

**SCOTTISH CHARITABLE
INCORPORATED ORGANISATION**

**CONSTITUTION
of
THE QUEEN'S NURSING INSTITUTE SCOTLAND**

One-tier SCIO

2022

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THE 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
 - (ii) 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 42;
 - 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 46;
- 1.22 “**year**” means a calendar year;
- 1.23 The singular includes the plural and vice versa;

- 1.24 References to any Act or any section include references to any statutory modification or re-enactment thereof and any subordinate legislation made under it;
- 1.25 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 Queen’s Nursing Institute Scotland”. The principal office of the SCIO is and will remain in Scotland.

Purposes

3. The purpose of the SCIO is the improvement of health with a focus on prevention and social justice. We do this through supporting nurses and midwives whose roles within Scotland’s communities enable individuals, families and communities to maintain or improve their health.

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 by 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 by 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 they are appointed as a Trustee of the SCIO.
- Terminating Membership* 9. Membership of the SCIO shall not be transferable and will cease on the Member's death or upon the Member ceasing to be a Trustee.
- Powers of Members* 10. The following resolutions will be valid only if passed in **Trustees' 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 and that of any committees;
 - (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**.
- Conduct of Meetings* 12. The Annual General Meeting shall be convened and conducted in accordance with the applicable provisions of Clauses 29 to 41.

TRUSTEES

- Maximum/minimum* 13.1 There shall be a minimum of ten and a maximum of fifteen Trustees of the SCIO. The Trustees may by resolution increase or reduce the minimum or maximum number of Trustees in accordance with the terms of the 2005 Act.
- 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. QNIS is an organisation that values diversity and welcomes Trustee applications from all sections of the community. Trustees shall be drawn from backgrounds relevant to the main functions of the SCIO and its areas of collaborative work, and collectively should be able to provide advice in relation to:-

- (i) the training and professional development of community nurses and related healthcare professionals;
- (ii) the welfare of those concerned with nursing in the community and support for retired Queen's Nurses;
- (iii) links to Scotland's Gardens (registered charity number SC011337);
- (iv) the National Health Service;
- (v) the management of the financial assets and accounts of the SCIO; and
- (vi) community interests.

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 their 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 the date of the letter by which they are notified by the SCIO of their appointment.

Terms of Office

- 15.1 Trustees, other than the First Trustees, shall be appointed for a term not exceeding four years and shall be eligible for re-appointment for a further term not exceeding four years, subject to the terms of the Constitution. With good reason, the Chair may extend a Trustee's term of office by no longer than one year.

Phasing-in of rotation provisions

- 15.2 Notwithstanding the terms of Clause 15.1, the First Trustees shall retire in accordance with the schedule of retirements to be determined by the Trustees and held by the Secretary. In each case, they shall be eligible for re-appointment for an additional term, deemed to be their second, at the introduction of the new Constitution, subject to the terms of the Constitution.
- 15.3 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 they resign by notice **in writing** to the SCIO, unless after their resignation there would be fewer than three Trustees in office; or
 - (iii) if they are disqualified under the 2005 Act from acting as a charity Trustee; or
 - (iv) if they become incapable, whether mentally or physically, of managing their own affairs and such incapacity is expected to continue or has continued for more than six months; or

- (v) if:
 - (a) they are absent (without good reason, in the opinion of Council) from more than three consecutive meetings of Council – but only if Council resolves to remove them from office; or
 - (b) in the sole opinion of the other Trustees, they have acted in such a way as would bring the SCIO into disrepute and in all the circumstances their removal from office is justified to preserve the reputation of the SCIO; or
 - (c) they have been in serious or persistent breach of either or both of their duties under sections 66(1) and 66(2) of the 2005 Act; and the other Trustees resolve that their office be vacated.

Alternate Trustees

17. A Trustee may not appoint an alternate Trustee or anyone else to act on their 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) their name;
 - (ii) their address;
 - (iii) the date they were appointed;
 - (iv) any offices they hold in the SCIO; and
 - (v) in the case of a Trustee appointed by OSCAR under section 70A of the 2005 Act, the fact of OSCAR'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) their name;
 - (ii) any offices they held in the SCIO; and
 - (iii) the date on which they 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, following recommendation from a recruitment panel (normally chaired by the Board Perspective Committee Chair), will elect a Trustee to be Chair of the Trustees and of the SCIO. Applications are encouraged from non-Trustees but they must become a Trustee before election to the Chair. There will be an

opportunity for the Chair to have their term extended by a further period of up to four years by mutual consent. Trustees will elect such other office bearers including a Vice-Chair as they consider appropriate and may combine any offices as they see fit. 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 or the Chair.

