

CONSTITUTION OF of KIRKMICHAEL AYRSHIRE DEVELOPMENT TRUST

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 Kirkmichael Ayrshire Development Trust

Purposes

4 The SCIO has been formed to benefit principally the community of Kirkmichael, South Ayrshire which comprises the Kirkmichael Community Council area (“the Community”) (see appendix 1) with the following objects:

1. The advancement of citizenship or community development
2. The provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of the persons for whom the facilities or activities are primarily intended

But only to the extent that such purposes are consistent with sustainable development

Powers

5 In pursuance of the objects listed in clause 4 (but not otherwise), the SCIO shall have the following powers:

- a) (i) To promote the benefit of the Community (see appendix 1) and its environs, the SCIO shall seek to:
 - (a) associate the local statutory authorities, voluntary organisations and inhabitants in a common effort to provide facilities, or assist in the provision of facilities, in the interest of social welfare for recreation and other leisure time occupation so that the said inhabitants' conditions of life may be improved
 - (b) carry out such regeneration, conservation and environmental projects as the SCIO sees fit, providing always that any such projects are carried out for the public benefit
- (ii) To lease, purchase or otherwise acquire the rights to occupy the McCosh Hall and environs
- (iii) To manage the premises and facilities of said Hall for the benefit of residents of Kirkmichael Village and its environs, without distinction as to age, sex, ethnic origin,

nationality or political, religious or other opinions

(iv) To maintain and keep in good order and repair the furnishings, plenishings and equipment of said Hall and, where appropriate and within the resources available to the SCIO, to upgrade, extend, alter and improve the Hall

- b) To carry on any other activities which further any of the above objects
- c) To purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the SCIO's activities
- d) To improve, manage, develop or otherwise deal with, all or any part of the property and rights of the SCIO
- e) To borrow money, and to give security in support of any such borrowings by the SCIO, in support of any obligations undertaken by the SCIO or in support of any guarantee issued by the SCIO
- f) To employ such staff as are considered appropriate for the proper conduct of the SCIO's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff and their dependants
- g) To engage such consultants and advisors as are considered appropriate from time to time
- h) To effect insurance of all kinds (which may include officers' liability insurance)
- i) To invest any funds which are not immediately required for the SCIO's activities in such investments as may be considered appropriate (and to dispose of, and vary such investments)
- j) To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the SCIO's purposes
- k) To establish and/or support any other charity, and to make donations for any charitable purpose falling within the SCIO's purposes
- l) To take such steps as may be deemed appropriate for the purpose of raising funds for the SCIO's activities
- m) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them)
- n) To oppose, or object to, any application or proceedings which may prejudice the SCIO's interests
- o) To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the SCIO, and to enter into any arrangement for co-operation or mutual assistance with any charity
- p) to do anything which may be incidental or conducive to the furtherance of any of the SCIO's purposes

6 In particular, (but without limiting the range of powers available under the Scottish Charities Act), the SCIO has power:

- a) To register any interest in land and to exercise any right to buy under Part 2 of the Land Reform (Scotland) Act 2003
- b) To exercise any right to buy under Part 3A of the Land Reform (Scotland) Act 2003

- c) To exercise any right to buy under Part 5 of the Land Reform (Scotland) Act 2016
- d) To make any participation request under Part 3 of the Community Empowerment (Scotland) Act 2015, and to take any appropriate steps following upon the making of any such request
- e) To make 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

Restrictions on use of the SCIO's assets

7 The income and property of the SCIO shall be applied solely towards promoting the SCIO's purposes (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 shall be paid or transferred (directly or indirectly) to the members of the SCIO, whether by way of dividend, bonus or otherwise.

9 No trustee of the SCIO shall be appointed as a paid employee of the SCIO; no trustee shall hold any office under the SCIO for which a salary or fee is payable.

