



The Plain Language Governing Document
Horshader Community Development Trust
Version 2019-01 : 20 July 2019

**The Plain Language
Governing Document
of
The Horshader Community
Development Trust**

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0.00 INTRODUCTION

0.01 How to use this plain language governing document [BL2019-00]

Horshader Community Development Trust has a series of documents that, together, comprise our Governing Document: the Articles of Association; the Memorandum of Association; and the Bye-laws. However, these documents are generally couched in legal terms and are sometimes contradictory. In addition, some important elements were missed out from the original documents. These issues can make it difficult to understand and challenging to work out the correct way of doing things to abide by the Governing Document, observe best practice and comply with the law. Consequently, the aim of this plain language interpretation of the Trust's governing documents is to make it easier for Members, Directors and other people associated with the Trust to know precisely what to do or how to act in any given situation.

This document might also be used as part of the induction of a new Director and as a way of Members keeping the Directors on their toes.

It will be updated as the laws governing charitable organisations change and as the Directors enact new Bye-laws.

A copy will always be available in the Trust office and an electronic copy (protected pdf) can be passed to any Member of the Trust on request.

Each element of the document has been numbered so that it should be a simple matter of working through the contents at the start of the document and going to the appropriate page. Each element is also cross-referenced to the original governing documents, the Scottish Council for Voluntary Organisations (SCVO) model Governing Document (where it suggested best

practice not contained in the Trust's own documents) and the Bye-laws that were enacted following the unanimous approval of all resolutions put the General Meeting of 4 July 2019.

It is important to point out that the specific provisions of the HCDT Articles of Association, Memorandum of Association and Bye-laws will always take precedence over any interpretation contained in this document and should be referred directly when the situation merits.

The primary piece of charity law in Scotland is: Charities and Trustee Investment (Scotland) Act 2005, sometimes referred to simply as the 2005 Act. The provisions of this Act take precedence over the Trust's Governing Document which should be aligned to it in all ways and at all times.

Reference abbreviations: A = Articles of Association; M = Memorandum of Association (Section B of the Articles of Association); B = Bye-laws; S = SCVO model governing document; Table A = The Companies (Tables A to F) Regulations 1985 (which are referred to in the Memorandum of Association); BL2019 = Bye-laws enacted following the General Meeting of 4 July 2019.

0.02 Explanation of terms [BL2019-00]

Non-gender-specific language has been used throughout this document.

'Governing Document' refers to three existing legal Trust documents: The Articles of Association; the Memorandum of Association; and the Bye-laws. There are references in these documents to other legal documents such as Companies (Tables A to F) Regulations 1985. All these documents are available for reference at the Trust office.

1.00 GENERAL PROVISIONS

1.01 The Trust's objects [A3A]

'Object' is the legal term for an aim or purpose. The overall aim of the Trust is to promote the benefit of the people of the Western Isles in general and those of the people of the Horshader area in particular. The Horshader area is defined as the townships of South Shawbost, Dalmore and Dalbeg. In short, the charitable aims of the Trust are to:

- Develop the community in a sustainable manner [A3A(i)];
- Support disadvantaged people in the community [A3A(ii)];
- Support the advancement of all forms of education in the community [A3A(iii)];
- Provide housing or affordable housing plots to those in need [A3A(iv)]
- Support our arts, culture and heritage, including Gaelic language and culture and protect local buildings and sites of architectural or historic importance [A3A(v)];
- Provide recreational activities for the community [A3A(vi)];
- Protect physical resources and amenities including the local environment [A3A(vii)];
- Relieve poverty and hardship in the community [A3A(viii)];
and
- Regenerate the local economy [A3A(ix)].

1.02 The Trust Development Plan [BL2019-00]

The Trust Development Plan is essentially our strategy, indicating our overall aim (the Trust's mission), the critical and substantial tasks we need to undertake (the charitable aims of the Trust, called key strategic tasks) and their relative importance, the measures we will use to ensure that we are moving in the right direction and the key actions (projects) that we intend to initiate to convert the strategy into outcomes that are beneficial to the Horshader community. It is imperative that the Plan is consistent

with the Trust's charitable purposes at all times – this ensures that we only do things that will benefit the community. One additional key strategic task has been added reflecting the Trust's desire to ensure the highest standards of good governance at all times.

