

St Ernan's by the Loch

CONSTITUTION

of

St Ernan's by the Loch

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Charities and Trustee Investment (Scotland) Act 2005

Constitution of St Ernan's by the Loch

In this constitution, the following definitions apply throughout:

- “AGM” means an Annual General Meeting.
- “Board” means the Board of Charity Trustees.
- “Charity” means a body entered in the Scottish Charity Register as defined under section 106 of Charities and Trustee Investment (Scotland) Act 2005.
- “Charity Trustees” means the persons having the general control and management of the organisation (The Board).
- “Clauses” means any clause.
- “Clear days” means a period excluding the day when notice is given and the day of the meeting.
- “Community” means the Community area described in Clause 4.
- “GM” means a General Meeting.
- “Individual” means a human/person.
- “Land Reform Act” means the Land Reform (Scotland) Act 2003 and every statutory modification or re-enactment thereof for the time being in force.
- “Members” means those individuals and groups who have joined this organisation.
- “Organisation” means the SCIO whose constitution this relates to.
- “OSCR” Means Office of the Scottish Charity Regulator”
- “Property” means any property, assets or rights, heritable or moveable, wherever situated in the world.
- “SCIO” means Scottish Charitable Incorporated Organisation.
- “Them & their” means individual or groups (either he, she or they).
- “The 2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005 and every statutory modification and re- enactment thereof for the time being in force

These Clauses supersede any model Clauses and any regulations pertaining thereto. Subject to the aforesaid, any words or expressions defined in the 2005 Act shall, if not inconsistent with the subject or context, bear the same meaning as in the Clauses.

GENERAL

Type of organisation

- 1 The organisation will, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO).

Principal Office

- 2 The principal office of the organisation will be in Scotland (and must remain in Scotland).

Name

- 3 The name of the organisation is “St Ernan's by the Loch”

Definition and Purposes

- 4 The organisation has been formed to benefit the communities of the Parish of Iona with Kilfinichen and Kilvickeon and the Ross of Mull, as defined by postcode units PA76, PA66, PA67, PA69 and PA70 (“the Community”), with the Purposes listed in the sub-clauses hereto (“the Purposes”), to be exercised following the principles of sustainable development (where sustainable development means development which meets the needs of the present without compromising the ability of future generations to meet their own needs). The organisation's purposes are:

4.1 the advancement of citizenship or community development,

4.2 the advancement of the arts, heritage, culture or science,

4.3 the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended. Activities are primarily intended for people who have need of them by reason of age, ill health, disability, financial hardship, social or geographical isolation or other disadvantage, and for members of the public.

Powers

- 5 The organisation has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

In particular, (but without limiting the range of powers available under the 2005 Act), the SCIO has power:

5.1 To encourage and develop a spirit of voluntary or other commitment by, or co-operation with, individuals,

unincorporated associations, societies, federations, partnerships, corporate bodies, agencies, undertakings, local authorities, unions, co-operatives, trusts and others and any groups or groupings thereof willing to assist the Organisation to achieve the Purposes.

5.2 To promote and carry out research, surveys and investigations and to promote, develop and manage initiatives, projects and programmes.

5.3 To prepare, organise, promote and implement training courses, exhibitions, lectures, seminars, conferences, events and workshops, to collect, collate, disseminate and exchange information and to prepare, produce, edit, publish, exhibit and distribute clauses, pamphlets, books and other publications, tapes, motion and still pictures, music and drama and other materials, all in any medium.

5.4 To register an interest in land and to exercise the right to buy land under Part 2 or Part 3A of the Land Reform (Scotland) Act 2003 including any statutory amendment or re-enactment thereof for the time being in force ("the Land Reform Act").

5.5 To purchase, take on lease, hire, or otherwise acquire any property suitable for the organisation.

5.6 To construct, convert, improve, develop, conserve, maintain, alter and demolish any buildings or erections whether of a permanent or temporary nature, and manage and operate or arrange for the professional or other appropriate management and operation of the organisation's property.

5.7 To sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the property of the organisation.

5.8 To establish and administer a building fund or funds.

5.9 To employ, contract with, train and pay such staff (whether employed or self-employed) as are considered appropriate for the proper conduct of the activities of the organisation.

5.10 To take such steps as may be deemed appropriate for the purpose of raising funds for the activities of the organisation.

