**UPDATED MODEL 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 association.

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 association.

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 Voluntary Association Constitution**

**CONSTITUTION**

**of**

**[ ]**

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| **Model constitution** | **Guidance** |
| **GENERAL** |  |
|  |  |
| **Name of association** |  |
|  |  |
| 1. The name of the association is "[insert name]".
 | See comments in [Writing your constitution](https://scvo.scot/support/setting-up/writing-constitution) |
| **Purposes** |  |
| 1. The association's purposes are:
 | See comments about charitable purposes in [About your charity](https://scvo.scot/support/setting-up/about-your-charity) |
| [insert purposes, listed as (a), (b), (c) etc if appropriate] |  |
| **Powers** |  |
| 1. In pursuance of the purposes set out in clause 2 (but not otherwise), the association shall have the following powers:-
 | It is often useful - particularly in a case where the need to obtain charitable status limits the type of wording which can be used in clause 2 - to set out a brief outline in paragraph (a) of the main activities which the association will be carrying on in practice. The remainder of clause 3 sets out a range of powers which will be appropriate for most organisations. The steering group may feel that there is no immediate prospect of certain of the powers being used in practice. Nevertheless it is usually best to keep the full set of powers, rather than delete items from the list, in case the power or powers which seem less relevant are in fact needed at a future date.You should bear in mind that including reference to a particular power does not mean that the association ***has*** to exercise that power in practice e.g. the fact that clause 3 includes a power to accept donations would not in any way force the organisation to accept a donation in the future where the management committee felt that this would be inappropriate for ethical or other reasons. It should be borne in mind that it might be necessary in some cases to add in some further powers to clause 3.  |
| * 1. [insert reference to main activities]
 |
| * 1. To carry on any other activities which further any of the above purposes.
 |
| * 1. To purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the association's activities.
 |
| * 1. To improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the association.
 |
| * 1. To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the association.
 |
| * 1. To borrow money, and to give security in support of any such borrowings by the association.
 |
| * 1. To employ such staff as are considered appropriate for the conduct of the association's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants.
 |
| * 1. To engage such consultants and advisers as are considered appropriate from time to time.
 |
| * 1. To effect insurance of all kinds (which may include officers' liability insurance).
 |
| * 1. To invest any funds which are not immediately required for the association's activities in such investments as may be considered appropriate (and to dispose of, and vary, such investments).
 |
| * 1. To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the association's purposes.
 |
| * 1. To establish and/or support any charity, and to make donations for any charitable purpose falling within the association's purposes.
 |
| * 1. To form any company or Scottish charitable incorporated organisation (SCIO) with similar purposes to those of the association, and, if considered appropriate, to transfer to any such company (but, if the association is a charity at the time, only if that company is a charity) or SCIO (without any payment being required from the company or SCIO) the whole or any part of the association's assets and undertaking.
 |
| * 1. To take such steps as may be deemed appropriate for the purpose of raising funds for the association's activities.
 |
| * 1. To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).
 |
| * 1. To do anything which may be incidental or conducive to the furtherance of any of the association's purposes.
 |
| 1. No part of the income or property of the association may be paid or transferred (directly or indirectly) to the members - either in the course of the association's existence or on dissolution - except where this is done in direct furtherance of the association's 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 third sector body as a non profit distributing organisation. The wording at the end of clause 4 (“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 association, on the basis that they form part of the group whose needs the organisation is intended to address. |
| 1. Clause 4 does not prevent the association making any payment which is permitted under clauses 92 to 96 (remuneration and expenses).
 | Clauses 92 to 96 set out a number of safeguards which are designed to minimise the risk of irregularities arising when remuneration or expenses are paid to management committee members or members. Clause 5 makes it clear that, providing these safeguards are met, clause 4 will not stand in the way of any such arrangement. |
| **General structure** |  |
| 1. The structure of the association consists of:
 | This is really only intended as general guidance, to help people understand the distinction between the members and the management committee. The references here to what the members and the management committee deal with are not meant to cover the full range of responsibilities; they are examples only.  |
| * 1. the MEMBERS - who have the right to participate in the annual general meeting (and any special general meeting) and have important powers under the constitution; for example, the members elect people to serve on the management committee and take decisions in relation to changes to the constitution itself;
 |  |
| * 1. the MANAGEMENT COMMITTEE - who hold regular meetings during the period between annual general meetings, and generally control the activities of the association; for example, the management committee is responsible for monitoring and controlling the financial position of the association.
 |  |
|  |  |
| **MEMBERS** |  |
| **Qualifications for membership** |  |
| 1. Membership shall be 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 association are not eligible for membership; and a person who becomes an employee of the association after admission to membership will automatically cease to be a member.
 | This prohibition on employees being members of the association is usual in the context of voluntary sector bodies. If it is important for you that employees should be included within the membership, then that could be provided for - as long as the wording makes it clear that non-employees must always make up the majority of the membership. If you do modify this clause to allow employees of the association to become members, though, that could affect eligibility for funding, as regards certain potential grant funders.  |
| **Application for membership** |  |
| 1. Any person who wishes to become a member must submit an application for membership (in writing or by email); the application for membership will then be considered by the management committee at its next management committee meeting.
 | It is important, having regard to the legal principles, 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 management committee may, at its discretion, refuse to admit any person to membership.
 | See also comments in [Decision making and governance in your organisation](https://scvo.scot/support/setting-up/decision-making) |
| 1. The management committee must notify each applicant promptly (in writing or by email) of its decision on whether or not to admit them to membership.
 |  |
| **Membership subscription** |  |
| 1. No membership subscription 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 association –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 association 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 clauses 17 to 19 of the model. Clauses 17 to 19 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 constitution. |
| **Register of members** |  |
| 1. The management committee must maintain 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 need to maintain a proper register of members. It will be much easier to send out the notices of the AGM etc if there is an organised list. The register can be kept on a computer, rather than on paper, providing back-ups are kept.It should be noted that if you are holding more than basic name and address information about members - or if sensitive data about members can be inferred from their membership (eg having a particular medical condition or religious affiliation) - you may need to obtain specific permission from each member to process the data. For more information about the provisions of the Data Protection Act 1988, you should visit the website of the [Information Commissioners Office](https://ico.org.uk/) (ICO). |
| 1. If a member or management committee member requests a copy of the register of members, the management committee must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a member (where they are not a member of the management committee), the management committee may provide a copy which has the addresses blanked out.
