

The Companies Act 2006  
Company Limited by Guarantee and not having a Share Capital

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**Articles of Association**

**of**

**The Open University Students Association [Limited](#)**

**Company number 12031028**

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**The Companies Act 2006**

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**Articles of Association of The Open University Students Association ~~Limited~~**

**Company number 12031028**

**BACKGROUND**

- A. The Open University Students Association ~~Limited~~ (The Association) is a students' union within the meaning of the Education Act. The Association is devoted to the educational interests and welfare of its Student Members.
- B. The Association will seek at all times to:
- (i) act exclusively for and within its charitable objects (at Article 4 of these Articles of Association);
  - (ii) ensure that the diversity of its Student Membership is recognised and that equal access is available to all Student Members of whatever origin or orientation;
  - (iii) pursue its aims and objectives independent of any political party or religious group; and
  - (iv) pursue equal opportunities by taking positive action within the law to facilitate participation of groups discriminated against by society.
- C. These Articles have been structured to give the Board of Trustees reasonable authority to manage the affairs of The Association in a professional manner. The Student Members enjoy the right, which must be exercised in accordance with charity law, to elect a proportion of the Trustees and, if necessary, to dismiss Trustees. The Board of Trustees will give careful consideration to the views of Student Members.
- D. Under the Education Act, The Open University has a statutory duty to ensure that The Association operates in a fair and democratic manner and is held to proper account for its finances. The Association therefore works alongside The Open University in ensuring that the affairs of The Association are properly conducted and that the educational and welfare needs of The Association's Student Members are met.

- E. For the avoidance of doubt this section "Background" is not part of the Articles and shall not be taken into account in their interpretation.

## PART 1

### *KEY CONSTITUTIONAL PROVISIONS*

#### 1. Definitions and Interpretation

The meanings of any defined terms used in these Articles are set out in Article 49. If any dispute arises in relation to the interpretation of these Articles or any of the Bye-Laws, it shall be resolved by the Board of Trustees.

#### 2. Name

The name of the company is The Open University Students Association ~~Limited~~. In these Articles it is called "The Association".

#### 3. Registered Office

The Registered Office of The Association is Walton Hall, Milton Keynes, MK7 6AA.

#### 4. Objects

- 4.1 The objects of The Association are the advancement of education of Students at the Open University for the public benefit by:

4.1.1 defending the principles of equal opportunity and of open access to the Open University regardless of academic qualifications or financial circumstances;

4.1.2 promoting the interests and welfare of Students at the Open University during their course of study and representing and supporting Students;

4.1.3 being the recognised representative channel between Students and the Open University and any other external bodies;

4.1.4 asserting that all students studying with the Open University have the right to have their views heard and acknowledged by the Open University; and

4.1.5 providing social, cultural, sporting and recreational activities and forums for discussions and debate for the personal development of its Students.

4.2 Nothing in these Articles shall authorise an application of the property of the charity for purposes which are not charitable in accordance with section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and/or section 2 of the Charities Act (Northern Ireland) 2008.

## 5. Powers

To further its objects, but not to further any other purpose, The Association may:

- 5.1 provide services and facilities for Student Members;
- 5.2 establish, support, promote and operate a network of student activities for Student Members;
- 5.3 support any fundraising activities carried out by Student Members for Open University Student Educational Trust (Ouset), including the provision of administrative support, banking facilities (so far as permitted by law) and acting as a holding trustee of any funds raised;
- 5.4 alone or with other organisations:
  - 5.4.1 carry out campaigning activities;
  - 5.4.2 seek to influence public opinion; and
  - 5.4.3 make representations to and seek to influence governmental and other bodies and institutions regarding the reform, development and implementation of appropriate policies, legislation and regulations, provided that all such activities shall be confined to the activities which an English and Welsh and Scottish charity may properly undertake and provided that The Association complies with the Education Act and any guidance published by the Charity Commission and the Office of the Scottish Charity Regulator (OSCR).
- 5.5 provide or procure the provision of advice, counselling and guidance;
- 5.6 write, make, commission, print, publish or distribute materials or information in any medium or assist in these activities;
- 5.7 promote, initiate, develop or carry out education and training and arrange, provide or assist with exhibitions, lectures, meetings, seminars, displays or classes;
- 5.8 promote, encourage, carry out or commission research, surveys, studies or other work, making the useful results available;
- 5.9 provide or appoint others to provide guidance and representation;

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**Commented [R1]:** Stone King: should we include Northern Ireland here now given recent changes in charity law there?

- 5.10 enter into contracts to provide services to or on behalf of other bodies;
- 5.11 co-operate with other charities, voluntary bodies, statutory authorities and other bodies and exchange information and advice with them;
- 5.12 establish and support or aid in the establishment and support of any other organisations and subscribe, lend or guarantee money or property for charitable purposes;
- 5.13 become a member, associate or affiliate of or act as trustee or appoint trustees of any other organisation (including without limitation any charitable trust of permanent endowment property held for any of the charitable purposes included in The Association's objects);
- 5.14 undertake and execute charitable trusts;
- 5.15 support, set up, amalgamate or merge with other charities with objects identical or similar to The Association's objects;
- 5.16 pay out of the funds of The Association the costs of forming and registering The Association;
- 5.17 accept (or disclaim) gifts of money and any other property;
- 5.18 raise funds by way of subscription, donation or otherwise;
- 5.19 acquire or rent any property of any kind and any rights or privileges in and over property and construct, maintain, alter and equip any buildings or facilities;
- 5.20 dispose of or deal with all or any of its property with or without payment and subject to such conditions as the Trustees think fit (in exercising this power The Association must comply as appropriate with the Charities Act);
- 5.21 borrow or raise and secure the payment of money for any purpose including for the purposes of investment or of raising funds, including charging property as security for the repayment of money borrowed or as security for a grant or the discharge of an obligation (The Association must comply as appropriate with the Charities Act if it wishes to mortgage land);
- 5.22 make grants or loans of money and give guarantees;
- 5.23 set aside funds for special purposes or as reserves against future expenditure, and impose restrictions, which may be revocable or irrevocable, on the use of any property of The Association, including (without limitation) by creating permanent endowment;

- 5.24 invest and deal with The Association's money not immediately required for its objects in or upon any investments, securities, or property;
- 5.25 delegate the management of investments to an appropriately experienced and qualified Financial Expert provided that:
  - 5.25.1 the investment policy is set down in writing for the Financial Expert by the Trustees;
  - 5.25.2 every transaction is reported in a timely manner to the Trustees;
  - 5.25.3 the performance of the investments is reviewed regularly by the Trustees;
  - 5.25.4 the Trustees are entitled to cancel the delegation at any time;
  - 5.25.5 the investment policy and the delegation arrangements are reviewed regularly;
  - 5.25.6 all payments due to the Financial Expert are on a scale or at a level which is agreed in advance and are notified in a timely manner to the Trustees on receipt; and
  - 5.25.7 the Financial Expert may not do anything outside the powers of the Trustees;
- 5.26 arrange for investments or other property of The Association to be held in the name of a nominee or nominees and pay any reasonable fee required;
- 5.27 lend money and give credit to, take security for such loans or credit and guarantee or give security for the performance of contracts by any person or company;
- 5.28 open and operate bank accounts and other facilities for banking and draw, accept, endorse, negotiate, discount, issue or execute negotiable instruments such as promissory notes or bills of exchange;
- 5.29 (trade in the course of carrying out any of its objects and carry on any other trade which is not expected to give rise to taxable profits;)
- 5.30 incorporate and acquire Subsidiary Companies to carry on any trade;
- 5.31 make reasonable provision for the payment of pensions and other retirement benefits to or on behalf of employees and former employees of The Association and to their spouses and dependants, to the extent that it is permitted to do so by clause 6 (Limitation on private benefits);

**Commented [R2]:** For advice from Stone King: are we able to amend this to allow trading that may give rise to taxable profit?

- 5.32 employ and remunerate such staff as are necessary for carrying out the work of The Association, including employees, consultants and professional or other advisers. The Association may employ or remunerate a Trustee only to the extent that it is permitted to do so by clause 6 (Limitation on private benefits) of these Articles and provided it complies with the conditions of that clause;
- 5.33 insure the property of The Association against any foreseeable risk and take out other insurance policies as are considered necessary by the Trustees to protect The Association;
- 5.34 provide indemnity insurance for the Trustees or any other officer of The Association in accordance with, and subject to the conditions in, Section 189 of the Charities Act (provided that in the case of an officer who is not a Trustee, the second and third references to "charity trustees" in the said Section 189 shall be treated as references to officers of the Charity); and
- 5.35 do all such other lawful things as may further The Association's objects.

