

## **LATEST NEWS FROM THE LEGAL AND OPERATIONS TEAM – DECEMBER 2020**

### **Virtual Church Members' Meetings in CIOs (Charitable Incorporated Organisations)**

**Please note that this section does not apply to the vast majority of our churches that are still unincorporated associations, not CIOs, and who should refer to the November 2020 Update instead.**

#### **Introduction**

Since March, many of our churches have made use of online resources and meeting platforms more than ever before. Live streaming services and holding church meetings by Zoom or other means have been crucial for churches to stay connected with their members and continue in ministry whilst not being able to meet in person. Our advice to churches has been to reflect that of the Charity Commission and to be as pragmatic and flexible as possible, so that meetings could take place virtually, with the understanding that decisions taken using electronic means would be subject to challenge unless ratified at a later meeting of members in person. Some churches have indicated that they have had many more members participate in online meetings, whilst other churches with an older demographic have struggled to involve their members this way.

#### **Baptist Union Council decision October 2020**

A key question that has arisen is whether it would be appropriate for Baptist churches to amend their governing documents to provide for Baptist church members' meetings to be held remotely going forward, should they wish to do so. This was considered by Baptist Union Council at their meeting in October 2020 and Council agreed that it is an acceptable reflection of our Baptist ecclesiology for church members' meetings to be conducted by electronic means. Council also agreed that it is for individual churches to decide for themselves whether virtual church members' meetings should be held in this way; whether in exceptional circumstances only, whether they can be convened this way generally, or not at all.

#### **Amending church constitutions – new template clauses for CIOs**

The Legal and Operations Team advises churches in relation to their governing documents and on charity law requirements for our churches as charities. We have two Approved Governing Documents (AGDs); one for unincorporated association church charities and the other for Charitable Incorporated Organisations (CIOs). Both of these AGDs are bespoke Baptist constitutions, which were drafted in consultation with the Charity Commission and Anthony Collins Solicitors and have special status as template constitutions approved by the Commission for use by Baptist churches. The wording of both AGDs has previously been approved by Council and neither constitution makes any provision for church members' meetings to be held electronically.

We have taken advice from Anthony Collins LLP and they have advised that since case law on the matter is unclear, electronic church member meetings should only be held (in normal times) where there is express provision for them in the church constitution. We have worked with Anthony Collins LLP to draft template clauses which churches can insert into their CIO constitution and you can find these below; the new wording is highlighted. These clauses are drafted to be inserted into the BUGB CIO Approved Governing Document which is issued to churches under copyright licence by our solicitors, Anthony Collins LLP ([esther.campsall@anthonicollins.com](mailto:esther.campsall@anthonicollins.com)).

The new wording offers optional clauses whereby churches can choose either to be able to hold virtual church member meetings at any time or to only be able to hold these meetings in exceptional

circumstances when it has not been possible to gather in person for a defined period of months. In this option the church can choose how long this period should be. The wording also provides for churches to hold hybrid meetings where some members are present in person and others are present online.

Amending a church constitution requires a decision of a special church members' meeting (SCM); in the BUGB CIO AGD the amendment provisions can be found in clause 31. Please note that these amendments do not require the special permission from BUGB and your Association described in 31.5. Where CIOs are not able to gather in person to hold an SCM this decision may be taken at a virtual meeting under the statutory provisions described below. Further information on the governance issues that arise due to the pandemic can be found in guideline leaflet [L18 Covid-19 Coronavirus Legal Issues](#).

Whilst these new clauses have been agreed by our solicitors, they have not yet been formally approved by the Charity Commission as official amendments to the BUGB CIO Approved Governing Document. This is a process which we will undertake in due course. We do not anticipate any difficulties in this respect. We will amend guideline leaflet *C12: Using the Charitable Incorporated Organisation Precedent Document* once the amendments are approved by the Commission, but this may take some time.

In all other respects we would continue to encourage churches to retain the approved wording which was agreed with the Charity Commission as the BUGB CIO Approved Governing Document.

CIOs that are already registered with the Commission need to provide them with a copy of their new constitution whenever it is amended.

### **Incorporated churches – CIOs and companies**

In response to the pandemic, new legislation has been passed which has temporarily allowed corporate charities to hold members' meetings virtually. Since CIOs and companies are corporate entities the temporary measures apply to them. The relevant period in which the legislation applies has been extended until 30 March 2021. Further information can be found in guideline leaflet [L18 Covid-19 Coronavirus Legal Issues](#) on page 4.

