



CONSTITUTION of the Ivatt Diesel Recreation Society

IDRS Constitution 11 September 2011 as amended 01 September 2018

Part 1

1. Adoption of the Constitution

The association and its property will be administered and managed in accordance with the provisions in Parts 1 and 2 of this constitution.

2. Names

The association's name is The Ivatt Diesel Recreation Society (and in this document is called the charity).

3. Objects

The charity's objects (the objects) are

- 3.1. To build, preserve, operate, maintain and exhibit the Charity's property, in particular, but not limited to, an LMS Diesel Locomotive to Engine Diagram 279, two of which were originally constructed in 1947 and known as the "Ivatt Twins", and advance the education of the public in pioneering diesel traction in the UK.
- 3.2. To use the Charity's property to promote public knowledge, appreciation and understanding of the historical educational, scientific, and cultural aspects of the trust property, with particular regard to its historical significance.

(Nothing in this constitution shall authorize 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).

4. Application of Income and Property

4.1. The income and property of the charity shall be applied solely towards the promotion of the objects.

- a) A charity trustee is entitled to be reimbursed from the property of the charity or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the charity.
- b) A charity trustee may benefit from the trustee indemnity insurance cover purchased at the charity's expense in accordance with, and subject to the conditions in, section 73F of the Charities Act 1993.

4.2. None of the income or property of the charity may be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise by way of profit, to any member of the charity. This does not prevent a member who is not also a trustee from receiving:

- a) A benefit from the charity in the capacity of a beneficiary of the charity;
- b) Reasonable and proper remuneration for any goods or services supplied to the charity.

5. Benefits and Payments to Charity Trustees and Connected Persons.

5.1. General Provisions

No charity trustee or connected person may:

- a) Buy or receive any goods or services from the charity on terms preferential to those applicable to members of the public
- b) Sell goods, services or any interest in land to the charity
- c) Be employed, by or receive, any remuneration from the charity
- d) Receive any other financial benefit from the charity

unless the payment is permitted, by sub-clause (2) of this clause, or authorised by the court or the Charity Commission (The Commission). In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

5.2. Scope and power permitting trustees' or connected persons' benefits

- a) A charity trustee or connected person may receive a benefit from the charity in the capacity of a beneficiary of the charity provided that a majority of the trustees do not benefit in this way.
- b) A charity 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 charity where that is permitted in accordance with, and subject to the conditions in, section 73A to 73C of the Charities Act 1993.
- c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the charity with goods that are not supplied in connection with services provided to the charity by the charity trustee or connected person.
- d) A charity trustee or connected person may receive interest on money lent to the charity at a reasonable and proper rate which must be 1% (or more) per annum below the base rate of a clearing bank to be selected by the charity trustees.
- e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the charity. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the charity on the same terms as members of the public.

5.3. Payment for supply of goods only – controls

The charity and its charity trustees may only rely upon the authority provided by sub-clause 2c of this clause if each of the following condition is satisfied:

- a) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the charity and the charity trustee or connected person supplying the goods (the supplier) under which the supplier is to supply the goods in question to or on behalf of the charity.
- b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.

- c) The other charity trustees are satisfied that it is in the best interests of the charity to contract with the supplier rather than someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with the charity trustee or connected person against the disadvantages of doing so.
- d) The supplier is absent from any part of the meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the charity.
- e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.
- f) The reason for their decision is recorded by the trustees in the minute book.
- g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 5.

5.4. In sub-clauses 2) and 3) of this clause

5.4.1. "the charity" includes any company in which the charity:

- a) Holds more than 50% of the shares; or
- b) Control more than 50% of the voting rights attached to the shares; or
- c) Has the right to appoint one or more trustees to the board of the company.

5.4.2. "connected person" includes any person within the definition set out in clause 33 "Interpretation".

6. Dissolution

6.1. If the members resolve to dissolve the charity the trustees will remain in office as charity trustees and be responsible for winding up the affairs of the charity in accordance with this clause.

6.2. The trustees must collect in all the assets of the charity and must pay or make provision for all liabilities of the charity.

