

CONSTITUTION OF HUTTON COMMUNITY INITIATIVE SCIO

CONSTITUTION
of
CONSTITUTION OF HUTTON COMMUNITY INITIATIVE SCIO

CONTENTS		
GENERAL	type of organisation, Scottish principal office, name, purposes, powers, application of income and property, liability, general structure	clauses 1 - 13
MEMBERS	categories of members, qualifications for membership, application, minimum number, subscription, arrangements involving the SCIO's website, register of members, withdrawal, transfer, expulsion, termination	clauses 14 - 28
DECISION-MAKING BY THE MEMBERS	members' meetings, power to request members' meeting, notice, procedure at members' meetings, voting at members' meetings, written resolutions, minutes	clauses 29 - 72
BOARD (CHARITY TRUSTEES)	categories, number, eligibility, initial charity trustees, election/retiral/re-election (Member Trustees), appointment/re-appointment (Co-opted Trustees), termination of office, register of charity trustees, office bearers, powers, general duties, code of conduct	clauses 73 - 110
DECISION-MAKING BY THE CHARITY TRUSTEES	notice, procedure at board meetings, minutes	clauses 111 - 140
ADMINISTRATION	sub-committees, operation of accounts, secretary, accounting records and annual accounts	clauses 141 - 150
MISCELLANEOUS	winding up, alterations to the constitution, interpretation	clauses 151 - 157

GENERAL

Type of organisation

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

Scottish 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 (referred to below as the “SCIO”) is “Hutton Community Initiative SCIO”, also referred to as “Hutton Community Initiative” or “HCI”.

Purposes

- 4 The SCIO’s purposes are to benefit principally the Hutton community which comprises of the properties listed on the register attached (Appendix 1) (“the Community”) with the following objects:
 - 4.1 The distribution of Community Benefit Funds from Windfarm monies and/or funds from other sources within the Hutton Community to undertake projects and/or activities which meet the criteria agreed by the SCIO and the donor and which fall within the SCIO’s other objects.
 - 4.2 The advancement of citizenship and community development, including the advancement of rural regeneration principally within the Community;
 - 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.
 - 4.4 The advancement of education;
 - 4.5 The advancement of the arts, heritage, culture and science;
 - 4.6 The advancement of environmental protection or improvement.

But only to the extent that the above purposes are consistent with furthering the achievement of sustainable development.

Powers

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

- 6 In particular, (but without limiting the range of powers available under the Charities and Trustee Investment (Scotland) Act 2005) the SCIO has power:
- 6.1 to register any interest in land and to exercise any right to buy under Part 2 of the Land Reform (Scotland) Act 2003;
 - 6.2 to exercise any right to buy under Part 3A of the Land Reform (Scotland) Act 2003;
 - 6.3 to exercise any right to buy under Part 5 of the Land Reform (Scotland) Act 2016; and
 - 6.4 to make any participation request under Part 3 of the Community Empowerment (Scotland) Act 2015 and/or any asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015, and to take any appropriate steps following upon the making of any such request.

Application of income and property

- 7 The income and property of the SCIO shall be applied solely towards promoting the SCIO's objects (as set out in clause 4) and in particular (but without limiting the generality of that provision) any surplus funds or assets of the SCIO must be applied for the benefit of the Community.
- 8 No part of the income or property of the SCIO may be paid or transferred (directly or indirectly) to the members of the SCIO, whether by way of dividend, bonus or otherwise - either in the course of the SCIO's existence or on dissolution - except where this is done in direct furtherance of the SCIO's charitable purposes.
- 9 No benefit (whether in money or in kind) shall be given by the SCIO to any charity trustee except:
- (a) repayment of out-of-pocket expenses; or
 - (b) reasonable payment in return for particular services (outwith the ordinary duties of a charity trustee) actually rendered to the SCIO.

Liability of members

- 10 The members of the SCIO have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up; accordingly, if the SCIO is unable to meet its debts, the members will not be held responsible.
- 11 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005, or subsequent

Act; and clause 10 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

12 The structure of the SCIO consists of:-

12.1 the MEMBERS - comprising (i) Ordinary Members (who have the right to attend members' meetings (including any annual general meeting) and have important powers under the constitution; in particular, the Ordinary Members elect people to serve on the board and take decisions on changes to the constitution itself), and (ii) the Junior Members;

12.2 the BOARD - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the SCIO; for example, the board is responsible for monitoring and controlling the financial position of the SCIO.

