

Bolt-on provisions for Single tier model SCIO constitution

These are alternative clauses for some of the sections within our model constitution for a single-tier SCIO.

SUPPLEMENT 1 Proxy voting

SUPPLEMENT 2 Participation in meetings via telephone/video conference etc

SUPPLEMENT 3 Chief executive (or equivalent) serving as a charity trustee

NOTE: The use of numbering such as “39A”, “39B” etc in the bolt-on provisions is intended simply to clarify where additional provisions are to be inserted (in the above example the new provisions would appear after clause 39 but before clause 40). Once the draft has been fully assembled, all clauses should be numbered through in the normal manner (e.g. 39A would become 40, 39B would become 41 and 40 (old numbering) would become 42); cross-references should be altered accordingly.

SUPPLEMENT 1 Proxy voting

1. Amend clause 70:-

“70. The provisions of clauses 47 and 48 (chairperson) shall apply in relation to all meetings of the charity trustees in their capacity as members of the organisation.”

2. Add immediately after clause 70:-

“70A. The quorum for a members’ meeting shall be [] persons entitled to vote, each being a member or a proxy for a member.”

3. Amend clause 71:-

“71. Every charity trustee shall have one vote in his/her capacity as a member, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.”

4. Add immediately after clause 74:-

“74A. A member who wishes to appoint a proxy to vote on his/her behalf at any members’ meeting:-

74A.1 must give to the SCIO a proxy form (in such terms as the board requires), signed by him/her; or

74A.2 must send by electronic means to the SCIO at the email address notified to the members for that purpose, a proxy form (in such terms as the board requires)

providing (in either case) the proxy form is received by the SCIO at the relevant address not less than 48 hours before the time for holding the members’ meeting.

74B. An instrument of proxy which does not comply with the provisions of clause 74A, or which is not lodged or given in accordance with such provisions, shall be invalid.

74C. A member shall not be entitled to appoint more than one proxy to attend on the same occasion.

74D. A proxy need not be a member of the organisation.

74E. Subject to clause 74F, in relation to each resolution proposed at a members’ meeting, an individual shall not be entitled to cast more than [] votes as a proxy (in addition to any vote to which he/she is entitled personally, if he/she is a member of the SCIO).

74F. Where members have appointed the chair of a members’ meeting to vote as their proxy - and have directed the chair (through wording in the proxy form) on whether he/she should vote on their behalf in favour of, or against, each resolution - the provisions of clause 74E shall not apply in relation to the chair, in acting as proxy for those members.

74G. A proxy appointed to attend and vote at any members’ meeting instead of a member shall have the same right as the member who appointed him/her to speak at the meeting.

5. Amend clause 75:-

“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 persons present at the meeting and entitled to vote, whether as members or as proxies for members) ask for a secret ballot.”

SUPPLEMENT 2 Participation in meetings via telephone/video conference etc

1. Add immediately after clause 45:

“45A. A charity trustee may participate in a meeting of the board by means of a conference telephone, video conferencing facility or similar communications equipment - so long as all the charity trustees participating in the meeting can hear each other; a charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting.”

2. Amend clause 49:

“49. Every charity trustee has one vote, which must be given personally; for the avoidance of doubt, a vote given by a charity trustee participating in the meeting through any of the methods referred to in clause 45A will be taken to be given personally for the purposes of this clause.”

3. Add immediately after clause 70:

“70A. The board may make arrangements, in advance of any members' meeting, to allow charity trustees (in their capacity as members of the organisation) to participate in the members' meeting by means of a conference telephone, video conferencing facility or similar communications equipment - so long as all those participating in the meeting can hear each other; a charity trustee participating in a members' meeting in this manner shall be deemed to be present in person at the meeting.”

4. Amend clause 71:

“71 Every charity trustee has one vote in his/her capacity as a member, which must be given personally; for the avoidance of doubt, a vote given by a charity trustee participating in the meeting through any of the methods referred to in clause 70A will be taken to be given personally for the purposes of this clause.”

SUPPLEMENT 3 Chief executive (or equivalent) serving as a charity trustee

1. Amend clause 14:-

“14 The maximum number of charity trustees is []; out of that:

- 14.1 no more than [] shall be charity trustees who were appointed under clause 18 (or deemed to have been appointed under clause 17);
- 14.2 no more than one shall be a charity trustee appointed under the provisions of clause 23A ([chief executive]).”

2. Amend clause 16:-

“16. Subject to clause 16A, a person will not be eligible for election or appointment to the board if he/she is: -

16.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

16.2 an employee of the organisation.”

3. Add immediately after clause 16:-

“16A. Paragraph 16.2 shall not apply to a person appointed to the board under clause 23A ([chief executive]).”

4. Add immediately after clause 23:-

“Appointment of [chief executive] as a charity trustee

“23A. The board shall, at the first board meeting following the appointment of any individual as the [chief executive] of the organisation, appoint him/her as a charity trustee.

23B. The chief executive shall continue to be a charity trustee unless and until he/she ceases (for any reason) to hold the post of [chief executive] of the organisation.”

5. Amend clauses 24 and 25:

“24. A charity trustee will automatically cease to hold office if: -

24.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;

24.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;

24.3 (except in the case of the [chief executive]) he/she becomes an employee of the organisation;

24.4 (in the case of the [chief executive]) he/she ceases (for whatever reason) to hold the post of [chief executive] of the organisation;

24.5 he/she gives the organisation a notice of resignation, signed by him/her;

- 24.6 he/she is 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 him/her from office;
 - 24.7 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a serious breach of the code of conduct for charity trustees (as referred to in clause 41); or
 - 24.8 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005.
- 25 A resolution under paragraph 24.7 or 27.8 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 his/her removal is to be proposed;
 - 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.”

6. Amend clause 39:-

- “39. Subject to clause 39A, no charity trustee may serve as an employee (full time or part time) of the organisation; and no charity trustee may be given any remuneration by the organisation for carrying out his/her duties as a charity trustee.

7. Add immediately after clause 39:-

- “39A. The [chief executive] of the organisation may retain all remuneration, and all pension and/or other benefits, paid or provided to him/her in his/her capacity as an employee of the organisation.”

8. Add immediately after clause 54:-

- “54A. For the avoidance of doubt, the [chief executive] shall not be entitled to vote in relation to any matter connected with his/her remuneration or other terms and conditions of employment.”