

SC 109966

**THE COMPANIES ACT 2006**  
**COMPANY LIMITED BY GUARANTEE**  
**AND NOT HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION**

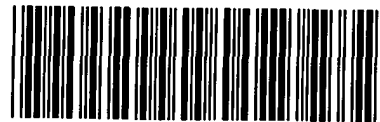
**of**

**THE WHITHORN TRUST**

**(as adopted by special resolution dated Monday 30th  
January 2023; ratified on 25th February 2023)**

Active: 101716404 v 1

FRIDAY



\*SBYHKDCP\*

SCT

03/03/2023

#60

COMPANIES HOUSE

This is a copy of the Articles of Association As adopted by  
Special resolution 30th January 2023, ratified 25th February  
2023 - Signed *Alex Hassell*

Director

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION**

of

**THE WHITHORN TRUST**

(as adopted by special resolution dated 30th January 2023;

ratified 25th February 2023 )

<b>CONTENTS</b>		
<b>GENERAL</b>	constitution of the company, defined terms, objects, powers, restrictions on use of assets, liability of members, general structure	articles 1-14
<b>MEMBERS</b>	qualifications, application for membership, subscription, register, withdrawal, termination/transfer	articles 15-23
<b>GENERAL MEETINGS</b> (meetings of members)	general, notice, procedure, votes of members, special/ordinary resolutions, written resolutions	articles 24-54
<b>DIRECTORS</b>	maximum number, eligibility, appointment/re-appointment/retirement of directors, termination of office, register, office bearers, personal interests, conduct of directors, directors' remuneration and expenses	articles 55-84
<b>DIRECTORS' MEETINGS</b>	powers, procedure	articles 85-103
<b>ADMINISTRATION</b>	committees, operation of bank accounts, minutes, accounting records and annual accounts, notices	articles 104-121
<b>MISCELLANEOUS</b>	winding-up, indemnity	articles 122-125

**Constitution of company**

- 1 The model articles of association as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of this company.

## **Defined terms**

- 2** In these articles of association, unless the context requires otherwise:
- 2.1** "Act" means the Companies Act 2006;
  - 2.2** "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;
  - 2.3** "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;
  - 2.4** "conflict of interest" includes a conflict of interest and duty, and a conflict of duty;
  - 2.5** "Conflict Situation" means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);
  - 2.6** "electronic form" has the meaning given in section 1168 of the Act;
  - 2.7** "OSCR" means the Office of the Scottish Charity Regulator;
  - 2.8** "property" means any property, heritable or moveable, real or personal, wherever situated; and
  - 2.9** "subsidiary" has the meaning given in section 1159 of the Act.
- 3** Any reference to a provision of any legislation (including any statutory instrument) shall include any statutory modification or re-enactment of that provision in force from time to time.

## **Objects**

- 4** The company's objects are:

- 4.1 to advance education;
- 4.2 to advance the arts, heritage, culture and science; and
- 4.3 to advance community development,

primarily through the provision of a high quality visitor experience and museum which inspires current and future generations with an appreciation of Whithorn's story and archaeology, as one of the earliest known Christian settlements in the UK; helps to stimulate further archaeological investigations and other scientific research relating to the sites in and around Whithorn and the historical significance of such sites; and contributes to the regeneration of local communities in and around Whithorn.

- 5 The company's objects are restricted to those set out in article 4 (but subject to article 6).
- 6 The company may (subject to first obtaining the consent of OSCR) add to, remove or alter the statement of the company's objects in article 4; on any occasion when it does so, it must give notice to the registrar of companies and the amendment will not be effective until that notice is registered on the register of companies.

#### **Powers**

- 7 In pursuance of the objects listed in article 4 (but not otherwise), the company shall have the following powers:-
  - 7.1 To enter into all such contracts and other arrangements as may be appropriate in connection with the activities of the company.
  - 7.2 To carry on any other activities which further any of the above objects.
  - 7.3 To acquire and take over the whole or any part of the undertaking and liabilities of any body holding property or rights which are suitable for the company's activities.
  - 7.4 To purchase, take on lease or under a licence, hire, or otherwise acquire, any property or rights which are suitable for the company's activities.
  - 7.5 To improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the company.
  - 7.6 To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the company.

