



# Island of Hoy Development Trust

The Companies Act 2006

Company Limited by Guarantee and not having a share capital

## ARTICLES OF ASSOCIATION

of

ISLAND OF HOY DEVELOPMENT TRUST

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THE COMPANIES ACT 2006

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

**ARTICLES OF ASSOCIATION**

**of**

**ISLAND OF HOY DEVELOPMENT TRUST**

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**Interpretation**

1 In these articles, unless the context requires otherwise:

“**Act**” means the Companies Act 2006;

“**business day**” means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Glasgow or Edinburgh are open for business.

<b>“charitable body” or “charity”</b>	means a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts;
<b>“charitable object”</b>	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;
<b>“Community”</b>	means the community of Hoy and Walls having the following postcodes: KW16 3NJ, KW16 3NQ, KW16 3NZ, KW16 3PA, KW16 3NY, KW16 3NX, KW16 3NU, KW16 3PQ, KW16 3NW, KW16 3PH, KW16 3PG, KW16 3NT, KW16 3NR, KW16 3NS;
<b>“document”</b>	includes, unless otherwise specified, any document sent or supplied in electronic form;
<b>“electronic form”</b>	has the meaning given in section 1168 of the Act;
<b>“eligible Trustee”</b>	means a Trustee who would be entitled to vote on the matter at a meeting of Trustees (but excluding any Trustee whose vote is not to be counted in respect of the particular matter);
<b>“Model Articles”</b>	means the model articles contained in Schedule 2 of The Companies (Model Articles) Regulations 2008 (SI 2009/3229) as amended prior to the date of adoption of these Articles;
<b>“property”</b>	means any property, heritable or moveable, wherever situated;
<b>“subsidiary”</b>	has the meaning given in section 1159 of the Act;
<b>“Trustees”</b>	means the directors for the time being of the company.

- 1.1 Save as otherwise specifically provided in these articles, words and expressions which have particular meanings in the Act shall have the same meanings in these articles.
- 1.2 Headings in these articles are used for convenience only and shall not affect the construction or interpretation of these articles
- 1.3 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
  - (a) any subordinate legislation from time to time made under it, and
  - (b) any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.4 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. Reference in these articles to the singular shall be deemed to include the plural.

- 1.5 These articles shall apply to the company to the total exclusion of the Model Articles.

## **Objects**

- 2 The company's objects are to benefit the Community in the following ways:
  - 2.1 to manage community land and associated assets for the benefit of the Community and the public in general as an important part of the protection and sustainable development of Scotland's natural environment, where "sustainable development" means development which meets the needs of the present without compromising the ability of future generations to meet their own needs;
  - 2.2 to provide in the interests of social welfare, facilities within the Community for recreation and other leisure time occupation available to the public at large;
  - 2.3 to advance education and in particular to promote opportunities for learning for the benefit of the general public;
  - 2.4 to advance education through promotion of the arts;
  - 2.5 to preserve, restore and improve the environment in through the provision, maintenance and/or improvement of public open space and other public amenities and other environment and regeneration projects (but subject to appropriate safeguards to ensure that the public benefits so arising clearly outweigh any private benefit thereby conferred on private landowners);
  - 2.6 to provide or assist in the provision of housing for people in necessitous circumstances within the Community;
  - 2.7 to relieve poverty particularly among the residents of the Community;
  - 2.8 to promote training, particularly among residents of the Community, and with particular reference to skills which will assist the participants in obtaining paid employment;
  - 2.9 to encourage, stimulate and support volunteering principally in the Community;
  - 2.10 to preserve, for the benefit of the general public, the historical, architectural and constructional heritage that may exist in and around the Community in buildings (including any structure or erection, and any part of a building as so defined) of particular beauty or historical, architectural or constructional interest;
  - 2.11 to promote and protect the wellbeing and physical health of the residents of the Community and to assist in the relief of ill health and the provision of health education for such residents;
  - 2.12 to advance education through (i) the provision and supervision of learning-orientated activities for school and pre-school children; (ii) the provision of care, guidance and instruction, activities and support directed towards addressing the special educational needs of school and pre-school children who come from a single parent family or other home environment where there are necessitous circumstances and/or to relieve poverty among the residents in the Community in particular by releasing poor individuals (whether parents or

