if and insofar as effect cannot be given to such provision then to some other charitable object.

[Proposed]

(101) The members of the company may at any time before, and in expectation of, its dissolution resolve that any net assets of the company after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the company be applied or transferred in any of the following ways:

- (a) Directly for the Objects; or*
- (b) By transfer to any charity or charities for purposes similar to the Objects; or*

(c) To any charity or charities for use for particular purposes that fall within the Objects.

(102) Subject to any such resolution of the members of the company, the directors of the company may at any time before and in expectation of its dissolution resolves that any net assets of the company after all its debts and liabilities have been paid, or provision made for them, shall on or before dissolution of the company be applied or transferred:

(a) Directly for the Objects; or

(b) By transfer to any charity or charities for purposes similar to the Objects; or

(c) To any charity or charities for use for particular purposes that fall within the Objects

(103) In no circumstances shall the net assets of the company be paid to or distributed among the members of the company (except to a member that is itself a charity) and if no resolution in accordance with article 101 is passed by the members or the directors the net assets of the company shall be applied for charitable purposes as directed by the Court or the Charity Commission.

The change proposed by the charity in this instance plainly falls within the scope of section 96, being an amendment to the provision directing the application of property of the company on its dissolution (S 96(3)(b) Charities Act (NI) 2008). Accordingly, such a change will require the prior written consent of the Commission in order to take effect.

Are the proposed provisions exclusively charitable where the assets would fall to a clearly outlined charitable use?

The proposed provision does not make a substantive change to how the property of the company will be applied on dissolution, with a continuing requirement for its charitable use.

It is clear that should the company dissolve, the property will be applied in furtherance of its objects (or similar charitable objects) and will not be distributed among members. Further, the proposed clause provides for clearer decision-making levels and safeguarding (for example through court or Commission involvement if

necessary). Therefore the dissolution provision remains exclusively charitable.

Director/member benefits

The charity wishes to amend its director/member provisions as follows:

[Current]

4. The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in the Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit, to members of the Company and no member of its Board or Directors shall save as below receive any remuneration or other benefit in money or money's worth from the Company provided that nothing herein shall prevent any payment in good faith by the Company:

(a) Of reasonable and proper remuneration to any member, officer or servant of the Company not being a member of its Board of Directors for any services rendered to the Company;

(b) Of interest on money lent by any member of the Company or of its Board of Directors at a rate per annum not exceeding 2% less than the base lending rate prescribed for the time being by the Bank appropriate to the Company or 3% whichever is the greater.

(c) Of reasonable and proper rent from premises demised or let by any member of the Company or if [sic] its Board of Directors.

(d) To any member of its Board of Directors reasonable out of pocket expenses.

[Proposed, with bold emphasis added]

(6) The income and property of the company shall be applied solely towards the promotion of the Objects.

(7)

(a) a director is entitled to be reimbursed from the property of the company or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the company;

(b) A director may benefit from trustee indemnity insurance cover purchased at the company's expense in accordance with, and subject to any conditions in, section 93 of the Charities Act;

(c) A director may receive an indemnity from the company in the circumstances specified in Article (97)

...

(8)

(a) A member, director or connected person may receive a benefit from the company in the capacity of a beneficiary of the company.

(b) None of the income or property of the company may be paid or transferred, directly or indirectly, by way of a dividend, bonus or otherwise howsoever by way of profit to any member, director or connected person, of the company. Provided that nothing herein shall prevent any payment in good faith by the company:

(i) Of reasonable and proper remuneration for any services rendered to the company by any member, officer or servant of the company who is not a director of the company.

(ii) Of interest on money lent by any member, director or connected person at a reasonable and proper rate per annum not exceeding 2% less than the base rate prescribed for the time being by a clearing bank selected by that board of directors or 3%, whichever is the greater.

*(iii) Of reasonable and proper rent for premises demised or let by any member, director **or connected person** provided that the director concerned shall withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.*

(iv) Of fees, remuneration or other benefit in money or money's worth to a company of which a member of the

board of directors may be a member holding not more than one hundredth part of the capital of that company.

(v) To any directors of reasonable and proper payment of out of pocket expenses.

(c) No director or connected person may buy any goods or services from the company on terms preferential to those applicable to other members of the public.

(d) "Company" shall include any other company in which the Company holds more than 50% of the shares; or controls more than 50% of the voting rights attached to the shares; or has the right to appoint one or more director to the board of the other company.

The change proposed by the charity in this instance falls within the scope of section 96, being an amendment which would 'authorise a benefit to be obtained by directors or persons connected with them' (S 96(3)(c) Charities Act (NI) 2008).

Many of the benefits obtainable by a director, member or person connect with them under the proposed articles are already obtainable under the current articles; interest on money lent, ability to rent premises, out of pocket expenses etc. and the prohibition on Directors receiving remuneration for services would remain in place.

The bold emphasised text demonstrates, however, that certain additional benefits would be obtainable by directors (via companies of which they are members) or to connected persons. These particular additions would have the effect of authorising a benefit to be obtained and, accordingly, will require the prior written consent of the Commission in order to take effect.

