

CONSTITUTION OF INVERGORDON DEVELOPMENT TRUST

Based on the model prepared by Burness Paull LLP (Solicitors) for
Development Trusts Association Scotland

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GENERAL

Type of organisation

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

Scottish principal office

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

Name

- 3 The name of the organisation (referred to below as the “SCIO”) is Invergordon Development Trust

Purposes

- 4 The SCIO’s purposes are to benefit principally the community of Invergordon, as defined by the area covered by the Invergordon, Saltburn and Westwood Community Councils (“the Community”) with the following objects:

- 4.1 The advancement of community development (including the advancement of urban*/ rural* regeneration) principally within the Community
- 4.2 The advancement of environmental protection or improvement
- 4.3 The advancement of the arts, heritage, culture or science

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

Powers

- 5 The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- 6 In particular, (but without limiting the range of powers available under the Charities and Trustee Investment (Scotland) Act 2005) the SCIO has power:
 - 6.1 to register any interest in land and to exercise any right to buy under Part 2 of the Land Reform (Scotland) Act 2003;
 - 6.2 to exercise any right to buy under Part 3A of the Land Reform (Scotland) Act 2003;
 - 6.3 to exercise any right to buy under Part 5 of the Land Reform (Scotland) Act 2016; and

- 6.4 to make any participation request under Part 3 of the Community Empowerment (Scotland) Act 2015 and/or any asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015, and to take any appropriate steps following upon the making of any such request.

Application of income and property

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

Liability of members

- 10 The members of the SCIO have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up; accordingly, if the SCIO is unable to meet its debts, the members will not be held responsible.
- 11 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 10 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

General structure

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

- 12.2 the BOARD - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the SCIO; in particular, the board is responsible for monitoring and controlling the financial position of the SCIO.
- 13 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

MEMBERS

Categories of members

- 14 For the purposes of this constitution:-
- (a) “Ordinary Member” means a member who fulfils the qualifications set out in clause 17; “Ordinary Membership” shall be interpreted accordingly;
 - (b) “Associate Member” means a member admitted under clause 18 (as read with clause 19); “Associate Membership” shall be interpreted accordingly;
 - (c) “Junior Member” means a member admitted under clause 20; “Junior Membership” shall be interpreted accordingly
- 15 Associate Members and Junior Members are not eligible to stand for election to the Board nor are they eligible to vote at any members’ meeting.

Qualifications for membership

- 16 The members of the SCIO shall consist of those individuals who made the application for registration of the SCIO and such other individuals and organisations as are admitted to membership under clauses 17 to 29.
- 17 Ordinary Membership shall (subject to clauses 22, 23 and 27) be open to any individual aged 16 years or over who:
- (a) is ordinarily resident in the Community (as defined in clause 4);
 - (b) is entitled to vote at a local government election in a polling district that includes the Community or part of it; and
 - (c) supports the objects and activities of the SCIO.
- 18 Associate Membership shall (subject to clauses 22, 23, 24, and 25) be open to individuals who are not ordinarily resident in the Community and (subject to clause 19) to organisations (wherever they have their principal office or place of business or main area of operation) that support the objects and activities of the SCIO.
- 19 In the case of an organisation which is not a corporate body, the organisation itself cannot be a member of the SCIO; instead, membership shall be open to an individual nominated by that organisation (where the organisation would qualify for membership under clause 18), but on the basis that no more than one individual nominated by each organisation under this clause 19 can be a member of the SCIO at any given time.
- 20 Junior Membership shall (subject to clauses 22 and 23) be open to those individuals aged between 12 and 15 (whether or not they are ordinarily

resident in the Community) who support the objects and activities of the SCIO.

- 21 An individual, once admitted to Ordinary Membership, shall automatically cease to be a member if he/she ceases to fulfil any of the qualifications for Ordinary Membership set out in clause 17.
- 22 Employees of the SCIO are not eligible for membership; a person who becomes an employee of the SCIO after admission to membership shall automatically cease to be a member.

