

**CONSTITUTION OF
COMMUNITY MOORINGS SCOTLAND
(a Scottish Charitable Incorporated Organisation)**

1 April 2021

CONSTITUTION
of
Community Moorings Scotland

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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 Narrowboat Farm, Linlithgow, West Lothian EH49 6QY.

Name

- 3 The name of the organisation is Community Moorings Scotland.

Purposes

- 4 The organisation's purposes are:
 - 4.1 The advancement of community development, in furtherance of which:
 - 4.1.1 the organisation will develop a network of small, non-profit community-owned mooring sites on the canals and inland waterways of Scotland;
 - 4.1.2 these sites will serve as hubs for the diverse and dispersed Canal Community, at which Canal Boat residents, recreational boaters, commercial boaters and members of the general public can come together by the water to live, work, relax, volunteer together and learn; and
 - 4.1.3 through these sites the Canal Community will take responsibility for its own future and gain the autonomy needed to do so.
 - 4.2 The advancement of education and the advancement of heritage, in furtherance of which the organisation will:
 - 4.2.1 run free training sessions, open to all, on boat maintenance and fit-out, safe boat handling and canal navigation, and manual skills associated with building and maintaining mooring infrastructure; and
 - 4.2.2 run free educational sessions, open to all, on the history, natural history and culture of the canals.
 - 4.3 The provision of recreational facilities, in furtherance of which the organisation will provide:
 - 4.3.1 mooring facilities including leisure and visitor moorings at each community-owned mooring site; and

- 4.3.2 attractive resting places at the community-owned mooring sites open to all canal users, including walkers, cyclists, canoeists and boaters.

The Canal Community is defined as the community of Canal Boat users in Scotland, spouses, partners or direct relations of Canal Boat users in Scotland, members of the communities located alongside the canals of Scotland, users of a community-owned mooring site in Scotland (whether or not they are Canal Boat users) and individuals with an active interest in the canals or inland waterways of Scotland.

The term “Canal Boat” means narrowboats, houseboats, Dutch barges, widebeam barges, and powered craft suitable for use on the Scottish canals.

Powers

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

Liability of members

- 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 the MEMBERS - who have the right to attend members' meetings (including any annual general meeting) and have important powers under the constitution; in particular, the members appoint people to serve on the board and take decisions on changes to the constitution itself;
- 9.2 the BOARD - who hold regular meetings, and generally control the activities of the organisation; for example, the board is responsible for monitoring and controlling the financial position of the organisation.
- 10 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

MEMBERS

Qualifications for membership

- 11 Membership is open to any individual aged 16 or over who supports the purposes of the organisation and who is:
 - 11.1 a Canal Boat user in Scotland;
 - 11.2 a spouse, partner or direct relation of a Canal Boat user in Scotland;
 - 11.3 a member of the communities located alongside the canals of Scotland;
 - 11.4 a user of a community-owned mooring site in Scotland (whether or not they are a Canal Boat user); or
 - 11.5 an individual who has an active interest in the canals or inland waterways of Scotland.
- 12 Membership is open to any corporate body (including a SCIO, charity or public-sector organisation) which supports the purposes of the organisation where:
 - 12.1 the purposes, trade or business of such corporate body are not in conflict with the purposes of the organisation;
 - 12.2 the charity trustees consider that membership by such corporate body would further the purposes of the organisation; and
 - 12.3 the corporate body ensures that an individual, acceptable to the board of the organisation, is at all times authorised and delegated to act as the corporate body's authorised representative, to vote on its behalf (if the relevant class of membership carries voting rights) and to give notices on its behalf.
- 13 There shall be at least two classes of membership:
 - 13.1 "Ordinary Member", which is open to individuals qualifying for membership under clause 11 and each Ordinary Member shall have one vote at members' meetings; and
 - 13.2 "Corporate Member", which is open to corporate bodies qualifying for membership under clause 12, and Corporate Members shall not have the power to vote at members' meetings.
- 14 Additional classes of membership may be created or annulled at members' meetings provided that any members of an annulled class of membership shall immediately be transferred to the most appropriate alternative class of membership.

Application for membership

- 15 Any person who wishes to become a member must apply for membership either in writing or by such other means as the board may determine (in the case of a corporate

body, an application for membership must be made in writing and signed by an appropriate officer of that body) and must remit the annual membership subscription; the application will then be considered by the board. Where all charity trustees are in favour of the application, the application may be approved without a board meeting.

