



## Constitution for Kirkmichael Community Garden

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# 1 General

## 1.1 Name and Principle Office

1.1.1 The name of the Scottish Charitable Incorporated Organisation is Kirkmichael Community Garden ("hereafter referred to as the SCIO").

1.1.2 The Principal Office of the SCIO is situated in Scotland.

## 1.2 Definitions and Interpretations

1.2.1 The definitions and meanings specified in this Clause shall apply throughout this Constitution and any Schedule hereto, as follows:

Definition	Meaning
"AGM"	the Annual General Meeting;
"Applicants"	those first members of the SCIO who are the individuals who make the Application to OSCR under section 54(1) of the Charities Act;
"Board"	the Board of Charity Trustees;
"Charitable Purposes"	as described in Clause 1.3 on the basis that these fall within section 7 of the Charities Act and are also regarded as charitable in relation to the application of the Taxes Acts;
"Charities Act"	the Charities and Trustee Investment (Scotland) Act 2005 and every statutory modification and re-enactment thereof for the time being in force;
"Charity"	a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts;
"Clause(s)"	Clause(s) of this Constitution;
"Constitution"	this Constitution, and any ancillary regulations thereunder, in force from time to time;
"EGM"	an Extraordinary General Meeting, and any Members' Meeting which is not an AGM;
"in writing"	written, printed or lithographed, or partly one and partly another, and other modes of representing or producing words in a visible and non- transitory (albeit electronically-based) form;
"Members"	all members of the SCIO
"Month"	a calendar month;
"Organisation"	any body corporate, unincorporated association, society, federation, authority, agency, union, co-operative, trust, partnership or other organisation (not being an individual person);
"OSCR" -	the Office of the Scottish Charity Regulator;
"Property"	any property, assets or rights, heritable or moveable, wherever situated;
"SCIO"	Renfrew Association of Growers and Gardeners;
"Trustee(s)"	the Charity Trustees (for the time being) of the SCIO.

- 1.2.2 Words importing the singular number only shall include the plural number, and *vice versa*.
- 1.2.3 Words importing the masculine gender only shall include the feminine gender.
- 1.2.4 Any words or expressions defined in the Charities Act shall, if not inconsistent with the subject or context, bear the same meanings in the Constitution.
- 1.2.5 Any Schedule to this Constitution is deemed to form an integral part hereof.

### **1.3 Charitable Purposes**

- 1.3.1 The charitable purposes of the SCIO ("the Charitable Purposes") are:
  - 1.3.1.1 the advancement of community development through provision of and participation in community garden spaces in a sustainable and inclusive manner.
  - 1.3.1.2 to provide 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 by providing community garden spaces and opportunities for people to keep physically and socially active.
  - 1.3.1.3 the advancement of education of the general public in horticulture and sustainable development and the protection and improvement of the natural environment through good environmental practices by supporting, encouraging and seeking to improve gardening of all kinds in Kirkmichael through the provision of community garden spaces by encouraging and teaching a range of outdoor skills and pursuits, promoting the benefits of the natural environment and living more sustainably.
  - 1.3.1.4 to advance environmental improvement through the growing of food locally, leading to a reduction in carbon footprint, increased resilience, and opportunities for recycling organic and other materials and by promoting the benefits of and demonstrating a range of good environmental and horticultural practices such as organic growing, composting, and through reducing, re-using and recycling of resources.

### **1.4 Powers**

- 1.4.1 In terms of section 50(5) of the Charities Act, the SCIO shall have power to do anything which is calculated to further the Charitable Purposes or is conducive or incidental to doing so. Without prejudice to the foregoing generality, the SCIO shall also have the powers, only in furtherance of its Charitable Purposes.

### **1.5 Liability of Members**

- 1.5.1 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.

- 1.5.2 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 1.5.1 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.

## **1.6 General Structure of the SCIO**

- 1.6.1 The structure of the SCIO comprises:

- 1.6.1.1 MEMBERS - who have the right to attend the AGM (and any Members' Meeting) and have important powers under this Constitution and the Charities Act, particularly in electing people to serve as Trustees and taking decisions in relation to any changes to this Constitution; and
- 1.6.1.2 TRUSTEES - who hold regular meetings between each AGM, set the strategy and policy of the SCIO, generally control and supervise the activities of the SCIO and, in particular, are responsible for monitoring its financial position and, where there are no employees or managers appointed, are responsible also for the day-to-day management of the SCIO.

