**UPDATED MAY 2022**

We endeavour to ensure that our model constitutions are the best available. The Office of the Scottish Charity Regulator (OSCR) has reviewed our models and, while OSCR is not in a position to formally endorse them, OSCR has indicated that, generally speaking, constitutions based on these models would be acceptable in terms of charity law. However, SCVO cannot be responsible for the approach taken by OSCR to any individual constitution; and you should be prepared for the possibility that OSCR may require alterations to a constitution based on one of our models.

When applying to OSCR for charitable status you need, as a minimum, to have filled in the blanks in certain sections of this model and to have either deleted or retained any optional clauses so that the constitution is complete. For example, OSCR have to know what your charitable objectives are – this section cannot be left blank. We have highlighted these particular sections in yellow – but, beyond that, it is important that you review the model constitution *as a whole*, and make adjustments as appropriate, to ensure that it reflects the governance features that you feel are most appropriate for your organisation.

To help with that process, we have included our guidance on the high-level issues that should be considered when tailoring a constitution. In addition, there are optional bolt-on clauses covering the most common “optional extras”.

Your constitution is an important document – it is worth taking the time to work through the various points systematically, and to discuss and agree what is best for your organisation.

DISCLAIMER: These model constitutions (and the accompanying bolt-on clauses and guidance) have been prepared by Burness Paull LLP (working with Stephen Phillips, a former partner of the firm) on a nil-fee basis, for SCVO as a free resource to support the Scottish charity sector, and those wishing to set up new charities in Scotland. It is the responsibility of those using the model constitutions to determine what type of legal entity – and what key features of the governance arrangements - are most appropriate for them; and to tailor the relevant model constitution (and bolt-on clauses, where applicable) accordingly. Should you require any guidance we recommend that you seek legal advice. Burness Paull, Stephen Phillips, and SCVO do not owe any duty of care to users of the materials; and in particular (but without limiting that general exclusion of liability) they will not be liable for any adverse consequences arising from any error, omission or other defect in the model constitutions, bolt-on clauses or guidance.

**SCVO Model SCIO Constitution (two tier)**

**CONSTITUTION**

**of**

**[ ] [SCIO]**

|  |  |  |
| --- | --- | --- |
| **CONTENTS** | | |
| **GENERAL** | type of organisation, Scottish principal office, name, purposes, powers, liability, general structure | clauses 1 - 11 |
| **MEMBERS** | qualifications for membership, application, subscription, register of members, withdrawal, transfer, re-registration, expulsion, termination | clauses 12 - 27 |
| **DECISION-MAKING BY THE MEMBERS** | members’ meetings, power to request members’ meeting, notice, procedure at members’ meetings, voting at members’ meetings, technical objections to remote participation, written resolutions, minutes | clauses 28 - 67 |
| **BOARD (CHARITY TRUSTEES)** | number, eligibility, status of initial charity trustees, election/ retiral/re-election, termination of office, register of charity trustees, office bearers, powers, general duties, conflicts of interest, remuneration and expenses, code of conduct | clauses 68 - 101 |
| **DECISION-MAKING BY THE CHARITY TRUSTEES** | notice, procedure at board meetings, technical objections to remote participation, resolutions agreed in writing/by email, minutes | clauses 102 - 129 |
| **ADMINISTRATION** | sub-committees, operation of accounts, accounting records and annual accounts | clauses 130 - 137 |
| **MISCELLANEOUS** | winding up, alterations to the constitution, interpretation | clauses 138 - 143 |

|  |  |
| --- | --- |
| **Model constitution** | **Guidance** |
| **GENERAL** |  |
|  |  |
| **Type of organisation** |  |
|  |  |
| 1. The organisation will, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO). |  |
| **Scottish principal office** |  |
| 1. The principal office of the organisation will be in Scotland (and must remain in Scotland). | This clause is only there as a reminder that the SCIO must continue to have its principal office in Scotland (as required by the Charities and Trustee Investment (Scotland) Act 2005 (referred to below as the “Scottish Charities Act”). It would ***not*** be appropriate to insert the full postal address here - as that would mean that an adjustment would be required to the constitution if the address of the principal office was to be changed at any point in the future. |
| **Name** |  |
| 1. The name of the organisation is “[*insert name*]……………[SCIO]”. | See comments in [Writing your constitution](https://scvo.scot/support/setting-up/writing-constitution) |
| **Purposes** |  |
| 1. The organisation’s purposes are: | See comments about charitable purposes in [About your charity](https://scvo.scot/support/setting-up/about-your-charity) |
| [*insert objects, listed as (a), (b), (c) etc if appropriate*] |  |
| **Powers** |  |
| 1. The organisation has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so. | The wording here closely reflects what is set out in the Scottish Charities Act. The wording should be left as it stands, unless there is a need - for some ***exceptional*** reason - to restrict the powers of the SCIO in some way. The SCIO regulations state that the constitution of a SCIO must make provision about any restrictions on the powers of the SCIO; but it is extremely rare for any such restrictions to be included in a SCIO constitution (other than as set out in clause 6 – see below). |
| 1. No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the members - either in the course of the organisation’s existence or on dissolution - except where this is done in direct furtherance of the organisation’s charitable purposes. | This prohibits matters such as the payment of dividends to members (and payment of any surplus to members on a winding-up) - in line with the general ethos of a charitable body as a non profit distributing organisation. The wording at the end of this clause (“except where this is done…”) recognises that, in certain cases, the membership of the organisation may include people who can legitimately receive support from the organisation, on the basis that they form part of the group whose needs the organisation is intended to address. |
| 1. Clause 6 does not prevent the organisation making any payment which is permitted under clauses 95 to 99 (remuneration and expenses). | Clauses 95 to 99 set out a number of safeguards which are designed to minimise the risk of irregularities arising when remuneration or expenses are paid to charity trustees or members. Clause 7 makes it clear that, providing these safeguards are met, clause 6 will not stand in the way of any such arrangement. |
| **Liability of members** |  |
| 1. The members of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the members will not be held responsible. | This reflects the principle under the Scottish Charities Act that the members of a SCIO are not liable for debts or other liabilities if the SCIO becomes insolvent. |
| 1. The members and charity trustees have certain legal duties under the Scottish Charities Act; and clause 8 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties, or in breach of other legal obligations or duties that apply to them personally. | In exceptional circumstances, charity trustees of a SCIO (in common with those serving on the board of e.g. a limited company), could (at least in theory – this is extremely rare in practice) be personally liable if they breach their legal duties. This clause makes it clear that any liability of that kind does not fall within the protection given by clause 8. Guidance on the [duties of charity trustees](https://www.oscr.org.uk/guidance-and-forms/guidance-and-good-practice-for-charity-trustees/) is available from the OSCR website. |
| **General structure** |  |
| 1. The structure of the organisation consists of: | This is really only intended as general guidance, to help people understand the key distinction between the members and the board. The references here to what the members and the board deal with are not meant to cover the full range of responsibilities; they are examples only. |
| * 1. the MEMBERS - who have the right to participate in members' meetings (including any annual members’ meeting) and have important powers under the constitution; for example, the members elect people to serve on the board and take decisions on changes to the constitution itself; |  |
| * 1. the BOARD - who hold regular meetings, and generally control the activities of the organisation; for example, the board is responsible for monitoring and controlling the financial position of the organisation. |  |
| 1. The people serving on the board are referred to in this constitution as CHARITY TRUSTEES. | The expression “charity trustees” is used throughout the constitution (in line with the wording used in the Scottish Charities Act) to refer to the members of the board; that should help to avoid confusion with the members of the SCIO. |
|  |  |
| **MEMBERS** |  |
| **Qualifications for membership** |  |
| 1. Membership is open to any individual aged 16 or over who [*insert membership qualifications*]. | See comments in [Decision making and governance in your organisation](https://scvo.scot/support/setting-up/decision-making) |
| 1. Employees of the organisation are not eligible for membership; and a person who becomes an employee of the organisation after admission to membership will automatically cease to be a member. | This prohibition on employees being members of the organisation is usual in the context of voluntary sector bodies. If it is important for you that employees should be included within the membership, then that could be provided for - as long as the wording makes it clear that non-employees must always make up the majority of the membership. If you do modify this clause to allow employees of the SCIO to become members, though, that could affect eligibility for funding, as regards certain potential grant funders. |