Application for membership

- 23 Any individual who wishes to become a member must (subject to clause 37) sign, and lodge with the SCIO, a written application for membership, specifying the category of membership for which he/she is applying.
- 24 Any organisation which is a corporate body and wishes to become an Associate Member must (subject to clause 37) lodge with the SCIO a written application for membership, signed on its behalf by an appropriate officer of that organisation.
- 25 Any individual nominated under clause 19 by an organisation which is an unincorporated body who wishes to become an Associate Member must (subject to clause 37) lodge with the SCIO a written application for membership, signed by him/her and also signed by an appropriate officer of the organisation which is nominating him/her for membership.
- 26 The SCIO shall supply a form for applying for membership to any individual or organisation on request.
- 27 An individual applying for Ordinary Membership who meets the qualifications set out in Article 17 shall be accepted as a member. If the SCIO so requests they will supply such evidence as the SCIO may reasonably request to demonstrate that he/she fulfils the qualifications set out in clause 17.
- 28 For the avoidance of doubt, when deciding whether to admit any individual or organisation to membership, the board shall adhere to a transparent process which enshrines the principles of equal treatment and non-discrimination.
- 29 The board shall consider each application for membership at the first board meeting which is held after receipt of the application; the board shall, within a reasonable time after the meeting, notify the applicant of their decision on the application.

Minimum number of members

- 30 The minimum number of members is 20; and at least three quarters of the members must, at all times, be Ordinary Members.

- 31 In the event that either or both of the requirements under clause 30 cease to be met through a reduction in the number of members or a reduction in the proportion of Ordinary Members included within the membership, the board may not conduct any business other than to ensure the admission of sufficient members (or, as the case may be, Ordinary Members) to ensure that those requirements are met once more.

Membership subscription

- 32 Members shall require to pay an annual membership subscription; unless and until otherwise determined by a resolution passed by majority vote at a members' meeting, the amount of the annual membership subscription shall be £NIL
- 33 The annual membership subscriptions shall be payable on or before 30 April in each year.
- 34 The members may vary the amount of the annual membership subscription and/or the date on which it falls due in each year, by way of a resolution to that effect passed by majority vote at an annual general meeting.
- 35 If the membership subscription payable by any member remains outstanding more than four weeks after the date on which it fell due (and providing he/she/it has been given at least one written reminder) the board may, by resolution to that effect, expel him/her/it from membership; for the avoidance of doubt, it will be open to an individual or organisation expelled from membership under this clause to reapply for membership if he/she/it so wishes.
- 36 An individual or organisation who ceases (for whatever reason) to be a member shall not be entitled to any refund of the membership subscription.

Arrangements involving the SCIO's website

- 37 The charity trustees may, if they consider appropriate, introduce arrangements under which an individual or organisation can apply for membership and/or membership subscriptions may be paid, by accessing the SCIO's website (and, where applicable, links from the SCIO's website), and completing and submitting forms electronically; the charity trustees shall ensure that any such arrangements incorporate appropriate security measures and reserve the right for the SCIO to request signed hard copy documentation and/or evidence of eligibility in any case where the charity trustees consider that to be appropriate.

Register of members

- 38 The board must keep a register of members, setting out
- 38.1 for each current member:
- 38.1.1 his/her/its full name and address;

- 38.1.2 the date on which he/she/it was registered as a member of the SCIO; and
 - 38.1.3 the category of membership into which he/she/it falls.
- 38.2 for each former member - for at least six years from the date on he/she/it ceased to be a member:
 - 38.2.1 his/her/its name; and
 - 38.2.2 the date on which he/she/it ceased to be a member.
- 39 Where an individual was admitted to Associate Membership on the basis of nomination by an organisation which is not a corporate body, the entries against his/her name in the register of members shall include details of the organisation which nominated him/her for membership.
- 40 The board must ensure that the register of members is updated within 28 days of any change:
 - 40.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
 - 40.2 which is notified to the SCIO.
- 41 If a member or charity trustee of the SCIO requests a copy of the register of members, the board must ensure that a copy is supplied to him/her/it within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses blanked out.

Withdrawal from membership

- 42 Any individual or organisation who/which wants to withdraw from membership must give a written notice of withdrawal to the SCIO, signed by him/her or (in the case of a corporate body) signed on its behalf by an appropriate officer of that body; he/she/it will cease to be a member as from the time when the notice is received by the SCIO.
- 43 An organisation which has nominated an individual for membership under clause 19 may withdraw its nomination at any time, by way of notice to the SCIO to that effect, signed by an appropriate officer of that organisation; on receipt of the notice by the SCIO, he/she will automatically cease to be a member.

