



**THE COMPANIES ACT 2006**

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

**ARTICLES of ASSOCIATION of  
ELCAP**

(as adopted by special resolution passed on 27 November 2023)

# THE COMPANIES ACT 2006

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

### ARTICLES of ASSOCIATION

of

#### ELCAP

(as adopted by special resolution passed on 27 November 2023)

#### Constitution of the company

1. The model articles of association as prescribed in Schedule 2 to The Companies (Model articles) Regulations 2008 are excluded in respect of the company.

#### Defined terms

2. In these articles of association, unless the context requires otherwise:
  - 2.1. **“Act”** means the Companies Act 2006;
  - 2.2. **“Advisory Council”** has the meaning given to it in article 149;
  - 2.3. **“charity”** means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;
  - 2.4. **“charitable purpose”** means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
  - 2.5. **“conflict of interest”** includes a conflict of interest and duty, and a conflict of duty;
  - 2.6. **“Conflict Situation”** means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);

- 2.7. **“electronic form”** has the meaning given in section 1168 of the Act;
  - 2.8. **“OSCR”** means the Office of the Scottish Charity Regulator;
  - 2.9. **“property”** means any property, heritable or moveable, real or personal, wherever situated;
  - 2.10. **“subsidiary”** has the meaning given in section 1159 of the Act.
3. Any reference to a provision of any legislation (including any statutory instrument) shall include any statutory modification or re-enactment of that provision in force from time to time.

### **Objects**

4. The company's objects are:
- 4.1. to provide relief to those in need by reason of age, ill health, disability or other disadvantage by providing services for people who require care and support in the activities of daily living, together with advice and assistance to others involved in their care;
  - 4.2. to promote and organise co-operation in the achievement of the above purposes and to that end to bring together representatives of statutory authorities and voluntary agencies engaged in the furtherance of any of the above purposes,
- (the **“Objects”**)
5. The Objects are restricted to those set out in article 4 (but subject to article 6).
6. The company may (subject to first obtaining the consent of OSCR) add to, remove or alter the statement of the Objects in article 4; on any occasion when it does so, it must give notice to the registrar of companies and the amendment will not be effective until that notice is registered on the register of companies.

### **Powers**

7. The company has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

### **Restrictions on use of the company's assets**

8. Subject to article 9:
- 8.1. the income and property of the company shall be applied solely towards promoting the Objects;
  - 8.2. no part of the income or property of the company shall be paid or transferred (directly or indirectly) to the members of the company, whether by way of dividend, bonus or otherwise;

- 8.3. no director of the company shall be appointed as a paid employee of the company; no director shall hold any office under the company for which a salary or fee is payable;
  - 8.4. no benefit (whether in money or in kind) shall be given by the company to any director except (i) repayment of out-of-pocket expenses or (ii) reasonable payment in return for particular services (not being of a management nature) actually rendered to the company.
9. The company shall, notwithstanding the provisions of article 8, be entitled:
- 9.1. to pay a rent not exceeding the market rent for premises let to the company by any member of the company;
  - 9.2. to pay a member reasonable payment in return for particular services rendered to the company;
  - 9.3. to make any transfer or payment to a member where such transfer or payment is made in direct furtherance of the Objects.

#### **Liability of members**

10. The liability of the members is limited.
11. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while they are a member or within one year after they cease to be a member, for payments of the debts and liabilities of the company contracted before they cease to be a member and of the costs, charges and expenses of winding-up and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding £1.

#### **Membership**

12. The membership of the company shall (subject to articles 13 to 20) consist of such individuals as are admitted to membership under the articles of association of the company in force from time to time.

#### **Eligibility for membership**

13. Subject to articles 12, 14 and 17 membership shall be open to any individual having an interest in supporting the work of the company.
14. No employee of the company may become a member; a person admitted to membership shall automatically cease to be a member if they become an employee of the company.

#### **Application for membership**

15. Any person who wishes to become a member shall lodge with the company a written application for membership (in such form as the directors require), signed by that person; a person applying for membership shall lodge with the company such information and evidence in support of their application as the directors require.

16. An application for membership must (subject to articles 25 to 27) be accompanied by a remittance for the full amount of the annual membership subscription, where this applies.
17. The directors shall be entitled at their discretion to refuse to admit any individual to membership even if they qualify for membership under article 13 and are not debarred from membership.
18. The directors shall consider each application for membership at the first directors' meeting which is held after receipt of the application (and, if required by the directors, supporting information and evidence) required under article 15.
19. The directors shall, within a reasonable time after the meeting at which an application for membership is considered, notify the applicant in writing of their decision on the application.
20. An individual, once admitted to membership, shall (subject to the provisions of articles 14 and 21) remain a member unless and until they withdraw from membership under article 24.