| **Application for membership** |  |
| 1. Any person who wishes to become a member must submit an application for membership (in writing or by email); the application will then be considered by the board at its next board meeting. | It is essential, under the Scottish Charities Act, to make provision about who is to be eligible for membership and how individuals/bodies are admitted to membership. Consideration should be given to discrimination and equalities issues, as a matter of best practice (see for example the Equalities Act 2010). See also comments in [Decision making and governance in your organisation](https://scvo.scot/support/setting-up/decision-making) |
| 1. The board may, at its discretion, refuse to admit any person to membership. |
| 1. The board must notify each applicant promptly (in writing or by email) of its decision on whether or not to admit them to membership. |
| **Membership subscription** |  |
| 1. No membership subscription will be payable. | It is possible to take a different approach ie by including a set of provisions which do allow for the collection of an annual membership subscription. Some suggested provisions are included in the additional clauses. Membership subscriptions will never be a significant source of income for the SCIO –it is rare for membership subscriptions to be set at anything more than a token level. However, requiring the members to pay an annual membership subscription can be a useful way of addressing a problem that can sometimes arise where there is a long list of “sleeping” members on the register of members (who still have to be sent notices of the AGM) but who have not actually had any involvement with the SCIO for a period of years. If people do not pay their membership subscription within a defined period, they can be expelled from membership – and that therefore allows the membership list to be cleared of sleeping members.  An alternative approach to address the issue of sleeping members is to provide for re-registration i.e. where people have to send back a form (in writing or by email) re-registering as members, otherwise they will lose their membership; and that is the mechanism set out in clauses 22 to 24 of the model. Clauses 22 to 24 should be deleted if provisions covering an annual membership subscription are inserted.  For clarity, it should be noted that “membership subscription” in this context is about paying a subscription to participate as a member in AGMs etc ie membership in a ***governance*** sense. For some organisations (eg community centres) there may be a membership subscription relating to ***use of the facilities*** (like being a member of a gym) – that is a separate matter, and something that is not normally addressed in a constitution. |
| **Register of members** |  |
| 1. The board must keep a register of members, setting out: | This serves as a reminder of the need to maintain a proper register of members. The wording closely follows the requirements imposed by the SCIO regulations. The register can be kept on a computer, rather than on paper, providing back-ups are kept. It should be noted that if you are holding more than basic name and address information about members (or if sensitive data about members can be inferred from their membership eg having a particular medical condition or religious affiliation), you may need to obtain specific permission from each member to process the data. For more information about the provisions of the Data Protection Act 2018, you should visit the [Information Commissioners Office](https://ico.org.uk/) website. |
| * 1. for each current member: |
| * + 1. their full name and address; and |
| * + 1. the date on which they were registered as a member of the organisation; |
| * 1. for each former member - for at least six years from the date on which they ceased to be a member: |
| * + 1. their name; and |
| * + 1. the date on which they ceased to be a member. |
| 1. The board must ensure that the register of members is updated within 28 days of any change: | Again, the wording here closely follows the SCIO regulations. |
| * 1. which arises from a resolution of the board or a resolution passed by the members of the organisation; or |  |
| * 1. which is notified to the organisation. |  |
| 1. If a member or charity trustee of the organisation requests a copy of the register of members, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses blanked out. | The provisions here reflect the obligations imposed on SCIOs by the SCIO regulations; the wording should not, therefore, be altered. |
| **Withdrawal from membership** |  |
| 1. Any person who wants to withdraw from membership must submit a notice of withdrawal to the organisation (either in writing or by email); they will cease to be a member as from the time when the notice is received by the organisation. | The notice withdrawing from membership can be kept simple eg “I wish to withdraw from membership…”. It should be noted that the SCIO regulations state that a SCIO constitution must make provision about the processes for withdrawal and for removal of members. |
| **Transfer of membership** |  |
| 1. Membership of the organisation may not be transferred by a member. | This wording is in line with what is set out in the SCIO regulations - which prohibit transfer of membership of a SCIO. |
| **Re-registration of members** |  |
| 1. The board may, at any time, issue notices to the members (either in writing or by email) requiring them to confirm that they wish to remain as members of the organisation, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the board. | If a membership subscription is introduced (see comments on clause 17), clauses 23 to 25 should be deleted. |
| 1. If a member fails to provide confirmation to the board (in writing or by email) that they wish to remain as a member of the organisation before the expiry of the 28-day period referred to in clause 23, the board may expel them from membership. | The use of the word “may” means that the board can exercise its discretion – the board may take the view that there was a good reason why a particular member was unable to respond within the 28-day period, and decide not to terminate their membership. |
| 1. A notice under clause 23 will not be valid unless it refers specifically to the consequences (under clause 24) of failing to provide confirmation within the 28-day period. |  |
| **Expulsion from membership** |  |
| 1. Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a members' meeting, providing the following procedures have been observed: | The SCIO regulations state that the constitution of a SCIO must make provision about the process for removal of members. The procedure laid down by the model refers the question of expulsion to a meeting of the members, rather than this being something which the board can do itself. That is deliberate – it is intended to address the risk that the board might be wanting to expel someone specifically because that person was raising legitimate points of concern. The requirement to specify the grounds for expulsion - and to allow the member concerned to be heard on the resolution - reflect the principles of natural justice; the procedure could (at least in theory) be subject to legal challenge if those elements were not included as part of the process. |
| * 1. 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; |
| * 1. the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed. |
| **Termination of membership** |  |
| 1. Membership of the organisation will terminate on death. |  |
|  |  |
| **DECISION-MAKING BY THE MEMBERS** |  |
| **Members’ meetings** |  |
| 1. The board must arrange a meeting of members (an annual members’ meeting or "AGM") in each calendar year. | The SCIO regulations state that a SCIO must hold a meeting of its members within 15 months of the date on which OSCR enters the SCIO in the Scottish Charity Register, and at least once every 15 months thereafter. |
| 1. The gap between one AGM and the next must not be longer than 15 months. |
| 1. Notwithstanding clause 28, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed. | In most cases, it will not be appropriate to have an AGM during the year in which the SCIO is formed; but, if the SCIO is formed in the early part of a calendar year, or if the steering group feels that there should be an early AGM so that democratic elections to the board can be held, the wording (“does not need…”) would still allow that to happen. |
| 1. The business of each AGM must include: | The SCIO regulations do not lay down any specific requirements regarding the matters which should be dealt with at each annual members’ meeting. The terms of clause 31 reflect the agenda items which would normally be expected at an AGM in the charity sector. |
| * 1. a report by the chair on the activities of the organisation; |
| * 1. consideration of the annual accounts of the organisation; |
| * 1. the election/re-election of charity trustees, as referred to in clauses 73 to 76. |
| 1. The board may arrange a special members' meeting at any time. |  |
| **Power to request the board to arrange a special members’ meeting** |  |
| 1. The board must arrange a special members’ meeting if they are requested to do so by a notice (in writing or by email) by members who amount to 5% or more of the total membership of the organisation at the time, providing: | In almost every case, the decision to convene a special members’ meeting will be made by the board (see clause 32) e.g. in a situation where the board feels that a change to the SCIO constitution should be made, and that it would be better to do this at a special members’ meeting rather waiting to deal with it at the next AGM.  Clause 33 provides a procedure under which members can force the board to convene a special members’ meeting. As a matter of practice it is extremely rare for that to happen – the board would normally be expected to be responsive to any widely-held view among the membership that a particular matter should be debated at a members’ meeting, rather than this having to be the subject of a formal requisition.  The reference to “two or more documents…” is intended to cover the possibility that rather than having everyone sign a single piece of paper (ie with a long list of names and signatures), each person might sign their own copy of the notice. Similarly, the notice can be in the form of separate emails from the various members who are making the request. |