 |  |
| **Withdrawal from membership** |  |
| 1. Any person who wants to withdraw from membership must submit a notice of withdrawal to the association (either in writing or by email); they will cease to be a member as from the time when the notice is received by the association.
 | The notice withdrawing from membership can be kept simple eg “I wish to withdraw from membership…”. |
| **Transfer of membership** |  |
| 1. Membership of the association may not be transferred by a member.
 | This reflects standard practice in the context of membership organisations in the third sector. |
|  |  |
| **Re-registration of members** |  |
| 1. The management committee 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 association, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the management committee.
 | If provision for a membership subscription is introduced (see comments on article 12), the provisions of clauses 17 to 19 should be deleted. |
| 1. If a member fails to provide confirmation to the management committee (in writing or by email) that they wish to remain as a member of the association before the expiry of the 28-day period referred to in clause 17, the management committee may expel them from membership.
 | The use of the word “may” means that the management committee can exercise its discretion - if the management committee feels that there was a good reason why a particular member was unable to respond within the 28-day period, the management committee can decide not to terminate their membership. |
| 1. A notice under clause 17 will not be valid unless it refers specifically to the consequences (under clause 18) of failing to provide confirmation within the 28-day period.
 |  |
| **Expulsion from membership** |  |
| 1. Any person may be expelled from membership by way of a resolution passed in compliance with clause 49 (requirement for two thirds majority) at a general meeting (meeting of members), 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 management committee can do itself. That is deliberate – it is intended to address the risk that the management committee 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 association 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. |
|  |  |
| **DECISION-MAKING BY THE MEMBERS** |  |
| **General meetings (meetings of members)** |  |
| 1. The management committee must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year.
 |  |
| 1. The gap between one AGM and the next must not be longer than 15 months.
 |  |
| 1. Notwithstanding clause 22, an AGM does not need to be held during the calendar year in which the association is formed; but the first AGM must still be held within 15 months of the date on which the association is formed.
 | In most cases, it will not be appropriate to have an AGM during the year in which the association is formed; but, if the association 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 management committee can be held, the wording (“does not need…”) would still allow that to happen. |
| 1. The business of each AGM must include:
 |  |
| * 1. a report by the chair on the activities of the association;
 |  |
| * 1. consideration of the annual accounts of the association;
 |  |
| * 1. the election/re-election of members of the management committee, as referred to in clauses 71 to 74.
 |  |
| 1. The management committee may arrange a special general meeting at any time.
 |  |
| **Power to request the management committee to arrange a special general meeting** |  |
| 1. The management committee must arrange a special general meeting if they are requested to do so by a notice (in writing or by email) by members who amount to 5% or more of the total membership of the association at the time, providing:
 | In almost every case, the decision to convene a special general meeting will be made by the management committee e.g. in a situation where the management committee feels that a change to the constitution should be made, and that it would be better to do this at a special general meeting rather waiting to deal with it at the next AGM. Clause 27 provides a procedure under which members can force the management committee to convene a special general meeting. As a matter of practice it is extremely rare for that to happen – the board would normally be expected to be responsive to any widely-held view among the membership that a particular matter should be debated at a general meeting, rather than this having to be the subject of a formal requisition.  |
| * 1. the notice states the purposes for which the meeting is to be held; and
 |
| * 1. those purposes are not inconsistent with the terms of this constitution, the Scottish Charities Act (where the association is a charity at the time), or any other statutory provision.
 |
| 1. A notice under clause 27 may take the form of:
 | The reference to “two or more documents…” is intended to cover the possibility that rather than having everyone sign a single piece of paper (ie with a long list of names and signatures), each person might sign their own copy of the notice. Similarly, the notice can be in the form of separate emails from the various members who are making the request. |
| * 1. two or more documents in the same terms, each signed by one or more members; and/or
 |  |
| * 1. a number of emails, each issued by a member;
 |  |
| and the board will be taken to have received the notice on the date on which they receive sufficient documents and/or emails to equal or exceed the 5% threshold referred to in clause 27. |  |
| 1. If the management committee receive a notice under clause 27, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.
 |  |
| **Notice of general meetings** |  |
| 1. At least 14 clear days' notice must be given of any AGM or any special general meeting.
 |  |
| 1. The notice calling a general meeting must specify in general terms what business is to be dealt with at the meeting; and
 |  |
| * 1. in the case of any resolution falling within clause 49 (requirement for two-thirds majority) must set out the exact terms of the resolution; and
 |  |
| * 1. in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s).
 |  |
| 1. The reference to "clear days" in clause 30 shall be taken to mean that, in calculating the period of notice:
 |  |
| * 1. the day after the notice is posted (or sent by e-mail) should be excluded; and
 |  |
| * 1. the day of the meeting should also be excluded.
 |  |
| 1. Notice of every general meeting must be given to all the members of the association, and to all the members of the management committee; but the accidental omission to give notice to one or more members or management committee members will not invalidate the proceedings at the meeting.
 |  |
| 1. Any notice which requires to be given to a member under this constitution must be:
 |  |
| * 1. sent by post to the member, at the address last notified by them to the association; or
 |  |
| * 1. sent by e-mail to the member, at the email address last notified by them to the association.
 |  |
| 1. If members of the association and management committee members are to be permitted to participate in a general meeting by way of audio and/or audio-visual link(s) (see clause 38), 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:
 |  |
| * + 1. participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
 |  |
| * + 1. [appointing the chairperson of the meeting as proxy, and directing the chairperson on how they should use that proxy vote in relation to each resolution to be proposed at the meeting];
 | This paragraph (ii) should be removed if the constitution does not allow proxy voting. |
| * + 1. (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;
 |  |
| * + 1. [(where clause 36 applies) submitting questions and/or comments in advance of the meeting]
 | This paragraph (iv) should be removed if clauses 36 and 37 are not included |
| 1. [Where a general meeting is to involve participation solely via audio and/or audio-visual link(s), the notice (or notes accompanying the notice) must include a statement inviting members to submit questions and/or comments in advance of the meeting, which (subject to clause 37) 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 clause is, however, optional - and can be removed if preferred. On the other hand, it may be felt that a similar approach should be taken in relation to a meeting where only some people are participating remotely (and perhaps going further, to include meetings where there is no remote participation). The wording can be adjusted to reflect any of these approaches. |
| 1. [Where clause 36 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.]