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

MEMBERS

Categories of members

14 For the purposes of this constitution: -

14.1 "Ordinary Member" means a member who fulfils the qualifications set out in clause 17; "Ordinary Membership" shall be interpreted accordingly;

14.2 "Junior Member" means a member admitted under clause 18; "Junior Membership" shall be interpreted accordingly

15 Junior Members are not eligible to stand for election to the Board nor are they eligible to vote at any members' meeting.

Qualifications for membership

16 The members of the SCIO shall consist of all individuals resident in the Community (as defined in clause 4) subject to clauses 17 and 18.

17 Ordinary Membership shall (subject to clause 20) be open to any individual aged 18 years or over who:

17.1 is resident in the Community (as defined in clause 4);

- 17.2 supports the objects and activities of the SCIO.
- 18 Junior Membership shall (subject to clause 20) be open to any individual aged between 14 and 18 who:
- 18.1 is resident in the Community (as defined in clause 4);
- 18.2 supports the objects and activities of the SCIO.
- 19 An individual shall automatically cease to be a member if they cease to fulfil any of the qualifications for Ordinary Membership set out in clause 17 or for Junior Membership set out in clause 18.
- 20 Employees of the SCIO are not eligible for membership; a person who becomes an employee of the SCIO after admission to membership shall automatically cease to be a member.

Membership subscription

- 21 No membership subscription will be payable.

Register of members

- 22 The board must keep a register of members. The register will set out:
- 22.1 The address and postcode of each property within the Community.
- 22.2 for each former member - for at least six years from the date on which they ceased to be a member:
- 22.2.1 their name; and
- 22.2.2 the date on which they ceased to be a member.
- 23 The board must ensure that the register of members is updated within 28 days of any change:
- 23.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
- 23.2 which is notified to the SCIO.
- 24 If a member or charity trustee of the SCIO 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.

Withdrawal from membership

- 25 Any individual who wants to withdraw from membership must submit a written notice of withdrawal to the SCIO, signed by them; they will

cease to be a member as from the time when the notice is received by the SCIO.

Transfer of membership

26 Membership of the SCIO may not be transferred by a member.

Expulsion from membership

27 Any individual 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:-

27.1 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;

27.2 the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

Termination of membership

28 Membership of the SCIO will terminate on death.

DECISION-MAKING BY THE MEMBERS

Members' meetings

29 The board must arrange a meeting of members (an annual general 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 32, an AGM does not need to be held during the calendar year in which the SCIO is formed; but the first AGM must still be held within 15 months of the date on which the SCIO is formed.

32 The business of each AGM must include:-

32.1 a report by the chair on the activities of the SCIO;

32.2 consideration of the annual accounts of the SCIO;

32.3 the election/re-election of charity trustees, as referred to in clauses 82 to 87.

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 (in writing or by email) by 5 members of the SCIO at the time, providing:
- 34.1 the notice states the purposes for which the meeting is to be held; and
 - 34.2 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 A notice under clause 34 may take the form of:
- 35.1 two or more documents in the same terms, each signed by one or more members; and/or
 - 35.2 a number of emails, each issued by a member;
- and the board will be taken to have received the notice on the date on which they receive sufficient documents and/or emails to equal or exceed the 5 threshold referred to in clause 34.
- 36 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

- 37 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 38 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 38.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
 - 38.2 in the case of any other resolution falling within clause 61 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 39 The reference to "clear days" in clause 37 shall be taken to mean that, in calculating the period of notice,
- 39.1 the day after the notice is posted/emailed should be excluded; and
 - 39.2 the day of the meeting itself should also be excluded.

- 40 Notice of every members' meeting must be given to all the members of the SCIO, 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.
- 41 Any notice which requires to be given to a member under this constitution must be: -
- 41.1 sent by post to the member; *or*
 - 41.2 sent by e-mail to the member, at the e-mail address last notified by them to the SCIO; *or*
 - 41.3 notified on social media
- 42 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 43 If members and charity trustees are to be permitted to participate in a members' meeting by way of an audio-visual link (see clause 44), the notice (or notes accompanying the notice) must:
- 43.1 set out details of how to connect and participate via that link or links; and
 - 43.2 state if 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 and vote in person at the meeting;
- 44 Where a members' meeting is to involve participation *solely* via audio-visual link, 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 45) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.
- 45 Where clause 44 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

- 46 The board may if they consider appropriate (and must, if this is required under clause 47) make arrangements for members and charity trustees to participate in members' meetings by way of an audio-visual link which allow them to hear and contribute to discussions at the meeting, providing:

- 46.1 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;
 - 46.2 the notice calling the meeting (or notes accompanying the notice) contains the information required under clause 46; and
 - 46.3 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-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).
- 47 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 an audio-visual link which allow them to hear and contribute to discussions at the meeting; and on the basis that the requirements set out in paragraphs 46.1 to 46.3 of clause 46 will apply.
- 48 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-visual link; or it may involve participation solely audio-visual link.
- 49 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 50 An individual participating in a members' meeting via an audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person.
- 51 The quorum for a members' meeting (subject to clause 52) is 7 members entitled to vote (each being an Ordinary Member) present in person.
- 52 A quorum shall not be deemed to be present at any members' meeting unless the Ordinary Members present form a majority of the members present.
- 53 For the avoidance of doubt, Junior Members shall not be counted in determining whether a quorum is present at any members' meeting.
- 54 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.

- 55 The chair of the SCIO should act as chairperson of each members' meeting.
- 56 If the chair of the SCIO 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.
- 57 The chairperson of a members' meeting may, with the consent of the meeting, adjourn the meeting to such date, time and place as the chairperson may determine.

Voting at members' meetings

- 58 Every Ordinary Member has one vote, which must be given personally.
- 59 For the avoidance of doubt, Junior Members shall have no power to vote at members' meetings.
- 60 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 61.
- 61 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 66) providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with clauses 37 to 45:
 - 61.1 a resolution amending the constitution (subject to clause 67);
 - 61.2 a resolution expelling an individual or organisation from membership under clause 27;
 - 61.3 a resolution directing the board to take any particular step (or directing the board not to take any particular step);
 - 61.4 a resolution approving the amalgamation of the SCIO with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
 - 61.5 a resolution to the effect that all of the SCIO'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);

- 61.6 a resolution for the winding up or dissolution of the SCIO.
- 62 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.
- 63 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 and entitled to vote, whether as Ordinary Members) ask for a secret ballot; a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.
- 64 Where members are participating in a meeting via an 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.
- 65 If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.
- 66 Where members are participating in a meeting via audio-visual link, 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 64, providing reasonable steps are taken to preserve anonymity (while at the same time, addressing any risk of irregularities in the process).
- 67 Amendments to the purposes of the SCIO (as set out in clause 4) will require the prior approval of OSCR.

Technical objections to remote participation in members' meetings

- 68 This constitution imposes certain requirements regarding the use of 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:
- 68.1 a member cannot insist on participating in the members' meeting, or voting at the members' meeting, by any particular means;
- 68.2 the members' meeting need not be held in any particular place;
- 68.3 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);

- 68.4 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;
- 68.5 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.

Minutes

- 69 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 70 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.
- 71 Any member may request a copy of the minutes of members' meetings and, provided that the request is reasonable, the SCIO must, subject to clause 72, provide a copy of the minutes to that person within 28 days of the request.
- 72 Where a request for a copy of minutes is made under clause 71, the SCIO may withhold information contained in the minutes provided that the person requesting a copy of the minutes is informed of the reasons for doing so.

BOARD

Categories of charity trustee

- 73 In this constitution:
 - 73.1 "Member Trustee" means a charity trustee (drawn from the membership of the SCIO) elected/appointed under clauses 80 to 85;
 - 73.2 "Co-opted Trustee" means a (non-member) charity trustee appointed by the board under clauses 86 and 87.

Number of charity trustees

- 74 The maximum number of charity trustees is 12; out of that number:

- 74.1 no more than 11 shall be Member Trustees; and
- 74.2 no more than 2 shall be Junior Members; and
- 74.3 no more than 2 shall be Co-opted Trustees.
- 75 At any given time, charity trustees who are also Ordinary Members must form a majority of the total number of charity trustees in office.
- 76 The minimum number of charity trustees shall be 7 of whom a majority must be Member Trustees.

Eligibility

- 77 A person shall not be eligible for election/appointment as a Member Trustee unless he/she is a member of the SCIO; a person appointed as a Co-opted Trustee need not, however, be a member of the SCIO.
- 78 A person will not be eligible for election or appointment as a charity trustee if he/she is: -
 - 78.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005, or subsequent Act; or
 - 78.2 an employee of the SCIO.

Initial charity trustees

- 79 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the SCIO shall be deemed to have been appointed by the members as charity trustees (within the category of "Member Trustees") with effect from the date of incorporation of the SCIO.