| * 1. the notice states the purposes for which the meeting is to be held; and |
| * 1. those purposes are not inconsistent with the terms of this constitution, the Scottish Charities Act or any other statutory provision. |
| 1. A notice under clause 33 may take the form of: |
| * 1. two or more documents in the same terms, each signed by one or more members; and/or |
| * 1. a number of emails, each issued by a member; |
| and the board will be taken to have received the notice on the date on which they receive sufficient documents and/or emails to equal or exceed the 5% threshold referred to in clause 33. |
| 1. If the board receive a notice under clause 33, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice. |  |
| **Notice of members’ meetings** |  |
| 1. At least 14 clear days’ notice must be given of any AGM or any special members' meeting. | The SCIO regulations state that the constitution of a SCIO must make provision about the convening of meetings. There is also a further provision in the SCIO regulations stating that a SCIO must give at least 14 days’ notice of its annual members’ meeting to its members and its charity trustees; and accordingly it is not possible to shorten that period of notice.  The provisions which have been included within the model represent best practice, and allow for notices to be issued by e-mail (but on the understanding that where a member has not supplied an e-mail address, they must be sent a notice by post). |
| 1. The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and |  |
| * 1. in the case of any resolution falling within clause 55 (requirement for two-thirds majority) must set out the exact terms of the resolution; and |  |
| * 1. in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s). |  |
| 1. The reference to “clear days” in clause 36 shall be taken to mean that, in calculating the period of notice: |  |
| * 1. the day after the notices are posted (or sent by email) should be excluded; and |  |
| * 1. the day of the meeting itself should also be excluded. |  |
| 1. Notice of every members' meeting must be given to all the members of the organisation, and to all the charity trustees; but the accidental omission to give notice to one or more members or charity trustees will not invalidate the proceedings at the meeting. |  |
| 1. Any notice which requires to be given to a member under this constitution must be: |  |
| * 1. sent by post to the member, at the address last notified by them to the organisation; or |  |
| * 1. sent by email to the member, at the email address last notified by them to the organisation. |  |
| 1. If members and charity trustees are to be permitted to participate in a members’ meeting by way of audio and/or audio-visual link(s) (see clause 44), the notice (or notes accompanying the notice) must: | The wording here is intended to ensure that all members receive proper information (and in good time) about how to connect and participate - in a situation where members are to be allowed to participate in a members’ meeting via Zoom (or equivalent) and/or via dial-in arrangements. Remote participation may create barriers for some members – so in the interests of maximising democratic participation in members’ meetings and in line with principles of inclusion, the wording emphasises the need to highlight other options which could be available to them. |
| * 1. set out details of how to connect and participate via that link or links; and |  |
| * 1. (particularly for the benefit of those members who may have difficulties in using a computer or laptop for this purpose) draw members' attention to the following options: |  |
| participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements); |  |
| [appointing the chairperson of the meeting as proxy, and directing the chairperson on how they should use that proxy vote in relation to each resolution to be proposed at the meeting]; | This sub-paragraph (ii) should be removed if the constitution does not allow proxy voting. |
| (where attendance in person is to be permitted, either on an open basis or with a restriction on the total number who will be permitted to attend) attending and voting in person at the meeting; |  |
| [(where clause 42 applies) submitting questions and/or comments in advance of the meeting] OMIT THIS SUB-PARAGRAPH (iv) IF CLAUSES 42 AND 43 ARE NOT INCLUDED. | This sub-paragraph (iv) should be removed if clauses 42 and 43 are not included. |
| 1. [[Where a members’ meeting is to involve participation *solely* via audio and/or audio-visual link(s), the notice (or notes accompanying the notice) must include a statement inviting members to submit questions and/or comments in advance of the meeting, which (subject to clause 43) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.] THIS CLAUSE 42 IS OPTIONAL | It can be harder to get a discussion going in the context of a virtual meeting; and so the thinking behind this clause is that encouraging members to submit questions and comments in advance of the meeting will help to stimulate more debate.  This clause is, however, optional - and can be removed if preferred. On the other hand, it may be felt that a similar approach should be taken in relation to a meeting where only some people are participating remotely (and perhaps going further, to include meetings where there is no remote participation). The wording can be adjusted to reflect any of these possible approaches. |
| 1. [Where clause 42 applies, the chairperson of a members’ meeting will not require to read out or address any questions or comments submitted by members in advance of the meeting if and to the extent that the questions or comments are of an unreasonable length (individually or taken together), or contain material which is defamatory, racist or otherwise offensive.] OMIT THIS CLAUSE 43 IF CLAUSE 42 IS NOT INCLUDED | This clause should be removed if clause 42 is not included. |
| **Procedure at members’ meetings** |  |
| 1. The board may if they consider appropriate (and must, if this is required under clause 45) make arrangements for members and charity trustees to participate in members’ meetings by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting, providing: |  |
| * 1. the means by which members and 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 membership - a barrier to participation; | The wording here requires the board to avoid choosing an approach to remote participation which would represent a barrier for all – or a significant proportion – of the membership eg where using the software would be complex, or would only be available on a paid-for basis. That is in line with the principle of maximising democratic participation in members’ meetings. |
| * 1. the notice calling the meeting (or notes accompanying the notice) contains the information required under clause 41; and |  |
| * 1. the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and 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 members and charity trustees (if any) who are attending in person (and vice versa). | It is important that members participating remotely in a members’ meeting have the same opportunity (so far as possible) to contribute to the discussions as they would have had if they had been attending in person (and vice versa). That reflects the same principles of fair participation as would apply in a conventional meeting ie where everyone was attending a meeting in person. |
| 1. If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed members’ meeting would not be possible or advisable for all or a significant proportion of the membership, the board must make arrangements for members and charity trustees to participate in that members’ 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 the requirements set out in paragraphs (a) to (c) of clause 44 will apply. | In line with principles of democratic participation by the members, this wording puts the board under an ***obligation*** to make arrangements for remote participation where a significant proportion of the members (eg those who are required to shield during a pandemic) are unable to attend a members’ meeting due to public health restrictions (or where attendance would be inadvisable). |
| 1. A members’ meeting may involve two or more members or charity trustees participating via attendance in person while other members and/or charity trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links. | This wording makes it clear that a members’ meeting can consist solely of people participating via Zoom (or equivalent) ie there is no need for two or more members or charity trustees to be present in one place. |
| 1. References in clauses 41 to 46 to members should be taken to include proxies for members and authorised representatives of members which are corporate bodies.] OMIT CLAUSE 47 IF THE CONSTITUTION DOES NOT ALLOW FOR PROXIES OR MEMBERSHIP BY CORPORATE BODIES (OR AMEND CLAUSE 47 IF ONLY ONE OF THOSE IS ALLOWED FOR UNDER THE CONSTITUTION) | Clause 47 should be removed if the constitution does not allow for proxies or membership by corporate bodies (or clause 47 should be amended if only one of those is allowed for under the constitution). |
| 1. The quorum for a members' meeting is [ ] members, present in person. | The quorum for AGMs and other meetings of members should be set at a level which means that a reasonably representative sample of the membership would have to be present before the meeting could proceed. Equally, though, it is inadvisable to have too high a quorum - otherwise this can cause frustration and inconvenience, with meetings having to be reconvened (and people persuaded to attend), in order to make up the quorum.  The quorum can be expressed as a specified proportion of the membership. If so, it may be appropriate to specify a minimum threshold e.g. a quorum of one-third might seem appropriate if the steering group is anticipating 60 members, but it produces an inappropriate result where there are only 6 members. The other question is whether an upper threshold should be specified - e.g. while one third might seem to be a sensible quorum to fix on the basis of an anticipated membership of 60, there could be a serious problem if the membership ended up as 600 members.  It is important to note that clauses 39 and 40 relate only to the quorum for ***members’*** meetings; the quorum for ***board meetings*** is to be specified in clause 86.  As noted in the comments against clause 44 below, it would be possible to allow for proxy voting; that has an impact on how the quorum provision is worded.  The increasing use of remote participation is also relevant in considering what quorum to fix – there may be more people willing to join a meeting from their laptop or personal computer than would attend in person (particularly where the membership is spread over a wide geographical area). |