6.3. The trustees must apply any remaining property or money:

- a) Directly for the objects;
- b) By transfer to any charity or charities for purposes the same as or similar to the charity;

- c) In such other manner as the Charity Commission for England and Wales may approve in writing in advance.
- 6.4. The members may pass a resolution before or at the same time as the resolution to dissolve the charity specifying the manner in which the trustees are to apply the remaining property or assets of the charity and the trustees must comply with the resolution if it is consistent with paragraphs 6.3 (a) to 6.3 (c) above.
- 6.5. In no circumstances shall the net assets of the charity be paid or distributed among the members of the charity (except to a member that is itself a charity).
- 6.6. The trustees must notify the Commission promptly that the charity has been dissolved. If the trustees are obliged to send the charity's accounts to the Commission for the accounting period which ended before its dissolution, they must send the Commission the charity's final accounts.

7. Amendment of Constitution

- 7.1. The charity may amend any provision contained in part 1 of this constitution provided that:
- a) No amendment may be made that would have the effect of making the charity cease to be a charity at law;
 - b) No amendment may be made to alter the objects if the change would undermine or work against the previous objects of the charity;
 - c) No amendment may be made to clauses 4 or 5 without the prior written consent of the Commission;
 - d) Any resolution to amend a provision of Part 1 of this constitution is passed by not less than two thirds of the members present and voting at a general meeting.
- 7.2. Any provision contained in Part 2 of the constitution may be amended, provided that any such amendment is made by resolution passed by a simple majority of the members present and voting at a general meeting.
- 7.3. A copy of any resolution amending this constitution shall be sent to the Commission within twenty one days of it being passed.

Part 2

8. Membership

- 8.1. Membership shall be open to individuals or organisations that are approved by the trustees.
- 8.2. Membership shall be open to individuals or organisations invited to become members of the association by the trustees.
- 8.3. The trustees may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the charity to refuse the application. The trustees must inform the applicant in writing of the reasons for the refusal within twenty one days of the decision. The trustees must consider any written representation the applicant may make about the decision. The trustees' decision following any written representations must be notified to the applicant in writing but shall be final.
- 8.4. Membership is not transferable.
- 8.5. The trustees shall maintain a register of members, setting out the full name and address of each member, the date on which s/he was admitted to membership, and the date on which any person ceased to be a member.
- 8.6. Any person who wishes to become a member must sign, and lodge with the association, a written, or electronic application for membership. The management committee shall consider each application for membership at the first management committee meeting which is held after receipt of the application.
- 8.7. Any person who wishes to withdraw from membership shall sign, and lodge with the association, a written notice or electronic notice to that effect; on receipt of the notice by the association, s/he shall cease to be a member.

9. Termination of membership

- 9.1. Membership is terminated if:
 - a) The member dies, or if it is an organisation, ceases to exist;
 - b) The member resigns by written notice to the charity unless, after the resignation, there would be less than two members;
 - c) Any sum due from the member to the charity is not paid in full within three months of it falling due;
 - d) The member is removed from membership by way of a resolution passed by majority vote at a general meeting (meeting of members), providing at least at least 21 days' notice of the intention to propose the resolution is given to the member concerned, specifying the grounds for the proposed removal. The member (or the member's representative) shall be entitled to

be heard on the resolution at the general meeting at which the resolution is proposed.

- e) Any person who wishes to withdraw from membership shall sign, and lodge with the association, a written notice to that effect; on receipt of the notice by the association, he or she shall cease to be a member.

10. General Meetings

- 10.1. The charity must hold a general meeting within 12 months of the date of adoption of this constitution
- 10.2. An annual general meeting must be held in each subsequent year and not more than 15 months shall elapse between successive annual general meetings.
- 10.3. All general meetings other than annual general meetings shall be called special general meetings.
- 10.4. The trustees may call a special general meeting at any time.
- 10.5. The trustees must call a special general meeting if requested to do so in writing by at least five members or one tenth of the membership, whichever ever is the greater. The request must state the nature of the business that is to be discussed. If the trustees fail to hold the meeting within twenty eight days of the request, the members may proceed to call a special general meeting but in doing so they must comply with the provisions of this constitution.

11. Notice

- 11.1. At least 14 clear days' notice must be given of any annual general meeting or special general meeting.
- 11.2. The notice must specify the date, time and place of the meeting and the general nature of any business to be dealt with at the meeting.
- 11.3. The notice must be given to all members and trustees.

12. Quorum

- 12.1. No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be 5 members, present in person or by electronic means such as video conferencing.
- 12.2. A quorum is five members entitled to vote upon the business to be conducted at the meeting.
- 12.3. If a quorum is not present within 15 minutes after the time at which a general meeting was due to commence - or if, during a meeting, a quorum ceases to be present - the meeting shall stand adjourned to such time and place as the trustees shall determine.
- 12.4. The trustees must re-convene the meeting and must give at least seven clear days' notice of the re-convened meeting stating the date, time and place of the meeting.
- 12.5. If no quorum is present at the re-convened meeting within 15 minutes of the specified start of the meeting, the members present at that time shall constitute the quorum for that meeting.