- guardians) having the care of school and/or pre-school children to attend training courses and programmes which are directed towards the acquisition of skills which will assist such individuals in obtaining employment or by allowing poor individuals (whether parents or guardians) having the care of school and/or pre-school children to maintain themselves in paid employment;
- 2.13 to promote, establish, operate and/or support other similar schemes and projects of a charitable nature for the benefit of the residents of the Community;
  - 2.14 to advance community development within the Community, including the advancement of rural regeneration; and
  - 2.15 to provide support for disadvantaged communities within the Community.

### **Powers**

- 3 In pursuance of those aims (but not otherwise), the company shall have the following powers:
  - 3.1 to establish, maintain, develop and/or operate a centre or centres providing facilities for childcare, community learning, healthy living initiatives, educational and cultural activities, training activities, leisure pursuits and accommodation for community groups, and for public sector agencies which provide services of benefit to the Community, and which may include refreshment facilities;
  - 3.2 to advise in relation to, prepare, organise, conduct and/or support training courses, educational and training events and activities of all kinds;
  - 3.3 to design, prepare, publish and/or distribute information packs, leaflets, books, newsletters, magazines, posters and other publications, audio visual recordings, multimedia products and display materials, and to create and maintain a website or websites;
  - 3.4 to promote, operate, coordinate, monitor, and/or support other projects and programmes (which may include workspace projects) which further the aims of the company;
  - 3.5 to provide information, advisory support and/or consultancy services which further the aims of the company;
  - 3.6 to liaise with local authorities, central government authorities and agencies, local enterprise companies, charitable/community benefit bodies and others, all with a view to furthering the aims of the company;
  - 3.7 to carry on any further activities which further any of the above objects;
  - 3.8 to promote companies whose activities may further one or more of the above objects, or may generate income to support the activities of the company, acquire and hold shares in such companies and carry out, in relation to any such company which is a subsidiary of the company, all such functions as may be associated with a holding company;
  - 3.9 to acquire and take over the whole or any part of the undertaking and liabilities of any body holding property or rights which are suitable for the company's activities;

- 3.10 to purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the company's activities;
- 3.11 to register an interest in land and to exercise the right to buy under the provisions of Part 2 of the Land Reform (Scotland) Act 2003 (including any statutory amendment or re-enactment of those provisions which may be in order from time to time);
- 3.12 to improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the company;
- 3.13 to sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the company;
- 3.14 to lend money and give credit (with or without security) and to grant guarantees and issues indemnities;
- 3.15 to borrow money, and to give security in support of any such borrowings by the company, in support of any obligations undertaken by the company or in support of any guarantee issued by the company;
- 3.16 to employ such staff as are considered appropriate for the proper conduct of the company's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex members of staff and their dependants;
- 3.17 to engage such consultants and advisers as are considered appropriate from time to time;
- 3.18 to effect insurance of all kinds (which may include officers' liability insurance);
- 3.19 to invest any funds which are not immediately required for the company's activities in such investments as may be considered appropriate (and to dispose of, and vary, such investments);
- 3.20 to liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the company's objects;
- 3.21 to establish and/or support any other charitable body, and to make donations for any charitable purpose falling within the company's objects;
- 3.22 to take such steps as may be deemed appropriate for the purpose of raising funds for the company's activities;
- 3.23 to accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them);
- 3.24 to oppose, or object to, any application or proceedings which may prejudice the company's interests;
- 3.25 to enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the company, and to enter into any arrangement for cooperation or mutual assistance with any charitable body;
- 3.26 to do anything which may be incidental or conducive to the furtherance of any of the company's objects.

And it is declared that:-

- (i) in this clause, "property" means any property, heritable or moveable, wherever situated.
- (ii) in this clause and throughout this memorandum of association "sustainable development" means development which meets the needs of the present without compromising the ability of future generations to meet their own needs.