- 7.7 To lend money and give credit (with or without security) and to grant guarantees and issue indemnities.
- 7.8 To borrow money, and to give security in support of any such borrowings by the company, in support of any obligations undertaken by the company or in support of any guarantee issued by the company.
- 7.9 To employ such staff as are considered appropriate for the proper conduct of the company's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants.
- 7.10 To engage such consultants and advisers as are considered appropriate from time to time.
- 7.11 To effect insurance of all kinds (which may include officers' liability insurance).
- 7.12 To invest any funds which are not immediately required for the company's activities in such investments as may be considered appropriate (and to dispose of, and vary, such investments).
- 7.13 To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the company's objects.
- 7.14 To establish and/or support any other charity, and to make donations for any charitable purpose falling within the company's objects.
- 7.15 To take such steps as may be deemed appropriate for the purpose of raising funds for the company's activities.
- 7.16 To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).
- 7.17 To oppose, or object to, any application or proceedings which may prejudice the company's interests.
- 7.18 To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the company, and to enter into any arrangement for co-operation or mutual assistance with any charity.
- 7.19 To do anything which may be incidental or conducive to the furtherance of any of the company's objects.
- 7.20 To own, hold, display and safeguard artefacts and specimens relating to the Whithorn archaeological record, from the earliest excavations to the present, and its later burgh history, and to make these accessible to the public through the operation of its museum and partnership agreements, using a variety of forms and media: to hold its collection and loaned objects in trust for the public benefit.

#### **Restrictions on use of the company's assets**

- 8 The income and property of the company shall be applied solely towards promoting the company's objects.
- 9 No part of the income or property of the company shall be paid or transferred (directly or indirectly) to the members of the company, whether by way of dividend, bonus or otherwise.
- 10 No director of the company shall be appointed as a paid employee of the company; no director shall hold any office under the company for which a salary or fee is payable.
- 11 No benefit (whether in money or in kind) shall be given by the company to any director except (i) repayment of out-of-pocket expenses or (ii) reasonable payment in return for particular services (outwith the ordinary duties of a director) actually rendered to the company.

#### **Liability of members**

- 12 The liability of the members is limited.
- 13 Every member of the company undertakes to contribute such amount as may be required (not exceeding £1) to the company's assets if it should be wound up while he/she is a member or within one year after he/she ceases to be a member, for payment of the company's debts and liabilities contracted before he/she ceases to be a member, and of the costs, charges and expenses of winding up; and for the adjustment of the rights of the contributories among themselves.

#### **General structure**

- 14 The structure of the company consists of:-
  - 14.1 the MEMBERS - who have the right to attend the annual general meeting (and any other general meeting) and have important powers under the articles of association and the Act; in particular, the members take decisions in relation to changes to the articles themselves
  - 14.2 the DIRECTORS - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the company; in particular, the directors are responsible for monitoring the financial position of the company.

### **Qualification for membership**

- 15 Membership shall (subject to article 16) be open to any individual who is a director of the company.
- 16 No employee of the company may become a member; a person admitted to membership shall automatically cease to be a member if he/she becomes an employee of the company.
- 17 For the avoidance of doubt, all individuals and bodies who/which are members of the company as at the time of adoption of these articles of association (other than individuals who are eligible for membership under article 15), shall automatically cease to be members of the company with effect from that time.

### **Application for membership**

- 18 Any director who wishes to become a member must sign, and lodge with the company, a written application for membership (in such form as the directors may reasonably prescribe).
- 19 Any individual eligible for membership under article 15 shall become a member of the company immediately upon receipt by the company of a duly signed application for membership in accordance with article 18.

### **Register of members**

- 20 The directors shall maintain a register of members, setting out the full name and address of each member, the date on which he/she was admitted to membership, and the date on which any individual ceased to be a member.

### **Withdrawal from membership**

- 21 If any individual wishes to withdraw from membership, he/she shall sign, and lodge with the company, a written notice to that effect; on receipt of the notice by the company, he/she shall cease to be a member.

