

SCIO Constitution (Single Tier)

CONSTITUTION

of

BLUE SPACE HIGHLAND



BLUE SPACE HIGHLAND

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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 is "Blue Space Highland".

Purposes

4. The organisation's purposes are:
 - (a) The advancement of health
 - (b) The advancement of public participation in sport
 - (c) The organisation of recreational activities

Powers

5. The organisation has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
6. No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the charity trustees - either in the course of the organisation's existence or on dissolution - except where this is done in direct furtherance of the organisation's purposes.

Liability of charity trustees

7. The charity trustees of the organisation (in their capacity as members - see clause 11) have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation 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 organisation consists of the BOARD – who hold regular meetings, and generally control the activities of the organisation; for example, the board is responsible for monitoring and controlling the financial position of the organisation.
10. The board also appoints charity trustees to fill vacancies, and the people serving on the board (in their capacity as members of the organisation – 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 organisation 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 organisation.
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 organisation.

BOARD

Number of charity trustees

14. The maximum number of charity trustees is 8.
15. The minimum number of charity trustees is 3.

Eligibility

16. Any individual will be eligible for election or appointment to the board if they:-
 - a) Are aged 16 or over; and
 - b) Support the purposes
17. A person will not be eligible for election or appointment to the board if they are: -
 - (a) disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
 - (b) an employee of the organisation.

Initial charity trustees

18. The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the organisation.

Appointment/retiral

19. 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.
20. At the second and each subsequent AGM, one third (to the nearest round number) or 1 of the charity trustees shall retire from office – but shall then be eligible for re-appointment under clause 24.
21. A retiring charity trustee shall be eligible for re-appointment after one term of office, but no trustee can serve more than two consecutive terms of office (with one term equalling three years), without at least one year out of office before being eligible again.
22. The exception to clause 21 is, where the board agree that for the purposes of continuity and where it is deemed to be in the interest of the organisation, to retain charity trustee(s) who would otherwise be eligible for retirement from the board.
23. If no other trustees has or trustees have decided to agree to retire, the appointed trustee to retire at each AGM shall be those who have been longest in office since their last appointment.
24. 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:
 - (a) they advise the board that they do not wish to be re-appointed; or
 - (b) a resolution for the re-appointment of that charity trustee was put to the board meeting and was not carried.

Termination of office

23. A charity trustee will automatically cease to hold office if: –
 - (a) they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - (b) 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;

- (c) they become an employee of the organisation;
 - (d) they give the organisation a notice of resignation, signed by them;
 - (e) 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;
 - (f) 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 43); or
 - (g) 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.
24. A resolution under paragraph (f) or (g) shall be valid only if: -
- (a) 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;
 - (b) 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
 - (c) 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

25. The board must keep a register of charity trustees, setting out:-

- (a) for each current charity trustee:
 - a) their full name and address;
 - a) the date on which they were appointed as a charity trustee; and
 - b) any office held by them in the organisation;
- (b) for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee:

- a) the name of the charity trustee;
 - b) any office held by them in the organisation; and
 - c) the date on which they ceased to be a charity trustee.
26. The board must ensure that the register of charity trustees is updated within 28 days of any change:
- (a) which arises from a resolution of the board; or
 - (b) which is notified to the organisation.
27. 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 organisation, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.
28. The members of the organisation are identical to its charity trustees - and therefore the organisation does not require to keep a separate register of members.

Office-bearers

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

Powers of board

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

Charity trustees - general duties

35. Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation; and, in particular, must:-
- (a) seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
 - (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - (c) in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party: -
 - a) put the interests of the organisation before that of the other party; or
 - b) where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
 - (d) ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
36. In addition to the duties outlined in clause 38, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- (a) that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
 - (b) that any trustee who has been in serious or persistent breach of those duties is removed as a trustee.
37. Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest; and (subject to clause 41 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.

38. 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.
39. The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for charity trustees

40. Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.
41. The code of conduct referred to in clause 43 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 in force from time to time.