Transfer of membership

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

Expulsion from membership

- 45 Any individual or organisation 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:-
- 45.1 at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;
 - 45.2 the member concerned (or, in the case of a corporate body, an individual authorised by it) will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

Termination of membership

- 46 Membership shall cease:
- (a) in the case of an individual, on death;
 - (b) in the case of an organisation, on the liquidation, winding-up, dissolution or striking-off of that organisation;
 - (c) in the case of an individual admitted to membership on the basis of nomination by an organisation which is not a corporate body, if that organisation is wound-up or dissolved.

DECISION-MAKING BY THE MEMBERS

Members' meetings

- 47 The board must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year.
- 48 The gap between one AGM and the next must not be longer than 15 months.
- 49 Notwithstanding clause 47, 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.
- 50 The business of each AGM must include:-
- 50.1 a report by the chair on the activities of the SCIO;
 - 50.2 consideration of the annual accounts of the SCIO;
 - 50.3 the election/re-election of charity trustees, as referred to in clauses 94 to 99.
- 51 The board may arrange a special members' meeting at any time.

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

- 52 The board must arrange a special members' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more members) by members who amount to 5% or more of the total membership of the SCIO at the time, providing:
- 52.1 the notice states the purposes for which the meeting is to be held; and
 - 52.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee Investment (Scotland) Act 2005 or any other statutory provision.
- 53 If the board receive a notice under clause 52, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

Notice of members' meetings

- 54 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 55 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 55.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or

- 55.2 in the case of any other resolution falling within clause 77 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 56 The reference to “clear days” in clause 54 shall be taken to mean that, in calculating the period of notice,
- 56.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
- 56.2 the day of the meeting itself should also be excluded.
- 57 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.
- 58 Any notice which requires to be given to a member under this constitution must be: -
- 58.1 sent by post to the member, at the address last notified by him/her/it to the SCIO; *or*
- 58.2 sent by e-mail to the member, at the e-mail address last notified by him/her/it to the SCIO.

Procedure at members' meetings

- 59 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 60 The quorum for a members' meeting (subject to clause 61) is 15 members entitled to vote (each being an Ordinary Member or a proxy for an Ordinary Member), present in person or represented by proxy.
- 61 A quorum shall not be deemed to be present at any members' meeting unless the Ordinary Members present or represented by proxy at the meeting form a majority of the members present or represented by proxy at the meeting.
- 62 For the avoidance of doubt, Associate Members and Junior Members shall not be counted in determining whether a quorum is present at any members' meeting.
- 63 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.
- 64 The chair of the SCIO should act as chairperson of each members' meeting.

- 65 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.
- 66 The chairperson of a members' meeting may, with the consent of the meeting, adjourn the meeting to such date, time and place as the chairperson may determine.

Voting at members' meetings

- 67 Every Ordinary Member has one vote, which may be given (whether or a show of hands or on a secret ballot) either personally or by proxy.
- 68 For the avoidance of doubt, Associate Members and Junior Members shall have no power to vote at members' meetings.
- 69 Any Ordinary Member who wishes to appoint a proxy to vote on his/her behalf at any members' meeting (or adjourned meeting):-
- 69.1 must give to the SCIO a proxy form (in such terms as the board requires), signed by him/her; or
- 69.2 must send by electronic means to the SCIO at such electronic address as may have been notified to the members for that purpose, a proxy form (in such terms as the board requires);
- providing (in either case) the proxy form is received by the SCIO at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting).
- 70 In calculating the 48-hour period referred to in clause 69, no account shall be taken of any part of a day that is not a working day.
- 71 An instrument of proxy which does not comply with the provisions of clause 69, or which is not lodged or given in accordance with such provisions, shall be invalid.
- 72 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 73 A proxy appointed to attend and vote at any members' meeting instead of a member shall have the same right as the member who appointed him/her to speak at the meeting; and need not be a member of the SCIO.
- 74 A vote given, or ballot demanded, by proxy shall be valid notwithstanding that the authority of the person voting or demanding a ballot had terminated prior to the giving of such vote or demanding of such ballot, unless notice of such termination was received by the SCIO at the SCIO's principal office (or, where sent by electronic means, was received by the SCIO at the address notified by the SCIO to the members for the purpose of electronic

