

Bolt-on provisions for Two tier model SCIO constitution

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

If you are using these bolt-on provisions within our model constitution 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, qualifications for membership, 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.

- SUPPLEMENT 1 Membership by incorporated bodies**
- SUPPLEMENT 2 Membership by unincorporated bodies**
- SUPPLEMENT 3 Some, but not all, elected charity trustees to retire each year**
- SUPPLEMENT 4 Maximum period in office for charity trustees**
- SUPPLEMENT 5 Annual membership subscription**
- SUPPLEMENT 6 Proxy voting**
- SUPPLEMENT 7 Participation in meetings via telephone/video conference etc**
- SUPPLEMENT 8 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 Membership by incorporated bodies

1. Amend clause 11:-

“11. Membership shall be open to

11.1 any individual aged 16 or over who [*insert membership qualifications*]

11.2 any corporate body which [*insert membership qualifications*]”

2. Amend clause 13:-

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

3. Add immediately after clause 13:-

“13A. An application for membership received by the organisation will be considered by the board at the next board meeting”.

4. Amend clause 14 - “any person or body”.

5. Amend clause 15 “them/it”.

6. Amend clause 17 - “they/it” and “they/its”.

7. Amend clause 20:

“20 Any person or body who/which wishes to withdraw from membership must give a written notice of withdrawal to the organisation, signed by them or (in the case of a corporate body) signed by an appropriate officer of that body; they/it will cease to be a member as from the time when the notice is received by the organisation”.

8. Amend clause 23 - “they/it” and “they/it”.

9. Amend clause 25 - “any person or body”.

10. Amend clause 26:

“26 Membership of the organisation will terminate on death or (in the case of a corporate body) on the liquidation, receivership, winding-up or dissolution of that body.”

11. Amend clause 32 - “signed by one or more members (in the case of a member which is a corporate body, signed by an appropriate officer of that body)”.

12. Amend clause 38 - “them/it”.

13. Amend clause 40:-

“40. The quorum for a members’ meeting is [] members, present in person or (in the case of members which are corporate bodies) present via their authorised representatives.”

14. Amend clause 44:-

“44. Every member has one vote, which must be given personally or (in the case of a member which is a corporate body) given via its authorised representative present at the meeting.”

15. Add immediately after clause 44:-

“44A. A member which is a corporate body shall be entitled to authorise an individual to attend and vote at members’ meetings; they will then be entitled to exercise the same powers on behalf of the body which they represent as that body could have exercised if it had been an individual member of the organisation.”

16. Amend clause 48 - “(or at least two other individuals present at the meeting and entitled to vote, whether as members or as the authorised representatives of corporate bodies which are members)”

17. Amend clause 56:-

“56. A person shall not be eligible for election or appointment to the board under clauses 58 to 61 unless they are a member of the organisation or has been nominated for election/appointment to the board by a member which is a corporate body.”

18. Add immediately after clause 60:-

“60A. A member which is a corporate body may (subject to clause 60B) nominate any individual for election/appointment to the board; they will then be deemed to be a member of the organisation for the purposes of clauses 59 and 60.

“60B No more than one individual nominated under clause 60A by each corporate member may serve as a charity trustee at any given time.”

19. Amend paragraph 65.3:-

“65.3 (in the case of a charity trustee elected/appointed under clauses 58 to 62) they cease to be a member of the organisation or (if they were nominated by a corporate body) the corporate body which nominated them ceases to be a member of the organisation ”

20. Amend paragraph 67.1:-

“67.1.3 the name of the corporate member which nominated them for appointment as a charity trustee (if applicable)”

“67.1.4 any office held by them in the organisation.”

SUPPLEMENT 2 Membership by unincorporated bodies

1. Amend clause 11:-

“11. Membership shall be open to

11.1 any individual aged 16 or over who [*insert membership qualifications*]

11.2 any individual who has been nominated for membership by an unincorporated body which [*insert membership qualifications*]

2. Add immediately after clause 11:-

“11A No more than one individual nominated under paragraph 11.2 by each unincorporated body may be a member of the organisation at any given time.”