Incorporated churches can rely on this legislation at present.

Please direct any follow-up questions to [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk)

New template clauses:

Clause Number	
13.3	<b>Notice of Church Members' Meetings</b>
13.3.3	The notice of any Church Members' Meeting must:
	<ul style="list-style-type: none"> <li>• State the time and date of the meeting;</li> </ul>
	<ul style="list-style-type: none"> <li>• Give the address at which the meeting is to take place [or, if the meeting is called by the Charity Trustees and is to be held by electronic means or by hybrid means, give the means by which the meeting will be held and information on how to access the meeting];</li> </ul>
	<ul style="list-style-type: none"> <li>• Indicate the general nature of business to be dealt with at the meeting; and</li> </ul>
	<ul style="list-style-type: none"> <li>• If a proposal to alter the constitution of the Church is to be considered at the meeting, include the text of the proposed alteration.</li> </ul>
13.6	<b>Quorum at Church Members' Meetings</b>
13.6.4	If the meeting has been called in any other way and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the chair must adjourn the meeting. The date, time and place at which the meeting will resume [or the means by which the adjourned meeting will be held and information on how to access the meeting] must [either be announced by the chair or] be notified to the Church members at least seven clear days before the date on which it will resume.
13.12	<b>Participation in Church Members' Meetings by electronic means [Optional]</b>
	<b>Option 1 of 2</b>
13.12.1	Any meeting may be held by:

	<ul style="list-style-type: none"> <li>• suitable electronic means; or</li> </ul>
	<ul style="list-style-type: none"> <li>• by a combination of a physical meeting and suitable electronic means</li> </ul>
	agreed by the Charity Trustees in which each participant may communicate with all the other participants.
<b>13.12.2</b>	Any member participating at a meeting by suitable electronic means or by hybrid means agreed by the Charity Trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
<b>13.12.3</b>	Meetings held by electronic means or by hybrid means must comply with rules for meetings, including chairing and the taking of minutes.
<b>13.12.4</b>	Voting at a meeting held by electronic means or by hybrid means shall be conducted in a way agreed by the Charity Trustees and communicated to the members with the notice of the meeting under clause 13.3
	<b>Option 2 of 2</b>
<b>13.12.1</b>	In exceptional circumstances, where it is not possible for a period of more than [two months] to hold a Church Members' Meeting in person, a meeting may be held by:
	<ul style="list-style-type: none"> <li>• suitable electronic means; or</li> </ul>
	<ul style="list-style-type: none"> <li>• by a combination of a physical meeting and suitable electronic means</li> </ul>
	agreed by the Charity Trustees in which each participant may communicate with all the other participants.
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<b>14</b>	<b>Charity Trustees</b>
<b>14.8</b>	<b>Voting Method</b>
	<b>Option 1 of 2 – Voting Method</b>
<b>14.8.1</b>	Voting shall be by secret ballot at an Ordinary Church Members’ Meeting. [Voting by secret ballot at a meeting held by electronic means or by hybrid means shall be conducted in a way agreed by the Charity Trustees and communicated to the members with the notice of the meeting under clause 13.3.] Church Members shall be asked to vote for those nominated candidates who they believe would serve the Church well as Charity Trustees. Each Member may vote for as many nominees as they believe meet this criteria.
<b>14.8.2</b>	Scrutineers shall be appointed by the Church Members’ Meeting to count the votes and shall report the outcome in confidence and in writing to the person chairing the meeting. [If the Ordinary Church Members’ Meeting is to be held by electronic means or by hybrid means then scrutineers shall be appointed in advance of the meeting by the Charity Trustees.]
	<b>Option 2 of 2 – Voting Method</b>
<b>14.8.1</b>	Voting shall be by secret ballot at an Ordinary Church Members’ Meeting. [Voting by secret ballot at a meeting held by electronic means or by hybrid means shall be conducted in a way agreed by the Charity Trustees and communicated to the members with the notice of the meeting under clause 13.3.] Church Members shall be asked to vote for those candidates whom they believe could serve the Church well as Charity Trustees. They shall vote for no more candidates than there are vacancies.
<b>14.8.2</b>	Scrutineers shall be appointed by the Church Members’ Meeting to count the votes and shall report in writing and in confidence to the person chairing the Church Members’ Meeting the number of votes cast for each candidate. [If the Ordinary Church Members’

	Meeting is to be held by electronic means or by hybrid means then scrutineers shall be appointed in advance of the meeting by the Charity Trustees.]
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