## **1.7 Eligibility for Membership**

- 1.7.1 The members of the SCIO shall consist of the Applicants and all such other persons as are admitted to membership in terms of this constitution.
- 1.7.2 Membership shall be open, regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, political or other opinion, in particular:
- 1.7.2.1 Full Members: all people over the age of 16, living the in locality of Kirkmichael, who subscribe to the purposes of the SCIO and have complied with the procedure for application to membership;
- 1.7.2.2 Group Members: whose work is supportive of the organisation may be invited by the Board to become a group member. Group members shall have a right to vote at committee meetings using a nominated representative. No more than one individual nominated by each group may be a member of the organisation at any given time.
- 1.7.2.3 Junior Members: all individuals under the age of 16 living the in locality of Kirkmichael and who subscribe to the purposes of the SCIO and have complied with the procedure for application to membership. Junior Members will not have the right to vote until they reach the age of 16 and become Full Members.
- 1.7.3 The Board may not, unless there are reasonable grounds to do so, refuse Membership to any individual or group.

## **1.8 Register of Members**

- 1.8.1 The Board shall maintain a Register of Members, setting out the following details of each member, namely, name, address and date of registration as a member, and where relevant the relative category of membership.
- 1.8.2 The Register will provide the following details of each former member for at least six years after cessation of membership, namely name and date of cessation of membership.
- 1.8.3 If a member or Trustee requests the SCIO to provide a copy of its Register of Members he or she is, if the request is reasonable, entitled to be given a copy within twenty-eight days. The SCIO may not charge for doing so. If the request is made by a member, the SCIO can omit the address of any or all of its members in its response to such a request.

## **1.9 Application for Membership**

- 1.9.1 Any person who wishes to become a member must sign, and lodge with the company, a written application for membership along with a remittance to meet the annual membership subscription (if any); and, for a Group Member, that application must be signed by an appropriately authorised officer of that body who will remain as the representative of that Group Member until such time as the Group Member informs the Board otherwise.
- 1.9.2 The Board may not, unless there are reasonable grounds to do so, refuse Membership to any individual or group.

## **1.10 Membership Subscriptions**

- 1.10.1 Members may be required to pay the appropriate annual membership subscription, the amount of the annual membership subscription shall be fixed at the discretion of the Board.
- 1.10.2 All members are entitled to take part in and vote at any Members' Meeting.
- 1.10.3 If the membership subscription payable by any member remains outstanding for more than three calendar months after the date on which it fell due (and providing the member in question has been given at least one written reminder), the Board may expel that member from membership.
- 1.10.4 An individual who ceases (for whatever reason) to be a member shall not be entitled to any refund of membership subscription.

## **1.11 Cessation of Membership**

1.11.1 Any member, may no longer serve as such in any one or more of the following events:

1.11.1.1 if by not less than 7 days' prior notice in writing to the SCIO he, she or it resigns his, her or its membership; or

1.11.1.2 if a resolution that a member be expelled is passed by a majority of at least 75% of the members present and voting at a Members' Meeting, of which not less than 14 days' previous notice specifying the intention to propose such resolution and the grounds on which it is proposed shall have been sent to all Trustees and all members, including the member whose removal is in question, such member being entitled to be heard at that meeting; or

1.11.1.3 if, being an individual, he or she dies.

1.11.2 Membership is neither transferable nor assignable to any other individual or organisation.

1.11.3 The liability of members of the SCIO is limited and, upon the winding-up of the SCIO, the terms of Clause 1.5 apply.

## **1.12 Member's Meetings**

1.12.1 Convening an AGM

1.12.1.1 The Board shall convene an AGM annual, at least once in every fifteen month period.

1.12.1.2 The AGM does not need to be held exclusively in one place, provided that, where two or more members are not in the same place as each other, they are all able to communicate together and vote thereat.

1.12.2 AGM Agenda

1.12.2.1 The business of each AGM shall include:

1.12.2.1.1 the report by the Chairperson on the activities of the SCIO;

1.12.2.1.2 the election of Trustees (where relevant);

1.12.2.1.3 the fixing of annual subscriptions (if applicable);

1.12.2.1.4 the report of the independent financial examiner;

1.12.2.1.5 receiving the annual accounts of the SCIO;

1.12.2.1.6 the appointment of the independent financial examiner.