Removal

21. The Trustees may at any time revoke any appointment or appointments made under Clause 20 as long as there is a supermajority amongst Trustees. A person appointed to any office will automatically cease to hold that office if they cease to be a Trustee or if they resign 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 Act, the Constitution (and in particular Clause 10) or any regulations prescribed the Trustees being not inconsistent with the 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 Patron who is committed to the purposes of the SCIO and wishes 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 their appointment as President or Patron, nor shall they be eligible for appointment as such. The President and the Patron may attend the Annual General Meeting 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 45, but the Trustees may otherwise meet together for the despatch of business, adjourn, adopt Standing Orders to regulate their proceedings, and regulate their meetings as they think fit. There shall normally be a minimum of four Trustees' Meetings each year.
- 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.
- 28.3 This constitution imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at Council meetings; providing the arrangements made by the Council in relation to a given Council meeting (and the manner in which the meeting is conducted) are consistent with those requirements:
- (i) a charity Trustee cannot insist on participating in the Council meeting, or voting at the Council meeting, by any particular means;
 - (ii) the Council meeting need not be held in any particular place;
 - (iii) the Council meeting may be held without any particular number of those participating in the meeting being present in person at the same place (but, notwithstanding that, the quorum requirements - taking account of those participating via audio and/or audio-visual links - must still be met);

- (iv) the Council meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting;
- (v) a charity Trustee will be able to exercise the right to vote at the Council meeting by such means as is determined by the chair of the meeting (consistent with the arrangements made by the Council) and which permits that charity Trustee's vote to be taken into account in determining whether or not a resolution is passed.

MEETING PROVISIONS

Convening a Meeting

29. Meetings shall be convened:-
- (i) in the case of the Annual General Meeting on the request of any three Trustees or the Chair;
 - (ii) in the case of a Trustees' Meeting, on the request of two Trustees or the Chair; 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 calendar days'** notice;
 - (ii) Trustees' Meetings shall be called with such notice as the Chair thinks fit.

- 30.1 If charity Trustees are to be permitted to participate in a Council meeting by way of audio and/or audio-visual link(s), the charity Trustees must, in advance of the meeting, be provided with details of how to connect and participate via that link or links; and (particularly for the benefit of those charity Trustees who may have difficulties in using a computer or laptop for this purpose) the charity Trustees' attention should be drawn to the following options:
- (i) participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
 - (ii) (where attendance in person is to be permitted, either on an open basis or subject to a restriction on the total number who will be permitted to attend) the ability to attend the meeting in person.

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
 - (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

they have 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 Trustees' Meeting must specify the place, day 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 their term is to be proposed, 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 their address; or
 - (v) by any other reasonable means by which they have 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 is the one they have given for the service of notices or documents. In the absence of such an address, it is their 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 their 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 No business may be conducted at an Annual General Meeting or Trustees' Meeting unless a quorum is and remains present throughout.
- 36 The quorum may be fixed by the Trustees and unless so fixed at any other number shall be:-
- (i) for any Annual General Meeting, 50% of the Members entitled to receive notice of and vote at the meeting present in person (rounded up to the nearest whole number);
 - (ii) for any Trustees' Meeting, 50% of the Council (rounded up to the nearest whole number), unless Clause 44.3 permits otherwise. Subject to Clause 44, a Trustee must not be counted in the quorum at a Trustees' meeting when a decision is made about a matter upon which they are not entitled to vote.

Chairing of meetings

- 37.1 The Chair of the SCIO appointed in terms of Clause 20 will preside as chair of the meeting at every Trustees' and Annual General Meeting unless they are unable or unwilling to do so.
- 37.2 If no Chair has been appointed or if they are not present within fifteen minutes after the time for which the meeting is scheduled or is unable or unwilling to preside as chair of the meeting, the Vice-Chair will preside.

Means of participation

38. Any or all of the Trustees and Members may participate in a Trustees' or Annual 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 Chair of the meeting is present. An individual participating in a Council meeting via an audio or audio-visual link will be deemed to be present in person (or, if they are not a charity Trustee, will be deemed to be in attendance) at the meeting.

Voting ***Show of hands***

- 39.1 At a Trustees' or Annual General Meeting, every Trustee or Member has one vote which must be given in person. 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.
- 39.2 The Council may if they consider appropriate (and must, if that is required under clause 39.3) allow charity Trustees to participate in Council meetings by way of an audio and/or audio-visual link or links, providing:
- (i) the means by which charity Trustees can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a

significant proportion, of the charity Trustees - a barrier to participation; and

- (ii) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those charity Trustees who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those charity Trustees (if any) who are attending in person (and vice versa).

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

39.4 Where a charity Trustee is participating in a Council meeting via an audio or audio-visual link, they may cast their vote on a given resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically.

39.5 If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed Council meeting would not be possible or advisable for one or more of the charity Trustees, the Council must make arrangements for charity Trustees to participate in that Council meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting; and on the basis that:

- (i) the requirements set out in paragraphs (i) and (ii) of clause 39.2 will apply; and
- (ii) the Council must use all reasonable endeavours to ensure that all charity Trustees have access to one or more means by which they may hear and contribute to discussions at the meeting.