### **Use of Company assets**

- 4 Subject to article 5:
  - 4.1 the income and property of the company shall be applied solely towards promoting the company's objects (as set out in article 2);
  - 4.2 subject to article 4.5, no part of the income or property of the company shall be paid or transferred (directly or indirectly) to the members of the company, whether by way of dividend, bonus or otherwise;
  - 4.3 no Trustee of the company shall be appointed as a paid employee of the company; no Trustee shall hold any office under the company for which a salary or fee is payable;
  - 4.4 no benefit (whether in money or in kind) shall be given by the company to any Trustee except (i) repayment of out-of-pocket expenses (ii) reasonable payment in return for particular services (not being of a management nature) actually rendered to the company or (iii) any payment received under an indemnity from the Trust in the circumstances set out in articles 93 and 94;
  - 4.5 members of the company shall be entitled to benefit from the services and activities which the company provides in connection with the company's objects (as set out in article 2).
- 5 The company shall, notwithstanding the provisions of article 4, be entitled:
  - 5.1 to pay interest at a rate not exceeding the commercial rate on money lent to the company by any Trustee or member of the company; and
  - 5.2 to pay rent at a rate not exceeding the open market rent for premises let to the company by any Trustee or member or purchase assets from, or sell assets to, any Trustee or member of the company providing such purchase or sale is at market value.

### **Liability of members**

- 6 The liability of the members is limited. Every member of the company undertakes to contribute such amount as may be required (not exceeding £1) to the company's assets if it should be wound up while he/she is a member or within one year after he/she ceases to be a member, for payment of the company's debts and liabilities contracted before he/she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

## **General structure**

- 7 The structure of the company consists of:
- 7.1 The **members** - who have the right to attend any general meeting (including the annual general meeting) and have important powers under the articles of association and the Act; in particular, the members elect people to serve as Trustees and take decisions in relation to changes to the articles themselves.
- 7.2 The **Trustees** - who are company directors and hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the company; in particular, the Trustees are responsible for monitoring the financial position of the company.

## **Qualifications for membership**

- 8 The members of the company shall consist of the subscribers to the memorandum of association and such other persons as are admitted to membership under articles 9 to 13.
- 9 Membership shall be open to any individual who is interested in promoting the objects of the company and is resident in the "Community" as defined in the interpretation of these articles.
- 10 Employees of the company are **not** eligible for membership; and a person who becomes an employee of the company after admission to membership will automatically cease to be a member.

## **Conditions of membership**

- 11 The conditions of membership are:
- 11.1 the company shall have not fewer than 20 members at any time;
- 11.2 In the event that the number of members falls below 20 or that at least three quarters of the members do not consist of members of the community, the board may not conduct any business other than to ensure the admission of sufficient ordinary members to achieve the minimum number and/or maintain the majority.

## **Application for membership**

- 12 Any person who wishes to become a member must sign, and lodge with the company, a written application for membership.
- 13 The Trustees shall consider each application for membership at the first Trustees' meeting which is held after receipt of the application; the Trustee shall, within a reasonable time after the meeting, notify the applicant of their decision on the application.

## **Membership subscription**

- 14 No membership subscription shall be payable.



### **Register of members**

- 15 The Trustees shall maintain a register of members in accordance with the provisions of the Act, setting out the full name and address of each member, the date on which he/she was admitted to membership, and the date on which any person ceased to be a member.

### **Withdrawal from membership**

- 16 Any person who wishes to withdraw from membership shall sign, and lodge with the company, a written notice to that effect; on receipt of the notice by the company, he/she shall cease to be a member.

### **Expulsion from membership**

- 17 Any person may be expelled from membership by special resolution, providing the following procedures have been observed:

(a) at least 21 days notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;

(b) the member concerned shall be entitled to be heard on the resolution at the general meeting at which the resolution is proposed.

### **Termination/transfer**

- 18 Membership shall cease on death.

- 19 A member may not transfer his/her membership to any other person.

### **General meetings (meetings of members)**

- 20 The Trustees shall convene an annual general meeting in each year (but excluding the year in which the company is formed).

- 21 Not more than 15 months shall elapse between one annual general meeting and the next.

- 22 The business of each annual general meeting shall include:

22.1 a report by the chair on the activities of the company;

22.2 consideration of the annual accounts of the company;

22.3 the election/re-election of Trustees, as referred to in articles 49 to 51.