13. Chair

- 13.1. General meetings shall be chaired by the person who has been elected as the chair.
- 13.2. If there is no such person or he or she is not present within fifteen minutes of the time appointed for the meeting, a trustee nominated by the trustees shall chair the meeting.
- 13.3. If there is only one trustee present, and willing to act, he or she shall chair the meeting.
- 13.4. If no trustee is present and willing to chair the meeting within fifteen minutes after the time appointed for holding it, the members present and entitled to vote must choose one of their number to chair the meeting.

14. Adjournments

- 14.1. The members present at a meeting may resolve that the meeting shall be adjourned.
- 14.2. The person who is chairing the meeting must decide the date, time, and place, at which the meeting is to be re-convened unless those details are specified in the resolution.
- 14.3. No business shall be conducted at an adjourned meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.
- 14.4. If a meeting is adjourned by a resolution of the members for more than seven days, at least seven days' notice shall be given of the re-convened meeting stating the date, time and place of the meeting.

15. Votes

- 15.1. Each member shall have one vote but if there is an equality of votes, the person who is chairing the meeting shall have a casting vote in addition to any other vote he or she may have.
- 15.2. A resolution in writing signed by each member (or in the case of a member that is an organisation, by its authorised representative) who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective. It may comprise several copies each signed by one or on behalf of one or more members.
- 15.3. Members aged 18 or over on the date of the meeting will be entitled to vote.

16. Representatives of Other Bodies

- 16.1. Any organisation that is a member of the charity may nominate any person to act as its representative at any meeting of the charity.
- 16.2. The organisation must give written notice to the charity of the name of its representative. The nominee shall not be entitled to represent the organisation at any meeting unless the notice has been received by the charity. The nominee may continue to represent the organisation until written notice to the contrary is received by the charity.
- 16.3. Any notice given to the charity shall be conclusive evidence that the nominee is entitled to represent the organisation or that his or her authority has been revoked. The charity shall not be required to consider whether the nominee has been properly appointed by the organisation.

17. Officers and Trustees

- 17.1. The charity and its property shall be managed and administered by a committee comprising the officers and other members elected in accordance with this constitution. The officers and other members of the committee shall be the trustees of the charity and in this constitution are together called "the trustees".
- 17.2. The charity shall have the following officers
- a) A chair
 - b) A secretary
 - c) A treasurer
- 17.3. A trustee must be a member of the charity or the nominated representative of an organisation that is a member of the charity.
- 17.4. No-one may be appointed a trustee if he or she would be disqualified from acting under the provisions of clause 20.
- 17.5. The number of trustees shall not be less than four and shall not be more than ten.
- 17.6. The first trustees (including officers) shall be those persons elected as trustees and officers at the meeting at which this constitution is adopted.
- 17.7. Other than the provision on section 21.13, a trustee may not appoint anyone to act on his or her behalf at meetings of the trustees.
- 17.8. In the event of the Chair, Secretary or Treasurer being unable to fulfil the duties of their role, the remaining Trustees may temporarily appoint a replacement, until such time as a members meeting is convened and a replacement elected.

18. Appointment of Trustees

- 18.1. The charity in general meeting shall elect the officers and the other trustees.
- 18.2. The trustees may appoint any person who is willing to act as a trustee. **Subject to sub-clause 5(b) of this clause,** they may also appoint trustees to act as officers.
- 18.3. Each of the trustees shall retire with effect from the conclusion of the annual general meeting next after his or her appointment but shall be eligible for re-election at that annual general meeting.
- 18.4. No-one may be elected a trustee or an officer at any annual general meeting unless prior to the meeting the charity is given a notice that:
- a) is signed by a member entitled to vote at the meeting

Commented [AH1]: No such clause

- b) states the members intention to propose the appointment of a person as a trustee or as an officer
- c) is signed by the person who is proposed to show his or her willingness to be appointed.

18.5. The appointment of a trustee, whether by the charity in general meeting or by the other trustees, must not cause the number of trustees to exceed any number fixed in accordance with this constitution as the maximum number of trustees. The trustees may not appoint a person to be an officer if a person has already been elected or appointed to that office and has not vacated that office.