- 16 The board may only refuse admission to membership in the following circumstances:
- 16.1 The board may, at its discretion, refuse to admit any corporate body to membership. Corporate Membership may be annulled by majority vote at a members' meeting.
 - 16.2 The board must refuse to admit any person or corporate body to membership if it reasonably believes that the person or corporate body concerned does not meet the requirements for membership set out in Clause 11 or Clause 12, as the case may be.
 - 16.3 The board may refuse to admit any person to the category of Associate Member, or any corporate body to the category of Corporate Member, if following such admission Ordinary Members would no longer form the majority of the members of the organisation.
 - 16.4 The board must refuse to admit any person or corporate body to membership who has been expelled from membership by a resolution passed in accordance with Clause 25, unless a subsequent resolution has been passed at a members' meeting allowing the board to admit them to membership (for the avoidance of doubt, a resolution passed by simple majority vote will suffice for readmission).
- 17 The board must notify each applicant promptly (in writing or by e-mail) of its decision on whether or not to admit the applicant to membership. Except where it would be prejudicial to the organisation, the board should provide the reason when membership is refused. If the decision was to refuse admission, the board shall return to the applicant the remittance lodged by them under clause 15. In the case of a Corporate Member whose membership is annulled at a members' meeting in accordance with clause 16, the membership subscription shall be refunded pro rata.

Membership subscription

- 18 Members shall be required to pay a membership subscription on an annual basis in accordance with the following:-
- 18.1 The rate of membership subscription must be the same within each class of membership but may vary between classes.
 - 18.2 The annual membership subscriptions shall be payable on or before the day on which the membership commences or renews.
 - 18.3 The membership subscription shall run from the date that the membership commences or renews until the anniversary date of the commencement or renewal.

- 18.4 The board shall determine the initial rate of subscription for each class of membership when that class of membership is introduced.
- 18.5 Subsequently, rates of subscription and the dates on which subscription falls due shall be determined at each AGM by a members' vote.
- 18.6 If the membership subscription payable by any member remains outstanding more than 12 weeks after the date on which it fell due, and providing they have been given at least one reminder in writing or by email, the board may, by resolution to that effect, expel them from membership.
- 18.7 A person or corporate body who ceases to be a member (for any reason other than annulment of membership or expulsion by vote at a members' meeting) shall not be entitled to any refund of the membership subscription.

Register of members

- 19 The board must keep a register of members, setting out
 - 19.1 for each current member:
 - 19.1.1 their name and contact information (including postal address, email address and telephone number where these are provided by the member); and
 - 19.1.2 the date on which they were registered as a member of the organisation; and
 - 19.2 for each former member, for at least six years from the date on he/she ceased to be a member:
 - 19.2.1 their name; and
 - 19.2.2 the date on which they ceased to be a member.
- 20 The board must ensure that the register of members is updated within three calendar months of any change:
 - 20.1 which arises from a resolution of the board or a resolution passed by the members of the organisation; or
 - 20.2 which is notified to the organisation.
- 21 The board must make available to all members, either on request in accordance with clause 22 or in a members-only area of the organisation's website, a list of the names (but not addresses or other contact information) of all members. This list must be maintained as per clause 19.

- 22 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 him/her 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

- 23 Any member who wishes to withdraw from membership must notify the board in writing or by email; they will cease to be a member as from the time when the notice is received by the organisation.

Transfer of membership

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

Expulsion from membership

- 25 Any person or corporate body 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:-
- 25.1 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;
 - 25.2 the grounds for expulsion include one or more of: ineligibility under Clauses 11 and 12; bringing the organisation into disrepute; acting in a manner which is directly contrary to the interests of the organisation; threatening or abusive behaviour; representing himself/herself as speaking or acting on behalf of the organisation when he/she has not been so authorised; corruption, bribery, embezzlement; dishonest use of the organisation's funds; or failing to disclose the existence of a material conflict of interest when he/she is obliged to do so;
 - 25.3 the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

Termination

- 26 Membership of the organisation will terminate on death or (in the case of a corporate body) on the liquidation, receivership, winding-up or dissolution of that body.

DECISION-MAKING BY THE MEMBERS

Members' meetings

- 27 The board must arrange a meeting of members in each calendar year (an annual general meeting or "AGM").
- 28 The gap between one AGM and the next must not be longer than 15 months.

- 29 Notwithstanding clause 27, 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.
- 30 The business of each AGM must include:-
- 30.1 a report by the chair on the activities of the organisation;
 - 30.2 consideration of the annual accounts of the organisation;
 - 30.3 the election/re-election of charity trustees, as referred to in clauses 67 to 70.
- 31 The board may arrange a members' meeting in addition to the AGM at any time (a special general meeting or SGM).
- 31A The board may determine that a members' meeting is to be held by conference telephone, video conferencing facility or similar communications equipment.