- 23 The Trustees may convene a general meeting at any time.

- 24 The Trustees must convene a general meeting if there is a valid requisition by members (under section 303 of the Act) or a requisition by a resigning auditor (under section 518 of the Act).

### **Notice of general meetings**

- 25 Unless consent to short notice is given by the members in accordance with Section 307 of the Act, at least 14 clear days' notice must be given of any general meeting.

- 26 The reference to “**clear days**” in article 25 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted, (or, in the case of a notice sent in electronic form, the day after it was sent) and also the day of the meeting, should be excluded.
- 27 A notice calling a general meeting shall specify the time and place of the meeting; it shall
- 27.1 indicate the general nature of the business to be dealt with at the meeting; and
- 27.2 if a special resolution (see article 30) (or a resolution requiring special notice under the Act) is to be proposed, shall also state that fact, giving the exact terms of the resolution.
- 28 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
- 29 Notice of every general meeting shall be given (either in writing or, where the party to whom notice is given has notified the company of an address to be used for the purpose of electronic communications, in electronic form) to all the members and Trustees, and (if there are auditors in office at the time) to the auditors.

#### **Special resolutions and ordinary resolutions**

- 30 For the purposes of these articles, a “**special resolution**” means a resolution passed by 75% or more of the votes cast on the resolution at a general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 25 to 29; for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the number of votes cast against the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting.
- 31 For the purposes of these articles, an “**ordinary resolution**” means a resolution passed by majority vote (taking account only of those votes cast in favour as compared with those votes against, and (as applicable) the chairperson’s casting vote), at a general meeting, providing proper notice of the meeting has been given in accordance with articles 25 to 29.

#### **Procedure at general meetings**

- 32 No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be 6 persons or 10%, whichever is greater, entitled to vote, each being a member or a proxy for a member. In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other. Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them (including, without limitation, by means of video conference, telephone or similar communications equipment or any other suitable electronic means) and attending by such means shall constitute presence in person at a meeting.
- 33 If a quorum is not present within 15 minutes after the time at which a general meeting was due to commence – or if, during a meeting, a quorum ceases to be present – the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.
- 34 The chair of the company shall (if present and willing to act as a chairperson) preside as chairperson of each general meeting; if the chair is not present and willing to act as

chairperson within 15 minutes after the time at which the meeting was due to commence, the members present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.

35 The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting to such time and place as the chairperson may determine.

36 Every member shall have one vote, which (whether on a show of hands or on a poll) may be given either personally or by proxy.

### **Proxies**

37 A proxy need not be a member of the company.

38 A member shall not be entitled to appoint more than one proxy to attend the same meeting. A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed him/her to speak at the meeting.

### **Content of proxy notices**

39

39.1 Proxies may only validly be appointed by a notice in writing (a “**proxy notice**”) which:

- (a) states the name and address of the member appointing the proxy;
- (b) identifies the person appointed to be that member’s proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the Trustees may determine; and
- (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

39.2 The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

39.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

39.4 Unless a proxy notice indicates otherwise, it must be treated as allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### **Delivery of proxy notice**

40

40.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person

- 40.2 An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given. A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 40.3 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

### **Voting**

- 41 If there is an equal number of votes for and against any resolution, the chairperson of the meeting shall be entitled to a casting vote.
- 42 A resolution put to the vote at a general meeting shall be decided on a show of hands unless a poll is demanded by the chairperson (or by at least two persons present in person at the meeting and entitled to vote, whether members or proxies for members); a poll may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared. A demand for a poll may be withdrawn if: (a) the poll has not yet been taken, and (b) the chairperson consents to the withdrawal.
- 43 If a poll is demanded, it shall be taken at the meeting and shall be conducted in such a manner as the chairperson may direct; the result of the poll shall be declared at the meeting at which the poll was demanded.