 | This clause should be removed if clause 36 is not included. |
| **Procedure at general meetings** |  |
| 1. The management committee may if they consider appropriate (and must, if required under clause 39) make arrangements for members and management committee members 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 management committee members can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all or a significant proportion of the membership - a barrier to participation;
 | The wording here requires the management committee 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 general meetings. |
| * 1. the notice calling the meeting (or notes accompanying the notice) contains the information required under clause 35; and
 |  |
| * 1. the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and management committee members 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 management committee members (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 management committee must make arrangements for members and management committee members 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 clause 38 will apply.
 | In line with principles of democratic participation by the members, this wording puts the management committee 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 general meeting due to public health restrictions (or where attendance would be inadvisable). |
| 1. A general meeting may involve two or more members or management committee members participating via attendance in person while other members and/or management committee members 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 general meeting can consist solely of people participating via Zoom (or equivalent) ie there is no need for two or more members or management committee members to be present in one place. |
| 1. [References in clauses 35 to 40 to members should be taken to include proxies for members and authorised representatives of members which are corporate bodies.]
 | This clause should be removed if the constitution does not allow for proxies or membership by corporate bodies (or this clause should be amended if only one of those is allowed for under your constitution).  |
| 1. The quorum for a general meeting is [ ] members, present in person.
 | 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 in fact 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 clause 42 relates only to the quorum for ***general*** meetings (ie meetings of members); the quorum for ***management committee meetings*** is to be specified in clause 102. It would be possible to allow for proxy voting at general meetings; that has an impact on how the quorum provision is worded. The increasing use of remote participation is also relevant in considering what quorum to fix – there may be more people willing to join a meeting from their laptop or personal computer than would attend in person (particularly where the membership is spread over a wide geographical area). |
| 1. An individual participating in a general meeting via an audio or audio-visual link which allows them to hear and participate in discussions at the meeting will be deemed to be present in person (or, if they are not a member [or the authorised representative of a member which is a corporate body]), will be deemed to be in attendance) at the meeting.
 | The reference to authorised representative should be removed if the constitution does not allow for membership by corporate bodies. |
| 1. If a quorum is not present within 15 minutes after the time at which a general meeting was due to start - or if a quorum ceases to be present during a general meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
 | Fifteen minutes is generally seen as an appropriate length of time to wait for a quorum if the numbers are not high enough at the time when a 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 association should act as chairperson of each general meeting.
 |  |
| 1. If the chair of the association 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 members of the management committee present at the meeting must elect from among themselves the person who will act as chairperson of that meeting.
 | If the association is to have a vice-chair, it would be possible for the provisions here to be extended so as to refer specifically to the vice-chair taking the role of chairperson if the chair of the association 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 clause 44, a longer or shorter period could be substituted (see comments on clause 44). |
|  |  |
| **Voting at general meetings** |  |
| 1. Every member has one vote, which must be given personally (subject to clause 52).
 | Clause 52 makes it clear that members can be allowed to cast their vote remotely – so there is a reference here to clause 52, to ensure that use of the word “personally” in clause 47 does not cause uncertainty on that issue. |
| 1. All decisions at general meetings will be made by majority vote - with the exception of the types of resolution listed in clause 49.
 |  |
| 1. The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a general meeting (or if passed by way of a resolution agreed to in writing or by email under clause 57):
 |  |
| * 1. a resolution amending the constitution;
 |  |
| * 1. a resolution expelling a person from membership under clause 20;
 |  |
| * 1. a resolution removing a person from office as a management committee member under paragraph (i) of clause77;
 |  |
| * 1. a resolution directing the management committee to take any particular step (or directing the management committee not to take any particular step) under clause 87;
 |  |
| * 1. a resolution for the dissolution of the association.
 |  |
| 1. If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
 | It is possible to provide specifically that the chairperson will ***not*** have a casting vote, if that is preferred – but for voluntary associations and SCIOs (technical difficulties apply in the case of companies), it is much more common for the chairperson of a general meeting to have a casting vote. It should be borne in mind that many types of resolution (see clause 49) require a two-thirds majority in any event – where the issue of a chairperson’s casting vote would not come into play. |
| 1. A resolution put to the vote at a general meeting will be decided on a show of hands unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot.
 |  |
| 1. Where members are participating in a meeting via an audio or audio-visual link, they may cast their votes on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically - and providing the management committee have no reasonable grounds for suspicion as regards authenticity, any such action shall be deemed to be a vote cast personally via a show of hands.
 | This wording gives flexibility on how votes can be cast where members are participating remotely. |
| 1. The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.
 |  |
| 1. Where members are participating in a meeting via audio and/or audio-visual links, the chairperson's directions regarding how a secret ballot is to be conducted may allow those members to cast their votes on the secret ballot via any or all of the methods referred to in clause 52, providing reasonable steps are taken to preserve anonymity (while at the same time, addressing any risk of irregularities in the process).
 | Again, the wording provides some flexibility in the context of remote participation – but care should be taken to devise a process which minimises the risk of members casting more than one vote while at the same time ensuring that the principle of anonymity is respected. |
| 1. [The principles set out in clauses 52 and 54 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.]
 | This clause should be removed if the constitution does not allow for proxies or membership by corporate bodies (or this clause should be amended if only one of those is allowed for under the constitution).  |
| **Technical objections to remote participation in general meetings**  |  |
| 1. This constitution imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at general meetings; providing the arrangements made by the management committee in relation to a given general meeting (and the manner in which the meeting is conducted) are consistent with those requirements:
 | The wording in clause 56 closely follows the wording that was used in the emergency legislation to cover companies and SCIOs (now no longer in force). While provisions within a constitution can never create the same degree of certainty in excluding technical challenges of this nature – as compared with wording in legislation – it is nevertheless useful to include this wording to minimise the risk of challenge. |
| * 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 management committee) and which permits that member's vote to be taken into account in determining whether or not a resolution is passed.
