

**SCOTTISH CHARITABLE
INCORPORATED ORGANISATION**

**CONSTITUTION
of
THE ALASDAIR GRAY ARCHIVE**

One-tier SCIO

2022

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THE ALISDAIR GRAY ARCHIVE SCIO

Interpretation

1. In this Constitution, the following words and expressions shall, unless the subject or context requires otherwise, have the following meanings:-

1.1 “**2005 Act**” means the Charities and Trustee Investment (Scotland) Act 2005;

1.2 “**Auditor**” means an Auditor or Independent Examiner appointed in accordance with Clause 54 and ‘**audit**’ shall be interpreted accordingly;

1.3 “**authenticated**” or “**authenticated document**” means a document or information which is:-

- (i) in hard copy form and signed by the person sending or supplying it; or
- (i) in electronic form, and contains or is accompanied by a statement of the identity of the sender, provided that the SCIO has no reason to doubt the truth of the statement.

1.4 “**charitable institution**” or “**charity**” means a charity in terms of the 2005 Act which is also regarded as a charity in relation to the application of the Taxes Acts, or a charity under the law of any other jurisdiction which is also regarded as a charity in relation to the application of the Taxes Acts, provided that nothing in this Constitution shall authorise an application of the property of the SCIO other than in furtherance of a charitable purpose.

1.5 “**charitable purpose**” or “**charitable object**” means a charitable purpose under section 7 of the 2005 Act which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;

1.6 “**circulation date**” in relation to a resolution means the date on which copies of it are first sent or submitted to Members or Trustees for their agreement, or, where the eligible Members or Trustees change during the course of the circulation date, the time that the resolution is first sent or submitted to Members or Trustees in accordance with the Constitution;

1.7 “**clear days**” does not include the day on which notice is given or the day of the meeting or other event for which notice is given;

1.8 “**Conflicted Trustee**” shall have the meaning given in Clause 43;

1.9 “**Constitution**” means this Constitution as originally framed or as amended from time to time in accordance with these presents;

1.10 “**electronic form**” means a document or information sent or supplied by electronic means (including by e-mail or by fax) or by any other means while in an electronic form, provided that the sender reasonably considers that it has been supplied in a form which will enable a recipient to read it and to retain a copy of it;

1.11 “**eligible**” in relation to a Member or Trustee to whom a resolution must be circulated means those who would have been entitled to vote on the resolution on its circulation date;

1.12 “**First Trustees**” shall have the meaning given in Clause 14.1;

1.13 “**General Meeting**” shall, unless the context requires otherwise, include the Annual General Meeting;

1.14 “**hard copy**” means a document or information which is sent or supplied in a paper copy or similar form capable of being read;

1.15 “**month**” means a calendar month;

1.16 “**OSCR**” means the Office of the Scottish Charity Regulator;

1.17 “**properly circulated**” in relation to a resolution means that written copies must be sent by the SCIO to all eligible Members or Trustees (as appropriate):

- (i) at the same time, so far as is reasonably practicable; or
- (ii) by submitting a copy or copies in turn to each eligible Member or Trustee (provided it is possible to do so without undue delay); or
- (iii) partly by one method and partly by the other.

1.18 “**routine business**” means the business of the Annual General Meeting specified in Clause 11.2;

1.19 “**Secretary**” means a person appointed in accordance with the Constitution and designated as the SCIO’s Secretary and to whom certain duties may be delegated;

1.20 “**in writing**” or “**written**” means written in hard copy form or produced by any substitute for writing in an electronic form, or partly one and partly another;

1.21 “**written resolution**” means a resolution in writing passed in accordance with Clause 47;

1.22 “**year**” means a calendar year;

1.23 The singular includes the plural and vice versa;

1.24 The masculine includes the neuter and vice versa, and each includes the feminine;

1.25 References to any Act or any section include references to any statutory modification or re-enactment thereof and any subordinate legislation made under it;

1.26 Save as aforesaid, any words or expressions defined in the 2005 Act shall, if not inconsistent with the subject or context, bear the same meaning in this Constitution.

Name and Principal Office

2. The name of the SCIO is “The Alisdair Gray Archive SCIO”. The principal office of the SCIO is and will remain in Scotland.

Purposes

3. The purposes of the SCIO are:-

- (i) the promotion, preservation, and education of the public of the collection of works by Alasdair Gray and more generally by (amongst other things):-
 - Commissioning, publishing, distributing and archiving research, literature, paintings and other materials;
 - Acquiring, creating and preserving works of art, including paintings, photographs, literature and other works, including sourcing suitable locations for storing and/or displaying such items;
 - Restoring and maintaining items of historical significance; and
 - Organising, managing, promoting and sponsoring various functions and events, including exhibitions, seminars, lectures and tours.
- (ii) to promote similar **charitable purposes, objects or institutions** in such proportions and manner as the Trustees think fit.