The Trust's mission and key strategic tasks will generally remain unchanged over the medium to long term. The relative importance of each key strategic task will inevitably change from one year to another as the focus of short-term activity changes. The key actions undertaken to deliver the strategy will also change as one project is completed and others are added.

The Trust Development Plan is used to guide all the key decisions made by the Board on behalf of the community. If a proposed action does not fit with the Trust's strategy, there must be compelling reasons for undertaking it.

The Plan should be reviewed formally on an annual basis and informally on an ongoing basis. For the short to medium term, that is to say the next 12-18 months, an action plan is created highlighting the specific elements of the strategy that the Board has decided to take forward.

The community must always have a level of involvement in the creation and modification of the Plan. The Board is appointed to take a strategic perspective on the management of the Trust but can only do so legitimately with the support of the community. It is therefore imperative that some form of consultation takes place before the Plan is confirmed.

1.03 The Trust's powers [A3B]

'Power' is the legal term for the right, ability, or authority to perform an act. The powers of the Trust are extensive and relate exclusively to helping the Trust achieve its aims. They include the right to:

- Encourage individuals and bodies to help the Trust on a voluntary or other basis [A3Ba];
- Carry out research that might benefit the Trust [A3Bb];
- Apply for and receive appropriate grants and contributions from any source [A3Bc];
- Accept donations, legacies and endowments [A3Bd];
- Raise finance and obtain loans to pay for activities and expenses associated with Trust aims [A3Be];
- Purchase or acquire property [A3Bf];
- Deal with the property rights of the Trust [A3Bg];
- Invest Trust funds [A3Bh];
- Lend or advance Trust funds [A3Bi];
- Raise money using Trust assets as security [A3Bj];
- Make grants or loans and give guarantees [A3Bk];
- Make payments using means equivalent to money [A3Bl];
- Apply for an order that might help the Trust achieve its aims and, conversely, oppose an order that might prejudice the Trust's aims [A3Bm];
- Enter into arrangements with other bodies that might help the Trust achieve its aims [A3Bn];
- Purchase and sell stocks and shares and similar securities [A3Bo & A3Bp];
- Act as agents for another person or body [A3Bq];
- Retain and employ staff and advisers and pay reasonable salaries and fees for the services provided [A3Br];
- Pay expenses incurred in the formation of the Trust [A3Bs];
- Appeal for money, gifts and assistance for any Trust purpose [A3Bt];
- Make provision for pensions and other employment benefits for employees and their dependents [A3Bu];
- Work with, or amalgamate with, other not-for-profit organisations whose aims align with those of the Trust [A3Bv];
- Support the aims of other charitable bodies where these align with those of the Trust [A3Bw];
- Publicise the work and aims of the Trust [A3Bx];
- Administer funds given to the Trust [A3By]; and
- Do anything else that is legal [A3Bz].

1.04 Application of Trust income and property [A4]

The income and property of the Trust must be applied solely to the promotion and achievement of its charitable aims as laid out in “The Trust’s objects”. [A4]

No part of the Trust’s income or property can be paid or transferred to any Member of the Trust. [A4]

No Director of the Trust can receive any type of remuneration or other benefit with a financial value. [A4]

The exceptions to these rules are that:

- The Board can direct a suitably qualified Member or employee to undertake professional, technical or other activities that are deemed to be of use to the Trust and then pay for these services. This exception does not apply to Directors [A4a];
- The Trust can pay interest to any Member or Director who has lent money to the Trust [A4b];
- The Trust can make reasonable payments to any Member or Director who has been properly authorised to provide premises or land for rent [A4c]; and
- The Trust can pay a Director reasonable out-of-pocket expenses incurred in the business of the Trust [M24].

2.00 PROVISIONS RELATING TO MEMBERS OF THE TRUST

2.01 General structure [S10 & BL2019-00]

The structure of the Trust consists of:

- Members: Ordinary Members and Nominated Members who pay a subscription and can vote at General Meetings;
- Associates who pay a subscription and cannot vote at General Meetings; and

- Directors who organise and manage the activities of the Trust, who may or may not be Members.