Election, retiral, re-election: Member Trustees

- 80 At each AGM, the Ordinary Members may (subject to clauses 74 and 78) elect any member (providing he/she is willing to act) to be a charity trustee (a "Member Trustee").
- 81 The board may (subject to clauses 74 and 78) at any time appoint any member (providing he/she is willing to act) to be a charity trustee (a "Member Trustee").
- 82 At the first AGM, one third (to the nearest round number) of the Member Trustees shall retire from office; the question of which of them is to retire shall be determined by some random method.
- 83 At each AGM (other than the first)
 - 83.1 any Member Trustee appointed under clause 81 during the period since the preceding AGM shall retire from office;

- 83.2 out of the remaining Member Trustees, one third (to the nearest round number) shall retire from office.
- 84 The charity trustees to retire under paragraph 83.2 shall be those who have been longest in office since they were last elected or re-elected; as between persons who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method.
- 85 A charity trustee who retires from office under clause 82 or 83 shall be eligible for re-election.

Appointment/re-appointment: Co-opted Trustees

- 86 In addition to their powers under clause 81, the board may (subject to clauses 74 and 78) at any time appoint any non-member of the SCIO (providing they are willing to act) to be a charity trustee (a “Co-opted Trustee”) either on the basis that they have been nominated by a body with which the SCIO 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.
- 87 At the conclusion of each AGM, all of the Co-opted Trustees shall retire from office – but shall then (subject to clauses 74 and 78) be eligible for re-appointment under clause 86.

Termination of office

- 88 A charity trustee will automatically cease to hold office if: -
- 88.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 88.2 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;
 - 88.3 (in the case of a Member Trustee) they cease to be a member of the SCIO;
 - 88.4 they become an employee of the SCIO;
 - 88.5 they give the SCIO a notice of resignation, signed by them;
 - 88.6 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;
 - 88.7 they are removed from office by resolution of the board on the grounds that they are considered to have committed a serious breach of the code of conduct for charity trustees (as referred to in clause 109);

- 88.8 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 his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005 or subsequent Act; or
- 88.9 they are removed from office by a resolution of the members passed at a members' meeting.
- 89 A resolution under paragraph 88.7, 88.8 or 88.9 shall be valid only if: -
 - 89.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;
 - 89.2 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
 - 89.3 (in the case of a resolution under paragraph 88.7 or 88.8) 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

- 90 The board must keep a register of charity trustees, setting out
 - 90.1 for each current charity trustee:
 - 90.1.1 their full name and address;
 - 90.1.2 the date on which they were appointed as a charity trustee; and
 - 90.1.3 any office held by them in the SCIO;
 - 90.2 for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee:
 - 90.2.1 the name of the charity trustee;
 - 90.2.2 any office held by them in the SCIO; and
 - 90.2.3 the date on which they ceased to be a charity trustee.
- 91 The board must ensure that the register of charity trustees is updated within 28 days of any change:
 - 91.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or

91.2 which is notified to the SCIO.

- 92 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the SCIO, 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

- 93 The charity trustees must elect (from among themselves) a chair, a treasurer and a secretary.
- 94 In addition to the office-bearers required under clause 93, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 95 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 93 or 94.
- 96 A person elected to any office will automatically cease to hold that office: -
- 96.1 if they cease to be a charity trustee; *or*
- 96.2 if they give to the SCIO a notice of resignation from that office, signed by them.

Powers of board

- 97 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the SCIO.
- 98 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 99 The members may, by way of a resolution passed in compliance with clause 61 (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

- 100 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the SCIO; and, in particular, must:-
- 100.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes (as set out clause 4);

- 100.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 100.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
 - 100.3.1 put the interests of the SCIO before that of the other party;
 - 100.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
 - 100.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005, or subsequent Act.
- 101 In addition to the duties outlined in clause 100, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 101.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
 - 101.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.

Conflicts of interest involving charity trustees - general

- 102 The board must use every effort to ensure that conflicts of interest involving charity trustees (including those which relate to individuals or bodies connected with charity trustees) are identified at the earliest opportunity and appropriately managed; the following provisions of this constitution are of particular relevance:
- 102.1 clauses 129 and 130 require charity trustees to declare any personal interest which they may have in any transaction or other arrangement with the organisation;
 - 102.2 clause 129 prohibits a charity trustee with a personal interest in a proposed arrangement from voting on the question of whether the organisation should enter into that arrangement;
 - 102.3 clause 105 (reflecting similar provisions contained in the Scottish Charities Act) sets out restrictions and conditions for any arrangement under which remuneration would be paid to a charity trustee (or where the charity trustee might benefit from remuneration paid to a connected party).