Powers

4. The powers of the SCIO are:-

- (i) to do anything lawful which is intended to further (directly or indirectly) any or all of the SCIO’s purposes or which is incidental or conducive to doing so; and
- (ii) unrestricted, save that the SCIO shall not be entitled to distribute or otherwise apply any of its property other than in furtherance of a charitable purpose, and no part of the income and property of the SCIO shall be paid or transferred, directly or indirectly, by way of profit to Members of the SCIO, provided that this shall not prevent a payment to a Member for charitable purposes in accordance with the terms of the **Constitution**.

Structure

5. The SCIO shall consist of **Trustees** who will have the general control and management of the SCIO and who will also be the **Members** of the SCIO for the purposes of the **2005 Act** and the Constitution.

Duties

6. The Trustees must, when acting in their capacity as Trustees, comply with the duties placed upon them under section 66 of the 2005 Act and the general law. The Members must, when acting in their capacity as Members, comply with the duties placed upon them under section 51 of the 2005 Act or otherwise.

MEMBERS

Eligibility

7. Membership of the SCIO shall consist of only the Trustees of the SCIO, and all persons appointed as Trustees in accordance with the Constitution shall be Members of the SCIO.

Appointment of Members

8. A person will be deemed to have been admitted as a Member on the date on which he is appointed as a Trustee of the SCIO.

Terminating Membership

9. Membership of the SCIO shall not be transferable and will cease upon the Member ceasing to be a Trustee.

Powers of Members

10. The following resolutions will be valid only if passed by the Members in **General Meeting** or by **written resolution** and with the percentage of votes required by law:-

- (i) a resolution to amend the Constitution under section 63 of the 2005 Act;
- (ii) a resolution to transfer the SCIO's undertaking to another SCIO under section 61 of the 2005 Act;
- (iii) a resolution to amalgamate the SCIO with any one or more other SCIO under section 59 of the 2005 Act; and
- (iv) a resolution to dissolve the SCIO under the Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011.

Annual General Meeting

11.1 An Annual General Meeting must be held not more than fifteen **months** after the registration of the SCIO and subsequently once in every year. There must be not more than fifteen months between the holding of one Annual General Meeting and the next.

11.2 The business of each Annual General Meeting shall include the following **routine business**:-

- (i) a report on the SCIO's activities;
- (ii) consideration of the SCIO's annual accounts;
- (iii) the appointment of Trustees in the place of any retiring; and
- (iv) the appointment of **Auditors**.

General Meetings

11.3 Any other meetings of the Members shall be called General Meetings. Meetings. General Meetings shall not normally be held unless required in order to

consider a resolution under Clause 10, but such number of General Meetings, if any, may be held as is thought necessary or desirable.

Conduct of Meetings

12. The Annual General Meeting and any other General Meetings shall be convened and conducted in accordance with the applicable provisions of Clauses 29 to 42.

TRUSTEES

Maximum/ minimum

13.1 There shall be a minimum of three and a maximum of twelve Trustees of the SCIO. The Trustees may by resolution increase or reduce the minimum or maximum number of Trustees provided that the minimum is at no time reduced below three.

Eligibility

13.2 The Trustees shall be individuals who are committed to the purposes of the SCIO. At least one Trustee must be resident in Scotland.

Appointment of Trustees

14.1 The first Trustees of the SCIO shall be the individuals who apply to **OSCR** for registration of the SCIO (the “**First Trustees**”).

14.2 The Trustees or the Members may by resolution at any time appoint as a Trustee any person who has confirmed his willingness to act, either to fill a vacancy should one arise for any reason or as an additional Trustee, but so that the maximum number of Trustees fixed by or in accordance with the Constitution is at no time exceeded.

14.3 A person will be deemed to have been appointed as a Trustee from such date as may be agreed between him and the SCIO, failing which from the date on which he is notified by the SCIO of his appointment.

Terms of Office

15.1 Trustees, other than the First Trustees, shall be appointed for a term not exceeding three years and shall be eligible for re-appointment for a second and final term not exceeding three years. Trustees must then stand down for a period of at least two years but may then be re-appointed as Trustees subject

15.2 For the purpose of this Clause 15 only, a year shall mean the period between one Annual General Meeting and the Annual General Meeting immediately following it in the next calendar year.