 |  |
| **Written resolutions by members** |  |
| 1. A resolution agreed to in writing (or by e-mail) by the required majority (see clause 59) 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 clauses 60 and 61) 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 provisions of clauses 57 to 59 broadly reflect the provisions governing written resolutions by members contained in the Companies Act (which apply only to companies). |
| 1. A copy of any proposed resolution under clause 57 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 how to 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 clause 60).
 |  |
| 1. For the purposes of clauses 57 and 60, "required majority" means:
 |  |
| * 1. in the case of a resolution of the nature referred to in clause 49 (requirement for two thirds majority) – two thirds or more;
 |  |
| * 1. in the case of any other resolution - more than half;
 |  |
| and on the basis that (if all members have voting rights) these proportions are to be applied to the total membership of the association at the time. |  |
| 1. In order for a resolution to be valid under clause 57, it must be agreed to by the required majority of the members within 28 days after it is circulated.
 |  |
| 1. A resolution to remove a management committee member cannot be dealt with via a resolution agreed to in writing or by email under clause 57.
 |  |
| **Minutes** |  |
| 1. The management committee 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 clauses 57 to 61.
 |  |
| 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 clause 62 must include confirmation that all members agreed to the resolution; and should be signed by the chair of the organisation.
 |  |
| 1. [The management committee shall make available copies of the minutes, and records of resolutions, referred to in clause 62 to any member of the public requesting them; but on the basis that the management committee may exclude confidential material to the extent permitted under clause 126.]
 | The (optional) wording here is included in the model to meet the needs of those associations who want to lay a strong emphasis on transparency and openness. Clause 65 can, however, be omitted (even if the association is to be a Scottish charity); there is no requirement under the Scottish Charities Act or other legislation for minutes of members’ meetings (or records of written resolutions) to be made available to the public on request. |
|  |  |
| **MANAGEMENT COMMITTEE** |  |
| **Number of management committee members** |  |
| 1. The maximum number of management committee members is [ ]; out of that:
 | See comments in [Decision making and governance at your charity](https://scvo.scot/support/setting-up/decision-making)   |
| * 1. no more than [ ] shall be management committee members who were elected/appointed under clauses 71 to 74 (the initial management committee members being deemed to fall within this category); and
 |  |
| * 1. no more than [ ] shall be management committee members who were co-opted under the provisions of clauses 75 and 76.
 |  |
| 1. The minimum number of management committee members is […] [must not be less than 3].
 |  |
| **Eligibility** |  |
| 1. A person shall not be eligible for election/appointment to the management committee under clauses 71 to 74 unless they are a member of the association; a person appointed to the management committee under clauses 75 and 76 need not, however, be a member of the association.
 |  |
| 1. A person will not be eligible for election or appointment to the management committee if they are:
 | As regards paragraph (b) of clause 69, 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 management committee members. It should be noted, however, that - even if the association is to be a charity - OSCR would be prepared to accept an employee (eg. chief executive or equivalent) serving on the management committee, providing it is clear that this is in the best interests of the charity (outweighing any private benefit to the person concerned) and that the legal requirements in relation to remuneration of charity trustees laid down by the Scottish Charities Act are observed. In the context of an application for 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 management committee member 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 management committee or board. |
| * 1. disqualified from being a charity trustee under the Scottish Charities Act (even if the association is not a charity at the time); or
 |
| * 1. an employee of the association.
 |  |
| **Initial management committee members** |  |
| 1. The individuals who are the initial management committee members (as referred to in clause 143) shall be deemed to have been appointed under clauses 71 to 74 with effect from the date of adoption of this constitution.
 |  |
| **Election, retiral, re-election**  |  |
| 1. At each AGM, the members may elect any member (subject to clause 66, and providing they are not debarred under clause 69) to be a management committee member.
 | So far as the mechanics of the election process are concerned, the template envisages that at each AGM there will be some management committee members standing for re-election and some new candidates – and (assuming that amounts in total to more than the number of spaces available at management committee level) there will be some form of election to determine which of them will serve as management committee members as from the end of the AGM. That reflects the principle of the management committee being democratically accountable to the membership – and that is an important aspect of governance, even if in practice the election/re-election process may seem to be no more than a formality. Where the number of those 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 management committee 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 management committee may at any time appoint any member (subject to clause 66, and providing they are not debarred under clause 69) to be a management committee member.
 |  |
| 1. At each AGM, all of the management committee members elected/appointed under clauses 71 and 72 (and, in the case of the first AGM, including the initial management committee members) shall retire from office - but shall then be eligible for re-election under clause 71.
 | The basic template requires all of the management committee members 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 management committee 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 management committee 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 management committee member 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 management committee level. Against that, there may be some communities where the pool of people willing to serve on the management committee is small and/or it may cause difficulties for the association if someone with strong skills and depth of experience is no longer permitted to serve on the management committee on the basis that they have reached the limit. |
| 1. A management committee member retiring at an AGM will be deemed to have been re-elected unless:
 | Clause 74 is there to address a situation where the need to ensure that a retiring management committee member 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 management committee member is retiring. |
| * 1. they advise the management committee prior to the conclusion of the AGM that they do not wish to be re-appointed as a management committee member; or
 |  |
| * 1. an election process was held at the AGM and they were not among those elected/re-elected through that process.
 |  |
| **Appointment/re-appointment of co-opted management committee members** |  |
| 1. In addition to their powers under clause 72, the management committee may at any time appoint any non-member of the association to be a management committee member (subject to clause 66, and providing they are not debarred under clause 69) either on the basis that they have been nominated by [insert name of body or bodies or simply state "a body with which the association 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 management committee.
 | The appointment by the management committee of management committee members under clauses 75 and 76 is based primarily on the benefits of topping-up the range of skills represented on the management committee, 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 management committee 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 management committee deliberately circumvented the will of the membership at the AGM, by appointing – at a management committee meeting just after the AGM – a person who had gained very little support from the membership in the election process. For that reason, the wording in the template allows only ***non***-***members*** to be appointed under this category of management committee members. One solution in exceptional cases would be for the person concerned to withdraw from membership so that they could be eligible for appointment within this category – but if it is felt that the restriction to non-members should be removed entirely, that adjustment can certainly be made. |
| 1. At each AGM, all of the management committee members appointed under clause 75 shall retire from office - but shall then be eligible for re-appointment by the management committee (after the AGM) under that clause.
