

SONS & FRIENDS OF THE CLERGY (THE “CHARITY”) EXPLANATORY MEMORANDUM ON PROPOSED AMENDMENTS TO THE ROYAL CHARTER

1. Executive summary

This Explanatory Memorandum has been prepared for consideration by Governors at the meeting of the Charity’s Annual General Court on 8 November 2018. Its purpose is to:

- Summarise the reasons for the review of the Charity’s Royal Charter granted in 1678 and amended in 1971, 2012, 2013 and 2017 (the **Charter**) (see section 0 below).
- Outline the process to update the Charter (see section 0).
- Summarise the key changes to the Charter proposed by the Charity (see **Annex A**).

2. Purpose of the proposed amendments to the Charity’s Charter

The purpose of the proposed amendments to the Charter is, in summary, to:

- Clarify the roles and powers of the Governors, the Court of Assistants (“the Court”), and the Visitors.
- Ensure that the provisions of the Charter better reflect good practice in charity governance.
- Ensure that the requirements as to the governance and administration of the Charity, as set out in the Charter, reflect what happens in practice.
- Streamline the Charity’s administrative processes and provide the Court with greater flexibility.
- Ensure that Charter can be easily understood and applied not only by current but also by future members of the Court and Governors.

3. Process to amend the Charter

The key steps to amend the Charter are, in summary:

- Governors to provide their ‘in principle’ approval to the proposed changes to the Charter, as set out in this Explanatory Memorandum.
- The Court to agree the full detail of the proposed changes to the Charter in the light of Governor responses to this Explanatory Memorandum.
- Our lawyers (Bircham Dyson Bell LLP) to submit a Statement of Intent to the Privy Council, outlining the changes sought and summarising the purpose of those amendments.
- The Privy Council to consult with its advisors (ie the Charity Commission and any other bodies the Privy Council determines appropriate) and then to revert with the views of those advisors and of the Privy Council on the proposals.
- Submission of a formal application to the Privy Council to amend the Charter.
- Application to be discussed at a meeting of the Privy Council.
- Court formally to resolve to adopt a Supplemental Charter, to be approved by Governors at their Annual General Court meeting on 14 November 2019.
- Privy Council to grant a Supplemental Charter.

A summary of the proposed changes to the Charter is attached at **Annex A**, which has been prepared by Bircham Dyson Bell in consultation with the Court. References to the sections or articles in the Charter are to a conformed copy prepared by BDB which is available from the Charity upon request by emailing us at enquiries@sonsandfriends.org.uk.

Court of Assistants
12 October 2018

Annex A – Summary of proposed changes (prepared by BDB)

Section/Article in the existing Charter	Summary of/comment on existing provision	Proposed amendment
Charitable objects		
Article 3	<p>The Charity's existing object is, in summary:</p> <p><i>'For the public benefit providing assistance to beneficiaries, whether directly or indirectly, in such manner as and by such means as the Court of Assistants from time to time in their absolute discretion think fit for the relief or prevention of poverty or hardship or for the relief of illness and the promotion of health, whether physical or mental.</i></p> <p><i>"beneficiaries" means members of the clergy, ordinands and the spouses, former spouses, children and dependants of living or deceased members or former members of the clergy or of ordinands.'</i></p>	N/A - As the objects have only very recently been amended, we do not envisage any further amendments to them.
Distinction between the Court of Assistants and the Governors		
Articles 6 & 10	<p>The division of responsibility and powers between the Court of Assistants and the Governors is akin to that between the company directors (the Court) and the company members (the Governors) of a company governed by the Companies Act.</p> <p>Article 6 of the Charter states that the Court shall have <i>'the whole government, management and direction of all of the affairs and business of the said Corporation, and act and do all things as they shall judge necessary for the well-ordering and governing of the same...'</i> Accordingly, the Court of Assistants are the Charity's trustees at law, as they are <i>"the persons having the general control and management of the administration"</i> of the Charity (s177 of the Charities Act 2011).</p> <p>The role of the Governors and the provisions as to the division of powers and responsibilities as between the Court and the Governors are not always clear in the current Charter.</p>	<p>We propose that the role of the Governors and the provisions in the Charter as to the division of powers and responsibilities as between the Court and the Governors be clarified, as set out in this Memorandum.</p> <p>In particular, the Charter should make clear that it is the Court which exercises the Charity's powers, in furtherance of the Charity's objects.</p>

