

BAPTIST UNION OF GREAT BRITAIN (BUGB)

INCORPORATION AS A CHARITABLE INCORPORATED ORGANISATION (CIO) CONSULTATION WITH MEMBERS ON CIO CONSTITUTION – COMMENTS AND RESPONSES TO QUESTIONS AND PROPOSED AMENDMENTS

The CIO structure was chosen as the appropriate vehicle for the incorporation of BUGB because it provides the best fit with the churchmanship of the Union. Whilst the proposed CIO Constitution for the Baptist Union of Great Britain is drafted as closely as possible to the current Constitution for the unincorporated association charity, in line with the assurance given to the Assembly in May 2017, there are some changes and new provisions in the CIO Constitution which are noted in this document and reflect the current practice of the Union as well as the requirements of the Charity Commission and CIO Regulations. We have worked closely with Anthony Collins Solicitors to extend the Charity Commission model as far as possible to fit with our existing structures.

- 1. In the interpretation clause, the definition of “Member of the Union” should be amended to remove the words “being a charitable incorporated organisation member” as this would exclude most churches from becoming members.**

We agree that the wording in the definition was not very clear and it was certainly not the intention to exclude any members from membership of the Union. This definition has been amended accordingly.

- 2. Defining any transitional arrangements around Trustee terms of office and the initial membership of the newly formed CIO seem to be key. How are these arrangements to be provided for?**

At the point of incorporation, the current members of BUGB will automatically become the first members of the CIO, which is now provided for in revised clauses 11.2.1 and 11.2.2. In May 2018, the Assembly will also be asked to pass a Resolution to this effect. All of the draft enabling Resolutions are available at www.baptist.org.uk/cioconsult and will be presented to Council for approval in March. At the first meeting of the Council after incorporation, the members of BUGB at the point of incorporation will be recognised and confirmed by Council as being those members who have come across to the CIO from the unincorporated association.

The CIO Constitution needs to include the names of the first Trustees of the Union and these will be the same Trustees who are in office at the point of incorporation. At the first meeting of the Council after incorporation, all the elected Trustees shall retire and a process of re-appointment shall be undertaken to appoint the same Trustees for an initial term of 1, 2 or 3 years in keeping with their remaining terms of office brought over from the unincorporated BUGB charity.

- 3. Is it wise to limit paid employment under clause 8.2.3 to the General Secretary alone?**

The current Constitution contains the same restriction and the CIO Constitution has been drafted as closely as possible to the wording of the current Constitution. It is not anticipated that any other employees of the Union would be appointed as Trustees and that this clause should be widened. Rather, the converse was considered by the sub-committee; whether the General Secretary should continue as a Trustee of the charity.

- 4. It is unrealistic to expect that a Trustee or Connected Person should only receive interest under clause 8.2.4 on the basis of Base Rate alone but rather on a margin associated with it.**

This clause is the standard wording provided by the Charity Commission in its precedent CIO Constitution. It is drafted this way as the payment of a preferential interest rate to a Trustee or Connected Person would be perceived as being a benefit to them of monetary value and would require consent from the Charity Commission. In the interests of good governance, the Union would always first look to other lenders rather than its Trustees or Connected Persons and it is not envisaged that such a situation is likely to arise.

- 5. Why are applications from churches for membership of the Union no longer submitted to Council?**

Clause 11.1.2 has been amended to reflect current practice and it was agreed by Council in October 2015 that applications from churches for membership of the Union should be submitted to the relevant Regional Association and then affirmed by Council.

- 6. Personal members – moving to a different legal structure gives us the ideal opportunity to remove this anomalous category of membership from our Constitution. The retention of personal membership complicates the wording of the Constitution and for no benefit at all to the life of the Union. I am sure that any existing personal members will understand the need for us to modernise our Constitution.**

It was decided by Council and confirmed at Assembly in 2007 that there would be no new Personal Members of the Union going forward. There are still 33 Personal Members of the Union and whilst the move to a different legal structure provided an opportunity to revisit this category of membership, it was felt that the better approach was to continue the current position that no new Personal Members of the Union should be admitted to membership of BUGB. The wording of Clause 11.2.2 has, however, been simplified.

- 7. Clause 11.2.1 could be interpreted to exclude from membership any church that does not send a delegate to the Assembly every year. If that is the intention, then we might be excluded from membership, as we cannot always send a delegate to Assembly, even though we ask for volunteers and pay for their expenses to attend.**

We have deleted this requirement from clause 11.2.1.