#### **Termination/transfer**

21. Membership shall cease on death.
22. A member may not transfer their membership to any other person or body.

#### **Register of members**

23. The directors shall 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.

#### **Withdrawal from membership**

24. Any individual who wishes to withdraw from membership shall lodge with the company a written notice of retiral (in such form as the directors require), signed by them; on receipt of the notice by the company they shall cease to be a member.

#### **Membership subscription**

25. The directors may (at their discretion) require each member to pay an annual membership subscription and where they so resolve, each member shall require to pay the annual membership subscription in accordance with articles 26 to 29.
26. The amount of the annual membership subscription shall be such amount(s) as is determined by the board from time to time.
27. Where applicable, the annual membership subscription shall be due on each accounting reference date of the company and shall be taken to cover the period from one accounting reference date to the date falling immediately prior to the next accounting reference date; if any member is admitted during the three month period prior to an accounting reference date, they shall not be required to pay the annual membership subscription until that accounting reference date.

28. The directors shall give to the members at least ten days' notice of each accounting reference date; each notice shall specify the amount of the membership subscription which will be due and shall state the possible consequence (under the following article) of failure to make payment.
29. If the company has not received a member's annual membership subscription within fourteen days after the accounting reference date on which it fell due, the directors may by resolution expel that person from membership; if, however, proper notice under article 28 was not given, a member shall not be liable to be expelled under this article unless they fail to pay the subscription within 24 days after notice requiring payment has been given to them.

#### **Expulsion from membership**

30. Any person may be expelled from membership by special resolution (see article 74) providing the following procedures have been observed:
  - 30.1. 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;
  - 30.2. the member concerned shall be entitled to be heard on the resolution at the general meeting of the members at which the resolution is proposed.

#### **General meetings**

31. The directors shall convene an annual general meeting in each year; not more than 15 months shall elapse between one annual general meeting and the next.
32. The directors must convene a general meeting if there is a valid requisition by members (under section 303 of the Act) or a requisition by a resigning auditor (under section 518 of the Act).
33. Subject to the provision of articles 31 and 32, the directors may convene general meetings whenever they think fit.

#### **Notice of general meetings**

34. At least 14 clear days' notice must be given to all the members and directors, and (if auditors are in office at the time) to the auditors of (a) an annual general meeting or (b) a general meeting at which a special resolution (see article 74) or a resolution requiring special notice under the Act is to be proposed; all other general meetings shall be called by at least 14 clear days' notice.
35. The reference to "clear days" in article 34 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted, and also the day of the meeting, should be excluded.
36. A notice calling a meeting shall specify the time, date and (subject to article 40) place of the meeting; it shall (a) indicate the general nature of any business to be dealt with at the meeting; (b) if a special resolution (see article 74) (or a resolution requiring special notice under the Act) is to be proposed, state that fact, giving the exact terms

of the resolution; and (c) contain a statement informing members of their right to appoint a proxy.

37. A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
38. Notice of every general meeting shall be given:
  - 38.1. in hard copy form;
  - 38.2. (where the individual to which notice is given has notified the company of an address to be used for the purpose of electronic communication) in electronic form; or
  - 38.3. (subject to the company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Act) by means of a website.
39. If members and directors are to be permitted to participate in a general meeting by way of audio and/or audio-visual link(s) (see article 40), the notice (or notes accompanying the notice) must:
  - 39.1. set out details of how to connect and participate via that link or links; and
  - 39.2. (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:
    - 39.2.1. participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
    - 39.2.2. appointing the chairperson of the meeting as proxy, and directing the chairperson on how they should use that/those proxy vote(s) in relation to each resolution to be proposed at the meeting;
    - 39.2.3. (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;
    - 39.2.4. (where article 41 applies) submitting questions and/or comments in advance of the meeting.
40. If participation in the meeting is to be by way of audio and/or audio-visual links - with no intention for the meeting to involve attendance in person by two or more members in any particular location - the place of the meeting shall, for the purposes of the notice calling the meeting, be taken to be the place where the anticipated chairperson of the meeting is expected to be, as at the time fixed for the commencement of the meeting; and, if it transpires that the chairperson of the meeting is at some other place as at the commencement of the meeting, the meeting shall be taken to have been validly adjourned to that other place.
41. Where a general meeting is to involve participation solely via audio and/or audio-visual links, the notice (or notes accompanying the notice) must include a statement

inviting members to submit questions and/or comments in advance of the meeting, which (subject to article 42) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.

42. Where article 41 applies, the chairperson of a general meeting will not require to read out or address any questions or comments submitted by members in advance of the meeting if and to the extent that the questions or comments are of an unreasonable length (individually or taken together), or contain material which is not deemed to be relevant to the meeting or which is defamatory, racist or otherwise offensive.

