**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 optional clauses – removing the square brackets and comments), 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 Memorandum of Association**

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

**MEMORANDUM of ASSOCIATION**

**of**

**[insert name of company]**

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

|  |  |
| --- | --- |
| Name of each subscriber | **Signature of each subscriber** |
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**Dated:**

**SCVO Model Articles of Association**

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| THE COMPANIES ACT 2006  COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL  ARTICLES of ASSOCIATION of  [insert name of company] |

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| **Model articles** | **Guidance** |
| **GENERAL** |  |
| **Constitution of company** |  |
| 1. The model articles of association as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of this company; accordingly, the articles of association of the company consist of the provisions set out in these articles (as amended from time to time). |  |
| Objects |  |
| 1. The company’s objects 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] |
| 1. The company’s objects are restricted to those set out in article 2 (but subject to article 4). |
| 1. The company may (subject to first obtaining the consent of OSCR) add to, remove or alter the statement of the company’s objects in article 2; on any occasion when it does so, it must give notice to the registrar of companies (Companies House) and the amendment will not be effective until that notice is registered on the register of companies. |
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| Powers |  |
| 1. The company has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so. | It was previously universal practice to set out in the articles a lengthy list of powers which the company could exercise, sometimes stretching to several pages. The approach to this has, however, evolved in recent years in line with changes in the legislation and a generally more relaxed view taken on this issue by banks and others. The template therefore uses general wording here, rather than a list of powers. |
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| **Restrictions on use of the company’s assets** |  |
| 1. No part of the income or property of the company may be paid or transferred (directly or indirectly; and whether by way of dividend or otherwise) to the members - either in the course of the company’s existence or on winding-up - except where this is done in direct furtherance of the company’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 article 6 (“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.  As regards article 7, articles 114 to 117 set out a number of safeguards which are designed to minimise the risk of irregularities arising when remuneration or expenses are paid to directors or members. Article 7 makes it clear that, providing these safeguards are met, article 6 will not stand in the way of any such arrangement. |
| 1. Article 6 does not prevent the company making any payment which is permitted under articles 114 to 117 (remuneration and expenses). |
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| **Liability of members** |  |
| 1. Each member undertakes that if the company is wound up while they are a member (or within one year after they cease to be a member), they will contribute - up to a maximum of £1 - to the assets of the company, to be applied towards: | The wording of this clause is quite technical, and not ideal from the point of view of accessibility; but it would be best to keep the wording as drafted, rather than risk any uncertainty about the limit on members’ liability. |
| 1. payment of the company’s debts and liabilities contracted before they cease to be a member; |
| 1. payment of the costs, charges and expenses of winding up; and |
| 1. adjustment of the rights of the contributories among themselves. |
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| **General structure** |  |
| 1. The structure of the company consists of: |  |
| 1. the MEMBERS - who have the right to participate in the annual general meeting (and any other general meeting) and have important powers under the articles of association and the Companies Act; for example, the members elect people to serve as directors and take decisions in relation to changes to the articles themselves; | 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 BOARD - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the company; for example, the board are responsible for monitoring the financial position of the company. |
| 1. The people serving on the board are referred to in these articles of association as DIRECTORS. |  |
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| **MEMBERS** |  |
| **Qualifications for membership** |  |
| 1. The members of the company shall consist of the subscribers to the memorandum of association and such other persons as are admitted to membership under articles 14 to 16. |  |
| 1. Membership is open to any individual 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 company are not eligible for membership; and a person who becomes an employee of the company after admission to membership will automatically cease to be a member. | This prohibition on employees being members of the company is usual in the context of voluntary sector bodies. If you modify this clause to allow employees of the company to become members, that might mean that certain grant funders would regard the company as ineligible for support. If, however, 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. |
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| **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. | The Companies Act makes it clear that someone has to have agreed to become a member before they can be entered in the register of members – so it is important that there should be some record of people having agreed to become members. The application for membership could be kept very simple eg “I wish to apply for membership…”. |
| 1. The board may, at its discretion, refuse to admit any person to membership. | See comments in [Decision making and governance in your organisation](https://scvo.scot/support/setting-up/decision-making) |
| 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. |
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| **Membership subscription** |  |
| 1. No membership subscription shall 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 bolt-on provisions. Membership subscriptions will never be a significant source of income for the company –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 company 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; that is the mechanism set out in articles 22 to 24 of the model. Articles 22 to 24 should be deleted if the bolt-on 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 the articles. |
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| Register of members |  |
| 1. The board must keep a register of members, setting out the full name and address of each member, the date on which they were admitted to membership, and the date on which any person ceased to be a member. | This serves as a reminder of the statutory requirement to maintain a proper register of members. The register can be kept on a computer, rather than on paper, providing adequate precautions are taken for guarding against the records being falsified (and detecting any falsification). Obviously, regular backups should be 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 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 website of the [Office of the Information Commissioner.](https://ico.org.uk/) |
| 1. The register of members (and index of members’ names, if applicable) must be made available for inspection – or, as the case may be, a copy of the register of members must be supplied - where a valid request (in compliance with section 116 of the Companies Act) has been made and (if applicable) the relevant fee has been paid; unless a direction to the contrary has been made by the court under section 117 of the Companies Act. | The wording here reflects the provisions of the Companies Act regarding inspection. A direction by the court would of course be extremely rare, but reference to this is included for completeness. |
| Withdrawal from membership |  |
| 1. Any person who wants to withdraw from membership must submit a notice of withdrawal to the company (either in writing or by email); they will cease to be a member as from the time when the notice is received by the company. | The notice withdrawing from membership can be kept simple eg “I wish to withdraw from membership…”. |
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| **Transfer of membership** |  |
| 1. Membership of the company may not be transferred by a member. | This reflects standard practice in the context of membership organisations in the third sector. |
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| **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 company, 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 article 17), the provisions of clauses 22 to 24 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 company before the expiry of the 28-day period referred to in article 22, the board may expel them from membership. | The use of the word “may” means that the board can exercise its discretion; if the board feels that there was a good reason why a particular member was unable to respond within the 28-day period, the board can decide not to terminate their membership. |
| 1. A notice under article 22 will not be valid unless it refers specifically to the consequences (under article 23) of failing to provide confirmation within the 28-day period. |  |
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| **Expulsion from membership** |  |
| 1. Any person may be expelled from membership by special resolution (see article 43), providing the following procedures have been observed: | 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 did not form 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 shall be entitled to be heard on the resolution at the general meeting at which the resolution is proposed. |
| **Termination of membership** |  |
| 1. Membership of the company will terminate on death. | This is in line with standard practice in the context of membership organisations in the third sector ie membership is not something which can pass to someone’s heirs when they die. |
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| **DECISION-MAKING BY THE MEMBERS** |  |
| **General meetings (meetings of members)** |  |
| 1. The board must arrange a meeting of members (an “annual general meeting” or “AGM”) in each year. | Except in the case of PLCs (not relevant here), the Companies Act no longer requires companies to hold AGMs. AGMs are, however, an important feature of governance in the context of membership organisations in the third sector – since they allow the wider membership to participate in the election/re-election of board members, as well as giving them an opportunity to raise questions on the annual accounts, comment on strategic issues, and generally hold the board to account. It is standard practice, therefore, for the articles of a third sector membership-led company (ie where the governance structure is based on the principle of the board being accountable to a wider membership) to require AGMs to be held – and that is reflected in the model. |
| 1. The gap between one AGM and the next must not be longer than 15 months. |  |
| 1. Notwithstanding article 27, an AGM does not need to be held during the calendar year in which the company is formed; but the first AGM must still be held within 15 months of the date on which the company is formed. | In most cases, it will not be particularly appropriate to have an AGM during the year in which the company is formed; but, if the company 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 annual general meeting must include: |  |
| 1. a report by the chair on the activities of the company; |  |
| 1. consideration of the annual accounts of the company; |  |
| 1. the election/re-election of directors, as referred to in articles 84 to 87. |  |
| 1. Subject to articles 27 to 29 and article 32, the board may arrange a general meeting at any time. |  |
| 1. The board must convene a general meeting if there is a valid requisition by members (under section 303 of the Companies Act) or a requisition by a resigning auditor (under section 518 of the Companies Act). | Section 303 of the Companies Act 2006 provides that one tenth of the members of a company may (providing they comply with the detailed statutory requirements) require the board to convene an EGM. It is very rare in practice for a formal requisition of this kind to be made.  As a matter of best practice in governance, the board of a third sector company would be expected to convene a general meeting without any need for a formal requisition, if they become aware that a significant number of the members feel strongly that a general meeting should be held to address a particular issue or issues of concern. |
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| **Notice of general meetings** |  |
| 1. At least 14 clear days’ notice must be given of a general meeting. | It should be noted that the period of 14 days corresponds with the minimum allowed for under the Companies Act (in the absence of specific consent to shorter notice from at least 95% of the total number of members with voting rights); and a provision referring to a shorter period would not be valid. |
| 1. The notice calling a general meeting must specify the time and (subject to article 40) place of the meeting; and also: |  |
| * 1. it must specify in general terms what business is to be dealt with at the meeting; |  |
| * 1. if a special resolution (see article 43) (or a resolution requiring special notice under the Companies Act) is to be proposed, it must state that it is to be proposed as a special resolution (or – as applicable – as a resolution requiring special notice), and must set out the exact terms of the resolution; | The requirement to specify that a resolution will be proposed as a special resolution, and the requirement to state the exact terms of the proposed special resolution, reflect the requirements under the Companies Act; and should not be altered. |
| * 1. in the case of a resolution to alter the articles, it must set out the exact terms of the proposed alteration(s); and |  |
| * 1. it must include a statement referring to the rights of a member regarding the appointment of another person as their proxy to attend, speak and vote at the general meeting in their place. | This again reflects the requirements under the Companies Act. |
| 1. A notice convening an annual general meeting must specify that the meeting is to be an annual general meeting. |  |
| 1. The reference to “clear days” in article 33 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 general meeting must be given to all the members of the company, and to all the directors; but the accidental omission to give notice to one or more members or directors will not invalidate the proceedings at the meeting. |  |
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| 1. Any notice which requires to be given to a member under these articles must be: |  |
| * 1. sent by post to the member, at the address last notified by them to the company; or |  |
| * 1. sent by email to the member, at the email address last notified by them to the company; or |  |
| * 1. (subject to the company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Companies Act) by means of a website. |  |
| 1. If members and directors are to be permitted to participate in a general meeting by way of audio and/or audio-visual link(s) (see article 46), 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 general meeting via Zoom (or equivalent) and/or 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: |  |
| (i) participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements); |  |
| (ii) 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; |  |
| (iii) (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; |  |
| (iv) [(where article 41 applies) submitting questions and/or comments in advance of the meeting]. | Paragraph (iv) should be omitted if article 41 is not included. |
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| 1. If participation in the meeting is to be by way of audio and/or audio-visual links - with no intention for the meeting to involve attendance in person by two or more members in any particular location - the place of the meeting shall, for the purposes of the notice calling the meeting, be taken to be the place where the anticipated chairperson of the meeting is expected to be, as at the time fixed for the commencement of the meeting; and, if it transpires that the chairperson of the meeting is at some other place as at the commencement of the meeting, the meeting shall be taken to have been validly adjourned to that other place. | The Companies Act requires all notices of general meetings to specify the place where the meeting is to be held. Article 40 addresses that issue (so far as it can) in the context of virtual meetings; but in fairness, it is impossible to square the circle entirely, from a technical point of view. |
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| 1. [Where a general meeting is to involve participation solely via audio and/or audio-visual links, 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 article 42) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.] | 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 article 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 those approaches. |
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| 1. [Where article 41 applies, the chairperson of a general 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.] | Article 42 should be omitted if article 41 is not included. |
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| **Special resolutions and ordinary resolutions** |  |
| 1. For the purposes of these articles, a “special resolution” means (subject to articles 70 to 74 (written resolutions)) a resolution passed by 75% or more of the votes cast on the resolution at a general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 33 to 41; for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the total number of votes cast in relation to the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting. | The definition of “special resolution” reflects the provisions of the Companies Act; it would not be possible, for example, to specify a percentage other than 75%. |
| 1. In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Companies Act allow the company, by special resolution, |  |
| 1. to alter its name; |  |
| 1. to alter any provision of these articles or adopt new articles of association. |  |
| 1. For the purposes of these articles, an “ordinary resolution” means (subject to articles 70 to 74 (written resolutions)) a resolution passed by majority vote (taking account only of those votes cast in favour as compared with those votes against), at a general meeting, providing proper notice of the meeting has been given in accordance with articles 33 to 41. |  |
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| **Procedure at general meetings** |  |
| 1. The board may if they consider appropriate (and must, if that is required under article 47) make arrangements for members and directors to participate in general 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 directors can participate via those link(s) 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 article 39; and |  |
| * 1. the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and directors 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 directors (if any) who are attending in person (and vice versa). | It is important that members participating remotely in a general 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 general meeting would not be possible or advisable for all or a significant proportion of the membership, the board must make arrangements for members and directors to participate in that general 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 article 46 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). |
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| 1. A general meeting may involve two or more members or directors participating via attendance in person while other members and/or directors 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 articles 39 to 42 and articles 46 to 48 to members should be taken to include proxies for members [and authorised representatives of members which are corporate bodies]. | The reference to authorised representatives should be removed if the articles do not allow membership by corporate bodies. |
| 1. The quorum for a general meeting shall be [ ] members, present in person or represented by proxy. | The quorum for AGMs and other general meetings (ie 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 article 50 relates only to the quorum for general meetings (ie ***members’*** meetings); the quorum for ***board meetings*** is to be specified in article 123.  The wording in article 50 allows a member who has appointed a proxy to be counted in the quorum ie notwithstanding that they are not physically present or participating remotely. It would be possible to word the quorum differently, so as to require a minimum number of ***people*** to be participating in the meeting (as members and/or as proxies for members); that might help to stimulate more debate and discussion in relation to the matters to be addressed at the meeting (since proxies – even if they are not members – are entitled to speak at general meetings), and reduces the risk of members ticking the “for” or “against” boxes on a proxy form without having a full understanding of the underlying issues.  The increasing use of remote participation is also relevant in considering what quorum to fix – there may be more people willing to join a general 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 general 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 representatives should be removed if the articles do not allow membership by corporate bodies. |
| 1. If a quorum is not present within 15 minutes after the time at which a general meeting was due to start - or if a quorum ceases to be present during a general meeting - the meeting shall stand adjourned to such time and (subject to article 56) place as may be fixed by the chairperson of the meeting. | 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 general 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 company should act as chairperson of each general meeting. |  |
| 1. If the chair of the company 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 directors present at the meeting must elect from among themselves the person who will act as chairperson of that meeting. | If the company is to have a vice-chair, it would be possible for the provisions to be extended so as to refer specifically to the vice-chair taking the role of chairperson if the chair is not present (or is not willing to act as chairperson). The provisions then become slightly more complicated, though, since you still have to cover the possibility that neither the chair nor the vice-chair might be present.  As with the reference to 15 minutes in article 52, a longer or shorter period could be substituted (see comments on article 52). |
| 1. The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting to such time and (subject to article 56) place as the chairperson may determine. |
| 1. Article 40 shall apply in relation to the requirement under articles 52 and 55 for the chairperson to specify the place of an adjourned meeting. |
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| **Voting at general meetings** |  |
| 1. Every member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy (subject to article 65). | Article 65 makes it clear that members can be allowed to cast their vote remotely – so there is a reference here to article 65, to ensure that use of the word “personally” in article 57 does not cause uncertainty on that issue.  It should be noted that the Companies Act gives members of a company a statutory right to vote by proxy (this is not the case in relation to a SCIO) – so it is not possible to exclude proxy voting in the articles. |
| 1. Any member who wishes to appoint a proxy to vote on their behalf at any meeting (or adjourned meeting): |  |
| 1. shall lodge with the company, at the company’s registered office, a written instrument of proxy (in such form as the board require), signed by them; or | “Instrument of proxy” is just the wording used in the Companies Act for a proxy form. The wording in the form should be kept as short and simple as possible, but (as a matter of best practice) should include tick boxes (or equivalent) to allow a member (if the member so wishes) to request the proxy to vote either in favour of, or against, each resolution.  The wording in the form should also allow for the member to either appoint a named person as their proxy (this need not be a member or director of the company) ***or*** to appoint “the chairperson of the meeting” (deliberately ***not*** giving a name, in case some person other than the chair of the company ends up chairing the meeting) as their proxy. |
| 1. shall send by email to the company, at the email address notified to the members by the company for that purpose, an instrument of proxy (in such form as the board require); |  |
| providing (in either case), the instrument of proxy is received by the company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting). |  |
| 1. An instrument of proxy which does not conform with the provisions of article 58, or which is not lodged or sent in accordance with such provisions, shall be invalid. |  |
| 1. A member shall not be entitled to appoint more than one proxy to attend on the same occasion. |  |
| 1. A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed them to speak at the meeting, and need not be a member of the company. | Article 61 makes it clear that someone appointed as a proxy can speak at a general meeting, even if they are not themselves a member.  Article 62 addresses the possibility that a member might want to cancel their proxy after sending the proxy form to the company. In order to avoid having to revisit the question of whether resolutions passed at the general meeting were validly passed (similarly, whether a demand for a ballot was validly made), the wording in article 62 makes it clear that termination of a proxy’s authority is only effective if notice of termination was received by the company before the start of the general meeting (and similarly for any adjourned meeting). |
| 1. A vote given, or ballot demanded, by proxy shall be valid notwithstanding that the authority of the person voting or demanding a ballot had terminated prior to the giving of such vote or demanding of such ballot, unless notice of such termination was received by the company at the company’s registered office (or, where sent by email, was received by the company at the address notified by the company to the members for the purpose of email communications) before the commencement of the meeting or adjourned meeting at which the vote was given or the ballot demanded. |
| 1. If there are an equal number of votes for and against any resolution, the chairperson of the meeting shall **not** be entitled to a casting vote. | Under the Companies Act it is not possible to give the chairperson of a general meeting a casting vote (without including more complex provisions to reflect the wording in the Act). As a matter of practice, the casting vote of the chairperson is unlikely to be significant in the context of general meetings, as more important resolutions at general meetings involve a “special resolution” and thus a 75% threshold in relation to votes cast. Different considerations apply in relation to the chairperson’s casting vote at board meetings (see comments on clause 130). |
| 1. A resolution put to the vote at a general meeting shall be decided on a show of hands unless a secret ballot is demanded by the chairperson (or by at least two persons present in person at the meeting and entitled to vote (whether as members or proxies for members)); a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared. |  |
| 1. Where members are participating in a 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 - 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. |
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| 1. If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded. |  |
| 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 article 65, 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 articles 65 and 67 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.] | The reference to authorised representatives should be removed if the articles do not allow membership by corporate bodies. |
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| **Technical objections to remote participation in general meetings** |  |
| 1. These articles impose certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at general meetings; providing the arrangements made by the board in relation to a given general meeting (and the manner in which the general meeting is conducted) are consistent with those requirements: | The wording in article 69 closely follows the wording that was used in the emergency legislation (now no longer in force). While provisions within a set of articles 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 articles 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 third sector company operating under a membership-led governance model. |
| * 1. a member cannot insist on participating in the general meeting, or voting at the general meeting, by any particular means; |  |
| * 1. the general meeting need not be held in any particular place; |  |
| * 1. the general 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 general 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 general 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. |  |
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| **Written resolutions by members** |  |
| 1. A resolution agreed to in writing (or by email) by the required majority (see article 73) of the members who would have been entitled (as at the date on which it is circulated) to vote on it if it had been proposed at a general meeting will (subject to articles 71, 72 and 74) be as valid as if it had been passed at a general meeting; and the date of the resolution will be taken to be the date on which the last member agreed to it. | The wording in articles 70 to 74 reflects the provisions of the Companies Act relating to written resolutions by members – and it would be inadvisable from a technical point of view to amend the wording in those articles. |
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| 1. A copy of any proposed resolution under article 70 must be sent (in writing or by email; and at the same time, so far as reasonably possible) to all those members entitled to vote on it; and it must be accompanied in each case by a statement: |  |
| * 1. informing the member of the ways in which they can give their agreement to the resolution; and |  |
| * 1. notifying the member of the date when the resolution would lapse if the required majority of the members have not given their agreement by that date (see paragraph (a) of article 72). |  |
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| 1. In order for a resolution to be valid under article 70: |  |
| * 1. it must be agreed to by the required majority of the members within 28 days after it is circulated among the members; |  |
| * 1. in the case of a special resolution, the resolution must state specifically that it is being proposed as a special resolution. |  |
| 1. For the purposes of articles 70 and 72, “required majority” means: |  |
| * 1. in the case of a special resolution - 75% or more; |  |
| * 1. in the case of an ordinary resolution – more than 50%; |  |
| and on the basis that (if all members have voting rights) these percentages are to be applied to the total membership of the company at the time. |  |
| 1. A resolution to remove a director or to remove an auditor cannot be dealt with via a resolution agreed to in writing or by email under articles 70 to 73. |  |
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| **Minutes of general meetings** |  |
| 1. The board must ensure that proper minutes are kept in relation to all general meetings, and that a proper record is kept of all resolutions agreed to in writing or by email under articles 70 to 73. | Article 75 serves as a reminder of the requirements imposed by the Companies Act. |
| 1. Minutes of general 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 article 75 must include confirmation that each resolution was passed as a special resolution (or, as applicable, an ordinary resolution); and should be signed by the chair of the company. |  |
| 1. [The board shall make available copies of the minutes, and records of resolutions, referred to in article 75 to any member of the public requesting them; but on the basis that the board may exclude confidential material to the extent permitted under article 148.] | 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. This article is optional and can be omitted. |
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| **DIRECTORS** |  |
| **Number of directors** |  |
| 1. The maximum number of directors is [ ]; out of that: | See comments under the heading of ‘[The composition of your management committee’](https://scvo.scot/support/setting-up-a-charity/write-your-constitution). |
| * 1. no more than [ ] shall be directors who were elected/appointed under articles 84 to 87 (or deemed under article 83 to have been appointed under article 85); and |  |
| * 1. no more than [ ] shall be directors who were co-opted under the provisions of articles 88 and 89. |  |
| 1. The minimum number of directors is [ ]. |  |
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| **Eligibility** |  |
| 1. A person will not be eligible for election/appointment to the board under articles 84 to 87 unless they are a member of the company; a person appointed to the board under articles 88 and 89 need not, however, be a member of the company. |  |
| 1. A person will not be eligible for election or appointment to the board if they are: | As regards paragraph 9b) of article 82, the model follows the approach taken by the vast majority of third sector organisations, in stating that employees will not be eligible to serve as board members. It should be noted, however, that – in the context of a company with charitable status - 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 processing an application for charitable status, 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 director 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. |
| * 1. disqualified from being a charity trustee under the Scottish Charities Act (even if the company is not a charity at the time); or |  |
| * 1. an employee of the company. |  |
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| **Initial directors** |  |
| 1. The individuals who were named as prospective directors in the incorporation documents automatically hold office as directors with effect from the time when the company was incorporated; but they will be deemed, for the purposes of these articles, to have been appointed under article 85 with effect from that time. |  |
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| **Election, retiral, re-election** |  |
| 1. At each AGM, the members may elect any member (subject to articles 79 and 82, and providing they are willing to act) to be a director. | So far as the mechanics of the election process are concerned, the template envisages that at each AGM there will be some directors 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 directors 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 a two-tier governance model, 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. |
| 1. The board may at any time appoint any member (subject to articles 79 and 82, and providing they are willing to act) to be a director. |  |
| 1. At each AGM, all of the directors elected/appointed under articles 84 and 85 (and, in the case of the first AGM, those deemed under article 83 to have been appointed under article 85) shall retire from office - but shall then be eligible for re-election under article 84. | The basic template requires all of the directors to retire at each AGM, but on the basis that they can be re-elected. That is certainly the simplest approach – 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 directors 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 director 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. |
| 1. A director retiring at an AGM will be deemed to have been re-elected unless: | Article 87 is there to address a situation where the need to ensure that a retiring director 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 director is retiring. |
| * 1. they advise the board prior to the conclusion of the AGM that they do not wish to be re-appointed as a director; or |  |
| * 1. an election process was held at the AGM and they were not among those elected/re-elected through that process. |  |
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| **Appointment/re-appointment of co-opted directors** |  |
| 1. In addition to their powers under article 85, the board may at any time appoint any non-member of the company to be a director (subject to articles 79 and 82, and providing they are willing to act) either on the basis that they have been nominated by [insert name of body or bodies or simply state "a body with which the company 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. | The appointment by the board of directors under articles 88 and 89 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 as regards annual 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 which had taken place at the AGM. For that reason, the wording in the template allows only ***non***-***members*** to be appointed under this category of director. If the board was keen to appoint a member with much-needed skills as a director (and assuming that they had not been elected by the members at the AGM, perhaps on the basis of more popular candidates having filled the available spaces for directors drawn from the membership) the solution 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. At each AGM, all of the directors appointed under article 88 shall retire from office - but shall then be eligible for re-appointment by the board (after the AGM) under that article. |  |
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| **Termination of office** |  |
| 1. A director shall automatically vacate office if: |  |
| 1. they cease to be a director through the operation of any provision of the Companies Act or become prohibited by law from being a director; |  |
| 1. they become disqualified from being a charity trustee under the Scottish Charities Act (even if the company is not a charity at the time); |  |
| 1. they become incapable for medical reasons of fulfilling their duties as a director, but only if that has continued (or is expected to continue) for a period of more than six months; | The period in paragraph (c) 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 (g). In relation to that latter point, it will 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 director 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 director; and if they failed to do so, the other directors would be under a legal duty (see comments below on paragraph (h)) to remove them from office as a director. |
| 1. (in the case of a director elected/appointed under article 84 or 85, or deemed under article 83 to have been appointed under article 85) they cease to be a member of the company; |  |
| 1. they become an employee of the company; |  |
| 1. they give the company 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 directors in force from time to time (as referred to in article 118); |  |
| 1. (if the company is a charity at the time) 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 | The Scottish Charities Act lays a specific legal duty on charity trustees (these would be the directors of a company with charitable status) to exercise any powers available to them to remove a charity trustee where a charity trustee has been in serious or persistent breach of their duties under the Scottish Charities Act. |
| 1. they are removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Companies Act. | Section 168 of the Companies Act states that any director can be removed (irrespective of what is contained in a company’s articles of association) by way of an ordinary resolution - providing the various detailed procedures laid down in the Act are followed. These procedures involve (broadly speaking) giving the director concerned 28 days’ prior written notice of the intention to propose the resolution, and allowing them an opportunity to make representations. |
| 1. A resolution under paragraph (h) or (i) of article 90 shall be valid only if: |  |
| 1. the director 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 director concerned is given the opportunity to address the board meeting at which the resolution is proposed, prior to the resolution being put to the vote; and |  |
| 1. at least two thirds (to the nearest round number) of the directors then in office vote in favour of the resolution. | The threshold is deliberately set as two thirds of the directors in office (ie taking account of the total number of directors, 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 if the director threatened with removal is actually the person who has uncovered wrongdoing by others on the board. |
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| **Register of directors** |  |
| 1. The board must keep a register of directors, setting out full details of each director, including the date on which they became a director, and also specifying the date on which any person ceased to hold office as a director; the board must also keep a register of directors’ residential addresses. | This is included as a reminder of the requirement under the Companies Act to maintain a proper register of directors; and also a register of directors’ residential addresses. |
| 1. The register of directors must be made available for inspection in compliance with section 162 of the Companies Act. |
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| **Office-bearers** |  |
| 1. The board must elect (from among themselves) a chair and a treasurer. | 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.  It should be noted that the secretary of a company falls into a rather different category eg. a secretary need not be a director of the company. The provisions dealing with appointment of the company secretary are contained in article 155. |
| 1. In addition to the office-bearers required under article 94, the board 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 article 94 or 95. | 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 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 limit on the period in office as a director – see comments on article 86). 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 prepared to take on that role is often very limited. |
| 1. A person elected to any office will automatically cease to hold that office: |  |
| * 1. if they cease to be a director; or |  |
| * 1. if they give to the company a notice of resignation from that office (either in writing or by email). |  |
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| **Powers of board** |  |
| 1. Subject to the provisions of the Companies Act and these articles, and subject to any directions given by special resolution under article 100: |  |
| * 1. the company (and its assets and undertaking) shall be managed by the board; and |  |
| * 1. the board may exercise all the powers of the company. |  |
| 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 special resolution, 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 article 100 to issue a direction to the board. Nevertheless, the inclusion of this provision is important - emphasising that the membership has ultimate control in relation to the company. 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 company) in the context of a proposal which involves transfer (for nil payment) of the company’s assets and activities to another organisation. |
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| **Directors’ general duties** |  |
| 1. Each of the directors shall, in exercising their functions as a director of the company, act in the interests of the company; and, in particular, must: | The provisions within article 101 are included as a general guide to the duties which apply under charities legislation where the company has charitable status. It should be noted that the requirements under company law (which would apply irrespective of whether the company was a charity) involve slightly less onerous requirements – and it may therefore be appropriate to omit (or modify) the provisions within article 101 if the company is not intended to apply for registration as a charity; having said that, it could be argued that - in the context of a third sector company – the same standards should apply even where the company is not a charity. |
| * 1. seek, in good faith, to ensure that the company acts in a manner which is in accordance with its objects; |
| * 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 company and any other party: |
| (i) put the interests of the company before that of the other party, in taking decisions as a director; or |
| (ii) where any other duty prevents them from doing so, disclose the conflicting interest to the company and refrain from participating in any discussions or decisions involving the other directors with regard to the matter in question; |
| * 1. (if the company is a charity at the time) ensure that the company complies with any direction, requirement, notice or duty imposed on it by the Scottish Charities Act. |
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| **Conflicts of interest involving directors - general** |  |
| 1. The board shall use every effort to ensure that conflicts of interest involving directors (including those which relate to individuals or bodies connected with directors) are identified at the earliest opportunity and appropriately managed; the following provisions of these articles are of particular relevance in that regard: | There are a number of strands to conflict of interest – and article 102 is intended firstly to stress the importance of ensuring that conflicts of interest are identified at the earliest opportunity and appropriately managed (something which is of particular relevance for companies with charitable status, given the importance which OSCR attaches to these issues); and secondly to signpost the key provisions within the articles which address the various aspects of conflict-of-interest that need to be tackled. |
| * 1. articles 104 to 109 (reflecting similar provisions contained in the Companies Act) require directors to declare any personal interest which they (or an individual or body connected with them) may have in any transaction or other arrangement with the company; |
| * 1. article 136 prohibits a director with a personal interest of this nature from voting on the question of whether the company should enter into that arrangement; |
| * 1. articles 110 to 113 refer to the duty on directors under the Companies Act to avoid any conflict of interest situation, and outline the process by which the board may authorise a conflict of interest situation if they consider that to be appropriate (note: this does not apply to a conflict of interest relating to a transaction or other arrangement with the company); |
| * 1. article 114 (reflecting similar provisions contained in the Scottish Charities Act) set out restrictions and conditions which would apply to any arrangement under which remuneration would be paid to a director (or where the director might benefit from remuneration paid to a connected party). |
| 1. In addition to complying with the articles referred to in article 102: | The requirements imposed by article 103 reflect generally-accepted principles of best practice in governance – and, for a company with charitable status, also help to remind the board of OSCR’s expectations in this regard. |
| * 1. the board must maintain a register of directors' interests; |  |
| * 1. the chairperson of each board meeting must invite declarations of interest, shortly after the commencement 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. |  |
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| **Conflicts of interest relating to transactions/arrangements with the company** |  |
| 1. A director who has a personal interest (directly or indirectly) in any transaction or other arrangement which the company is proposing to enter into, must declare that interest (including details of the nature and extent of the director's interest) at a board meeting. | The wording in articles 104 to 107 reflect the requirements which apply under the Companies Act; for a company with charitable status, these issues are also important from the point of view of OSCR’s expectations of good practice. |
| 1. Any declaration under article 104 must be made before the discussion at the board meeting on the question of whether the transaction or other arrangement should be entered into. |  |
| 1. A director who has a personal interest in any transaction or other arrangement which the company is proposing to enter into will be debarred under article 136 (unless the special circumstances outlined in article 138 apply) from voting on the question of whether or not the company should enter into that arrangement. |  |
| 1. Where a transaction or arrangement has already been entered into by the company and a director has a personal interest in that arrangement, that director must (unless they declared their interest in advance of the company entering into the arrangement, in accordance with articles 104 and 105) declare the nature and extent of their interest at a board meeting or by way of a notice to the directors. |  |
| 1. For the purposes of articles 104, 106 and 107, a director shall be deemed to have a personal interest in an arrangement if: |  |
| * 1. an individual who is "connected" with the director under section 68(2) of the Scottish Charities Act (husband/wife, partner, child, parent, brother/sister etc) has an interest in that arrangement (even if the company is not a charity at the time); or |  |
| * 1. 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 arrangement. |  |
| 1. Provided they have declared their interest - and have not voted on the question of whether or not the company should enter into the arrangement - a director will not be debarred from entering into an arrangement with the company in which they have a personal interest where that is not prohibited under article 114 or 115; and (subject to article 115 and - if the company is a charity at the time - 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. |  |
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| **Conflict of interest situations** |  |
| 1. Section 175 of the Companies Act imposes a duty on every director to avoid any situation (referred to below as a "Conflict Situation") in which they have, or could have, a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company - unless the matter has been authorised by the board (as referred to in article 113). | The Companies Act imposes a specific duty on directors to avoid conflict of interest “situations”. This is in a different category from conflicts of interest relating to transactions or other arrangements with the company – see article 112 – although people often confuse the two categories.  One example of a conflict of interest “situation” would be where a director was proposing to take on a directorship of another company, where that might cause difficulties from a conflict of interest (or conflict of duty – see article 111) point of view eg where both companies were likely to be bidding for the same contract for the delivery of public services or were likely to be applying for grant funding in a case where the funder would only give support to one or other company. The director concerned would be in breach of their legal duty under the Companies Act unless the board specifically authorised them – through a formal resolution - to take on the directorship. |
| 1. For the purposes of section 175 of the Companies Act, conflict of interest is taken to include a conflict of interest and duty, and a conflict of duty. |  |
| 1. The duty referred to in article 110 does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company; any conflict of interest of that kind should be addressed in accordance with the provisions set out or referred to in articles 104 to 109, and the code of conduct referred to in article 118. |  |
| 1. The board may, if they consider it appropriate to do so, pass a resolution (in accordance with the provisions of section 175 of the Companies Act), authorising any particular Conflict Situation; the board may give authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances, and may amend or vary any such authorisation. | Where a director is facing a conflict of interest “situation” (see comments on article 110), the Companies Act allows the board to authorise the director to proceed – and that would then mean that the director would not be in breach of their legal duty to avoid conflict of interest situations. Under the detailed wording in the Companies Act, the director concerned should not take part in voting on the question of whether authorisation should be given; and the director must not be counted in determining whether a quorum is present. As noted in article 113, the board can impose conditions when granting authorisation – that might include a requirement to maintain strict confidentiality on particular matters. |
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| **Remuneration and expenses** |  |
| 1. No director may serve as an employee (full time or part time) of the company, and no director may be given any remuneration by the company for carrying out their ordinary duties as a director. | This should be adjusted if the articles will permit an employee to serve on the board (though this would be unusual – see comments on article 82). Where the chief executive (or equivalent) is to serve on the board as a director, the amendments are covered in the relevant bolt-on provisions. |
| 1. Where a director provides services to the company or might benefit from any remuneration paid to a connected party for such services, then: | Article 115 provides a summary of the requirements imposed by the Scottish Charities Act in this situation, where the company has charitable status. If the company does have charitable status, 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.  While these requirements are not imposed by legislation on a company which does not have charitable status, they reflect what would normally be considered good practice in a third sector context. |
| * 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 company to enter into the arrangement (taking account of that maximum amount); and |  |
| * 1. less than half of the directors must be receiving remuneration from the company (or benefit from remuneration of that nature). |  |
| 1. The directors may be paid all travelling and other expenses reasonably incurred by them in connection with their attendance at board meetings, general meetings, or meetings of committees, or otherwise in connection with the carrying-out of their duties. | 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. |
| 1. The company may also enter into an arrangement with a member who is not a director (or with a person or body connected with them) under which that member (or the connected person or body) receives payment for goods or services provided by them to the company, 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 article 115) – but given the potential for abuse (and OSCR’s expectations regarding how this should be approached in practice), article 117 provides some safeguards to cover that situation (and similarly for any loan or lease arrangement with a member). As with article 115, it is reasonable to include safeguards of this kind in the articles even where the company is not a charity, to reflect principles of good practice. |
| * 1. the terms and conditions (including the amount of the payment(s)) are at least as good (from the company'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 company; |  |
| 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 company or makes a loan to the company. |  |
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| **Code of conduct for directors** |  |
| 1. Each of the directors 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. For the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association; and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time. |  |
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| **DECISION-MAKING BY THE DIRECTORS** |  |
| **Notice of board meetings** |  |
| 1. Any director may call a meeting of the board or may ask the secretary to call a meeting of the board. | The ability under article 120 for any one director to call a board meeting reflects the fact that each and every director has legal responsibilities – and that in turn suggests that it is reasonable that any one director 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 director 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) directors. |
| 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. |  |
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| 1. If directors are to be permitted to participate in a board meeting by way of audio and/or audio-visual link(s), the directors 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 directors who may have difficulties in using a computer or laptop for this purpose) the directors' attention should be drawn to the following options: | Article 122 contains provisions similar to those applying to general meetings (ie members’ meetings) – see comments on article 39. |
| * 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 [ ] directors, present in person. | A figure has to be stated as the quorum for meetings of the board. As with the quorum for general meetings (ie 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 company 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 directors.  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 directors 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 directors, which is to apply even if the “majority of the directors in office” formulation would give a lower figure for the quorum – to ensure that board decisions are not taken by one or two directors if the number of directors drops to a low level.  Certainly, if the articles envisage that there may be fifteen directors in office, it sends a poor message regarding the anticipated level of commitment by directors (having regard to their legal duties) if the quorum is set at something like three directors. |
| 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 director, will be deemed to be in attendance) at the meeting. |  |
| 1. If at any time the number of directors in office falls below the number stated as the quorum in article 123, the remaining director(s) will have power to fill the vacancies or call a general meeting – but will not be able to take any other valid decisions. | The wording in article 125 will have to be adjusted slightly, if the quorum is expressed only as a proportion of the directors in office at the time – see comments on article 123. |
| 1. The chair of the company 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 directors present at the meeting must elect (from among themselves) the person who will act as chairperson of the meeting. | See comments on article 54, regarding the need for amendments if the articles allow for a vice chair. |
| 1. Every director has one vote, which must be given personally (subject to article 134). | The reference to article 134 is there just to ensure that the use of the word “personally” does not mislead people into thinking that directors 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. | It could be stated instead that the chairperson of the meeting would ***not*** have a casting vote – although that would be uncommon in the context of board meetings.  A further issue which may be worth considering in relation to board meetings is whether a director should have power to appoint an alternate director (the equivalent of a proxy, but at board level) to attend and vote at a board meeting at which they are unable to be present. Such an arrangement can occasionally be seen as appropriate where the provisions dealing with the composition of the board specifically provide that a particular outside body will have power to appoint a director (or to nominate a director, where there is an obligation or strong expectation that the board will give effect to that nomination by appointing them as a director). The arguments in favour of alternate directors are much less persuasive, however, in the case of directors who are appointed on the basis of their personal qualities. Also, the increasing use of remote participation to address situations where a director is unable to attend a board meeting in person means that the range of circumstances where a director should be resorting to appointing an alternate is narrower than it used to be. Over-use of the facility to appoint alternate directors can have an adverse effect on decision-making, since the alternate director might not be aware of the discussions at previous board meetings; and it could also undermine the democratic election/re-election arrangements (since decisions might end up being taken through most of the year by an alternate director, rather than the director who had been elected by the membership). |
| 1. The board may, if they consider appropriate (and must, if this is required under article 132) allow directors to participate in board 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 directors can participate in this manner are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a significant proportion, of the directors - a barrier to participation; and |  |
| * 1. the manner in which the meeting is conducted ensures, so far as reasonably possible, that those directors 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 directors (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 directors, the board must make arrangements for directors 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 article 132 are slightly stronger than the similar obligations relating to general meetings (ie members’ meetings) – reflecting the importance of allowing all directors the opportunity to participate in board meetings. |
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| * 1. the requirements set out in paragraphs (a) and (b) of article 131 will apply; and |  |
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| * 1. the board must use all reasonable endeavours to ensure that all directors have access to one or more means by which they may hear and contribute to discussions at the meeting. |  |
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| 1. A board meeting may involve two or more directors participating via attendance in person while other directors participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links. | See comments on article 48. |
| 1. Where a director or directors 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 director – but on the basis that they must not participate in decision-making. |  |
| 1. A director must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution concerning a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the company; they must withdraw from the meeting while an item of that nature is being dealt with. |  |
| 1. For the purposes of article 136: |  |
| * 1. an interest held by an individual who is "connected" with the director 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 director (even if the company is not a charity at the time); |  |
| * 1. a director will (subject to article 138) 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 company has an interest in a particular matter which is to be considered by the board, a director of the company 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 company 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 parent company. This clause makes it clear that the normal conflict of interest rules (see in particular paragraph (b) of article 137) will not prevent someone in that position from voting at board meetings of the parent company on matters in which the subsidiary has an interest – unless of course there is some other reason why they have a conflict of interest. |
| 1. The company may, by ordinary resolution, suspend or relax to any extent – either generally or in relation to any particular matter – the provisions of articles 136 and137. |  |
| 1. The principles set out in article 69 (technical objections to remote participation) shall apply in relation to remote participation and voting at board meetings, as if each reference in that article to a member were a reference to a director and each reference in that article to a general meeting were a reference to a board meeting. |  |
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| **Board resolutions agreed in writing or by email** |  |
| 1. A resolution agreed to in writing (or by email) by a majority of the directors then in office shall (subject to articles 142 and 143) be as valid as if duly passed at a board meeting. | Allowing remote participation in board meetings can often resolve practical difficulties (whether related to public health concerns or otherwise) in getting directors together in person to take board decisions, but there are still 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 reflected in the wording of the formal resolution which is circulated to the directors). Also, 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 articles 142 and 143) which is designed to ensure that each of the directors has an opportunity to require the matter in question 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 article 141 shall not be valid unless a copy of the resolution was circulated to all of the directors, along with a cut-off time (which must be reasonable in the circumstances) for notifications under article 143. |  |
| 1. If a resolution is circulated to the directors under article 142, any one or more directors 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 article 141 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 directors then in office. |  |
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| **Minutes of board meetings** |  |
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| 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 directors under article 141. | Article 144 reflects the requirements which apply under the Companies Act. |
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| 1. The minutes to be kept under article 144 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting. |  |
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| 1. The records of resolutions kept under article 144 must include the names of those directors who agreed to the resolution (as well as the names of any directors who stated that they disagreed with the resolution); and should be signed by the chair of the company. |  |
