

The Companies Acts 1985 & 1989

COMPANY LIMITED BY GUARANTEE

## Memorandum of Association of

### **National Day Nurseries Association**

as amended by special resolution on 20 September 1999 and 21 October 1999  
and February 2007 and 21 Jan 2009 and 26 May 2011

1. The name of the Company is "National Day Nurseries Association"
2. The registered office of the Company will be situated in England and Wales.
3. The object of the Company is to enhance the development and education of children in their early years, through the provision of support services to organisations who are delivering education and care to said children and in doing so to develop, encourage and maintain high standards in education and care for the benefit of the children, their family units and their local communities.
4. In furtherance of the above but not otherwise, the Company shall have the following powers:
  - (a) To consult and canvass the opinions of members of the Company via electronic methods of communication including email, fax, World Wide Web and any other appropriate technologies.
  - (b) To conduct and carry out research and to publish and disseminate the results of such research.
  - (c) To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges which the Company may think necessary for the promotion of its objects;
  - (d) To construct, maintain and alter any buildings or erections which the Company may think necessary for the promotion of its objects;
  - (e) To publish books, pamphlets, reports, leaflets, journals, films and instructional matter;
  - (f) To acquire or found and to carry on schools and educational establishments, and to run lectures, seminars, conferences and courses, and to establish links with existing educational establishments;
  - (g) To receive donations, endowments, sponsorship fees, subscriptions and legacies from persons desiring to promote the Company's objects or any of them and to hold funds in trust for same;
  - (h) Subject to such consents as may be required by law, if any, to borrow or raise money for the Company on such terms and on such security as may be thought fit;
  - (i) To establish and support or aid in the establishment and support or to amalgamate with any other charitable institutions or associations and to subscribe or guarantee money for charitable purposes in any way connected with the purposes of the Company or calculated to further its objects;
  - (j) To undertake and execute any charitable trusts which may be lawfully undertaken by the Company and may be necessary to its objects;

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- (k) To invest the monies of the Company not immediately required for its own purposes in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as for the time being may be imposed or required by law and subject also as hereinafter provided;
  - (l) To purchase, take on lease or in exchange, hire or otherwise acquire and hold for any estate or interest any lands, buildings, easements, rights, privileges, concessions, patent rights, licences, secret processes or property of any kind necessary or convenient for or in connection with the objects of the Company;
  - (m) To sell, improve, develop, exchange, let on rent, royalty or otherwise and in any manner deal with or dispose of all or any of property and assets for the time being of the Company subject to such consents as may be required by law and subject also to the provisions of this Memorandum of Association;
  - (n) To provide indemnity insurance to cover the liability of the members of the Board of Directors, in relation to any such liability as is mentioned in sub-clause (n)(i) of this clause, but subject to the restrictions specified in sub-clause (n) (ii) of this sub-clause. (n)(i) The liabilities referred to in sub-clause (n) are: (a) any liability that by virtue of any rule of law would otherwise attach to a director of a company in respect of any negligence, default breach of duty or breach of trust of which he or she may be guilty in relation to the Company; (b) the liability to make a contribution to the Company's assets as specified in section 214 of the Insolvency Act 1986 (wrongful trading). (n)(ii)(a) The following liabilities are excluded from sub-clause (n)(i)(a): (i) fines; (ii) costs of unsuccessfully defending criminal prosecutions for offences arising out of the fraud, dishonesty or wilful or reckless misconduct of the Director or other officer; (iii) liabilities to the Company that result from conduct that the Director or other officer new or must be assumed to have known was not in the best interests of the Company or about which the person concerned did not care whether it was in the best interests of the Company or not. (n)(ii)(b) There is excluded from sub-clause (n)(i) any liability to make such a contribution where the basis of the Director's liability is his or her knowledge prior to the insolvent liquidation of the Company (or reckless failure to acquire that knowledge) that there was no reasonable prospect that the Company would avoid going into insolvent liquidation.
  - (o) To engage or employ such personnel (not being members of its Board of Directors), whether as employees, consultants, advisers or however, as may be required for the promotion of the objects of the Company;
  - (p) To open and operate bank accounts and other facilities for banking in the name of the Company;
  - (q) To do all such other lawful things as may be necessary for the attainment of the above objects or any of them;
  - (r) To establish, promote and otherwise assist any other company or companies for the purpose of furthering any of the objects of the Company.