Removal of Trustees

16. The office of a Trustee shall be vacated in any of the following events:-
(i) on the Trustee's death; or

- (ii) if he resigns by notice **in writing** to the SCIO, unless after his resignation there would be fewer than three Trustees in office; or
- (iii) if he enters into an arrangement with his creditors or becomes apparently insolvent; or
- (iv) if he is disqualified under the 2005 Act from acting as a charity trustee; or
- (v) if a registered medical practitioner who is treating the Trustee gives a written opinion to the SCIO stating that the Trustee has become physically or mentally incapable of acting as a Trustee and may remain so for more than three months; or
- (vi) if:
 - (a) he is absent from Trustees' meetings for more than six months without the Trustees' permission; or
 - (b) in the sole opinion of the other Trustees, he has acted in such a way as would bring the SCIO into disrepute and in all the circumstances his removal from office is justified to preserve the reputation of the SCIO; or
 - (c) he has been in serious or persistent breach of either or both of his duties under sections 66(1) and 66(2) of the 2005 Act; or
 - (d) the other Trustees reasonably believe that he does not have sufficient capacity and is physically or mentally incapable of making decisions in relation to, and managing the affairs of, the SCIO, and the other Trustees have given him a reasonable opportunity to respond to their concerns;and the other Trustees resolve that his office be vacated.

Alternate Trustees

17. A Trustee may not appoint an alternate Trustee or anyone else to act on his behalf at meetings of the Trustees.

Register of Trustees

18.1 The Trustees must keep a Register of Trustees and must update the Register within 28 days of receiving notification of any change.

Content

18.2 The Register must, at all times, contain for each current Trustee:-

- (i) his name;
- (ii) his address;
- (iii) the date he was appointed;
- (iv) any offices he holds in the SCIO; and
- (v) in the case of a Trustee appointed by OSCRC under section 70A of the 2005 Act, the fact of OSCRC's involvement.

18.3 The Register must, for six years from the date that the office of Trustee is vacated, contain for each former Trustee:-

- (i) his name;
- (ii) any offices he held in the SCIO; and
- (iii) the date on which he ceased to be a Trustee.

Right of Inspection

19.1 A copy of the Register of Trustees must be provided within 28 days to any person who reasonably requests a copy.

19.2 Where the request is made by a person who is not a Trustee:-

- (i) the address of any of the Trustees may be withheld; and
- (ii) the names of any of the Trustees may be withheld only if the Trustees are satisfied that this information is likely to jeopardise the safety or security of any person or premises.

OFFICE BEARERS

Appointment

20. The Trustees will elect a Trustee to be Chairman of the Trustees and of the SCIO, and such other office bearers (if any) as they consider appropriate. If it is desired that a **Secretary** be appointed, any Trustee or any other person shall be so appointed for such term, at such remuneration and upon such conditions as the Trustees think fit, and where any notice is required under the Constitution to be served on or by the Trustees or the SCIO, it may be served on or by the Secretary.

Removal

21. The Trustees may at any time revoke any appointment or appointments made under Clause 20. A person appointed to any office will automatically cease to hold that office if he ceases to be a Trustee or if he resigns from that office.

POWERS OF TRUSTEES

Business of the SCIO

22. The business of the SCIO will be managed by the Trustees who may exercise all powers of the SCIO which are not required to be exercised by the Members in terms of the 2005 Act, the Constitution (and in particular Clause 10) or any regulations prescribed the Trustees being not inconsistent with the 2005 Act and the Constitution.

Effect of Regulations

23. No regulation prescribed by the Trustees shall invalidate a prior act of the Trustees which would have been valid if the regulation had not been made.

Execution of documents

24.1 Unless otherwise required or authorised by law, a document is validly executed by the SCIO only if it is signed by:-

- (i) a Trustee; or
- (ii) the Secretary (if any); or
- (iii) a person authorised to sign the document on the SCIO's behalf.

24.2 Unless otherwise required or authorised by law, a document shall be presumed to have been executed in accordance with Clause 24.1 above if it is also signed by a witness whose name and address is included in the testing clause or body of the document and it in all respects complies with schedule 2, paragraph 5 of the Requirements of Writing (Scotland) Act 1995.

Cheques

24.3 All cheques and all receipts for moneys paid to the SCIO shall be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Trustees from time to time by resolution determine.

Patrons

25. The Trustees will have the power to appoint a President and/or Patrons who is/are committed to the purposes of the SCIO and wish to be associated with it, and may at any time revoke any appointment. Any President or Patron shall not be a Member or Trustee merely by virtue of his appointment as President or Patron, nor shall he be eligible for appointment as such. The President and the Patrons may attend General Meetings but shall have no vote.

Filling vacancies

26. The continuing Trustees may act notwithstanding any vacancies, but, if and so long as the number of Trustees is reduced below the minimum number fixed by or in accordance with the Constitution, the continuing Trustee or Trustees may act only for the purpose of filling such vacancies and for no other purpose.