2.02 About Members

The Trust must have at least 3 Members; there is no limit to the maximum number of Members [M3].

Ordinary Members are those that satisfy the eligibility criteria – see 2.04 [M4b(i) & B1].

A person wishing to become a Member must complete an application form and lodge it with the Trust. The Board must consider applications at the first meeting after an application is received. The Board will admit the person to the membership if and when their eligibility is confirmed. The Board must notify the applicant of its decision within a reasonable period of time after its meeting. The date on which the Board approved an application is the date upon which membership commenced [M4e].

Nominated Members are individuals, institutions or organisations who have a deep interest in, and support for, the purpose of the Trust. The Board is responsible for nominating these Members as long as it is satisfied that their participation in the Trust will be beneficial. The number of Nominated Members must never exceed the number of Ordinary Members. The date on which a nominated membership application commenced is the date that the body notified the Trust of its acceptance. Nominated Members can appoint an individual to speak and vote at meetings on their behalf. They must notify the Trust in writing about the name of their representative and any change to this person. [M4b(ii) & M4f]

2.03 About Associates

Associates are individuals, charitable bodies or commercial organisations that wish to be associated with, and can bring benefit to, the Trust. Associates are admitted by the Board. They can only become Members of the Trust if they satisfy the eligibility criteria laid out elsewhere. They can attend AGMs but cannot vote and they are not eligible to become Directors of the Trust. [M10]

2.04 Eligibility for membership

Ordinary membership is open to all individuals over the age of 16 who are either residents of the Horshader area or resident within the Isle of Lewis and registered as a tenant of a croft within the Horshader area or formally sublets a croft within the Horshader area, where 'formally' is defined as a sublet that has been approved by the Crofting Commission. [B1 & & BL2019-16]

A resident is defined as someone:

- Who lives at a qualifying address for not less than 9 months out of 12; or
- Has a permanent home at a qualifying address and lives there all the time apart from when on holiday or working away from home for a period of not more than 3 months at a time or when following a course of full-time education. [B1a, b & c]

Nominated membership is open to any organisation that has an interest in the Trust and can support the activities of the Trust. [M4d]

Admitting a person or body to membership is at the absolute discretion of the Board. However, the Board will only refuse membership if it is reasonable to do so. [M4d]

2.05 Member's rights

Ordinary and Nominated Members have the right to:

- Attend Annual General Meetings (and any other General Meetings);
- Vote at General Meetings – each Member has one vote in a show of hands or a poll; [M18]
- Use a proxy to vote at General Meetings if they are not able or willing to be present in person; [M9]
- Elect people to serve as Directors;
- Participate in decisions regarding changes to the Trust's governing documents;
- Participate in consultations regarding the future activities and direction of the Trust;
- Suggest improvements in the way that the Trust conducts itself;
- Offer ideas to the Members and the Board about projects the Trust might undertake to achieve its aims; and
- Offer assistance to any project undertaken by the Trust.

2.06 Member's conduct

Members should act in and promote the best interests of the Trust. In particular, each Member should [BL2019-18]:

- Act with honesty and integrity in any dealings with the Trust and its Members;
- Attend all General Meetings and Trust activities, wherever possible;
- Support the Trust in the delivery of its charitable aims; and
- Call to the attention of the Board any wrongdoing or failure to observe best practice of which they become aware

2.07 Member's liabilities

The liability of Members is limited because the Trust is a limited company. [A5]

Each Member commits to contribute no more than £1 to the assets of the Trust should it be wound up. This liability remains in force up to one year from the time membership has ceased. [A6]

2.08 Member subscription

Every Member must pay a subscription fee of £1 when they are accepted into membership. [M5]

2.09 Register of Members

The Directors 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. [S18 & BL2019-01]

2.10 Resignation from membership

An Ordinary Member may resign from membership by giving 28 days' notice in writing to the Trust – membership will cease 28 days after the receipt of this notice. [M6]

A Nominated Member may resign from membership by giving 3 months' notice in writing to the Trust – membership will cease 3 months after the receipt of this notice. [M7]

2.11 Transfer of membership

Membership cannot be transferred to another person or body under any circumstances. [M8]