1.12.3 Convening an EGM

- 1.12.3.1 No fewer than one-third of the Trustees may convene an EGM whenever they think fit.
- 1.12.3.2 The Board must convene an EGM within 28 days of a valid requisition. To be valid, such requisition must:
  - 1.12.3.2.1 be signed by not less than 5% of the Members;
  - 1.12.3.2.2 clearly state the objects of the meeting; and
  - 1.12.3.2.3 be deposited with the SCIO.
- 1.12.3.3 Such requisition may consist of several documents in like form each signed by one or more requisitionists.
- 1.12.3.4 Any such meeting convened in terms of this Clause shall not be an AGM.

### **1.13 Notice of Member's Meetings**

- 1.13.1 At least 14 clear days' notice shall be given of every AGM and EGM.
- 1.13.2 The notice shall specify the place, the day and the hour of meeting and, in the case of special business, the specific nature of that business.
- 1.13.3 The notice shall be sent, in the manner specified in this clause, to all members and to such persons or organisations as are under this Constitution entitled to receive such notices.
- 1.13.4 The accidental omission to give notice of a Members' Meeting to, or the non-receipt of such notice by, any members, persons or organisations entitled to receive notice thereof shall not invalidate any resolution passed at or proceedings of any AGM or EGM.

### **1.14 Chairperson of Members' Meetings**

- 1.14.1 The Chairperson of the SCIO, shall act as chairperson of each Members' Meeting. If neither the Chairperson is present and willing to act as chairperson of the meeting within 15 minutes after the time at which the Members' Meeting in question was due to commence, the Trustees present shall elect from among themselves the Trustee who will act as chairperson of that meeting.

### **1.15 Quorum at Members' Meetings**

- 1.15.1 The quorum for a Members' Meeting shall be 25% of the total membership, present in person. No business shall be dealt with at any Members' Meeting, other than the appointment of the chairperson of the meeting in terms of Clause 1.14, unless a quorum is present.

- 1.15.2 If a quorum is not present within 15 minutes after the time at which the Members' Meeting was due to commence - or if, during a Members' Meeting, a quorum ceases to be present - the Members' Meeting shall stand

### **1.16 Voting at Members Meetings**

- 1.16.1 The chairperson of the meeting (see Clause 1.14) shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote.
- 1.16.2 Each Individual and Group Member of the SCIO is able to attend and speak at any Members' Meeting and shall have one vote, to be exercised in person or by its authorised representative.
- 1.16.3 In the event of an equal number of votes for and against any resolution, the chairperson of the meeting shall have a second casting vote as well as any deliberative vote.
- 1.16.4 If a member is unable to attend any general meeting in person, they may attend the meeting remotely by telephone, videolink, Skype, and other internet VOIP or teleconferencing mechanisms Remote participation may only be used in the event of exceptional circumstances
- 1.16.5 Where a Trustee does not have to be, or cannot be, a member of the SCIO, he or she may attend and speak at any Members' Meeting, but in those circumstances may not vote thereat.
- 1.16.6 The chairperson of the meeting may permit any other person or persons to attend a Members' Meeting who otherwise has no right to do so, as an observer or observers. In that event, it shall be at the discretion of the chairperson of the meeting whether any such observer may be invited to speak thereat.
- 1.16.7 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.

## **1.17 Voting at Members' Meetings – Special Resolutions**

1.17.1 At any Members' Meeting a resolution put to the vote of the meeting shall be voted upon by the Members who either are present in person and voting thereon, or are not present but are voting by written resolution in terms of Clause 1.18 (no account therefore being taken of members who abstain from voting or of members who are absent from the meeting who do not vote by written resolution).

1.17.2 All resolutions shall be voted on by a simple majority of the Members, except for decisions relating to any of the following Special Resolutions, which shall require to be decided upon by not less than two-thirds of the Individual and Group Members present and voting thereon (no account therefore being taken of members, namely:

1.17.2.1 to alter the name of the SCIO;

1.17.2.2 to amend the Charitable Purposes;

1.17.2.3 to amend this Constitution;

1.17.2.4 to amend the maximum number of Trustees;

1.17.2.5 to purchase or sell any heritable property owned by the SCIO;

1.17.2.6 all other Special Resolutions.

1.17.3 An ordinary resolution to be proposed at a Members' Meeting may be amended if:

1.17.3.1 written notice of the proposed amendment is received by the SCIO from a member entitled to vote thereat not less than 48 hours before the time appointed for the holding of the meeting or adjourned meeting; and

1.17.3.2 the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

1.17.4 A Special Resolution to be proposed at a Members' Meeting may be amended if:

1.17.4.1 the chairperson of the meeting proposes the amendment at the Members' Meeting at which the Special Resolution is to be proposed; and

1.17.4.2 the amendment does not go beyond what is necessary to correct a grammatical, interpretative or other non-substantive error in the Special Resolution.

