

**CONSTITUTION  
OF  
INNERWICK PARISH WELFARE ASSOCIATION SCIO  
(TWO TIER SCIO)**

2021

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Ref: INN/15/1

## 1. DEFINITIONS

1.1. In this Deed the following definitions will apply:

|                            |   |
|----------------------------|---|
| <b>Act</b>                 | means the Charities and Trustee Investment (Scotland) Act 2005.   |
| <b>AGM</b>                 | means the annual meeting of the Members of the SCIO.  |
| <b>Charity</b>             | means a body which is either a "Scottish charity" within the meaning of section 13 of the Act or a "charity" within the meaning of section 1 of the Charities Act 2011 or any statutory variation or re-enactment specifically setting out a definition of "charity" providing that its objects are limited to Charitable Purposes. |
| <b>Charitable Purposes</b> | means any charitable purpose under section 7 of the Act which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.  |
| <b>Charity Trustees</b>    | means the original Charity Trustees of the SCIO or any other person or persons or corporate body who may be assumed to act hereunder, and the survivors and survivor of the persons or corporate body before named or who may be assumed.   |
| <b>Constitution</b>        | means this Constitution.  |
| <b>Minutes</b>             | means any written record disclosing the procedure and/or decisions at any Charity Trustees' meetings.   |
| <b>Members</b>             | means the members of the SCIO from time to time.  |
| <b>SCIO</b>                | means the Scottish Charitable Incorporated Organisation created by the Constitution.  |
| <b>Written Notice</b>      | means notice sent by post or by e-mail to the address or e-mail address last notified by a Member or Charity Trustee to the SCIO.   |

## 2. INTERPRETATION

2.1. Throughout this constitution words importing the neuter gender include all genders and words importing the singular include the plural and vice versa as the context requires.

### **3. TYPE OF LEGAL ENTITY**

3.1. The SCIO will, upon registration, be a Scottish Charitable Incorporated Organisation.

### **4. PRINCIPAL OFFICE**

4.1. The principal office of the SCIO will be, and must remain, in Scotland.

### **5. NAME OF SCIO**

5.1. The SCIO shall be known as “**Innerwick Parish Welfare Association SCIO**”.

### **6. GENERAL STRUCTURE**

6.1. The structure of the SCIO comprises:

- (a) the “**Members**” - who have the right to attend Members' meetings (including any annual Members' meeting) and have important powers under the constitution. In particular, the Members appoint people to serve on the Committee and take decisions on changes to the constitution itself.
- (b) the “**Committee**” - who hold regular meetings, and generally control the activities of the SCIO. For example, the Committee is responsible for monitoring and controlling the financial position of the SCIO.
- (c) The people serving on the Committee are referred to in this constitution as “**Charity Trustees**”.
- (d) No-one can be a Charity Trustee unless they are also a Member of the SCIO.

### **7. PURPOSES**

7.1. The SCIO will promote the welfare of the communities resident in the Parish of Innerwick but without prejudice to the generality of that purpose, the SCIO shall assist with:

- (a) the initiation, encouragement and support of activities of a charitable, educational, cultural, or recreational nature to support the physical, social, emotional and mental wellbeing of the community, individually and collectively;
- (b) the maintenance of a Meeting place or places for the furtherance of these ends;
- (c) to raise funds, receive and hold monies and other assets and to receive, hold, and to receive, hold and keep in good repair the property of the SCIO, all for the furtherance of these ends outlined in 7.1 (a) and 7.1 (b);
- (d) For the implementation or assistance in implementing any Charitable Purpose or purposes as the Charity Trustees in their unfettered discretion may decide.

- 7.2. For the purposes of the 2005 Act the following charitable purposes are (i) particularly relevant and (ii) are the charitable purposes identified as applicable from section 7 of the 2005 Act:
- (a) the advancement of citizenship or community development; and
  - (b) 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.
- 7.3. The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so all in compliance with the terms of the Act insofar as it relates to the operation of a SCIO.
- 7.4. No part of the income or property of the SCIO may be paid or transferred (directly or indirectly) to the Charity Trustees - either in the course of the SCIO's existence or on dissolution - except where this is done in direct furtherance of the SCIO's purposes.