19. Powers of Trustees

19.1. The trustees must manage the business of the charity and have the following powers in order to further the objects (but not for any other purpose):

- a) To raise funds. In doing so, the trustees must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations.
- b) To open and operate such bank accounts and other accounts the trustees consider necessary, and invest any funds as may be considered appropriate by the trustees.
- c) To set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves.
- d) To purchase, take on lease, hire, or otherwise acquire, any property which is suitable for the association's activities.
- e) To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the charity. In exercising this power, the trustees must comply as appropriate with sections 36 and 37 of the Charities Act 1993, as amended by the Charities Act 2006.
- f) To borrow money, and to give security in support of any such borrowings by the charity.
- g) To co-operate with other charities and statutory bodies as required to further the charity's objects.
- h) To establish or support any charitable trusts, associations or institutions for any purpose falling within the association's objects.
- i) To form any company which is a charity with similar objects to those of the association, and, if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the association's assets and undertaking.

- j) To acquire, merge with or enter into any partnership or joint venture arrangement with any other charity formed for any of the objects.
- k) To do all such other lawful things that further the charity's objects.

19.2. No alteration of this constitution or any special resolution shall have retrospective effect to invalidate any prior act of the trustees.

19.3. Any meeting of trustees at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the trustees.

20. Disqualification and Removal of Trustees

A trustee shall cease to hold office if he or she:

- a) Is disqualified as acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision;
- b) Ceases to be a member of the charity;
- c) becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months
- d) resigns as a trustee by notice to the charity (but only if at least two trustees will remain in office when the notice of resignation is to take effect);
- e) is absent (without permission of the management committee) from more than three consecutive meetings of the management committee, and the management committee resolve to remove him/her from office.

21. Proceedings of Trustees

21.1. The trustees may regulate their proceedings as they think fit subject to the provisions of this constitution.

21.2. Any trustee may call a meeting of the trustees.

21.3. The secretary must call a meeting of the trustees if requested to do so by a trustee.

21.4. Questions arising at a meeting must be decided by a majority of votes.

21.5. In the case of an inequality of votes, the person who chairs the meeting shall have a second or casting vote.

21.6. No decision may be made by a meeting of the trustees unless a quorum is present at the time the decision is purported to be made.

21.7. The quorum shall be four or the number nearest to one-half of the total number of trustees, whichever is the greater or such large number as may be decided from time to time by the trustees.

- 21.8. A trustee shall not be counted in the quorum present when any decision is made about a matter upon which that trustee is not entitled to vote.
- 21.9. If the number of trustees is less than the number fixed as the quorum, the continuing trustees or trustee may act only for the purposes of filling vacancies or of calling a general meeting.
- 21.10. Meetings of trustees will be chaired by the person elected as chair.
- 21.11. If the chair is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the trustees present may appoint one of their number to chair that meeting.
- 21.12. A resolution in writing signed by all trustees entitled to receive notice of a meeting of trustees or of a committee of trustees and to vote upon the resolution shall be valid and effectual as if it had been passed at a meeting of the trustees or (as the case may be) a committee of trustees duly convened and held. The written resolution may comprise several documents containing the text of the resolution in like form each signed by one or more trustees.
- 21.13. Details of all proposals to be voted on at a trustees meeting will be circulated to all trustees two weeks prior to the meeting. Trustees unable to be present at a meeting may pass their voting decision to the Chair prior to the meeting for inclusion in the voting process. No additional decisions may be put to trustees for voting without the agreement of all absent trustees.

22. Conflicts of Interests and Conflicts of Loyalties

A charity trustee must:

- 22.1. Declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the charity, or in any transaction or arrangement entered into by the charity which has not previously been declared; and
- 22.2. Absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interest of the charity and any personal interest (including but not limited to any personal financial interest).

Any charity trustee absent from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

23. Delegation

- 23.1 The trustees may delegate any of their powers or functions to a committee consisting of two or more trustees. The terms of the delegation must be recorded in the minute book.
- 23.2 Any delegation of powers under clause 23.1 may be made subject to such conditions as the trustees may impose and may be revoked or altered.
- 23.3 All acts and proceedings of any committees must be fully and promptly reported to the trustees

24. Irregularities in Proceedings

- 24.1 Subject to sub-clause (2) of this clause, all acts done by a meeting of Trustees, or of a committee of trustees, shall be valid notwithstanding the participation in any vote of a trustee:
- a) Who was disqualified from holding office.
 - b) Who had previously retired or who had been obliged by the constitution to vacate office.
 - c) Who was not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise.