 | 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.  |
| **Termination of office** |  |
| 1. A member of the management committee will automatically cease to hold office if:
 | The period in paragraph (c) could be adjusted to refer to a longer or shorter period if preferred. 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 management committee 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 management committee member 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 management committee member; and if they failed to do so, the other management committee members would be under a legal duty (see comments below on paragraph (h)) to remove them from office as a management committee member.As regards paragraph (h), it should be noted – if the association is to be a charity - that the Scottish Charities Act lays a specific legal duty on charity trustees (in this case, the members of the management committee) to exercise their powers to remove a charity trustee where that charity trustee has been in serious or persistent breach of their duties under the Scottish Charities Act. |
| * 1. they become disqualified from being a charity trustee under the Scottish Charites Act (even if the association is not a charity at the time);
 |
| * 1. they become incapable for medical reasons of carrying out their duties as a member of the management committee - but only if that has continued (or is expected to continue) for a period of more than six months;
 |
| * 1. (in the case of a management committee member elected/appointed under clauses 71 to 74, or any of the initial management committee members) they cease to be a member of the association;
 |
| * 1. they become an employee of the association;
 |
| * 1. they give the association a notice of resignation (either in writing or by email);
 |
| * 1. they are absent (without good reason, in the opinion of the management committee) from more than three consecutive meetings of the management committee - but only if the management committee resolve to remove them from office;
 |
| * 1. they are removed from office by resolution of the management committee on the grounds that they are considered to have committed a serious breach of the code of conduct for management committee members (as referred to in clause 97);
 |
| * 1. (if the association is a charity at the time) they are removed from office by resolution of the management committee on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Scottish Charities Act; or
 |
| * 1. they are removed from office by a resolution of the members passed at a general meeting.
 |
| 1. A resolution under paragraph (g), (h) or (i) of clause 77 shall be valid only if:
 |  |
| * 1. the management committee member concerned is given reasonable prior written notice (in writing or by email) of the grounds upon which the resolution for their removal is to be proposed;
 |  |
| * 1. the management committee member concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
 |  |
| * 1. (in the case of a resolution under paragraph (g) or (h)) at least two thirds (to the nearest round number) of the management committee members then in office vote in favour of the resolution; and
 | The threshold is deliberately set as two thirds of the management committee members in office (ie taking account of the total number of management committee members, not just those attending the management committee 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 management committee member threatened with removal is actually the person who has uncovered wrongdoing by others on the management committee. |
| * 1. (in the case of a resolution under paragraph (i)) at least two thirds (to the nearest round number) of the votes cast in relation to the resolution were in favour of the resolution.
 |  |
|  |  |
| **Register of management committee members** |  |
| 1. The management committee must keep a register of management committee members, setting out the full name and address of each member of the management committee, the date on which each such person became a management committee member, and the date on which any person ceased to hold office as a management committee member.
 |  |
| 1. If any person requests a copy of the register of management committee members, the management committee must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a management committee member, the management committee may provide a copy which has the addresses blanked out - if the association is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.
 |  |
| **Office-bearers** |  |
| 1. The management committee members must elect (from among themselves) a chair, a treasurer and a secretary.
 | Different names could be used here for the office-bearers – but the model deliberately avoids use of “chairperson” to refer to the holder of the ***office*** - to reduce the risk of confusion in the context of provisions elsewhere within the constitution which use “chairperson” to refer to the person who is actually chairing a given meeting ie this could be a person who had taken on the role of chairperson just for that meeting, in the absence of the person holding the office of chair.It would be possible to omit the reference to a treasurer -although a few funders may expect to see a treasurer within the office-bearers, as one indicator that the management committee recognises its responsibilities regarding financial oversight.As regards the reference to secretary, there is no requirement under legislation (even if the association is a charity) to have a secretary – but identifying a specific management committee member with responsibility for carrying out this role is generally seen as helpful in the context of third sector organisations from the point of view of supporting good governance. It should also be noted that various provisions within the template assume that there will be a secretary – so those provisions would have to be amended if the decision is taken not to have a secretary. Another possibility – again, this would require some amendments to the wording – would be to allow for someone who was not a management committee member to be the secretary of the association. |
| 1. In addition to the office-bearers required under clause 81, the management committee members 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 management committee (after the AGM) under clause 81 or 82.
 | 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 similar limit on the period in office as a management committee member – see comments on clause 73). 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 may be limited. |
| 1. A person elected to any office will automatically cease to hold that office:
 |  |
| * 1. if they cease to be a member of the management committee; or
 |  |
| * 1. if they give to the association a notice of resignation from that office (either in writing or by email).
 |  |
| **Powers of management committee** |  |
| 1. Except where this constitution states otherwise:
 |  |
| * 1. the association (and its assets and undertaking) will be managed by the management committee; and
 |  |
| * 1. the management committee may exercise all the powers of the association.
 |  |
| 1. A meeting of the management committee at which a quorum is present may exercise all powers exercisable by the management committee.
 |  |
| 1. The members may, by way of a resolution passed in compliance with clause 49 (requirement for two thirds majority), direct the management committee to take any particular step or direct the management committee not to take any particular step; and the management committee shall give effect to any such direction accordingly.
 | As a matter of practice, it is extremely rare for the members to make use of the power under clause 87 to issue a direction to the management committee. Nevertheless, the inclusion of the clause is important - emphasising that the membership has ultimate control in relation to the association. It can also be a useful mechanism for ensuring that the management committee 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 association) in the context of a proposal which involves transfer (for nil payment) of the association’s assets and activities to another organisation. |
| **Management committee members - general duties** |  |
| 1. Each of the management committee members has a duty, in exercising functions as a management committee member, to act in the interests of the association; and, in particular, must:
 | The provisions within clause 88 are included as a general guide to the duties which apply under charities legislation where the association has charitable status. It would be possible to omit (or modify) the provisions within clause 88 if the association 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 organisation – the same standards should apply even where the association is not a charity. |
| * 1. seek, in good faith, to ensure that the association acts in a manner which is in accordance with its purposes;
 |  |
| * 1. act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 |  |
| * 1. in circumstances giving rise to the possibility of a conflict of interest between the association and any other party:
 |  |
| * + 1. put the interests of the association before that of the other party; or
 |  |
| * + 1. where any other duty prevents them from doing so, disclose the conflicting interest to the association and refrain from participating in any deliberation or decision of the other management committee members with regard to the matter in question;
 |  |
| * 1. (if the association is a charity at the time) ensure that the association complies with any direction, requirement, notice or duty imposed under or by virtue of the Scottish Charities Act.
