

Bolt-on provisions for Company Limited by Guarantee model constitution

These are alternative clauses for some of the sections within our model constitution for a company limited by guarantee.

If you are using these bolt-on provisions within our model constitution to apply to OSCR for charitable status then you need to complete certain sections in full. OSCR have to know what are your charitable objectives and activities, the number of trustees you need for a quorum, whether there are any qualifications to be a member of your organisation, etc. We have highlighted the sections you must complete in order to gain charitable status so that you can ensure your constitution contains all the information that OSCR will be looking for when they consider whether your organisation can become a Scottish charity.

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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 - Membership by incorporated bodies

1. Amend article 9 of the articles of association – “they/it”

2. Amend article 11 – “such other persons and bodies”

3. Amend article 12:-

“12. Membership shall be open to

(a) any individual who [insert membership qualifications]

(b) any corporate body which [insert membership qualifications]”

4. Amend article 14:-

“14. Any person or body who/which wishes to become a member must sign, and lodge with the company, a written application for membership; in the case of a corporate body, the application must be signed by an appropriate officer of that body.”

5. Amend article 15 - “any person or body”.

6. Amend article 18 - “they/it” and “any person or body”

7. Amend article 19:-

“19. Any person or body who/which wishes to withdraw from membership shall sign (in the case of a corporate body, through an appropriate officer), and lodge with the company, a written notice to that effect; on receipt of the notice by the company, they/it shall cease to be a member.”

8. Amend article 20 - “Any person or body”

9. Amend article 21:-

“21. Membership shall cease on death or (in the case of a corporate body) on receivership, liquidation, dissolution or striking-off of the body which constituted the member.”

10. Amend article 22 – “they/its”

11. Amend article 36:-

“36. No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be [] members, present in person or (in the case of members which are corporate bodies) present via their duly authorised representatives.”

12. Amend article 40:-

“40. Every member shall have one vote, which (whether on a show of hands or on a secret ballot) must be given personally or (in the case of a member which is a corporate body) given via its duly authorised representative present at the meeting.”

13. Add immediately after article 40:-

“40A. A member which is a corporate body shall be entitled to authorise an individual to attend and vote at general meetings; they will then be entitled to exercise the same powers on behalf of the body which they represents a that body could have exercised if it had been an individual member of the company.”

14. Amend article 50:-

“50. A person shall not be eligible for election/appointment as a director unless they are a member of the company or has been nominated for election/appointment as a director by a member which is a corporate body.”

15. Insert immediately after article 50:-

“50A. A person shall not be eligible for election/appointment as a director if they are an employee of the company.”

16. Add immediately after article 52:-

“52A A member which is a corporate body may (subject to article 52B) nominate any individual for election/appointment as a director; they will then be deemed to be a member of the company for the purposes of articles 51 and 52.

52B No more than one individual nominated under article 52A by each corporate member may serve as a director at any given time.”

17. Amend paragraph (d) of article 54:-

“(d) they cease to be a member of the company or (if they were nominated by a corporate body) the corporate body which nominated them ceases to be a member of the company”

18. Amend article 55:-

“55. The directors shall maintain a register of directors, setting out full details of each director, the name of the corporate member which nominated each director (if applicable), the date on which each such person became a director, and the date on which any person ceased to hold office as a director.”

19. Amend article 87 - “they/it”.

SUPPLEMENT 2 -Membership by unincorporated bodies

1. Amend article 12:-

“12. Membership shall be open to

(a) any individual who [insert membership qualifications]

(b) any individual who has been nominated for membership by an unincorporated body which [insert membership qualifications]”

2. Add immediately after article 12:-

“12A No more than one individual nominated under paragraph (b) of article 12 by each unincorporated body may be a member of the company at any given time.”

3. Amend article 14:-

“14. Any person who wishes to become a member must sign, and lodge with the company, a written application for membership; in the case of an application under paragraph (b) of article 12, the application must also be signed by an appropriate officebearer of the unincorporated body which is nominating them for membership.”

4. Amend article 18:-

“18. 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; in the case of a member who was admitted under paragraph (b) of article 12, the entry against their name shall also include details of the unincorporated body which nominated them for membership.”