Third parties dealing in good faith with the SCIO

27. All acts done by any resolution of the Trustees or any person acting as a Trustee shall, as regards all persons dealing in good faith and for value with the SCIO, be as valid as if every such person had been duly appointed, was qualified and had continued to be a Trustee and entitled to vote, notwithstanding any defect in the appointment or continuance in office of any Trustee or person acting as such or that such person had vacated office or was not entitled to vote. The provisions of this clause shall apply equally to all acts by members of committees or by any person acting as a member of a committee as they apply to the Trustees.

Conduct of Meetings

28.1 Trustees' Meetings shall be convened and conducted in accordance with the applicable provisions of Clauses 29 to 46, but the Trustees may otherwise meet together for the despatch of business, adjourn, adopt regulations (being not inconsistent with the Constitution) to govern their proceedings, and regulate their meetings as they think fit.

28.2 The Trustees may agree to invite additional persons to attend and speak at their meetings and to seek advice from such persons as they think fit, but such additional persons shall not have the right to participate in making decisions or to vote.

MEETING PROVISIONS

Convening a Meeting

29. Meetings shall be convened:-
- (i) in the case of the Annual General Meeting or a General Meeting, on the request of any two Members or the Chairman;
 - (ii) in the case of a Trustees' Meeting, on the request of any Trustee; and
 - (iii) by the Secretary (if one is appointed) on the request of any individual(s) entitled to convene a meeting under (i) or (ii) above.

Notice

Notice period

30. The following notice shall be given of meetings:-
- (i) the Annual General Meeting shall be called by at least 14 **clear days'** notice;

- (ii) any other General Meeting shall be called by at least 7 clear days' notice, unless at least 75% of the Members with the right to attend and vote at the meeting agree to shorter notice; and
- (iii) Trustees' Meetings shall be called with such notice as the Chairman thinks fit.

Entitlement to notification

- 31.1 Notice of every meeting must be given:-
- (i) in the case of the Annual General Meeting, to all Members and to the Auditor; and
 - (i) in the case of a General Meeting, to all Members; and
 - (ii) in the case of a Trustees' Meeting, to all Trustees.

31.2 There is no requirement to give notice of a meeting to any individual who is for the time being absent from the United Kingdom or whose address in terms of Clause 33.2 is outwith the United Kingdom, unless he has supplied the SCIO with either an address for service within the United Kingdom or an email address.

Failure to give notice

31.3 Where there is an accidental omission to give notice to, or the non-receipt of notice by, any person entitled to receive notice, notice will nonetheless be deemed to have been duly given and it will not invalidate the proceedings at any meeting.

Content of notice

32.1 Every notice calling a General Meeting or Trustees' Meeting must specify the place, date and time of the meeting.

32.2 Every notice calling an Annual General Meeting must also specify the meeting as such and, if other than routine business is to be transacted, the notice must detail the general nature of the business.

32.3 If a resolution to amend the Constitution or to remove an Auditor before the expiry of his term is to be proposed at a General Meeting, the notice must include the text of the resolution and, where applicable, representations must be permitted in accordance with Clause 54.2.

Method of notification

33.1 Any notice or document to be sent or supplied to a Trustee or Member may be given in **hard copy** or **electronic form** as follows:

- (i) by handing it to the individual personally;
- (ii) by delivering it by hand to the individual's address;
- (iii) by sending it by e-mail to the individual's e-mail address;
- (iv) by sending it by post with delivery pre-paid, addressed to the individual at his address; or
- (v) by any other reasonable means by which he has asked to be sent or supplied with such notices or documents for the time being.

Any notice so served shall be deemed to have been duly served on the individual as both Trustee and Member.

33.2 For the purpose of Clause 33.1, an individual's address or email address is the one he has given for the service of notices or documents. In the absence of such an address, it is his address in the Register of Trustees.

Deemed service of notice

34.1 Any notice or document is deemed to have been served:-
(i) immediately upon being handed to the individual personally;
(ii) 12 hours after being delivered by hand to the individual's address or sent by e-mail to his e-mail address; and
(iii) 48 hours after the letter containing the same is posted;
or, if earlier, as soon as the individual acknowledges receipt.

34.2 In proving service, it is sufficient to show that:-
(i) a letter was properly addressed, stamped and posted;
(ii) a courier confirmed delivery of the item to the correct address;
(iii) an e-mail was properly addressed and sent; or
(iv) receipt of service was acknowledged.

Quorum

35.1 No business may be conducted at a General Meeting or Trustees' Meeting unless a quorum is and remains present throughout.