## **MEMBERSHIP**

### **8. QUALIFICATIONS FOR MEMBERSHIP**

- 8.1. Membership is open to any individual aged over 16 in Scotland who:
- (a) lives within the boundary of Innerwick Parish; or
  - (b) lives outwith the boundary of the Innerwick Parish, but whose membership is approved by two thirds of the Committee on the basis that they have a demonstrable connection with the community (for example a minister, teacher, volunteer, or previous resident).
- 8.2. Employees of the SCIO shall not be eligible for membership.

### **9. APPLICATION FOR MEMBERSHIP**

- 9.1. Any person who wishes to become a Member must submit a written application for membership that is signed by them, or submit an application via any electronic method approved by the Committee from time to time. The application will then be considered by the Committee at its next Committee meeting.
- 9.2. The Committee may, at its discretion, refuse to admit any person to membership.
- 9.3. The Committee must notify each applicant promptly (in writing or by e-mail) of its decision on whether or not to admit them to membership.

### **10. REGISTER OF MEMBERS**

- 10.1. The Committee must keep a register of Members, setting out for each current Member:
- (a) their full name and address; and

- (b) the date on which they were registered as a Member of the SCIO.
- 10.2. The Committee must keep a register for each former Member - for at least six years from the date on which they ceased to be a Member, which includes:
  - (a) their name; and
  - (b) the date on which they ceased to be a Member.
- 10.3. The Committee must ensure that the register of Members is updated within 28 days of any change:
  - (a) which arises from a resolution of the Committee or a resolution passed by the Members of the SCIO; or
  - (b) which is notified to the SCIO.
- 10.4. If a Member or Charity Trustee of the SCIO requests a copy of the register of Members, the Committee must ensure that a copy is supplied to them within 28 days, providing the request is reasonable. If the request is made by a Member (rather than a Charity Trustee), the Committee may provide a copy that has the addresses redacted.

## **11. WITHDRAWAL FROM MEMBERSHIP**

- 11.1. Any person who wants to withdraw from membership must give 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.

## **12. TRANSFER OF MEMBERSHIP**

- 12.1. Membership of the SCIO may not be transferred by a Member.

## **13. RE-REGISTRATION OF MEMBERS**

- 13.1. The Committee may, at any time, issue notices to the Members requiring them to confirm that they wish to remain as Members of the SCIO, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the Committee.
- 13.2. If a Member fails to provide confirmation to the Committee (in writing or by e-mail) that they wish to remain as a Member of the SCIO before the expiry of the 28-day period, the Committee may expel them from membership.
- 13.3. A notice will not be valid unless it refers specifically to the consequences of failing to provide confirmation within the 28-day period.

## **14. EXPULSION FROM MEMBERSHIP**

- 14.1. Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a Members' meeting, providing the following procedures have been observed:

- (a) at least 21 days' notice of the intention to propose the resolution must be given to the Member concerned, specifying the grounds for the proposed expulsion; and
- (b) the Member concerned will be entitled to be heard on the resolution at the Members' meeting at which the resolution is proposed.

## **15. TERMINATION**

- 15.1. Membership of the SCIO will terminate on death.

### **DECISION-MAKING BY THE MEMBERS**

## **16. MEMBERS' MEETINGS**

- 16.1. The Committee must arrange a meeting of Members (an annual Members' meeting or "AGM") in each calendar year.
- 16.2. The gap between one AGM and the next must not be longer than 15 months.
- 16.3. Notwithstanding clause 17.1, 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.
- 16.4. The business of each AGM must include:
  - (a) a report by the chair on the activities of the SCIO;
  - (b) consideration of the annual accounts of the SCIO; and
  - (c) the election or re-election of the Committee.
- 16.5. The Committee may arrange a special Members' meeting at any time.