**PROVIDED THAT:**

- (1) In case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts;
- (2) In case the Company shall take or hold any property subject to the jurisdiction of the Charity Commissioners for England and Wales, the Company shall not sell, mortgage, charge or lease the same without such authority, approval or consent as may be required by law, and as regards any such property that may come into their hands the Board of Directors (being the board of directors of the Company)

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- shall be answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of such property in the same manner and to the same extent as such Board of Directors of the Company would have been if no incorporation had been effected, and the incorporation of the Company shall not diminish or impair any control or authority exercisable by the Chancery Division or the Charity Commissioners over such Board of Directors but they shall, as regards such property, be subject jointly and separately to such control and authority as if the Company were not incorporated;
- (3) The objects of the Company shall not extend to the regulation of relations between workers and employers or organisations of workers and organisations of employers.
5. In carrying out its objects the Company shall promote equality of opportunity for all sections of the community, both in its own affairs and in society generally.
- 6.1 The income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set out in clause 3 above.
- 6.2.1 A Director is entitled to be reimbursed from the property of the Company or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the Company.
- 6.2.2 Subject to the restrictions in sub-clauses 4(n)(i) and 4(n)(ii), a Director may benefit from trustee indemnity insurance cover purchased at the Company's expense.
- 6.3 None of the income or property of the Company may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Company. This does not prevent a member who is not also a Director receiving: (a) a benefit from the Company in the capacity of a beneficiary of the Company; (b) reasonable and proper remuneration for any goods or services supplied to the Company.
- 6.4 No Director may (a) buy any goods or services from the Company; (b) sell goods, services, or any interest in land to the Company; (c) be employed by, or receive any remuneration from the Company; (d) receive any other financial benefit from the Company; unless: (i) the payment is permitted by sub-clause 6.5 and the Directors follow the procedure and observe the conditions set out in sub-clause 6.6; or (ii) the Directors obtain the prior written approval of the Charity Commission and fully comply with any procedures it prescribes.
- 6.5.1 A Director may receive a benefit from the Company in the capacity of a beneficiary of the Company.
- 6.5.2 A Director may be employed by the Company or enter into a contract for the supply of goods or services to the Company, other than for acting as a Director.
- 6.5.3 A Director may receive interest on money lent to the Company at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Directors.
- 6.5.4 A company of which a Director is a member may receive fees remuneration or other benefit in money or money's worth provided that the shares of the company are listed on a recognised stock exchange and the Director holds no more than 1% of the issued capital of that company.
- 6.5.5 A Director may receive rent for premises let by the Director to the Charity if the amount of the rent and the other terms of the lease are reasonable and proper.
- 6.6.1 The Charity and its Directors may only rely upon the authority provided by sub-clause 6.5 if each of the following conditions is satisfied: (i) The remuneration or other sums paid to the Director do not exceed an amount that is reasonable in all the circumstances. (ii) The Director is absent from the part of any meeting at which there

is discussion of: (a) his or her employment or remuneration, or any matter concerning the contract; or (b) his or her employment of remuneration, or any matter concerning the contract; or (c) any proposal to enter into any other contract or arrangement with him or her or to confer any benefit upon him or her that would be permitted under sub-clause 6.5; or (d) any other matter relating to a payment or the conferring of any benefit permitted by sub-clause 6.5. (iii) The Director does not vote on any such matter and is not to be counted when calculating whether a quorum of Directors is present at the meeting. (iv) The other Directors are satisfied that it is in the interests of the Company to employ or to contract with that Director rather than with someone who is not a Director. In reaching that decision the Director must balance the advantage of employing a Director against the disadvantages of doing so (especially the loss of the Director's services as a result of dealing with the Director's conflict of interest). (v) The reason for their decision is recorded by the Directors in the minute book. (vi) A majority of the Directors then in office have received no such payments.

6.6.2 The employment or remuneration of a Director includes the engagement or remuneration of any firm or company in which the Director is (i) a partner; (ii) an employee; (iii) a consultant; (iv) a director; or (v) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Director holds less than 1% of the issued capital.

6.7 In sub-clauses 6.2 to 6.6 (a) "Company" shall include any company in which the Company: (i) holds more than 50% of the shares; or (ii) controls more than 50% of the voting rights attached to the shares; or (iii) has the right to appoint one or more directors to the Board of the company; (b) "Director" shall include any child, parent, grandchild, grandparent, brother, sister or spouse of the Director or any person living with the Director as his or her partner.

7. The liability of the members is limited.

8. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time s/he or it is a member, or within one year afterwards, for the payments of the debts and liabilities of the Company contracted before the time at which s/he or it ceases to be a member and of the costs, charges and expenses of winding up the same, and for the adjustments of the rights of the contributors among themselves such amount as may be required not exceeding ten pounds.

9. If upon the winding up or dissolution of the Company there remains after the satisfaction of its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other charitable institution or institutions having objects similar to the objects of the Company and which shall prohibit the distribution of its or their income to an extent as least as great as is imposed on the Company under or by virtue of clause 6 above, such institution or institutions to be determined by the members of the Company at or before the time of dissolution, and in so far as effect cannot be given to this provision, then to some other charitable object.

10. No such addition, alteration or amendment shall be made to or in the provisions of the Memorandum or Articles of Association for the time being in force as shall cause the Company to cease to be a charity in law.

11. Nothing in this constitution shall authorise an application of the property of the Company for purposes which are not charitable in accordance with section 7 Charities and Trustee Investment (Scotland) Act 2005.

- HRB/ICOM 1998 -