Annex A – Summary of proposed changes (prepared by BDB)

Section/Article in the existing Charter	Summary of/comment on existing provision	Proposed amendment
Powers of the Court of Assistants		
Powers of the Court of Assistants (Articles 2 and 7)	These Articles set out the powers of the Court, which whilst wide (and include a 'sweeper power' at sub-clause 2(d)), would benefit from being updated and clarified.	We propose that the powers of the Court are added to and modernised to ensure they are fit for purpose, eg by including investment powers relating to the Court's management of assets and the Court's powers in relation to borrowing and giving guarantees, which will make dealings with third parties (eg banks) easier.
Power to make regulations (no power in the existing Charter)	N/A - No power in the Charter	We propose including a specific power for the Court to make regulations relating to the internal governance, management, structure, finances, membership and other administrative affairs of the Charity. As regulations include matters that the Privy Council would not require to be included in the Charter or any Byelaws, their creation and amendment does not generally require approval of the Privy Council and regulations are therefore a relatively flexible governing instrument.
Composition and appointment of members to the Court of Assistants		
Size of the Court of Assistant (Article 10)	The Charter provides that the Court shall comprise 42 Assistants, in addition to the President, Vice-President and three Treasurers. We note that the current size of the Court (15 members) is significantly smaller than that required under the Charter.	We propose that the size of the Court be reduced significantly. Based on the understanding that the Court ordinarily comprises between twelve and sixteen members and, in the interests of good governance and effective decision-making, we propose setting a minimum of six members of the Court and a maximum of sixteen.
Appointment of members of the Court of Assistants (Article 10)	<p>The Charter provides that:</p> <ul style="list-style-type: none"> • The members of the Court are elected by the Governors on an annual basis at the meeting of the Governors every November. • In the event of a death or removal of a member of the Court, the Governors may at any point during the year, convene a meeting to elect a replacement. 	The proposal is to retain the wording which provides that the power to elect members of the Court sits with the Governors, but to amend the Charter to enable the Court to co-opt additional/replacement voting members during the year if appropriate (eg if there arises a particular skills gap among the members of the Court which needs to be filled in advance of the November Governors' meeting). The Governors could then at their November meeting determine whether or not to retain the co-optee as a member of the Court.

Annex A – Summary of proposed changes (prepared by BDB)

Section/Article in the existing Charter	Summary of/comment on existing provision	Proposed amendment
Retirement of members of the Court Assistants (Article 10)	The Charter includes only very limited provisions as to the retirement, or termination of office, of a member of the Court.	<p>We propose that the Charter be amended to include provisions as to:</p> <ul style="list-style-type: none"> The resignation of members of the Court. The termination of office of members of the Court, which would include the circumstances in which a member will by law automatically be disqualified from acting as a charity trustee. <p>(It is standard practice for a charity's constitution to set out the circumstances in which a trustee's term in office will cease and the procedure for retiring).</p> <p>It is proposed that the members of the Court serve a three year term, at the end of which they would be eligible to serve two further three year terms and only in exceptional circumstances (eg if it is deemed in the best interest of the Charity because the member has a particular set of skills and/or experience that is of significant benefit to the Court and that the Court has been unable to recruit elsewhere) would a member be able to serve more than nine years. This proposal is in line with good governance practices and the expectations of the Charity Commission.</p>
Proceedings of the Court of Assistants		
Meetings of the Court of Assistants (Article 7)	This Article (which also, as noted above, summarises the power of the Court), includes only a very broad statement as to the ability of the Court to meet when they determine appropriate to govern the Charity.	<p>We propose updating this Article to:</p> <ul style="list-style-type: none"> Include clear provisions as to the notice required for meetings of the Court, the appointment of the chair (ie the Senior Treasurer), attendance at meetings of the Court, quorum requirements and voting procedures. These provisions, which concern matters that sit at the heart of good governance practices, are those which the Charity Commission would expect to see in a charity's constitution as a matter of standard practice.

Annex A – Summary of proposed changes (prepared by BDB)

Section/Article in the existing Charter	Summary of/comment on existing provision	Proposed amendment
		<ul style="list-style-type: none"> In the interests of ease of interpretation, separate it from the provisions as to the powers of the Court (ie so that one Article deals with the proceedings of the Court and the other deals with the powers of the Court). <p>In the interests of good governance, we propose amending the quorum provisions to require the highest of five members of the Court, or one third of the total size of the Court, to be present for a meeting to be quorate. The intention would also be to require that at least one of the three Treasurers be present in order for a meeting to be quorate.</p>
Conflicts of Interests (no provision in the existing Charter)	N/A - No provision in the Charter	The Charter should include conflict of interest provisions to set out, in broad terms, how conflicts should be identified and managed, in line with Charity Commission guidance. Such provisions are standard provision for charities to have in their constitutions and the subject of conflict of interests is currently high up the Charity Commission's regulatory agenda.
Delegation (no provision in the existing Charter)	N/A - No provision in the Charter (save for a reference in Article 7 to the election of officers by the Court, who would then act on delegated authority by the Court, as recorded in their job descriptions).	We propose that a power is added to expressly permit the Court to delegate some its functions to the Charity's senior management and/or to committees of the Court, which is a standard provision for charities to have in their governing document.
Trustee benefits (no provision in the existing Charter)	N/A - No provision in the Charter	In line with standard practice, the Charter should include provisions as to the circumstances in which the members of the Court can benefit from the Charity, eg to enable a member of the Court to be paid for providing professional services to the Charity, subject to specified conditions, which would be outlined in the Charter (and would reflect relevant charity law requirements and Charity Commission guidance).

Annex A – Summary of proposed changes (prepared by BDB)

Section/Article in the existing Charter	Summary of/comment on existing provision	Proposed amendment
Powers and proceedings of the Governors		
Powers of the Governors (Article 10)	As explained in more detail elsewhere in this memorandum, the Charter provides that the Governors have the power to: <ul style="list-style-type: none"> • Elect the members of the Court (ie the Assistants, the President, the Vice-President and the three Treasurers). • Elect the Governors. • Have custody of the seal. 	There is no intention to remove or alter these powers, save for the proposals (explained in more detail elsewhere in this Memorandum) to: <ul style="list-style-type: none"> • Provide that only those recommended by the Court for the positions of President, Vice-President and Treasurer are eligible for election by the Governors. • Give the Court the power to co-opt additional members of the Court mid-year. • Give the Court custody of the seal.
Annual Meeting of the Court (Article 10)	This Article requires there to be an annual meeting of the Governors (referred to as a General Court or Assembly) in November.	The intention is to retain the requirement to hold this annual meeting, but amend the Charter to give the Court the ability to decide not to hold the meeting in any particular year, if the Court determines it is not necessary or appropriate (which would only be in exceptional circumstances). It is also proposed to make the provision more flexible by removing the requirement for the meeting to be in November (so that, if, for example, it is not convenient to hold the meeting in November one year or the meeting has to be cancelled at the last minute, it would be possible to hold the meeting in a different month without being in breach of the Charter).
Proceedings of the Governors (Article 10)	There are no provisions in the Charter as to conduct of meetings of the Governors, save for the requirement to hold an annual meeting.	We propose including provisions (which would be in line with good governance practices in the charity sector) as to the proceedings of a meeting of the Governors, to include notice period, election of the chair, voting, attendance and quorum.

Annex A – Summary of proposed changes (prepared by BDB)