#### **Proceedings at general meetings**

43. The directors may if they consider appropriate (and must, if that is required under article 44) make arrangements for members and directors to participate in general meetings by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting, providing:
- 43.1. the means by which members and directors can participate via those link(s) are not subject to technical complexities, significant costs or other factors which are likely to represent - for all or a significant proportion of the membership - a barrier to participation;
  - 43.2. the notice calling the meeting (or notes accompanying the notice) contains the information required under article 39; and
  - 43.3. the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and directors who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those members and directors (if any) who are attending in person (and vice versa).
44. 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 directors must make arrangements for members and directors to participate in that general meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting; and on the basis that the requirements set out in articles 43.1 to 43.3 will apply.
45. A general meeting may involve two or more members or directors participating via attendance in person while other members and/or directors participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
46. Reference in articles 39 to 42 and articles 43 to 45 to members should be taken to include proxies for members.
47. Reference in articles 43, 44, 49, paragraph 65.4 of article 65, 121 and paragraph 122.2 of article 122 to the ability to "hear" shall be taken to include circumstances where alternative arrangements have been made for those with hearing loss to follow what is being said at the meeting.



48. No business shall be transacted at any meeting unless a quorum is present; five members, present in person or represented by proxy, shall be a quorum.
49. An individual participating in a general meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a member, will be deemed to be in attendance) at the meeting.
50. If the quorum required under article 48 (as read with article 49) is not present within half an hour after the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and (subject to article 51) place as may be fixed by the chairperson of the meeting.
51. article 40 shall apply in relation to the requirement under article 50 for the chairperson to specify the place of an adjourned meeting.
52. Where participation in the adjourned meeting is to be by way of audio and/or audio-visual links - with no intention for the adjourned meeting to involve attendance in person by two or more members or directors in one place - the requirement under article 50 for the chairperson to fix the place of the adjourned meeting shall not apply.
53. The Chairperson shall (if present and willing to act) preside as chairperson of the meeting; if the Chairperson is not present and willing to act as chairperson of the meeting within half an hour of the time appointed for holding the meeting, the Vice Chairperson shall (if present and willing to act) preside as chairperson of the meeting.
54. If neither the Chairperson nor the Vice Chairperson is present and willing to act as chairperson of the meeting within half an hour of the time appointed for holding the meeting the directors present shall elect one of their number to act as chairperson of the meeting or, if there is only one director present and willing to act, they shall be chairperson of the meeting.
55. A director shall, notwithstanding that they are not a member, be entitled to attend and speak at any general meeting.
56. The chairperson of the meeting may permit other persons who are not members of the company to attend and speak at a general meeting.
57. The chairperson of the meeting may, with the consent of the meeting at which a quorum is present (and must, if the meeting requests them to do so), adjourn the meeting but not for a period in excess of thirty days; no notice need be given of an adjourned meeting.
58. A resolution put to the vote of a meeting shall be decided on a show of hands or voting cards unless before the show of hands (or voting cards), or immediately after the result of the show of hands (or voting cards) is declared, a secret ballot is demanded by the chairperson of the meeting or by any person present at the meeting and entitled to vote (whether as a member or as the proxy for a member).
59. Where members are participating in a meeting via an audio or audio-visual link, they may cast their vote on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically - and providing the directors 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.

60. If a secret ballot is demanded in accordance with article 58, it shall be taken at once and shall be conducted in such manner as the chairperson of the meeting may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.
61. Where members are participating in a meeting via audio and/or audio-visual links, the chairperson's directions regarding how a secret ballot is to be conducted may allow those members to cast their votes on the secret ballot via any or all of the methods referred to in article 59, providing reasonable steps are taken to preserve anonymity (while at the same time, addressing any risk of irregularities in the process).
62. The principles set out in articles 59 and 61 shall also apply in relation to the casting of votes by an individual in their capacity as proxy for a member.
63. No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
64. Any such objection referred to in article 63 must be referred to the chairman of the meeting whose decision is final.

#### **Technical objections to remote participation in general meetings**

65. These articles impose certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at general meetings; providing the arrangements made by the directors in relation to a given general meeting (and the manner in which the general meeting is conducted) are consistent with those requirements:
  - 65.1. a member cannot insist on participating in the general meeting, or voting at the general meeting, by any particular means;
  - 65.2. the general meeting need not be held in any particular place;
  - 65.3. 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);
  - 65.4. 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;
  - 65.5. 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 directors) and which permits that member's vote to be taken into account in determining whether or not a resolution is passed.