2.12 Termination of membership

An Ordinary Member will cease to be a Member in the event of death, becoming bankrupt, becoming of unsound mind or failing to meet any of the eligibility criteria laid out in 2.04 above. [M8]

A Nominated Member will cease to be a Member should they cease to be designated as such. [M8]

Associates cease to be associated with the Trust if their organisation passes a winding-up resolution. [M8]

The Board can terminate the membership of a Member if it has 'good and sufficient reason'. The Member concerned has the right to be heard by the Board before a final decision is made. The Member then has the right of appeal against any decision to terminate membership at the next General Meeting of the Trust. [M8]

3.00 PROVISIONS RELATING TO GENERAL MEETINGS OF MEMBERS

3.01 Notice of meetings

Ordinarily, the Board will call all General Meetings. [M11]

However, Members can call for an Extraordinary General Meeting. In this situation, at least 10 Ordinary and/or Nominated Members must sign a written request for the meeting, stating the reasons for calling it. This request must be handed to a member of the Board. The Secretary (or other member of the Board) is then obliged to call the meeting within 28 days of receiving the written request. [M11]

At least 21 days' notice is required for calling a General Meeting for passing a Special Resolution.

An Annual General Meeting can be called with less notice when all the Members entitled to attend and vote agree to do so. [Table A 38]

Any other General Meeting can be called with less notice when 95% of the Members entitled to attend and vote agree to do so. [Table A 38]

The notice for a meeting must specify the time and place of the meeting and the general nature of the business to be transacted. If the meeting being called is an Annual General Meeting, the notice must specify this. The notice must be given to all Members, Directors and auditors of the Trust. [Table A 38]

3.02 Proceedings at General Meetings

All business conducted at General Meetings, and at an Annual General Meeting, is called special business – this means that any resolutions relating to this business are Special Resolutions and need to be dealt with accordingly. Examples of exceptions to this are: consideration of the Annual Accounts and the Directors' Report; and the appointment of Auditors. [M13]

A quorum must be present before any business can be done. A quorum for General Meetings is at least 10 Members who must be present in person or by proxy. The only exception to this is the unlikely situation where the total number of Members in the Trust is less than 10 in which case all Members must be present to create a quorum. A Nominated Member is considered to be present when the body's representative is present. [M14]

If a quorum is not present within 30 minutes of the appointed time for the meeting that has been requested by the Members, the meeting is 'dissolved', that is to say, ended. [M15]

If a quorum ceases to be present during a meeting, the meeting is adjourned until the same time and place in the following week, or until a different time and or place determined by the Board. [M15]

If a quorum is not present within 30 minutes of the start of the adjourned meeting, the meeting will continue regardless. [M15]

A Director is entitled to attend and speak at any General Meeting even if they are not a Member of the Trust. [M16]

A show of hands will generally decide the outcome of a resolution put to a vote at a meeting unless a poll is demanded before the vote is taken. A poll can be demanded by: the Chair; at least 2 Members who have the right to vote at the meeting; a Member or Members who represent at least 10% of the voting rights of all Members. [Table A46]

If there is an equal number of votes for and against any resolution, the Chair of the meeting is not entitled to a casting vote. In this event, the decision will be taken through a ballot of the entire membership where the same voting rules will apply: 50% of those voting for an Ordinary Resolution; and 75% of those voting for a Special Resolution. [S46 & BL2019-19]

The Trust at a General Meeting has the power to add to the By-laws and alter or repeal existing ones. [M35]

3.03 Proxy votes

Any member who wishes to appoint a proxy to vote on their behalf at any meeting (or at an adjourned meeting) must lodge a written, signed and dated proxy form at the Trust's office. Proxy forms can be obtained from the Trust's office. This can be in the form of a physical paper or an electronic copy. All proxy forms must be received no later than 48 hours before the time for holding the meeting (or the adjourned meeting). [S41 & BL2019-02]

A proxy which does not conform to these provisions, or which is not lodged or sent in accordance with these provisions, is invalid. [S42 & BL2019-02]

A member can only appoint one proxy to attend for each occasion where a vote is going to take place. [S43 & BL2019-02]