Required majority

39.6 The majority of votes required to pass a resolution shall be:-

- (i) for any questions arising at any Annual General Meeting (except where the law or the Constitution, and in particular Clause 10 thereof, requires otherwise), a simple majority of the Members voting; 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.

<i>Casting vote</i>	39.7 Where an equal number of votes are cast for and against a resolution at a 'Trustees' or Annual General Meeting, the chair of the meeting will be entitled to a second and casting vote.
<i>Ineligibility</i>	39.8 A Trustee must not vote when any decision is made about a matter upon which they are not entitled to vote under Clauses 42-45.
<i>Declaration of result</i>	39.9 A declaration by the chair 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.
<i>Error</i>	39.10 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 chair of the meeting considers the error to be sufficiently serious to invalidate the result.
<i>Secret Ballot</i>	<p>(i) 40.1 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chair (or at least two other members present at the meeting) ask for a secret ballot.</p> <p>(ii) 40.2 The chair will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting</p>
<i>Records</i>	<p>41.1 The Trustees shall arrange for records to be taken and kept of:-</p> <p>(i) all proceedings of meetings, including the names of those present;</p> <p>(ii) all written resolutions; and</p> <p>(iii) all appointments of officers of the SCIO.</p> <p>41.2 Records kept under Clause 41.1 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.</p>

CONFLICTS OF INTEREST

<i>Duty to avoid conflicts</i>	42.1 A Trustee must avoid a situation in which they have an interest or duty which conflicts or possibly may conflict with the interests of the SCIO.
<i>What constitutes an interest</i>	<p>42.2 A Trustee will be deemed to have an interest in a proposed transaction or arrangement under consideration by the SCIO if:-</p> <p>(i) the proposed transaction or arrangement is or includes the provision of remuneration by the SCIO to that Trustee, or to a</p>

person connected to them in terms of the 2005 Act, for services provided to or on behalf of the SCIO; or

- (ii) they have 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 they are deemed to be connected in terms 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 42.2(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 them is the payment by the SCIO of a premium for indemnity insurance for the SCIO; or
- (c) they are not aware of their interest, or they are not aware of the proposed transaction or arrangement in question, and it is not a matter of which they ought reasonably to be aware.

42.3 A Trustee who has an interest in terms of this Clause 42 shall be known as a “**Conflicted Trustee**”.

Declaration of interest

43.1 A Conflicted Trustee must declare the nature and extent of their 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

43.2 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

44.1 Where a Conflicted Trustee has an interest in a matter to be discussed at a meeting of the Trustees, they must, unless the other Trustees authorise them to do otherwise in terms of Clause 44.2:

- (i) declare the nature and extent of their interest in accordance with Clause 43;

- (ii) after providing any information requested by the Trustees, take no part in any discussions of the Trustees and, if so required by the Chair, 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*

- 44.2 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 36 or Clause 44.3, by resolution passed in the absence of the Conflicted Trustee, authorise them 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 the 2005 Act are not thereby contravened;
 - (b) the authorisation shall not remove the requirement that the interest be declared in terms of Clause 43.

*Quorum where
conflicts exist*

- 44.3 For the purpose of Clause 44, 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 36.

Personal benefit

- 44.4 Where the procedure in Clauses 43 to 44 is followed, a Trustee is permitted to enter into a transaction with the SCIO in which they have an interest and, provided the terms the 2005 Act are not contravened, may retain any personal benefit which arises.

*Failure to
follow
procedure*

- 45.1 Subject to Clause 45.2, 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.
- 45.2 Clause 45.1 does not permit a Conflicted Trustee or a person connected to them to retain any personal benefit arising from a resolution of the Trustees if, but for Clause 45.1, the resolution would have been invalid or if they failed to declare their interest in terms of Clause 43.

WRITTEN (or e-mail) RESOLUTIONS

Written (or email) Resolutions

- 46.1 A written (or e-mail) resolution passed in accordance with this Clause 46 shall be as valid and effective as if it had been passed at a Trustees' or Annual General Meeting duly convened and held.
- 46.2 A written (or e-mail) resolution may be sent out in more than one document in the like form and, subject to Clause 46.3, 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 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**.
- 46.3 The following additional requirements shall apply:
- (i) where a written (or e-mail) resolution relates to the removal of an Auditor before their 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 (or e-mail) 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 (or e-mail) resolution is one to which Clause 10 relates, the majority of eligible Members who must signify their agreement to the resolution in an authenticated document(s) will be the specified majority required by law.

COMMITTEES

Delegation to Committees

- 47.1 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.
- 47.2 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

- 47.3 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.
- 47.4 Subject to Clause 47.3, 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*** 48. 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. 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 prepared under section 44 of the 2005 Act, or its Constitution, where it is reasonably requested in accordance with 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 their term of office expires, they must be given at least 21 days' notice of their 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 an Annual 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 an Annual 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 Annual 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 them in the execution and discharge of their 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.