## **Votes of members**

66. Every member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy (subject to article 67).
67. A member who wishes to appoint a proxy to vote on their behalf at any meeting (or adjourned meeting):
- 67.1. shall lodge with the company, at the company's registered office, a written instrument of proxy (in such form as the directors require), signed by them; or
  - 67.2. shall send by electronic means to the company at such electronic address as may have been notified to the members by the company for that purpose, an instrument of proxy (in such form as the directors require);
- providing (in either case) the instrument of proxy is received by the company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting); for the avoidance of doubt, in calculating the 48-hour period referred to in the preceding provisions of this article 67, no account shall be taken of any part of a day that is not a working day.
68. An instrument of proxy which does not conform with the provisions of article 67, or which is not lodged or sent in accordance with such provisions, shall be invalid.
69. A member shall not be entitled to appoint more than one proxy to attend on the same occasion.
70. A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed them to speak at the meeting and need not be a member of the company.
71. An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
72. A vote given, or ballot demanded, by proxy shall be valid notwithstanding that the authority of the person voting or demanding a ballot had terminated prior to the giving of such vote or demanding of such ballot unless notice of such termination was received by the company at the company's registered office (or, where contained in an electronic communication, was received by the company at the address notified by the company to the members for the purpose of electronic communication) before the commencement of the meeting or adjourned meeting at which the vote was given or the ballot demanded.
73. A member of the company who is the chairperson of a general meeting shall be entitled to a second or casting vote, in the case of an equality of votes, whether on a show of hands or on a ballot.

## **Special resolutions and ordinary resolutions**

74. For the purposes of these articles, a "special resolution" means (but subject to articles 77 to 80) a resolution of the members, which is passed by 75% or more of the votes cast on the resolution at a general meeting, providing proper notice of the meeting

and of the intention to propose the resolution has been given in accordance with articles 34 to 42 (for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the number of votes cast against the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting).

75. In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution:
- 75.1. to alter its name;
  - 75.2. to alter any provision of these articles or adopt new articles of association.
76. For the purposes of these articles (but subject to articles 77 to 80), an “ordinary resolution” means a resolution, which is passed by majority vote (taking account only of those votes cast in favour as compared with those votes cast against and (as applicable) the chairperson’s casting vote) at a general meeting, providing proper notice of the meeting has been given in accordance with articles 34 to 42.

#### **Written resolutions**

77. A written resolution can be passed by the members of the company (having been proposed by either the members or the directors in accordance with the procedures detailed in Chapter 2 of Part 13 of the Act) and will have effect as if passed by the members of the company in general meeting; a written resolution is passed when the required majority of eligible members have signified their agreement to it by sending to the company (in hard copy or electronic form) an authenticated document which identifies the resolution to which it relates and which indicates the member’s agreement to it (agreement to which cannot thereafter be revoked).
78. For the purposes of the preceding article:-
- 78.1. the reference to “eligible members” is to those members who would have been entitled to vote on the resolution on the circulation date of the resolution (which is either (a) the date on which copies of the written resolution are sent or submitted to the members in accordance with the procedures detailed in Chapter 2 of Part 13 of the Act; or (b) if copies are sent or submitted to members on different days, the first of those dates);
  - 78.2. the reference to “required majority” is to the majority required to pass an ordinary or a special resolution under the Act, as follows:-
    - 78.2.1. in order to pass an ordinary resolution by way of written resolution, it must be passed (in accordance with article 77) by members representing a simple majority of the total voting rights of eligible members;
    - 78.2.2. in order to pass a special resolution by way of written resolution, it must be passed (in accordance with article 77) by members representing not less than 75% of the total voting rights of eligible members and the resolution must specifically state that it was proposed as a special resolution.

79. For the avoidance of doubt, a resolution to remove a director (under section 168 of the Act) or a resolution to remove an auditor (under section 510 of the Act) cannot be proposed as a written resolution under article 77.
80. For the purposes of article 77, a proposed written resolution will lapse if it is not passed before the end of a period of 28 days beginning with the circulation date (as defined in article 78), and the agreement of any member to a written resolution will be ineffective if signified after the expiry of that period.

### **Categories of directors**

81. For the purposes of these articles:

**“Member Director”** means a director appointed under articles 85 to 92; and

**“Co-opted Director”** means a director appointed under articles 93 and 94.

### **Number of directors**

82. The minimum number of directors shall be 9 and the maximum number of directors shall be 15, no more than three of whom:
- 82.1. at any given time, no more than three of the Member Directors shall have been nominated by the Advisory Council;
- 82.2. at any given time, a maximum of three shall be Co-opted Directors.

### **Eligibility**

83. A person shall not be eligible for appointment as a Member Director unless they are a member of the company.
84. A person shall not be eligible for appointment as a director if they are an employee of the company.

