

CONSTITUTION

of

East Kintyre Community Fund (EKCF)
A single tier SCIO

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GENERAL

Type of Organisation

- 1 The organisation will, upon registration, be a Scottish Charitable Incorporated organisation (SCIO).

Scottish principal office

- 2 The principal office of the organisation will be in Scotland (and must remain in Scotland).

Name

- 3 The name of the organisation (referred to below as the SCIO) is “East Kintyre Community Fund”.

Purposes, Area of Benefit and Beneficiaries

- 4 The SCIO’s purposes are to benefit the communities of East Kintyre. The objects are:
 - 4.1 The distribution of Community funds from windfarms, and funds from other sources, to community groups or organisations within the area of East Kintyre to undertake projects that meet the public benefit criteria agreed by the SCIO and the donors and which fall within the purposes of;
 - 4.1.1 the advancement of community development and sustainability (including rural regeneration),
 - 4.1.2 the advancement of education,
 - 4.1.3 the advancement of arts, heritage, culture or science,
 - 4.1.4 the provision of recreational facilities or the organisation of recreational activities with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
 - 4.1.5 the advancement of environmental protection or improvement,
 - 4.1.6 the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
 - 4.2 The SCIO shall promote (but not promote exclusively) its activities and operations to people within the area of East Kintyre. These people will be the SCIO’s beneficiaries.

Powers

- 5 The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so as stated in Section 50 (5) of the Charities and Trustee Investment (Scotland) Act 2005.
- 6 No part of the income or property of the SCIO may be paid or transferred (directly or indirectly) to the charity trustees - either in the course of the SCIO's existence or on dissolution - except where this is done in direct furtherance of the SCIO's purposes.

Liability of charity trustees

- 7 The charity trustees of the SCIO (in their capacity as the only members - see clause 11) have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up; accordingly, if the SCIO is unable to meet its debts, the charity trustees will not be held responsible.
- 8 The charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

General structure

- 9 The structure of the SCIO consists of the CHARITY TRUSTEES who are also the SCIO's only members and comprise the SCIO's BOARD. They will hold regular meetings, and generally control the activities of the SCIO; for example, the board is responsible for monitoring and controlling the financial position of the SCIO.
- 10 The board also appoints charity trustees to fill vacancies, and the people serving on the board (in their capacity as members of the SCIO - see clauses 11 and 13) have power to make changes to the constitution itself.
- 11 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES - and they are *also* the MEMBERS of the SCIO for the purposes of the Charities and Trustee Investment (Scotland) Act 2005.
- 12 Under the provisions of this constitution, no-one can be a member unless they are also a charity trustee of the SCIO.
- 13 The Charities and Trustee Investment (Scotland) Act 2005 requires certain decisions to be taken by the charity trustees in their capacity as members of the SCIO.

BOARD

Number of charity trustees

- 14 The maximum number of charity trustees is 6.
- 14.1 In order to ensure a wide diversity of community views and improve SCIO resilience the maximum number of trustees who are also elected representatives of the community is 3.
- 15 The minimum number of charity trustees is 3.

Eligibility

- 16 A person will not be eligible for election or appointment to the board if they are: -
- 16.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
- 16.2 an employee of the SCIO; or
- 16.3 or not resident within East Kintyre and entitled to vote in local elections.

Initial charity trustees

- 17 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the SCIO shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the SCIO and its entry on the Scottish Charity Register.

Appointment/retiral

- 18 The board may at any time appoint any person to be a charity trustee - by way of a resolution passed by majority vote at a board meeting.
- 19 At the conclusion of the first AGM, one third (to the nearest round number) of the charity trustees shall retire from office; the question of which of them is to retire shall be determined by some random method.
- 20 At the conclusion of each AGM (other than the first)
- 20.1 any charity trustees appointed during the period since the preceding AGM (but excluding those re-appointed under clause 22 during that period) shall retire from office;
- 20.2 out of the remaining charity trustees, one third (to the nearest round number) shall retire from office.

- 21 The charity trustees to retire under clause 20.2 shall be those who have been longest in office since they were last appointed or re-appointed; as between persons who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method.
- 22 A charity trustee who retires from office under clause 19 or 20 at the conclusion of an AGM shall be eligible for re-appointment under clause 18 at the next board meeting.
- 23 A charity trustee vacating office at the conclusion of an AGM will be deemed to have been re-elected at the board meeting which next follows unless:
- 23.1 they advise the board that they do not wish to be re-appointed;
or
- 23.2 a resolution for the re-appointment of that charity trustee was put to the board meeting and was not carried.