If, without:

- a) The vote of that trustee; and
 - b) That trustee being counted in the quorum,
 - c) The decision has been made by a majority of the trustees at a quorate meeting.
- 24.2 Sub-clause (1) of this clause does not permit a trustee to keep any benefit that may be conferred upon him or her by a resolution of the trustees or of a committee of trustees if the resolution would otherwise have been void.
- 24.3 No resolution or act of
- a) The trustees
 - b) Any committee of the trustees, or
 - c) The charity in general meeting
- 24.4 Shall be invalidated by reason of the failure to give notice to any trustee or member or by reason of any procedural defect in the meeting unless it is shown that the failure or defect has materially prejudiced a member or the beneficiaries of the charity.

25. Minutes

- 25.1. The trustees must keep minutes of all:
- a) Appointments of officers and trustees made by the trustees.
 - b) Proceedings at meetings of the charity.
 - c) Meetings of the trustees and committees of trustees including;
 - 1) The names of the trustees present at the meetings;
 - 2) The decisions made at the meetings; and
 - 3) Where appropriate the reasons for their decisions.

26. Accounts, Annual Report, Annual Return

- 26.1 The trustees must comply with their obligations under the Charities Act 1993 with regard to:
- a) The keeping of accounting records for the charity;
 - b) The preparation of annual statements of account for the charity
 - c) The transmission of the statements of account to the Commission;
 - d) The preparation of an Annual Report and its transmission to the Commission
 - e) The preparation of an Annual Return and its transmission to the Commission
- 26.2 Accounts must be prepared in accordance with the provisions of any Statement of Recommended Practice issued by the Commission, unless the trustees are required to prepare accounts in accordance with the provisions of such a Statement prepared by another body.

27. Registered Particulars

The trustees must notify the Commission promptly of any changes to the charity's entry on the Central Register of Charities.

28. Repair and Insurance

The trustees must insure suitably in respect of public liability and employers' liability.

29. Notices

- 29.1 Any notice which requires to be given to a member under this constitution shall be in writing or given using electronic communications. Such a notice may either be sent to the member by e-mail, given personally to the member or sent by post in a pre-paid envelope addressed to the member at the address last intimated by him/her to the association.
- 29.2 A member who does not register an address whether postal or electronic shall not be entitled to receive any notice from the charity.
- 29.3 A notice shall be deemed to be given 48 hours after the envelope containing it is posted, or for an electronic communication, 48 hours after it is sent.

30. Rules

- 30.1 The trustees may from time to time make rules or bye-laws for the conduct of their business.
- 30.2 The by-laws may regulate the following matters but are not restricted to them.
- a) The admission of members to the charity (including admission of organisations to membership), the rights, privileges, entrance fees, subscriptions and other payments made by those members;
 - b) The conduct of members of the charity in relation to one another, and to the charity's employees and volunteers;
 - c) the procedure at general meeting and meetings of trustees in so far as such procedure is not regulated by this constitution;
 - d) the keeping an authenticating of records
 - e) generally, all such matters as are commonly the subject of the rules of an unincorporated association.
- 30.3 The charity in general meeting has the power to alter, add to or repeal the rules or bye-laws.
- 30.4 The trustees must adopt such means as they think sufficient to bring the rules and bye-laws to the notice of members of the charity.
- 30.5 The rules or bye-laws shall be binding on all members of the charity. No rule or bye-laws shall be inconsistent with, or shall affect or repeal anything contained in, this constitution.

31. Disputes

If a dispute arises between members of the charity about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

32. Interpretation

In this constitution, “connected person” means

- 1) A child, parent, grandchild, grandparent, brother or sister of the trustee;
- 2) The spouse or civil partner of any trustee or of any person falling within paragraph (1) above;
- 3) A person carrying on a business in partnership with the trustee or with any person falling within paragraph 1) or 2) above;
- 4) An institution which is controlled –
 - a) By the trustee or any connected person falling within Paragraphs 1), 2) or 3) above. Or;
 - b) By any two or more persons falling within sub-paragraph 4) a) when taken together
- 5) A body corporate in which –
 - a) The charity trustee or any connected person falling within paragraphs 1) to 3) has a substantial interest; or
 - b) Two or more persons falling within sub-paragraph 5) a) who, when taken together, have a substantial interest.
- 6) Paragraphs 2 to 4 of schedule 5 of the Charities Act 1993 apply for the purposes of interpreting the terms used in this clause.