### **Election, retiral, re-election, appointment, re-appointment: Member Directors**

85. Any member who wishes to be considered for election as a Member Director at an annual general meeting must lodge with the company a written notice (in such form as the directors require), confirming that they are willing to be appointed; the notice must be signed by the individual and, if necessary, signed by a representative of the Advisory Committee (for individuals nominated by the Advisory Committee) and must be lodged with the company at least 21 days before the date of the annual general meeting.
86. At an annual general meeting the members may (subject to articles 82) elect as a Member Director any member who has lodged a written notice in accordance with article 85.
87. The directors may at any time appoint (subject to articles 82 to 84) any member (providing they are willing to act) to be a Member Director, either to fill a vacancy or as an additional director.

88. At each annual general meeting any Member Director who was appointed by the directors (under article 87) in the period from the date of the last annual general meeting shall retire from office.
89. Each Member Director shall hold office until the conclusion of the third annual general meeting which follows the date on which they were appointed or (as the case may be) were last re-appointed, but shall then be eligible for re-appointment under article 92; if re-appointed, they shall hold office until the conclusion of the third annual general meeting which follows and will then (subject to article 90) be eligible for further re-appointment under article 92.
90. A director who has held office for three consecutive three-year terms shall not be eligible for reappointment under article 92 (as read with article 89) until a further period of one year has lapsed, unless the board of directors resolve to the contrary.
91. For the purposes of articles 89 and 90:
- 91.1. the period between the date of appointment of a director under article 87 and the annual general meeting which next follows shall be deemed to be a period of one year unless it is of less than six months' duration, in which case it shall be disregarded;
  - 91.2. the period between one annual general meeting and the next shall be deemed to be a period of one year;
  - 91.3. if a director ceases to be appointed but is reappointed to that office within a period of six months, they will be deemed to have held that office continuously.
92. The members may at any annual general meeting re-elect any Member Director who retires from office at the meeting under article 88 (providing they are willing to act and subject to article 90); if any such Member Director is not re-appointed, they shall retain office until the meeting appoints someone in their place or, if it does not do so, until the end of the meeting.

#### **Appointment, re-appointment: Co-opted Directors**

93. Subject to articles 82 to 94, the directors may at any time appoint any individual to be a director (a **"Co-opted Director"**), providing they are willing to act, either on the basis that they have been nominated by a body with which the company has close contact in the course of its activities or on the basis that they have specialist experience and/or skills which could be of assistance to the board.
94. At the conclusion of each annual general meeting, all of the Co-opted Directors shall vacate office – but shall then be eligible for re-appointment under article 93.

#### **Disqualification and removal of directors**

95. A director shall vacate office if:
- 95.1. they cease to be a director by virtue of any provision of the Act or become prohibited by law from being a director or a charity trustee (within the meaning of the Charities and Trustee Investment (Scotland) Act 2005);

- 95.2. they are sequestered;
  - 95.3. they become incapable for medical reasons of fulfilling the duties of their office and such incapacity is expected to continue for a period of more than 6 months;
  - 95.4. they become an employee of the company;
  - 95.5. they resign office by notice to the company, and such resignation has taken effect in accordance with the notice's term;
  - 95.6. in the case of a Member Director, they cease to be a member of the company;
  - 95.7. by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
  - 95.8. they are absent for a period of more than 3 months (without permission of the directors) from meetings of directors held during that period and the directors resolve to remove them from office;
  - 95.9. they are removed from office by resolution of the directors on the grounds that they are considered to have committed a material breach of the code of conduct for directors in force from time to time (as referred to in article 110);
  - 95.10. they are removed from office by resolution of the directors 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 Charities and Trustee Investment (Scotland) Act 2005; or
  - 95.11. they are removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act.
96. A resolution under paragraphs 95.10 and 95.11 or article 95 shall be valid only if:
- 96.1. the director who is the subject of the resolution is given reasonable prior written notice by the directors of the grounds upon which the resolution for their removal is to be proposed;
  - 96.2. the director concerned is given the opportunity to address the meeting of directors at which the resolution is proposed, prior to the resolution being put to the vote; and
  - 96.3. at least two-thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.

## **Register of directors**

97. The directors shall maintain a register of directors, setting out full details of each director, including the date on which they became a director, and also specifying the date on which any person ceased to hold office as a director.

## **Appointments to offices**

98. Directors shall be appointed to hold the office of Chairperson, Vice Chairperson and any other offices which the directors may consider appropriate.
99. The appointments under article 98 shall be made at meetings of directors.
100. Each office shall be held (subject to article 101) until conclusion of the annual general meeting which next follows appointment; a director whose period of office expires under this article may be re-appointed to that office under article 98 (providing they are willing to act).
101. The appointment of any director to an office under article 98 shall terminate if they cease to be a director or if they resign from that office by notice to the company.
102. If the appointment of a director to any office under article 98 terminates, the directors shall appoint another director to hold the office in their place.