A proxy appointed to attend and vote at any meeting has the same right as the Member who appointed them to speak at the meeting and need not be a member of the Trust. [S44 & BL2019-02]

3.04 Ordinary Resolutions and Special Resolutions

An 'Ordinary Resolution' means a resolution passed by a simple majority vote of those Members present in person or by proxy, as long as proper notice of the meeting and of the intention to propose the resolution has been given. Examples of 'Ordinary Resolutions' are: the approval of the Chair's annual report and of the annual accounts; and the appointment or reappointment of the Trust's auditors. [S35 & BL2019-03]

All other business at General Meetings is deemed to be special business. A 'Special Resolution' is one that must be passed by 75% or more of the votes cast on the resolution at a General Meeting, as long as proper notice of the meeting and of the intention to propose the resolution has been given. A 75% majority relates only to the number of votes cast in favour of the resolution by Members present at the meeting in person or by proxy – it does not mean 75% of the membership. [S33 & BL2019-03]

Changing the name of the Trust and altering, or adopting new, Articles of Association all require a Special Resolution – this is a legal requirement. Such changes also need to be approved by OSCR. [S34 & BL2019-03]

4.00 PROVISIONS RELATING TO DIRECTORS

4.01 Composition of the Board

Elected Directors: the Board must have at least 3 and no more than 8 Directors who represent the Horshader area – no more than 2 Directors from Dalmore and Dalbeg and no more than 6 from South Shawbost. [M19 & M20]

The maximum number of Elected Directors can only be changed by Special Resolution. [BL2019-20]

Nominated Directors are appointed by Nominated Members and may number no more than 5, following an invitation from the Board. [M19]

Associate Directors: the Board may appoint a maximum of 2 additional Associate Directors where they feel that these individuals bring a specific expertise to the Board. [M23]

4.02 Office bearers

The Directors must elect a Chair from among their number. They can also elect other office bearers, such as a Treasurer and a Secretary, if they consider this appropriate. The Chair has a strategic role to play in representing the vision and purpose of the Trust - the Chair ensures that the Board of Directors functions properly, that there is full participation at meetings, all relevant matters are discussed and that effective decisions are made and carried out. [S57 & BL2019-04]

The role of the Treasurer is to maintain an overview of the Trust's financial affairs, ensuring its viability and ensuring that proper financial records and procedures are maintained. [BL2019-04]

The role of the Secretary is to support the Chair in ensuring the smooth functioning of the Board of Directors. [BL2019-04]

It is not essential to appoint any other office bearers although it is advisable to appoint a Vice-Chair who can deputise for the Chair if they are unavailable. [S58 & BL2019-04]

All of the office bearers cease to hold office at the conclusion of each Annual General Meeting but can then be re-elected. [S59 & BL2019-04]

Anyone elected to any office ceases to hold that office if they cease to be a Director or if they resign from that office, by written notice. [BL2019-04]

4.03 Eligibility for being a Director

Elected Directors: A Member can be nominated for election as an Elected Director after one year of membership, the date of the start of membership being the date that membership was approved by the Board. [B1]

Nominated Directors: Any suitable person nominated by a Nominated Member can be appointed as a Nominated Director as long as the Board is satisfied with the individual.

Associate Directors: Any individual who has specific expertise or experience that the Board considers to be valuable at a point in time can be appointed as an Associate Director. [M23]

4.04 Appointing Directors

Elected Directors are elected by the Members at an Annual General Meeting – this is considered to be special business and must therefore comply with the rules for Special Resolutions. When a Member puts themselves forward for election as a Director, they must first complete an application and deliver it to the Trust. All applications must be made public before the start of the General Meeting. Where there are two candidates for election to a single post, a ballot will be undertaken and the Member with the

greater number of votes will be deemed to have been elected.
[M19]

Nominated Directors are nominated by Nominated Members after an invitation from the Board. The Board can specify the term of, and any conditions they wish to apply to, the appointment. The Board will then appoint the nominated individuals if satisfied with everything. Nominated Directors are not subject to retirement by rotation. Nominated Directors need not be Members of the Trust. If a Nominated Director retires or is removed from this appointment by the Nominated Member, the Nominated Member can then nominate an alternative person to take their place. This new nomination will go through the same appointment process. The maximum number of Nominated Directors shall not exceed 5.
[M19 & M22]