5.11 To accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust.

5.12 To borrow or raise money for the Purposes and to give security in support of any such borrowings by the organisation and/or in support of any obligations undertaken by the organisation.

5.13 To set aside funds not immediately required as a reserve or for specific purposes.

5.14 To invest any funds which are not immediately required for the activities of the organisation in such investments as may be considered appropriate, which may be held in the name of a nominee organisation under the instructions of the Board of Trustees, and to dispose of, and vary, such investments.

5.15 To establish, manage and/or support any other charity, and to make donations for any charitable purpose falling within the purposes.

5.16 To establish, operate and administer and/or otherwise acquire any separate trading organisation or association, whether charitable or not.

5.17 To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the organisation and to enter into any arrangement for co-operation, mutual assistance, or sharing profit with any charitable organisation.

5.18 To enter into contracts to provide services to or on behalf of others.

5.19 To effect insurance of all kinds (which may include indemnity insurance in respect of Trustees and employees).

5.20 To oppose, or object to, any application or proceedings which may prejudice the interests of the organisation.

5.21 To pay the costs of forming the organisation and its subsequent development.

Liability of members

- 6 No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the members - either in the course of the organisation's existence or on dissolution - except where this is done in direct furtherance of the organisation's charitable purposes and in the circumstances provided for in clause 129.
- 7 The members of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is

wound up; accordingly, if the organisation is unable to meet its debts, the members will not be held responsible.

- 8 The members and Charity Trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

General structure

- 9 The structure of the organisation consists of:-

9.1 Members—comprising:

(a) Ordinary Members (who have the right to attend the Annual General Meeting (AGM) and any General Meeting (GM) and have important powers under these Clauses and the Act, who elect people to serve as Trustees and take decisions in relation to any changes to these Clauses), and

(b) Associate Members; and

9.2 Charity Trustees—comprising:

(a) Elected Charity Trustees and

(b) Appointed and/or co-opted Charity Trustees, who hold regular meetings between each AGM, and in particular are responsible for monitoring the charity's financial position, setting the strategy and policy, and generally controlling and supervising the activities of the organisation.

- 10 The following conditions apply to the structure:

10.1 The organisation shall have no fewer than 4 members at any time; and

10.2 At least half of the members of the organisation are members of the Community; and

10.3 In the event that the number of members falls below 4 or that at least three quarters of the members of the organisation do not consist of members of the Community, the Board may conduct essential business to ensure the admission of sufficient Ordinary Members to achieve the minimum number and/or take steps to maintain the majority.

- 11 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

MEMBERSHIP

Qualifications for membership

- 12 The members of the organisation shall consist of those individuals who made the application for registration of the organisation, and such other individuals as are admitted to membership under the following clauses. Membership of the organisation is open to:

12.1 Ordinary Members: those individuals aged 16 and over who:

(a) are resident in the Community; and

(b) are entitled to vote at a local government election in a polling district that includes the Community or part of it; and

(c) who support the purposes;

12.2 Associate Members: those individuals who:

(a) are not resident in the Community, and

(b) support the purposes.

Associate Members are neither eligible to stand for election to the Board nor to vote at any General Meeting.

- 13 Declaring that, if a member ceases to comply with any of the criteria at Clauses 12.1 and 12.2, they will be obliged to inform the organisation and will thereafter have membership reclassified in terms of either Clauses 12.1 and 12.2, and that if the organisation becomes aware of changes itself it will so reclassify the member and notify them accordingly.

- 14 Employees of the organisation are not eligible for membership.

Application for membership

- 15 Any person who wishes to become a member must sign an application for membership in such written form as the Board prescribe.

- 16 The applicant must be admitted by the Board at its next board meeting, provided the conditions set out in Clause 12 are met.

- 17 The Board must welcome each applicant promptly (on paper or by e-mail) as a member.

Membership subscription

18 No membership subscription will be payable.

Register of members

19 The board must keep a register of members, setting out

(a) for each current member, their full name and address, and the date on which they were registered as a member of the organisation; and

(b) for each former member, for at least six years from the date on which they ceased to be a member, their full name and the date on which they ceased to be a member.

20 The board must ensure that the register of members is updated within 28 days of any change:

(a) which arises from a resolution of the board or a resolution passed by the members of the organisation; or

(b) which is notified to the organisation.

