



A BioSciAcademy briefing

Implications of 2006 Companies Act for bioscience learned societies

This briefing applies to societies that are companies limited by guarantee.

The Companies Act 2006, which is being implemented in a number of stages but most of which are now in force, has implications for learned societies. The Act brings in a number of new regulations, some of which may override elements of societies' current constitutions.

1. There is no longer a requirement for a separate Memorandum of Association. There is no need to make changes with respect to this. In the case of existing incorporated societies, it will in future be deemed to be part of the Articles of Association.
2. There are new rules with regard to conflicts of interest. There are two kinds of conflict:
 - a. *Situational conflicts* – i.e. those that arise from a trustee's position within other organisations where an inherent conflict of loyalty may be present. This could include, amongst others, positions within societies (and journals) where there may be (even theoretically) competition or other forms of conflict, or directorships of companies that could be competitors, suppliers or clients of the society. Strictly, this also applies to close relatives. Such conflicts need to be approved by the trustees in accordance with the constitution. This therefore requires the Articles to authorise this explicitly. If this is not currently so, an amendment to the Articles will be needed. Once the Articles have been amended, societies will need to compile a register of interests that will need to be approved by the trustees and kept updated regularly.
 - b. *Transactional conflicts* – where trustees must declare an interest and withdraw from discussions and voting on any subject in which they have an interest, unless it is reasonable to assume that the interest will not lead to any conflict of interest or an ordinary resolution is passed to allow it. This could include, for example, arrangements with pharmaceutical companies with whom a trustee may have a close link. This requirement should already be included in the articles of charitable companies and effectively restates existing law.

If a proposed amendment to the Articles could be interpreted as providing actual benefit to trustees because, for example, it extends beyond regularising a conflict of loyalties then it is likely to be necessary to obtain permission from the Charity Commission before making that change to the Articles.

3. It is now a requirement that proxies be allowed to attend and speak at general meetings and to be able to vote on a show of hands and not just on a poll.
4. Except in the case of companies incorporated before 1 October 2007 it is no longer permissible for the chair to use a casting vote at general meetings, although this is still permitted at trustee meetings. Thus, if there is a tied vote, the situation will remain as if there had been no vote. Societies will therefore

Euro House, 22 Apex Court
Woodlands, Bradley Stoke

Bristol, BS32 4JT, UK

Tel: (+44) (0) 1454 642240

Fax: (+44) (0) 1454 642222

info@bioscientifica.com
www.bioscientifica.com

Registered address as above.
Registered in England
no. 3190519



need to ensure that resolutions that will be voted on are worded so as to avoid a situation where, for example, if members are asked to choose between two potential changes, neither would be adopted if there was a tie. The main area where this could cause problems is likely to be the election of new trustees, where a repeat ballot would be implied (although probably few societies' members would have been happy for the chairman to use a casting vote in this circumstance anyway).

5. Companies are no longer required to hold an AGM or appoint a company secretary, although they must continue to do so if the Articles expressly require it. It is likely that most charities will wish to retain annual general meetings as a useful forum for reviewing the previous year's activities.
6. The deadline for filing reports and accounts with Companies House has been reduced from ten months to nine.

Other matters which, while not a direct result of the Companies Act 2006, in each case are affected by it, and are worth reminding trustees of, are set out below:-

1. All members must be sent a proxy form at the same time as the AGM Notice. This must be returned to the society 48 hours before the AGM. However, the Companies Act 2006 now provides that weekends and public holidays do not count in the 48 hour period (unless the Articles provide otherwise). It may nonetheless be worth reconsidering your AGM timing if it is usually held on a Monday. Members can appoint the chairman as their proxy or they can appoint anyone of their choice, including someone who is not a member. A person can hold proxies for multiple members and will then be able to cast that number of votes.
2. Trustees need not all be personally present at a meeting and can participate by telephone, teleconferencing or other medium provided that the Articles make express provision. The Companies Act 2006 has clarified certain aspects of this.
3. Provided the Articles allow it, official communication with members (e.g. AGM notice and papers) can take place using email and the web. However, this requires the member's agreement. Broadly, use of the web can start once members have been given the opportunity to opt out but email requires them to opt in. Again, the Companies Act 2006 has clarified certain aspects.

This is not a legal briefing, but is a personal interpretation prepared for BioScientifica by Sue Thorn, with assistance from Julian Rampton of Royds LLP and no liability is accepted for its contents. Societies should consider their own circumstances and consult their legal advisors as appropriate.

Sue Thorn
(01454 642216; sue.thorn@endocrinology.org)
Chief Executive, Society for Endocrinology
Managing Director, BioScientifica

Julian Rampton
(020 7583 2222; jnr@royds.com)
Royds LLP

Euro House, 22 Apex Court
Woodlands, Bradley Stoke

Bristol, BS32 4JT, UK

Tel: (+44) (0) 1454 642240

Fax: (+44) (0) 1454 642222

info@bioscientifica.com
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