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of board meetings

42. Any charity trustee may call a meeting of the board.
43. 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.
44. If charity trustees are to be permitted to participate in a board meeting by way of audio and/or audio-visual link(s), the charity trustees must, in advance of the meeting, be provided with details of how to connect and participate via that link or links; and (particularly for the benefit of those charity trustees who may have difficulties in using a computer or laptop for this purpose) the charity trustees' attention should be drawn to the following options:
 - (a) participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);

- (b) (where attendance in person is to be permitted, either on an open basis or subject to a restriction on the total number who will be permitted to attend) the ability to attend the meeting in person.

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 2 charity trustees.
- 46. An individual participating in a board meeting via an audio or audio-visual link will be deemed to be present in person (or, if they are not a charity trustee, will be deemed to be in attendance) at the meeting.
- 47. If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 48, 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.
- 48. The chair of the organisation should act as chairperson of each board meeting.
- 49. If the chair of the organisation 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.
- 50. Every charity trustee has one vote, which must be given personally (subject to clause 59).
- 51. All decisions at board meetings will be made by majority vote.
- 52. 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.
- 53. The board may if they consider appropriate (and must, if that is required under clause 57) allow charity trustees to participate in board meetings by way of an audio and/or audio-visual link or links, providing:
 - (a) the means by which charity trustees can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all, or a significant proportion, of the charity trustees - a barrier to participation; and
 - (b) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those charity trustees who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as

compared with those charity trustees (if any) who are attending in person (and vice versa).

54. If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed board meeting would not be possible or advisable for one or more of the charity trustees, the board must make arrangements for charity trustees to participate in that board meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting; and on the basis that:
- (a) the requirements set out in paragraphs (a) and (b) of clause 56 will apply; and
 - (b) the board must use all reasonable endeavours to ensure that all charity trustees have access to one or more means by which they may hear and contribute to discussions at the meeting.
55. A board meeting may involve two or more charity trustees participating via attendance in person while other charity trustees participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
56. Where a charity trustee is participating in a board meeting via an audio or audio-visual link, they may cast their vote on a given resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically.
57. The board may, at its discretion, allow any person to attend (whether in person or by way of an audio or audio-visual link) 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.
58. A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.
59. For the purposes of clause 61: -
- (a) an 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;
 - (b) a charity trustee will be deemed to have a personal 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.

Technical objections to remote participation in board meetings

60. This constitution imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at board meetings; providing the arrangements made by the board in relation to a given board meeting (and the manner in which the meeting is conducted) are consistent with those requirements:
- (a) a charity trustee cannot insist on participating in the board meeting, or voting at the board meeting, by any particular means;
 - (b) the board meeting need not be held in any particular place;
 - (c) the board meeting may be held without any particular number of those participating in the meeting being present in person at the same place (but, notwithstanding that, the quorum requirements - taking account of those participating via audio and/or audio-visual links - must still be met);
 - (d) the board meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting;
 - (e) a charity trustee will be able to exercise the right to vote at the board meeting by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by the board) and which permits that charity trustee's vote to be taken into account in determining whether or not a resolution is passed.

Resolutions agreed by the board in writing or by e-mail

61. A resolution agreed to in writing (or by e-mail) by a majority of the charity trustees then in office shall (subject to clauses 65 and 66) be as valid as if duly passed at a board meeting.
62. A resolution under clause 64 shall not be valid unless a copy of the resolution was circulated to all of the charity trustees, along with a cut-off time (which must be reasonable in the circumstances) for notifications under clause 66.
63. If a resolution is circulated to the charity trustees under clause 65, any one or more charity trustees may, following receipt of a copy of the resolution, notify the secretary that they consider that a board meeting should be held

to discuss the matter which is the subject of the resolution; and if any such notification is received by the secretary prior to the cut-off time:

- (a) the secretary must convene a board meeting accordingly, and on the basis that it will take place as soon as reasonably possible;
- (b) the resolution cannot be treated as valid under clause 65 unless and until that board meeting has taken place;
- (c) the board may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that board meeting that the resolution should be treated as invalid, notwithstanding that it had previously been agreed to in writing (or by e-mail) by a majority of the charity trustees then in office.

Minutes

- 64. The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 65. The minutes to be kept under clause 67 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 66. The board shall (subject to clause 70) make available copies of the minutes referred to in clause 67 to any member of the public requesting them.
- 67. The board may exclude from any copy minutes made available to a member of the public under clause 69 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 organisation 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

- 68. For certain purposes of the Charities and Trustee Investment (Scotland) Act 2005, the charity trustees make decisions in their capacity as *members* of the organisation, rather than as a board; the provisions of clauses 72 to 95 relate to those situations.