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

- 32 The board must arrange a special general 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 five members entitled to vote or 5% of the members entitled to vote, whichever is the greater, or if the organisation has fewer than ten members entitled to vote, a majority of the members entitled to vote, always providing that:
- 32.1 the notice states the purposes for which the meeting is to be held; and
 - 32.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.
- 33 If the board receives a notice under clause 35, 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

- 34 At least 14 clear days' notice must be given of any AGM or any SGM.
- 35 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 35.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
 - 35.2 in the case of any other resolution falling within clause 54 (requirement for two-thirds majority) must set out the exact terms of the resolution.

- 36 The reference to “clear days” in clause 34 shall be taken to mean that, in calculating the period of notice,
- 36.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
- 36.2 the day of the meeting itself should also be excluded.
- 37 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.
- 38 Any notice which requires to be given to a member under this constitution must be:-
- 38.1 sent by post to the member, at the address last notified by them to the organisation; or
- 38.2 sent by e-mail to the member, at the e-mail address last notified by them to the organisation.

Procedure at members' meetings

- 39 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 40 The quorum for a members' meeting is five members entitled to vote present in person, each being a member or a proxy for a member.
- 40A A member or charity trustee may participate in a members' meeting by means of a conference telephone, video conferencing facility or similar communications equipment. A member or charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting.
- 41 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.
- 42 The chair of the organisation should act as chairperson of each members' meeting.
- 43 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.

Voting at members' meetings

- 44 Every Ordinary Member has one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.
- 45 A member who wishes to appoint a proxy to vote on his/her behalf at any members' meeting:-

- 45.1 must give to the organisation a proxy form (in such terms as the board requires), signed by him/her; or
- 45.2 must send by electronic means to the organisation at the email address notified to the members for that purpose, a proxy form (in such terms as the board requires)

providing (in either case) the proxy form is received by the organisation at the relevant address not less than 48 hours before the time for holding the members' meeting.

- 46 An instrument of proxy which does not comply with the provisions of clause 45, or which is not lodged or given in accordance with such provisions, shall be invalid.
- 47 Should a member appoint more than one proxy to attend on the same occasion, the chairperson for the meeting shall determine which proxy was most recently appointed by the member, and all other proxies appointed by that member will be deemed to have stood down.
- 48 A proxy need not be a member of the organisation.
- 49 Subject to clause 50, in relation to each resolution proposed at a members' meeting, an individual shall not be entitled to cast more than two votes as a proxy (in addition to any vote to which he/she is entitled personally, if he/she is a member of the organisation).
- 50 Where members have appointed the chairperson of a members' meeting to vote as their proxy, and have directed the chairperson (through wording in the proxy form) on whether he/she should vote on their behalf in favour of, or against, each resolution, the provisions of clause 49 shall not apply in relation to the chairperson, in acting as proxy for those members.
- 51 A proxy appointed to attend and vote at any members' meeting instead of a member shall have the same right as the member who appointed him/her to speak at the meeting.
- 52 Where a member attends a meeting for which he/she has appointed a proxy, the proxy shall be deemed to have stood down and the member shall be entitled to vote on his/her own behalf.
- 53 All decisions at members' meetings will be made by majority vote, with the exception of the types of resolution listed in clause 54.
- 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 58):
 - 54.1 a resolution amending the constitution;
 - 54.2 a resolution expelling a person from membership under clause 25;

- 54.3 a resolution directing the board to take any particular step (or directing the board not to take any particular step);
 - 54.4 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);
 - 54.5 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);
 - 54.6 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 must (insofar as it is practical to do so) allow time for further debate, after which the resolution must be voted on again. If there is still an equal number of votes for and against the 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:
- 56.1 by secret ballot, if the chairperson (or at least two other individuals present at the meeting and entitled to vote, whether as members or as the authorised representatives of corporate bodies which are members) ask for a secret ballot, or if the resolution is for the election or re-election of a trustee or trustees, or
 - 56.2 in all other cases, on a show of hands.
- 57 The chairperson will decide how any secret ballot is to be conducted, and he/she will declare the result of the ballot at the meeting.

Written resolutions by members

- 58 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; the date of the resolution will be taken to be the date on which the last member agreed to it.

Minutes

- 59 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 60 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.
- 61 Copies of minutes of members' meetings shall be available to members on request and may be provided by email, in writing or on the organisation's website in a members-only area.