### **Amendments to resolutions**

- 44
- 44.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if notice of the proposed amendment is given to the company in writing by a person entitled to vote at said the general meeting not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine), and the proposed amendment does not, in the reasonable opinion of the chairperson, materially alter the scope of the resolution.
- 44.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if the chairperson proposes the amendment at the said general meeting and the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 44.3 If the chairperson, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

### **Written resolutions**

- 45 A resolution in writing signed by members of the company who would be entitled to receive notice of and to attend and vote at a general meeting at which such resolution was to be proposed, or by their duly appointed attorneys or representatives, shall be as valid and effectual as if it had been passed at a general meeting of the company duly convened and held, if the appropriate number of members (per article 30 re special resolutions and article 31 re ordinary resolutions) have signed the said written resolution. Any such resolution may consist of several documents in the like form each signed by one or more of the members or their duly appointed attorneys or representatives.

## **Number of Trustees**

- 46 The minimum number of Trustees shall be 3 and the maximum number shall be 13. If at any time the number of Trustees fall below 3 the only power which the remaining Trustees may exercise shall be under article 50, the power to fill vacancies to bring the number of Trustees up to at least 3.

## **Eligibility**

- 47 A person shall not be eligible for election/appointment as a Trustee unless he/she is a member of the company.

## **Election, retiral, re-election**

- 48 At each annual general meeting, the members may elect any member (providing he/she is willing to act) to be a Trustee.
- 49 Trustees shall be subject to retirement by rotation, as follows. At the first annual general meeting following adoption of these articles and at every subsequent annual general meeting one-third of the said Trustees or, if their number is not three or an integral multiple of three, the number nearest to one-third, shall retire from office provided that, for the avoidance of doubt, if there is only one Trustee he shall not retire. The Trustees to retire by rotation shall be those who have been longest in office since their last appointment or re-appointment, but as between persons who became or were last re-appointed Trustees on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot. At each annual general meeting, any Trustee who has retired from office under this article shall then be eligible for re-election.
- 50 The Trustees may at any time appoint any member (providing he/she is willing to act) to be a Trustee. A Trustee so appointed shall hold office for a maximum period of three years annual general meeting at which time he/she shall retire in accordance with article 49. At each annual general meeting, any Trustee who has retired from office under this article shall then be eligible for re-election (under article 48).

## **Termination of office**

- 51 A Trustee shall automatically vacate office if:
- 51.1 he/she ceases to be a Trustee through the operation of any provision of the Act or becomes prohibited by law from being a Trustee;
  - 51.2 he/she becomes debarred under any statutory provision from being involved in the management or control of a charity;
  - 51.3 he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months;
  - 51.4 he/she ceases to be a member of the company;
  - 51.5 he/she becomes an employee of the company;
  - 51.6 he/she resigns office by notice to the company;
  - 51.7 he/she is absent (without permission of the Trustees) from more than three consecutive meetings of the Trustees, and the Trustees resolve to remove him/her from office;

51.8 he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act; or

51.9 he/she ceases to be resident on the Island of Hoy.

### **Register of Trustees**

52 The Trustees shall maintain a register of Trustees in accordance with the Act, setting out full details of each Trustee, including the date on which he/she became a Trustee, and also specifying the date on which any person ceased to hold office as a Trustee.

### **Office-bearers**

53 The Trustees shall elect from among themselves a chair and a treasurer, and such other office bearers (if any) as they consider appropriate.

54 All of the office bearers shall cease to hold office at the conclusion of each annual general meeting, but shall then be eligible for re-election.

55 A person elected to any office shall cease to hold that office if he/she ceases to be a Trustee, or if he/she resigns from that office by written notice to that effect.

### **Powers of Trustees**

56 Subject to the provisions of the Act and these articles, and subject to any directions given by special resolution, the company and its assets and undertaking shall be managed by the Trustees, who may exercise all the powers of the company.

57 A meeting of the Trustees at which a quorum is present may exercise all powers exercisable by the Trustees.

### **Personal interests**

58 A Trustee who has a personal interest in any transaction or other arrangement which the company is proposing to enter into, must declare that interest at a meeting of the Trustees; he/she will be debarred (in terms of article 72) from voting on the question of whether or not the company should enter into that arrangement.

59 For the purposes of the preceding article, a Trustee shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or Trustee (or any other party who/which is deemed to be connected with him/her for the purposes of section 252 of the Act), has a personal interest in that arrangement.