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| 1. [The board shall (subject to article 148) make available copies of the minutes and records of resolutions referred to in article 144 to any member of the public requesting them.] | There is no requirement under the Companies Act or the Scottish Charities Act to make minutes of board meetings available to the public. Articles 147 and 148 can be omitted if preferred. |
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| 1. [The board may exclude from any copy minutes, or records of resolutions, made available to a member of the public under article 147 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 company or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.] | This article should be omitted if article 147 is not included. |
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| **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 director, but other members of a sub-committee need not be directors. | It should be borne in mind that although the use of sub-committees can be appropriate in many cases, the board of the company retains legal responsibility for exercising overall control and supervision. |
| 1. The board may also delegate to the chair of the company (or the holder of any other post) such of their powers as they may consider appropriate. |  |
| 1. When delegating powers under article 149 or 150, the board must set out appropriate conditions (which must include an obligation to report regularly to the board). |  |
| 1. Any delegation of powers under article 149 or 150 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. |  |
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| **Operation of bank accounts** |  |
| 1. The board should ensure that the systems of financial control adopted by the company in relation to the operation of the company's bank accounts (including online banking) reflect the recommendations made from time to time by the company's auditors (or independent examiners) or other external accountants. | The provisions of article 154 provide flexibility, in 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 (or the independent examiners or other external accountants) regarding the systems of financial control. |
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| Secretary |  |
| 1. The board shall (notwithstanding the provisions of the Companies Act) appoint a company secretary - and on the basis that the term of the appointment, the remuneration (if any) payable to the company secretary, and the conditions of appointment shall be as determined by the board; the company secretary may be removed by them at any time. | The Companies Act does not require companies to have a company secretary (previously this used to be a requirement under company law) – but identifying a specific person with responsibility for carrying out this role is generally seen as helpful in a third sector context, 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. |
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| **Accounting records and annual accounts** |  |
| 1. The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements. | These provisions reflect the legal responsibilities of the board. |
| 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. |  |
| 1. No member shall (unless they are a director) have any right of inspecting any accounting or other records, or any document of the company, except as conferred by statute or as authorised by the board or as authorised by ordinary resolution of the company. |  |
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| **MISCELLANEOUS** |  |
| **Notices** |  |
| 1. Any notice, notification, request or other document which requires to be given to a member under these articles shall be given either in writing or by email (or, in the case of a notice of general meeting, by way of a website - subject to the company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Companies Act). |  |
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| 1. Any notice or other document may be given personally to the member or may be sent by post in a pre-paid envelope addressed to the member at the address last notified by that member to the company or (in the case of a member who has notified the company of an address to be used for the purpose of email communications) may be given to the member by way of email. |  |
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| 1. Any application, confirmation, notice, notification or other document which requires to be given to the company under these articles (where it is sent by email) must be sent to the email address used by the company for communications of that nature, as intimated by the company from time to time. |  |
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| 1. Any notice or other document, if sent by post, shall be deemed to have been given at the expiry of 24 hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted. |  |
| 1. Any notice or other document sent by email shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any notice sent by email was indeed sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators. |  |
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| **Winding-up** |  |
| 1. If on the winding-up of the company any property remains after satisfaction of all the company’s debts and liabilities, such property shall be transferred to such body or bodies (whether incorporated or unincorporated) as may be determined by the members of the company at or before the time of dissolution (or, failing such determination, by such court as may have or acquire jurisdiction), to be used solely for [a charitable purpose or charitable purposes]. | If the company is not intended to be a charity, the wording at the end of article 164 could refer instead to a ‘purpose, or purposes which are the same as, or similar to, the objects of the company’. |
| 1. To the extent that effect cannot be given to article 164, the relevant property shall be applied to some charitable purpose or purposes. |  |
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| **Indemnity** |  |
| 1. Every director or other officer or auditor of the company shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Companies Act) out of the assets of the company against any loss or liability which they may sustain or incur in connection with the execution of the duties of their office. | The general principle reflected in article 166 is that the company should reimburse any director where they incur liability in carrying out their duties as a director. The ability of a company to do that is, however, limited under the Companies Act. Broadly speaking, a provision of that kind will be invalid if it indemnifies the director against liability which would otherwise attach to them in relation to negligence, default, breach of duty or breach of trust…unless they are ultimately absolved from liability by the court. Article 168 states, for the avoidance of doubt, that the company can take out insurance to provide cover for directors in relation to any personal liability that they might incur in carrying out their duties. Careful consideration should be given to the terms of any such policy before it is taken out; as a general comment, though, it should be recognised that insurance of this nature will not cover every eventuality. The risk of a director incurring personal liability in the context of a third sector company (other than in relation to eg. fines for late payment of accounts) is extremely low – and many third sector companies take the view that insurance policies of this nature do not represent value for money. It is for each board of directors, however, to form a view on this issue - and, of course, it is essential that insurance policies are maintained in relation to ***other*** matters such as employers’ liability, public liability, property and so on. |
| 1. The indemnity for officers and auditors of the company under article 166 may include (but only to the extent permitted by the sections of the Companies Act referred to in that article): |
| * 1. any liability incurred by them in defending any proceedings (whether civil or criminal) in which judgement is given in their favour or in which they are acquitted; and |
| * 1. any liability in connection with an application in which relief is granted to them by the court from liability for negligence, default or breach of trust in relation to the affairs of the company. |
| 1. The company shall be entitled (subject to the provisions of section 68A of the Scottish Charities Act, if the company is a charity at the time) to purchase and maintain for any director insurance against any loss or liability which any director or other officer of the company may sustain or incur in connection with the execution of the duties of their office; and such insurance may (subject to the provisions of section 68A of the Scottish Charities Act, if the company is a charity at the time) extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director). |
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| **Defined terms** |  |
| 1. In these articles of association: |  |
| * 1. “board” means the directors; |  |
| * 1. "charity" means a body which is entered in the Scottish charity register |  |
| * 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; |  |
| * 1. "Companies Act" means (subject to article 170) the Companies Act 2006; |  |
| * 1. "OSCR" means the Office of the Scottish Charity Regulator; |  |
| * 1. "Scottish Charities Act" means (subject to article 1700) the Charities and Trustee Investment (Scotland) Act 2005. |  |
| 1. References in these articles to any 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. |  |