A Nominated Member is also permitted to appoint an alternate Director to take the place of the Nominated Director. This alternate Director is treated as if they were the Nominated Director that they replaced. The Nominated Member must give notice to the Trust if they intend to nominate an alternate Director. [M22c]

A Nominated Member who foregoes their right to nominate a person to become a Nominated Director can, nonetheless, appoint a representative who can attend and participate in Board meetings. This representative will be treated as if they were a Director in every respect except that they will have no voting rights. The Nominated Member must notify the Trust in writing of their intent to appoint a representative. [M22d]

The Board appoints Associate Directors as the need arises. The number of Associate Directors does not count towards the maximum number of elected Directors on the Board at any one time. [M23]

4.05 Appointments between General Meetings

Directors can only be appointed at General Meetings. If the Board wishes to appoint a Director between General Meetings, it must appoint as an Associate Director who must then retire at the next General Meeting and, if they so wish, put themselves forward for election in line with 4.04 above. [BL2019-21]

4.06 Resignation as a Director

A Director can resign at any time but must do so in writing and deliver this resignation to the Trust. [BL2019-05]

4.07 Retirement of Directors

Elected Directors must retire by rotation at each AGM. One half of the sitting Elected Directors, or the nearest number, must stand down at the AGM but are eligible to stand for re-election at that same meeting, subject to the maximum number of consecutive terms that can be served. The Elected Directors that must retire by rotation are those that have served the longest since their appointment or re-appointment. If all those that must retire were all appointed at the same time, a ballot will select the Elected Directors that must retire. [M20]

Nominated Directors are retired at the discretion of the Nominated Member. [M22c(ii)]

Associate Directors retire at each AGM but are eligible for re-appointment by the new Board, subject to the maximum numbers of consecutive terms that may be served. [M23]

4.08 Termination of office

A Director will automatically vacate office if they [S54 & BL2019-06]:

- Cease to be a Director through the operation of any provision of the Companies Act 2006 or the Charities and the Trustee Investment (Scotland) Act 2005 or become prohibited by law from being a Director;
- Become debarred under any statutory provision from being a charity trustee;
- 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 six months;
- Cease to be a Member of the Trust;
- Become an employee of the Trust;
- Resign office by notice to the Trust;
- Are absent (without permission of the Directors) from more than 25% meetings of the Directors, and the Directors resolve to remove them from office;
- 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;
- 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 as a Director of the Trust; or
- Are removed from office by Ordinary Resolution after special notice has been given.

A resolution to remove a Director is valid only if [S55]:

- 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;

- 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
- At least two thirds (to the nearest round number) of the Directors then in office vote in favour of the resolution.

A Nominated Director ceases to be such if the Nominated Member removes them from office or if the Nominated Member ceases to be such. [M22c(ii)]

5.00 PROVISIONS RELATING TO THE PROCEEDINGS OF DIRECTORS

5.01 Responsibilities of the Directors

The first responsibility of a newly elected Board is to elect a Chair. This is done as the first item of business at the first meeting of the new Board after the Annual General Meeting where new Directors were elected or previous Directors were re-elected. If there is a single candidate, they should be proposed, seconded and then voted in. If there are two or more candidates, election is done by a simple show of hands with the individual gaining the highest number of votes being elected Chair. This same process is adopted if a Chair has to be elected between AGMs. It is advisable, but not mandatory, that a Chair has served at least one year as a Director. [BL2019-07]

It is the Board's responsibility to manage all the affairs of the Trust from a strategic perspective. [M25]

The Board must formally acknowledge issues and suggestions raised by other Members and then address them and respond to the respective Members within a period of one month or one Board Meeting from receipt, whichever comes sooner. [BL2019-22]

The Board can exercise all of the powers of the Trust outlined in '1.04: The Trust's powers'. [M27]

The Board can create new rules, called Bye-laws, as they consider necessary for the proper conduct and management of the Trust. These Bye-laws can cover areas such as [M34]:

- The admission of Members of the Trust, the rights and privileges of such Members, the conditions of membership and termination of membership; [M34a]
- The procedures for nominating, but not electing, persons to serve as Directors of the Trust; [M34b]
- The conduct of Members in relation to one another and to people who work for, or are associated with, the Trust on a paid or voluntary basis – these people are known as the Trust's 'servants'; [M34c]
- Setting aside Trust assets and property for particular purposes; [M34d]
- The procedures at General Meetings, Board meetings and the like as long as they do not run counter to the provisions already laid out in the Articles of Association; [M34d] and
- Any other matters that are generally accepted to relate to the rules and procedures for governing the Trust, again as long as they do not run counter to the provisions already laid out in the Articles of Association. [M34e]

The Bye-laws, whilst they remain in force, are binding on all Members of the Trust. Consequently, Board must ensure that all Members are aware of them. [M35]

New bye-laws must be put to a General Meeting for approval of the membership. [M35]

5.02 Quorum of Directors

A quorum for the transaction of Directors' business is four or more Elected Directors. These Directors must be present at the

same time, either in person or by electronic means (where this term includes telephone and video conference). [M26]

5.03 Director benefit

No Director can be in receipt of a salary, fee or any other type of remuneration or benefit in money (or its equivalent). The exceptions to this rule are laid out in '1.05: Application of Trust income and property'. [A4]

5.04 Directors' interests

A Director must disclose to the Board the nature of any interest that they have in any transactions concerning the Board in particular and the Trust in general. They must then leave any meeting for the entire time that this matter is being considered unless the Board unanimously agrees to invite them to remain in which case they cannot participate in any discussion. [M29]

A meaning of 'personal interest' is extended to include a situation where they, or any partner or close relative of or any enterprise in which they have a substantial involvement, has an interest in the matter in hand. [S63]

A Director must not vote on a resolution at any meeting on a matter in which they have a direct or indirect material interest that may conflict with the interests of the Trust. There are some exceptions to this rule [M28 & Table A94]:

- The resolution relates to giving them a guarantee related to money lent to them or an obligation incurred by them for the benefit of the Trust;
- The resolution relates to giving a third party a guarantee related to an obligation incurred by the Trust for which the Director has assumed responsibility in whole or in part, alone or jointly with others;

- Their interest arises because they are subscribing for debentures issued by the Trust; or
- The resolution relates to a retirement benefits scheme approved by HMRC for taxation purposes.

A Director must complete a Register of Interests within a period of one Board meeting from their appointment. When registering interests, a Director must indicate their employment status and employer. [BL2019-08]

A Director may not serve as an employee of the Trust. [S67 & BL2019-08]

A Director must not be paid any remuneration for carrying out their duties as a Director of the Trust. [S67 & BL2019-08]

Where a Director provides goods or services to the Trust, or might benefit from any remuneration paid to a connected third party [S68 & BL2019-08]:

- The maximum amount of the remuneration must be specified in a written agreement and must be reasonable; and
- The Directors must be satisfied that it is in the interests of the Trust to enter into the arrangement.

If a question about the right of the Chair to vote arises at a Board meeting, this question may be referred to the other members of the Board and their ruling will be final. [M30]

The Register of Directors' Interests should be made available to Members on request. [BL2019-08]

5.05 Conduct of Directors

Each of the Directors must act in the interests of the Trust at all times whilst exercising their functions as a Director of the Trust. In particular, each Director must [BL2019-09]:

- Ensure that the Trust acts in accordance with its charitable aims;
- Act with the care and diligence that is reasonable to expect of a person managing the affairs of another person;
- Make known any potential conflict of interest, personal or otherwise. They must put the interests of the Trust before those of the other party. Where the conflict of interest is personal, they must refrain from participating in any discussions or decisions involving the other Directors with regard to the matter in question;
- Ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005;
- Ensure that recognised best practice is applied to all the dealings and activities of the Trust;
- Regularly review the Trust's policies and procedures to make sure that they comply with current legislation and recognised best practice;
- Call to the attention of the Board any wrongdoing or failure to observe best practice of which they become aware;
- Apply an appropriate duty of care to paid staff and volunteers; and
- Ensure that a current Trust Development Plan is in place and being used to drive Trust activities.