## **17. POWER TO REQUEST THE COMMITTEE TO ARRANGE A SPECIAL MEMBERS' MEETING**

- 17.1. The Committee must arrange a special Members' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more Members) by Members who amount to 5% or more of the total membership of the SCIO at the time, providing:
  - (a) the notice states the purposes for which the meeting is to be held; and
  - (b) those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.
- 17.2. If the Committee receive a notice under clause 18.1, 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.

## **18. NOTICE OF MEMBERS' MEETINGS**

- 18.1. At least 14 clear days' notice must be given of any AGM or any special Members' meeting.
- 18.2. The notice calling a Members' meeting must specify in general terms what business is to be dealt with at the meeting; and
  - (a) in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
  - (b) in the case of any other resolution falling within clause 23 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 18.3. The reference to "clear days" in clause 19.1 shall be taken to mean that, in calculating the period of notice:
  - (a) the day after the notices are posted (or sent by e-mail) should be excluded; and
  - (b) the day of the meeting itself should also be excluded.
- 18.4. 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.
- 18.5. Any notice which requires to be given to a Member under this constitution must be:
  - (a) sent by post to the Member, at the address last notified by them to the SCIO; or
  - (b) sent by e-mail to the Member, at the e-mail address last notified by them to the SCIO.
- 18.6. If Members and Charity Trustees are to be permitted to participate in a Members' meeting by way of audio and/or audio-visual link(s), the notice (or notes accompanying the notice) must:
  - (a) set out details of how to connect and participate via that link or links; and
  - (b) (particularly for the benefit of those Members who may have difficulties in using a computer or laptop for this purpose) draw Members' attention to the following options:
    - (i) participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
    - (ii) (where attendance in person is to be permitted, either on an open basis or with a restriction on the total number who will be permitted to attend) attending and voting in person at the meeting; and
    - (iii) submitting questions and/or comments in advance of the meeting.

- 18.7. Where a Members' meeting is to involve participation *solely* via audio and/or audio-visual link(s), the notice (or notes accompanying the notice) must include a statement inviting Members to submit questions and/or comments in advance of the meeting, which the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.
- 18.8. 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.

## **19. PROCEDURE AT MEMBERS' MEETINGS**

- 19.1. The Committee may if they consider appropriate make arrangements for Members and Charity Trustees to participate in Members' meetings by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting, providing:
- (a) the means by which Members and Charity Trustees can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all or a significant proportion of the membership - a barrier to participation;
  - (b) the notice calling the meeting (or notes accompanying the notice) contains the information required; and
  - (c) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those Members and Charity Trustees who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those Members and Charity Trustees (if any) who are attending in person (and vice versa).
- 19.2. 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 Committee must make arrangements for Members and Charity Trustees to participate in that Members' meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting.
- 19.3. A Members' meeting may involve two or more Members or Charity Trustees participating via attendance in person while other Members and/or Charity Trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
- 19.4. The quorum for a Members' meeting is 20 of the SCIO's Members, present in person.



- 19.5. An individual participating in a Members' meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a Member will be deemed to be in attendance) at the meeting.
- 19.6. 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.
- 19.7. The chair of the SCIO should act as chairperson of each Members' meeting.
- 19.8. 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.

## **20. VOTING AT MEMBERS' MEETINGS**

- 20.1. Every Member has one vote, which must be given personally or by electronic means (such as any form of audio and/or audio-visual software).
- 20.2. All decisions at Members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 21.3.
- 20.3. 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 23):
  - (a) a resolution amending the constitution;
  - (b) a resolution expelling a person from membership;
  - (c) a resolution directing the Committee to take any particular step (or directing the Committee not to take any particular step);
  - (d) 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);
  - (e) 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);
  - (f) a resolution for the winding up or dissolution of the SCIO.
- 20.4. 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.

- 20.5. 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) ask for a secret ballot.
- 20.6. Where Members are participating in a meeting via an audio or audio-visual link, they may cast their votes on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically - and providing the Committee 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.
- 20.7. The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.
- 20.8. Where Members are participating in a meeting via audio and/or audio-visual links, the chairperson's directions regarding how a secret ballot is to be conducted may allow those Members to cast their votes on the secret ballot via any electronic method, providing reasonable steps are taken to preserve anonymity (while at the same time, addressing any risk of irregularities in the process).