- 103 In addition to complying with the provisions referred to in clause 102:
- 103.1 the board must maintain a register of charity trustees' interests;
 - 103.2 the chairperson of each board meeting must invite declarations of interest, shortly after the start of the meeting;
 - 103.3 the minutes of each board meeting must record any conflicts of interest which have been declared at the meeting, and must set out in detail how any such conflicts of interest have been managed.

Remuneration and expenses

- 104 Where a charity trustee provides services to the SCIO or might benefit from any remuneration paid to a connected party for such services, then:
- (a) the maximum amount of the remuneration must be specified in a written agreement and must be reasonable;
 - (b) the charity trustees must be satisfied that it would be in the interests of the SCIO to enter into the arrangement (taking account of that maximum amount); and
 - (c) less than half of the charity trustees must be receiving remuneration from the SCIO (or benefit from remuneration of that nature).
- 105 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 where that is not prohibited under clause 104 or 107; and (subject to clause 104 and to the provisions relating to remuneration for services contained in the Scottish Charities Act), they may retain any personal benefit which arises from that arrangement.
- 106 The organisation may also enter into an arrangement with a member who is not a charity trustee (or with a person or body *connected* with a member who is not a charity trustee) under which that member (or the connected person or body) receives payment for goods or services provided by them to the organisation, but only if:
- 106.1 the terms and conditions (including the amount of the payment(s)) are at least as good (from the organisation's point of view) as those which would be expected if the goods or services had been sourced on the open market; and
 - 106.2 the board are satisfied, after careful consideration, that the arrangement is in the best interests of the organisation;

and the same principles will apply in relation to any arrangement under which a member (or a person or body connected with a member) lets premises to the organisation or makes a loan to the organisation

- 107 No charity trustee may serve as an employee (full time or part time) of the SCIO; and no charity trustee may be given any remuneration by the SCIO for carrying out their duties as a charity trustee.
- 108 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

- 109 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.
- 110 The code of conduct referred to in clause 109 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, or subsequent Act; 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

- 111 Any charity trustee may call a meeting of the board *or* ask the secretary to call a meeting of the board.
- 112 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.
- 113 If charity trustees are to be permitted to participate in a board meeting by way of an audio-visual link, the charity trustees must, in advance of the meeting, be provided with details of how to connect and participate via that link or links;
 - 113.1 (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

- 114 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 5 charity trustees, present in person.
- 115 An individual participating in a board meeting via 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.
- 116 A quorum shall not be deemed to be constituted at any board meeting unless the Member Trustees who are also Ordinary Members form a majority of the total number of charity trustees present at the meeting.
- 117 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 114, 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.
- 118 The chair of the SCIO should act as chairperson of each board meeting.
- 119 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.
- 120 Every charity trustee has one vote, which must be given personally (subject to clause 124).
- 121 All decisions at board meetings will be made by majority vote.
- 122 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will (subject to clause 123) be entitled to a second (casting) vote.
- 123 A chairperson who is not an Ordinary Member shall not be entitled to a casting vote.
- 124 The board may if they consider appropriate (and must, if this is required under clause 125), allow charity trustees to participate in board meetings by way of an audio-visual link or links which allow them to hear and contribute to discussions at the meeting, providing:
 - 124.1 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

- 124.2 the manner in which the meeting is conducted ensures, so far as reasonably possible, that those charity trustees who participate via an 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).
- 125 If restrictions arising from public health legislation 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 an audio-visual link; and on the basis that:
- 125.1 the requirements set out in clauses 124.1 and 124.2 will apply; and
- 125.2 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.
- 126 A board meeting may involve two or more charity trustees participating via attendance in person while other charity trustees participate via an audio-visual links; or it may involve participation solely via audio-visual link.
- 127 Where a charity trustee or charity trustees are participating in a board meeting via an 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.
- 128 The board may, at its discretion, allow any person to attend 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.
- 129 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 SCIO; they must withdraw from the meeting while an item of that nature is being dealt with.
- 130 For the purposes of clause 129: -
- 130.1 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;

- 130.2 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.
- 131 Where a subsidiary of the organisation has an interest in a particular matter which is to be considered by the board, a charity trustee who is also a director/charity trustee of that subsidiary will not be debarred from voting on that matter (unless they have a different personal interest in that matter, unrelated to their position as a director/charity trustee of that subsidiary).
- 132 A charity trustee shall not be counted in the quorum present at a meeting in relation to a resolution on which they cannot vote.