10 No benefit (whether in money or in kind) shall be given by the SCIO to any trustee except:

- a) repayment of out-of-pocket expenses
- b) reasonable payment in return for particular services (outwith the ordinary duties of a trustee) actually rendered to the SCIO

11 Notwithstanding the provisions of clauses 9 and 10, the SCIO may make any payment to any individual who is a member or trustee of the SCIO, where that payment is made in direct furtherance of the purposes of the SCIO.

Liability of Members

12 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. The members and charity trustees have certain legal duties under the Charities and Trustee investment (Scotland) Act 2005; and clause 11 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

13 The structure of the SCIO consists of:

- a) The MEMBERS – comprising
 - i. Ordinary Members (who have the right to participate in the annual general meeting (and any other general meeting) and have important powers under the constitution; in particular the Ordinary Members elect people to serve as Trustees and take decisions in relation to changes to the constitution themselves
 - ii. the Associate Members

- iii. the Junior Members
- b) 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 trustees are responsible for monitoring the financial position of the SCIO.

MEMBERS

CATEGORIES OF MEMBERS

14 For the purposes of these clauses:

- 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); an “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 (as defined in clause 92), nor are they eligible to vote at any general 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 are admitted to membership under clauses 17 – 30.

17 Ordinary Membership shall (subject to clauses 24 and 28) be open to any person aged 16 years or over who:

- a) is resident in the Community (as defined in clause 4) and
- b) is entitled to vote at a local government election in a polling district that includes the Community or part of it

18 Associate Membership shall (subject to clauses 22, 23 and 24) be open to:

- a) individuals who do not fulfil the qualifications under paragraphs a) and b) of clause 17 but support the objects and activities of the SCIO
- b) (subject to clause 19) organisations (wherever they have their principal office or place of business or their 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 clause 23) be open to those individuals aged between 12 and 15 (whether or not they are 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 they cease to fulfil any of the qualifications for Ordinary Membership set out in clause 17 (but will then be able to apply for admission as an Associate Member if they so wish).

22 Employees of the SCIO shall not be eligible for membership; a person who becomes an employee of the SCIO after admission to membership shall automatically cease to be a member.

Applications for membership

23 Any individual who wishes to become a member (in a personal capacity) must (subject to clause 39) sign, and lodge with the SCIO, a written application for membership, specifying the category of membership for which they are applying.

24 Any individual nominated under clause 23 by an organisation which is an unincorporated body who wishes to become an Associate Member must (subject to clause 39) lodge with the SCIO a written application for membership, signed by that individual and also signed by an appropriate officer of the organisation which is nominating that individual for membership.

25 The SCIO shall (subject to clause) supply a form for applying for membership to any individual or organisation on request.

26 An individual applying for Ordinary Membership shall, if the SCIO so requests, supply such evidence as the SCIO may reasonably request to demonstrate that they fulfil the qualifications set out in clause 17.

27 At the first board meeting which is held after receipt of an application for membership, the board shall review the application (together with any evidence supplied under clause 26) to determine whether the applicant fulfils the qualifications for membership set out in clauses 17, 18 or 20 (as the case may be).

28 If, on the basis of the review carried out under clause 27 the applicant fulfils the qualifications for membership, the board shall (subject to clause 29) admit the applicant to membership; and, within a reasonable time after the meeting, shall notify the applicant of the outcome of the application.

29 The board do not require to admit an applicant to membership (even if they fulfil the qualifications for membership) if:

- a) the effect of admitting them would be that the requirement under clause 31 that at least three quarters of the members must be members of the community was no longer met
- b) they were expelled from membership under clause 44 at any time in the past; or
- c) in the case of an individual applying for membership on the basis of nomination by an unincorporated body, any other individual previously nominated for membership by that organisation was expelled from membership under clause 44 at any time in the past (unless a special resolution of the nature referred to in clause 45 has been passed in relation to that unincorporated body)

30 For the avoidance of doubt, in determining whether or not any individual or organisation fulfils the qualifications for membership, the board shall adhere to a transparent process which enshrines the principles of equal treatment and non-discrimination.

Minimum number of members

31 The minimum number of members is 20; and at least three quarters of the members must, at all times, be members of the community.