| 1. An individual participating in a members’ meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a member [or the authorised representative of a member which is a corporate body]), will be deemed to be in attendance) at the meeting. | The reference to authorised representative should be removed if the constitution does not allow for membership by corporate bodies. |
| 1. If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted. | Fifteen minutes is generally seen as an appropriate length of time to wait for a quorum if the numbers are not high enough at the time when a members’ meeting was due to start – but the wording here could be amended so as to refer to a longer or shorter period, if that is felt appropriate. |
| 1. The chair of the organisation should act as chairperson of each members' meeting. | If the SCIO is to have a vice-chair, it would be possible for the provisions here to be extended so as to refer specifically to the vice-chair taking the role of chairperson if the chair of the SCIO is not present (or is not willing to act as chairperson). The provisions then become slightly more complicated, though, since you then have to cover the possibility that neither the chair nor the vice-chair might be present.  As with the reference to 15 minutes in clause 50, a longer or shorter period could be substituted (see comments on clause 50). |
| 1. If the chair of the organisation is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting. |
| **Voting at members’ meetings** |  |
| 1. Every member has one vote, which must be given personally (subject to clause 58). | Clause 58 makes it clear that members can be allowed to cast their vote remotely – so there is a reference here to clause 58, to ensure that use of the word “personally” in clause 53 does not cut across that. |
| 1. All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 55. |  |
| 1. The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members’ meeting (or if passed by way of a written resolution under clause 63): | The requirement for a two-thirds majority in relation to a resolution amending the constitution (also the types of resolution referred to in clauses 55 (e), (f) and (g)) reflect what is stated in the Scottish Charities Act, and therefore cannot be amended.  While it would be ***possible*** to state that a resolution expelling a person from membership (55 (b)) or a resolution removing a charity trustee (55(c)) or a resolution directing the board to take any particular step (55 (d)) would be valid if passed by a simple majority vote, it would normally be considered that a two-thirds majority (ie a higher threshold than just a majority vote) was more appropriate for those types of resolution, as envisaged by article 55. |
| * 1. a resolution amending the constitution; |
| * 1. a resolution expelling a person from membership under clause 26; |
| * 1. a resolution removing a person from office as a charity trustee under paragraph (i) of clause 79; |
| * 1. a resolution directing the board to take any particular step (or directing the board not to take any particular step) under clause 90; |
| * 1. a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation); |
| * 1. a resolution to the effect that all of the organisation’s property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities); |
| * 1. a resolution for the winding up or dissolution of the organisation. |
| 1. If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote. | It is possible to provide specifically that the chairperson will ***not*** have a casting vote, if that is preferred – but for SCIOs it is much more common for the chairperson to have a casting vote at members’ meetings. It should be borne in mind that many types of resolution (see clause 55) require a two-thirds majority in any event – where the issue of a chairperson’s casting vote would not come into play. |
| 1. A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot. |  |
| 1. Where members are participating in a meeting via an audio or audio-visual link, they may cast their votes on any 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 - and providing the board have no reasonable grounds for suspicion as regards authenticity, any such action shall be deemed to be a vote cast personally via a show of hands. | This wording gives flexibility on how votes can be cast where members are participating remotely. |
| 1. The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting. |  |
| 1. Where members are participating in a meeting via audio and/or audio-visual links, the chairperson's directions regarding how a secret ballot is to be conducted may allow those members to cast their votes on the secret ballot via any or all of the methods referred to in clause 58, providing reasonable steps are taken to preserve anonymity (while at the same time, addressing any risk of irregularities in the process). | Again, the wording provides some flexibility in the context of remote participation – but care should be taken to devise a process which minimises the risk of members casting more than one vote while at the same time ensuring that the principle of anonymity is respected. |
| 1. [The principles set out in clauses 58 and 60 shall also apply in relation to the casting of votes by an individual in their capacity as proxy for a member or as the authorised representative of a member which is a corporate body.] OMIT CLAUSE 61 IF THE CONSTITUTION DOES NOT ALLOW FOR PROXIES OR MEMBERSHIP BY CORPORATE BODIES (OR AMEND CLAUSE 61 IF ONLY ONE OF THOSE IS ALLOWED FOR UNDER THE CONSTITUTION) | Clause 61 should be omitted if the constitution does not allow for proxies or membership by corporate bodies (or clause 61 should be amended if only one of those is allowed for under the constitution) |
| **Technical objections to remote participation in members’ meetings** |  |
| 1. This constitution imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at members’ meetings; providing the arrangements made by the board in relation to a given members’ meeting (and the manner in which the meeting is conducted) are consistent with those requirements: | The wording in clause 62 closely follows the wording that was used in the emergency legislation (now no longer in force). While provisions within a constitution can never create the same degree of certainty in excluding technical challenges of this nature – as compared with wording in legislation – it is nevertheless useful to include this wording to minimise the risk of challenge.  It should be noted that – unlike the approach taken in the emergency legislation – the exclusion of technical challenges only applies where the various requirements under the constitution regarding remote participation are properly complied with. That is deliberate, and reflects the importance of supporting democratic participation by members in the context of a two-tier SCIO. |
| * 1. a member cannot insist on participating in the members’ meeting, or voting at the members’ meeting, by any particular means; |  |
| * 1. the members’ meeting need not be held in any particular place; |  |
| * 1. the members’ 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); |  |
| * 1. the members’ meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting; |  |
| * 1. a member will be able to exercise the right to vote at the members’ meeting (including where a secret ballot is to be held) by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by the board) and which permits that member's vote to be taken into account in determining whether or not a resolution is passed. |  |
| **Written resolutions by members** |  |
| 1. A resolution agreed to in writing (or by email) by all the members will be as valid as if it had been passed at a members’ meeting; the date of the resolution will be taken to be the date on which the last member agreed to it. | Unlike the position which applies under company law, the Scottish Charities Act specifically requires a written resolution altering a SCIO’s constitution to be agreed to by ***all*** the members – and it is not possible to set a lower threshold in the constitution. |
| **Minutes of members’ meetings** |  |
| 1. The board must ensure that proper minutes are kept in relation to all members' meetings, and that a proper record is kept of all resolutions agreed to in writing or by email under clause 63. | The SCIO regulations state that the constitution of a SCIO must make provision about records of meetings. |
| 1. Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting. |
| 1. The records of resolutions kept under clause 64 must include confirmation that all members agreed to the resolution; and should be signed by the chair of the organisation. | There are no specific requirements under SCIO legislation regarding records of written resolutions – but clause 66 is included to promote good practice. |
| 1. [[The board shall make available copies of the minutes and records of resolutions referred to in clause 64 to any member of the public requesting them; but on the basis that the board may exclude confidential material to the extent permitted under clause 129.] THIS CLAUSE 67 IS OPTIONAL | The (optional) wording here is included in the model to meet the needs of those organisations who want to lay a strong emphasis on transparency and openness. Clause 67 can, however, be omitted, as there is no requirement under the Scottish Charities Act or the SCIO regulations for minutes of members’ meetings (or records of written resolutions) to be made available to the public on request. |
|  |  |