35.2 The quorum may be fixed by the Trustees and unless so fixed at any other number shall be:-
(i) for any General Meeting, of the Members entitled to receive notice of and vote at the meeting present in person or by proxy;
(ii) for any Trustees' Meeting, unless Clause 45.3 permits otherwise, Trustees entitled to receive notice of and vote at the meeting present in person; and

Subject to Clause 45, a Trustee must not be counted in the quorum at a Trustees' meeting when a decision is made about a matter upon which he is not entitled to vote.

35.3 If a quorum is not present within fifteen minutes after the time for which a meeting is scheduled, or if a quorum ceases to be present during the meeting, the meeting must be adjourned.

Adjournment

36.1 The Chairman may, with the consent of a majority of participants at a quorate meeting, (and must if so directed by a majority) adjourn a meeting to such other day, time and place as he may direct.

36.2 No business may be transacted at any adjourned meeting other than the business left unfinished at the original meeting.

36.3 It will not be necessary to give any notice of an adjourned meeting unless the meeting is adjourned for two weeks or more, in which case notice must be given as in the case of an original meeting.

Chairing of meetings

37.1 The Chairman of the SCIO appointed in terms of Clause 20 will preside as chairman of the meeting at every Trustees' and General Meeting unless he is unable or unwilling to do so.

37.2 If no Chairman has been appointed or if he is not present within fifteen minutes after the time for which the meeting is scheduled or is unable or unwilling to preside as chairman of the meeting, the Trustees present may choose one of their number to preside.

Means of participation

38. Any or all of the Trustees and Members may participate in a Trustees' or General Meeting by any suitable means which allows all participants to communicate with all other participants. Participation by such means shall constitute presence in person at a meeting, and the meeting shall be deemed to have occurred where the majority of the participants are present or, if there is no such majority, where the Chairman of the meeting is present.

Voting

Show of hands

39.1 At a Trustees' or General Meeting, every Trustee or Member has one vote which must be given in person or by proxy in accordance with the Constitution. A resolution put to the vote of a meeting will be decided on a show of hands unless, prior to the result being declared, a secret ballot is requested under Clause 40.

Required majority

39.2 The majority of votes required to pass a resolution shall be:-
(i) for any questions arising at any General Meeting (except where the law or the Constitution, and in particular Clause 10 thereof, requires otherwise), a simple majority of the Members voting in person or by proxy; and
(ii) for any questions arising at any Trustees' meeting (except where the law or the Constitution requires otherwise), a simple majority of the Trustees voting;
at a meeting duly convened and held, and in calculating the votes cast, no account shall be taken of abstentions, those absent from the meeting, or those who are for any reason ineligible to vote.

Casting vote

39.3 Where an equal number of votes are cast for and against a resolution at a Trustees' or General Meeting, the chairman of the meeting will be entitled to a second and casting vote.

Ineligibility

39.4 A Trustee must not vote when any decision is made about a matter upon which he is not entitled to vote under Clauses 4344.

Declaration of result

39.5 A declaration by the chairman of the meeting of the result of any vote and an entry in the minutes to that effect will be conclusive evidence of the result and, if recorded, the proportion of votes cast.

Error

39.6 If any votes are counted in error, the result of the resolution will remain valid unless the error is pointed out at the same meeting or an adjournment thereof, and unless the chairman of the meeting considers the error to be sufficiently serious to invalidate the result.

Secret Ballot

40.1 At any meeting, a secret ballot must be held if it is requested by:-

- (i) the chairman of the meeting; or
- (ii) at least two individuals present in person or by proxy (where proxies are permitted) and entitled to vote.

40.2 A request for a secret ballot may be withdrawn. If not withdrawn, a ballot must be held in the manner directed by the chairman of the meeting. The result of a secret ballot will be deemed to be a resolution of the meeting at which the ballot was requested.

40.3 A secret ballot on the election of a Chairman or on the question of adjournment must be taken immediately but a ballot requested on any other matter may be held at such time and place as the chairman of the meeting directs. No notice need be given to any individuals not present at the meeting of a ballot not taken immediately.

Proxies

41.1 A Member may appoint the chairman of the meeting as his proxy to exercise all or any of his rights at a General Meeting. Where the chairman is appointed as a proxy for more than one Member, he will have one vote for each Member entitled to vote on a resolution. Proxies shall not be permitted at Trustees' meetings.

41.2 A Member remains entitled to exercise his rights at a Meeting even where a valid notice of proxy has been delivered. Unless the Member otherwise directs, where a Member who has submitted a valid notice of proxy attends a meeting, the notice of proxy shall become invalid for as long as the Member remains present at the meeting.