1.17.4.3 If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

## **1.18 Voting – Written Resolutions**

- 1.18.1 Ordinary and Special Resolutions may be passed in writing, rather than at a Members' Meeting, provided that the terms of this Clause are followed.
- 1.18.2 An ordinary resolution in writing signed by or on behalf of a simple majority of all the Members shall be as valid and effective as if the same had been passed at a Members' Meeting of the SCIO duly convened and held, provided that the terms of this Clause are followed.
- 1.18.3 A Special Resolution in writing signed by or on behalf of not less than two-thirds of all the Members shall be as valid and effective as if the same had been passed at a Members' Meeting of the SCIO duly convened and held, provided that the terms of this Clause are followed.
- 1.18.4 Written resolutions may not be used either for the removal of a Trustee prior to the expiration of his or her term of office, or for the removal of an independent financial examiner prior to the expiration of his or her term of office.
- 1.18.5 Any written resolution must be issued in hard copy (by hand or by post) or in electronic form (by fax or e-mail), or by means of a website at the same time, to all Members on the Circulation Date (that is, the date on which copies of the written resolution are sent to the Members).
- 1.18.6 Where such a written resolution is proposed by the Board, it must include the following express statements:
  - 1.18.6.1 an explanation to the eligible members how to signify their agreement to the resolution;
  - 1.18.6.2 how it can be sent back by them, and whether in hard copy (by hand or by post) and/or in electronic form (by fax or by e-mail);
  - 1.18.6.3 clarification that a failure to reply will be deemed to be a vote against the resolution in question;
  - 1.18.6.4 the date by which the resolution must be passed if it is not to lapse (that is, the date which is 28 days after the Circulation Date).
- 1.18.7 Where such a written resolution is proposed by members, the following shall apply:
  - 1.18.7.1 the resolution must be requested by not less than 5% of the Ordinary Members ("the members' request");

- 1.18.7.2 the members' request may be made in hard copy (by hand or by post) or in electronic form (by fax or by e-mail);
- 1.18.7.3 the members' request must identify the resolution to be put to members. The Board can reject this if it is, in its opinion, either frivolous, vexatious, defamatory of any person or would be ineffective (whether by reason of inconsistency with any enactment or this Constitution or otherwise);
- 1.18.7.4 the members' request can include an accompanying statement which they can require the SCIO to issue with the written resolution to all Members, within 21 days, the SCIO must circulate the resolution and any accompanying statement with the express statements referred to;
- 1.18.7.5 the SCIO may charge a reasonable fee to the requesting members to cover its costs of circulation of the members' request.
- 1.18.8 Any such written resolution may consist of several documents in the same form, each signed by or on behalf of one or more Members.
- 1.18.9 Once a Member has signed and returned a written resolution in agreement thereto, his or her agreement is irrevocable.

## **2 The Board of Trustee's**

### **2.1 General**

- 2.1.1 The strategy and affairs of the SCIO shall be directed and managed by a Board of Trustees. The Board may exercise all such powers of the SCIO, and do on behalf of the SCIO all acts as may be exercised and done by the SCIO, other than those required to be exercised or done by the members in Members' Meeting, and subject always to this Constitution.

### **2.2 Eligibility**

- 2.2.1 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

### **2.3 Limitation**

- 2.3.1 The Members may, by Special Resolution, direct the Board to take, or to refrain from taking, specified action, but no such Special Resolution shall invalidate anything which the Board may have done prior to the passing of such Special Resolution.

## **2.4 Delegation**

- 2.4.1 The Board may delegate any of its powers to any sub-committee or persons or person, by such means, to such an extent and on such terms and conditions as it thinks fit, and may at any time revoke such delegation, in whole or in part, or alter such terms and conditions. If the Board so specifies, any such delegation may authorise further delegation of the Board's powers by any subcommittee or persons or person to whom they are delegated.

## **2.5 Number of Trustees**

- 2.5.1 The number of Trustees shall not be fewer than Three (3) and, unless otherwise determined by special resolution at a Members' Meeting (but not retrospectively), and not more than Nine (9).
- 2.5.2 The Board may act notwithstanding any vacancy in it, but where the number of Trustees falls below the minimum number specified in this Clause, it may only do so for the purpose of appointing sufficient Trustees to match or exceed that minimum.