## **Directors' interests**

103. Subject to the provisions of the Act and of the Charities and Trustee Investment (Scotland) Act 2005 and articles 8 and 9 and provided that they have disclosed to the directors the nature and extent of any personal interest which they have (unless immaterial), a director (notwithstanding their office):

103.1. may be a party to, or have some other personal interest in, any transaction or arrangement with the company or any associated company;

103.2. may be a party to, or have some other personal interest in, any transaction or arrangement in which the company or any associated company has an interest;

103.3. in the case of the Executive Director, may be employed by the company;

103.4. may be a director or secretary of, or employed by, or have some other personal interest in, any associated company;

and

103.5. shall not, because of their office, be accountable to the company for any benefit which they derive from any such office or employment or from any such transaction or arrangement or from any interest in any such company;

and no such transaction or arrangement shall be liable to be treated as void on the ground of any such interest or benefit.



104. For the purposes of the preceding article, an interest of which a director has no knowledge and of which it is unreasonable to expect them to have knowledge shall not be treated as an interest of theirs; the references to “associated company” shall be interpreted as references to any subsidiary of the company or any other company in which the company has a direct or indirect interest.
105. The directors shall be entitled, for the purposes of section 175 of the Act, to authorise (by way of resolution to that effect) any Conflict Situation that may arise (such that the duty of the director concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.
106. For the purposes of article 105, a “Conflict Situation” means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company; and such that:
- 106.1. the situations and matters which fall within this definition may include (without limitation) (a) a situation where a director of the company becomes an employee, director, member of the management committee, officer or elected representative of a body which is a party to a significant contract with the company (or which is competing with the company in the context of any grant application) and (b) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);
- 106.2. “conflict of interest” for this purpose includes a conflict of interest and duty, and a conflict of duties.
107. For the avoidance of doubt, article 105 shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the company; any conflict of interest of that nature shall be governed by the provisions of articles 132 to 140 and the code of conduct referred to in article 110.

### **Conduct of directors**

108. It is the duty of each director of the company to take decisions (and exercise their other powers and responsibilities as a director) in such a way as they consider, in good faith, will be most likely to promote the success of the company in achieving its Objects (as set out in article 4 )and will be in the interests of the company, and irrespective of any office, post, engagement or other connection which they may have with any other body which may have an interest in the matter in question.
109. Without prejudice to the principle set out in article 108, each of the directors shall have a duty, in exercising functions as a charity trustee, to act in the interests of the company; and, in particular, must:
- 109.1. seek, in good faith, to ensure that the company acts in a manner which is in accordance with its charitable purposes;

- 109.2. act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 109.3. in circumstances giving rise to the possibility of a conflict of interest between the company and any party responsible for the appointment of that director, put the interests of the company before that of the other party;
  - 109.4. where any other duty prevents them from doing so, disclose the conflicting interest to the company and refrain from participating in any deliberation or decision of the other directors with regard to the matter in question; and
  - 109.5. ensure that the company complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
110. Each of the directors shall comply with the code of conduct prescribed by the board of directors from time to time; for the avoidance of doubt, the code of conduct rules shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association, and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct rules in force from time to time.

#### **Directors' remuneration and expenses**

111. No director may serve as an employee of the company and no director may be given any remuneration by the company for carrying out their duties as a director or as chairperson or as the holder of any other office under article 98.
112. The directors may be paid all travelling and other expenses properly incurred by them in connection with their attendance at meetings of directors, general meetings, meetings of committees of directors or otherwise in connection with the carrying-out of their duties.

#### **Powers of directors**

113. Subject to the provisions of the Act, these articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company.
114. No alteration of these articles and no direction given by special resolution shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given.
115. The powers conferred by article 113 shall not be limited by any special power conferred on the directors by these articles.
116. A meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

#### **Proceedings of directors**

117. Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.

118. Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.
119. If directors are to be permitted to participate in a directors' meeting by way of audio and/or audio-visual link(s), the directors must, in advance of the meeting, be provided with details of how to connect and participate via that link or links; and (particularly for the benefit of those directors who may have difficulties in using a computer or laptop for this purpose) the directors' attention should be drawn to the following options:
- 119.1. participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
- 119.2. (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.
120. Questions arising at a meeting of directors shall be decided by a majority of votes; in the case of an equality of votes, the chairperson of a meeting of directors shall have a second or casting vote.
121. The directors may, if they consider appropriate (and must, if this is required under article 122) allow directors to participate in directors' meetings by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting, providing:
- 121.1. the means by which directors can participate in this manner are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a significant proportion, of the directors - a barrier to participation; and
- 121.2. the manner in which the meeting is conducted ensures, so far as reasonably possible, that those directors who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those directors (if any) who are attending in person (and vice versa).
122. If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed directors' meeting would not be possible or advisable for one or more of the directors, the directors must make arrangements for directors to participate in that directors' meeting by way of audio and/or audio-visual link(s); and on the basis that:
- 122.1. the requirements set out in paragraphs 121.1 and 121.2 of article 121 will apply; and
- 122.2. the directors must use all reasonable endeavours to ensure that all directors have access to one or more means by which they may hear and contribute to discussions at the meeting.
123. A directors' meeting may involve two or more directors participating via attendance in person while other directors participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.

124. For the avoidance of doubt, an individual participating in a directors' meeting via an audio or audio-visual link will be deemed to be present in person (or, if they are not a director, will be deemed to be in attendance) at the meeting.
125. Where a director or directors are participating in a directors' 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.
126. The quorum for the transaction of the business of the directors shall be four or such higher figure as the directors may determine from time to time.
127. The continuing directors or a sole continuing director may act notwithstanding vacancies, but if the number of remaining directors is less than the number fixed as the quorum they may act only for the purpose of filling vacancies or of calling a general meeting.
128. Unless they are unwilling to do so, the Chairperson shall preside as chairperson at every meeting of directors at which they are present; if the chairperson is unwilling to act as chairperson of a meeting of directors or is not present within fifteen minutes after the time appointed for the meeting, then the Vice Chairperson shall act as chairperson. If the Vice Chairperson is also unwilling to act as chairperson of a meeting of directors or is not present within fifteen minutes after the time appointed for the meeting, then the directors may appoint one of their number to be chairperson of the meeting.
129. The directors shall be entitled to allow any person to attend (whether in person or by way of an audio or audio-visual link) and speak (but not vote) at any meeting of the directors.
130. A person invited to attend a meeting of the directors under the preceding article shall not be entitled to exercise any of the powers of a director, and shall not be deemed to constitute a director for the purposes of the Act or any provision of these articles.
131. All acts done by a meeting of directors or by a meeting of a committee of directors or by a person acting as a director shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any director or that any of them was disqualified from holding office or had vacated office or was not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.
132. A director who has a personal interest (directly or indirectly) in any transaction or other arrangement which the company is proposing to enter into, must declare that interest (including details of the nature and extent of the director's interest) at a board meeting.
133. Any declaration under article 132 must be made before the discussion at the board meeting on the question of whether the transaction or other arrangement should be entered into.
134. A director shall not vote at a meeting of directors or at a meeting of a committee of directors on any resolution concerning a matter in which they have, directly or

indirectly, a personal interest or duty (unless immaterial) which conflicts or may conflict with the interests of the company.

135. Where a transaction or arrangement has already been entered into by the company and a director has a personal interest in that arrangement, that director must (unless they declared their interest in advance of the company entering into the arrangement, in accordance with articles 132 and 133) declare the nature and extent of their interest at a board meeting or by way of a notice to the directors.
136. For the purposes of articles 132, 133 and 135:
  - 136.1. an interest of a person who is taken to be connected with a director for any purpose of the Act or under section 68(2) of the Charities and Trustee Investment (Scotland) Act shall be treated as a personal interest of the director;
  - 136.2. a director shall 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 has an interest in that matter.
137. Subject to article 138, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairperson is to be final and conclusive.
138. If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairperson is not be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.
139. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which they are not entitled to vote.
140. The company may (subject to the Charities and Trustee Investment (Scotland) Act 2005) by ordinary resolution suspend or relax to any extent, either generally or in relation to any particular matter, the provisions of articles 134 to 139.
141. The principles set out in article 63 (technical objections to remote participation) shall apply in relation to remote participation and voting at directors' meetings, as if each reference in that article to a member were a reference to a director and each reference in that article to a general meeting were a reference to a directors' meeting.
142. A resolution agreed to in writing (or by e-mail) by a majority of the directors then in office shall (subject to articles 143 and 144) be as valid as if duly passed at a directors' meeting.
143. A resolution under article 142 shall not be valid unless a copy of the resolution was circulated to all of the directors, along with a cut-off time (which must be reasonable in the circumstances) for notifications under article 144.