## **6. Limitation on private benefits**

### **6.1 Application of income and property**

6.1.1 The income and property of The Association shall be applied solely towards the promotion of its objects save that:

- (a) A Trustee is entitled to be reimbursed from the property of The Association or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of The Association.
- (b) A Trustee may benefit from trustee indemnity cover purchased at The Association's expense in accordance with, and subject to the provisions of section 189 of the Charities Act.

6.1.2 No part of the income and property of The Association may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Company Law Member unless the payment is permitted by Article 6.3.

6.1.3 Nothing in this clause shall prevent a Trustee or Connected Person receiving any benefit or payment which is authorised by clauses 6.2 - 6.3 of these Articles.

### **6.2 General provisions**



No Trustee or Connected Person may:

- 6.2.1 buy or receive any goods or services from The Association on terms preferential to those applicable to members of the public;
- 6.2.2 sell goods, services or any interest in land to The Association;
- 6.2.3 be employed by, or receive any remuneration from, The Association, save as specified at clause 6.3; or
- 6.2.4 receive any other financial benefit from the Association

unless the payment is permitted by Article 6.1.1 or Article 6.3 or authorised by the court or the Charity Commission (and, so far as necessary, the Office of the Scottish Charities Regulator or the Charity Commission for Northern Ireland).

### 6.3 **Scope and powers permitting Trustees or Connected persons' benefit**

A Trustee may receive the following benefits from The Association, subject to the requirements of Article 39 (Conflicts of Interest), where applicable:

- 6.3.1 A Trustee or Connected Person may receive a benefit from The Association in the same way as any other beneficiary of The Association.
- 6.3.2 A Trustee or Connected Person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to The Association where that is permitted in accordance with, and subject to the conditions in, sections 185 to 188 of the Charities Act.
- 6.3.3 A Trustee or Connected Person may receive interest on money lent to The Association at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- 6.3.5 A Trustee or Connected Person may receive rent for premises let by the Trustee or Connected Person to The Association. The amount of the rent and the other terms of the lease must be reasonable and proper. The Trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- 6.3.6 A Trustee or Connected Person may take part in the normal trading and fundraising activities of The Association on the same terms as members of the public.
- 6.3.7 The Association may employ Officer Trustees and Connected Persons and provide them with such reasonable remuneration under contracts of

employment as the other Trustees unanimously consider to be in the best interests of The Association, provided that:

- a) such employment shall not extend to the provision of services for acting as Trustee;
- b) this provision may not apply to more than half of the Trustees in any financial year (and for these purposes such provision shall be treated as applying to a Trustee if it applies to a person who is a Connected Person in relation to that Trustee);
- c) the restrictions contained in sections 185 to 188 of the Charities Act (remuneration of charity trustees providing services to charity) shall apply to any employment of Trustees and Connected Persons which occurs under this Article as though those sections referred to the employment of Trustees and Connected Persons; and
- d) The Association shall comply at all times with the provisions of the Education Act.

## **7. Liability of Company Law Members**

7.1 The liability of each Company Law Member is limited to £1, being the amount that each Company Law Member undertakes to contribute to the assets of The Association in the event of its being wound up while they are a Company Law Member or within one year after they cease to be a Company Law Member, for:

- 7.1.1 payment of The Association's debts and liabilities contracted before they cease to be a Company Law Member;
- 7.1.2 payment of the costs, charges and expenses of winding up; and
- 7.1.3 adjustment of the rights of the contributories among themselves.

## **8. Dissolution**

8.1 At any time before, and in expectation of, the winding up or dissolution of The Association, the Trustees may resolve that any net assets of The Association after all its debts and liabilities have been paid, or provision made for them, shall on the dissolution or winding up of The Association be applied or transferred in any of the following ways:

- 8.1.1 directly for the objects of The Association; or
- 8.1.2 to any charity or charities:

- (a) for purposes similar to the objects of The Association; or
- (b) for use for particular purposes that fall within the objects of The Association.

8.2 In no circumstances shall the net assets of The Association be paid to or distributed among the Company Law Members of The Association under this Article 8.

8.3 If no resolution is passed in accordance with Article 8.1, the net assets of The Association shall be applied for such charitable purposes as are directed by the Charity Commission or OSCR as appropriate.

**9. Reviewing and Amending the Articles**

**Commented [R3]:** Awaiting advice from Stone King

9.1 The Association Trustees and the Open University shall review the provisions of these Articles in 2022 and at intervals of every four years thereafter.

9.2 No amendment shall be made which would have the effect of The Association ceasing to be a charity.

9.3 Article 4 (Objects), Article 6 (Limitation on Private Benefits) and Article 8 (Dissolution) may not be amended without the prior written consent of the Charity Commission.

**Commented [R4]:** Keep

9.4 All amendments to the Articles shall require

- (a) the approval of at least 75% of the Student Members voting at the Association's ~~AGM/Conference~~ and
- (b) a Special Resolution under the Companies Acts (comprising at least 75% of the Company Law Members),

**Commented [R5]:** Change to AGM. Would this need to be 75%? Or simple majority?

save that requirement (a) shall be disapplied when an equivalent vote by Student Members has effectively already approved the substance of a proposed amendment to the Articles, for example, when Student Members have approved a change to the Bye-Laws which requires a consequential amendment of the Articles to be effective.

9.5 All amendments to these Articles must also be approved by the Open University Council as required for the purposes of compliance with the Education Act.

**Commented [R6]:** Keep

**PART 2**

**MEMBERS**

## **10. Members of The Association**

10.1 Subject to Articles 10.1.2 and 12, the “Members” of The Association shall be as follows:

10.1.1 the Student Members who shall enjoy the rights and responsibilities of Student Members as subsequently set out in these Articles; and

10.1.2 the Company Law Members, who shall be the sole members of the Association for the purposes of the Companies Acts.

## **11. Student Members**

11.1 The Student Members shall be as follows:

11.1.1 each and every registered student, aged 18 or over, who has not opted out by notifying the Chief Executive of their wish not to be a Member of the Association;

11.1.2 any student holding an elected or appointed position specified in these Articles who was a registered student at the time of such election or appointment;

11.1.3 any student who has achieved their registered qualification and applied for and been granted extended membership to cover a gap in registered student status not exceeding twenty-four months;

11.1.4 any student under the age of 18, who shall have associate membership, the rights and privileges of which shall be determined from time to time by the Board of Trustees;

11.1.5 those granted various types of honorary membership which shall not confer any rights under these Articles;

11.1.6 the Immediate Past President who shall not have any specific rights under these Articles by virtue of holding that title;

11.1.7 Only those students covered by Articles 11.1.1 to 11.1.3 above shall be eligible to hold any elected position within The Association.

11.2 Student Membership shall not be transferable and shall cease on death. A Student Member shall cease to be a Student Member of The Association if:

11.2.1 they cease to be in compliance with Article 11;

11.2.2 in the case of Student Members, other than the Officer Trustees, a resolution is passed at a meeting of the Trustees at which at least half of the Trustees are present resolving that the Student Member be expelled on the ground that their continued Student Membership is harmful to, or is likely to become harmful to, the interests of The Association. Such a resolution shall not be passed unless the Student Member has been given at least 14 clear days' notice that the resolution is to be proposed, specifying the circumstances alleged to justify expulsion, and has been afforded a reasonable opportunity of being heard by or of making written representations to the Trustees.

11.3 Student Members' details shall be as held on The Open University database of registered students in the case of the categories specified in Articles 11.1.1 and 11.1.4 and as held on The Association's database in the case of the categories specified in Articles 11.1.2, 11.1.3, 11.1.5 and 11.1.6.

11.4 Student Members of The Association shall be entitled to the benefits set out in the Code of Practice.

## **12. Trustees as Company Law Members**

12.1 Until and including the Effective Date, the subscribers to the Memorandum and Articles of Association of The Association shall be the Company Law Members. Thereafter, the Trustees from time to time shall be the only Company Law Members.

12.2 A Trustee shall become a Company Law Member on becoming a Trustee. In agreeing to become a Trustee, each new Trustee is also agreeing to become a Company Law Member.

12.3 The names of the Company Law Members must be entered in the register of Company Law Members.

## **13 Termination of Company Law Membership**

13.1 A Company Law Member shall cease to be a Company Law Member if they cease to be a Trustee.

13.2 Company Law Membership is not transferable and shall cease on death.

## **14. Code of Conduct**

14.1 The Board of Trustees will establish and monitor a "Code of Conduct" that all Student Members shall be required to adhere to, including when Student Members are involved in activities or at events that are administered or organised by The Association.