5. Add immediately after article 21:-

“21A An unincorporated body which has nominated an individual for membership may withdraw its nomination at any time by written notice to the company to that effect; on receipt of the notice by the company, the individual in question shall automatically cease to be a member of the company.”

SUPPLEMENT 3 - Co-opted directors

1. Amend article 49:-

“49. The maximum number of directors shall be []; out of that number, no more than [] shall be directors who were co-opted under the provisions of articles 53A and 53B.”

2. Amend article 50:-

“50. A person shall not be eligible for election/appointment as a director under articles 51 to 53 unless they are a member of the company; a person appointed as a director under articles 53A and 53B need not, however, be a member of the company.”

3. Insert immediately after article 50:-

“50A A person shall not be eligible for election/appointment as a director if they are an employee of the company.”

4. Amend article 53:-

“53. At each annual general meeting, all of the directors elected/appointed under articles 51 and 52 shall retire from office – but shall then be eligible for re-election.”

5. Insert immediately after article 53:-

“Appointment/re-appointment of co-opted directors

53A. In addition to their powers under article 52, the directors may (subject to article 49) at any time appoint any non-member of the company to be a director (providing they are willing to act) either on the basis that they have been nominated by [insert name of body or bodies or simply state “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 directors.

53B At each annual general meeting, all of the directors appointed under article 53A shall retire from office – but shall then be eligible for re-appointment under article 53A.”

6. Amend paragraph (d) of article 54:-

“(d) (in the case of a director elected/appointed under articles 51 to 53) they cease to be a member of the company”

SUPPLEMENT 4 - Some, but not all, elected directors to retire each year

1. Amend article 53:-

“53. At the first annual general meeting, one third (to the nearest round number) [or insert a specific number] of the directors [disregarding for this purpose those appointed under article 53A] shall retire from office; the question of which of them is to retire shall be determined by some random method.”

2. Insert immediately after article 53:-

“53AA At each annual general meeting (other than the first)

(a) any director appointed under article 52 during the period since the preceding annual general meeting shall retire from office

(b) out of the remaining directors [disregarding for this purpose those appointed under article 53A], one third (to the nearest round number) [or insert a specific number] shall retire from office.

53AB The directors to retire under paragraph (b) of article 53AA shall be those who have been longest in office since they were last elected or re-elected; as between persons who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method.

53AC A director who retires from office under article 53 or 53AA shall be eligible for re-election.”

SUPPLEMENT 5 - Maximum period in office for directors

1. Add immediately after article 50:-

“50A A person who has served as a director for a period of [] years shall automatically vacate office on expiry of that [] year period and shall then not be eligible for re-election until a further year has elapsed.

50B For the purposes of article 50A

(a) the period from the date of the formation of the company to the first annual general meeting 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

(b) the period between the date of appointment of a director 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

(c) the period between one annual general meeting and the next shall be deemed to be a period of one year

(d) if a director ceases to hold office but is re-appointed as a director within a period of six months, they shall be deemed to have held office as a director continuously.”

2. Amend article 53:

“53. At each annual general meeting, all of the directors shall retire from office – but shall then (subject to article 50A) be eligible for re-election.”

also amend article 53B (if applicable)

“53B At each annual general meeting, all of the directors appointed under article 53A shall retire from office – but shall then be eligible (subject to article 50A) for re-appointment under article 53A.”

SUPPLEMENT 6 – Outside body having right to representation on board

1. Amend article 50:-

“50. A person shall not be eligible for election/appointment as a director under articles 51, 52 and 53 unless they are a member of the company; a person appointed as a director under article 53A need not, however, be a member of the company.”

2. Insert immediately after article 50:-

“50A A person shall not be eligible for election/appointment as a director if they are an employee of the company.”

3. Amend article 51:-

“51. At each annual general meeting, all of the directors (other than any director appointed under article 53A) shall retire from office – but shall then be eligible for re-election.”