- communications) before the commencement of the meeting or adjourned meeting at which the vote was given or the ballot demanded.
- 75 An Associate Member which is a corporate body shall be entitled to appoint an individual to attend and speak at any members' meeting as its authorised representative.
- 76 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 77.
- 77 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 82) providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with clauses 54 to 58:
- 77.1 a resolution amending the constitution (subject to clause 81);
 - 77.2 a resolution expelling an individual or organisation from membership under clause 45;
 - 77.3 a resolution directing the board to take any particular step (or directing the board not to take any particular step);
 - 77.4 a resolution approving the amalgamation of the SCIO with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
 - 77.5 a resolution to the effect that all of the SCIO's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
 - 77.6 a resolution for the winding up or dissolution of the SCIO.
- 78 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.
- 79 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting and entitled to vote, whether as Ordinary Members or as proxies for Ordinary Members) ask for a secret ballot; a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.
- 80 If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.
- 81 Amendments to the purposes of the SCIO (as set out in clause 4) will require the prior approval of OSCR.

Written resolutions by members

- 82 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.

Minutes

- 83 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 84 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.
- 85 Any person may request a copy of the minutes of members' meetings and, provided that the request is reasonable, the SCIO must, subject to clause 86, provide a copy of the minutes to that person within 28 days of the request.
- 86 Where a request for a copy of minutes is made under clause 85, the SCIO may withhold information contained in the minutes provided that the person requesting a copy of the minutes is informed of the reasons for doing so.

BOARD

Categories of charity trustee

87 In this constitution:

87.1 “Member Trustee” means a charity trustee (drawn from the membership of the SCIO) elected/appointed under clauses 94 to 99;

87.2 “Co-opted Trustee” means a (non-member) charity trustee appointed by the board under clauses 100 and 101.

Number of charity trustees

88 The maximum number of charity trustees is 16 ; out of that number:

88.1 no more than 12 shall be Member Trustees; and

88.2 no more than 4 shall be Co-opted Trustees.

89 At any given time, charity trustees who are also Ordinary Members must form a majority of the total number of charity trustees in office.

90 The minimum number of charity trustees shall be 4 of whom a majority must be Member Trustees.

Eligibility

91 A person shall not be eligible for election/appointment as a Member Trustee unless he/she is a member of the SCIO; a person appointed as a Co-opted Trustee need not, however, be a member of the SCIO.

92 A person will not be eligible for election or appointment as a charity trustee if he/she is: -

92.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

92.2 an employee of the SCIO.

Initial charity trustees

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

Election, retiral, re-election: Member Trustees

- 94 At each AGM, the Ordinary Members may (subject to clauses 88 and 92) elect any member (providing he/she is willing to act) to be a charity trustee (a “Member Trustee”).
- 95 The board may (subject to clauses 88 and 92) at any time appoint any member (providing he/she is willing to act) to be a charity trustee (a “Member Trustee”).
- 96 At the first AGM, one third (to the nearest round number) of the Member Trustees shall retire from office; the question of which of them is to retire shall be determined by some random method.
- 97 At each AGM (other than the first)
- 97.1 any Member Trustee appointed under clause 95 during the period since the preceding AGM shall retire from office;
- 97.2 out of the remaining Member Trustees, one third (to the nearest round number) shall retire from office.
- 98 The charity trustees to retire under paragraph 97.2 shall be those who have been longest in office since they were last elected or re-elected; as between persons who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method.
- 99 A charity trustee who retires from office under clause 96 or 97 shall be eligible for re-election.

Appointment/re-appointment: Co-opted Trustees

- 100 In addition to their powers under clause 95, the board may (subject to clauses 88 and 92) at any time appoint any non-member of the SCIO (providing he/she is willing to act) to be a charity trustee (a “Co-opted Trustee”) either on the basis that he/she has been nominated by Invergordon, Saltburn and Westwood Community Council or any other body with which the SCIO has close contact in the course of its activities or on the basis that he/she has specialist experience and/or skills which could be of assistance to the board.
- 101 At the conclusion of each AGM, all of the Co-opted Trustees shall retire from office – but shall then (subject to clauses 88 and 92) be eligible for re-appointment under clause 100.