5.06 Director's expenses [M24]

The Directors will be paid all reasonable travelling, hotel and other expenses properly incurred by them in connection with the execution of their role. [Table A83]

Such expenses must be properly authorised in advance by the Board. [BL2019-23]

6.00 PROVISIONS RELATING TO THE ADMINISTRATION OF THE TRUST

6.01 Modifying the Governing Documents [BL2019-10]

Modifications to the Trust's Governing Documents fall into two categories:

- Minor modifications which can be dealt with through the creation of a bye-law; and
- Major modifications that can only be dealt with through a modification of the Governing Documents.

Where new bye-laws are created, they must be put before a General Meeting for approval by the Membership. [M35]

Where major modifications to the Governing Documents are required, proper legal support must be sought for drafting the changes. OSCR (Office of the Scottish Charity Regulator) must be advised of, and approve, any such approved changes before they are adopted into the Governing Document of the Trust.

Members must be given the opportunity to fully understand any modifications, and their rationale, in advance of being asked to approve them.

6.02 Delegation to sub-committees

The Directors may delegate any of their powers to any sub-committee consisting of one or more Directors and such other persons, if any, as they consider appropriate to the task in hand. They may also delegate to the Chair of the Trust, or the holder of any other post, any of their powers as they consider appropriate. Any such delegation can be made subject to whatever conditions the Directors see fit and may be altered or revoked. The rules of procedure for any sub-committee will be the same as for any meetings of the Directors. [S83-85 & BL2019-11]

6.03 Operation of bank accounts

The signatures of two out of the signatories appointed by the Directors is required in relation to all operations (other than lodgement of funds) on the bank and building society accounts held by the Trust. At least one out of the two signatures must be the signature of a Director. [S86 & BL2019-12]

6.04 Taking minutes

The Directors must ensure that minutes are made of all proceedings at General Meetings, Directors' meetings and meetings of committees. A minute of any meeting must include the names of those present. [M31, Table A100 & BL2019-13]

The appointment of officers made by the Directors must be minuted. [BL2019-13]

The resignation of Directors must be minuted. [BL2019-13]

In line with best practice, the minutes will be signed by the Chair of the meeting to confirm that they represent an accurate and fair representation of what took place at the meeting. [BL2019-13]

6.05 Financial management of the Trust

The Directors must ensure that proper accounting records are maintained in accordance with all applicable statutory requirements. [S89 & BL2019-14]

The Directors must prepare annual accounts, complying with all relevant statutory requirements. If an audit is required under any statutory provisions, or if they otherwise think fit, they must ensure that a qualified auditor carries out an audit of such accounts. [S90 & BL2019-14]

No Member, unless they are a Director, has any right to inspect any accounting or other records, or any other document of the Trust, except as conferred by statute or as authorised by the Directors or as authorised by an Ordinary Resolution of the Trust. [S91 & BL2019-14]]

6.06 Notices

Any notice to be given to or by any person must be in writing with the exception of a notice calling a meeting of the Directors. [Table A 111]

The Trust may give any notice to a Member personally, by post or by leaving it at their (registered) address. [M31]

A Member that is present at a meeting, either in person or by proxy, is deemed to have received notice of the meeting and, where appropriate, of the purpose for which it was called. [M33 & Table A 113]

6.07 Winding up the Trust

Should the Trust be wound up, all the Trust's debts and liabilities must first be satisfied. [S95]

No Trust property will be paid to or distributed amongst any of its Members. [M7]

Instead, remaining Trust property will be given or transferred to another not-for-profit organisation that has similar charitable aims as the Trust. The organisation that receives Trust property cannot then pay or distribute it to their members. [M7]

If a suitable organisation cannot be found at the time of winding up the Trust, the remaining Trust property must be given to an organisation established for charitable purposes only. [M7]

6.08 Indemnifying officers (these elements have been left in the original legal language to avoid misinterpretation)

Every Director, other officer and auditor of the Trust is indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the Trust against any loss or liability which they may sustain or incur in connection with the execution of the duties of their office. This may include any liability incurred by them in defending any proceedings, 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 Trust. [S98 & BL2019-15]

The Trust 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 Trust 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). [S99 & BL2019-15]