### **Termination/transfer**

- 22 Membership shall cease on the member ceasing (for any reason) to be a director of the company.
- 23 A member may not transfer his/her membership to any other individual or to any body.

### **General meetings (meetings of members)**

- 24 The directors shall convene an annual general meeting in each year.
- 25 The business of each annual general meeting shall include:-
  - 25.1 a report by the chair on the activities of the company; and
  - 25.2 consideration of the annual accounts of the company.
- 26 Subject to article 24, the directors may convene a general meeting at any time.
- 27 The directors must convene a general meeting if there is a valid requisition by members (under section 303 of the Act) or a requisition by a resigning auditor (under section 518 of the Act).

### **Notice of general meetings**

- 28 At least 14 clear days' notice must be given of each general meeting must be given to the members, to all the directors, and (if auditors are in office at the time) to the auditors.
- 29 The reference to "clear days" in article 28 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted, (or, in the case of a notice sent by electronic means, the day after it was sent) and also the day of the meeting, should be excluded.
- 30 A notice calling a meeting shall specify the time, date and place of the meeting; it shall:
  - 30.1 indicate the general nature of the business to be dealt with at the meeting;
  - 30.2 if a special resolution or a resolution requiring special notice under the Act is to be proposed, state that fact, giving the exact terms of the resolution; and
  - 30.3 contain a statement informing each member of his/her/its right to appoint a proxy.
- 31 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
- 32 The directors will take such steps as they consider appropriate to publicise each annual general meeting, with a view to encouraging attendance by a wide range of stakeholders including members of the local community.



**33** Notice of every general meeting shall be given to all the members and directors, and (if auditors are in office at the time) to the auditors:

**33.1** in hard copy form;

**33.2** in writing or (where the individual to whom notice is given has notified the company of an address to be used for the purpose of electronic communication) in electronic form; or

**33.3** (subject to the company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Act) by means of a website.

#### **Procedure at general meetings**

**34** No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be as follows:

**34.1** if the total number of individuals comprised in the membership at the time is an odd number, one half (rounded upwards) of the total membership;

**34.2** if the total number of individuals comprised in the membership at the time is an even number, one half of the total membership, plus one.

**35** If a quorum is not present within 15 minutes after the time at which a general meeting was due to commence - or if, during a meeting, a quorum ceases to be present - the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.

**36** The chair of the company shall (if present and willing to act as chairperson) preside as chairperson of each general meeting; if the chair is not present and willing to act as chairperson within 15 minutes after the time at which the meeting was due to commence, the vice-chair shall preside as chairperson.

**37** If neither the chair nor the vice-chair is present and willing to act as chairperson of a general meeting within 15 minutes after the time when the meeting was due to commence, the directors present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.

**38** The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting to such time and place as the chairperson may determine.

#### **Votes of members**

**39** Every member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.

40 Any member who wishes to appoint a proxy to vote on his/her behalf at any meeting (or adjourned meeting):

40.1 shall lodge with the company, at the company's registered office, a written instrument of proxy (in such form as the directors require), signed by him/her; or

40.2 shall send by electronic means to the company, at such electronic address as may have been notified to the members by the company for that purpose, an instrument of proxy (in such form as the directors reasonably require);

providing (in either case), the instrument of proxy is received by the company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting); for the avoidance of doubt, in calculating the 48-hour period referred to in the preceding provisions of this article 40, no account shall be taken of any part of a day that is not a working day.

41 An instrument of proxy which does not conform with the provisions of article 40, or which is not lodged or sent in accordance with such provisions, shall be invalid.

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

43 A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed him/her to speak at the meeting and need not be a member of the company.

44 A vote given, or ballot demanded, by proxy shall be valid notwithstanding that the authority of the person voting or demanding a ballot had terminated prior to the giving of such vote or demanding of such ballot, unless notice of such termination was received by the company at the company's registered office (or, where sent by electronic means, was received by the company at the address notified by the company to the members for the purpose of electronic communications) before the commencement of the meeting or adjourned meeting at which the vote was given or the ballot demanded.