21 If a member or Charity Trustee of the organisation requests a copy of the register of members, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a member (rather than a Charity Trustee), the board may provide a copy which has the addresses blanked out.

Withdrawal from membership

22 Any person who wants to withdraw from membership must give a written notice of withdrawal to the organisation, signed by them; they will cease to be a member as from the time when the notice is received by the organisation.

Transfer of membership

23 Membership of the organisation may not be transferred by a member.

Re-registration of members

24 The board may, at any time, issue notices to the members requiring them to confirm that they wish to remain as members of the organisation, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the board.

25 If a member fails to provide confirmation to the board (in writing or by e-mail) that they wish to remain as a member of the organisation before the expiry of the 28-day period referred to in clause 24, the board may expel them from membership.

- 26 A notice under clause 24 will not be valid unless it refers specifically to the consequences (under clause 25) of failing to provide confirmation within the 28-day period.

Expulsion from membership

- 27 Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a members' meeting, providing the following procedures have been observed:-
- (a) at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;
- (b) the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

Termination

- 28 Membership of the organisation will terminate on death.

DECISION-MAKING BY THE MEMBERS

Members' meetings

- 29 The board must arrange a meeting of members (an annual members' meeting or "AGM") in each calendar year.
- 30 The gap between one AGM and the next must not be longer than 15 months.
- 31 Notwithstanding clause 29, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.
- 32 The business of each AGM must include:-
- (a) a report by the chair on the activities of the organisation;
- (b) consideration of the annual accounts of the organisation;
- (c) the election/re-election of Charity Trustees, as referred to in clauses 69 to 72.
- 33 The board may arrange a special members' meeting at any time.

Power to request the board to arrange a special members' meeting

- 34 The board must arrange a special members' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more members) by members who amount to 5% or more of the total membership of the organisation at the time, providing:
- (a) the notice states the purposes for which the meeting is to be held; and
 - (b) those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.
- 35 If the board receive a notice under clause 34, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

Notice of members' meetings

- 36 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 37 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- (a) in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
 - (b) in the case of any other resolution falling within clause 53 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 38 The reference to "clear days" in clause 36 shall be taken to mean that, in calculating the period of notice,
- (a) the day after the notices are posted (or sent by e-mail) should be excluded; and
 - (b) the day of the meeting itself should also be excluded.
- 39 Notice of every members' meeting must be given to all the members of the organisation, and to all the Charity Trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.

- 40 Any notice which requires to be given to a member under this constitution must be: -
- (a) sent by post to the member, at the address last notified by them to the organisation; or (b) sent by e-mail to the member, at the e-mail address last notified by them to the organisation.
- 41 If members and Charity Trustees are to be permitted to participate in a members' meeting by way of audio and/or audio-visual link(s) (see clause 44), the notice (or notes accompanying the notice) must:
- (a) set out details of how to connect and participate via that link or links; and
- (b) (particularly for the benefit of those members who may have difficulties in using a computer or laptop for this purpose) draw members' attention to the following options:
- (i) participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
- (ii) (where attendance in person is to be permitted, either on an open basis or with a restriction on the total number who will be permitted to attend) attending and voting in person at the meeting;
- (iii) submitting questions and/or comments in advance of the meeting
- 42 Where a members' meeting is to involve participation *solely* via audio and/or audio-visual link(s), the notice (or notes accompanying the notice) must include a statement inviting members to submit questions and/or comments in advance of the meeting, which (subject to clause 43) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.
- 43 Where clause 42 applies, the chairperson of a members' meeting will not require to read out or address any questions or comments submitted by members in advance of the meeting if and to the extent that the questions or comments are of an unreasonable length (individually or taken together), or contain material which is defamatory, racist or otherwise offensive.

Procedure at members' meetings

- 44 The board may if they consider appropriate (and must, if this is required under clause 45) make arrangements for members and Charity Trustees to participate in members' meetings by way of

audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting, providing:

(a) the means by which members and Charity Trustees can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all or a significant proportion of the membership - a barrier to participation;

(b) the notice calling the meeting (or notes accompanying the notice) contains the information required under clause 41; and

(c) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and Charity Trustees who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those members and Charity Trustees (if any) who are attending in person (and vice versa).