| **BOARD** |  |
| **Number of charity trustees** |  |
| 1. The maximum number of charity trustees is [ ]; out of that: | See comments in [Decision making and governance at your charity](https://scvo.scot/support/setting-up/decision-making)  The Scottish Charities Act states that the constitution of a SCIO must make provision for the appointment of charity trustees and about any conditions of eligibility for becoming a charity trustee.  As regards clause 71, the model follows the approach taken by the vast majority of charities, in stating that employees will not be eligible to serve as charity trustees. It should be noted, however, that OSCR would be prepared to accept an employee (eg. chief executive or equivalent) serving on the board as a charity trustee, providing it is clear that this is in the best interests of the charity (outweighing any private benefit to the person concerned) and that the legal requirements in relation to remuneration of charity trustees laid down by the Scottish Charities Act are observed. In the context of an application for registration of a new SCIO, OSCR would also be likely to probe a number of aspects such as the selection process and the level of remuneration and benefits. Provisions allowing for a chief executive (or equivalent) to serve as a charity trustee are included in the additional clauses. It should be borne in mind, though, that certain grant funders will not provide support to a body which has any employees on its board.  As regards clause 75, the basic template requires all of the charity trustees to retire at each AGM, but on the basis that they can be re-elected. That is certainly the easiest approach to manage – but it has the disadvantage of loss of continuity and disruption at board level if a completely different set of people are elected at the AGM (and that might happen where a grouping within the membership with a particular agenda deliberately set out to achieve that outcome). To address risks of that kind, the bolt-on provisions include a set of provisions which require only some of the charity trustees to retire at each AGM.  A further aspect which is worth considering is whether there should be a limit on the number of times that a charity trustee can be re-elected. A set of provisions setting a limit of this kind is included within the bolt-on provisions. It is generally considered best practice from a governance point of view to set some sort of limit, to encourage new perspectives and skillsets to be introduced over time at board level. Against that, there may be some communities where the pool of people willing to serve on the board is small; also, there may be some frustration in having to comply with a provision of this kind if the person who has reached the limit on their period in office has very strong skills and experience.  So far as the mechanics of the election process are concerned, the template envisages that at each AGM there will be some charity trustees standing for re-election and some new candidates – and (assuming that amounts in total to more than the number of spaces available at board level) there will be some form of election to determine which of them will serve as charity trustees as from the end of the AGM. That reflects the principle of the board being democratically accountable to the membership – and that is an important aspect of governance, even if in practice the election/re-election process may seem to be no more than a formality.  Where the number of people standing for re-election or election is the same or smaller than the number of available places, the outcome of the election process will be a foregone conclusion ie they will all be elected/re-elected. Occasionally there may be concerns that that might allow a very unsuitable candidate to come onto the board on the basis that there are no other competing candidates and a free space is available. It is possible to introduce provisions within the constitution which require a minimum threshold of support from the membership in this situation, but there would remain some risk of those provisions being circumvented or abused. It is generally considered preferable, therefore, to address this kind of risk by encouraging a good spread of candidates with appropriate experience and skills – and trying to ensure a good level of participation at AGMs from across all interest-groups within the membership.  Clause 76 is there to address a situation where the need to ensure that a retiring charity trustee is properly re-elected at an AGM is accidentally overlooked. It is a fallback provision to cover that risk – and, as a matter of good practice, a re-election process should always be held where a charity trustee is retiring.  The appointment by the board of charity trustees under clauses 77 and 78 is based primarily on the benefits of topping-up the range of skills represented on the board, after the AGM (there is also the possibility of appointing those who have been nominated by key partner organisations - but that relates to different considerations).  Because this appointment process (and similarly annual as regards re-appointment) is dealt with by the board themselves – with no opportunity for the membership as a whole to vote on such appointments/re-appointments – there is inevitably some dilution of democratic principles. Beyond that, it would be possible to envisage a situation where the board deliberately circumvented the will of the membership at the AGM, by appointing – at a board meeting just after the AGM – a person who had gained very little support from the membership in the election process. For that reason, the wording in the template allows only ***non***-***members*** to be appointed under this category of charity trustees. One solution in exceptional cases would be for the person concerned to withdraw from membership so that they could be eligible for appointment within this category – but if it is felt that the restriction to non-members should be removed entirely, that adjustment could certainly be made. |
| * 1. no more than [ ] shall be charity trustees who were elected/appointed under clauses 73. to 76. (or deemed to have been appointed by the members under clause 72); and |
| * 1. no more than [ ] shall be charity trustees who were co-opted by the board under the provisions of clauses 77 and 78. |
| 1. The minimum number of charity trustees is [ ][*must not be less than 3*]. |
| **Eligibility** |
| 1. A person shall not be eligible for election/appointment to the board under clauses 73 to 76 unless they are a member of the organisation; a person appointed to the board under clauses 77 and 78 need not, however, be a member of the organisation. |
| 1. A person will not be eligible for election or appointment to the board if they are: |
| * 1. disqualified from being a charity trustee under the Scottish Charities Act; or |
| * 1. an employee of the organisation. |
| **Initial charity trustees** |
| 1. The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the organisation. |
| **Election, retiral, re-election** |
| 1. At each AGM, the members may elect any member (subject to clause 68, and providing they are not debarred under clause 71) to be a charity trustee. |
| 1. The board may at any time appoint any member (subject to clause 68, and providing they are not debarred under clause 71) to be a charity trustee. |
| 1. At each AGM, all of the charity trustees elected/appointed under clauses 73 and 74 (and, in the case of the first AGM, those deemed to have been appointed by the members under clause 72) shall retire from office – but shall then be eligible for re-election under clause 73. |
| 1. A charity trustee retiring at an AGM will be deemed to have been re-elected unless: |
| * 1. they advise the board prior to the conclusion of the AGM that they do not wish to be re-appointed as a charity trustee; or |
| * 1. an election process was held at the AGM and they were not among those elected/re-elected through that process. |
| **Appointment/re-appointment of co-opted charity trustees** |
| 1. In addition to their powers under clause 74, the board may at any time appoint any non-member of the organisation to be a charity trustee (subject to clause 68, and providing they are not debarred under clause 71) either on the basis that they have been nominated by [*insert name of body or bodies or simply state “a body with which the organisation has close contact in the course of its activities*”] or on the basis that they have specialist experience and/or skills which could be of assistance to the board. |
| 1. At each AGM, all of the charity trustees appointed under clause 77 shall retire from office – but shall then be eligible for re-appointment by the board (after the AGM) under that clause. |
| **Termination of office** |  |
| 1. A charity trustee will automatically cease to hold office if: |  |
| * 1. they become disqualified from being a charity trustee under the Scottish Charities Act; | The period in paragraph 79 (b) could be adjusted, if a longer or shorter period was felt to be appropriate. The same applies in relation to the reference to three consecutive meetings in paragraph 79(f). In relation to that latter point, it should be noted that, under the wording in the model, someone who is absent for more than three consecutive meetings will not ***automatically*** vacate office; rather, it is up to the board to decide whether or not to remove them.  In considering these issues, it should be borne in mind that OSCR would generally take the view that where there was a prolonged period of absence from board meetings, the charity trustee in question could not be regarded as complying with their duties as a charity trustee. If there was a prolonged absence, therefore, it would be in their own interests to resign as a charity trustee; and if they failed to do so, the other charity trustees would be under a legal duty (see comments below on paragraph (h)) to remove them from office as a charity trustee.  As regards paragraph (h), the Scottish Charities Act lays a specific legal duty on charity trustees to exercise their powers to exercise any powers available to them to remove a charity trustee where that charity trustee has been in serious or persistent breach of their duties under the Scottish Charities Act. |