Termination of office

- 24 A charity trustee will automatically cease to hold office if: -
- 24.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
- 24.2 they become incapable for medical reasons of carrying out their duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months; or
- 24.3 they become an employee of the SCIO; or
- 24.4 they give the SCIO a notice of resignation, signed by them; or
- 24.5 they are absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove them from office; or
- 24.6 they are removed from office by resolution of the board on the grounds that they are considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 41); or
- 24.7 they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- 24.8 They are removed from office for any other reason by resolution of the Board

- 25 A resolution under clause 24.6 or 24.7 or 24.8 shall be valid only if:-
- 25.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed; and
 - 25.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
 - 25.3 at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

Register of charity trustees

- 26 The board must keep a register of charity trustees, setting out
- 26.1 for each current charity trustee:
 - 26.1.1 their full name and address;
 - 26.1.2 the date on which they were appointed as a charity trustee; and
 - 26.1.3 any office held by them in the SCIO;
 - 26.2 for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee:
 - 26.2.1 the name of the charity trustee;
 - 26.2.2 any office held by them in the SCIO; and
 - 26.2.3 the date on which they ceased to be a charity trustee.
- 27 The board must ensure that the register of charity trustees is updated within 28 days of any change:
- 27.1 which arises from a resolution of the board; or
 - 27.2 which is notified to the SCIO.
- 28 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable. If the request is made by a person who is not a Charity Trustee of the SCIO, the Board may provide a copy which has the addresses of the Trustees blanked out. The SCIO may, if it is satisfied that including the names of any or all of the Charity Trustees is likely to jeopardise the safety or security of any person or premises, remove the name(s). Such a decision must be taken on a case by case basis, justified and minuted at a meeting of the Board of Charity Trustees

- 29 The members of the SCIO are identical to its charity trustees - and therefore the SCIO does not require to keep a separate register of members.

Office-bearers

- 30 The charity trustees must elect (from among themselves) a chair, a treasurer and a secretary.
- 31 In addition to the office-bearers required under clause 30, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 32 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 30 or 31.
- 33 A person elected to any office will automatically cease to hold that office: -
- 33.1 if they cease to be a charity trustee; *or*
 - 33.2 if they give to the SCIO a notice of resignation from that office, signed by them.

Powers of board

- 34 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the SCIO.
- 35 A meeting of the board at which a quorum is present (see clause 45) may exercise all powers exercisable by the board.

Charity trustees - general duties

- 36 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the SCIO; and, in particular, must:-
- 36.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes; and
 - 36.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person; and
 - 36.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party: -
 - 36.3.1 put the interests of the SCIO before that of the other party;

- 36.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
- 36.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 37 In addition to the duties outlined in clause 36, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 37.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
- 37.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee (see clause 24.7).
- 38 Provided they have declared their interest - and have not voted on the question of whether or not the SCIO should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the SCIO in which they have a personal interest; and (subject to clause 39 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005) they may retain any personal benefit which arises from that arrangement.
- 39 No charity trustee may serve as an employee (full time or part time) of the SCIO; and no charity trustee may be given any remuneration by the SCIO for carrying out their duties as a charity trustee.
- 40 The charity trustees may be paid all 'out of pocket' travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this does not include expenses relating to their attendance at board or member meetings. The Charity Trustees must have a written policy and approved procedure on such matters (see Appendix A, Code of Conduct for the policy and procedure).

Code of conduct for charity trustees

- 41 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) adopted by the charity members from time to time (see Appendix A Code of Conduct for the adopted policy).
- 42 The code of conduct referred to in clause 41 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the

Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct, which will be reviewed annually by the Board.

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of board meetings

- 43 Any charity trustee may call a meeting of the board and/or ask the Secretary to call a meeting of the board.
- 44 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

Procedure at board meetings

- 45 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 4 charity trustees. Any trustee may attend a meeting by virtual communications (such as teleconference or video conference). A trustee participating in the meeting in this manner shall be deemed to be present in person at the meeting.
- 46 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 45, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.
- 47 The chair of the SCIO should act as chairperson of each board meeting.
- 48 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 49 Every charity trustee has one vote, which must be given personally (see clause 45).
- 50 All decisions at board meetings will be made by majority vote.
- 51 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 52 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that they are not a charity trustee - but on the basis that they must not participate in decision-making.

- 53 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee or at a members' meeting) on any resolution which relates to a matter in which they have a private interest or duty which conflicts (or may conflict) with the interests of the SCIO; they must withdraw from the meeting while an item of that nature is being dealt with.
- 54 For the purposes of clause 53: -
- 54.1 a private interest held by an individual who is "connected" with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
- 54.2 a charity trustee will be deemed to have a private 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.

Minutes

- 55 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 56 The minutes to be kept under clause 55 must include the names of those present; must be approved by those that present as a true record at or before the next meeting and (so far as possible) should be signed by the chairperson of the meeting.
- 57 The board shall (subject to clause 58) make available copies of the minutes referred to in clause 55 to any member of the public requesting them.
- 58 The board may exclude from any copy minutes made available to a member of the public under clause 57 any material which the board considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the SCIO or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

DECISION-MAKING BY THE CHARITY TRUSTEES - IN THEIR CAPACITY AS MEMBERS

- 59 For certain purposes of the Charities and Trustee Investment (Scotland) Act 2005, the charity trustees make decisions in their capacity as *members* of the SCIO, rather than as a board; the provisions of clauses 60 to 80 relate to those situations.