- 45 If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed members' meeting would not be possible or advisable for all or a significant proportion of the membership, the board must make arrangements for members and Charity Trustees to participate in that members' meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting; and on the basis that the requirements set out in paragraphs (a) to (c) of clause 44 will apply.
- 46 A members' meeting may involve two or more members or Charity Trustees participating via attendance in person while other members and/or Charity Trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
- 47 The quorum for a members' meeting shall be 6 Ordinary Members, being present in person. No business shall be dealt with at any general meeting unless a quorum is present.
- 48 An individual participating in a members' meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a member will be deemed to be in attendance) at the meeting.
- 49 If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with

the business (or remaining business) which was intended to be conducted.

- 50 The chair of the organisation should act as chairperson of each members' meeting.
- 51 If the chair of the organisation is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the Charity Trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 52 The Chairperson of the meeting shall endeavour to achieve consensus where possible but, if necessary, questions arising shall be decided by being put to the vote.

Voting at members' meetings

- 53 Every member has one vote, which must be given personally (subject to clause 57).
- 54 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed here in clause 54.

The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 61):

- (a) a resolution amending the constitution;
 - (b) a resolution expelling a person from membership under clause 27;
 - (c) a resolution directing the board to take any particular step (or directing the board not to take any particular step);
 - (d) a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
 - (e) a resolution to the effect that all of the organisation's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
 - (f) a resolution for the winding up or dissolution of the organisation.
- 55 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

- 56 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting) asks for a secret ballot.
- 57 Where members are participating in a meeting via an audio or audio- visual link, they may cast their votes on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically - and providing the board have no reasonable grounds for suspicion as regards authenticity, any such action shall be deemed to be a vote cast personally via a show of hands.
- 58 The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.
- 59 Where members are participating in a meeting via audio and/or audio- visual links, the chairperson's directions regarding how a secret ballot is to be conducted may allow those members to cast their votes on the secret ballot via any or all of the methods referred to in clause 57, providing reasonable steps are taken to preserve anonymity (while at the same time, addressing any risk of irregularities in the process).

Technical objections to remote participation in members' meetings

- 60 This constitution imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at members' meetings; providing the arrangements made by the board in relation to a given members' meeting (and the manner in which the meeting is conducted) are consistent with those requirements:
- (a) a member cannot insist on participating in the members' meeting, or voting at the members' meeting, by any particular means;
 - (b) the members' meeting need not be held in any particular place;
 - (c) the members' meeting may be held without any particular number of those participating in the meeting being present in person at the same place (but, notwithstanding that, the quorum requirements - taking account of those participating via audio and/or audio-visual links - must still be met);
 - (d) the members' meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting;

(e) a member will be able to exercise the right to vote at the members' meeting (including where a secret ballot is to be held) by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by the board) and which permits that member's vote to be taken into account in determining whether or not a resolution is passed.

Written resolutions by members

- 61 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a members' meeting, provided that the terms of clause 54 are followed; the date of the resolution will be taken to be the date on which the last member agreed to it.

Minutes

- 62 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 63 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 64 The board shall make available copies of the minutes referred to in clause 62 to any member of the public requesting them; but on the basis that the board may exclude confidential material to the extent permitted under clause 120.

BOARD

Number of Charity Trustees

- 65 The maximum number of Charity Trustees is 12; out of that:
(a) no more than 9 shall be Charity Trustees who were elected/appointed under clauses 70 and 71 (or deemed to have been appointed under clause 69), and therefore resident in the Community; and
(b) no more than 3 shall be Charity Trustees who were co-opted under the provisions of clauses 74 and 75.
- 66 The minimum number of Charity Trustees is 3, of whom those elected under clauses 70 and 71 (or deemed to have been appointed at clause 69), must always outnumber those appointed under clauses 74 and 75.

Eligibility

- 67 A person shall not be eligible for election/appointment to the board under clauses 70 to 73 unless they are a member of the

organisation; a person appointed to the board under clause 74 need not, however, be a member of the organisation.

68 A person will not be eligible for election or appointment to the board if they are: -

(a) disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005; or (b) an employee of the organisation.

Initial Charity Trustees

69 The individuals who signed the Charity Trustee declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the members as Charity Trustees with effect from the date of incorporation of the organisation.

Election, retirement, re-election

70 At each AGM, the members may elect any member (unless they are debarred from membership under clause 68) to be a Charity Trustee.

71 The board may at any time appoint any member (unless they are debarred from membership under clause 68) to be a Charity Trustee.