| * 1. they become incapable for medical reasons of carrying out their duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months; |
| * 1. (in the case of a charity trustee elected/appointed under clauses 73 to 76, or deemed to have been appointed by the members under clause 72) they cease to be a member of the organisation; |
| * 1. they become an employee of the organisation; |
| * 1. they give the organisation a notice of resignation (either in writing or by email); |
| * 1. they are absent (without good reason, in the opinion of the board) from more than three consecutive board meetings - but only if the board resolve to remove them from office; |
| * 1. they are removed from office by resolution of the board on the grounds that they are considered to have committed a serious breach of the code of conduct for charity trustees (as referred to in clause 100); |
| * 1. they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Scottish Charities Act; or |
| * 1. they are removed from office by a resolution of the members passed at a members’ meeting. |
| 1. A resolution under paragraph (g), (h) or (i) of clause 79 shall be valid only if: |  |
| * 1. the charity trustee concerned is given reasonable prior notice (in writing or by email) of the grounds upon which the resolution for their removal is to be proposed; |  |
| * 1. the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; |  |
| * 1. (in the case of a resolution under paragraph (g) or (h)) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution; and | The threshold is deliberately set as two thirds of the charity trustees in office (ie taking account of the total number of charity trustees, not just those attending the board meeting; and with a higher threshold than just a majority vote) to reduce the risk of this power of removal being abused eg in a case where the charity trustee threatened with removal was actually the person who had uncovered wrongdoing by others on the board. |
| * 1. (in the case of a resolution under paragraph (i)) at least two thirds (to the nearest round number) of the votes cast in relation to the resolution were in favour of the resolution. |  |
| **Register of charity trustees** |  |
| 1. The board must keep a register of charity trustees, setting out: | The wording here closely reflects the requirements under the SCIO regulations |
| * 1. for each current charity trustee: |
| * + 1. their full name and address; |
| * + 1. the date on which they were appointed as a charity trustee; and |
| * + 1. any office held by them in the organisation; |
| * 1. for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee: |
| * + 1. the name of the charity trustee; |
| * + 1. any office held by them in the organisation; and |
| * + 1. the date on which they ceased to be a charity trustee. |
| 1. The board must ensure that the register of charity trustees is updated within 28 days of any change: |
| * 1. which arises from a resolution of the board or a resolution passed by the members of the organisation; or |
| * 1. which is notified to the organisation. |
| 1. If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the organisation, the board may provide a copy which has the addresses blanked out - if the organisation is satisfied that including that information is likely to jeopardise the safety or security of any person or premises. |
| **Office-bearers** |  |
| 1. The charity trustees must elect (from among themselves) a chair, a treasurer and a secretary. | Different names could be used here for the office-bearers – but the model deliberately avoids use of “chairperson” to refer to the holder of the ***office*** - to reduce the risk of confusion in the context of provisions elsewhere within the constitution which use “chairperson” to refer to the person who is actually chairing a given meeting ie this could be a person who had taken on the role of chairperson just for that meeting, in the absence of the person holding the office of chair.  It would be possible to omit the reference to a treasurer -although a few funders may expect to see a treasurer within the office-bearers, as one indicator that the board recognises its responsibilities regarding financial oversight.  As regards the reference to secretary, the SCIO legislation does not require every SCIO to have a secretary – but identifying a specific charity trustee with responsibility for carrying out this role is generally seen as helpful from the point of view of supporting good governance. It should also be noted that various provisions within the template assume that there will be a secretary – so those provisions would have to be amended if the decision is taken not to have a secretary. Another possibility – again, this would require some amendments to the wording – would be to allow for someone who was not a charity trustee to be the secretary of the SCIO. |
| 1. In addition to the office-bearers required under clause 84, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate. |  |
| 1. All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected by the board (after the AGM) under clause 84 or 85. | It would be possible to provide that someone who had held a particular office for a specified time (e.g. three successive years) would not be eligible for re-appointment to that office until a further year had elapsed. It is generally regarded as best practice from a governance view to have a limit of that kind (for similar reasons to those which are seen as supporting a similar limit on the period in office as a charity trustee – see comments on clause 75). Having said that, there are potential disadvantages associated with imposing a limit on the period in office - particularly in relation to the office of treasurer – where the pool of people willing and able to take on that role may well be quite limited. |
| 1. A person elected to any office will automatically cease to hold that office: |
| * 1. if they cease to be a charity trustee; or |
| * 1. if they give to the organisation a notice of resignation from that office (either in writing or by email). |
| **Powers of board** |  |
| 1. Except where this constitution states otherwise: |  |
| * 1. the organisation (and its assets and operations) will be managed by the board; and |  |
| * 1. the board may exercise all the powers of the organisation. |  |
| 1. A meeting of the board at which a quorum is present may exercise all powers exercisable by the board. |  |
| 1. The members may, by way of a resolution passed in compliance with clause 55 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly. | As a matter of practice, it is extremely rare for the members to make use of the power under clause 90 to issue a direction to the board. Nevertheless, the inclusion of the clause is important - emphasising that the membership has ultimate control in relation to the SCIO. It can also be a useful mechanism for ensuring that the board has appropriate support (and possibly some protection against any challenge on the grounds of whether they have fulfilled their duty to further the interests of the organisation) in the context of a proposal which involves transfer (for nil payment) of the organisation’s assets and activities to another charity. |
| **Charity trustees - general duties** |  |
| 1. Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation; and, in particular, must: | The provisions here closely reflect the duties of charity trustees under the Scottish Charities Act. |
| * 1. seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes; |
| * 1. act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person; |
| * 1. in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party: |
| * + 1. put the interests of the organisation before that of the other party; or |
| * + 1. where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question; |
| * 1. ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Scottish Charities Act. |
| 1. In addition to the duties outlined in clause 91, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: |
| * 1. that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and |
| * 1. that any charity trustee who has been in serious or persistent breach of those duties is removed as a charity trustee. |
| **Conflicts of interest involving charity trustees - general** |  |
| 1. The board must use every effort to ensure that conflicts of interest involving charity trustees (including those which relate to individuals or bodies connected with charity trustees) are identified at the earliest opportunity and appropriately managed; the following provisions of this constitution are of particular relevance: | The SCIO regulations state that the constitution of a SCIO must make provision for procedures for dealing with any conflict of interest. There are a number of strands to this – and clause 93 is intended firstly to stress the importance of ensuring that conflicts of interest are identified at the earliest opportunity and appropriately managed (in line with the importance which OSCR attaches to these issues); and secondly to signpost the key provisions within the constitution which address the various aspects of conflict-of-interest that need to be tackled. |
| * 1. clauses 94 and 97 require charity trustees to declare any personal interest which they may have in any transaction or other arrangement with the organisation; |
| * 1. clause 118 prohibits a charity trustee with a personal interest in a proposed arrangement from voting on the question of whether the organisation should enter into that arrangement; |
| * 1. clause 96 (reflecting similar provisions contained in the Scottish Charities Act) sets out restrictions and conditions for any arrangement under which remuneration would be paid to a charity trustee (or where the charity trustee might benefit from remuneration paid to a connected party). |
| 1. In addition to complying with the provisions referred to in clause 93: | The requirements imposed by clause 94 reflect generally-accepted principles of best practice in governance – as well as OSCR’s expectations in this regard. |
| * 1. the board must maintain a register of charity trustees’ interests; |  |
| * 1. the chairperson of each board meeting must invite declarations of interest, shortly after the start of the meeting; |  |
| * 1. the minutes of each board meeting must record any conflicts of interest which have been declared at the meeting, and must set out in detail how any such conflicts of interest have been managed. |  |