## **2.6 Composition of Board**

- 2.6.1.1 From and after the first AGM, the Board shall comprise:
- 2.6.1.2 up to 9 individual persons elected as Trustees by the Members in terms of Clause 2.7 ("the Member Trustees"); and
- 2.6.1.3 up to 3 individual persons co-opted as Trustees in terms of clause 2.7 ("the Co-opted Trustees").

## **2.7 Member Trustees**

- 2.7.1 Nomination of any Member trustee shall be in writing by the nominee, who shall confirm his or her willingness to act as a Member trustee if elected, and if required shall provide a statement to explain his or her suitability.
- 2.7.2 All nominations to be valid must be delivered to the SCIO (or to such other address for the SCIO as specified in the nomination form) not less than seven days prior to the date of the AGM in question.
- 2.7.3 The Members or the Board may also nominate one of the Members to become a Member trustees, prior to the AGM or at any time, provided that they are willing to act and (if requested) have provided a statement of suitability delivered to the SCIO.

- 2.7.4 A person who has served on the board for a period of three (3) years shall automatically vacate office on expiry of that 3 year period but shall be eligible for re-election.
- 2.7.5 A trustee who retires under article 28.4 shall remain in office until the end of the meeting.
- 2.7.6 If no other Trustee has or Trustees have decided or agreed to retire, the Member trustees to retire at each AGM shall be those who have been longest in office since their last election but, as between persons who were elected or last re-elected Trustees on the same day, the one or ones to retire shall (unless they otherwise agree amongst themselves) be determined by lot.

## **2.8 Co-opted Trustees**

- 2.8.1 Up to 3 individuals may be co-opted from time to time by the Board of Trustees itself, either on the basis that he/she has specialist experience and/or skills which could be of assistance to the directors, as follows:
- 2.8.2 A Co-opted Trustee may serve for a maximum of 3 consecutive years after his or her co-option.
- 2.8.3 A Co-opted Trustee can be re-co-opted by the Board immediately after such next AGM.
- 2.8.4 A Co-opted Trustee can be removed from office at any time by a simple majority of the Board.
- 2.8.5 For the avoidance of doubt, a Co-opted Trustee may participate fully in and vote at all Board meetings which he or she attends.

## **2.9 Casual Vacancies**

- 2.9.1 The Board may from time to time fill any casual vacancy arising as a result of the retiral (or deemed retiral for any reason) of any Member trustee, from or after the date of such retiral or deemed retiral until the next AGM.

## **2.10 Termination of Office**

- 2.10.1 Any Trustee must cease to be a Trustee in any one or more of the following events:
  - 2.10.1.1 if he or she is prohibited from being a member under clause 1.7;

- 2.10.1.2 if he or she is prohibited from being a charity trustee by virtue of section 69 (2) of the Charities Act;
- 2.10.1.3 if, in terms of section 66(5) of the Charities Act, he or she is considered by the Board to have been in serious or persistent breach of either or both of the duties listed in sections 66(1) and 66(2) of the Charities Act, such Trustee being entitled to be heard prior to the Board taking a decision;
- 2.10.1.4 if he or she holds any office of profit or is employed by the SCIO;
- 2.10.1.5 if he or she has a significant conflict of interest which the Board considers has and is likely to continue to undermine his or her ability to act impartially as a Trustee;
- 2.10.1.6 if he or she becomes incapable for medical reasons of fulfilling the duties of his or her office and such incapacity, as certified if necessary by two medical practitioners, is expected to continue for a period of more than six months from the date or later date of such certification;
- 2.10.1.7 if he or she is absent (without permission) from more than three consecutive meetings of the Board, and the Board resolves to remove him or her from office;
- 2.10.1.8 if by notice in writing to the Principal Office he or she resigns his or her office as a Trustee.

## **2.11 Register of Trustees**

- 2.11.1 The Board shall maintain a Register of Trustees, setting out the following details of each Trustee, namely, name, address, date of appointment and any offices held.
- 2.11.2 Where a Trustee is not a natural person, the following details shall be included on the Register, namely, name, any other name by which it is known, any offices held, its principal contact, its principal address, its charity number (if applicable) and its company number (if applicable).
- 2.11.3 Where a Trustee is appointed by OSCR, in terms of section 70A of the Charities Act, this fact must be stated on the Register.
- 2.11.4 The Register must provide the following details of each former Trustee for at least five years after cessation of trusteeship, namely name, any offices held and date of cessation of trusteeship.
- 2.11.5 The Register of Trustees is open to all members and Trustees of the SCIO, but Trustees' addresses (or any of them) can be kept confidential by the SCIO.