4. Add immediately after article 53:-

“Appointment of directors nominated by [name of body]

53A. [Insert name of body] shall be entitled to nominate any person to serve as a director; the directors shall, at the directors’ meeting which follows receipt of any such notice, appoint the individual named in the notice (subject to article 53B) as a director with immediate effect.

53B No more than one person nominated under article 53A may serve as a director at any given time.

53C For the avoidance of doubt, a director appointed under article 53A shall not require to retire from office at any annual general meeting.”

5. Amend paragraph (d) of article 54:-

“(d) (except in the case of a director appointed under article 53A) they cease to be a member of the company”

6. Add immediately after paragraph (d) of article 54:-

“(e) (in the case of a director appointed under article 53A) [insert name of body] withdraws their nomination by written notice to the company to that effect.”

SUPPLEMENT 7 - Annual membership subscription

1. Amend article 14:-

14. Any person who wishes to become a member must sign, and lodge with the company, a written application for membership; the application must be accompanied by a remittance to meet the annual membership subscription.”

2. Amend article 16:-

“16. The directors shall consider each application for membership at the first directors’ meeting which is held after receipt of the application (and accompanying remittance); the directors shall, within a reasonable time after the meeting, notify the applicant of its decision on the application and, if the decision was to refuse admission, shall return to the applicant the remittance lodged by them under article 14.”

3. Amend article 17:-

“17. Members shall require to pay an annual membership subscription; unless and until otherwise determined by ordinary resolution, the amount of the annual membership subscription shall be £ [] .

4. Add immediately after article 17:-

17A The annual membership subscriptions shall be payable on or before [insert date] in each year.

17B The members may vary the amount of the annual membership subscription and/or the date on which it falls due in each year, by way of an ordinary resolution to that effect passed at an annual general meeting.

17C If the membership subscription payable by any member remains outstanding more than [] weeks after the date on which it fell due (and providing they have been given at least one written reminder) the directors may, by resolution to that effect, expel them from membership.

17D A person who ceases (for whatever reason) to be a member shall not be entitled to any refund of the membership subscription.”

SUPPLEMENT 8 - Members’ power to require an extraordinary general meeting to be held

1. Add immediately after article 27:-

“27A If a notice signed by 10% of the voting members (or 5% of the voting members, if a meeting requested on this basis has been held previously, and more than 12 months have passed since then) requesting an extraordinary general meeting is received by the company, the directors must convene an extraordinary general meeting – and on the basis that it must be held within six weeks from the date on which the notice was received; a notice under the preceding provisions must set out the business which is to be considered at the extraordinary general meeting.”

SUPPLEMENT 9 - Alternate directors

1. Amend article 49:-

“The maximum number of directors (excluding for this purpose alternate directors) shall be [].”

2. Add immediately after article 68:-

“68A A director who is also an alternate director shall be entitled, in the absence of the director who appointed them, to a separate vote on behalf of their appointer in addition to their own vote.”

3. Add immediately after article 69:-

“69A A person (other than a director) acting as an alternate director, shall, if the director who appointed them is not present, be counted in the quorum.”

4. Add immediately after article 74:-

“74A A personal interest held by a director who has appointed an alternate director shall be treated as a personal interest of the alternate director.”

5. Add immediately after article 77:-

“Alternate directors

78A A director may appoint any other director (or any other person approved by resolution of the directors and willing to act) to be an

alternate director; any such alternate director may be removed by them at any time.

78B The appointment or removal of an alternate director shall be valid only if effected by a written notice signed by the director who is making or revoking the appointment.

78C The notice appointing an alternate director may state that the powers of the alternate director shall be limited to attending, speaking and voting at a directors' meeting at which the director who appointed them will not be present; in the absence of a statement of that kind, the appointment shall be deemed to extend to performing all the functions of their appointor as a director in their absence.

78D An alternate director shall (subject to article 78E) cease to be an alternate director if their appointor ceases to be a director.

78E If a director retires or vacates office but is re-appointed at or immediately following the meeting at which they retire or vacate office, any appointment of an alternate director made by them which was in force immediately prior to retiral or vacating of office shall continue after their re-appointment.

78F References in these articles to directors shall, unless the context otherwise requires, be interpreted as including alternate directors."