| **Remuneration and expenses** |  |
| 1. No charity trustee may serve as an employee (full time or part time) of the organisation; and no charity trustee may be given any remuneration by the organisation for carrying out their duties as a charity trustee. | This should be adjusted if the constitution will permit an employee to serve on the board (though this would be unusual – see comments on clause 71). Where the chief executive (or equivalent) is to serve on the board as a charity trustee, the amendments are covered in the relevant bolt-on provisions.  The SCIO regulations state that the constitution of a SCIO must make provision about any circumstances in which remuneration may not be paid to charity trustees, over and above the restrictions which already apply under section 67 of the Scottish Charities Act. |
| 1. Where a charity trustee provides services to the organisation or might benefit from any remuneration paid to a connected party for such services: | Clause 96 provides a summary of the requirements imposed by the Scottish Charities Act in this situation. Reference should be made to the wording in the Scottish Charities Act for the full detail, if any proposal of this kind is under consideration. |
| * 1. the maximum amount of the remuneration must be specified in a written agreement and must be reasonable; |  |
| * 1. the board must be satisfied that it would be in the interests of the organisation to enter into the arrangement (taking account of that maximum amount); and |  |
| * 1. less than half of the charity trustees must be receiving remuneration from the organisation (or benefit from remuneration of that nature). |  |
| 1. Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest where that is not prohibited under clause 95 or 96; and (subject to clause 96 and to the provisions relating to remuneration for services contained in the Scottish Charities Act), they may retain any personal benefit which arises from that arrangement. |  |
| 1. The organisation may also enter into an arrangement with a member who is not a charity trustee (or with a person or body *connected* with a member who is not a charity trustee) under which that member (or the connected person or body) receives payment for goods or services provided by them to the organisation, but only if: | The Scottish Charities Act does not directly address arrangements where payment is made to a member (or a person or body connected with a member) for goods or services(as distinct from paying remuneration to a charity trustee for services – see comments on clause 96) – but given the potential for abuse (and OSCR’s expectations regarding how this should be approached in practice), clause 98 provides some safeguards to cover that situation (and similarly for any loan or lease arrangement with a member). |
| * 1. the terms and conditions (including the amount of the payment(s)) are at least as good (from the organisation’s point of view) as those which would be expected if the goods or services had been sourced on the open market; and |  |
| * 1. the board are satisfied, after careful consideration, that the arrangement is in the best interests of the organisation; |  |
| and the same principles will apply in relation to any arrangement under which a member (or a person or body connected with a member) lets premises to the organisation or makes a loan to the organisation. |  |
| 1. The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings. | As a matter of best practice, the board should put in place a written policy on expenses, to minimise the risk of abuse or irregularities. |
| **Code of conduct for charity trustees** |  |
| 1. Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time. | The reference to a code of conduct is in line with principles of best practice in governance. |
| 1. The code of conduct referred to in clause 100 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Scottish Charities Act; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time |
| **DECISION-MAKING BY THE CHARITY TRUSTEES** |  |
| **Notice of board meetings** |  |
| 1. Any charity trustee may call a meeting of the board or may ask the secretary to call a meeting of the board. | The SCIO regulations state that the constitution of a SCIO must make provision about the convening of meetings.  The ability under clause 102 for any one charity trustee to call a board meeting reflects the fact that each and every charity trustee has legal responsibilities – and that in turn suggests that it is reasonable that any one charity trustee should have the right to call a board meeting if they discover a serious matter of concern which they feel should be considered by the board as a whole. Having said that, if it is felt that allowing a single charity trustee to call a board meeting could cause unnecessary disruption in practice, the wording could be amended so as to refer to two (or perhaps three) charity trustees.  Clause 104 contains provisions similar to those applying to members’ meetings – see comments on clause 41. |
| 1. At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate. |
| 1. If charity trustees are to be permitted to participate in a board 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: |
| * 1. participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements); |
| * 1. (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. |
| **Procedure at board meetings** |  |
| 1. No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is [ ] charity trustees, present in person. | A figure has to be stated as the quorum for meetings of the board. As with the quorum for members’ meetings, a balance has to be struck between the objective of ensuring that decisions are not being taken by a very small number of people on the one hand; and, on the other hand, not paralysing the SCIO through being unable to take valid decisions because of difficulties in gathering a quorum. The proposed figure for the quorum should be compared against the figure which has been decided upon in relation to the maximum number of board members. Importantly, though, it should also be reviewed against people’s expectations with regard to how many of the places on the board are likely to be filled at any given time, and the likely level of turnout.  It is increasingly seen as best practice to set a quorum which is at least equal to the majority of the charity trustees in office at any given time – and sometimes the quorum is expressed in that way, rather than by stating a particular figure. Occasionally that is supplemented by wording which sets a floor of say three charity trustees, which is to apply even if the “majority of the charity trustees” formulation would give a lower figure for the quorum – to ensure that board decisions are not taken by one or two charity trustees if the number of charity trustees drops to a low level.  Certainly, if the constitution envisages that there may be fifteen charity trustees in office, it sends a poor message regarding the anticipated level of commitment by charity trustees (having regard to their legal duties) if the quorum is set at something like three charity trustees. |
| 1. An individual participating in a board meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting 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. |  |
| 1. If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 105, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions. | The wording in clause 107 will have to be adjusted slightly, if the quorum is expressed only as a proportion of the charity trustees in office at the time – see comments on clause 105. |
| 1. The chair of the organisation should act as chairperson of each board meeting. |  |
| 1. If the chair is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting. | See comments on clause 56, regarding the need for amendments if the constitution allows for a vice chair. |
| 1. Every charity trustee has one vote, which must be given personally (subject to clause 116). | The reference to clause 116 is there just to ensure that the use of the word “personally” does not mislead people into thinking that people participating remotely cannot vote. |
| 1. All decisions at board meetings will be made by majority vote. |  |
| 1. If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote. |  |
| 1. The board may if they consider appropriate (and must, if this is required under clause 114), allow charity trustees to participate in board meetings by way of an audio and/or audio-visual link or links which allow them to hear and contribute to discussions at the meeting, providing: | See comments on clause 44. |
| * 1. 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 |  |
| * 1. 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). |  |
| 1. If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed board meeting would not be possible or advisable for one or more of the charity trustees, the board must make arrangements for charity trustees to participate in that board meeting by way of audio and/or audio-visual link(s); and on the basis that: | The obligations on the board imposed by clause 114 are slightly stronger than the similar obligations relating to members’ meetings – reflecting the importance of allowing all charity trustees the opportunity to participate in board meetings. |
| * 1. the requirements set out in paragraphs (a) and (b) of clause 113 will apply; and |  |
| * 1. the board 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. |  |
| 1. A board 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. | See comments on clause 46. |
| 1. Where a charity trustee or charity trustees are participating in a board meeting via an audio or audio-visual link, they may cast their vote on any 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. |  |
| 1. The board may, at its discretion, allow any person to attend (whether in person or by way of an audio or audio-visual link) and speak at a board meeting notwithstanding that they are not a charity trustee - but on the basis that they must not participate in decision-making. |  |
| 1. A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with. |  |
| 1. For the purposes of clause 118: |  |