32 The expression “members of the community” in clause 33 shall be taken to be a reference to Ordinary Members.

33 In the event that either or both of the requirements under clause 31 cease to be met through a reduction in the number of members or through a reduction in the proportion of members of the community 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

34 No membership subscription shall be payable.

Re-registration

35 The board may at any time request all members, or all members within a given category, to confirm that they wish to remain in membership of the SCIO.

36 Any request under clause 35 must be issued:

- a) in hard copy form
- b) (where the member to whom notice is given has notified the SCIO of an email address to be used for the purpose of communications from the SCIO) by way of email

and must refer to the possible consequences (under clause 37) of failing to confirm, within the period allowed for under clause 37, that the member wishes to remain in membership.

37 If the SCIO does not receive confirmation from any member, within four weeks after the issue to that member of a request under clause 35, that they wish to remain in membership of the SCIO, the board may, by resolution to that effect, expel that individual or organisation from membership.

38 Subject to clause 37, any confirmation under clauses 35 and 36 must be:

- a) in hard copy form, signed by the relevant individual (or, in the case of an organisation which is a corporate body, signed on its behalf by an appropriate officer of that organisation), and sent or delivered to the SCIO; or
- b) sent by way of email to the SCIO at the email address supplied by the organisation to the members for this purpose

Arrangements involving the SCIO's website

39 The board may, if they consider appropriate, introduce arrangements under which an individual or organisation can apply for membership and/or an individual or organisation may confirm that they wish to remain a member, by accessing the SCIO's website (and, where applicable, links from the SCIO's website), and completing and submitting forms electronically.

40 The board shall ensure that any arrangements introduced under clause 39 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 board consider that to be appropriate.

Register of members

41 The board must keep a register of members, setting out

a) for each current member:

(i) his/her/their full name and address

(ii) the date on which he/she/they was/were registered as a member of the SCIO; and

(iii) the category of membership into which he/she/they falls/fall.

b) For each former member - for at least six years from the date on he/she/it ceased to be a member:

(i) his/her/their name; and

(ii) the date on which he/she/they ceased to be a member.

42 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/their name in the register of members shall include details of the organisation which nominated him/her/them for membership.

43 The board must ensure that the register of members is updated within 28 days of any change:

a) which arises from a resolution of the board or a resolution passed by the members of the SCIO; or

b) which is notified to the SCIO.

44 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/them 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

45 Any individual or organisation who/which wishes to withdraw from membership shall lodge with the SCIO a written notice to that effect, signed by that individual or (in the case of a corporate body) signed on its behalf by an appropriate officer of that body; on receipt of the notice by the SCIO, that individual or organisation shall cease to be a member.

46 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, that individual will automatically cease to be a member.

Transfer of membership

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

Expulsion from membership

48 Any individual or organisation may be expelled from membership by special resolution, 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;
- b) the member concerned (or, in the case of a corporate body, an individual authorised by it) shall be entitled to be heard on the resolution at the general meeting at which the resolution is proposed.

49 Where an individual who was admitted to membership on the basis of nomination by an unincorporated organisation (i.e. an organisation which is not a corporate body) is expelled from membership under clause 45, no other individual nominated for membership by that organisation will be eligible for membership unless and until a special resolution to that effect is passed.

Termination of membership

50 Membership shall cease:

- a) in the case of an individual, on death
- b) in the case of an organisation which is a corporate body, 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

51 The board must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year.

52 The gap between one AGM and the next must not be longer than 15 months.

53 Notwithstanding clause 51, 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.

54 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;
- c) the election/re-election of charity trustees, as referred to in clauses 100 to 105.

55 The board may arrange a special members' meeting at any time.

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

56 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:

- 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.

57 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

58 At least 14 clear days' notice must be given of any general meeting.

59 The reference to "clear days" in clause 56 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted (or, in the case of a notice sent by email, the day after it was sent), and also the day of the meeting, should be excluded.

60 A notice calling a meeting shall specify the time of the meeting, and (subject to clause 59) the place where the meeting is to be held; and

- a) it shall indicate the general nature of the business to be dealt with at the meeting
- b) if a special resolution (see clause 62) (or a resolution requiring special notice under the Companies Act) is to be proposed, it shall also state that fact, giving the exact terms of the resolution
- c) it shall notify the Ordinary Members of their right to appoint a proxy.

61 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.

62 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 him/her/they to the SCIO; or
- b) sent by e-mail to the member, at the e-mail address last notified by him/her/they to the SCIO

63 If members and directors are to be permitted to participate in the meeting by way of audio and/or an audio-visual link, the notice (or notes with the notice) shall:

- a) set out details of how to connect and participate via (in the case of participation by way of audio) dial-in details, or (in the case of participation by way of an audio-visual link) that link

- b) for the benefit of those members who do not have access to a computer or to an adequate internet connection, draw members' attention to:
 - (i) the ability to participate in the meeting via audio only means,
 - (ii) the ability of Ordinary Members to appoint the chairperson of the meeting as proxy, and to direct the chairperson on how they should vote in relation to each resolution to be proposed at the meeting, or
 - (iii) (where attendance in person is to be permitted) the ability to attend and vote in person at the meeting.

64 If participation in the meeting is to be by way of audio and/or audio-visual links – with no intention for the meeting to involve attendance in person by two or more members in one place – the requirement under clause 58 to specify the place of the meeting in the notice calling the meeting shall not apply.

65 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.

66 Notice of every members' meeting shall be given to all the members and trustees:

- a) in hard copy form
- b) (where the individual or organisation to whom notice is given has notified the SCIO of an email address to be used for the purpose of communications from the SCIO) by way of email
- c) (subject to the SCIO notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Companies Act) by means of a website

Procedure at members' meetings

67 No valid decisions can be taken at any members' meeting unless a quorum is present.

68 The quorum for a members' meeting (subject to clause 67) 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, or 10% of the membership, whichever is the greater.

69 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.

70 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.

71 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.

72 The chair of the SCIO should act as chairperson of each members' meeting.

73 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.

74 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

75 Every Ordinary Member has one vote, which may be given (whether as a show of hands or on a secret ballot) either personally or by proxy.

76 For the avoidance of doubt, Associate Members and Junior Members shall have no power to vote at members' meetings.

77 Any Ordinary Member who wishes to appoint a proxy to vote on his/her behalf at any members' meeting (or adjourned meeting):-

- a) must give to the SCIO a proxy form (in such terms as the board requires), signed by him/her/them; or
- b) 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).

78 In calculating the 48-hour period referred to in clause 77, no account shall be taken of any part of a day that is not a working day.

79 An instrument of proxy which does not comply with the provisions of clause 77, or which is not lodged or given in accordance with such provisions, shall be invalid.

80 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.

81 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.

82 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.

83 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.

84 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 85.

85 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 90) providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with clauses 58 to 63:

- a) a resolution amending the constitution;
- b) a resolution expelling an individual or organisation from membership under clause 46;
- c) a resolution directing the board to take any particular step (or directing the board 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.

86 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.

87 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.

88 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.

89 Amendments to the purposes of the SCIO (as set out in clause 4) will require the prior approval of OSCR.

Written resolutions by members

90 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

91 The board must ensure that proper minutes are kept in relation to all members' meetings.

92 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

93 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 96, provide a copy of the minutes to that person within 28 days of the request.

94 Where a request for a copy of minutes is made under clause 93, 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

95 In this constitution

- a) "Charity Trustee" means a trustee (drawn from the Ordinary Membership of the SCIO)
- b) "Co-opted Trustee" means a trustee appointed or re-appointed by the charity trustees

Number of charity trustees

96 The maximum number of charity trustees shall be 12 ; out of that number, no more than 10 shall be Charity Trustees and no more than 2 shall be Co-opted Trustees.