Termination of office

- 102 A charity trustee will automatically cease to hold office if: -
- 102.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;

- 102.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
 - 102.3 (in the case of a Member Trustee) he/she ceases to be a member of the SCIO;
 - 102.4 he/she becomes an employee of the SCIO;
 - 102.5 he/she gives the SCIO a notice of resignation, signed by him/her;
 - 102.6 he/she is absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove him/her from office;
 - 102.7 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a serious breach of the code of conduct for charity trustees (as referred to in clause 122);
 - 102.8 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
 - 102.9 he/she is removed from office by a resolution of the members passed at a members' meeting.
- 103 A resolution under paragraph 102.7, 102.8 or 102.9 shall be valid only if: -
- 103.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;
 - 103.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
 - 103.3 (in the case of a resolution under paragraph 102.7 or 102.8) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

Register of charity trustees

- 104 The board must keep a register of charity trustees, setting out
 - 104.1 for each current charity trustee:

- 104.1.1 his/her full name and address;
- 104.1.2 the date on which he/she was appointed as a charity trustee;
and
- 104.1.3 any office held by him/her in the SCIO;
- 104.2 for each former charity trustee - for at least 6 years from the date on which he/she ceased to be a charity trustee:
 - 104.2.1 the name of the charity trustee;
 - 104.2.2 any office held by him/her in the SCIO; and
 - 104.2.3 the date on which he/she ceased to be a charity trustee.
- 105 The board must ensure that the register of charity trustees is updated within 28 days of any change:
 - 105.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
 - 105.2 which is notified to the SCIO.
- 106 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the SCIO, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

Office-bearers

- 107 The charity trustees must elect (from among themselves) a chair and a treasurer.
- 108 In addition to the office-bearers required under clause 107, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 109 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 107 or 108.
- 110 A person elected to any office will automatically cease to hold that office: -
 - 110.1 if he/she ceases to be a charity trustee; *or*
 - 110.2 if he/she gives to the SCIO a notice of resignation from that office, signed by him/her.

Powers of board

- 111 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the SCIO.
- 112 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 113 The members may, by way of a resolution passed in compliance with clause 77 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.

Charity trustees - general duties

- 114 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:-
- 114.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes (as set out clause 4);
 - 114.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 114.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
 - 114.3.1 put the interests of the SCIO before that of the other party;
 - 114.3.2 where any other duty prevents him/her 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;
 - 114.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 115 In addition to the duties outlined in clause 114, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 115.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
 - 115.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 116 A charity trustee who has a personal interest in any transaction or other arrangement which the SCIO is proposing to enter into, must declare that interest at a board meeting; he/she will be debarred (under clause 137) from voting on the question of whether or not the SCIO should enter into that arrangement.

- 117 For the purposes of the preceding clause, a charity trustee shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or director or any limited liability partnership of which he/she is a member (or any other party who/which is deemed to be connected with him/her), has a personal interest in that arrangement.
- 118 Provided he/she has declared his/her interest - and has 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 he/she has a personal interest; and (subject to clause 120 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), he/she may retain any personal benefit which arises from that arrangement.
- 119 Where a charity trustee provides services to the SCIO or might benefit from any remuneration paid to a connected party for such services, then:
- (a) the maximum amount of the remuneration must be specified in a written agreement and must be reasonable;
 - (b) the charity trustees must be satisfied that it would be in the interests of the SCIO to enter into the arrangement (taking account of that maximum amount); and
 - (c) less than half of the charity trustees must be receiving remuneration from the SCIO (or benefit from remuneration of that nature).
- 120 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 his/her duties as a charity trustee.
- 121 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for charity trustees

- 122 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.
- 123 The code of conduct referred to in clause 122 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of board meetings

- 124 Any charity trustee may call a meeting of the board *or* ask the secretary to call a meeting of the board.
- 125 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

Procedure at board meetings

- 126 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings (subject to clause 127) is 4 charity trustees, present in person.
- 127 A quorum shall not be deemed to be constituted at any board meeting unless the Member Trustees who are also Ordinary Members form a majority of the total number of charity trustees present at the meeting.
- 128 A charity trustee may participate in a board meeting by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the charity trustees participating in the meeting can hear each other; a charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting.
- 129 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 126, 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.
- 130 The chair of the SCIO should act as chairperson of each board meeting.
- 131 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.
- 132 Every charity trustee has one vote, which must be given personally.
- 133 All decisions at board meetings will be made by majority vote.
- 134 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will (subject to clause 135) be entitled to a second (casting) vote.
- 135 A chairperson who is not an Ordinary Member shall not be entitled to a casting vote.