| * 1. an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Scottish Charities Act (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee; |  |
| * 1. a charity trustee will (subject to clause 120) be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative (or a body in relation to which they are a major shareholder or have some other significant financial interest) has an interest in that matter. |  |
| 1. Where a subsidiary of the organisation has an interest in a particular matter which is to be considered by the board, a charity trustee who is also a director of that subsidiary will not be debarred from voting on that matter (unless they have a different personal interest in that matter, unrelated to their position as a director of that subsidiary). | In cases where a SCIO has a subsidiary (the most likely situation is where the subsidiary carries on a business which would not fall within the charities tax exemptions), it is quite common for some or all of the subsidiary’s board members to be drawn from the board of the SCIO. This clause makes it clear that the normal conflict of interest rules (see in particular paragraph (b) of clause 119) will not prevent someone in that position from voting at SCIO board meetings on matters in which the subsidiary has an interest – unless of course there is some other reason why they have a conflict of interest. |
| **Technical objections to remote participation in board meetings** |  |
| 1. The principles set out in clause 62 (technical objections to remote participation) shall apply in relation to remote participation and voting at board meetings, as if each reference in that clause to a member were a reference to a charity trustee and each reference in that clause to a members’ meeting were a reference to a board meeting. | See comments on clause 62. |
| **Board resolutions agreed in writing or by email** |  |
| 1. A resolution agreed to in writing (or by email) by a majority of the charity trustees then in office shall (subject to clauses 123 and 124) be as valid as if duly passed at a board meeting. | While allowing remote participation in board meetings can resolve practical difficulties (whether related to public health concerns or otherwise) in getting charity trustees together in person to take board decisions, there are situations where it might be more appropriate and/or efficient to deal with board decisions via a formal resolution agreed in writing or by email. This approach can, however, introduce risks from the point of view of good governance – as it tends to focus on only one option (ie the particular proposal which is reflected in the wording of the formal resolution); and although there is usually an accompanying explanation, that explanation may not take account of other perspectives on the issue in question. In order to support good governance, therefore, the template includes a mechanism (see clauses 123 and 124) which is designed to ensure that each of the charity trustees has an opportunity to require the matter to be considered at a board meeting – which would allow other options to be presented and differing views to be expressed before a final decision is taken. |
| 1. A resolution under clause 122 shall not be valid unless a copy of the resolution was circulated to all of the charity trustees, along with a cut-off time (which must be reasonable in the circumstances) for notifications under clause 124. |  |
| 1. If a resolution is circulated to the charity trustees under clause 123, any one or more charity trustees may, following receipt of a copy of the resolution, notify the secretary that they consider that a board meeting should be held to discuss the matter which is the subject of the resolution; and if any such notification is received by the secretary prior to the cut-off time: |  |
| * 1. the secretary must convene a board meeting accordingly, and on the basis that it will take place as soon as reasonably possible; |  |
| * 1. the resolution cannot be treated as valid under clause 122 unless and until that board meeting has taken place; |  |
| * 1. the board may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that board meeting that the resolution should be treated as invalid, notwithstanding that it had previously been agreed to in writing (or by email) by a majority of the charity trustees then in office. |  |
| **Minutes of board meetings** |  |
| 1. The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees; and that a proper record is kept of all resolutions agreed to (in writing or by email) by the charity trustees under clause 122. | The SCIO regulations state that the constitution of a SCIO must make provision about records of meetings. |
| 1. The minutes to be kept under clause 125 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting. |  |
| 1. The records of resolutions kept under clause 125 must include the names of those charity trustees who agreed to the resolution (as well as the names of any charity trustees who stated that they disagreed with the resolution); and should be signed by the chair of the organisation. | The requirements set out in clause 127 are not based on anything specifically required under the SCIO regulations – but reflect best practice. |
| 1. [The board shall (subject to clause 129) make available copies of the minutes and records of resolutions referred to in clause 125 to any member of the public requesting them.] CLAUSE 128 IS OPTIONAL | There is no requirement under the Scottish Charities Act or the SCIO regulations to make minutes of board meetings available to the public. Clauses 128 and 129 can be omitted if preferred. |
| 1. [The board may exclude from any copy minutes, or records of resolutions, made available to a member of the public under clause 128 any material which the board considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.] OMIT CLAUSE 129 IF CLAUSE 128 IS NOT INCLUDED |
|  |  |
|  |  |
| **ADMINISTRATION** |  |
| **Delegation to sub-committees** |  |
| 1. The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees. | It should be borne in mind that although the use of sub-committees can be appropriate in many cases, the board of the SCIO retains legal responsibility for exercising overall control and supervision. |
| 1. The board may also delegate to the chair of the organisation (or the holder of any other post) such of their powers as they may consider appropriate. |
| 1. When delegating powers under clause 130 or 131, the board must set out appropriate conditions (which must include an obligation to report regularly to the board). |
| 1. Any delegation of powers under clause 130 or 131 may be revoked or altered by the board at any time. |
| 1. The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board. |
| **Operation of accounts** |  |
| 1. The board should ensure that the systems of financial control adopted by the organisation in relation to the operation of the organisation’s bank accounts (including online banking) reflect the recommendations made from time to time by the organisation's auditors (or independent examiners) or other external accountants. | The provisions of clause 135 provide some flexibility ie allowing for online banking, as well as more traditional approaches involving the signing of cheques; the key principle is that the board should take on board the recommendations made by the auditors, independent examiners or other external accountants regarding the systems of financial control. |
| **Accounting records and annual accounts** |  |
| 1. The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements. | These clauses serve as a reminder of the legal obligations of the board under the relevant legislation. |
| 1. The board must prepare annual accounts, complying with all relevant statutory requirements; and |
| * 1. if an audit is required under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor; |
| * 1. if an audit is not carried out, the board must ensure that an independent examination of the accounts is carried out by a qualified independent examiner. |
|  |  |
|  |  |
| **MISCELLANEOUS** |  |
| **Winding-up** |  |
| 1. If the organisation is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Scottish Charities Act. |  |
| 1. Any surplus assets available to the organisation immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the organisation as set out in this constitution; and the named recipient body (or bodies) in the resolution for the winding-up and dissolution of the organisation must also comply with any additional requirements which apply at the time under the regulations which govern the winding up and dissolution of SCIOs. | The main SCIO regulations state that the constitution of a SCIO must make provision about “those purposes which are the same as or which resemble closely the purposes of the SCIO, for which any surplus assets available to the SCIO immediately preceding its winding up or dissolution must be used”. The current version of the SCIO winding-up and dissolution regulations (which may be amended at some point in the future) do, however, include requirements regarding the recipient body or bodies which is/are specified in the relevant resolution – and that is therefore reflected in the wording of clause 139. |
| **Alterations to the constitution** |  |
| 1. This constitution may (subject to clause 141) be altered by resolution of the members passed at a members’ meeting (subject to achieving the two thirds majority referred to in clause 55) or by way of a written resolution of the members. | The provisions of these clauses reflect the requirements imposed by the Scottish Charities Act. |
| 1. The Scottish Charities Act prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR). |
| **Interpretation** |  |
| 1. References in this constitution to the Scottish Charities Act should be taken to include: |  |
| * 1. any statutory provision which adds to, modifies or replaces that Act; and |  |
| * 1. any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph (a) above. |  |
| 1. In this constitution: |  |
| * 1. “Scottish Charities Act” means (subject to clause 142) the Charities and Trustee Investment (Scotland) Act 2005; |  |
| * 1. “charitable purpose” means a charitable purpose under section 7 of the Scottish Charities Act which is also regarded as a charitable purpose in relation to the application of the Taxes Acts. |  |
|  |  |
|  |  |
|  |  |
|  |  |