14.2 The Code of Conduct or disciplinary procedure for Student Members may include a range of sanctions for breach of the code of conduct by a Student Member, including the suspension or removal of some of the rights and privileges of Student Membership, including the holding of office.

15. **Annual General Meeting (AGM) Conferences**

15.1 The Association shall hold an Annual General Meeting (AGM) ~~biennial Conference which shall be The Association's General Meeting.~~ Not more than ~~(15)30~~ months shall pass between the date of one AGM Conference and the next. The AGM Conference shall be held online at such time ~~and place~~ as the Trustees shall think suitable. ~~The AGM Conference shall have the power to refer back any decision made by the Board of Trustees and Central Executive Committee (CEC) Student Leadership Team subject to Article 23.~~ ]

Commented [R7]: Is this appropriate?

15.2 The Trustees may call an Extraordinary General Meeting (EGM) Conference at any time. The Trustees ~~may shall~~ also call such a meeting on receiving a requisition from the CEC or from a petition signed by a number of students as defined in the relevant Bye-Laws.

Commented [R8]: Is this appropriate?

15.3 ~~The business to be transacted at an EGM will normally only include the business items that precipitated the calling of the EGM by the Trustees. Biennial and extraordinary meetings of Conference will be carried out by a combination of face to face and online components.~~

15.4 ~~Biennial Conference~~ The AGM shall be called by at least ten calendar weeks' written notice and an ~~extraordinary meeting~~ EGM by at least six calendar weeks' written notice.

15.5 ~~The notice~~ Every notice calling a meeting of Conference shall specify the online means, ~~place,~~ dates and time of the meeting. ~~The notice must specify whether the event is an AGM or an EGM. If it is an EGM, the notice must further specify the reason for this being necessary. If the meeting is an extraordinary meeting of Conference the agenda must say so, the only item on the agenda shall be the motion from the Trustees in response to a requisition under Article 15.2. If the meeting is a Biennial Conference, the notice must say so and~~ The business to be transacted at an AGM shall include:

15.5.1 ratification of minutes of previous biennial Conference;

15.5.2 receiving the report of the Trustees and the CEC on The Association's activities since the previous biennial Conference;

15.5.3 receiving a report on policy statements for ratification;

15.5.4 receiving the accounts of The Association for the completed financial years since the previous biennial Conference;

15.5.5 appointment or reappointment of the auditors;

15.5.6 approving the list of affiliations of The Association; and

(15.5.7 open questions to the Trustees and CEC by the Student Members. )

15.6 ~~The notice~~ ~~Notice of Conferences~~ shall be given to every active Student Member and shall be openly published and advertised across The Open University community.

15.7 No business shall be transacted at any ~~AGM or EGM~~ ~~Conference~~ unless a quorum is present. No decision of ~~an AGM or EGM~~ ~~Conference~~ shall be valid if the number of ~~attendees~~ ~~delegates~~ participating in that decision is less than ~~50 Student Members~~ ~~who have been appropriately 40% of registered and validated delegates, the count of delegates will be aggregated across face to face and virtual components.~~

15.8 ~~The AGM will feature a wider and engaging programme beyond the business to be transacted. This shall include non-binding discussions or debates on issues affecting students, key speakers and workshops where feasible and appropriate.~~

15.9~~8~~ The President shall preside as Chair of ~~the AGM~~ ~~Conference~~ or shall appoint a Chair from amongst The Association's ~~s~~ Officers or Immediate Past President.

15.10~~9~~ ~~Neither the CEC nor the Board of Trustees~~ ~~The Association's Board of Trustees and/or Student Leadership Team~~ shall ~~not~~ select ~~Conference delegates~~ ~~AGM or EGM attendees. Attendance will be open to all Student Members, subject to a registration process to attend which will include validation of their student status and right to vote. This process will be undertaken by the Association's staff team or external administrators.~~

15.11~~0~~ Trustees and CEC members are expected to attend and participate in ~~the AGM or EGM~~ ~~all the component parts of Conferences~~ ~~but shall only be entitled to be registered to exercise voting rights at one component of each Conference.~~

15.12~~+~~ ~~\_\_\_\_\_~~ Each registered ~~attendee~~ ~~delegate~~ shall have one vote on all matters determined by ~~Conference~~ ~~the AGM or EGM.~~

15.12~~-~~ ~~Every Student Member has the right to register an interest to attend Conference and, where successfully appointed as a delegate member, have the right to vote. A resolution put to the vote of a Conference shall be decided by every delegate member having a single vote.~~

**Commented [R9]:** Stone King to comment: what business must be handled by the AGM?

**Commented [R10]:** Stone King: must we specify a minimum period here?

**Commented [R11]:** Stone King: should this stipulate that this does not include Trustees and Student Leadership Team members?

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15.1~~3~~ Every resolution put to the vote of ~~Conference the AGM or EGM~~ shall be decided by a simple majority of the votes cast, ~~aggregated across component parts~~, unless these Articles provide otherwise.

## 16. Company Law Meetings

- 16.1 The Trustees may call a Company Law Meeting at any time.
- 16.2 Such meetings must be held in accordance with the provisions regarding such meetings in the Companies Acts. Each Company Law Member shall have one vote.
- 16.3 A Company Law Meeting shall only be required where The Association wishes to pass a ~~C~~ompany ~~L~~aw resolution (other than by way of written resolution) in accordance with the Articles and/or the Companies Acts.

## 17. Written Resolutions

- 17.1 Subject to this Article 17 and Article 9.4, a written resolution agreed by:
- 17.1.1 Company Law Members representing a simple majority of the eligible Company Law Members; or
- 17.1.2 (in the case of a special resolution) Company Law Members representing not less than 75% of the eligible Company Law Members;
- shall be effective.
- 17.2 On a written resolution each Company Law Member shall have one vote.
- 17.3 A written resolution is not a special resolution unless it stated that it was proposed as a special resolution.
- 17.4 A copy of the proposed written resolution must be sent to every eligible Company Law Member together with a statement informing the Company Law Member how to signify their agreement and the date by which the resolution must be passed if it is not to lapse.
- 17.5 In relation to a resolution proposed as a written resolution of The Association the eligible Company Law Members are the Company Law Members who would have been entitled to vote on the resolution on the Circulation Date of the resolution.
- 17.6 The required majority of eligible Company Law Members must signify their agreement to the written resolution within the period of 28 days beginning with the Circulation Date.



- 17.7 Written resolutions must be sent to The Association's auditors in accordance with the Companies Acts.
- 17.8 A Company Law Member signifies their agreement to a proposed written resolution when The Association receives from them (or from someone acting on their behalf) an authenticated document:
- 17.8.1 identifying the resolution to which it relates; and
- 17.8.2 indicating the Company Law Member's agreement to the resolution.
- 17.9 For the purposes of Article 17:
- 17.9.1 a document sent or supplied in Hard Copy Form is sufficiently authenticated if it is signed by the person sending or supplying it; and
- 17.9.2 a document sent or supplied in Electronic Form is sufficiently authenticated if:-
- 17.9.2.1 the identity of the sender is confirmed in a manner specified by The Association; or
- 17.9.2.2 where no such manner has been specified by The Association, if the communication contains or is accompanied by a statement of the identity of the sender and The Association has no reason to doubt the truth of that statement.
- 17.10 If The Association gives an electronic address in any document containing or accompanying a written resolution, it will be deemed to have agreed that any document or information relating to that resolution may be sent by Electronic Means to that address (subject to any conditions or limitations specified in the document).

### **PART 3**

#### **TRUSTEES**

##### ***APPOINTMENT AND RETIREMENT OF TRUSTEES***

#### **18. Appointment of Trustees**

- 18.1 Those persons notified to the Registrar of Companies as the first directors of The Association shall be the first Trustees until and including the Effective Date. On the day immediately following the Effective Date, those persons elected and/or appointed

by the Unincorporated Charity as its Board of Trustees for the Academic Years 2018–2020 shall be the Trustees of The Association and shall be deemed to be The Officer Trustees, Student Trustees and ~~LayExternal~~ Trustees as appropriate for the purposes of these Articles. Thereafter, the Trustees shall be made up as set out in Article 18.2.]

Commented [R12]: Stone King: is this required any longer?

18.2 The Trustees shall be made up of the following persons:

18.2.1 not more than ~~43~~ Officer Trustees, elected in accordance with Article 19;

18.2.2 not more than ~~46~~ Student Trustees, ~~appointed~~ elected in accordance with Article 20; and

18.2.3 not more than ~~43~~ ~~LayExternal~~ Trustees, appointed in accordance with Article 21.

18.3 ~~Trustees~~ may be elected or appointed to serve up to ~~9 years four terms~~ in total. For the avoidance of doubt, these terms may be consecutive or non-consecutive.

#### 19. Officer Trustees

Up to ~~43~~ Officer Trustees shall be elected by secret ballot of Student Members as defined in Articles 11.1.1 or 11.1.3 at an election held in accordance with the Bye-Laws. The Officer Trustees shall be elected to posts set out in the Bye-Laws. The Officer Trustees shall remain in office for a term of two years commencing in accordance with the Bye-Laws. Each Officer Trustee must be a Student Member as defined by Articles 11.1.1 or 11.1.3 at the time of ~~their~~ ~~his or her~~ election.

#### 20. Student Trustees

Up to ~~46~~ Student Trustees shall be ~~elected by secret ballot of Student Members as defined in Articles 11.1.1 or 11.1.3 at an election held~~ appointed in accordance with the Bye-Laws. The Student Trustees shall remain in office for a term of two years commencing in accordance with the Bye-Laws. Each Student Trustee must be a Student Member as defined by Articles 11.1.1 or 11.1.3 at the time of ~~their~~ ~~his or her~~ election ~~appointment~~.

#### 21. ~~LayExternal~~ Trustees

Up to ~~43~~ ~~LayExternal~~ Trustees may be appointed ~~by a 75% majority vote of the CEC in accordance with the Bye-Laws~~. Subject to Article 22, ~~LayExternal~~ Trustees shall remain in office for a term of up to ~~three~~ years commencing in accordance with the Bye-Laws.

#### 22. Disqualification, Resignation and Removal of Trustees

22.1 The office of a Trustee shall be vacated if:

- 22.1.1 ~~he or she~~They ceases to be a company director by virtue of any provision of the Companies Acts or are prohibited from being a company director by law;
- 22.1.2 They are ~~he or she is~~ disqualified under the Charities Act from acting as a trustee of a charity;
- 22.1.3 They~~he or she~~ resigns by notice to The Association (but only if at least four Trustees will remain in office when the notice of resignation is to take effect);
- 22.1.4 ~~he or she~~They reasonably believes that they are suffering from mental or physical disorder and ~~are~~ incapable of acting as a trustee and they resolve that they be removed from office;
- 22.1.5 They ~~he or she~~ fails to attend two consecutive meetings of the Trustees and in the opinion of the Trustees there are no mitigating circumstances for that failure and the Trustees therefore resolve that ~~he or she~~they be removed for this reason;
- 22.1.6 ~~he or she is~~They are removed from office under Article 22.3.1, Article 22.3.2 or Article 22.2, except that these powers to remove a Trustee shall not be effective if as a result of the removal the Trustees would no longer be able to achieve a quorum under Article 34.
- 22.2 The office of Trustee shall be vacated if a majority resolution of no confidence is passed by the Trustees. For the avoidance of doubt:
- 22.2.1 the Trustee concerned and any Trustee who has a conflict of interest in relation to the matter shall not vote on this resolution and quorum shall be adjusted accordingly in accordance with Article 39;
- 22.2.2 a resolution to remove a Trustee in accordance with this Article shall not be passed unless the Trustee concerned has been given at least 14 clear days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been afforded a reasonable opportunity of being heard by or making written representations to the Trustees; and
- 22.2.3 a Trustee removed from office in accordance with this Article shall be entitled to appeal the decision to remove them to an Appeals Panel within 14 days of the resolution. The Appeals Panel shall be made up of a nominee of The Open University, one independent person and a chief executive/general manager and officer of another students' union. The independent person shall be a Student Member who is not a Trustee or a member of the ~~CEC~~Student Leadership Team

[or Student Forum](#). The selection of the members of the Appeals Panel and its procedures shall be set out in the Bye-Laws.

22.3 The office of Trustee shall be vacated if a majority resolution of no confidence is passed by [a joint meeting of the Student Leadership Team and Student Forum](#)~~CEC~~. For the avoidance of doubt:

22.3.1 a motion of no confidence in the Trustee is passed by a simple majority of the [Student Leadership Team and Student Forum](#)~~CEC~~ provided that at least two thirds of the ~~CEC-members~~ in office at the time cast a vote. Such a motion shall only be triggered by a Secure Petition of no confidence signed by at least 100 Student Members;

22.3.2 a motion of no confidence in the Trustee is passed by a 66% majority in a vote of the [Student Leadership Team and Student Forum](#)~~CEC~~;

22.3.3 a resolution to remove a Trustee in accordance with this Article shall not be passed unless the Trustee concerned has been given at least 14 clear days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been afforded a reasonable opportunity of being heard by or making written representations to the [Student Leadership Team and Student Forum](#)~~CEC~~; and

22.3.4 a Trustee removed from office in accordance with this Article shall be entitled to appeal the decision to remove them to an Appeals Panel within 14 days of the resolution. The Appeals Panel shall be made up of a nominee of The Open University, one independent person and a chief executive/general manager and officer of another students' union. The independent person shall be a [Student Member](#) who is not a Trustee or a member of the [Student Leadership Team or Student Forum](#)~~CEC~~. The selection of the members of the Appeals Panel and its procedures shall be set out in the Bye-Laws.

22.4 If an Officer Trustee resigns, is disqualified or removed from office at any time prior to the commencement of their term of office, the vacancy that results on the Board of Trustees shall be filled in accordance with the Bye-Laws.

22.5 If an Officer Trustee resigns, is disqualified or removed from office after the commencement of their term of office the vacancy shall be filled in accordance with the Bye-Laws. Any person elected under this Article may be required to assume the responsibilities of the Officer Trustee.

- 22.6 If a Student Trustee resigns, is disqualified or removed from office at any time the vacancy that results on the Board of Trustees shall be filled in accordance with the Bye-Laws.
- 22.7 If an ~~Lay~~External Trustee resigns, is disqualified or removed from office at any time the vacancy that results on the Board of Trustees shall be filled in accordance with the Bye-Laws.
- 22.8 The continuing Trustees, or a sole remaining Trustee, may act notwithstanding any vacancies on their number. However, if and so long as the number of Trustees is less than the number fixed by Article 34, the Trustees may only act to increase the number of Trustees (including arranging an election) so that there is a quorum.

#### ***TRUSTEES' POWERS AND RESPONSIBILITIES***

### **23. Trustees' general authority**

- 23.1 The Board of Trustees is responsible for the management and administration of The Association and (subject to the relevant legislation at the time, these Articles and the Bye-Laws) may exercise all the powers of The Association.
- 23.2 No alteration of these Articles or the Bye-Laws shall invalidate any prior act of the Trustees which would have been valid if that alteration had not been made.
- 23.3 The Board's powers under Article 23 shall include but not be limited to responsibility for:
- 23.3.1 the governance of The Association;
  - 23.3.2 the budget of The Association; and
  - 23.3.3 the strategy of The Association.
- 23.4 The Board of Trustees may override any decision ~~or Policy~~ made by the Student Members at an AGM or EGMConference or by the CEC-Student Leadership Team or Student Forum which the Trustees consider (in their absolute discretion):
- 23.4.1 has or may have any financial implications for The Association;
  - 23.4.2 is or may be in breach of, contrary to or otherwise inconsistent with the Charities Act or Companies Acts or any other legal requirements (including ultra vires);
  - 23.4.3 is not or may not be in the best interests of The Association or all or any of its charitable objects; or

23.4.4 will or may otherwise affect the discharge of any or all of the responsibilities referred to in Article 23.3.

23.5 All acts done by a meeting of Trustees, or of a committee of the Trustees, shall be valid, even if it is later discovered that any Trustee who participated in the vote:

23.5.1 was not properly appointed;

23.5.2 was disqualified from holding office;

23.5.3 had vacated office; or

23.5.4 was not entitled to vote.

#### **24. Delegation of Trustees' Powers and Functions**

24.1 Subject to the Articles, [Charity Law, Company Law and the Education Act, or any other relevant legislation](#), the Trustees may delegate any of their powers or functions to any committee.

24.2 Subject to the Articles, the Trustees may delegate the implementation of their decisions or day to day management of the affairs of The Association to any person or committee.

24.3 Any delegation by the Trustees may be:

24.3.1 by such means;

24.3.2 to such an extent;

24.3.3 in relation to such matters or territories; and

24.3.4 on such terms and conditions as they think fit.

24.4 The Trustees may authorise further delegation of the relevant powers, functions, implementation of decisions or day to day management by any person or committee to whom they are delegated.

24.5 The Trustees may revoke any delegation in whole or part or alter its terms and conditions.

24.6 The Trustees may by power of attorney or otherwise appoint any person to be the agent of The Association for such purposes and on such conditions as they determine.

[24.7 Such delegations of powers or functions will be captured in the Association's scheme of delegation, which will be revised by the Board of Trustees from time to time.](#)

## 25. Committees

25.1 In the case of delegation to committees:

25.1.1. the resolution making the delegation must specify the terms of reference for the committee, including but not limited to those who shall serve or be asked to serve on such committee (although the resolution may allow the committee to make co-options up to a specified number);

25.1.2. subject to Article 25.3, the composition of any committee shall be entirely in the discretion of the Trustees and may include such of their number (if any) as the resolution may specify;

25.1.3 the deliberations of any committee must be reported regularly to the Trustees and any resolution passed or decision taken by any committee must be reported promptly to the Trustees and every committee must appoint a secretary for that purpose;

25.1.4 no committee shall knowingly incur expenditure or liability on behalf of The Association except where authorised by the Trustees or in accordance with a budget which has been approved by the Trustees;

25.1.5 the delegation will be included in the next revision of the scheme of delegations and the Board of Trustees will always retain responsibility for oversight of the committee, including agreeing any revision to the terms of reference of that committee and ensuring the overall efficiency and effectiveness of the entire governance structure.-

25.2 The Trustees must establish the following committees (which is a non-exhaustive list) in accordance with their powers under Articles 24 and 25.1:

25.2.1 Appointments Committee;

25.2.2 ~~Remuneration Committee~~ Finance, Resources and Risk Committee:-

25.2.3 Nominations Panel;

25.2.4 Safeguarding Panel;

25.2.5 Scrutiny Panel.

25.3 For the avoidance of doubt, the Trustees may (in accordance with Articles 24 and 25.1) delegate all financial matters to any committee provided that such committee shall include at least one Trustee. The Trustees may empower such committee to resolve upon the operation of any bank account according to such mandate as it shall think

fit provided that the signature or agreement of at least one Trustee shall be required for payments above a certain amount as set out in the Bye-Laws and provided always that no committee shall incur expenditure on behalf of The Association except in accordance with a budget which has been approved by the Trustees.

25.4 ~~(The meetings and proceedings of any committee shall be governed by the Articles regulating the meetings and proceedings of the Trustees so far as they apply and are not superseded by any Bye-Laws.)~~

**Commented [R13]:** Article 28 duplicates this. Delete Article 28 as it stands, retain this instead.

## 26 ~~Student Leadership Team~~The Central Executive Committee

26.1 ~~The Student Leadership Team is the public face of the Association, led by the President. It leads on all matters of student engagement within and outside the Open University. Strategic in outlook, it is focused on discussing and taking action around student matters, including delivering the Association's organisational strategy, campaigning, representation, setting Association policy positions on matters affecting students and acting on student feedback. A terms of reference for the Student Leadership Team will be developed by the Student Leadership Team and agreed by the Board of Trustees.~~

26.2 ~~The Student Leadership Team will be elected by the student members to serve terms of two years at maximum, running in line with Academic Years. By-elections will be held for vacant roles in pre-arranged windows during each term. In between such windows, the Student Leadership Team shall have the right to co-opt Student Members to cover any vacancies on a time-limited basis via an open recruitment process as defined in the Bye-Laws.~~

26.3 ~~The Student Leadership Team will develop, agree and maintain a Code of Conduct to govern their work and this shall take account of the organisational values and strategy in place at the time. They will be supported in this work by the Board of Trustees.~~

26.4 ~~For the avoidance of doubt, the work of the Student Leadership Team shall not include the responsibilities of the Board of Trustees and neither shall the work of the Board of Trustees include the responsibilities of the Student Leadership Team.~~

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~~The CEC will consist of the following elected members:~~

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~~26.1.1 Between 6 and 10 officers with defined remits as agreed by the CEC and Board of Trustees;~~

~~26.1.2 One representative for each Nation and Europe not exceeding 6 in total;~~

~~26.1.3 Representation from each of the Faculties but not more than one representative per Faculty;~~



~~26.1.4 Other representatives as defined in the Bye-Laws but not to exceed 2 extra members;~~

~~26.1.5 The Student Member of The Open University Council will also be a member of the CEC.~~

26.5 The Student Leadership Team will be led by the President and will consist of a total of 6-8 elected student Officers with defined remits as agreed by the Student Leadership Team and Board of Trustees. The specific role remits and titles will be detailed in a role descriptions document, which will be agreed prior to the election period. The process for developing these remits will be set out in the Bye-Laws and must include some element of independence in order to avoid potential conflicts of interest.

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26.6 Four of the elected student Officers, including the President, will also serve as Officer Trustees. The specific remits that fall into this category will be defined in the Bye-Laws.

26.7 The Student Leadership Team will, on taking up office, develop and agree a programme of work and format and regularity of meetings which all be linked to the organisational strategy and utilising student feedback and insight to drive their focus. They will further agree arrangements for working with the Open University and dealing with regular requests for involvement. The Student Leadership Team will be expected to work cohesively as a team, representing the full student membership and setting aside personal interests at all times. The Student Leadership Team shall also support the Board of Trustees with the development of the organisational strategy and values.

26.8 The Student Leadership Team shall meet in accordance with the Bye-Laws and their terms of reference. No member may hold more than one position at any one time. The Chief Executive and The Association's senior management team may attend meetings of the Student Leadership Team at the request of the Student Leadership Team. The Student Leadership Team will also have the right to invite observers and regular non-voting members to their meetings as set out in their Bye-Laws and at the discretion of the President or nominated Deputy. Such non-voting members will include (but not be limited to) the Student Member of the Open University's Council, Nation representatives and/or Faculty representatives where relevant and appropriate.

26.9 The Student Leadership Team shall hold joint meetings with the Student Forum, to enable the Student Leadership Team to hear wider representative input and to discuss and debate policy positions and other important matters. The role, function and

proceedings of the joint meetings will be defined in the Bye-Laws and/or terms of reference.

26.10 The Student Leadership Team is required to heed student feedback, report back to students regularly on their activities and engage with students to answer questions or assist with matters relevant to the role of the Student Leadership Team.

26.11 The Student Leadership Team will also submit a report to the Student Membership at each AGM and answer questions from attendees on the content.

26.12 The Board of Trustees will hold the Student Leadership Team to account for their behaviour and performance on behalf of Student Members and will put in place procedures to ensure capable and effective behaviour governance in line with their responsibilities under Article 14 (Code of Conduct). The Scrutiny Panel will assist the Board of Trustees in their duty to hold the Student Leadership Team to account, and the Board will agree its terms of reference, membership, Chair and arrangements for the oversight of its work. The Scrutiny Panel must always be the same size or smaller than the maximum number of places on the Student Leadership Team. All members of the Scrutiny Panel will serve at the discretion of the Board of Trustees.

26.13 The Student Leadership Team may delegate parts of their collective or individual responsibilities to working groups or small teams of volunteers. Further details on appropriate delegation will be set out in the Bye-Laws and terms of reference.

26.14 Term limits will apply to the Student Leadership Team. Individual Student Members will be able to serve a maximum of two consecutive two-year terms in any one role and a maximum of three consecutive two-year terms in total on the Student Leadership Team before taking a break of at least two years.

26.15 Student Leadership Team members will not be eligible to serve as members of the Board of Trustees, Student Forum or Scrutiny Panel unless one of two exceptions applies:

26.15.1 The member is an ex-officio member of the Board of Trustees, Student Forum or Scrutiny Panel;

26.15.2 The Board of Trustees agrees to make an exception to this rule for a specific purpose and on a time-limited basis, e.g. in the event of a co-option to cover a vacancy.

The CEC shall meet in accordance with the Bye-Laws. The CEC's responsibility shall not include the duties of the Trustees as set out in Article 23 but shall include representation and campaigning work and the implementation of Policy

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~~save in so far as these responsibilities have not been delegated to another committee.~~

~~26.3 The Chief Executive and The Association's senior management team may attend meetings of the CEC at the request of the CEC.~~

~~26.4 The Officers and the second Student Member of the Open University Council may meet formally as a team from time to time to discuss such matters as they may deem appropriate but shall make no decision binding upon the CEC and will make minutes of such meetings available to the CEC.~~

~~26.5 The CEC shall have the authority to:~~

~~— 26.5.1 represent the voice of the Students;~~

~~— 26.5.2 subject to Article 23, set the Policy of the Association;~~

~~26.5.3 make, repeal and amend the Bye-Laws jointly with the Trustees in accordance with Article 23;~~

~~— 26.5.4 receive a quarterly report from the Trustees; and~~

~~— 26.5.5 appoint honorary members in accordance with the Bye-Laws.~~

~~26.6 The composition and proceedings of the CEC shall be set out in the Bye-Laws. No Member may hold more than one seat on the CEC at any one time.~~

## **27. Student Forum**

~~27.1 The Student Forum is a body representative of the full student membership engaged to provide insight and perspectives from student members to assist the Student Leadership Team in the full range of their work, using a range of methods to collate and analyse student views and input. The Student Forum will have a terms of reference, including identification of a meeting cycle and arrangements for a chair, developed in conjunction with the Student Leadership Team and as agreed by the Board of Trustees.~~

~~27.2 The Student Forum will consist of 30-40 Student Members who have been appointed and/or elected to their roles on the Student Forum. This will be defined in the Bye-Laws. The membership must be representative of the full student membership of the Association, including but not limited to study interests, demographics, geographic representation and protected characteristics.~~

~~27.3 Members of the Student Forum will serve a term of one academic year. They may apply for re-appointment for a further year, as defined in the Bye-Laws. Term limits will apply to the Student Forum, whereby an individual Student Member will be able to~~

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serve a maximum of two consecutive two-year terms in any one role and a maximum of three consecutive two-year terms in total before taking a break of at least two years.

27.4 The Student Forum will hold joint meetings with the Student Leadership Team as defined by the Bye-Laws and/or terms of reference. The President or nominated Officer will normally Chair such joint meetings.

27.5 Members of the Student Forum may be asked to take on additional student representative duties by agreement, including attending Student Leadership Team meetings as non-voting members to provide specific insight, serving as support to Officers, taking an active part in working groups, working with colleagues within the Open University or representing the Association at external events. At least two members of the Student Forum will serve on the Scrutiny Panel following a nomination process from within the Student Forum.

27.6 The Student Forum will operate as an agile, dynamic and engaged body of students. It will discuss issues facing students and provide valuable insight and perspective to the Student Leadership Team. This focus on insight and student issues will drive the work and meetings of the Student Forum and all members will be expected to contribute to this goal.

27.7 In keeping with the dynamic nature of the Student Forum, membership of the Student Forum may be flexed by the Student Leadership Team to add additional perspectives or insight into the Student Forum on a temporary basis in the event of specific issues warranting an enhanced approach, e.g. additional specific Faculty or geographic input from Student Members.

27.8 Student Forum members will not be eligible to serve as members of the Board of Trustees, Student Leadership Team or Scrutiny Panel unless one of two exceptions applies:

27.8.1 The member is an ex-officio member of the Board of Trustees, Student Forum or Scrutiny Panel;

27.8.2 The Board of Trustees agrees to make an exception to this rule for a specific purpose and on a time-limited basis, e.g. in the event of a co-option to cover a vacancy.

27.9 Student Forum members will abide by a Code of Conduct, developed and agreed by a joint meeting of the Student Leadership Team and Student Forum. This will be monitored by the Student Leadership Team and ultimately the Board of Trustees will

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hold individual members of the Student Forum to account in keeping with Article 14 (Code of Conduct).

**28.7. Delegation of day-to-day management powers to the Chief Executive**

In the case of delegation of the day-to-day management of The Association to the Chief Executive:

28.7.1 the delegated power shall be to manage The Association by implementing the policy and strategy adopted by and within a budget approved by the Trustees and if applicable to advise the Trustees in relation to such policy, strategy and budget;

28.7.2 the Trustees shall provide the Chief Executive with a description of their role and the extent of their authority;

28.7.3 \_\_\_\_\_the Chief Executive shall report regularly to the Trustees on the activities undertaken in managing The Association and provide them regularly with management accounts which are sufficient to explain the financial position of The Association; and

28.7.4 the Trustees shall provide the Chief Executive with a performance management structure to aid their work plan and development.

**28. Proceedings of Committees**

~~The meetings and proceedings of any committee shall be governed by the provisions of these Articles regulating the meetings and proceedings of the Trustees so far as the same are applicable and are not superseded by any Bye-Laws made by the Trustees and the CEC.~~

***DECISION-MAKING BY TRUSTEES***

**29. Proceedings of Trustees**

Subject to the provisions of these Articles and the Bye-Laws, the Trustees may regulate their proceedings as they think fit.

**30. Trustees' meetings**

30.1 The Trustees shall hold a minimum of four meetings in any twelve-month period.

30.2 Three Trustees may call a meeting of the Trustees.

30.3 Guests or observers can attend meetings of the Trustees at the discretion of the Chair.

### **31. Length of notice**

A Trustees' meeting shall be called by at least 14 clear days' notice unless either:

31.1 all the Trustees agree to shorter notice; or

31.2 urgent circumstances require shorter notice.

### **32. Contents of notice**

Every notice calling a Trustees' meeting shall specify the place, date and time of the meeting and the general particulars of all business to be considered at such meeting.

### **33. Service of notice**

Notice of Trustees' meetings shall be sent to each Trustee by post or by Electronic Means.

### **34. Quorum**

The quorum for Trustees' meetings shall be five. This should include at least one Officer Trustee, one Student Trustee and one [LayExternal](#) Trustee. Where the resolution or issue under discussion concerns a matter in respect of which some or all of the Trustees have a conflict of interest, the quorum shall be five.

### **35. Chair and Deputy Chair**

35.1 The Trustees shall appoint the Chair with the President acting ex officio as Deputy Chair. The appointment would require ratification by a majority of the [CECStudent Leadership Team](#).

35.2 In the absence of the Chair and the Deputy Chair, another Trustee appointed by the Trustees present shall preside as Chair of the Meeting.

### **36. Decision making by Trustees at meetings**

Questions arising at a meeting shall be decided by a simple majority of votes. In the case of an equality of votes, the Chair shall be entitled to a casting vote in addition to any other vote they may have.

### **37. Virtual meetings**

A Trustees' meeting may be held by electronic means within an agreed timeframe provided that all Trustees have access to full participation in the meeting.

### **38. Trustee decisions without a meeting**

38.1 The Trustees may take a majority decision without a Trustees' meeting by indicating to each other by any means, including without limitation by Electronic Means, that they share a common view on a matter. Such a decision may, but need not, take the form of a resolution in writing, copies of which have been signed by each Trustee or to which each Trustee has otherwise indicated agreement in writing. A quorum as defined in Article 34 shall apply.

38.2 A Trustees' resolution which is made in accordance with Article 38 shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and held, provided the following conditions are complied with:

38.2.1. approval from each Trustee must be received by one person being either such person as all the Trustees shall have nominated in advance for that purpose or such other person as volunteers if necessary ("the Recipient"), which person should be confirmed by prior agreement of the Trustees and may, for the avoidance of doubt, be one of the Trustees;

38.2.2 following receipt of response from all of the Trustees, the Recipient shall communicate to all of the Trustees by any means whether the resolution has been formally approved by the Trustees in accordance with these Articles;

38.2.3 the date of the decision shall be the date of the communication from the Recipient confirming formal approval; and

38.2.4 the Recipient prepares a minute of the decision in accordance with Article 43.

### **39. Conflicts of Interest**

39.1 Whenever a matter is to be discussed at a meeting or decided in accordance with Article 39 and a Trustee has a Personal Interest in respect of that matter then they must:

39.1.1 declare their interest to the Trustees;

- 39.1.2 remain only for such part of the meeting as in the view of the other Trustees is necessary to inform the debate;
  - 39.1.3 not be counted in the quorum for that part of the meeting (or decision-making process); and
  - 39.1.4 withdraw during the vote and have no vote on the matter.
- 39.2 If any question arises as to whether a Trustee has a Personal Interest, the question shall be decided by a majority decision of the other Trustees.

#### **PART 4**

##### ***ADMINISTRATIVE ARRANGEMENTS AND MISCELLANEOUS PROVISIONS***

#### **40. Bye-Laws**

The Trustees and the [Student Leadership Team](#) shall have the power from time to time to jointly make, repeal or amend Bye-Laws as to the management of The Association and its working practices provided that such Bye-Laws shall not be inconsistent with these Articles.

#### **41. Communications by and to The Association**

##### **Methods of communication**

- 41.1 Subject to the Articles and the Companies Acts, any document or information (including any notice, report or accounts) sent or supplied by The Association under the Articles or the Companies Acts may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by The Association, including without limitation:
- 41.1.1 in Hard Copy Form;
  - 41.1.2 in Electronic Form; or
  - 41.1.3 by making it available on a website.
- 41.2 Where a document or information which is required or authorised to be sent or supplied by The Association under the Companies Acts is sent or supplied in Electronic Form or by making it available on a website, the recipient must have agreed that it may be sent or supplied in that form or manner or be deemed to have so agreed under the Companies Acts (and not revoked that agreement). Where any other document or



information is sent or supplied in Electronic Form or made available on a website the Trustees may decide what agreement (if any) is required from the recipient.

- 41.3 Where a document or information which is required or authorised to be sent or supplied by The Association under the Companies Acts is sent or supplied by making it available on a website, The Association must notify the recipient that the document or information is available on the website in accordance with the Companies Acts.
- 41.4 Subject to the Articles, any notice or document to be sent or supplied to a Trustee in connection with the taking of decisions by Trustees may also be sent or supplied by the means by which that Trustee has asked to be sent or supplied with such notices or documents for the time being.

**Deemed delivery**

- 41.5 A Company Law Member present in person or by proxy at a meeting of The Association shall be deemed to have received notice of the meeting and the purposes for which it was called.
- 41.6 Where any document or information is sent or supplied by The Association to the Company Law Members:
  - 41.6.1 where it is sent by post it is deemed to have been received 48 hours (including Saturdays, Sundays, and Public Holidays) after it was posted;
  - 41.6.2 where it is sent or supplied by Electronic Means, it is deemed to have been received on the same day that it was sent;
  - 41.6.3 where it is sent or supplied by means of a website, it is deemed to have been received:
    - 41.6.3.1 when the material was first made available on the website; or
    - 41.6.3.2 if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.
- 41.7 Subject to the Companies Acts, a Trustee or any other person (other than in their capacity as a Company Law Member) may agree with The Association that notices or documents sent to that person in a particular way are deemed to have been received within a specified time, and for the specified time to be less than 48 hours.

### **Failed delivery**

41.8 Where any document or information has been sent or supplied by The Association by Electronic Means and The Association receives notice that the message is undeliverable:

41.8.1 if the document or information has been sent to a Company Law Member or Trustee and is notice of a Company Law Meeting of The Association, The Association is under no obligation to send a Hard Copy of the document or information to the Company Law Member's or Trustee's postal address as shown in The Association's register of Company Law Members or Trustees, but may in its discretion choose to do so;

41.8.2 in all other cases, The Association shall send a Hard Copy of the document or information to the Company Law Member's postal address as shown in The Association's register of Company Law Members (if any), or in the case of a recipient who is not a Company Law Member, to the last known postal address for that person (if any); and

41.8.3 the date of service or delivery of the documents or information shall be the date on which the original electronic communication was sent, notwithstanding the subsequent sending of Hard Copies.

### **Exceptions**

41.9 Copies of The Association's annual accounts and reports need not be sent to a person for whom The Association does not have a current address.

41.10 Notices of Company Law Meetings need not be sent to a Company Law Member who does not register an address with The Association, or who registers only a postal address outside the United Kingdom, or to a Company Law Member for whom The Association does not have a current address.

### **Communications to The Association**

41.11 The provisions of the Companies Acts shall apply to communications to The Association.

### **Communications with Student Members**

41.12 Notwithstanding anything in this Article 41, The Association may send or supply any document or information to Student Members (whether under the Articles or otherwise) in such manner as The Association thinks fit. In particular (but without limitation) if The Association is aware of a Student Member's email address, The

Association may communicate with the Student Member using that address, and The Association may communicate with Student Members via website.

41.13 Further provisions governing The Association's communications with its Student Members may be set out in the Bye-Laws.

#### **42. Company Secretary**

42.1 A Company Secretary may be appointed by the Trustees for such term at such remuneration and upon such conditions as they may think fit, and may be removed by them. If there is no Secretary:

42.1.1 anything authorised or required to be given or sent to, or served on, The Association by being sent to its Company Secretary may be given or sent to, or served on, The Association itself, and if addressed to the Company Secretary shall be treated as addressed to The Association; and

42.1.2 anything else required or authorised to be done by or to the Company Secretary of The Association may be done by or to a Trustee, or a person authorised generally or specifically in that behalf by the Trustees.

#### **43. Minutes**

43.1 The Trustees shall cause minutes to be made in books kept for the purpose:

43.1.1 of all appointments of officers made by the Trustees;

43.1.2 of all resolutions of The Association and of the Trustees (including, without limitation, decisions of the Trustees made without a meeting); and

43.1.3 of all proceedings at meetings of The Association and of the Trustees, and of committees of Trustees, including the names of the Trustees participating in each such meeting

and any such minute, if purported to be signed (or in the case of minutes of Trustees' meetings signed or authenticated) by the Chair of the Meeting at which the proceedings were had, or by the Chair of the next succeeding meeting, shall, as against any Member or Trustee of The Association, be sufficient evidence of the proceedings.

43.2 The minutes referred to in Article 43.1 above must be kept for at least ten years from the date of the meeting, resolution or decision.

43.3 The minutes of the meetings referred to in Article 43.1 above shall normally be considered open and shall be available to the Student Members on The Association's

website, except where those minutes relate to any reserved or confidential matters, including without limitation staff-related or disciplinary matters. Copies of the minutes shall also be kept in The Association's offices.

#### **44. Records and accounts**

44.1 The Trustees shall comply with the requirements of the applicable Charity, Education and Company legislation as to maintaining a Company Law Members' register, keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies, the Charity Commission and OSCR of:

44.1.1 annual reports;

44.1.2 annual returns; and

44.1.3 annual statements of account.

44.2 The Student Members have the right to ask the Trustees questions in writing about the content of any documents referred to in Article 44.1.

#### **45. Irregularities**

The proceedings at any meeting or on the taking of any poll or the passing of a written resolution or the making of any decision shall not be invalidated by reason of any accidental informality or irregularity (including any accidental omission to give or any non-receipt of notice) or any want of qualification in any of the persons present or voting or by reason of any business being considered which is not specified in the notice.

#### **46. Honorary Life Members**

The Student Leadership Team may appoint and remove any individual(s) as Honorary Life Members of The Association and on such terms as set out in the Bye Laws. An Honorary Life Member shall have the right to be given notice of, to attend and speak (but not vote) at an AGM or EGM as if a Student Member and shall also have the right to receive accounts of The Association when available to Student Members. For the avoidance of doubt, Honorary Life Members will not be Company Members.

#### **47. Exclusion of model articles**

The relevant model articles for a company limited by guarantee are hereby expressly excluded.

### ***TRUSTEES' INDEMNITY***

#### 48. Indemnity

Without prejudice to any indemnity to which a Trustee may otherwise be entitled, every Trustee of The Association shall be indemnified out of the assets of The Association in relation to any liability incurred by them in that capacity but only to the extent permitted by the Companies Acts; and every other officer of The Association may be indemnified out of the assets of The Association in relation to any liability incurred by them in that capacity, but only to the extent permitted by the Companies Acts.

### *DEFINITIONS AND INTERPRETATION*

#### 49. Defined terms

49.1 In these Articles, unless the context requires otherwise, the following terms shall have the following meanings:

Term	Meaning
49.1.1 "Academic Year"	the period between 1 August in one year to 31 July in the next year as determined by The Open University
49.1.2 "address"	includes a postal or physical address and a number or address used for the purpose of sending or receiving documents by Electronic Means;
<u>49.1.3 "Annual General Meeting"</u>	<u>The Annual General Meeting of the Association as defined in Article 15.</u>
49.1.43 "Appeals Panel"	the Appeals Panel constituted as set out in the Bye-Laws <del>the committee set up in accordance with the Bye-Laws</del>
49.1.54 "Appointments Committee"	a sub-committee of the Board of Trustees having the role as set out in <del>their terms of reference; Bye-Laws;</del>
49.1.65 "Articles"	these Articles of Association of The Association;
49.1.76 "Association Officer"	the <del>members of the Student Leadership Team student representatives</del> (including the Officer Trustees) elected to such posts further to a secret ballot of Student Members;

<b>49.1.87</b> "Board of Trustees" or "Board"	the Board of Trustees of The Association;
<b>49.1.98</b> "Bye-Laws"	the <del>B</del> bye-laws setting out the working practices of The Association made from time to time in accordance with Article 40;
<del>49.1.9</del> "the Central Executive Committee" or "CEC"	<del>the committee including the Officers as further described in Article 26;</del>
<b>49.1.10</b> "Chair"	the chair of the Board of Trustees; <u>or the Chair of an individual committee or the AGM as described in the relevant Article.</u>
<b>49.1.11</b> "Chair of the Meeting"	in the case of Trustees' meetings means the person chairing the meeting in accordance with Article 35.2;
<b>49.1.12</b> "Chief Executive"	the chief executive of The Association who is appointed by the Board of Trustees;
<b>49.1.13</b> "Charities Act"	the Charities Act 2011 or any subsequent Act;
<b>49.1.14</b> "Circulation Date"	in relation to a written resolution, has the meaning given to it in the Companies Acts;
<b>49.1.15</b> "clear days"	in relation to the period of a notice, that 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;
<b>49.1.16</b> "Code of Conduct"	<u>The Code of Conduct for all Student Members of the Association, supporting organisational behaviour governance as per Article 14; and the individual Codes of Conduct in place for the Student Leadership Team, Student Forum and Board of Trustees.</u>
<b>49.1.176</b> "Code of Practice"	the Relationship Agreement– of practice relating to the Open University's obligations under Section 22 of the Education Act;
<b>49.1.187</b> "Companies Acts"	the Companies Acts (as defined in Section 2 of the Companies Act 2006), in so far as they apply to The Association (and including associated company case law);
<b>49.1.198</b> "Company Law Meeting"	a general meeting of the Company Law Members for the purposes of the Companies Acts;

49.1.2019 "Company Law Members"	members of The Association for the purposes of the Companies Acts, as defined in Article 12;
49.1.20 "Conference"	<del>the Business Section of The Association's Biennial Conference;</del>
49.1.201 "Connected Person"	in relation to a Trustee means any person falling within any of the following categories: (a) any spouse, civil partner, parent, child, brother, sister, grandparent or grandchild of a Trustee; or (b) the spouse or civil partner of any person in (a); or (c) any other person in a relationship with the Trustee which may reasonably be regarded as equivalent to such a relationship as is mentioned at (a) or (b); or (d) any company, partnership or firm of which a Trustee is a paid director, member, partner or employee, or shareholder holding more than 1% of the capital;
49.1.22 "Deputy Chair"	the deputy chair of the Board of Trustees, who shall be appointed in accordance with Article 35;
49.1.23 "Deputy President"	the person appointed as such in accordance with the Bye-Laws;
49.1.24 "document"	includes summons, notice, order or other legal process and includes, unless otherwise specified, any document sent or supplied in Electronic Form;
49.1.25 "Education Act"	the Education Act 1994 or any subsequent Act;
49.1.26 "Effective Date"	the date on which the undertaking previously carried on by the Unincorporated Charity is transferred to The Association;
49.1.27 "Electronic Form" and "Electronic Means"	have the meanings respectively given to them in Section 1168 of the Companies Act 2006;
49.1.28 "Extraordinary General Meeting" and "Trustee"	<del>An Extraordinary General Meeting called in line with Article 15, a Trustee appointed in accordance with Article 21 who for the avoidance of doubt shall not be deemed to be either a major The Association office holder or a sabbatical The Association office holder for the purposes of Section 22 of the Education Act;</del>
49.1.29 "Faculty" or Faculties"	a recognised academic unit within the Open University;

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49.1.30 <del>“Finance, Resources and Risk Committee”</del> <b>“Financial Expert”</b>	<del>a sub-committee of the Board of Trustees having the role as set out in their terms of reference, an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;</del>
49.1.31 <del>“Financial Expert”</del> <b>“General Meeting”</b>	<del>an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000; the Biennial Conference or any extraordinary Conference of The Association;</del>
49.1.32 <b>“Hard Copy” and “Hard Copy Form”</b>	have the meanings respectively given to them in the Companies Act 2006;
49.1.33 <b>“Immediate Past President”</b>	the immediate past holder of the office of President;
49.1.34 <b>“Lay Trustee”</b>	<del>a Trustee appointed in accordance with Article 21 who for the avoidance of doubt shall not be deemed to be either a major The Association office holder or a sabbatical The Association office holder for the purposes of Section 22 of the Education Act;</del>
49.1.35 <del>4</del> <b>“Members” or “Member”</b>	the Student Members and the Company Law Members;
49.1.36 <del>5</del> <b>“Nation and Europe”</b>	as defined in the Association’s Bye-laws;
49.1.37 <b>“Nominations Panel”</b>	<del>a sub-committee of the Board of Trustees having the role as set out in their terms of reference.</del>
49.1.38 <del>6</del> <b>“Officer Trustee”</b>	an Association Officer elected as an Officer Trustee in accordance with Article 19 and therefore being a Trustee;
49.1.39 <del>7</del> <b>“The Open University”</b>	the Open University, incorporated by Royal Charter (RC 000391), an exempt charity in England & Wales and a charity registered in Scotland (SC 038302);
49.1.40 <del>38</del> <b>“Open University Council”</b>	the Open University Council is the governing body of the Open University;
49.1.41 <del>39</del> <b>“Open University Students Educational Trust”</b>	Open University Student Educational Trust (Ouset) is a Charity operated by the Association and is registered



	with the Charity Commission with Registration Number 285189 and SCO 38300;
<b>49.1.4240 "Personal Interest"</b>	a financial interest or an interest that does not arise in the ordinary course of being a Member or a Trustee (for example, being a member of a club or society);
<b>49.1.431 "Policy"</b>	representative and campaigning policy set <u>by the Student Leadership Team, by Conference or the Central Executive Committee in accordance with Article 15 and Article 16 respectively;</u>
<b>49.1.442 "President"</b>	the holder of the office of President, an Association Officer role
<b>49.1.453 "The Recipient"</b>	the person selected as set out in Article 38.2.1 and should be confirmed by prior agreement of the Trustees;
<b>49.1.46 "Safeguarding Panel"</b>	<u>a sub-committee of the Board of Trustees having the role as set out in their terms of reference.</u>
<b>49.1.47 "Scheme of Delegation"</b>	<u>The scheme of delegation approved by the Board of Trustees, recording the delegation of powers and functions.</u>
<b>49.1.484 "Scrutiny Panel/Remuneration Committee"</b>	<u>a sub-committee of the Board of Trustees, with the role and membership as set out in the Bye-Laws and Terms of Reference; A sub-committee of the Board of Trustees with the role as set out in their terms of reference.</u>
<b>49.1.495 "Secure Petition"</b>	the petition as set out in the Bye-Laws for this purpose;
<b>49.1.5046 "Student" "or Students"</b>	any individual who is formally registered for an approved programme of study provided by the Open University. For the avoidance of doubt, the Open University shall determine whether or not an individual has student status;
<b>49.1.51 "Student Forum"</b>	<u>A representative body of students, as defined in Article 27.</u>
<b>49.1.52 "Student Leadership Team"</b>	<u>The Student Leadership Team of Association Officers, as defined in Article 26.</u>
<b>49.1.5347 "Student Members" or "Student Membership"</b>	student members of The Association being Students at The Open University as further defined in Article 11 and the Association- Officers;

<b>49.1.5448 "Student Trustee"</b>	a Trustee elected in accordance with Article 20 or Article 19 who is a Student and who, for the avoidance of doubt, shall not be a The Association office holder for the purposes of Section 22 of the Education Act;
<b>49.1.5549 "Subsidiary Companies"</b>	any company in which The Association holds more than 50% of the shares, controls more than 50% of the voting rights attached to the shares or has the right to appoint a majority of the board of the company;
<b>49.1.569 "Trustees"</b>	the directors of The Association as defined in Article 18;
<b>49.1.577 "The Association"</b>	The Open University Students' Association <del>Limited</del> ;
<b>49.1.582 "Unincorporated Charity"</b>	the unincorporated charity known as The Open University <u>Students Association</u> ;
<b>49.1.53 "Vice President"</b>	<del>the person appointed as such in accordance with the Bye-Laws; and</del>
<b>49.1.594 "writing"</b>	the representation or reproduction 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.

- 49.2 Words importing the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.
- 49.3 Subject to Article 49.4, any reference in these Articles to an enactment includes a reference to that enactment as re-enacted or amended from time to time and to any subordinate legislation made under it.
- 49.4 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Act 2006 as in force on the date when these Articles become binding on The Association.

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