BOARD

Number of charity trustees

- 62 The maximum number of charity trustees is 12, of whom:
- 62.1 no more than ten shall be charity trustees who were elected or appointed under clauses 67 and 68 (or deemed to have been appointed under clause 66);
 - 62.2 no more than two shall be charity trustees who were co-opted under the provisions of clauses 71 and 72.
- 63 The minimum number of charity trustees is three, and the trustees who were elected or appointed under clauses 67 and 68 (or deemed to have been appointed under clause 66) must form the majority of the trustees. If these conditions are breached, the board must appoint, according to clause 68 or 71 and within twelve weeks, sufficient charity trustees to meet these conditions, failing which, the board must call a special general meeting at which a motion must be tabled to elect according to clause 67 sufficient replacement charity trustees to meet the minimum number.

Eligibility

- 64 A person shall not be eligible for election or appointment to the board under clauses 66 to 68 unless he/she is a member of the organisation; a person appointed to the board under clause 71 need not, however, be a member of the organisation.
- 65 A person will not be eligible for election or appointment to the board if he/she is disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005.

Initial charity trustees

- 66 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, retiral, re-election

- 67 Subject to clause 62, at each AGM (or at an SGM called under clause 63), the members may elect any member (unless he/she is debarred from membership under clause 65) to be a charity trustee.
- 68 Subject to clause 62, the board may at any time appoint any member (unless he/she is debarred from membership under clause 65) to be a charity trustee.
- 69 At each AGM, all of the charity trustees elected/appointed under clauses 67 and 68 (and, in the case of the first AGM, those deemed to have been appointed under clause 66) shall retire from office, but shall then be eligible for re-election under clause 67.

- 70 A charity trustee retiring at an AGM will be deemed to have been re-elected unless:-
- 70.1 he/she advises the board prior to the conclusion of the AGM that he/she does not wish to be re-appointed as a charity trustee; or
 - 70.2 an election process was held at the AGM and he/she was not among those elected/re-elected through that process; or
 - 70.3 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

- 71 In addition to their powers under clause 68, the board may at any time appoint any non-member of the organisation to be a charity trustee (subject to clause 62, and providing he/she is not debarred from membership under clause 65), provided that:
- 71.1 he/she has specialist experience and/or skills which the trustees believe would be of assistance to the board; and
 - 71.2 following such appointment, the trustees elected or appointed under clauses 67 and 68 (or deemed to have been appointed under clause 66) would constitute the majority of the trustees.
- 72 At each AGM, all of the charity trustees appointed under clause 71 shall retire from office, but shall then be eligible for re-appointment under that clause.

Procedure for retirements at AGMs

- 73 The retirement of any charity trustee retiring at an AGM shall not have effect until the conclusion of the meeting except where:-
- 73.1 a resolution is passed to elect some other person in the place of the retiring charity trustee, in which case the retirement shall take effect at the time of the election of the replacement, or
 - 73.2 a resolution for his/her re-election is put to the AGM and lost, in which case the retirement shall take effect at the time of the losing of that resolution.
- 74 A retiring charity trustee who is re-elected or re-appointed will continue without a break.

Termination of office

- 75 A charity trustee will automatically cease to hold office if: -
- 75.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 75.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee, but only if that has continued (or is expected to continue) for a period of more than six months;

- 75.3 (in the case of a charity trustee elected/appointed under clauses 66 to 70) he/she ceases to be a member of the organisation;
 - 75.4 he/she gives the organisation a notice of resignation, signed by him/her;
 - 75.5 he/she is 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 him/her from office;
 - 75.6 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 93);
 - 75.7 he/she is removed from office by resolution of the board on the grounds that he/she is 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
 - 75.8 he/she is removed from office by a resolution of the members passed at a members' meeting.
- 76 A resolution under paragraph 75.6, 75.7 or 75.8 shall be valid only if: -
- 76.1 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;
 - 76.2 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
 - 76.3 (in the case of a resolution under paragraph 75.6 or 75.7) 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

- 77 The board must keep a register of charity trustees, setting out
- 77.1 for each current charity trustee:
 - 77.1.1 his/her full name and address;
 - 77.1.2 the date on which he/she was appointed as a charity trustee; and
 - 77.1.3 any office held by him/her in the organisation;
 - 77.2 for each former charity trustee, for at least 6 years from the date on which he/she ceased to be a charity trustee:
 - 77.2.1 the name of the charity trustee;

77.2.2 any office held by him/her in the organisation; and

77.2.3 the date on which he/she ceased to be a charity trustee.

- 78 The board must ensure that the register of charity trustees is updated within 28 days of any change:
- 78.1 which arises from a resolution of the board or a resolution passed by the members of the organisation; or
- 78.2 which is notified to the organisation.
- 79 The board must make available to all members, either on request or in a members-only area of the organisation's website, the names but not addresses of all charity trustees.
- 80 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 organisation, the board may provide a copy which has the addresses blanked out.