45 If there are an equal number of votes for and against any resolution, whether on a show of hands or on a ballot, the chairperson of the meeting shall be entitled to a casting vote.

46 A resolution put to the vote at a general meeting shall be decided on a show of hands unless a secret ballot is demanded by the chairperson (or by at least two persons present in person at the meeting and entitled to vote, whether as members or proxies for members); a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.

- 47 If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.

#### **Special resolutions and ordinary resolutions**

- 48 For the purposes of these articles, a "special resolution" means a resolution passed by 75% or more of the votes cast on the resolution at a general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 28 to 33; for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the total number of votes cast in relation to the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting.
- 49 In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution,
- 49.1 to alter its name; or
- 49.2 to alter any provision of these articles or adopt new articles of association.
- 50 For the purposes of these articles, an "ordinary resolution" means a resolution passed by majority vote (taking account only of those votes cast in favour as compared with those votes against), at a general meeting, providing proper notice of the meeting has been given in accordance with articles 28 to 33.

#### **Written resolutions**

- 51 A written resolution can be passed by the members of the company (having been proposed by either the members or the directors in accordance with the procedures detailed in Chapter 2 of Part 13 of the Act) and will have effect as if passed by the members of the company in general meeting; a written resolution is passed when the required majority of eligible members have signified their agreement to it by sending to the company (in hard copy or electronic form) an authenticated document which identifies the resolution to which it relates and which indicates the member's agreement to it (which agreement cannot thereafter be revoked).
- 52 For the purposes of the preceding article:
- 52.1 the reference to "eligible members" is to those members who would have been entitled to vote on the resolution on the circulation date of the resolution (which is either (a) the date on which copies of the written resolution are sent or submitted to the members in accordance with the procedures detailed in

Chapter 2 of Part 13 of the Act; or (b) if copies are sent or submitted to members on different days, the first of those dates);

52.2 the reference to "required majority" is to the majority required to pass an ordinary or a special resolution under the Act, as follows:

52.2.1. in order to pass an ordinary resolution by way of written resolution, it must be passed (in accordance with article 51) by members representing a simple majority of the total voting rights of eligible members;

52.2.2. in order to pass a special resolution by way of written resolution, it must be passed (in accordance with article 51) by members representing not less than 75% of the total voting rights of eligible members and the resolution must specifically state that it was proposed as a special resolution.

53 A resolution to remove a director (under section 168 of the Act) or a resolution to remove an auditor (under section 510 of the Act) cannot be proposed as a written resolution.

54 For the purposes of article 51, a proposed written resolution will lapse if it is not passed before the end of a period of 28 days beginning with the circulation date (as defined in article 52), and the agreement of any member to a written resolution will be ineffective if signified after the expiry of that period.

#### **Maximum number of directors**

55 The maximum number of directors shall be 11 with a minimum of 7.

#### **Eligibility**

56 An individual shall not be eligible to hold office as a director if he/she is an employee of the company.

#### **Composition of the board**

57 In making appointments to the board of directors, the directors shall have due regard to principles of equality and diversity, and shall be mindful of the range of stakeholders who have an interest in the aims and activities of the company; at the same time, due consideration should be given to ensuring that stakeholders (including members of the local community) are able to engage and contribute through a number of other routes - including by way of consultation exercises, thematic groups and advisory committees.

- 58 For the avoidance of doubt, references in these articles to skills and experience shall be taken to include the contribution which those drawn from the local community can make to the work of the board of directors, through their understanding of local needs and priorities, and local aspirations.