## **21. TECHNICAL OBJECTIONS TO REMOTE PARTICIPATION IN MEMBERS' MEETINGS**

- 21.1. This constitution imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at Members' meetings; providing the arrangements made by the Committee in relation to a given Members' meeting (and the manner in which the meeting is conducted) are consistent with those requirements:
- (a) a Member cannot insist on participating in the Members' meeting, or voting at the Members' meeting, by any particular means;
  - (b) the Members' meeting need not be held in any particular place;
  - (c) the Members' meeting may be held without any particular number of those participating in the meeting being present in person at the same place (but, notwithstanding that, the quorum requirements - taking account of those participating via audio and/or audio-visual links - must still be met);
  - (d) the Members' meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting;
  - (e) a Member will be able to exercise the right to vote at the Members' meeting (including where a secret ballot is to be held) by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by

the Committee) and which permits that Member's vote to be taken into account in determining whether or not a resolution is passed.

## **22. WRITTEN RESOLUTIONS BY MEMBERS**

22.1. A resolution agreed to in writing (or by e-mail) by the majority of a quorum of the SCIO's 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. A quorum is 20 of the SCIO's Members for the purposes of this clause.

## **23. MINUTES**

23.1. The Committee must ensure that proper minutes are kept in relation to all Members' meetings.

23.2. 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.

23.3. The Committee shall make available copies of the minutes referred to in clause 24.1 to any Member of the public requesting them; but on the basis that the Committee may exclude confidential material.

## **24. SUBSCRIPTION**

Reasonable membership subscription may be levied from time to time by the Charity Trustees at their sole discretion.

## **THE COMMITTEE**

### **25. NUMBER OF CHARITY TRUSTEES**

25.1. The Committee comprises the Charity Trustees.

25.2. The maximum number of Charity Trustees is 13.

25.3. The minimum number of Charity Trustees is 5.

### **26. ELIGIBILITY**

26.1. A person shall not be eligible for election/appointment to the Committee unless they are a Member of the SCIO.

26.2. A person will not be eligible for election or appointment to the Committee if they are:

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

## **27. INITIAL CHARITY TRUSTEES**

27.1. 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 as the original Members and appointed by the same as Charity Trustees with effect from the date of incorporation of the SCIO.

## **28. ELECTION, RETIRAL, RE-ELECTION**

28.1. At each AGM, the Members may elect any Member (unless they are debarred from membership) to be a Charity Trustee.

28.2. The Committee may at any time appoint any Member (unless they are debarred from membership under clause) to be a Charity Trustee.

28.3. At each AGM, all of the Charity Trustees elected/appointed (and, in the case of the first AGM, those deemed to have been appointed under clause 28.1) shall retire from office – but shall then be eligible for re-election under clause 29.4.

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

- (a) they advise the Committee prior to the conclusion of the AGM that they do not wish to be re-appointed as a Charity Trustee; or
- (b) an election process was held at the AGM and they were not among those elected/re-elected through that process; or
- (c) a resolution for the re-election of that Charity Trustee was put to the AGM and was not carried.

## **29. APPOINTMENT/RE-APPOINTMENT OF CO-OPTED CHARITY TRUSTEES**

29.1. The Committee may at any time appoint any non-Member of the SCIO to be a Charity Trustee (providing they are not debarred from membership) either on the basis that they have specialist experience and/or skills which could be of assistance to the Committee.

29.2. Any person appointed under clause 30.1 shall also be appointed as a Member of the SCIO.

29.3. At each AGM, all of the Charity Trustees appointed under clause 30.1 shall retire from office – but shall then be eligible for re-appointment under that clause.