- 136 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that he/she is not a charity trustee - but on the basis that he/she must not participate in decision-making.
- 137 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 138 For the purposes of clause 137: -
- 138.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
- 138.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 139 A charity trustee shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- 140 The SCIO may, by majority vote, suspend or relax to any extent – either generally or in relation to any particular matter – the provisions of clauses 137 to 139.

Minutes

- 141 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 142 The minutes to be kept under clause 141 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 143 Any person may request a copy of the minutes of meetings of the charity trustees of the SCIO and, provided that the request is reasonable, the SCIO must, subject to clause 144, provide a copy of the minutes to that person within 28 days of the request.
- 144 Where a request for a copy of minutes is made under clause 143, the SCIO may withhold information contained in the minutes provided that the person requesting a copy of the minutes is informed of the reasons for doing so.

ADMINISTRATION

Delegation to sub-committees

- 145 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 146 The board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.
- 147 When delegating powers under clause 145 or 146, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 148 Any delegation of powers under clause 145 or 146 may be revoked or altered by the board at any time.
- 149 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

Operation of accounts

- 150 Subject to clause 151, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the SCIO; at least one out of the two signatures must be the signature of a charity trustee.
- 151 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 150.

Secretary

- 152 The board shall appoint a secretary, and on the basis that the term of the appointment, the remuneration (if any) payable to the secretary, and the such conditions of appointment shall be as determined by the board; the secretary may be removed by them at any time.

Accounting records and annual accounts

- 153 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 154 The accounting records shall be maintained by the treasurer and overseen by the chair, or otherwise by, or as determined by, the board; such records shall be kept at such place or places as the board think fit and shall always be available for inspection by the board.
- 155 The board must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions

(or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.

- 156 No member shall (unless he/she is a charity trustee) have any right of inspecting any accounting or other records, or any document of the SCIO, except as conferred by statute or authorised by a resolution passed at a meeting of the members of the SCIO.

MISCELLANEOUS

Winding-up

- 157 If the SCIO is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 158 Any surplus assets (including any land acquired by the SCIO under Part 2 or Part 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) Act 2016) available to the SCIO immediately preceding its winding up or dissolution must be applied for the benefit of the Community to be used for purposes which are the same as - or which closely resemble - the purposes of the SCIO as set out in this constitution.

Alterations to the constitution

- 159 This constitution may (subject to clause 160) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 77) or by way of a written resolution of the members.
- 160 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 OSCR. If:
- (a) the company is a community body (as defined in article 162.3 and (i) it has registered a community interest in land under Part 2 of the Land Reform (Scotland) Act 2003 and remains so registered, or (ii) has bought land under Part 2 of the Land Reform (Scotland) Act 2003 any part of which remains in its ownership; or
 - (b) the company is a Part 3A community body or Part 5 community body (in each case, as defined in article 162.5) and has bought land under Part 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) 2016 any part of which remains in its ownership,
- the company must give written notice to the Scottish Ministers of any amendments to the articles of association of the company as soon as possible after such amendments take effect.”

Interpretation

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

161.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 161.1 above.

162 In this constitution: -

162.1 “charity” means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;

162.2 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;

162.3 “community body” means a community body within the meaning of section 34 of the Land Reform (Scotland) Act 2003 (as amended by section 37 of the Community Empowerment (Scotland) Act 2015);

162.4 “OSCR” means the Office of the Scottish Charity Regulator;

162.5 “Part 3A community body” means a Part 3A community body with the meaning of section 97D of the Land Reform (Scotland) Act 2003 (as inserted by section 74 of the Community Empowerment (Scotland) Act 2015);

162.6 “Part 5 community body” means a Part 5 community body within the meaning of section 49 of the Land Reform (Scotland) Act 2016;

162.7 “sustainable development” means development which meets the needs of the present without compromising the ability of future generations to meet their own needs.