Exclusively charitable

The proposed regulated alterations do not affect the overall charitable nature of and, indeed, are in line with more modern drafting commonly seen in other charitable company articles. It is notable that these were first provided to the charity by a large helper group from within the sector.

Best interests

In considering whether the best interests of the charity served the Commission will, proportionate to the circumstances of the case, have regard to matters including:

- Any evidence on how the charity’s interests are served
- The complexity of the proposed changes
- Whether governance might be strengthened or weakened
- Whether the proposals are ones a reasonable body of trustees would make in the circumstances of the particular charity.

On consideration of the elements above, and in light of the circumstances in which the charity finds itself, it is recommended that its best interests are served through granting of consent to the proposed alterations.

The revision of objects will help to fulfil regulatory advice provided to the charity when they were initially drafted, will bring clarity and certainty to the objects and will account for the development of the charity and the work that it is carrying out. Importantly, the relevant consent will also allow the charity to regularise and make certain the objects under which it has been operating in good faith since 2013, and which the then members showed a wish to adopt by passing a vote.

In relation to the dissolution and director/member benefits provisions, these conform to commonly seen, modern wordings and are not complex in the Commission’s experience. It is prudent that such modernisation exercises be carried out by charities and the particular changes would strengthen governance and decision-making at any future dissolution.

A minor concern arises whereby the changes to authorise connected persons and companies to enter into transactions with the charity could give rise to conflicts of interest. These are not, however, uncommon clauses in charities and such conflicts can be easily be addressed either by following the provisions set out in the proposed articles or by following a conflicts of interest policy.

In summary, in the circumstances of the charity both at the point of application and at the present time, the proposed alterations are reasonable and within the best interests of the charity.

Recommendation

Consent is requested in relation to alterations in the company's objects clause and modernisation of the dissolution and director/member benefits provisions. The changes are in the best interests of the charity and have no adverse effect on the exclusively charitable nature of the company.

It is therefore recommended that the consent be granted under Section 96 of the Act for the aforementioned alterations.

The Commission's general functions, objectives, general duties and the principles of best regulatory practice have been considered and recorded in reaching the recommendation above.

Publication

In section 96 cases we will usually publish our decision unless we consider there is a strong reason why we should not. There is no reason to diverge from the Commission's publication policy in this case.

Referral advice (including legal) / external advice received

N/A

Casework manager's comments

Not applicable – summary report drafted and present by
XXXXXXXXXX

Approval for escalation CEO/SMT

CEx approval by email – HPRM Ref: CC1/20/6372

Date: 4 March 2020

Board/Schedule 1 Committee decision

[insert decision and any variance from the recommendation should be documented]

3.0 Decision pack Schedule 1 Committee 10 March 2020

3.2 The law

References to the Act are to the Charities Act (Northern Ireland) 2008.

Casework

Registration: Section 16

In Northern Ireland, a “charity” is an institution which falls under the definition set out in section 1(1) of the Act as being an organisation which:

- (a) is established for charitable purposes only, and
- (b) falls to be subject to the control of the Court in the exercise of its jurisdiction with respect to charities.

A “charitable purpose” is defined under section 2 of the Act as one which:

- (a) falls under one of the twelve descriptions of purposes set out in section 2(2) of the Act, and
- (b) is for the public benefit.

Section 16 of the Act gives the Commission the duty to keep a *register of charities* and Section 17 of the Act sets out the duties of charity trustees in connection with registration and gives the Commission the power to request any documents or information from charity trustees as the Commission may require for the purposes of the application.

Section 16 (1) states: “*The Commission shall keep a register of charities.*”

Section 16 (4) sets out that the register should contain:

- (a) the name of the charity...*
- (c) such other particulars of, and such other information relating to, the charity as the Commission thinks fit.*

Section 17 (2) sets out what the 'required documents and information' are and includes: "*(c) such other documents or information as the Commission may require for the purposes of the application.*"

Company Consents: Section 96

Under the Act, certain changes to a charitable company's articles of association must receive the Commission's prior approval in order to take effect. These are known as 'regulated alterations'.

Section 96(2) states that a 'regulated alteration':

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

A regulated alteration is defined in Section 96(3) as:

- (a) An amendment of the company's articles of association adding, removing or altering a statement of the company's objects*
- (b) Any alteration of any provision of its articles of association directing the application of property of the company on its dissolution, and*
- (c) Any alteration of any provision of its articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.*

It is important to note that, unlike the making of a cy-pres scheme, the Commission's consent under section 96(2) does not itself make the alteration. The charity must still follow the procedures in its articles of association and in company law, which requires the passing of a special resolution.

Enquiries

Publication statutory inquiry report: Section 22(6)

General powers to institute an inquiries

22.—(1) The Commission may institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.

(6) Where an inquiry has been held under this section, the Commission may either—

- (a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as the Commission thinks fit, to be printed and published, or