

**CONSTITUTION
OF
HAWICK COMMON RIDING COMMITTEE SCIO
SC049647**

Single Tier SCIO

SCVO Model SCIO Constitution (single-tier)

CONSTITUTION

of

**HAWICK COMMON RIDING COMMITTEE SCIO
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CONTENTS		
GENERAL	type of organisation, Scottish principal office, name, purposes, powers, liability, general structure	clauses 1 - 13
GENERAL COMMITTEE (CHARITY TRUSTEES)	qualifications, number, eligibility, appointment/ retiral, termination of office, register of charity trustees, office-bearers, powers, general duties, code of conduct	clauses 17 - 43
DECISION-MAKING BY THE CHARITY TRUSTEES	notice, procedure at General Committee meetings, minutes	clauses 44 - Error! Reference source not found.
DECISION-MAKING BY THE CHARITY TRUSTEES AS MEMBERS	AGMs and other members' meetings, notice, procedure, voting at members' meetings, written resolutions, minutes	clauses 58 - Error! Reference source not found.
ADMINISTRATION	sub-committees, operation of accounts, accounting records and annual accounts	clauses 79 - 87
MISCELLANEOUS	winding up, alterations to the constitution, interpretation	clauses 88 - 93

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 “Hawick Common Riding Committee SCIO”.

Purposes

- 4 The organisation’s purposes are to uphold and continue the Heritage, Customs and Traditions of the Common Riding for the benefit of the people of Hawick, and to annually accept responsibility to ensure the proper conduct of the ceremonies.

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 (known as the Ceremonial and General Committee) - who hold regular meetings, and generally control the activities of the organisation; for example, the Ceremonial and General Committee is responsible for monitoring and controlling the financial position of the organisation.

- 10 The Ceremonial and General Committee also appoints charity trustees to fill vacancies, and the people serving on the General Committee (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 Ceremonial and General Committee 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.

CEREMONIAL AND GENERAL COMMITTEE

Qualifications for Charity Trusteeship

- 14 Charity Trusteeship is open to any person aged 18 or over, who supports the aims of the organisation, in the following categories:
 - 14.1 Two members nominated by Hawick's Honorary Provost Council, who shall be the Honorary Provost and an elected member of Scottish Borders Council, or their nominated deputies.
 - 14.2 Twelve Ward members, who shall be individuals whose main residence is within the Hawick town boundary; (subject to clause 15.1) there shall be six members from each of two Wards, defined as a) the area north of the River Teviot, and b) the area south of the River Teviot.
 - 14.3 Two Community Councillors: one individual from each of Hawick Community Council and Burnfoot Community Council, who shall be nominated for this category by their respective Community Council.
 - 14.4 Eight Public Members, who shall be appointed at the AGM (subject to clause 15.2).
 - 14.5 Four Principals, who shall be the Cornet, the Right Hand Man, the Left Hand Man, and the Acting Father, all *ex officio* (subject to clause 15.3).
 - 14.6 One member nominated by the Drums and Fife Band as their elected representative.
- 15 The following rules apply in respect of the above categories of membership:

- 15.1 Ward members (clause 14.2):
- 15.1.1 must reside in the Ward they represent when seeking election;
 - 15.1.2 in the event of a Ballot for Ward representatives, the vote shall take place between 7pm and 8pm on a date and at a venue to be agreed by the General Committee no more than 8 weeks before the AGM; the meeting shall be open to the public; each individual aged 18 or over, whose main residence is in the Ward, may cast up to six votes for different candidates as their Ward representative; those elected shall be appointed as charity trustees with effect from the first meeting of the Ceremonial and General Committee following their election, which shall take place before the AGM.
 - 15.1.3 should any Ward vacancy not be filled at the election or during the term, the Ceremonial and General Committee may, at their discretion, appoint a person from either ward to represent the vacant ward post as a charity trustee for the balance of the term.
- 15.2 Public members (clause 14.4) shall be persons with knowledge and experience of the Hawick Common Riding:
- 15.2.1 their names shall be put forward and agreed by the Ceremonial and General Committee at the last meeting of this Committee before the AGM;
 - 15.2.2 should a vacancy arise, the Ceremonial and General Committee shall appoint an individual to fill the vacancy as a charity trustee for the balance of the term.
- 15.3 The Principals (clause 14.5) are not eligible for election as office bearers of the organisation under clause 31.
- 16 The organisation may confer associate (non-voting) membership on Honorary Life Members, who shall be advisors to the Ceremonial and General Committee; further information on their appointment and role is contained in the Schedule.

Number of charity trustees

- 17 The maximum number of charity trustees is 29.
- 18 The minimum number of charity trustees is 18.