3. Amend clause 13:-

“13. Any person who wishes to become a member must sign a written application for membership; in the case of an application under paragraph 11.2, the application must also be signed by an appropriate office bearer of the unincorporated body which is nominating them for membership.

13A An application for membership received by the organisation will be considered by the board at the next board meeting”

4. Add immediately after paragraph 17.1.2:-

“17.1.3 (in the case of an individual nominated under paragraph 11.2) the name of the unincorporated body which nominated them for membership”

5. Add immediately after clause 20:-

“20A. An unincorporated body which has nominated an individual for membership may withdraw its nomination at any time by written notice to the organisation to that effect, signed by an appropriate office bearer of that body; on receipt of the notice by the organisation, the individual in question shall automatically cease to be a member of the organisation .”

6. Amend clause 26:-

“26 Membership of the organisation will terminate on death or (in the case of an individual admitted to membership on the basis of nomination by an unincorporated body) if the unincorporated body is dissolved.”

SUPPLEMENT 3 Some, but not all, elected charity trustees to retire each year

1. Amend clause 61:-

“61. At the first AGM, one third (to the nearest round number) [or insert a specific number] of the charity trustees elected/appointed under clauses 59 and 60 (and, in the case of the first AGM, those deemed to have been appointed under clause 58) [(disregarding for this purpose the charity trustee appointed under clause [] ([chief executive]))] shall retire from office; the question of which of them is to retire shall be determined by some random method.”

2. Insert immediately after clause 61:-

“61AA At each AGM (other than the first)

61AA.1 any charity trustees appointed under clause 60 during the period since the preceding AGM shall retire from office;

61AA.2 out of the remaining charity trustees elected/appointed under clauses 59 and 60 [(disregarding for this purpose the charity trustee appointed under clause [] ([chief executive]))], one third (to the nearest round number) [or insert a specific number] shall retire from office.

61AB The charity trustees to retire under paragraph 61AA.2 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.

61AC A charity trustee who retires from office under clause 61 or 61AA shall be eligible for re-election.”

SUPPLEMENT 4 Maximum period in office for charity trustees

1. Amend clause 61:

“61 At each AGM, all of the charity trustees elected/appointed under clauses 59 and 60 shall retire from office – but shall then (subject to clause 61A) be eligible for re-election.”

2. Add immediately after clause 61:-

“61A A person who has served on the board 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.

61B For the purposes of clause 61A

61B.1 the period from the date of the formation of the organisation to the first AGM 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);

61B.2 the period between the date of appointment of a charity trustee and the AGM 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;

61B.3 the period between one AGM and the next shall be deemed to be a period of one year;

61B.4 if a charity trustee ceases to hold office but is reappointed to that office within a period of six months, they shall be deemed to have held office as a charity trustee continuously."

SUPPLEMENT 5 Annual membership subscription

1. Amend clause 13:-

"13. Any person who wishes to become a member must sign a written application for membership and lodge this with the organisation along with a remittance to meet the annual membership subscription; the application will then be considered by the board at the next board meeting"

2. Amend clause 15:-

"if the decision was to refuse admission, the board shall return to the applicant the remittance lodged by them under clause 13."

3. Amend clause 16:-

"16. Members shall require to pay an annual membership subscription; unless and until otherwise determined by the members, the amount of the annual membership subscription shall be £ [redacted].

16A. The annual membership subscriptions shall be payable on or before [insert date] in each year.

16B. 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 a resolution to that effect passed at an AGM.

16C. If the membership subscription payable by any member remains outstanding more than [redacted] weeks after the date on which it fell due - and providing they have been given at least one written reminder - the board may, by resolution to that effect, expel them from membership.

16D. A person who ceases (for whatever reason) to be a member shall not be entitled to any refund of the membership subscription."

SUPPLEMENT 6 Proxy voting

1. Amend clause 40:-

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

2. Amend clause 44:-

“44. Every member has one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.”

3. Add immediately after clause 44:-

“44A. A member who wishes to appoint a proxy to vote on their behalf at any members’ meeting:-

44A.1 must give to the SCIO a proxy form (in such terms as the board requires), signed by them; or

44A.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.