72 At each AGM, all of the Charity Trustees elected/appointed under clauses 70 and 71 (and, in the case of the first AGM, those deemed to have been appointed under clause 69) shall retire from office – but shall then be eligible for re-election under clause 70.

73 A Charity Trustee retiring at an AGM will be deemed to have been re-elected unless: -

(a) they advise the board prior to the conclusion of the AGM that they do not wish to be re-appointed as a Charity Trustee; or

(b) an election process was held at the AGM and they were not among those elected/re-elected through that process; or

(c) a resolution for the re-election of that Charity Trustee was put to the AGM and was not carried.

Appointment/re-appointment of co-opted Charity Trustees

74 In addition to their powers under clause 71, the board may at any time appoint any non-member of the organisation to be a Charity Trustee (subject to clause 65, and providing they are not debarred from membership under clause 68) either on the basis that they have been nominated by a body with which the organisation has close

contact in the course of its activities, or on the basis that they have specialist experience and/or skills which could be of assistance to the board.

- 75 At each AGM, all of the Charity Trustees appointed under clause 74 shall retire from office – but shall then be eligible for re-appointment under that clause.
- 76 A co-opted Charity Trustee can be removed from office at any time by a simple majority of the Board.
- 77 For the avoidance of doubt, a co-opted Charity Trustee may participate fully in all Board meetings which they attend, and is eligible to vote at them.

Termination of office

- 78 A Charity Trustee will automatically cease to hold office if: -
- (a) they become disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - (b) they become incapable for medical reasons of carrying out their duties as a Charity Trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
 - (c) (in the case of a Charity Trustee elected/appointed under clauses 70 to 73) they cease to be a member of the organisation;
 - (d) they become an employee of the organisation;
 - (e) they give the organisation a notice of resignation, signed by them;
 - (f) they are absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove them from office;
 - (g) they are removed from office by resolution of the board on the grounds that they are considered to have committed a material breach of the code of conduct for Charity Trustees (as referred to in clause 95);
 - (h) they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
 - (i) they are removed from office by a resolution of the members passed at a members' meeting.
- 79 A resolution under paragraph (g), (h) or (i) shall be valid only if: -

(a) the Charity Trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed; (b) the Charity Trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and

(b) (in the case of a resolution under paragraph (g) or (h)), at least two thirds (to the nearest round number) of the Charity Trustees then in office vote in favour of the resolution.

Register of Charity Trustees

80 The board must keep a register of Charity Trustees, setting out:-

(a) for each current Charity Trustee their full name and address; the date on which they were appointed as a Charity Trustee; and any office held by them in the organisation;

(b) for each former Charity Trustee, for at least 6 years from the date on which they ceased to be a Charity Trustee, the name of the Charity Trustee; any office held by them in the organisation; and the date on which they ceased to be a Charity Trustee.

81 The board must ensure that the register of Charity Trustees is updated within 28 days of any change:-

(a) which arises from a resolution of the board or a resolution passed by the members of the organisation; or

(b) which is notified to the organisation.

82 If any person requests a copy of the register of Charity Trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a Charity Trustee of the organisation, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

Office-bearers

83 The Charity Trustees must elect (from among themselves) a chair, a treasurer and a secretary.

84 In addition to the office-bearers required under clause 83, the Charity Trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

85 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 83 or 84.

86 A person elected to any office will automatically cease to hold that office: -

(a) if they cease to be a Charity Trustee; *or*

(b) if they give to the organisation a notice of resignation from that office, signed by them.

Powers of board

87 Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the organisation.

88 A meeting of the board at which a quorum (see clause 100) is present may exercise all powers exercisable by the board.

89 The members may, by way of a resolution passed in compliance with clause 54 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.

Charity Trustees - general duties

90 Each of the Charity Trustees has a duty, in exercising functions as a Charity Trustee, to act in the interests of the organisation; and, in particular, must:-

(a) seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;

(b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

(c) in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:

put the interests of the organisation before that of the other party; or

where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other Charity Trustees with regard to the matter in question;

(d) ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.

91 In addition to the duties outlined in clause 90, all of the Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring: -

(a) that any breach of any of those duties by a Charity Trustee is corrected by the Charity Trustee concerned and not repeated; and

(b) that any trustee who has been in serious or persistent breach of those duties is removed as a trustee.