- 8. It is clear from the Constitution that the Assembly and general meeting are two quite distinct entities, operating under different rules of representation and each given distinct roles in the life of the Union. I understand the reasons for this: the Assembly as currently constituted has a much wider constituency than the one-member-one-vote requirement of the general meeting. The legislation behind CIOs places greater bureaucratic demands upon BUGB in calling a general meeting, which is much more prescriptive. I would have liked to have had a longer process of consultation with members over whether we would be willing to move to a one-member-one-vote decision-making process for Assembly, with the Assembly becoming co-terminus with the general meeting.**

It is recognised that the provision for both the Assembly and a general meeting appears cumbersome and that it would be simpler if the Assembly were co-terminus with the general meeting. However, it was agreed by the BUGB Trustees and Council and put to the Assembly in May 2017 that the Constitution for the CIO would resemble the current Constitution for the

unincorporated association as closely as possible. A change to a one-member-one-vote decision-making process would be a significant change in the life of the Union requiring extensive consultation. The priority was for the Union to incorporate as soon as possible for the reasons set out in Lynn Green's letter to members dated 17 January 2017 and the Frequently Asked Questions document prepared for Assembly in 2017 (both available at www.baptist.org.uk/cioconsult).

9. Part 1, clause 5 of the current Constitution in relation to Operations has been deleted. Can you confirm that the wording in Clauses 12 and 18 of the CIO Constitution adequately replace the powers set out in the current Constitution?

The Operations clause has been deleted as the operations of the Union are described in more detail elsewhere in the Constitution. The BUGB charity will continue to be administered and managed by the Trustee Board provided for in clause 19. The Assembly shall continue to act through Council, as constituted in clause 18, although certain decisions are reserved to the members of the Union in a general meeting under clause 13, as required by the CIO regulations.

10. Why has the provision around Ministerial Members of the Assembly in Clause 12 been changed?

Clause 12.1.3 has been amended to provide for all ministers in training to be a Representative Member of the Assembly. This reflects the changing role of ministers in training, who are already practising in ministry in local churches and are recognised as having gifts of leadership. Retired Accredited Ministers are already Associate Members of the Assembly but no longer need to be elected annually by the Council.

11. Under Clause 12.3 the agenda for each Meeting of the Assembly used to be set by Council and chaired by the President.

At the meeting of Council in November 2017, clause 12.3.1 was discussed by members of the Council, who agreed that the agenda for the meeting of the Assembly should be determined by the Trustees, and is not a strategic matter requiring a decision of the Council. In keeping with current practice, the Moderator of Council, rather than the President of the Union, acts as the chair of a Meeting of the Assembly and may determine the voting procedure to be followed at that Meeting. In clause 12.3.4 the words "of those present and voting" in relation to the 75% majority vote required has been added here for the sake of clarity and likewise elsewhere in the Constitution, for consistency.

12. Clause 13 indicates the decisions which must be made by Members of the Union in a general meeting but there is nothing to limit the decisions which may be made by a general meeting. Members may therefore exercise their right to call a general meeting to discuss a matter of concern within the Union. There is the potential for confusion between the Assembly and the general meeting.

The current structure of the Union is largely a result of superimposing the requirements of charity governance onto patterns of discerning the mind of Christ, which has served us well as a Baptist family over the years. The Constitution for the unincorporated Baptist Union is already an attempt to marry these two together and the same is true of the requirements for a CIO. The CIO Regulations require that members of a CIO have the decisions set out in clause 13.1 reserved to them only. As the constituents of the Assembly are wider than the Members of the Union, provision for a separate general meeting has therefore been made. However, following consultation feedback, on 14 March 2018 Council will consider inserting a new clause 13.2 to provide that the general meeting will only consider the matters set out in clause 13.1, although

this may be queried by the Charity Commission. The intention is that a general meeting will take place in conjunction with an annual Meeting of the Assembly as a separately constituted meeting when the matters in clause 13 are on the agenda, so that Members of the Assembly who are not representing Members of the Union may listen, discern and speak but not vote. A general meeting may be called at shorter notice than the Assembly but it is expected that unless a crisis dictates otherwise, consultation with Members on any of the matters set out in clause 13.1 would take place.

Organisational Members shall be represented at general meetings using the same method for appointing delegates to the Assembly (see clause 13.5.2) and each delegate or Personal Member of the Union will have one vote each (clause 13.6.3).

- 13. The language in clause 18.1 has changed. The “general policy” of the Union has been replaced with the “broad strategic direction” of the Union and the use of the word "discerned" in place of the word "decided" is noted. Please would you explain?**

The language in this clause was amended to be in keeping with the March 2013 Governance Report of Council and BUGB General Secretary Lynn Green’s Clarity document of March 2016. Both reports reflected the need to engage in further discernment from what is being heard so that the broad strategic direction as Baptists Together can be agreed and owned. Churches are represented through their Association and the leadership and oversight of all partners in Baptist Together is discerned and held accountable at Council.

- 14. Is it possible for some specific skills to be mentioned in relation to the membership of Council and the Trustee Board so that persons with business/finance/legal training are able to properly identify problems as they arise?**

This is not usually provided for in a Constitution. The Union undertakes an annual skills audit of the Trustee Board and the Finance & Audit Committee and the Trustees also carry out a Board effectiveness review each year to assess their individual contribution to the Board. The BUGB Key Roles Nominations Committee, which is a sub-committee of the Trustee Board, has the responsibility for identifying and nominating individuals for election by Council and seeks to fill the skills gaps which have been identified on the Board. The Trustee Board is keen to identify suitable Trustees and would welcome suggestions of nominees from BUGB members.