44B. An instrument of proxy which does not comply with the provisions of clause 44A, or which is not lodged or given in accordance with such provisions, shall be invalid.

44C. A member shall not be entitled to appoint more than one proxy to attend on the same occasion.

44D. A proxy need not be a member of the organisation.

44E. Subject to clause 44F, 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 they are entitled personally, if they are a member of the SCIO).

44F. 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 they should vote on their behalf in favour of, or against, each resolution - the provisions of clause 44E shall not apply in relation to the chair, in acting as proxy for those members.

44G. 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 them to speak at the meeting.

4. Amend clause 48:-

“48. 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 7 Participation in meetings via telephone/video conference etc

1. Add immediately after clause 40:

“40A. The board may make arrangements, in advance of any members’ meeting, to allow members 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 member participating in a members’ meeting in this manner shall be deemed to be present in person at the meeting.”

2. Amend clause 44:

“44 Every member has one vote, which must be given personally; for the avoidance of doubt, a vote given by a member participating in the meeting through any of the methods referred to in clause 40A will be taken to be given personally for the purposes of this clause.”

3. Add immediately after clause 86:

“86A. 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.”

4. Amend clause 90:

“90. 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 86A will be taken to be given personally for the purposes of this clause.”

SUPPLEMENT 8 Chief executive (or equivalent) serving as a charity trustee

1. Amend clause 54:-

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

54.1 no more than [] shall be charity trustees who were elected/appointed under clauses 59 and 60 (or deemed to have been appointed under clause 58);

54.2 no more than [] shall be charity trustees who were co-opted under the provisions of clauses 63 and 64; and

54.3 no more than one shall be a charity trustee appointed under the provisions of clause 63A ([chief executive]).”

2. Amend clauses 56 and 57:-

“56. Subject to clause 57A, a person shall not be eligible for election/appointment to the board under clauses 59 to 62 unless they are a member of the organisation; a person appointed to the board under clause 63 need not, however, be a member of the organisation.

57. Subject to clause 57A, a person will not be eligible for election or appointment to the board if they are: -

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

57.2 an employee of the organisation.”

2. Add immediately after clause 57:-

“57A. Clause 56 and paragraph 57.2 shall not apply to a person appointed to the board under clause 63A ([chief executive]).”

3. Add immediately after clause 63:-

“Appointment of [chief executive] as a charity trustee“

63A. The board shall, at the first board meeting following the appointment of any individual as the [chief executive] of the organisation, appoint them as a charity trustee.

63B. The [chief executive] shall continue to be a charity trustee unless and until they cease (for any reason) to hold the post of [chief executive] of the organisation.”

4. Amend clauses 65 and 66:

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

- 65.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
- 65.2 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;
- 65.3 (in the case of a charity trustee elected/appointed under clauses 59 to 62) they cease to be a member of the organisation;
- 65.4 (except in the case of the [chief executive]) they become an employee of the organisation;
- 65.5 (in the case of the [chief executive]) they cease (for whatever reason) to hold the post of [chief executive] of the organisation;
- 65.5 they give the organisation a notice of resignation, signed by them;
- 65.8 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;
- 65.9 they are removed from office by resolution of the board on the grounds that they are considered to have committed a serious breach of the code of conduct for charity trustees (as referred to in clause 79);
- 65.10 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
- 65.11 they are removed from office by a resolution of the members passed at a members' meeting.

66 A resolution under paragraph 65.9, 65.10 or 65.11 shall be valid only if:

- 66.1 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;
- 66.2 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
- 66.3 (in the case of a resolution under paragraph 65.9 or 65.10) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution."

5. Amend clause 80:-

“80. Subject to clause 80A, 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 their duties as a charity trustee.

6. Add immediately after clause 80:-

“80A. The [chief executive] of the organisation may retain all remuneration, and all pension and/or other benefits, paid or provided to them in their capacity as an employee of the organisation.”

7. Add immediately after clause 95:-

“95A. For the avoidance of doubt, the [chief executive] shall not be entitled to vote in relation to any matter connected with their remuneration or other terms and conditions of employment.”