

**CONSTITUTION of PRESTWICK
SAILING CLUB**



Prestwick Sailing Club

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GENERAL

Type of organisation

1. The organisation is a Scottish Charitable Incorporated Organisation (SCIO).

Scottish principal office

2. The principal office of the organisation will be in Scotland (31 Grangemuir Road, Prestwick, Ayrshire, KA9 1SN, Scotland) and must remain in Scotland.

Name

3. The name of the organisation is Prestwick Sailing Club hereafter referred to as 'the organisation'.

Community

4. The organisation has been formed to benefit the people in the community of South Ayrshire, and those who have an interest in dinghy sailing, windsurfing, paddle boarding, rowing, kayaking and other non-powered water sports, with the following purposes...

Purposes

5. The purposes of the organisation are:
 - a) The advancement of public participation in sailing and other non-motorised water sports.
 - b) The provision of recreational facilities, or the organisation of recreational activities with the object of improving the conditions of life for the persons for whom the facilities are intended.

Powers

6. The organisation has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
7. No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to any members - either during the organisation's existence or on dissolution - except where this is done in direct furtherance of the organisation's charitable purposes.

Liability of members

8. The members of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the members will not be held responsible.

9. The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

General Structure

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

MEMBERS

Qualifications for membership

12. Membership is open to any individual who is a member of the community, and those who support the purposes of the organisation.
13. The voting membership shall consist of individual, family, senior cadet, associate, life, group and family associate members. Of these only those aged 16 or over shall be entitled to vote at general meetings of the organisation. For the avoidance of doubt each family member 16 years and over shall have an individual vote.
14. In addition, the committee may from time to time create categories of non-voting membership including cadet, training, visitor, temporary, honorary and affiliated organisations who will not be entitled to vote at general meetings of the organisation.
15. The definition of categories of membership and other matters such as the entitlements attaching to each category of membership and relevant subscription rates and any other charges shall be set by the committee from time to time.

Application for membership

16. Any person who wishes to become a member must complete an online application for membership; the application will then be processed by the membership secretary who provides a membership report at each committee meeting. Between an application being submitted and the membership secretary processing the application the applicant may make

use of the facilities of the organisation as if they were members, but shall not be entitled to vote.

17. The committee may, at its discretion, refuse to admit any person to membership. Refusal of membership cannot be on grounds of sex, age, disability, ethnicity, nationality, sexual orientation, religion or other beliefs.
18. The membership secretary must notify each applicant promptly (in writing or by e-mail) of the decision on whether or not to admit them to membership.
19. The organisation shall have no fewer than 20 members at any time.

Membership subscription

20. Any decision by the committee to admit an applicant to membership shall be deemed conditional upon the payment of the amount of any annual membership subscription for the time being in force.
21. Any member who has not paid their subscription by the due date may be requested, in the name of the committee, to pay the subscription and if their subscription is not paid within 28 days they shall be expelled from membership at the discretion of the committee.

Register of members

22. The committee must keep a register of members, setting out
 - a. for each current member:
 - i. their full name and address; and
 - ii. the date on which they were registered as a member of the organisation;
 - b. for each former member - for at least six years from the date on which they ceased to be a member:
 - i. their name; and
 - ii. the date on which they ceased to be a member.
23. The committee must ensure that the register of members is updated within 28 days of any change:
 - a. which arises from a resolution of the committee or a resolution passed by the members of the organisation; or
 - b. which is notified to the organisation.
24. If a member or charity trustee of the organisation requests a copy of the register of members, the committee must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the committee may provide a copy which has the addresses blanked out.

Withdrawal from membership

25. Any person who wants to withdraw from membership must give a written notice of withdrawal to the organisation, signed by them; they will cease to be a member as from the time when the notice is received by the organisation.

Transfer of membership

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

Re-registration of members

27. The committee may, at any time, issue notices to the members requiring them to confirm that they wish to remain as members of the organisation and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the committee.

28. If a member fails to provide confirmation to the committee (in writing or by e-mail) that they wish to remain as a member of the organisation before the expiry of the 28-day period referred to in clause 25, the committee may expel them from membership.

29. A notice under clause 28 will not be valid unless it refers specifically to the consequences (under clause 26) of failing to provide confirmation within the 28-day period.

Expulsion from membership

30. The Committee for good and sufficient reason such as conduct or character likely to bring the club or sport into disrepute may refuse renewal of any existing membership or terminate or suspend any membership provided that the member concerned shall have the right to be heard by the full General Committee before the decision is made.

- a. at least 21 days' notice of the intention must be given to the member concerned, specifying the grounds for the proposed action.
- b. a final appeal against such a decision may be made at a General Meeting and decided by a majority vote.

Termination

31. Membership of the organisation will terminate on death.

DECISION-MAKING BY THE MEMBERS

Members' meetings

32. The committee must arrange a meeting of members (an annual general meeting or AGM) in each calendar year.

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

34. Notwithstanding clause 31, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.

35.The business of each AGM must include:

- a. a report by the Commodore on the activities of the organisation.
- b. consideration of the annual accounts of the organisation.
- c. the election/re-election of charity trustees, as referred to in clauses 65 to 69.