Office-bearers

- 81 The charity trustees must elect (from among themselves) a chair (who must not be an employee of the organisation), a treasurer and a secretary. In the event that the chair becomes an employee of the organisation, he/she shall be deemed to have retired from the office of chair, and the trustees must elect a replacement chair in accordance with this clause 81.
- 82 In addition to the office-bearers required under clause 81, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 83 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 81 or 82.
- 84 A person elected to any office will automatically cease to hold that office: -
- 84.1 if he/she ceases to be a charity trustee; or
- 84.2 if he/she gives to the organisation a notice of resignation from that office, signed by him/her.

Powers of board

- 85 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.
- 86 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.

87 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

88 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:-

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

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

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

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

88.3.2 where any other duty prevents him/her 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;

88.4 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;

88.5 act in accordance with guidance and good practice for charity trustees set out from time to time by the Scottish Charities Regulator; and

88.6 refrain from taking actions likely to materially damage the interests of the organisation.

89 In addition to the duties outlined in clause 88, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring:-

89.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and

89.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.

90 Provided he/she has declared his/her interest, and has 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 he/she has a personal interest; and (subject to clause 91 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment

(Scotland) Act 2005), he/she may retain any personal benefit which arises from that arrangement.

- 91 No charity trustee may be given any remuneration by the organisation for carrying out his/her duties as a charity trustee, but charity trustees who are also employees of the organisation may receive remuneration, pension and other benefits due to them in respect of their employment.
- 92 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties provided that an expenses policy is adopted by a resolution passed at a members' meeting and that such expenses are strictly in accordance with this policy; this may include expenses relating to their attendance at meetings.

Code of conduct for charity trustees

- 93 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.
- 94 The code of conduct referred to in clause 93 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

- 95 Any charity trustee may call a meeting of the board or ask the secretary to call a meeting of the board.
- 96 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.
- 96A The chair of the organisation may determine that a board meeting is to be held by conference telephone, video conferencing facility or similar communications equipment.

Procedure at board meetings

- 97 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is at least three charity trustees, present in person, the majority of whom must have been elected or appointed under clauses 67 and 68 (or deemed to have been appointed under clause 66).

- 98 A charity trustee may participate in a meeting of the board by means of a conference telephone, video conferencing facility or similar communications equipment, so long as all the charity trustees participating in the meeting can hear each other. A charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting.
- 99 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 97, 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.
- 100 The chair of the organisation should act as chairperson of each board meeting.
- 101 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.
- 102 Every charity trustee has one vote, which must be given personally.
- 103 All decisions at board meetings will be made by majority vote.
- 104 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.
- 105 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that he/she is not a charity trustee, but on the basis that he/she must not participate in decision-making.
- 106 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 he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; he/she must withdraw from the meeting while an item of that nature is being dealt with. Additionally, the board must ensure that any transaction or commercial agreement which the organisation may enter into, in which a trustee has a personal interest, is on terms no less favourable to the organisation than fair market value at the time.
- 107 For the purposes of clause 106:-
- 107.1 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;
- 107.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter;

107.3 for the avoidance of doubt, employees who are charity trustees shall not be entitled to vote in relation to any matter connected with their remuneration or other terms and conditions of employment and must withdraw from any board or sub-committee meeting while an item of that nature is being dealt with.

Minutes

- 108 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 109 The minutes to be kept under clause 108 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 110 The board shall (subject to clause 111) make available copies of the minutes referred to in clause 108 to any member of the public making a reasonable request for them.
- 111 The board may exclude from any copy minutes made available to a member of the public under clause 110 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

- 112 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.
- 113 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.
- 114 When delegating powers under clause 112 or 113, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 115 Any delegation of powers under clause 112 or 113 may be revoked or altered by the board at any time.
- 116 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

- 117 Subject to clause 118, the signatures of two signatories appointed by the board will be required in relation to all operations (other than the lodging of funds or transactions below a *de minimis* value determined at a members' meeting) on the bank and building

society accounts held by the organisation; at least one out of the two signatures must be the signature of a charity trustee.

- 118 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 117.

Accounting records and annual accounts

- 119 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 120 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.

MISCELLANEOUS

Winding-up

- 121 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.
- 122 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

- 123 This constitution may (subject to clause 124) 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.
- 124 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

- 125 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include:-
- 125.1 any statutory provision which adds to, modifies or replaces that Act; and

125.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 125.1 above.

126 In this constitution:-

126.1 “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;

126.2 “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.