- 2.11.6 Changes to the Register must be made within twenty-eight days of the SCIO receiving notice of any change.
- 2.11.7 If an individual requests the SCIO to provide a copy of its Register of Trustees, he or she is, if the request is reasonable, entitled to be given a copy within twenty-eight days. The SCIO may not charge for doing so. The SCIO can omit all or any of its Trustees' addresses in its response to a request.

### **3 Board Meetings**

#### **3.1 Quorum**

- 3.1.1 The quorum for Board meetings shall be not less than one-third of all the Trustees. No business shall be dealt with at a Board meeting unless a quorum is present. The quorum can be fixed by the Chairperson, to ensure that specific Trustees are present that may help inform planned discussions or decisions.
- 3.1.2 A Trustee shall not be counted in the quorum at a meeting (or at least the relevant part thereof) in relation to a resolution on which, whether because of personal interest or otherwise, he or she is not entitled to vote.

#### **3.2 Convening Board Meetings**

- 3.2.1 Meetings of the Board may take place in person or by telephone, video conferencing facility or similar communications equipment whereby all the directors participating in the meeting can hear each other, approved from time to time by the Board; a director participating in a meeting in this manner shall be deemed to be present in person at the meeting telephone conference call, video conference call.
- 3.2.2 Not less than 14 clear days' notice in writing shall be given of any meeting of the Board at which a decision is to be made in relation to any matter requiring to be decided by Special Resolution, which notice shall be accompanied by an agenda and any papers relevant to the matter to be decided. All other Board meetings shall require not less than 7 days' prior notice, unless all Trustees agree unanimously in writing to dispense with such notice on any specific occasion.
- 3.2.3 A Trustee may at any time, summon a meeting of the Board by notice served upon all Trustees, to take place at a reasonably convenient time and date.
- 3.2.4 The trustees shall meet not less than 4 times per calendar year.

### **3.3 Chairperson of Board Meeting**

- 3.3.1 The Chairperson shall be entitled to preside as chairperson of all Board meetings at which he or she shall be present.
- 3.3.2 If at any meeting neither the Chairperson is present and willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting, the remaining Trustees may appoint one of the Trustees to be chairperson of the Board meeting, which failing the meeting shall be adjourned until a time when the Chairperson will be available.
- 3.3.3 The Chairperson need not be a member of the SCIO.

### **3.4 Voting at Board Meetings**

- 3.4.1 The chairperson of the Board meeting shall endeavour to achieve consensus wherever possible but, if necessary, questions arising shall be decided by being put to the vote, on a show of hands only, each Trustee present having one vote.
- 3.4.2 All decisions of the Board shall be by a simple majority at any meeting which is quorate at the time the decision is taken.
- 3.4.3 The decisions requiring a Special Resolution cannot be taken by the Trustees alone, but must be taken also by the Members in a Members' Meeting and only thereafter acted upon by the Board as directed by the Members.
- 3.4.4 In the event of an equal number of votes for and against any resolution at a Board meeting, the chairperson of the meeting shall have a second casting vote as well as a deliberative vote.
- 3.4.5 A resolution in writing (whether one single document signed by all or a sufficient majority of the Trustees or all or a sufficient majority of the members of any sub-committee), whether in one or several documents in the same form each signed by one or more Trustees or members of any relative sub-committee as appropriate, shall be as valid and effectual as if it had been passed at a meeting of the Board or of such sub- committee duly convened and constituted.

### **3.5 Observers**

- 3.5.1 The Board may invite or allow any person to attend and speak, but not to vote, at any meeting of the Board.

### **3.6 Minutes**

- 3.6.1 The Board shall cause minutes to be made of all appointments of officers made by it and of the proceedings of all Members' Meetings and of all Board meetings and of sub-committees, including the names of those present, and all business transacted at such meetings and any such minutes of any meeting, if purporting to be signed after approval, either by the chairperson of such meeting, or by the chairperson of the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated. The minutes shall be retained for at least 10 years.

### **3.7 Validation**

- 3.7.1 All acts *bona fide* done by any Board meeting, or of any sub-committee, or by any person acting as a Trustee shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Trustee or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Trustee.
- 3.7.2 No alteration of this Constitution and no direction given by Special Resolution shall invalidate any prior act of the Board which would have been valid if that alteration had not been made or that direction had not been given.