60 Provided (a) he/she has declared his/her interest (b) he/she has not voted on the question of whether or not the company should enter into the relevant arrangement and (c) article 63 is complied with - a Trustee will not be debarred from entering into an arrangement with the company in which he/she has a personal interest (or is deemed to have a personal interest under article 60) and may retain any personal benefit which he/she gains from his/her participation in that arrangement.

### **Trustees' remuneration and expenses**

- 61 No Trustee may serve as an employee (full time or part time) of the company, and no Trustee may be given any remuneration by the company for carrying out his/her duties as a Trustee.
- 62 A Trustee may serve as an employee (full time or part time) of a trading subsidiary of the company.
- 63 Where a Trustee provides services to the company or might benefit from any remuneration paid to a connected party for such services, then:
- 63.1 the maximum amount of the remuneration must be specified in a written agreement and must be reasonable; and
  - 63.2 the Trustees must be satisfied that it would be in the interests of the company to enter into the arrangement (taking account of that maximum amount); and
  - 63.3 less than half of the Trustees must be receiving remuneration from the company (or benefit from remuneration of that nature).
- 64 The Trustees may be paid all travelling and other expenses reasonably incurred by them in connection with their attendance at meetings of the Trustees, general meetings, or meetings of committees, or otherwise in connection with the carrying-out of their duties.

### **Conduct of Trustees**

- 65 Each of the Trustees shall, in exercising his/her functions as a Trustee of the company, act in the interests of the company; and, in particular, must:
- 65.1 seek, in good faith, to ensure that the company acts in a manner which is in accordance with its objects (as set out in the memorandum of association);
  - 65.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 65.3 in circumstances giving rise to the possibility of a conflict of interest of interest between the company and any other party:
    - (a) put the interests of the company before that of the other party, in taking decisions as a Trustee;
    - (b) where any other duty prevents him/her from doing so, disclose the conflicting interest to the company and refrain from participating in any discussions or decisions involving the other Trustees with regard to the matter in question;
  - 65.4 ensure that the company complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.

### **Procedure at Trustees' meetings**

- 66 Any Trustee may call a meeting of the Trustees or request the secretary to call a meeting of the Trustees.

- 67 Questions arising at a meeting of the Trustees shall be decided by a majority of votes; if an equality of votes arises, the chairperson of the meeting shall have a casting vote.
- 68 No business shall be dealt with at a meeting of the Trustees unless a quorum is present; the quorum for meetings of the Trustees shall be 5. In determining whether Trustees are participating in a Trustees' meeting, it is irrelevant where any Trustee is or how they communicate with each other (including, without limitation, by means of video conference, telephone or similar communications equipment or any other suitable electronic means) provided that all those participating in the meeting are able to communicate with all other participants. If all the Trustees participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any one of them is.
- 69 If at any time the number of Trustees in office falls below the number fixed as the quorum, the remaining Trustee(s) may act only for the purpose of filling vacancies or of calling a general meeting.
- 70 Unless he/she is unwilling to do so, the chair of the company shall preside as chairperson at every Trustees' meeting at which he/she is present; if the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the Trustees present shall elect from among themselves the person who will act as chairperson of the meeting.
- 71 The Trustees may, at their discretion, allow any person whom they reasonably consider appropriate, to attend and speak at any meeting of the Trustees; for the avoidance of doubt, any such person who is invited to attend a Trustees' meeting shall not be entitled to vote.
- 72 A Trustee shall not vote at a Trustees' meeting (or at a meeting of a committee) on any resolution concerning a matter in which he/she has a personal interest which conflicts (or may conflict) with the interests of the company; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 73 For the purposes of article 72, a person shall be deemed to have a personal interest in a particular matter if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or Trustee, has a personal interest in that matter.
- 74 A Trustee shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- 75 Subject always to article 62, the company may, by ordinary resolution, suspend or relax to any extent – either generally or in relation to any particular matter – the provisions of articles 71 to 73, provided that despite any such relaxation a Trustee can only attend and / or vote in relation to a matter in which they have a personal interest if they have declared said interest.

### **Delegation**

- 76 The Trustees may delegate any of the powers which are conferred on them under the articles:
- 76.1 to such person or committee;
- 76.2 by such means (including by power of attorney);
- 76.3 to such an extent;



76.4 in relation to such matters or territories; and

76.5 on such terms and conditions;

as they think fit.

77 If the Trustees so specify, any delegation of powers under article 76 may authorise further delegation of the Trustees' powers by any person to whom they are delegated.

78 The Trustees may revoke any delegation in whole or in part, or alter its terms and conditions.

79 The rules of procedure for any sub-committee shall be as prescribed by the Trustees.

#### **Operation of bank accounts**

80 The signatures of two out of the signatories appointed by the Trustees shall be required in relation to all operations (other than lodgement of funds) on the bank and building society accounts held by the company; at least one out of the two signatures must be the signature of a Trustee.

#### **Secretary**

81 The company shall have no company secretary unless decided otherwise by the Trustees. If the Trustees appoint a company secretary subject to the provisions of the Act, the company secretary may be appointed by the Trustees for such term, at such remuneration (if any and, if the company secretary is a Trustee, subject to article 62), and upon such conditions, as they may think fit; the company secretary may be removed by them at any time.

#### **Minutes**

82 The Trustees shall ensure that minutes are made of all proceedings at general meetings, Trustees' meetings and meetings of committees; a minute of any meeting shall include the names of those present, and (as far as possible) shall be signed by the chairperson of the meeting.

#### **Accounting records and annual accounts**

83 The Trustees shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.

84 The Trustees shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if they otherwise think fit, they shall ensure that an audit of such accounts is carried out by a qualified auditor.

85 No member shall (unless he/she is a Trustee) have any right of inspecting any accounting or other records, or any document of the company, except as conferred by statute or as authorised by the Trustees or as authorised by ordinary resolution of the company.

#### **Notices / communications**

86 Subject to the articles, any notice or anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act

to be sent or supplied by or to the company (which includes sending the communication in writing or in electronic form).

87 Subject to article 88, any notice, document or other information shall be deemed served on or delivered to the intended recipient:

87.1 if properly addressed and delivered by hand, on signature of a delivery receipt or at the time the notice, document or other information is left at the address;

87.2 if properly addressed and sent by sent by pre-paid first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second business day after posting:

87.3 if properly addressed and sent to the email address of the recipient and sent or supplied by email, one hour after the notice, document or information was sent or supplied;

87.4 if sent by fax and a transmission report was received confirming that the notice was successfully transmitted to the correct fax number, at the time of transmission;

87.5 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website,

provided that, if deemed receipt under the previous paragraphs of this article 87 would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 on the day when business next starts in the place of deemed receipt. For the purposes of this article, all references to time are to local time in the place of deemed receipt.

88 Subject to the articles, any notice or document to be sent or supplied to a Trustee in connection with the taking of decisions by Trustees may also be sent or supplied by the means by which that Trustee has asked to be sent or supplied with such notices or documents for the time being. A Trustee may agree with the company that notices or documents sent to that Trustee in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### **Provision for employees on cessation of business**

89 The Trustees may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a Trustee or former Trustee or shadow Trustee) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

#### **Winding up**

90 If on the winding-up of the company any property remains after satisfaction of all of the company's debts and liabilities, such property shall not be paid to or distributed among the members of the company; that property shall instead be transferred to some other charitable body or bodies (whether incorporated or unincorporated) whose objects are similar (wholly or in part) to the objects of the company.

- 91 The body or bodies to which property is transferred under article 90 shall be determined by the members of the company at or before the time of dissolution or, failing such determination, by such court as may have jurisdiction at the time.
- 92 To the extent that effect cannot be given to the provisions of articles 90 and 91, the relevant property shall be applied to some other charitable object or objects.

### **Indemnity**

- 93 Every Trustee or other officer or auditor of the company shall be indemnified out of the assets of the company against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office; that may include, without prejudice to that generality, any liability incurred by him/her in defending any proceedings (whether civil or criminal) in which judgement is given in his/her favour or in which he/she is acquitted or any liability in connection with an application in which relief is granted to him/her by the court from liability for negligence, default or breach of trust in relation to the affairs of the company.
- 94 The indemnity contained in article 93 shall be subject to the provisions of the Act and is without prejudice to any other indemnity to which a Trustee may otherwise be entitled.