## **30. TERMINATION OF OFFICE**

30.1. A Charity Trustee will automatically cease to hold office if:

- (a) they miss three consecutive Committee meetings, without good reason (such reason to be determined by the Committee in their absolute discretion) but only if the Committee resolves to remove them from office;

- (b) they become disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005;
- (c) 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;
- (d) (in the case of a Charity Trustee elected/appointed under clauses 29 or 30) they cease to be a Member of the SCIO;
- (e) they become an employee of the SCIO;
- (f) they give the SCIO a notice of resignation, signed by them;
- (g) they are removed from office by resolution of the Committee on the grounds that they are considered to have committed a material breach of the code of conduct for Charity Trustees;
- (h) they are removed from office by resolution of the Committee on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- (i) they are removed from office by a resolution of the Members passed at a Members' meeting.

30.2. A resolution under paragraph (g), (h) or (i) shall be valid only if:

- (a) the Charity Trustee who is the subject of the resolution is given reasonable prior Written Notice of the grounds upon which the resolution for their removal is to be proposed;
- (b) the Charity Trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
- (c) (in the case of a resolution under paragraph (g) or (h)) at least two thirds (to the nearest round number) of the Charity Trustees then in office vote in favour of the resolution.

## **31. REGISTER OF CHARITY TRUSTEES**

31.1. The Committee must keep a register of Charity Trustees, setting out:

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

(b) for each former Charity Trustee - for at least 6 years from the date on which they ceased to be a Charity Trustee:

- (i) the name of the Charity Trustee;
- (ii) any office held by them in the SCIO; and
- (iii) the date on which they ceased to be a Charity Trustee.

31.2. The Committee must ensure that the register of Charity Trustees is updated within 28 days of any change:

- (a) which arises from a resolution of the Committee or a resolution passed by the Members of the SCIO; or
- (b) which is notified to the SCIO.

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

## **32. OFFICE-BEARERS**

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

32.2. In addition to the office-bearers required under clause 33.1 the Charity Trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

32.3. All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 29.

32.4. A person elected to any office will automatically cease to hold that office:

- (a) if they cease to be a Charity Trustee; or
- (b) if they give to the SCIO a notice of resignation from that office, signed by them.

## **33. POWERS OF COMMITTEE**

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

33.2. A meeting of the Committee at which a quorum is present may exercise all powers exercisable by the Committee.

33.3. The Members may, by way of a resolution passed in compliance with a requirement for two-thirds majority, direct the Committee to take any particular step or direct the Committee not to take any particular step; and the Committee shall give effect to any such direction accordingly.

#### **34. CHARITY TRUSTEES - GENERAL DUTIES**

34.1. 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:

- (a) seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes;
- (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
- (c) in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
  - (i) put the interests of the SCIO before that of the other party; or
  - (ii) 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;
- (d) 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.

34.2. In addition to the duties outlined in clause 35.1, all of the Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring:

- (a) that any breach of any of those duties by a Charity Trustee is corrected by the Charity Trustee concerned and not repeated; and
- (b) that any trustee who has been in serious or persistent breach of those duties is removed as a trustee.

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

- 34.4. 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.
- 34.5. 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.

### **35. CODE OF CONDUCT FOR CHARITY TRUSTEES**

- 35.1. Each of the Charity Trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Committee from time to time.
- 35.2. The code of conduct 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**

#### **36. NOTICE OF COMMITTEE MEETINGS**

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

#### **37. PROCEDURE AT COMMITTEE MEETINGS**

- 37.1. No valid decisions can be taken at a Committee meeting unless a quorum is present; the quorum for Committee meetings is 5 Charity Trustees, present in person.