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

98 The minimum number of charity trustees shall be 3

Eligibility

99 A person shall not be eligible for election/appointment as a Charity Trustee unless they are an Ordinary Member of the SCIO; a person appointed as a Co-opted Trustee need not, however, be a member of the SCIO.

100 A person shall not be eligible for election/appointment as a trustee 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.

Initial charity trustees

101 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: Charity Trustees

102 At each annual general meeting, the Ordinary Members may (subject to clauses 96 to 100) elect any Ordinary Member (providing they are willing to act) to be a trustee (a “Member Trustee”).

103 The board may (subject to clauses 96 to 100) at any time appoint any Ordinary Member (providing they are willing to act) to be a trustee (a “Member Trustee”).

104 At the first annual general meeting, 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.

105 At each annual general meeting (other than the first):

- a) any Member Trustee appointed under clause 104 during the period since the preceding annual general meeting shall retire from office
- b) out of the remaining Member Trustees, one third (to the nearest round number) shall retire from office

106 The Member Trustees to retire under paragraph (b) of clause 105 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.

107 A Member Trustee who retires from office under clause 105 shall be eligible for re-election.

Appointment/re-appointment: Co-opted Trustees

108 In addition to their powers under clause 103, the board may (subject to clauses 96 to 100) at any time appoint any individual (providing they are willing to act) to be a trustee (a “Co-opted Trustee”) on the basis that they have been nominated by a body with which the SCIO has close contact in the course of its activities or on the basis that they have specialist experience and/or skills which could be of assistance to the board or on the basis that they are in a position to bring an additional perspective (e.g. a young person’s perspective) to the work of the board.

109 At each annual general meeting, all of the Co-opted Trustees shall retire from office – but shall then (subject to clauses 94 to 98) be eligible for re-appointment under clause 108.

Termination of office

110 A trustee shall automatically vacate office if:

- a) they cease to be a trustee through the operation of any provision of the Companies Act or become prohibited by law from being a trustee
- b) they become debarred under any statutory provision from being a charity trustee (within the meaning of section 106 of the Scottish Charities Act)
- c) they become incapable for medical reasons of fulfilling the duties of their office and such incapacity is expected to continue for a period of more than six months
- d) (in the case of a Member Trustee) they cease to be an Ordinary Member of the SCIO

- e) they become an employee of the SCIO
- f) they resign office by notice to the SCIO
- g) they are absent (without permission of the board) from more than three consecutive board meetings, and the board resolve to remove them from office
- h) they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Scottish Charities Act
- i) they are removed from office by resolution of the board on the grounds that they are considered to have committed a serious breach of the code of conduct for Trustees
- j) they are removed from office by a resolution of the members passed at a members' meeting

111 A resolution under paragraph (h) or (i) of clause 108 shall be valid only if: -

- a) the trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for removal is to be proposed;
- b) the 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) at least two thirds (to the nearest round number) of the trustees then in office vote in favour of the resolution.

Register of Charity Trustees

112 The board must keep a register of charity trustees, setting out:

- 1. for each current charity trustee:
 - a. his/her full name and address;
 - b. the date on which he/she/they was/were appointed as a charity trustee; and
 - c. any office held by him/her/them in the SCIO;
- 2. for each former charity trustee - for at least 6 years from the date on which he/she/they ceased to be a charity trustee:
 - a. the name of the charity trustee;
 - b. any office held by him/her in the SCIO; and
 - c. the date on which he/she/they ceased to be a charity trustee.

113 The board must ensure that the register of charity trustees is updated within 28 days of any change:

- a) which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
- b) which is notified to the SCIO.

114 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her/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 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

115 The charity trustees must elect (from among themselves) a chair, a treasurer and a secretary.

- a) The chair must be elected from Trustees who are Ordinary Members

116 In addition to the office-bearers required under clause 115, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

117 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 115 or 116.

118 A person elected to any office will automatically cease to hold that office: -

- a) if he/she/they cease(s) to be a charity trustee; or
- b) if he/she/they give(s) to the SCIO a notice of resignation from that office, signed by him/her/them.