Form of proxy

41.3 A valid notice of proxy must be in writing and must be signed by the Member granting the proxy or by his attorney. Where a notice of proxy is signed by an attorney, the Trustees may require evidence of the authority of the attorney. The notice of proxy must be in the usual form or in any other form as the Trustees may accept. It need not be witnessed and shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates. A notice of proxy must be delivered to the place specified in the notice of the meeting for the delivery of proxy notices, or, if no place is so specified, to the principal office of the SCIO, not less than 24 hours before the time for which the meeting, adjourned meeting, or secret ballot is scheduled (or, in the case of a secret ballot held within 24 hours of being requested, must be delivered at the time at which the ballot was requested) and in default shall not be treated as valid.

41.4 A notice of proxy may specify how the proxy is to vote (or that he is to abstain from voting) on one or more resolutions. Unless it so specifies, it must be treated as

allowing the proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting. It does not require to be witnessed and will, unless it specifies otherwise, remain valid for any adjournment of the meeting.

Revocation of proxy

41.5 A vote given by a proxy will remain valid despite the death or loss of mental capacity of the principal or revocation of the proxy or of the authority under which the notice of proxy was executed, provided that the Trustees did not receive intimation in writing of such death, loss of mental capacity or revocation at the place specified in the notice of the meeting for the delivery of proxy notices, or, if no place is so specified, at the principal office of the SCIO, prior to the commencement of the meeting or adjourned meeting or secret ballot at which the vote is given. Any revocation of a notice of proxy must be in writing and shall be subject to the same requirements to which the notice of proxy is subject under Clause 41.3.

Records

42.1 The Trustees shall arrange for records to be taken and kept of:-
(i) all proceedings of meetings, including the names of those present;
(ii) all written resolutions; and
(iii) all appointments of officers of the SCIO.

42.2 Records kept under Clause 42.1 must be retained for at least six years from the date of the meeting, resolution or appointment. The records must be made available at the SCIO's principal office or such other place within Scotland as the Trustees may agree for inspection without charge by any Trustee who reasonably wishes to view them. Copies of the records must be provided to any Trustee who reasonably requests it upon payment by the Trustee of such fee as is determined by the Trustees, which must not exceed the SCIO's reasonable expenses in compliance.

CONFLICTS OF INTEREST

Duty to avoid conflicts

43. 1 A Trustee must avoid a situation in which he has an interest or duty which conflicts or possibly may conflict with the interests of the SCIO.

What constitutes an interest

43.2 A Trustee will be deemed to have an interest in a proposed transaction or arrangement under consideration by the SCIO if:-

- (i) the proposed transaction or arrangement is or includes the provision of remuneration by the SCIO to that Trustee, or to a person connected to him in terms of section 68(2) of the 2005 Act, for services provided to or on behalf of the SCIO; or
- (ii) he has any other interest, direct or indirect (including but not limited to any personal financial interest), in the proposed transaction or arrangement; or
- (iii) a person, firm, or limited company with whom or with which he is deemed to be connected in terms of section 68(2) of the 2005 Act has an interest, direct or indirect, (including but not limited to any personal financial interest), in the proposed transaction or arrangement;

unless

- (a) the proposed transaction or arrangement is not one which falls within the scope of Article 43.2(i) and is such that it cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (b) the only benefit to him is the payment by the SCIO of a premium for indemnity insurance for the SCIO; or
- (c) he is not aware of his interest, or he is not aware of the proposed transaction or arrangement in question, and it is not a matter of which he ought reasonably to be aware.

43.3 A Trustee who has an interest in terms of this Clause 43 shall be known as a “**Conflicted Trustee**”.

Declaration of interest

44.1 A Conflicted Trustee must declare the nature and extent of his interest to the Trustees, unless they are already aware of it or ought reasonably to be aware of it. Such declaration must be made before the proposed transaction or arrangement has been entered into by the SCIO, or, where it relates to an existing transaction or arrangement, as soon as is reasonably practicable, and must be made:-

- (i) at a Trustees’ meeting at or before the time discussion begins on the matter;
- (ii) by notice in writing to the other Trustees sent to them in accordance with the terms of the Constitution relating to the service of notices.

If the declaration proves to be or becomes inaccurate or incomplete, a further declaration must be made.

Register of Interests

44.2 The SCIO shall maintain a Register of Interests which shall be reviewed at least annually and updated as necessary, and which shall be open to inspection at any time by all Trustees. Where an interest has been entered in the Register of Interests, the other Trustees shall be deemed to be aware of it.