36.The committee may arrange a special members' meeting at any time.

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

37.The committee must arrange a special members' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more voting members) by voting members who amount to 10% or more of the total voting membership of the organisation 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.

38.If the committee receive a notice under clause 35, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

Notice of members' meetings

39.At least 14 clear days' notice must be given of any AGM or any special members' meeting.

40.The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and

- a. in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
- b. in the case of any other resolution falling within clause 51 (requirement for two-thirds majority) must set out the exact terms of the resolution.

41.The reference to "clear days" in clause 37 shall be taken to mean that, in calculating the period of notice,

- a. the day after the notices are posted (or sent by e-mail) should be excluded; and
- b. the day of the meeting itself should also be excluded.

42.Notice of every member's meeting must be given to all the members of the organisation and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.

43. Any notice which requires to be given to a member under this constitution must be: -
- a. sent by post to the member, at the address last notified by them to the organisation; or
 - b. sent by e-mail to the member, at the e-mail address last notified by them to the organisation.

Procedure at members' meetings

44. No valid decisions can be taken at any members' meeting unless a quorum is present.
45. The quorum for a members' meeting is 15 voting members, or 50% of the voting membership if the membership falls below 30, present in person.
46. 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; fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
47. The Commodore of the organisation should act as chairperson of each members' meeting.
48. If the Commodore is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

Voting at members' meetings

49. Every voting member has one vote, which must be given personally.
50. All decisions at members' meetings will be made by majority vote except for the types of resolution listed in clause 50.
51. 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 53):
- a. a resolution amending the constitution;
 - b. a resolution directing the committee to take any particular step (or directing the committee not to take any particular step);
 - c. a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);

- d. a resolution to the effect that all of the organisation's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
 - e. a resolution for the winding up or dissolution of the organisation.
- 52.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.
- 53.A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot.
- 54.The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.

Written resolutions by members

- 55.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

- 56.The committee must ensure that proper minutes are kept in relation to all members' meetings.
- 57.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.

COMMITTEE

Number of charity trustees

- 58.The maximum number of charity trustees is 14;
- 59.The minimum number of charity trustees is 4.

Eligibility

- 60.A person shall not be eligible for election/appointment to the committee under clauses 59, 60, 64 and 66, unless they are a member of the organisation. A person will not be eligible for election or appointment to the committee if they are:-
- a. disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
 - b. an employee of the organisation.

Initial charity trustees

61. The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the organisation.

Office-bearers

62. The office-bearers of the organisation will serve on the committee and shall consist of:

- a. Commodore
- b. Vice Commodore
- c. Treasurer
- d. Club Secretary
- e. Sailing Captain

63. All office-bearers will cease to hold office at the conclusion of each AGM but may then be re-elected under clause 67:

- a. The Commodore, Vice Commodore and Sailing Captain shall not hold the same office for more than three consecutive years. These office-bearers shall not be eligible for re-election to the same office for a period of two years.

64. A person elected to any office will automatically cease to hold that office if they cease to be a charity trustee; or if they give to the club a notice of resignation from that office, signed by them.

Rear Commodore

65. The immediate past Commodore may serve for one year only as Rear Commodore to advise the committee for continuity purposes.

General committee members

66. Up to 8 general committee members can be elected. The committee can appoint general committee members to specific roles for the management of club activities.

Election, retiral, re-election

67. At each AGM, the members may elect any member (unless they are debarred from membership under clause 58) to the committee. Office-bearers will be elected directly to post by members.

68. In the event of a vacancy arising in an officer-bearer post, for whatever reason, or when there is a vacancy among the general committee members, the committee may co-opt an organisation member to fill the vacancy until the next AGM (unless they are debarred from membership under clause 58).

69. At each AGM, all of the charity trustees elected/appointed under clauses 65 and 66 (and, in the case of the first AGM, those deemed to have been appointed under clause 59) shall retire from office – but shall then be eligible for re-election under clause 65.

Termination of office

70. A charity trustee will automatically cease to hold office if: -

- a. they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
- b. they become incapable for medical reasons of carrying out their duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
- c. in the case of a charity trustee elected/appointed under clauses 59, 60, 64 and 66) they cease to be a member of the organisation;
- d. they become an employee of the organisation;
- e. they give the organisation a notice of resignation, signed by them;
- f. they are absent (without good reason, in the opinion of the committee) from more than three consecutive meetings of the committee - but only if the committee resolves to remove them from office;
- g. they are removed from office by resolution of the committee on the grounds that they are considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 81);
- h. they are removed from office by resolution of the committee on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- i. they are removed from office by a resolution of the members passed at a members' meeting.

71. A resolution under paragraph 68,g, 68,h or 68,i shall be valid only if: -

- a. the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed;
- b. the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
- c. in the case of a resolution under paragraph 68.g or 68.h) 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

72. The committee must keep a register of charity trustees, setting out

- a. for each current charity trustee:
 - i. their full name and address;

- ii. the date on which they were appointed as a charity trustee; and
 - iii. any office held by them in the organisation;
 - b. for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee:
 - i. the name of the charity trustee;
 - ii. any office held by them in the organisation; and
 - iii. the date on which they ceased to be a charity trustee.
73. The committee must ensure that the register of charity trustees is updated within 28 days of any change:
- a. which arises from a resolution of the committee or a resolution passed by the members of the organisation; or
 - b. which is notified to the organisation.
74. If any person requests a copy of the register of charity trustees, the committee must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the organisation, the committee 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.

Powers of committee

75. Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the committee; and the committee may exercise all the powers of the organisation.
76. A meeting of the committee at which a quorum is present may exercise all powers exercisable by the committee.
77. The members may, by way of a resolution passed in compliance with clause 48 (requirement for two-thirds majority), direct the committee to take any particular step or direct the committee not to take any particular step; and the committee shall give effect to any such direction accordingly.

Charity trustees - general duties

78. Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation; and in particular must:
- a. seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
 - b. act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - c. in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:

- i. put the interests of the organisation before that of the other party;
 - ii. where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
 - d. ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
79. In addition to the duties outlined in clause 76, all 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.

Constraints on payments/benefits to members and charity trustees

80. The income and property of the Organisation shall be applied solely towards promoting the Charitable Purposes and do not belong to the members. Any surplus income or assets of the Organisation are to be applied for the benefit of the Community.
- a. No part of the income or property of the Organisation shall be paid or transferred (directly or indirectly) to the members of the Organisation, or to any other individual, whether by way of dividend, bonus or otherwise except in the circumstances provided for in clause c below
 - b. No benefit (whether in money or in kind) shall be given by the Organisation to any member or Charity Trustee except the possibility of:
 - i. repayment of out-of-pocket expenses (subject to prior agreement by the Board).
 - ii. reasonable remuneration in return for specific services actually rendered to the Organisation (in the case of a Charity Trustee such services must not be of a management nature normally carried out by a Trustee of an Organisation).
 - iii. payment of interest at a rate not exceeding the commercial rate on money lent to the Organisation.
 - iv. payment of rent at a rate not exceeding the open market rent for property let to the Organisation.
 - v. the purchase of property from any member or Charity Trustee provided that such purchase is at or below market value.
 - vi. payment by way of any indemnity.

Code of conduct for charity trustees

81. Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the committee from time to time.
82. The code of conduct referred to in clause 81 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 committee meetings

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

Procedure at committee meetings

85. No valid decisions can be taken at a committee meeting unless a quorum is present; the quorum for committee meetings is 4 charity trustees, present in person.
86. If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 85, 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.
87. The Commodore should act as chairperson of each committee meeting.
88. If the Commodore 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.
89. Every charity trustee has one vote, which must be given personally.
90. All decisions at committee meetings will be made by majority vote.
91. 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.
92. The committee may, at its discretion, allow any person to attend and speak at a committee meeting notwithstanding that they are not a charity trustee - but on the basis that they must not participate in decision-making.
93. A charity trustee must not vote at a committee meeting (or at a meeting of a committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.
94. For the purposes of clause 93:
 - a. an interest held by an individual who is "connected" with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
 - b. a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
95. Trustees shall produce and maintain written procedures for the governance and management of the organisation

Minutes

96. The committee must ensure that proper minutes are kept in relation to all committee meetings and meetings of committees. The minutes will be made available to all members.
97. The minutes to be kept under clause 96 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

ADMINISTRATION

Delegation to committees

98. The committee may delegate any of their powers to committees; a committee must include at least one charity trustee, but other members of a committee need not be charity trustees.
99. The committee may also delegate to the Commodore (or the holder of any other post) such of their powers as they may consider appropriate.
100. When delegating powers under clause 98 or 99, the committee must set out appropriate conditions (which must include an obligation to report regularly to the committee).
101. Any delegation of powers under clause 98 or 99 may be revoked or altered by the committee at any time.
102. The rules of procedure for each committee, and the provisions relating to membership of each committee, shall be set by the committee.

Operation of accounts

103. Subject to clause 104, the signatures of two out of three signatories appointed by the committee will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the organisation; at least one out of the two signatures must be the signature of a charity trustee.
104. Where the organisation uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 103.

Accounting records and annual accounts

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

MISCELLANEOUS

Winding-up

107. If, on the winding-up of the Organisation, any property or assets remain after satisfaction of all its debts and liabilities, such property shall be given or transferred to such other community body or bodies or charitable group, resembling closely the purposes of the Organisation, as may be:
- a. determined by not less than two thirds of the members of the organisation voting (in person or by proxy) at a general meeting called specifically (but not necessarily exclusively) for the purpose; and
 - b. approved by OSCAR (and its successors).

Alterations to the constitution

108. This constitution may (subject to clause 110) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 48) or by way of a written resolution of the members.
109. The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCAR).

Interpretation

110. References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- a. any statutory provision which adds to, modifies or replaces that Act; and
 - b. any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 111.a above.
111. In this constitution:
- a. "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;

- b. "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.