- 15. Please clarify what “natural person” means and the intention of using this term in clause 19.2.1. There is also a change to the appointment of Trustees in clause 19.4.2. Please explain.**

The wording used in clauses 19.1 and 19.2 is the standard wording provided in the Charity Commission precedent document. The term “natural person” is used to distinguish between individuals and corporate bodies, who might have legal personality or status but are not a human being. The Trustee Board may only have individual people appointed to it. Clause 19.4.2 is included so that should specific expertise be required to fill a skills gap on the Trustee Board and it is not possible to find a Trustee from within a Baptist Union member church, the Council have the ability to nominate a Trustee from elsewhere.

- 16. Delegation of Trustee powers to a Committee in Clause 19.9, consisting of only two people, one of whom must be a Trustee, seems to run the risk that a single Trustee on a Committee might not take into account views held by other Trustees, and our view is that the minimum number on a committee should be three, two of whom should be Trustees.**

This clause is a new clause which has been included to be of use to the CIO in drawing in relevant skills from others. A sub-committee may have more than one Trustee, however, the drafting provides flexibility for the Trustees to appoint individuals who bring specific skills or sector expertise where it may not be available from the Trustee Board. Trustees are appointed to be involved in sub-committees where they can apply their expertise and the wider Trustee Board will have oversight over the work of a Trustee delegated sub-committee.

17. Why is clause 19.10.1 headed “Meeting of Trustees” when it only concerns the delegation of powers? Would it be better to include it within 19.9?

We agree and have deleted clause 19.10.1 and have moved the clause to 19.9.3.

18. What was the reason for reducing the quorum of Trustees in clause 19 from six to four? Is the reduced number to reflect a potentially smaller board of Trustees? In these days, it is of course possible for Trustee meetings to be held using conference call technology, and Trustees could be in attendance while physically at a remote location from the main Trustee meeting venue.

The composition of the Trustee Board is unchanged with provision for up to twelve Trustees but under the CIO Constitution, there must always be a minimum of eight Trustees on the Board. The quorum was reduced to four Trustees in order for the Board to still be able to effect decisions if a situation arose where some Trustees were unable to attend the meeting and others had a conflict of interest and were therefore not entitled to vote on a matter. We do use video technology to facilitate Trustees to attend meetings remotely but as a number of Trustees are entitled to take a sabbatical or may have demanding jobs, the reduced quorum provides the flexibility for a key decision to be taken at short notice.

19. Does the Council intend to revise the basis on which annual subscriptions are calculated in the future? If not, the current basis for these calculations could be spelled out in the CIO Constitution.

The wide drafting of clause 23 gives Council the flexibility to revise the basis upon which annual subscriptions may be calculated in the future. If these were to be included in the Constitution and required amendment, a general meeting of the Members of the Union would be required to approve the amendment to the Constitution under clause 13.1.1.

20. Clause 25 was introduced some time ago because it was not always possible to plan meetings of Council sufficiently ahead of the Assembly to meet all of the Constitutional requirements. Would this clause be allowed to overrule the requirements for the calling of a general meeting under the regulations which establish CIOs?

It is expected that should a general meeting of the Members of the Union need to be called, that it will ordinarily take place in conjunction with a Baptist Assembly event but will be separate from a meeting of the Assembly. The requirements for the calling of a general meeting are set down in the Charities Act 2011 and the Charitable Incorporated Organisations (General) Regulations 2012, which would take priority over clause 25 to the extent that Council would have to provide for the minimum amount of notice for a meeting of the Assembly, if it were to include a separate general meeting, as required by law.

21. Clauses 27 to 34 do not appear in the current Constitution. Why are they necessary?

These new clauses have been included and adapted for our purposes in the new CIO Constitution as they form part of the Charity Commission model document for Association Model CIOs. We want our Constitution for the CIO to be appropriate for our operations today and provide greater clarity going forward and the current Constitution does not provide for matters such as electronic communications, disputes or even the winding up or dissolution of the charity.

22. Should there be any reference in the Constitution to the General Data Protection Regulations (GDPR) 2018 because of the significant new requirements?

It is not necessary to refer to specific Statutes or Regulations in the Constitution which will be applicable to the CIO, aside from those related to the formation and governance of CIOs and charities more generally and those which are necessary to the fulfilment of the powers of the Union under clause 6. The stringent new GDPR requirements are significant and it is the responsibilities of the Charity Trustees to ensure the Union's compliance with GDPR and the law in general.

For further information please contact Caroline Sanderson, BUGB Legal Services Manager, by email at csanderson@baptist.org.uk.

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