Procedure

45. 1 Where a Conflicted Trustee has an interest in a matter to be discussed at a meeting of the Trustees, he must, unless the other Trustees authorise him to do otherwise in terms of Clause 45.2:

- (i) declare the nature and extent of his interest in accordance with Clause 44;
- (ii) after providing any information requested by the Trustees, take no part in any discussions of the Trustees and, if so required by the Chairman, withdraw from the meeting for that item;
- (iii) take no part in the deliberations;
- (iv) not be counted in the quorum for that part of the meeting; and
- (v) withdraw from the meeting during the vote and have no vote on the matter.

Authorisation by Trustees

45.2 Where the unconflicted Trustees are satisfied that it is in the best interests of the SCIO to do so, they may, provided that they form a quorum in accordance with

Clause 35 or Clause 45.3, by resolution passed in the absence of the Conflicted Trustee, authorise him to:-

- (i) participate in deliberations and/or to vote;
- (ii) disclose to a third party information confidential to the SCIO;
- (iii) take any other action not otherwise authorised; or
- (iv) refrain from taking any action required to remove the conflict;

provided always that:

- (a) the terms of Section 66 of the 2005 Act are not thereby contravened;
- (b) a Conflicted Trustee whose interest is a financial one shall at all times comply with the terms of sections 67-68 of the 2005 Act; and
- (c) the authorisation shall not remove the requirement that the interest be declared in terms of Clause 44.

Quorum where conflicts exist

45.3 For the purpose of Clause 45, if a conflict of interest arises for a Trustee and there are insufficient non-conflicted Trustees of the SCIO to form a quorum, the quorum for the purpose of that decision only shall consist of all non-conflicted Trustees of the SCIO notwithstanding the terms of Clause 35.2.

Personal benefit

45.4 Where the procedure in Clauses 44 to 45 is followed, a Trustee is permitted to enter into a transaction with the SCIO in which he has an interest and, provided the terms of sections 66 to 68 of the 2005 Act are not contravened, may retain any personal benefit which arises.

Failure to follow procedure

46. 1 Subject to Clause 46.2, all business transacted by a meeting of Trustees will be validly transacted notwithstanding the participation in the vote of any Trustee who was disqualified from holding office, had previously retired or who was obliged in terms of the Constitution to vacate office, or who was not entitled to vote or be counted in the quorum for the matter, if, when that Trustee is disregarded for the purposes of both the vote and the quorum, the decision has been made by a majority of the Trustees at a quorate meeting.

46.2 Clause 46.1 does not permit a Conflicted Trustee or a person connected to him to retain any personal benefit arising from a resolution of the Trustees if, but for Clause 46.1, the resolution would have been invalid or if he failed to declare his interest in terms of Clause 44.

WRITTEN RESOLUTIONS

Written Resolutions

47.1 A written resolution passed in accordance with this Clause 47 shall be as valid and effective as if it had been passed at a Trustees' or General Meeting duly convened and held.

47.2 A written resolution may be sent out in more than one document in the like form and, subject to Clause 47.3, is passed when:-

- (i) it has been **properly circulated** to all **eligible** Members or all Trustees (as applicable);
- (ii) a simple majority of the eligible Members or eligible Trustees (as applicable) have signified their agreement to the resolution in an **authenticated document(s)**; and
- (iii) the authenticated document(s) is or are received by the SCIO within 42 days of the **circulation date**.

47.3 The following additional requirements shall apply:

- (i) where a written resolution relates to the removal of an Auditor before his term of office expires, notice must be given and the Auditor permitted to make representations in accordance with Clause 54.2; and
- (ii) where a written resolution relates to the amendment of the Constitution, the unanimous agreement of the Members will be required in accordance with Clause 56.1; and
- (iii) where a written resolution is one for which law or the Constitution (and in particular Clause 10) require a majority other than a simple majority, the majority of eligible Members or Trustees (as applicable) who must signify their agreement to the resolution for it to be passed will be the specified majority required by law or the Constitution.

COMMITTEES

Delegation to Committees

48.1 The Trustees may delegate any of their powers to a committee consisting of such number of Trustees and/or such other persons (if any) as they think fit. All proceedings of committees must be reported promptly to the Trustees.

48.2 When exercising powers delegated to it, a committee must abide by any regulations imposed on it by the Trustees. The Trustees may impose such regulations as they think fit, and any regulations so imposed may be revoked or altered.

Proceedings of Committees

48.3 No resolution of any committee will be effective unless a majority of the members of the committee at the meeting are Trustees or unless the resolution is ratified by the Trustees. All proceedings of committees must be reported promptly to the Trustees.

48.4 Subject to Clause 48.3, the meetings and proceedings of any committee will be governed by the provisions of the Constitution regulating the meetings and proceedings of the Trustees (so far as the same are applicable and are not superseded by any regulations made by the Trustees).