 |  |
| 1. In addition to the duties outlined in clause 88, all of the management committee members must take such steps as are reasonably practicable for the purpose of ensuring:
 |  |
| * 1. that any breach of any of those duties by a management committee member is corrected by the management committee member concerned and not repeated; and
 |  |
| * 1. that any management committee member who has been in serious or persistent breach of those duties is removed as a management committee member.
 |  |
| **Conflicts of interest involving management committee members - general** |  |
| 1. The management committee must use every effort to ensure that conflicts of interest involving management committee members (including those which relate to individuals or bodies connected with management committee members) are identified at the earliest opportunity and appropriately managed; the following provisions of this constitution are of particular relevance:
 | There are a number of strands to conflict of interest – and clause 90 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 if the association is to have charitable status, given the importance which OSCR attaches to these issues); and secondly to signpost the key provisions within the constitution which address the various aspects of conflict-of-interest that need to be tackled.The requirements imposed by clause 91 reflect generally-accepted principles of best practice in governance – and, for an association with charitable status, also help to remind the management committee of OSCR’s expectations in this regard. |
| * 1. clauses 91 and 94 require management committee members to declare any personal interest which they may have in any transaction or other arrangement with the association;
 |
| * 1. clause 115 prohibits a management committee member with a personal interest in a proposed arrangement from voting on the question of whether the association should enter into that arrangement;
 |
| * 1. clause 93 (reflecting similar provisions contained in the Scottish Charities Act) sets out restrictions and conditions for any arrangement under which remuneration would be paid to a management committee member (or where the management committee member might benefit from remuneration paid to a connected party).
 |
| 1. In addition to complying with the provisions referred to in clause 90:
 |
| * 1. the management committee must maintain a register of management committee members' interests;
 |
| * 1. the chairperson of each management committee meeting must invite declarations of interest, shortly after the start of the meeting;
 |
| * 1. the minutes of each management committee meeting must record any conflicts of interest which have been declared at the meeting, and must set out in detail how any such conflicts of interest have been managed.
 |
| **Remuneration and expenses** |  |
| 1. No management committee member may serve as an employee (full time or part time) of the association; and no management committee member may be given any remuneration by the association for carrying out their duties as a management committee member.
 | This should be adjusted if the constitution will permit an employee to serve on the management committee (though this would be unusual – see comments on clause 69). Where the chief executive (or equivalent) is to serve on the management committee, the amendments are covered in the relevant bolt-on provisions.  |
| 1. Where a management committee member provides services to the association or might benefit from any remuneration paid to a connected party for such services:
 | Clause 93 provides a summary of the requirements imposed by the Scottish Charities Act in this situation, where the association has charitable status. If the association 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 an association which does not have charitable status, they reflect what would normally be considered good practice in a third sector context – and are included in the model for that reason. |
| * 1. the maximum amount of the remuneration must be specified in a written agreement and must be reasonable;
 |  |
| * 1. the management committee must be satisfied that it would be in the interests of the association to enter into the arrangement (taking account of that maximum amount); and
 |  |
| * 1. less than half of the management committee members must be receiving remuneration from the association (or benefit from remuneration of that nature).
 |  |
| 1. Provided they have declared their interest - and have not voted on the question of whether or not the association should enter into the arrangement - a management committee member will not be debarred from entering into an arrangement with the association in which they have a personal interest where that is not prohibited by clause 92 or 93; and (subject to clause 93 and – if the association is a charity at the time – subject to the provisions relating to remuneration for services contained in the Scottish Charities Act), they may retain any personal benefit which arises from that arrangement.
 |  |
| 1. The association may also enter into an arrangement with a member who is not a management committee member (or with a person or body connected with a member who is not a management committee member) under which that member (or the connected person or body) receives payment for goods or services provided by them to the association, but only if:
 | The Scottish Charities Act does not directly address arrangements where payment is made to a member (or a person or body connected with a member) for goods or services(as distinct from paying remuneration to a charity trustee for services – see comments on clause 93) – but given the potential for abuse (and, in the context of an association with charitable status, OSCR’s expectations regarding how this should be approached in practice), clause 95 provides some safeguards to cover that situation (and similarly for any loan or lease arrangement with a member). As with clause 93, these safeguards are in line with what would be considered good practice for any third sector organisation (irrespective of whether it has charitable status). |
| * 1. the terms and conditions (including the amount of the payment(s)) are at least as good (from the association'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 management committee members are satisfied, after careful consideration, that the arrangement is in the best interests of the association;
 |  |
| 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 association or makes a loan to the association. |  |
| 1. The management committee members may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.
 | As a matter of best practice, the management committee should put in place a written policy on expenses, to minimise the risk of abuse or irregularities. |
| **Code of conduct for management committee members** |  |
| 1. Each of the management committee members shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the management committee from time to time.
 | The reference to complying with a code of conduct is in line with principles of best practice in governance. |
| 1. The code of conduct referred to in clause 97 shall be supplemental to the provisions relating to the conduct of management committee members contained in this constitution and (if the association is a charity at the time) the duties imposed on charity trustees under the Scottish Charities Act; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.
 |  |
|  |  |
| **DECISION-MAKING BY THE MANAGEMENT COMMITTEE MEMBERS** |  |
| **Notice of management committee meetings** |  |
| 1. Any management committee member may call a meeting of the management committee or may ask the secretary to call a meeting of the management committee.