### **3.8 Ancillary Regulations**

- 3.8.1 The Board may from time to time promulgate, review and amend any Ancillary Regulations, Guidelines and/or Policies, subordinate at all times to this Constitution, as it deems necessary and appropriate to provide additional explanation, guidance and governance to themselves, members, employees, stakeholders and/or others.

### **3.9 Office Bearers**

- 3.9.1 The Board may appoint a Chairperson, Treasurer and Secretary. Such appointments shall be made as soon as practicable immediately after each AGM.
- 3.9.2 In addition to the office-bearers required under the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 3.9.3 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected.
- 3.9.4 A person elected to any office will automatically cease to hold that office: -

3.9.4.1 if he/she ceases to be a charity trustee; *or*

3.9.4.2 if he/she gives to the organisation a notice of resignation from that office, signed by him/her.

## **4 Miscellaneous**

### **4.1 Remuneration**

4.1.1 The income and property of the SCIO shall be applied solely towards promoting the Charitable Purposes.

4.1.2 No part of the income or property of the SCIO shall be paid or transferred (directly or indirectly) to the members or Trustees of the SCIO, whether by way of dividend, bonus or otherwise, except where such members or Trustees are in receipt of income or property of the SCIO as a beneficiary of the SCIO in terms of the Charitable Purposes.

4.1.3 No benefit (whether in money or in kind) shall be given by the SCIO to any member or Trustee except the possibility of:

4.1.4 repayment of out-of-pocket expenses to Trustees (subject to prior agreement by the Board); *or*

4.1.5 reasonable remuneration to a member or any Trustees in return for specific services actually rendered to the SCIO (not being of a management nature normally carried out by a director of a company); *or*

### **4.2 Charity Trustee – Legal Duties**

4.2.1 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:-

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

4.2.3

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

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

- 4.2.5.1 put the interests of the organisation before that of the other party;
  - 4.2.5.2 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;
  - 4.2.5.3 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.
- 4.2.6 In addition to the duties outlined in the preceding clause, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 4.2.6.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated;
  - 4.2.6.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.

### **4.3 Conflicts of Interests**

- 4.3.1 Any Trustee and/or employee who has a personal interest (as defined in Clause 4.3.2) in any prospective or actual contract or other arrangement with the SCIO must declare that interest either generally to the Board or specifically at any relevant meeting of the SCIO. Where such an interest arises, the provisions within Clause 4.3.3 shall apply.
- 4.3.2 A personal interest includes the following interests:
  - 4.3.2.1 those of the Trustee or employee in question; and
  - 4.3.2.2 those of his or her partner or close relative; and
  - 4.3.2.3 those of any business associate; and
  - 4.3.2.4 those of any firm of which he or she is a partner or employee; and
  - 4.3.2.5 those of any limited company of which he or she is a director, employee or shareholder of more than 5% of the equity; and
  - 4.3.2.6 those of any person or organisation responsible for his or her appointment as a Trustee.
- 4.3.3 Whenever a Trustee finds that there is a personal interest, he or she has a duty to declare this to the Board meeting in question. In that event, in order to avoid a material conflict of interest arising, the Trustee in question cannot partake in discussions or decisions relating to such matter.

- 4.3.4 It shall be for the chairperson of the meeting in question to determine whether the Trustee in question should at the least be required to be absent during that particular element of the meeting. Where a Trustee leaves, or is required to leave, the meeting in question, he or she no longer forms part of the quorum thereat.
- 4.3.5 The Board may at any time resolve, but without taking a specific vote on the matter, to authorise any Trustee to continue acting where a real or potential conflict of interest exists in relation to a personal interest of that Trustee, but where it considers that the interests of the SCIO have not been nor are likely to be prejudiced as a result. The Trustee in question cannot be considered as part of the quorum for that part of any Board meeting giving consideration to this authorisation.
- 4.3.6 The Board may resolve at any time to require all Trustees and employees to deliver a Notice of Relevant Interests to the Principal Office (or elsewhere as it may determine), as they arise and at least annually. In that event, the Board shall determine from time to time what additional interests, if any, shall be relevant interests and shall ensure that a Register of Notices of Relevant Interests is maintained.
- 4.3.7 If existing, the Register of Interests shall be open for inspection by both the Board and members of the SCIO and, with the express prior written approval of the Trustee or employee concerned, by members of the public.