- 37.2. An individual participating in a Committee meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a Charity Trustee, will be deemed to be in attendance) at the meeting.
- 37.3. If at any time the number of Charity Trustees in office falls below the number stated as the quorum, 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.
- 37.4. The chair of the SCIO should act as chairperson of each Committee meeting.
- 37.5. 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.
- 37.6. Every Charity Trustee has one vote, which must be given personally.
- 37.7. All decisions at Committee meetings will be made by majority vote.
- 37.8. 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.
- 37.9. The Committee may if they consider appropriate, allow Charity Trustees to participate in Committee meetings by way of an audio and/or audio-visual link or links which allow them to hear and contribute to discussions at the meeting, providing:
- (a) the means by which Charity Trustees can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a significant proportion, of the Charity Trustees - a barrier to participation; and
  - (b) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those Charity Trustees who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those Charity Trustees (if any) who are attending in person (and vice versa).
- 37.10. If restrictions arising from public health legislation, directions or guidance are likely to mean that attendance in person at a proposed Committee meeting would not be possible or advisable for one or more of the Charity Trustees, the Committee must make arrangements for Charity Trustees to participate in that Committee meeting by way of audio and/or audio-visual link(s); and on the basis that:
- (a) the requirements set out in paragraphs (a) and (b) of clause 37.3 will apply; and

- (b) the Committee 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.

37.11. A Committee meeting may involve two or more Charity Trustees participating via attendance in person while other Charity Trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.

37.12. Where a Charity Trustee or Charity Trustees are participating in a Committee meeting via an audio or audio-visual link, they may cast their vote on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically.

37.13. The Committee may, at its discretion, allow any person to attend (whether in person or by way of an audio or audio-visual link) and speak at a Committee meeting notwithstanding that they are not a Charity Trustee - but on the basis that they must not participate in decision-making.

37.14. A Charity Trustee must not vote at a Committee 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.

37.15. For the purposes of clause 38.14:

- (a) an interest held by an individual who is “connected” with the Charity Trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that Charity Trustee;
- (b) a Charity Trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, Member of the management Committee, officer or elected representative has an interest in that matter.

37.16. The principles set out in clause 22 (technical objections to remote participation) shall apply in relation to remote participation and voting at Committee 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 Committee meeting.

37.17. A resolution agreed to in writing (or by e-mail) by 7 of the Charity Trustees then in office shall be as valid as if duly passed at a Committee meeting.

- 37.18. A resolution under clause 38.17 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.
- 37.19. If a resolution is circulated to the Charity Trustees under clause 38.17, any one or more Charity Trustees may, following receipt of a copy of the resolution, notify the secretary that they consider that a Committee meeting should be held to discuss the matter which is the subject of the resolution; and if any such notification is received by the secretary prior to the cut-off time:
- (a) the secretary must convene a Committee meeting accordingly, and on the basis that it will take place as soon as reasonably possible;
  - (b) the resolution cannot be treated as valid under clause 38.17 unless and until that Committee meeting has taken place;
  - (c) the Committee may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that Committee meeting that the resolution should be treated as invalid, notwithstanding that it had previously been agreed to in writing (or by e-mail) by a majority of the Charity Trustees then in office.

## **38. MINUTES**

- 38.1. The Committee must ensure that proper minutes are kept in relation to all Committee meetings and meetings of sub-Committees.
- 38.2. The minutes to be kept under clause 39.1 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 38.3. The Committee may at their sole discretion make available copies of part or all of the minutes referred to in clause 39.1 to any member of the public requesting them.
- 38.4. The Committee may exclude from any copy minutes made available to a Member of the public any material which the Committee 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 SCIO or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

## **ADMINISTRATION**

## **39. DELEGATION TO SUB-COMMITTEES**

- 39.1. The Committee 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.
- 39.2. The Committee 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.
- 39.3. When delegating powers under clause 40.1 or 40.2, the Committee must set out appropriate conditions (which must include an obligation to report regularly to the Committee).
- 39.4. Any delegation of powers under clause 40.1 or 40.2 may be revoked or altered by the Committee at any time.
- 39.5. The rules of procedure for each sub-Committee, and the provisions relating to membership of each sub-Committee, shall be set by the Committee.

## **40. OPERATION OF ACCOUNTS**

- 40.1. Subject to clause 41.2, the signatures of two out of three signatories appointed by the Committee 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; at least one out of the two signatures must be the signature of a Charity Trustee.
- 40.2. 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 41.1.