Section/Article in the existing Charter	Summary of/comment on existing provision	Proposed amendment
President, Vice-President and the Treasurers		
The President, Vice-President and Treasurers (Article 9)	<p>This Article refers to the positions of the President, Vice-President and the three Treasurers of the Charity, who are all in theory part of the Court and are therefore trustees of the Charity. The Article states that:</p> <ul style="list-style-type: none"> • Elections for these positions will be undertaken by the Governors on an annual basis at their November meeting. • In the event of a death or removal of the President, Vice-President and/or a Treasurer, the Governors may at any point during the year, convene a meeting to elect a replacement(s). 	<p>We propose the following:</p> <ul style="list-style-type: none"> • Since the positions of President and Vice-President (of which there may be more than one holder of each post) are now honorary and do not involve membership of the Court, ie they are more akin to the role of Patron, that appointment to these posts be a matter for the Court rather than (as now) the Governors. • That the three Treasurers, being effectively officers of the Charity, should (as now) continue to be elected by the Governors on the recommendation of the Court. • Since one of the Treasurers has traditionally been referred to as the Senior Treasurer and has acted as the chair of the Charity, that it would make sense for the revised Charter to refer to the role of Senior Treasurer, such appointment from amongst the Treasurers being made by the Court.
Role of the Visitors		
Visitors (Article 11)	<p>This Article provides that the Archbishop of Canterbury, the Bishop of London, the Lord Mayor of London and a number of other dignitaries listed in the Charter (including two posts which no longer exist) shall act as ‘Visitors’ of the Charity. The office of a Visitor is not peculiar to the Charity but is common in Royal Charter bodies. The office has ecclesiastical roots and Visitors enjoy certain rights under common law and rights afforded to them under the relevant organisation’s governing document, in this case the Charter.</p> <p>In summary, the Charity’s Visitors have the right to hear and determine internal disputes relating to the governance and administration of the Charity and the way in which its assets are applied.</p>	<p>The Visitors do not play an active role in the Charity; they are rarely - if at all - called on to fulfil their ‘dispute resolution’ duties; they are not necessarily aware of their role as Visitors; and they do not act as a figurehead to the Charity.</p> <p>If the individuals concerned no longer wish to be Visitors, it would be appropriate to apply for the references to them to be removed – not least because the provision requires a majority of the dignitaries listed to act whenever a dispute arises. The Charity Commission would be likely to require written confirmation that they no longer wished to act in this capacity. The Visitor posts which no longer exist (the Lord High Treasurer of England and the Lord Almoner) should also be removed.</p>

Annex A – Summary of proposed changes (prepared by BDB)

Section/Article in the existing Charter	Summary of/comment on existing provision	Proposed amendment
	In our view, although the Visitors have power to resolve such disputes, this does not, in itself, make them trustees of the Charity and so any inactivity on the part of the Visitors will not lead to them being in dereliction of any trustee duties. Indeed, were they to take an active role in the management or control of the Charity, they would risk becoming trustees by operation of charity law – whether they intended this or not – and, as a result, they would take on all the duties and responsibilities associated with being a trustee, which they would be unlikely to want.	Trustees have not yet reached a firm view on the role of the Visitors and whether they should be retained in a revised Royal Charter. Much will depend on whether the current ex officio Visitors wish to continue in the role. The Court will do further work on this, but should welcome the views of Governors.
Dissolution of the Charity		
Dissolution (no provisions in the existing Charter)	N/A - No provision in the Charter	This clause is unlikely to be needed but the Charter should include a dissolution provision, which would set out how any remaining assets of the Charity would be disbursed for use in furtherance of the Charity's objects on dissolution.
Miscellaneous provisions		
Changes to the administration of the Corporation (Article 4)	The only provision in the Charter as to the amendment of the Charter is this Article 4, which is currently limited to the ability to amend the administration of the Corporation by way of a resolution.	<p>The scope of this power should be expanded to include an express power to amend the Charter, and any Byelaws.</p> <p>Adoption of this change would mean that future substantive changes to the Charter could be made way of a Scheme and Order of the Privy Council, rather than by adopting a Supplemental Charter, which would be significantly easier and less costly.</p>

Annex A – Summary of proposed changes (prepared by BDB)

Section/Article in the existing Charter	Summary of/comment on existing provision	Proposed amendment
Seal (Article 5)	This provides that the Governors shall have custody of the Corporation's Seal.	<p>We propose that the use of the Seal - and reference to it in the Charter - is maintained but suggest that:</p> <ul style="list-style-type: none"> • The Court (as opposed to the Governors) should have control of the Seal (to reflect the fact that is the Court which is responsible for the management and administration of the Charity). • This Article is modernised to include custody of the seal, authority to affix and procedure for use.
Legal compliance (Article 8)	This Article, in summary, confirms that the Corporation will abide by its Charter and by the Laws of England.	The somewhat archaic language in this Article should be updated.
Definitions (only very limited definitions in the existing Charter)	Save for in relation to the definitions of 'beneficiary', there are no defined terms in the Charter.	<p>The Charter should include definitions to assist with the interpretation of the Charter.</p> <p>To the extent there is any confusion about the terms used in the Charter (eg the various references to the General Court, the Assembly and the Court of Assistants), the constitutional review would provide a good opportunity to clarify these.</p>

12 October 2018