## **5 Finances and Accounts**

### **5.1 General**

- 5.1.1 The Board shall ensure that all funds and assets of the SCIO are applied towards achieving the Charitable Purposes.

### **5.2 Bank Accounts**

- 5.2.1 The banking account or accounts of the SCIO shall be kept in such bank or building society and/or banks or building societies as the Board shall from time to time determine.
- 5.2.2 The signatures of one out of two 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. In cases where funds have to be paid out that exceed one thousand pounds (£1,000), two signatories appointed by the board will be required. All signatories shall be charity trustees. 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 this approach.

### **5.3 Accounting Records**

- 5.3.1 The Board shall cause accounting records to be kept in accordance with the requirements of the relevant regulations.
- 5.3.2 The accounting records shall be maintained by the Treasurer (if there is one), or otherwise by, or as determined by, the Board. Such records shall be kept at such place or places as the Board shall think fit and shall always be open to the inspection of the Trustees. The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the SCIO or any of them shall be open to the inspection of the members of the SCIO.

### **5.4 Accounts**

- 5.4.1 At or before each AGM, or otherwise after the Accounts have been approved by the Board, it shall provide the members with a copy of the accounts for the period since the last preceding accounting reference date or (in the case of the first account since the incorporation of the SCIO). The accounts shall be accompanied by proper reports of the Board and the independent financial examiner. As an alternative, the Accounts may be available for inspection on the website of the SCIO (with all members, Trustees and the independent financial examiner (if applicable) being made aware that they are so available for inspection there).

## **6 Administration**

### **6.1 Notices**

- 6.1.1 A notice may be served by the SCIO upon any member, either personally or by sending it by post, fax, e-mail or other appropriate electronic means, addressed to such member at his or her or its registered address as appearing in the Register of Members.
- 6.1.2 Any notice, whether served by post or otherwise, shall be deemed to have been served on the day following that on which the letter containing the same is put into the post or is otherwise dispatched.
- 6.1.3 A member present at any meeting of the SCIO shall be deemed to have received notice of the meeting and, where requisite, of the purpose for which it was called.

- 6.1.4 The business of the SCIO and all its correspondence with and notification to or from members may be conducted equally validly and effectively if transmitted by fax or e-mail or other appropriate electronic means (except where a member specifically requests all such correspondence and notification by post) or otherwise if publicised on the website of the SCIO where the SCIO has advised each member of this and has taken due steps to notify by other reasonable means all other members who state that they do not have access to the Internet.

## **6.2 Indemnity**

- 6.2.1 Without prejudice to any other indemnity, the Trustees, or member of any sub-committee, the Treasurer of the SCIO shall be indemnified out of the funds of the SCIO against any loss or liability (including the costs of defending successfully any court proceedings) which he, she or they may respectively incur or sustain, in connection with or on behalf of the SCIO and each of them shall be chargeable only for so much money as he or she may actually receive and they shall not be answerable for the acts, receipts, neglects or defaults of each other, but each of them for his or her own acts, receipts, neglects or defaults only.

## **6.3 Alteration of Constitution**

- 6.3.1 No alteration in this Constitution may at any time be made unless by the decision of two-thirds of the Members present and voting at a Members' Meeting called specifically (but not necessarily exclusively) for the purpose.

## **6.4 Winding Up**

- 6.4.1 The winding-up of the SCIO may take place only:
- 6.4.1.1 on the decision of not less than two-thirds of its Members who are present and voting at a Members' Meeting called specifically (but not necessarily exclusively) for the purpose; and on application to and consent of OSCR.
  - 6.4.1.2 If, on the winding-up of the SCIO, any property remains, after satisfaction of all its debts and liabilities, such property shall be given or transferred to any one or more charities having the same or a similar object to the Charitable Purposes.
  - 6.4.1.3 The charity or charities to which the property is to be transferred in terms of Clause shall be determined on the decision of not less than two-thirds of the Members of the SCIO who are present and voting at a Members' Meeting called specifically (but not necessarily exclusively) for the purpose or, failing that, by a decision of not less than two-thirds of the Board or, failing that, as determined by an arbiter to be chosen amicably by the Board, whose decision shall be final and binding upon the SCIO

- 6.4.1.4 If the SCIO is a charity at the time that its winding-up is decided upon in terms of this Clause, the prior consent of the Office of the Scottish Charity Regulator (or any successor thereto) must be obtained in terms of The Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011.
- 6.4.1.5 The members of the SCIO are not liable to contribute to the assets of the SCIO upon its winding up.