144. If a resolution is circulated to the directors under article 143, any one or more directors may, following receipt of a copy of the resolution, notify the secretary that they consider that a directors' 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:
- 144.1. the secretary must convene a directors' meeting accordingly, and on the basis that it will take place as soon as reasonably possible;
  - 144.2. the resolution cannot be treated as valid under article 142 unless and until that directors' meeting has taken place;
  - 144.3. the directors may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that directors' meeting that the resolution should be treated as invalid, notwithstanding that it had previously been agreed to in writing (or by e-mail) by a majority of the directors then in office.
145. The provisions of articles 142 to 144 shall apply equally in respect of decisions of committees of directors with all necessary modifications.

#### **Delegation to committees of directors and holders of offices**

146. The directors may delegate any of their powers to any committee consisting of two or more directors; they may also delegate to the Chairperson or a director holding any other office such of their powers as they consider appropriate.
147. Any delegation of powers under the preceding article may be made subject to such conditions as the directors may impose and may be revoked or altered.
148. Subject to any condition imposed in pursuance of the preceding article, the proceedings of a committee consisting of two or more directors shall be governed by the articles regulating the proceedings of meetings of directors so far as they are capable of applying.

#### **Advisory Council**

149. The directors shall establish a council (referred to in these articles as the "Advisory Council") to assist the board of directors in better understanding the wishes of the users of its services.
150. Membership of the Advisory Council, and the procedures governing its relationship to the directors, will be agreed by the directors, made known to the members of the Advisory Council, and from time to time reviewed.
151. The directors shall not delegate any executive authority to the Advisory Council.

#### **Patrons**

152. The directors may invite and appoint such a person or persons as they shall think fit to be a patron or patrons of the company.
153. Patrons shall have such duties as may be determined by the directors and shall not be members of the company.

### **Secretary**

154. The directors may appoint a company secretary, and on the basis that the term of the appointment, the remuneration (if any) payable to the company secretary, and the conditions of appointment shall be as determined by the directors; the company secretary may be removed by them at any time.

### **Minutes**

155. The directors shall ensure that minutes are made (in books kept for the purpose) of all proceedings at general meetings, meetings of the directors and meetings of committees of directors, all such minutes being approved at the next relevant meeting; a minute of a meeting of directors or of a committee of directors shall include the names of the directors present and the minutes of each meeting shall be signed by the chairperson of that meeting.

### **Records of decision to be kept**

156. The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

### **Accounts**

157. The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
158. The directors shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required (as opposed to an independent examination) under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.
159. No member shall (as such) have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or as authorised by the directors or by ordinary resolution of the company.

### **Notices**

160. Any notice to be given in pursuance of these articles shall be given either in writing or by way of electronic means.
161. The company may give any notice to a member either personally or by sending it by post in a pre-paid envelope addressed to the member at their address last intimated by them to the company or by leaving it at that address; in the case of a member who has notified the company of an electronic address to be used for this purpose, the company may give any notice to that member by way of electronic means.
162. A member may give any notice to the company either by sending it by post in a pre-paid envelope addressed to the company at its registered office or by leaving it, addressed to the company secretary, at the company's registered office or (where the company has notified the member of an electronic address to be used for this purpose) by way of electronic means.

163. Any notice, if sent by post, shall be deemed to have been given at the expiry of 24 hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
164. Any notice sent by electronic means shall be deemed to have been given at the expiry of 48 hours after it is sent; for the purpose of proving that any notice sent by electronic means was indeed sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.
165. A member present or represented at any meeting of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

#### **Winding-up**

166. If on the winding-up of the company any property remains after satisfaction of all the company's debts and liabilities, such property shall be transferred to some other charity or charities (whether incorporated or unincorporated) whose objects are all together or in part similar to the Objects of the company and whose constitution restricts the distribution of income and assets to an extent at least as great as does article 8 (as read with article 9).
167. The charity or charities to which property is transferred under article 166 shall be determined by the members of the company at or before the time of dissolution or, failing such determination, by such court as may have or may acquire jurisdiction.
168. To the extent that effect cannot be given to the provisions of articles 166 and 167, the relevant property shall be applied to some charitable purpose or purposes.

#### **Indemnity**

169. Every director or other officer or auditor of the company shall be indemnified out of the assets of the company (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) against any loss or liability which they may sustain or incur in connection with the execution of the duties of their office; that may include, without prejudice to that generality (but only to the extent permitted by those sections of the Act), any liability incurred by them in defending any proceedings (whether civil or criminal) in which judgement is given in their favour or in which they are acquitted or any liability in connection with an application in which relief is granted to them by the court from liability for negligence, default or breach of trust in relation to the affairs of the company.

#### **Insurance**

170. For the avoidance of doubt, the company shall be entitled (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) to purchase and maintain for any director insurance against any loss or liability which any director or other officer of the company may sustain or incur in connection with the execution of the duties of their office, and such insurance may (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) extend to



liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).