Annual general meetings

69. The board must convene a meeting of the charity trustees - in their capacity as members of the organisation - in each calendar year; that meeting will be called an annual general meeting or "AGM".
70. The gap between one AGM and the next must not be longer than 15 months.
71. Notwithstanding clause 72, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.
72. The business of each AGM must include:-
- (a) a report by the chair on the activities of the organisation; and
 - (b) consideration of the future strategy for the organisation, including a review of key risks and opportunities.
73. The board may convene any other meeting of the charity trustees - in their capacity as members of the organisation - at any time.

Notice of members' meetings

74. At least 14 clear days' notice must be given of any AGM or any other members' meeting.
75. 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).
76. The reference to "clear days" in clause 77 shall be taken to mean that, in calculating the period of notice,
- (a) the day after the notices are posted (or sent by e-mail) should be excluded; and
 - (b) the day of the meeting itself should also be excluded.
77. 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.
78. Any notice of a members' meeting which requires to be given to a charity trustee - in their capacity as a member of the organisation - under this constitution must be: -

- (a) sent by post to the charity trustee, at the address last notified by them to the organisation; *or*
- (b) sent by e-mail to the charity trustee, at the e-mail address last notified by them to the organisation.

79. Clause 47 shall apply where notice is being given in relation to a members' meeting at which charity trustees (in their capacity as members of the organisation) are to be permitted to participate by way of audio and/or audio-visual link(s).

Procedure at members' meetings

80. The provisions of clauses 48, 47, 51 and 52 (quorum, chairperson) shall apply in relation to all meetings of the charity trustees in their capacity as members of the organisation.

Voting at members' meetings

81. Every charity trustee shall have one vote in their capacity as a member, which must be given personally (subject to clause 90).

82. All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 86.

83. 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 92):-

- (a) a resolution amending the constitution;
- (b) a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
- (c) a resolution to the effect that all of the organisation'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);
- (d) a resolution for the winding up or dissolution of the organisation.

84. 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.

85. 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.

86. The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.
87. The provisions of clauses 56 to 59 (remote participation) shall apply in relation to participation and voting by charity trustees in their capacity as members of the organisation and in relation to participation and voting by any proxy appointed by a charity trustee (in their capacity as a member of the organisation).

Technical objections to remote participation in members' meetings

88. The principles set out in clause 63 (technical objections to remote participation) shall apply in relation to remote participation and voting at members' meetings, as if each reference in that clause to a charity trustee were a reference to a charity trustee in their capacity as a member and each reference in that clause to a board meeting were a reference to a members' meeting.

Written resolutions

89. A resolution agreed to in writing (or by e-mail) by all the charity trustees, in their capacity as members of the organisation, 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.

Minutes

90. The board must ensure that proper minutes are kept in relation to all members' meetings.
91. 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.
92. The board shall make available copies of the minutes referred to in clause 93 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 70.

ADMINISTRATION

Delegation to sub-committees

93. 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.

94. The board may also delegate to the chair of the organisation (or the holder of any other post) such of their powers as they may consider appropriate.
95. When delegating powers under clause 96 or 97, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
96. Any delegation of powers under clause 96 or 97 may be revoked or altered by the board at any time.
97. 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

98. Subject to clause 102, 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 organisation; at least one out of the two signatures must be the signature of a charity trustee.
99. Where the organisation 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 101.

Accounting records and annual accounts

100. The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
101. The board must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.

MISCELLANEOUS

Winding-up

102. If the organisation 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.

103. Any surplus assets available to the organisation 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 organisation as set out in this constitution.

Alterations to the constitution

104. This constitution may (subject to clause 105) be altered by resolution of the charity trustees – in their capacity as members of the organisation – passed at a members’ meeting (subject to achieving the two thirds majority referred to in clause 86) or by way of a written resolution of the charity trustees in their capacity as members.
105. The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

106. References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: –
- (a) any statutory provision which adds to, modifies or replaces that Act; and
 - (b) any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph (a) above.
107. In this constitution: –
- (a) “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;
 - (b) “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.



Secretary