REMUNERATION

Remuneration

49.1 Any Trustee appointed to any office of the SCIO paid by salary or fees or receiving any remuneration or other benefit in money or money's worth from the SCIO may do so only in accordance with the provisions of the 2005 Act.

Expenses

49.2 Trustees shall be entitled to be reimbursed for any reasonable expenses properly incurred by them in the exercise of their duties.

ACCOUNTING

Accounting Records

50.1 The Trustees must ensure that proper accounting records sufficient to show and explain the SCIO's transactions are kept.

50.2 The accounting records kept under Clause 50.1 above must:-
(i) disclose at any time the current financial position of the SCIO;
(ii) contain entries showing from day to day all sums received and spent by the SCIO and the matters in respect of which the sums are received and spent;
(iii) include a record of the assets and liabilities of the SCIO; and
(iv) be sufficient to enable a statement of account which complies with Clause 51 below to be prepared.

51. The Trustees must ensure a statement of account is prepared each financial year which contains a report on the SCIO's activities and complies with the Charities Accounts (Scotland) Regulations 2006 and the 2005 Act.

52. Accounting records must be kept by the SCIO for a minimum of six years from the end of the financial year to which they relate.

Inspection

53.1 The accounting records under Clauses 50-52 above shall be kept at the SCIO's principal office or at such other place in Scotland as the Trustees think fit and shall be open to inspection by the Trustees.

53.2 Members of the public shall be entitled to request and receive a copy of the most recent statement of account of the SCIO, or its Constitution, where it is reasonably requested in accordance with section 23 of the 2005 Act.

53.3 A copy of the SCIO's statement of account must be sent to OSCR within 9 months of the end of the SCIO's financial year.

53.4 Subject to this Clause, no other person shall have any right to inspect any accounting records of the SCIO except as conferred by statute, ordered by a court of competent jurisdiction or authorised by the Trustees.

Audit

54.1 Auditors (as defined in Clause 1.2) shall be appointed and their duties regulated in accordance with the provisions of the 2005 Act.

54.2 Where it is proposed that the Auditor is removed before his term of office expires, he must be given at least 21 days' notice of his proposed removal. The Auditor must be allowed to make representations to the Trustees and any such representations must be considered by the Trustees before the resolution is voted upon.

AMENDMENT OF CONSTITUTION

Consent

- 55.1 If the SCIO wishes to:-
- (i) amend its purposes;
 - (ii) apply to the court to amend its purposes; or
 - (iii) change its name;
- it may do so only with OSCR's consent. In the absence of such consent (given or deemed under the 2005 Act), any purported amendment shall be invalid.

55.2 OSCR's consent must be sought a minimum of 42 days prior to any change set out in Clause 55.1 taking place.

Procedure

56.1 Subject to Clause 55, the Constitution of the SCIO may be amended by a resolution of the Members passed:

- (i) by a majority of not less than two thirds of the Members voting in person at a General Meeting duly convened and held; or
- (ii) unanimously by way of a written resolution of the Members.

56.2 Where the resolution is passed at a General Meeting, the notice of the meeting must include details of the proposed amendments in accordance with Clause 32.3.

56.3 The date on which a resolution under Clause 56.1 is passed is:-

- (i) the date of the General Meeting at which it is passed; or
- (ii) the date on which the last Member agreed to it.

Notification

56.4 Any amendment to the Constitution, whether an amendment within the scope of Clause 55 or not, must be notified to OSCR within three months of it taking effect.

INDEMNITY AND LIABILITY

Indemnity

57. Subject to the provisions of this Constitution and save as otherwise excluded by law, a Trustee, Auditor, Secretary or other officer of the SCIO shall be entitled to be indemnified by the SCIO against all costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or in relation to the SCIO,

unless such cost, charge, loss, expense or liability incurred is one within the terms of section 68A(2)(a) to (c) of the 2005 Act.

Liability

58. The Members of the SCIO have no liability in their capacity as Members to contribute to the assets of the SCIO or to the payment of its debts and liabilities, whether on its winding up or otherwise.

DISSOLUTION

Dissolution

59.1 If the SCIO wishes to wind up or dissolve, it may do so only in accordance with the Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011.

59.2 On the winding up or dissolution of the SCIO, any property of the SCIO which remains after all of the SCIO's debts and liabilities have been met must be paid or transferred to a charitable institution or institutions selected at or before the time of the dissolution by the Members which has purposes which are the same as or which closely resemble the purposes of the SCIO. A charitable institution to which any property is transferred must prohibit the distribution of its income and property amongst its members to an extent at least as great as is imposed on the SCIO.

59.3 No part of the SCIO's property may be paid or transferred to the Members of the SCIO, except to a Member that is itself a charity or directly in furtherance of a charitable purpose in accordance with the terms of the Constitution.