 | The ability under clause 99 for any one management committee member to call a management committee meeting reflects the fact that each and every management committee member has legal responsibilities – and that in turn suggests that it is reasonable that any one management committee member should have the right to call a management committee meeting if they discover a serious matter of concern which they feel should be considered by the management committee as a whole. Having said that, if it is felt that allowing a single management committee member to call a management committee meeting could cause unnecessary disruption in practice, the wording could be amended so as to refer to two (or perhaps three) management committee members. |
| 1. At least 7 days' notice must be given of each management committee meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.
 |  |
| 1. If management committee members are to be permitted to participate in a management committee meeting by way of audio and/or audio-visual link(s), the management committee members 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 management committee members who may have difficulties in using a computer or laptop for this purpose) the management committee members' attention should be drawn to the following options:
 | Clause 101 contains provisions similar to those applying to members’ meetings – see comments on clause 35. |
| * 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 management committee meetings** |  |
| 1. No valid decisions can be taken at a management committee meeting unless a quorum is present; the quorum for management committee meetings is [ ] management committee members, present in person.
 | A figure has to be stated as the quorum for meetings of the management committee. As with the quorum for members’ meetings, a balance has to be struck between the objective of ensuring that decisions are not being taken by a very small number of people on the one hand; and, on the other hand, not paralysing the association 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 management committee members. Importantly, though, it should also be reviewed against people’s expectations with regard to how many of the places on the management committee 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 management committee members 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 management committee members, which is to apply even if the “majority of the management committee members in office” formulation would give a lower figure for the quorum – to ensure that management committee decisions are not taken by one or two management committee members if the number of management committee members drops to a low level. Certainly, if the constitution envisages that there may be fifteen management committee members in office, it sends a poor message regarding the anticipated level of commitment by management committee members (having regard to their legal duties) if the quorum is set at something like three management committee members. |
| 1. An individual participating in a management committee 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 management committee member, will be deemed to be in attendance) at the meeting.
 |  |
| 1. If at any time the number of management committee members in office falls below the number stated as the quorum in clause 102, the remaining management committee member(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 clause 104 will have to be adjusted slightly, if the quorum is expressed only as a proportion of the management committee members in office at the time – see comments on clause 102. |
| 1. The chair of the association should act as chairperson of each management committee meeting.
 | See comments on clause 46, regarding possible amendments if the constitution allows for a vice chair. |
| 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 management committee members present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
 |  |
| 1. Every management committee member has one vote, which must be given personally (subject to clause 113).
 | The reference to clause 113 is there just to ensure that the use of the word “personally” does not mislead people into thinking that people participating remotely cannot vote. |
| 1. All decisions at management committee 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 that the chairperson of the meeting would **not** have a casting vote. |
| 1. The management committee may if they consider appropriate (and must, if this is required under clause 111), allow management committee members to participate in management committee meetings by way of an audio and/or audio-visual link or links which allow them to hear and contribute to discussions at the meeting, providing:
 |  |
| * 1. the means by which management committee members can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a significant proportion, of the management committee members - a barrier to participation; and
 |  |
| * 1. the manner in which the meeting is conducted ensures, so far as reasonably possible, that those management committee members 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 management committee members (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 management committee meeting would not be possible or advisable for one or more of the management committee members, the management committee must make arrangements for management committee members to participate in that management committee meeting by way of audio and/or audio-visual link(s); and on the basis that:
 | The obligations on the board imposed by clause 111 are slightly stronger than the similar obligations relating to general meetings (ie members’ meetings) – reflecting the importance of allowing all management committee members the opportunity to participate in management committee meetings. |
| * 1. the requirements set out in paragraphs (a) and (b) of clause 110 will apply; and
 |  |
| * 1. the management committee must use all reasonable endeavours to ensure that all management committee members have access to one or more means by which they may hear and contribute to discussions at the meeting.
 |  |
| 1. A management committee meeting may involve two or more management committee members participating via attendance in person while other management committee members participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
 | See comments on clause 40. |
| 1. Where a management committee member or management committee members are participating in a management committee 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 management committee 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 management committee meeting notwithstanding that they are not a management committee member - but on the basis that they must not participate in decision-making.
 |  |
| 1. A management committee member must not vote at a management committee meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the association; they must withdraw from the meeting while an item of that nature is being dealt with.
 |  |
| 1. For the purposes of clause 115:
 |  |
| * 1. an interest held by an individual who is “connected” with the management committee member 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 management committee member (even if the association is not a charity at the time);
 |  |
| * 1. a management committee member will (subject to clause 117) 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 association has an interest in a particular matter which is to be considered by the management committee, a management committee member 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 an association has a subsidiary (the most likely situation is where the parent association is a charity and 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 management committee of the association. This clause makes it clear that the normal conflict of interest rules (see in particular paragraph (b) of clause 116) will not prevent someone in that position from voting at management committee meetings on matters in which the subsidiary has an interest – unless of course there is some other reason why they have a conflict of interest). |
| **Technical objections to remote participation** |  |
| 1. The principles set out in clause 56 (technical objections to remote participation) shall apply in relation to remote participation and voting at management committee meetings, as if each reference in that clause to a member were a reference to a management committee member and each reference in that clause to a general meeting were a reference to a management committee meeting.
 |  |
| **Management committee resolutions agreed in writing or by email** |  |
| 1. A resolution agreed to in writing (or by email) by a majority of the management committee members then in office shall (subject to clauses 120 and 121) be as valid as if duly passed at a management committee meeting.
 | Allowing remote participation in management committee meetings can often resolve practical difficulties (whether related to public health concerns or otherwise) in getting management committee members together in person to take board decisions, but there are still situations where it might be more appropriate and/or efficient to deal with management committee 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); and although there is usually an accompanying explanation, that explanation may not take account of other perspectives on the issue in question. In order to support good governance, therefore, the template includes a mechanism (see clauses 120 and 121) which is designed to ensure that each of the management committee members has an opportunity to require the matter in question to be considered at a management committee meeting – which would allow other options to be presented and differing views to be expressed before a final decision is taken. |
| 1. A resolution under clause 119 shall not be valid unless a copy of the resolution was circulated to all of the management committee members, along with a cut-off time (which must be reasonable in the circumstances) for notifications under clause 121.