## **41. ACCOUNTING RECORDS AND ANNUAL ACCOUNTS**

- 41.1. The Committee must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 41.2. The Committee must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the Committee consider that an audit would be appropriate for some other reason), the Committee should ensure that an audit of the accounts is carried out by a qualified auditor.

## **42. CHARITY TRUSTEES' LIABILITY**

- 42.1. The Charity Trustees have no liability to pay any sums to help to meet the debts or other liabilities of the SCIO if it is wound up.
- 42.2. If the SCIO is unable to meet its debts, the Charity Trustees will not be held responsible.

- 42.3. The Charity Trustees shall not be liable for depreciation in the value of any investments made by them or received and retained by them nor for omissions or errors in judgement nor for neglect in management, nor for the insolvency of debtors, nor for the acts, omissions, neglect or default of each other or of any agents employed by them.
- 42.4. The Charity Trustees have certain legal duties under the Act and clauses 43.1, 43.2 and 43.3 do not exclude or limit any personal liabilities the Charity Trustees might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to the Charity Trustees personally.

### **43. CONDUCT OF CHARITY TRUSTEES**

- 43.1. In their role as a Trustee, each of the Charity Trustees shall act in the interests of the SCIO and, in particular, must:
- (a) Ensure that the SCIO acts in a manner which is in accordance with the Trust Purposes.
  - (b) Act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person.
  - (c) In circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
    - (i) Put the interests of the SCIO before that of the other party, in taking decisions as a Trustee;
    - (ii) Where any other duty prevents them from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any discussions or decisions involving the other Charity Trustees with regard to the matter in question;
    - (iii) Provided they have declared their interest, and have not voted on the question of whether or not the SCIO should enter into the arrangement, a Trustee may enter into an arrangement with the SCIO in which they have a personal interest; and (subject to the provisions relating to remuneration for services under the Act) may retain any personal benefit which arises from that arrangement;
    - (iv) Ensure that the SCIO complies with any direction, requirement, notice or duty imposed on it by the Act or any statutory re-enactment thereof.
- 43.2. The Charity Trustees may from time to time set out a code of conduct for Charity Trustees of the SCIO and the Charity Trustees shall comply with any such code. Any code of conduct shall be supplemental to the provisions of the Constitution and the

duties imposed on Charity Trustees under the Act; and all relevant provisions of the Constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

43.3. The Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring that:

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

(b) Any Charity Trustee who has been in serious and persistent breach of those duties is removed as a Charity Trustee.

43.4. No Charity Trustee may serve as an employee (full time or part time) of the SCIO and no Trustee may be given any remuneration by the SCIO for carrying out their duties as a Trustee. Notwithstanding this, any Charity Trustee may be appointed and remunerated as a professional advisor to the Charity Trustees.

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

#### **44. ALTERATIONS TO THE CONSTITUTION**

44.1. This constitution may (subject to clause 45.2) be altered by resolution of the Members passed at a Members' meeting (subject to achieving the two thirds majority) or by way of a written resolution of the Members (subject to achieving the two thirds majority).

44.2. 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).

#### **45. WINDING UP**

45.1. If at any time, the Charity Trustees in their absolute discretion are of the opinion that the Trust Purposes can no longer be achieved or would be better achieved in some other manner, the SCIO may be wound-up in accordance with the procedures set out under the Act and the regulations made thereunder by resolution of the Members passed at a Members' meeting (subject to achieving the two thirds majority) or by way of a written resolution of the Members (subject to achieving the two thirds majority).

45.2. On winding-up, the SCIO's property, after meeting all expenses, shall be paid over and transferred by the Charity Trustees to such Charity having purposes which are the

same as or which closely resemble the purposes of the SCIO as the Charity Trustees in their absolute discretion think fit.

**46. LAW OF SCOTLAND**

The Constitution and SCIO shall be governed by the law of Scotland.

**47. INTERPRETATION**

The clause headings are included for ease of reference only and do not form part of the Constitution itself nor should they be relied upon as an aid to interpreting the Constitution: