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Tel 01568 615186

Leominster Museum CIO: Registered Incorporated Charity Number 1162600

www.leominstermuseum.org.uk



& : leominstermuseum



: @leomuseum

## Declaration by incoming Charity Trustee

Both the Charity Commission and (for slightly different reasons) HM Revenue & Customs require us to satisfy ourselves that those involved in the management of the charity\* are not disqualified from acting as charity trustees or unsuitable to be involved as such. They both recommend getting those concerned to sign declarations, which are then to be retained on file by the charity. Although the model forms of declaration that they publish do overlap, it will make for clearer record-keeping to retain the full text of each than to try to combine them.

Please will you therefore:

- complete all items in the Personal Details section below;
- read carefully both of the Declaration sections overleaf, including the Appendix to section 2, and the HMRC notes about their “fit and proper persons” test which accompany this form;
- tick whichever box applies immediately above the signature space, and if relevant give, in the space provided†, full information necessary to clarify or qualify the content of either or both of the printed declarations;
- sign and date the form at the end (keep a copy if you wish); and
- return the original hard copy signed form to the Treasurer or the Secretary.

You should read the CIO’s Constitution and at least the last year’s published Trustees’ Annual Report & Accounts. We strongly recommend also reading the Charity Commission booklets CC3 “The Essential Trustee”‡ and CC10 “The Hallmarks of an Effective Charity”§.

### Section 1 Personal Details

<b>Title</b>	<input type="text"/>	<b>Full Names</b>	<input type="text"/>	
		<b>Home Address</b>	<input type="text"/>	
		Mark X to confirm you have lived here at least 24 months	<input type="checkbox"/>	
		or complete former address overleaf	<input type="text"/>	
			<b>Postcode</b>	<input type="text"/>

\* This extends not just to charity trustees as such but also to senior managers who are not trustees, but this is not relevant to the way the Museum operates currently. The meaning of senior managers for this purpose differs slightly as between the Charity Commission rules and those of HMRC:

- for the Charity Commission definition see <https://www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions#detailed-check---what-a-senior-manager-position-is>
- for HMRC see the first section of the notes from the HMRC helpsheet reproduced below

† Continue on a separate sheet if necessary; in this case please also sign the separate sheet and make sure it is attached to this declaration

‡ [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/617828/CC3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/617828/CC3.pdf)

§ [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387134/CC10\\_LowInk.indd.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387134/CC10_LowInk.indd.pdf)



Name for display on Charity Commission website		<input type="text"/>	
Daytime telephone number	<input type="text"/>	Evening tel. number	<input type="text"/>
Date of Birth	<input type="text"/>		
National Insurance Number	<input type="text"/>	National Identity Card number (if you have one)	<input type="text"/>
Role/proposed role in Leominster Museum CIO	Charity trustee [with specific role:].....		

Only complete this section if you have not lived at your present address for at least 24 months *delete italicised words or complete role*

Previous Home Address	<input type="text"/>		Postcode	<input type="text"/>
	<input type="text"/>			
	<input type="text"/>			

**Section 2 Charity Commission Declaration Wording (v9 01/17, incorporating May 2018 disqualification provisions effective August 2018)**

I declare that:

- I am willing to act as a charity trustee of Leominster Museum CIO (“the charity”);
- I understand the charity’s purposes (objects) and rules set out in its governing document;
- I am not prevented from acting as a trustee for any of the reasons described in the Appendix below;
- I will comply with my responsibilities as a charity trustee as set out in the Charity Commission’s guidance ‘The essential trustee (CC3)’.
- If at any time the charity proposes to pay any trustee for being a trustee, or to pay any trustee or person connected to them for providing goods or services, I will only permit this if it:
  - is in the charity’s best interests,
  - is lawful and authorised, and
  - helps the charity carry out its purposes (or is a necessary by-product of its carrying out its purposes).
- I understand that it’s an offence under section 60(1)(b) of the Charities Act 2011 to knowingly or recklessly provide false or misleading information.