Technical objections to remote participation in board meetings

- 133 The principles set out in clause 68 (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

Board resolutions agreed in writing or by email

- 134 A resolution agreed to in writing (or by email) by a majority of the charity trustees then in office shall (subject to clauses 135 and 136) be as valid as if duly passed at a board meeting.
- 135 A resolution under clause 134 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 136.
- 136 If a resolution is circulated to the charity trustees under clause 135, 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:
- 136.1 the secretary must convene a board meeting accordingly, and on the basis that it will take place as soon as reasonably possible;
- 136.2 the resolution cannot be treated as valid under clause 134 unless and until that board meeting has taken place;
- 136.3 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 email) by a majority of the charity trustees then in office.

Minutes

- 137 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 138 The minutes to be kept under clause 137 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 139 Any person may request a copy of the minutes of a meeting of the charity and, provided that the request is reasonable, the SCIO must, subject to clause 140, provide a copy of the minutes to that person within 28 days of the request.
- 140 Where a request for a copy of minutes is made under clause 139, the SCIO may withhold information contained in the minutes provided that the person requesting a copy of the minutes is informed of the reasons for doing so.

ADMINISTRATION

Delegation to sub-committees

- 141 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.
- 142 The board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.
- 143 When delegating powers under clause 141 or 142, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 144 Any delegation of powers under clause 141 or 142 may be revoked or altered by the board at any time.
- 145 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

Operation of accounts

- 146 Subject to clause 147, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society

accounts held by the SCIO; all signatures must be the signature of a charity trustee.

- 147 Where the SCIO 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 146.

Accounting records and annual accounts

- 148 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 149 The accounting records shall be maintained by the treasurer and overseen by the board; such records shall be kept at such place or places as the board think fit and shall always be available for inspection by the board.
- 150 The board must prepare annual accounts, complying with all relevant statutory requirements;
- 150.1.1 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.
- 150.1.2 If an audit is not carried out, the board must ensure that an independent examination of the accounts is carried out by a qualified independent examiner in line with statutory requirements.

MISCELLANEOUS

Winding-up

- 151 If the SCIO 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, or subsequent Act.
- 152 Any surplus assets (including any land acquired by the SCIO under Part 2 or Part 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) Act 2016) available to the SCIO immediately preceding its winding up or dissolution must be applied for the benefit of the Community to be used for purposes which are the same as - or which closely resemble - the purposes of the SCIO as set out in this constitution; and the named recipient body (or bodies) in the resolution for the winding-up and dissolution of the organisation must also comply with any additional requirements which apply at the time under the regulations which govern the winding up and dissolution of SCIOs.

Alterations to the constitution

- 153 This constitution may (subject to clause 154) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 61) or by way of a written resolution of the members.
- 154 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).
- 155 If:
- 155.1 the SCIO is a community body (as defined in article 162.3 and (i) it has registered a community interest in land under Part 2 of the Land Reform (Scotland) Act 2003 and remains so registered, or (ii) has bought land under Part 2 of the Land Reform (Scotland) Act 2003 any part of which remains in its ownership; or
- 155.2 the SCIO is a Part 3A community body or Part 5 community body (in each case, as defined in article 157.5) and has bought land under Part 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) 2016 any part of which remains in its ownership,
- the SCIO must give written notice to the Scottish Ministers of any amendments to the constitution as soon as possible after such amendments take effect.

Interpretation

- 156 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 156.1 any statutory provision which adds to, modifies or replaces that Act; and
- 156.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 170.1 above.
- 157 In this constitution: -
- 157.1 "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;

- 157.2 “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;
- 157.3 “community body” means a community body within the meaning of section 34 of the Land Reform (Scotland) Act 2003 (as amended by section 37 of the Community Empowerment (Scotland) Act 2015);
- 157.4 “OSCR” means the Office of the Scottish Charity Regulator;
- 157.5 “Part 3A community body” means a Part 3A community body with the meaning of section 97D of the Land Reform (Scotland) Act 2003 (as inserted by section 74 of the Community Empowerment (Scotland) Act 2015);
- 157.6 “Part 5 community body” means a Part 5 community body within the meaning of section 49 of the Land Reform (Scotland) Act 2016;
- 157.7 “sustainable development” means development which meets the needs of the present without compromising the ability of future generations to meet their own needs.