Powers of board

119 Except where this constitution states otherwise:

- a) The organisation (and its assets and operations) will be managed by the board; and
- b) The board may exercise all the powers of the organisation

120 A board meeting at which a quorum is present may exercise all powers exercisable by the board.

121 The members may, by way of a resolution passed in compliance with the requirement for a 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

122 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 (as set out clause 4);

- 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;
 - (ii) where any other duty prevents him/her/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;
 - (iii) With respect to clause 122 c) (ii) a register of trustees' interests shall be kept by the secretary and reviewed at each board meeting
- 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.

123 In addition to the duties outlined in clause 122, 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 and persistent breach of those duties is removed as a trustee.

124 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/they will be debarred (under clause 145) from voting on the question of whether or not the SCIO should enter into that arrangement.

125 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/theirs or any firm of which he/she/they is/are a partner or any limited company of which he/she/they is/are a substantial shareholder or director or any limited liability partnership of which he/she/they is/are a member (or any other party who/which is deemed to be connected with him/her), has a personal interest in that arrangement.

126 Provided he/she/they has declared his/her/their 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/they has a personal interest; and (subject to clause 124 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), he/she/they may retain any personal benefit which arises from that arrangement.

127 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).

128 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/their duties as a charity trustee.

129 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.

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of board meetings

130 Any charity trustee may call a meeting of the board or ask the secretary to call a meeting of the board.

131 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

132 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 5 charity trustees, present in person.

133 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.

134 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.

135 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 130, 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.

136 The chair of the SCIO should act as chairperson of each board meeting.

137 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.

138 Every charity trustee has one vote, which must be given personally.

139 All decisions at board meetings will be made by majority vote.

140 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will (subject to clause 137) be entitled to a second (casting) vote.

141 A chairperson who is not an Ordinary Member shall not be entitled to a casting vote.

142 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that he/she/they is/are not a charity trustee - but on the basis that he/she/they must not participate in decision-making.

143 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/they has/have a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO; he/she/they must withdraw from the meeting while an item of that nature is being dealt with.

144 For the purposes of clause 143:

- 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 he/she/they is/are an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

145 A charity trustee shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she/they is/are not entitled to vote.

146 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 139 to 141.

Minutes

147 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.

148 The minutes to be kept under clause 17 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

149 Any person may request a copy of the minutes of a meeting of the charity and, provided that the request is reasonable, the SCIO must, subject to clause 150, provide a copy of the minutes to that person within 28 days of the request.

150 Where a request for a copy of minutes is made under clause 149, 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

151 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.

152 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.

153 When delegating powers under clause 151 or 152, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).

154 Any delegation of powers under clause 151 or 152 may be revoked or altered by the board at any time.

155 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

156 Subject to clause 157, 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.

157 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 156.

Secretary

158 The board shall appoint an administration 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

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

160 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.

161 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.

162 No member shall (unless he/she/they is/are 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

163 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.

164 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

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

166 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 SCIO is a community body (as defined in clause 170.3 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 SCIO is a Part 3A community body or Part 5 community body (in each case, as defined in clause 170.5) and has bought land under Part 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) 2016 any part of which remains in its ownership,

the SCIO must give written notice to the Scottish Ministers of any amendments to the constitution of the SCIO as soon as possible after such amendments take effect."

Interpretation

167 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -

169.1 any statutory provision which adds to, modifies or replaces that Act; and

169.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 167.1.

168 In this constitution: -

168.1 "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;

168.2 "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;

168.3 "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);

168.4 "OSCR" means the Office of the Scottish Charity Regulator;

168.5 "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);

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

168.7 "sustainable development" means development which meets the needs of the present without compromising the ability of future generations to meet their own needs.

Signed.....	[Redacted Signature]	Date.....	18/9/24	Signed.....	[Redacted Signature]	Date.....	18/9/24
Print Name.....	JAN TORRANCE	Print Name.....	CATRIONA HASTON				
Position.....	CHAIRPERSON	Position.....	SECRETARY				

Appendix 1

Kirkmichael Boundary Map