Eligibility

- 19 A person will not be eligible for election or appointment to the General Committee if they are: -

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

19.2 an employee of the organisation.

Initial charity trustees

20 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

21 The term of office for charity trustees is as follows:

21.1 For those appointed under clause 20, the term of office shall be until the end of the first AGM of the organisation, unless they are re-appointed in any of the categories in clause 14 in the meantime.

21.2 For those appointed under clause 14.1 the term shall be co-terminus with their role as Honorary Provost or SBC Councillor.

21.3 For those appointed under clauses 14.2 the term is 3 years from the date of their election.

21.4 For those appointed under clause 14.3 the term shall be co-terminus with their role as Community Councillor, unless their nomination by the respective Community Council is withdrawn and another individual is nominated by them.

21.5 For those appointed under clause 14.4 the term is three years from the date of the Annual General Meeting (AGM), which will be held as near as possible to but not before 1st November.

21.6 For those appointed under clause 14.5, the term shall follow their ex officio role.

22 The Ceremonial and General Committee may at any time appoint an individual to be a charity trustee to fill a vacancy in the various categories - by way of a resolution passed by majority vote at a Ceremonial and General Committee meeting.

23 All the charity trustees appointed as a result of clause 22 shall serve the balance of the current three-year term.

24 A charity trustee who completes their term of office at the conclusion of a three-year term shall be eligible for re-appointment.

Termination of office

25 A charity trustee will automatically cease to hold office if: -

- 25.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 25.2 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;
 - 25.3 they become an employee of the organisation;
 - 25.4 they give the organisation a notice of resignation, signed by them;
 - 25.5 they are absent (without good reason, in the opinion of the Ceremonial and General Committee) from more than three consecutive meetings of the Ceremonial and General Committee - but only if the Ceremonial and General Committee resolves to remove them from office;
 - 25.6 they are removed from office by resolution of the Ceremonial and General Committee 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 42);
 - 25.7 they are removed from office by resolution of the Ceremonial and General Committee 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
- 26 A resolution under paragraph 25.6 or 25.7 shall be valid only if: -
- 26.1 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;
 - 26.2 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
 - 26.3 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

27 The Ceremonial and General Committee must keep a register of charity trustees, setting out

27.1 for each current charity trustee:

27.1.1 their full name and address;

27.1.2 the date on which they were appointed as a charity trustee; and

27.1.3 any office held by them in the organisation;

- 27.2 for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee:
- 27.2.1 the name of the charity trustee;
- 27.2.2 any office held by them in the organisation; and
- 27.2.3 the date on which they ceased to be a charity trustee.
- 28 The Ceremonial and General Committee must ensure that the register of charity trustees is updated within 28 days of any change:
- 28.1 which arises from a resolution of the Ceremonial and General Committee ; or
- 28.2 which is notified to the organisation.
- 29 If any person requests a copy of the register of charity trustees, the Ceremonial and General Committee 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 Ceremonial and General Committee 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.
- 30 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

- 31 The charity trustees must elect (from among themselves) a Chairman, a Vice-Chairman, a Master of Ceremonies and an Assistant Master of Ceremonies, who shall serve for a three year term, as follows:
- 31.1 Nominations (proposer and seconder) for the above positions must be submitted before the date of the last Ceremonial and General Committee meeting before the AGM; all nominations must be circulated to the members prior to the AGM;
- 31.2 In the event that any of the Office Bearer positions fall vacant during the three year term, the Ceremonial and General Committee will elect a replacement as soon as possible.
- 32 In addition to the office-bearers required under clause 31, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 33 All of the office-bearers will cease to hold office at the conclusion of the AGM at the end of their 3 year term of office but may then be re-elected under clause 31 or 32.

- 34 A person elected to any office will automatically cease to hold that office: -
- 34.1 if they cease to be a charity trustee; *or*
 - 34.2 if they give to the organisation a notice of resignation from that office, signed by them.

Powers of the Ceremonial and General Committee

- 35 Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the Ceremonial and General Committee, and the Ceremonial and General Committee may exercise all the powers of the organisation.
- 36 A meeting of the Ceremonial and General Committee at which a quorum is present may exercise all powers exercisable by the Ceremonial and General Committee.

Charity trustees - general duties

- 37 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:-
- 37.1 seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
 - 37.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 37.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party: -
 - 37.3.1 put the interests of the organisation before that of the other party;
 - 37.3.2 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;
 - 37.4 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.
- 38 In addition to the duties outlined in clause 37, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 38.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
 - 38.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.