 |  |
| 1. If a resolution is circulated to the management committee members under clause 120, any one or more management committee members may, following receipt of a copy of the resolution, notify the secretary that they consider that a management committee 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 management committee meeting accordingly, and on the basis that it will take place as soon as reasonably possible;
 |  |
| * 1. the resolution cannot be treated as valid under clause 119 unless and until that management committee meeting has taken place;
 |  |
| * 1. the management committee may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that management committee 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 management committee members then in office.
 |  |
| **Minutes** |  |
| 1. The management committee must ensure that proper minutes are kept in relation to all management committee 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 management committee members under clause 119.
 |  |
| 1. The minutes to be kept under clause 122 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
 |  |
| 1. The records of resolutions kept under clause 122 must include the names of those management committee members who agreed to the resolution (as well as the names of any management committee members who stated that they disagreed with the resolution); and should be signed by the chair of the association.
 |  |
| 1. [The management committee shall (subject to clause 126) make available copies of the minutes and records of resolutions referred to in clause 122 to any member of the public requesting them.]
 | There is no requirement under the Scottish Charities Act (or any other legislation) to make minutes of management committee meetings available to the public. Clauses 125 and 126 can be omitted if preferred. |
| 1. [The management committee may exclude from any copy minutes, or records of resolutions, made available to a member of the public under clause 125 any material which the management committee 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 association or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.]
 | Clause 126 should be removed if clause 125 is not included in the constitution. |
|  |  |
| **ADMINISTRATION** |  |
| **Delegation to sub-committees** |  |
| 1. The management committee may delegate any of their powers to sub-committees; a sub-committee must include at least one management committee member, but other members of a sub-committee need not be management committee members.
 | It should be borne in mind that although the use of sub-committees can be appropriate in many cases, the management committee retains legal responsibility for exercising overall control and supervision. |
| 1. The management committee may also delegate to the chair of the association (or the holder of any other post) such of their powers as they may consider appropriate.
 |  |
| 1. When delegating powers under clause 127 or 128, the management committee must set out appropriate conditions (which must include an obligation to report regularly to the management committee).
 |  |
| 1. Any delegation of powers under clause 127 or 128 may be revoked or altered by the management committee 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 management committee.
 |  |
| **Operation of accounts** |  |
| 1. The management committee should ensure that the systems of financial control adopted by the association in relation to the operation of the association’s bank accounts (including online banking) reflect the recommendations made from time to time by the association's auditors (or independent examiners) or other external accountants.
 | The provisions of clause 132 provide some flexibility, in allowing for online banking as well as more traditional approaches involving the signing of cheques. The key principle is that the management committee should take on board the recommendations made by the auditors (or independent examiners or other external accountants) regarding the systems of financial control. |
| **Accounting records and annual accounts** |  |
| 1. The management committee must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
 |  |
| 1. The management committee must prepare annual accounts, complying with all relevant statutory requirements; and
 |  |
| * 1. if an audit is required under any statutory provisions (or if the management committee consider that an audit would be appropriate for some other reason), the management committee should ensure that an audit of the accounts is carried out by a qualified auditor;
 |  |
| * 1. if an audit is not carried out, the management committee must ensure that an independent examination of the accounts is carried out by a qualified independent examiner.
 |  |
|  |  |
| **MISCELLANEOUS** |  |
| **Dissolution** |  |
| 1. The members may, by way of a resolution passed in compliance with clause 49 (requirement for two thirds majority), resolve that the association be dissolved.
 |  |
| 1. If a resolution to dissolve the association is passed under clause 135, the management committee shall have power to dispose of any assets held by or on behalf of the association - and any assets remaining after satisfaction of the debts and liabilities of the association shall be transferred to some other body or bodies having purposes similar to those of the association [which is/are a charity or charities at the time][which (in each case, if there are two or more bodies) have a constitution prohibiting the distribution of profits (and of surplus assets on a winding-up) to members].
 | If the association is to have charitable status, the second set of wording in square brackets (ie “[which (in each case, if there are two or more bodies) have a constitution prohibiting the distribution of profits (and of surplus assets on a winding-up) to members]” should be deleted. If, on the other hand, the association is ***not*** to have charitable status, ***either*** the first set of wording in square brackets ***or*** the second set of wording in square brackets should be retained, and the other set deleted.  |
| 1. The identity of the body or bodies to which assets are transferred under clause 136 shall be determined by the members of the association at, or prior to, the time of dissolution.
 |  |
| 1. For the avoidance of doubt, no part of the income or property of the association shall (otherwise than in pursuance of the association’s purposes) be paid or transferred (directly or indirectly) to the members, either in the course of the association’s existence or on dissolution.
 |  |
| **Alterations to the constitution** |  |
| 1. This constitution may (subject to clause 140) be altered by resolution of the members passed at a general meeting (subject to achieving the two thirds majority referred to in clause 49) or by way of a resolution of the members agreed in writing or by email under clause 57.
 |  |
| 1. The Scottish Charities Act prohibits charities from taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR); if the association is a charity at the time, it must obtain OSCR’s consent accordingly, before taking the relevant step.
 |  |
| **Interpretation** |  |
| 1. References in this constitution to the Scottish Charities Act should be taken to include:
 | If the association is not intended to have charitable status, it is possible (depending on what view is taken on certain clauses – see comments above) that the constitution will not in fact include reference to one or more of the expressions defined in clause 142 – in which case, clause 142 (and possibly clause 141) should ideally be amended (or, as the case may be, omitted entirely). |
| * 1. any statutory provision which adds to, modifies or replaces that Act; and
 |
| * 1. any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph (a) above.
 |
| 1. In this constitution:
 |
| * 1. "Scottish Charities Act" means (subject to clause 141) the Charities and Trustee Investment (Scotland) Act 2005;
 |
| * 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.
 |
| **Initial members of the management committee** |  |
| 1. The initial members of the management committee, and the positions held by each, shall be as set out below.
 |  |
|  |  |
|  |  |
|  |  |
| This constitution was adopted on [ ] |  |
|  |  |
| Signature Name Address Position |  |
| [ ] [ ] [ ] [ ]  |  |
| [ ] [ ] [ ] [ ]  |  |
| [ ] [ ] [ ] [ ]  |  |
| [ ] [ ] [ ] [ ] |  |