For charities that work with vulnerable people (including children):

- I have read and understood the Charity Commission’s safeguarding guidance \*

**Appendix to section 2 – Disqualification Reasons**

After 1<sup>st</sup> August 2018<sup>†</sup>, you will be automatically disqualified<sup>‡</sup> from acting as a trustee if:

1. You have an **unspent** conviction for any of the following
  - a) an offence involving deception or dishonesty
  - b) a terrorism offence
    - a. to which Part 4 of the Counter-Terrorism Act 2008 applies
    - b. under sections 13 or 19 of the Terrorism Act 2000
  - c) a **money laundering** offence within the meaning of section 415 of the Proceeds of Crime Act 2002
  - d) a **bribery** offence under sections 1, 2, 6 or 7 of the Bribery Act 2010
  - e) an offence of **contravening a Commission Order or Direction** under section 77 of the Charities Act 2011
  - f) an offence of **misconduct in public office, perjury or perverting the course of justice**
  - g) In relation to the above offences, an offence of: attempt, conspiracy, or incitement to commit the offence; aiding, or abetting, counselling or procuring the commission of the offence; or, under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to the offence

\* <https://www.gov.uk/government/publications/safeguarding-children-and-young-people/safeguarding-children-and-young-people>

† For more details of the changes taking effect on 1<sup>st</sup> August 2018, see [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/673799/Auto\\_disqualification\\_table\\_v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/673799/Auto_disqualification_table_v1.1.pdf)

‡ If one of the disqualification reasons does apply, you may be able to apply for a waiver from the Charity Commission which will allow you to take up or continue to act as a trustee; see <https://www.gov.uk/guidance/automatic-disqualification-rules-for-charity-trustees-and-charity-senior-positions#apply-waiver> . If you obtain or have obtained such a waiver, please disclose this by ticking the “with clarification” box below, summarising the waiver in the space provided immediately below that, and attaching a copy of the waiver to this form. If one of these reasons does apply but you intend to apply for a waiver, please note that automatic disqualification applies unless and until any waiver has been formally granted

2. You are **on the sex offenders register** (ie. subject to notification requirements of Part 2 of the Sexual Offences Act 2003)
3. You have an unspent sanction for **contempt of court** for making, or causing to be made, a false statement or for making, or causing to be made, a false statement in a document verified by a statement of truth
4. You have been found guilty of **disobedience to an order or direction of the Commission** under section 336(1) of the Charities Act 2011
5. You are a **designated person** for the purposes of Part 1 of the Terrorist Asset-Freezing etc. Act 2010, or the Al Qaida (Asset Freezing) Regulations 2011
6. You have **previously been removed as an officer, agent or employee of a charity** by the Charity Commission, the Scottish charity regulator, or the High Court, due to misconduct or mismanagement
7. You have **previously been removed as a trustee** of a charity by the Charity Commission, the Scottish charity regulator, or the High Court, due to misconduct or mismanagement
8. You have been **removed from management or control of any body** under section s34(5)(e) of the Charities and Trustee Investment (**Scotland**) Act 2005 (or earlier legislation)
9. You are **disqualified from being a company director**, or have given a disqualification undertaking, and leave has not been granted (as described in section 180 of the Charities Act) for you to act as director of the charity
10. You are currently declared bankrupt (or subject to bankruptcy restrictions or an interim order)
11. You have an individual voluntary arrangement (IVA) to pay off debts with creditors
12. You are subject to a moratorium period under a debt relief order, or a debt relief restrictions order, or an interim order
13. You are subject to an order made under s.429(2) of the Insolvency Act 1986. (Failure to pay under a County Court Administration Order.)

### **Section 3 HM Revenue & Customs Declaration Wording (March 2017 update)**

I declare that:

- I am not disqualified from acting as a charity trustee;
- I have not been convicted of an offence involving deception or dishonesty (**or** any such conviction is legally regarded as spent);
- I have not been involved in tax fraud or other fraudulent behaviour including misrepresentation and/or identity theft;
- I have not used arrangements notified under the Disclosure of Tax Avoidance Schemes (“DOTAS”) rules in Part 7 Finance Act 2004 in respect of which a reference number has been issued under section 311 of Finance Act 2004, where the arrangements featured charitable reliefs or which used a charity, and where my tax position has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final;
- I have not used tax arrangements which have been successfully counteracted under the general anti-abuse rules (see Part 5 of Finance Act 2013 or section 10 National Insurance Contributions Act 2014, as enacted or as amended from time to time) where such counteraction has become final;
- I have not been actively involved in designing and/or promoting tax avoidance schemes featuring charitable reliefs or which used a charity, and I am not:
  - a promoter\* named by HMRC under the Promoters of Tax Avoidance Schemes (POTAS) legislation in Part 5 of Finance Act 2014, or
  - a promoter of any tax arrangements designed or intended to obtain for any person a tax advantage and such tax advantage has successfully counteracted by HMRC under the general anti-abuse rule (see Part 5 of Finance Act 2013 and section 10 National Insurance Contributions Act 2014 as enacted or as amended from time to time) and such counteraction has become final, or
  - a promoter of arrangements notified under DOTAS, in respect of which a reference number has been issued under section 311 of Finance Act 2004, and the tax position of all or any of the users of the arrangements has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final;
- I am not an undischarged bankrupt;
- I have not made compositions or arrangements with my creditors from which I have not been discharged;
- I have not been removed from serving as a charity trustee, or been stopped from acting in a management position within a charity;
- I have not been disqualified from serving as a Company Director; and
- I will at all times seek to ensure the charity’s funds, and charity tax reliefs received by this organisation, are used only for charitable purposes.

\* The meaning of a ‘promoter’ in this context is explained in the Promoters of Tax Avoidance Schemes guidance: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/313987/Promoters\\_of\\_Tax\\_Avoidance\\_Schemes\\_Guidance\\_v1\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313987/Promoters_of_Tax_Avoidance_Schemes_Guidance_v1_0.pdf)

**I accept** office as a charity trustee of Leominster Museum CIO; and

**I confirm** that all the personal details in Section 1 above are accurate, and that all the declarations by me in Sections 2 and 3 above are true, complete and correct ...

- without further clarification
- with the clarification, or subject to the information, in the box below and any continuation sheet attached

Signed.....

Date .....

**NB BEFORE SIGNING PLEASE TICK ONE OR OTHER BOX ABOVE AS APPLICABLE, AND IF RELEVANT PROVIDE ANY APPROPRIATE INFORMATION OR CLARIFICATION IN THE BOX BELOW**

**If there is not enough space in this box, continue on a separate sheet, sign and attach it, and tick here**

*The notes below are reproduced from HMRC's "Fit and proper persons helpsheet and declaration",\* and have not been customised to the Museum's situation except for references to Museum's declaration form instead of "the form below"†*

## Who is this helpsheet for?

This helpsheet and the model declaration are for use by 'managers' of a charity, Community Amateur Sports Club (CASC) or other organisation entitled to UK charity tax reliefs. The term 'managers' applies to the trustees of charities, directors of corporate charities, directors of corporate trustees, CASC officials and any other persons having general control and management over the running of the charity or the application of its assets. For example:

- In a typical small local charity a manager for the purposes of the fit and proper persons test could include the Chairperson, Treasurer, Secretary and the rest of the management committee who would have control over expenditure.
- In a larger charity a manager for the purposes of the fit and proper persons test would include all trustees or directors of a corporate charity but may also extend to certain employees who are able to determine how a significant proportion of the charity's funds are spent. For example, most large charities have a Board of Trustees and an Executive Board of senior employees. In such a case the trustees and members of the Executive Board would be managers of the charity.

If you are a 'manager' of a charity you should read this helpsheet and, if appropriate, sign [the declaration in the Museum's form]. The charity, CASC or other organisation entitled to charity tax reliefs should keep the signed declaration in case HM Revenue & Customs (HMRC) ask to see it. The signed form should not be sent to HMRC unless HMRC asks to see it.

## Why is there a 'fit and proper persons' test?

The 'fit and proper persons' test is a statutory requirement. The test requires that individuals who are 'managers' of the charity, CASC or other organisation are 'fit and proper persons' to be managers of such a body. It exists to ensure that charities, CASCs and other organisations entitled to charity tax reliefs are not managed or controlled by individuals who might misuse the tax reliefs the organisation receives. Unfortunately fraudsters have been known to exploit charity tax reliefs, so the fit and proper persons test exists to help prevent that.