92 Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a Charity Trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest; and (subject to clause 93 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), they may retain any personal benefit which arises from that arrangement.

93 No Charity Trustee may serve as an employee (full time or part time) of the organisation; and no Charity Trustee may be given any remuneration by the organisation for carrying out their duties as a Charity Trustee.

94 The Charity Trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for Charity Trustees

95 Each of the Charity Trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.

96 The code of conduct referred to in clause 95 shall be supplemental to the provisions relating to the conduct of Charity Trustees contained in this constitution and the duties imposed on Charity Trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

DECISION-MAKING BY THE Charity Trustees

Notice of board meetings

- 97 Any Charity Trustee may call a meeting of the board or ask the secretary to call a meeting of the board.
- 98 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.
- 99 If Charity Trustees are to be permitted to participate in a board meeting by way of audio and/or audio-visual link(s), the Charity Trustees must, in advance of the meeting, be provided with details of how to connect and participate via that link or links; and (particularly for the benefit of those Charity Trustees who may have difficulties in using a computer or laptop for this purpose) the Charity Trustees' attention should be drawn to the following options:
- (a) participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
 - (b) (where attendance in person is to be permitted, either on an open basis or subject to a restriction on the total number who will be permitted to attend) the ability to attend the meeting in person.

Procedure at board meetings

- 100 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 4 Charity Trustees, present in person.
- 101 An individual participating in a board meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a Charity Trustee, will be deemed to be in attendance) at the meeting.
- 102 If at any time the number of Charity Trustees in office falls below the number stated as the quorum in clause 100, the remaining Charity Trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.
- 103 The chair of the organisation should act as chairperson of each board meeting.
- 104 If the chair is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson),

- the Charity Trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 105 Every Charity Trustee has one vote, which must be given personally (subject to clause 111).
- 106 All decisions at board meetings will be made by majority vote.
- 107 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 108 The board may if they consider appropriate (and must, if this is required under article 109), allow Charity Trustees to participate in board meetings by way of an audio and/or audio-visual link or links which allow them to hear and contribute to discussions at the meeting, providing:
- (a) the means by which Charity Trustees can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a significant proportion, of the Charity Trustees - a barrier to participation; and
 - (b) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those Charity Trustees who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those Charity Trustees (if any) who are attending in person (and vice versa).
- 109 If restrictions arising from public health legislation, directions or guidance are likely to mean that attendance in person at a proposed board meeting would not be possible or advisable for one or more of the Charity Trustees, the board must make arrangements for Charity Trustees to participate in that board meeting by way of audio and/or audio-visual link(s); and on the basis that:
- (a) the requirements set out in paragraphs (a) and (b) of clause 108 will apply; and
 - (b) the board must use all reasonable endeavours to ensure that all Charity Trustees have access to one or more means by which they may hear and contribute to discussions at the meeting.
- 110 A board meeting may involve two or more Charity Trustees participating via attendance in person while other Charity Trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.

- 111 Where a Charity Trustee or Charity Trustees are participating in a board meeting via an audio or audio-visual link, they may cast their vote on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically.
- 112 The board may, at its discretion, allow any person to attend (whether in person or by way of an audio or audio-visual link) and speak at a board meeting notwithstanding that they are not a Charity Trustee - but on the basis that they must not participate in decision-making.
- 113 A Charity Trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.
- 114 For the purposes of clause 113: -
- (a) an interest held by an individual who is “connected” with the Charity Trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc.) shall be deemed to be held by that Charity Trustee;
 - (b) a Charity Trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 115 The principles set out in clause 60 (technical objections to remote participation) shall apply in relation to remote participation and voting at board meetings, as if each reference in that clause to a member were a reference to a Charity Trustee and each reference in that clause to a members’ meeting were a reference to a board meeting.
- 116 A resolution agreed to in writing (or by e-mail) by a majority of the Charity Trustees then in office shall (subject to clauses 117 and 118) be as valid as if duly passed at a board meeting.
- 117 A resolution under clause 116 shall not be valid unless a copy of the resolution was circulated to all of the Charity Trustees, along with a cut-off time (which must be reasonable in the circumstances) for notifications under clause 118.
- 118 If a resolution is circulated to the Charity Trustees under clause 117, any one or more Charity Trustees may, following receipt of a copy of

the resolution, notify the secretary that they consider that a board meeting should be held to discuss the matter which is the subject of the resolution; and if any such notification is received by the secretary prior to the cut-off time:

(a) the secretary must convene a board meeting accordingly, and on the basis that it will take place as soon as reasonably possible;

(b) the resolution cannot be treated as valid under clause 116 unless and until that board meeting has taken place;

(c) the board may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that board meeting that the resolution should be treated as invalid, notwithstanding that it had previously been agreed to in writing (or by e-mail) by a majority of the Charity Trustees then in office.