Annual general meetings

- 60 The board must convene a meeting of the charity trustees - in their capacity as members of the SCIO - in each calendar year; that meeting will be called an annual general meeting or "AGM" and will report on the immediately preceding financial year of the SCIO.
- 61 The gap between one AGM and the next must not be longer than 15 months.
- 62 Notwithstanding clause 60, an AGM does not need to be held during the calendar year in which the SCIO is formed; but the first AGM must still be held within 15 months of the date on which the SCIO is incorporated and entered on the Scottish Charity Register.
- 63 The business of each AGM must include:-
- 63.1 a report by the chair on the activities of the SCIO; and
 - 63.2 consideration of the annual statement of account of the SCIO, as prepared under Section 44 of the Charities and Trustee Investment (Scotland) Act 2005;
 - 63.3 consideration of the future strategy for the SCIO, including a review of key documents (such as adherence to the Code of Conduct and Grant-making Policy) and opportunities.
 - 63.4 the election/re-election of charity trustees
- 64 The board may convene any other meeting of the charity trustees - in their capacity as members of the SCIO - at any time.

Notice of members' meetings

- 65 At least 14 clear days' notice must be given of any AGM or any other members' meeting.
- 66 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and, in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s).
- 67 The reference to "clear days" in clause 65 shall be taken to mean that, in calculating the period of notice,
- 67.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
 - 67.2 the day of the meeting itself should also be excluded.

- 68 Notice of every members' meeting must be given to all the charity trustees; but the accidental omission to give notice to one or more charity trustees will not invalidate the proceedings at the meeting.
- 69 Any notice of a members' meeting which requires to be given to a charity trustee - in their capacity as a member of the SCIO - under this constitution must be: -
- 69.1 sent by post to the charity trustee, at the address last notified by them to the SCIO; *or*
- 69.2 sent by e-mail to the charity trustee, at the e-mail address last notified by them to the SCIO. It is the responsibility of each Charity Trustee to keep their personal email and address details up to date

Procedure at members' meetings

- 70 The provisions of clauses 45, 47, 48, 53 & 54 (quorum, participation, chairperson, conflict of interest) shall apply in relation to all meetings of the charity trustees in their capacity as members of the SCIO.

Voting at members' meetings

- 71 Every charity trustee shall have one vote in their capacity as a member, which must be given personally (see clause 45).
- 72 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 73.
- 73 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 77):
- 73.1 a resolution amending the constitution, including changing the name;
- 73.2 a resolution amending the Code of Conduct, including all Appendices;
- 73.3 a resolution amending the Grant Making Policy;
- 73.4 a resolution expelling a person from Charity Trusteeship under clause 24.6, 24.7 or 24.8;
- 73.5 a resolution directing the Board to take any particular action (or directing the Board not to take any particular action)
- 73.6 a resolution approving the amalgamation of the SCIO with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);

- 73.7 a resolution to the effect that all of the SCIO's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
- 73.8 a resolution for the winding up or dissolution of the SCIO.
- 74 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 75 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot.
- 76 The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.

Written resolutions

- 77 A resolution agreed to in writing (or by e-mail) by all the charity trustees, in their capacity as members of the SCIO, will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last charity trustee agreed to it and it must be unanimous.

Minutes

- 78 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 79 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 80 The board shall make available copies of the minutes referred to in clause 78 to any member of the public requesting them; but on the basis that the board may exclude confidential material to the extent permitted under clause 58.

ADMINISTRATION

Delegation to sub-committees

- 81 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 82 The board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.

- 83 When delegating powers under clause 81 or 82, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 84 Any delegation of powers under clause 81 or 82 may be revoked or altered by the board at any time.
- 85 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

Operation of accounts

- 86 Subject to clause 87, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the SCIO; both signatories must be charity trustees.
- 87 Where the SCIO uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 86.

Accounting records and annual accounts

- 88 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 89 The board must prepare annual accounts, complying with all relevant statutory requirements; which includes deciding the correct format of the accounts, and the appropriate external scrutiny requirement by either a registered auditor or an appropriately qualified independent examiner.

MISCELLANEOUS

Winding-up

- 90 If the SCIO is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005 and the Scottish Charitable Incorporated SCIO (Removal from Register and Dissolution) Regulations 2011
- 91 Any surplus assets available to the SCIO immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the SCIO as set out in this constitution.

Subscriptions to the SCIO

- 92 No subscription will be payable.

Alterations to the constitution

- 93 This constitution may (subject to clause 94) be altered by resolution of the charity trustees - in their capacity as members of the SCIO - passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 73) or by way of a written resolution of the charity trustees in their capacity as members.
- 94 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (e.g. change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

- 95 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 95.1 any statutory provision which adds to, modifies or replaces that Act; and
 - 95.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under clause 95.1 above.
- 96 In this constitution: -
- 96.1 "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;
 - 96.2 "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.
 - 96.3 East Kintyre means the area encompassed by the East Kintyre Community Council in 2020, running from Grogport at its northern boundary to Ballymenach gun emplacement at its southern boundary.

Decision making in the SCIO