## What does 'fit and proper' mean?

**An individual is 'a fit and proper person' if they ensure, or are likely to ensure, that charity funds and tax reliefs are used only for charitable purposes.**

In signing a declaration like the one [in the HMRC model] you are confirming that you will ensure that funds are used for charitable purposes and also disclosing certain information

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\* [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/597664/Fit-and-proper-persons-helpsheet-and-declaration.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/597664/Fit-and-proper-persons-helpsheet-and-declaration.pdf)

† the text of Section 3 of the Museum's declaration form reproduces the text of the model declaration appearing in HMRC's helpsheet, and the personal details sought in HMRC's model declaration are included in Section 1 of the Museum's declaration form

about your past that may impact on whether or not you are indeed 'a fit and proper person'. When a charity notifies HMRC of certain new managers, HMRC cross-checks that person's details against any information it has and will raise any concerns it has if there is anything to indicate the person may misuse the charity funds and tax reliefs. Factors that may lead to HMRC deciding that an individual manager is not a fit and proper person include where:

- the individual has been involved in tax fraud or other fraudulent behaviour including misrepresentation and/or identity theft
- HMRC has knowledge of the individual's involvement in attacks against, or abuse of, tax repayment systems
- the individual has been removed from acting as a charity trustee by a charity regulator or been disqualified from acting as a charity trustee or company director
- the individual has used arrangements notified under the Disclosure of Tax Avoidance Schemes ("DOTAS") rules in Part 7 Finance Act 2004 in respect of which a reference number has been issued under section 311 of Finance Act 2004, and the arrangements featured charitable reliefs or which used a charity, and their tax position has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final
- the individual has used tax arrangements which have been successfully counteracted under the general anti-abuse rules (see Part 5 of Finance Act 2013 or section 10 National Insurance Contributions Act 2014, as enacted or as amended from time to time) and such counteraction has become final
- the individual has been actively involved in designing and/or promoting tax avoidance schemes featuring charitable reliefs or which used a charity, and they are:
  - a promoter\* named by HMRC under the Promoters of Tax Avoidance Schemes (POTAS) legislation in Part 5 of Finance Act 2014, or
  - a promoter of any tax arrangements designed or intended to obtain for any person a tax advantage and such tax advantage has successfully counteracted by HMRC under the general anti-abuse rule (see Part 5 of Finance Act 2013 and section 10 National Insurance Contributions Act 2014 as enacted or as amended from time to time) and such counteraction has become final, or
  - a promoter of arrangements notified under DOTAS, in respect of which a reference number has been issued under section 311 of Finance Act 2004, and the tax position of all or any of the users of the arrangements has been adjusted by HMRC to wholly or partly remove the tax advantage generated by the arrangements and such adjustments have become final

However, just because a person has been, say, barred from acting as a charity trustee or one of the other points above applies, it does not always follow that the charity will not be eligible for tax reliefs. When considering the application of the fit and proper persons test

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\* The meaning of a 'promoter' in this context is explained in the Promoters of Tax Avoidance Schemes guidance: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/313987/Promoters\\_of\\_Tax\\_Avoidance\\_Schemes\\_Guidance\\_v1\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313987/Promoters_of_Tax_Avoidance_Schemes_Guidance_v1_0.pdf)

to particular managers, HMRC will take account of the likely impact on the charity's tax position. For example any person who has no dealings with HMRC and no control over spending charity funds, even if the person is not a fit and proper person, is unlikely to affect the charity's eligibility to tax reliefs.

### **What do I need to do?**

- If you are confident you will do your best to ensure that charity funds and tax reliefs are used only for charitable purposes and do not need to disclose any information listed on the declaration then you should sign a declaration and give it to the charity.
- If you are confident you will do your best to ensure that charity funds and tax reliefs are used only for charitable purposes but you do need to disclose any information listed on the declaration then you should sign the declaration suitably amended – for example by crossing out the relevant bullet point – and provide details in the final box before you give the declaration to the charity. The charity will then need to decide what to do.

If neither of the above applies you should not sign the declaration.

### **I've signed the declaration so what happens next?**

The charity will keep the declaration and in certain cases pass your details to HMRC. If HMRC have any concerns about you they will contact you to clarify the situation.