- 39 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 40 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.
- 40 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.
- 41 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

- 42 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Ceremonial and General Committee from time to time.
- 43 The code of conduct referred to in clause 42 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 Ceremonial and General Committee meetings

- 44 A meeting may be called by the Secretariat following discussion with the Chairman or on receipt of a written request for a meeting signed by at least 10 of the Charity Trustees.
- 45 At least 7 days' notice must be given of each Ceremonial and General Committee meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

Procedure at Ceremonial and General Committee meetings

- 46 No valid decisions can be taken at a Ceremonial and General Committee meeting unless a quorum is present; the quorum for Ceremonial and General Committee meetings is 18 charity trustees.
- 47 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 46, 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 Ceremonial and General Committee 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.
- 51 All decisions at Ceremonial and General Committee 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 Ceremonial and General Committee may, at its discretion, allow any person to attend and speak at a Ceremonial and General Committee meeting notwithstanding that they are not a charity trustee - but on the basis that they must not participate in decision-making.
- 54 A charity trustee must not vote at a Ceremonial and General Committee 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.
- 55 For the purposes of clause 54: -
 - 55.1 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;
 - 55.2 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.

Minutes

- 56 The Ceremonial and General Committee must ensure that proper minutes are kept in relation to all Ceremonial and General Committee meetings and meetings of sub-committees.
- 57 The minutes to be kept under clause 56 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

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

58 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 Ceremonial and General Committee; the provisions of clauses 59 to **Error! Reference source not found.** relate to those situations.

Annual general meetings

59 The Ceremonial and General Committee 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".

60 The gap between one AGM and the next must not be longer than 15 months.

61 Notwithstanding clause 59, 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.

62 The business of each AGM must include:-

62.1 a report by the chair on the activities of the organisation; and

62.2 consideration of the future strategy for the organisation, including a review of key risks and opportunities.

62.3 Election of Office Bearers and Sub-committee Conveners to serve for a three-year term.

63 The Ceremonial and General Committee may convene any other meeting of the charity trustees - in their capacity as members of the organisation - at any time.

Notice of members' meetings

64 At least 14 clear days' notice must be given of any AGM or any other members' meeting.

65 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).

66 The reference to "clear days" in clause 64 shall be taken to mean that, in calculating the period of notice,

- 66.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
- 66.2 the day of the meeting itself should also be excluded.
- 67 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.
- 68 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: -
 - 68.1 sent by post to the charity trustee, at the address last notified by them to the organisation; *or*
 - 68.2 sent by e-mail to the charity trustee, at the e-mail address last notified by them to the organisation.

Procedure at members' meetings

- 69 The provisions of clauses 46, 48 and 49 (quorum and chairperson) shall apply in relation to all meetings of the charity trustees in their capacity as members of the organisation.

Voting at members' meetings

- 70 Every charity trustee shall have one vote in their capacity as a member, which must be given personally.
- 71 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 72.
- 72 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 76):
 - 72.1 a resolution amending the constitution;
 - 72.2 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);
 - 72.3 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);
 - 72.4 a resolution for the winding up or dissolution of the organisation.
- 73 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.

- 74 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.
- 75 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

- 76 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

- 77 The Ceremonial and General Committee must ensure that proper minutes are kept in relation to all members' meetings.
- 78 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.

ADMINISTRATION

Delegation to sub-committees

- 79 The General Committee may delegate any of their powers to sub-committees;
- 79.1 a sub-committee must include at least one charity trustee as Convener, who shall be appointed at the AGM, but other members of a sub-committee need not be charity trustees;
- 79.2 a list of sub-committees, their members and their responsibilities, shall be attached to the constitution as a Schedule, but shall not form part of the constitution.
- 80 The Ceremonial and General Committee 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.
- 81 When delegating powers under clause 79 or 80, the Ceremonial and General Committee must set out appropriate conditions (which must include an obligation to report regularly to the Ceremonial and General Committee).
- 82 Any delegation of powers under clause 79 or 80 may be revoked or altered by the Ceremonial and General Committee at any time.
- 83 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the Ceremonial and General Committee.

Operation of accounts

- 84 Subject to clause 85, the signatures of two out of three or more signatories appointed by the Ceremonial and General Committee 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.
- 85 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 84.

Accounting records and annual accounts

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

MISCELLANEOUS

Winding-up

- 88 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.
- 89 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

- 90 This constitution may (subject to clause 91) 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 72) or by way of a written resolution of the charity trustees in their capacity as members.
- 91 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

92 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -

92.1 any statutory provision which adds to, modifies or replaces that Act; and

92.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 92.1 above.

93 In this constitution: -

93.1 “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;

93.2 “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.