Minutes

- 119 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 120 The minutes to be kept under clause 119 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 121 The board shall (subject to clause 122) make available copies of the minutes referred to in clause 119 to any member of the public requesting them.
- 122 The board may exclude from any copy minutes made available to a member of the public under clause 121 any material which the board considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

ADMINISTRATION

Delegation to sub-committees

- 123 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one Charity Trustee, but other members of a sub-committee need not be Charity Trustees.

- 124 The board may also delegate to the chair of the organisation (or the holder of any other post) such of their powers as they may consider appropriate.
- 125 When delegating powers under clause 123 or 124, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 126 Any delegation of powers under clause 123 or 124 may be revoked or altered by the board at any time.
- 127 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

Constraints on payments/benefits to members and Charity Trustees

- 128 The income and property of the organisation shall be applied solely towards promoting the Purposes and do not belong to the members. Any surplus income or assets of the organisation are to be applied for the benefit of the Community in ways consistent with the Purposes, as they are set out in this constitution.
- 129 No benefit (whether in money of kind) shall be given by the organisation to any member or Charity Trustee except the possibility of:
- 129.1 repayment of out-of-pocket expenses to Charity Trustees (subject to prior agreement by the Board of Charity Trustees);
or
- 129.2 reasonable remuneration to any member or Charity Trustee in return for specific services actually rendered to the organisation (not being of a management nature normally carried out by a Trustee of an organisation); or
- 129.3 payment of interest at a rate not exceeding the commercial rate on money lent to the organisation by any member or Charity Trustee; or
- 129.4 payment of rent at a rate not exceeding the open market rent for property let to the organisation by any member or Charity Trustee; or
- 129.5 the purchase of property from any member or Charity Trustee provided that such purchase is at or below market value or the sale of property to any member or Charity Trustee provided that such sale is at or above market value; or
- 129.6 payment by way of any indemnity, where appropriate;

129.7 and in any such event the terms of clauses 113 and 114 shall specifically apply.

Finances and accounts

- 130 The board must ensure that proper accounting records are kept for the organisation, in accordance with the requirements of the 2005 Act and other relevant regulations.
- 131 The organisation must use and apply its property in furtherance of its purposes and in accordance with its constitution.
- 132 The banking account or accounts of the organisation shall be kept in such bank or building society and/or banks of building societies as the Board shall from time to time by resolution determine
- 133 The accounting records shall be maintained by the Treasurer (if there is one) and overseen by the Principal Officer (if there is one), or otherwise by, or as determined by, the Board. Such records shall be kept at such place or places as the Board thinks fit and shall always be open to the inspection of the Trustees.
- 134 Subject to clause 135, the on-paper signatures of two out of three signatories appointed by the board will be required in relation to all operations amounting to £500 or more (other than the lodging of funds) on the bank and building society accounts held by the organisation (for operations amounting to less than £500, authorisation from the same signatories is required but may be given by email or verbally); at least one out of the two signatures (or one out of the two authorising communications) must be that of a Charity Trustee.
- 135 Where the organisation uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 134.
- 136 The board must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.
- 137 At each AGM, the Board shall provide the members with a copy of the accounts for the period since the last preceding accounting reference date (or, in the case of the first account, since the incorporation of the organisation). The accounts shall be accompanied by proper reports of the Board.

MISCELLANEOUS

Winding-up

- 138 If the organisation is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 139 Any surplus assets available to the organisation immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the organisation as set out in this constitution.

Alterations to the constitution

- 140 This constitution may (subject to clause 141) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 54 or by way of a written resolution of the members.
- 141 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (e.g., change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

- 142 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- (a) any statutory provision which adds to, modifies or replaces that Act; and
 - (b) any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph (a) above.
- 143 In this constitution: -
- (a) "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;
- "charitable purpose" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.