#### **Appointment of directors**

- 59 The directors may at any time appoint as a director any individual (providing he/she is willing to act) who they consider to have the requisite skills and experience to make a substantial contribution to the work of the board of directors.
- 60 In exercising their powers under article 59, the directors shall be guided by the Nominations Committee (as defined in article 105) in relation to the selection of appropriate individuals for appointment as directors; and (for the avoidance of doubt) the same principle shall apply in determining whether an individual retiring from office under article 61 should be re-appointed as a director.
- 61 At each annual general meeting:
- 61.1 any director appointed under article 59 during the period since the preceding annual general meeting shall retire from office;
  - 61.2 out of the remaining directors, one third (to the nearest round number) shall retire from office.
- 62 The directors to retire under article 61.2 shall be those who have been longest in office since they were last elected or re-elected (and including any period in office as a director prior to the adoption of these articles of association); 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.
- 63 Subject to article 64, a director who retires from office under article 61 shall be eligible for re-election.
- 64 A director who, as at the annual general meeting when he/she retires from office as a director under paragraph 61.2, has held office for a period of 6 years or more shall be required to retire from office and he/she shall only be eligible to be elected/appointed as a director at or after the following annual general meeting.
- 65 For the avoidance of doubt, a director who is due to retire at an annual general meeting shall remain in office as a director throughout that annual general meeting; he/she shall, however, unless re-appointed as a director at the meeting of directors which immediately follows that annual general meeting, automatically vacate office at the conclusion of that meeting of directors.

## **Termination of office**

**66 A director shall automatically vacate office if:**

- 66.1 he/she ceases to be a director by virtue of any provision of the Act or becomes prohibited by law from being a director or a charity trustee (within the meaning of the Charities and Trustee Investment (Scotland) Act 2005);**
- 66.2 he/she is sequestrated;**
- 66.3 he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity has continued or is expected to continue for a period of more than six months;**
- 66.4 he/she becomes an employee of the company;**
- 66.5 he/she resigns office by notice to the company;**
- 66.6 he/she is absent (without permission of the directors) from more than three consecutive meetings of the directors, and the directors resolve to remove him/her from office;**
- 66.7 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have committed a material breach of the code of conduct for directors in force from time to time (as referred to in article 81);**
- 66.8 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under sections 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or**
- 66.9 he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act.**

**67 A resolution under paragraph 66.7 or 66.8 shall be valid only if:-**

- 67.1 the director who is the subject of the resolution is given reasonable prior written notice by the directors of the grounds upon which the resolution for his/her removal is to be proposed;**
- 67.2 the director concerned is given the opportunity to address the meeting of directors at which the resolution is proposed, prior to the resolution being put to the vote; and**
- 67.3 at least two thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.**

### **Register of directors**

- 68 The directors shall maintain a register of directors, setting out full details of each director, including the date on which he/she became a director, and also specifying the date on which any person ceased to hold office as a director.

### **Office bearers**

- 69 The directors shall elect from among themselves a chair and a vice-chair, and such other office bearers (if any) as they consider appropriate.
- 70 At the conclusion of the third annual general meeting which follows the appointment of any individual to an office under article 69 (including any period prior to the adoption of these articles) he/she shall retire from office, but shall then be eligible (subject to article 71) for re-appointment to that office.
- 71 An individual who, as at the annual general meeting when he/she retires from office under article 70, is completing his/her second consecutive term of office shall not be eligible for re-election until the conclusion of the next annual general meeting.
- 72 A person elected to any office shall cease to hold that office if he/she ceases to be a director (whether by way of retiral as a director under article 61, where he/she is not re-appointed as a director; or for any other reason) or if he/she resigns from that office by written notice to that effect.
- 73 If the appointment of a director to any office terminates, the directors shall appoint another director to hold the office in his/her place.

### **Personal interests**

- 74 Subject to the provisions of the Act and of articles 8 to 11 and provided that he/she has disclosed to the directors the nature and extent of any personal interest which he/she has (unless immaterial) and has complied with the code of conduct (as referred to in article 81), a director (notwithstanding his/her office):
- 74.1 may be a party to, or have some other personal interest in, any transaction or arrangement with the company or any associated company;
- 74.2 may be a party to, or have some other personal interest in, any transaction or arrangement in which the company or any associated company has an interest;
- 74.3 may be a director or secretary of, or employed by, or have some other personal interest in, any associated company; and

**74.4** shall not, because of his/her office, be accountable to the company for any benefit which he/she derives from any such office or employment or from any such transaction or arrangement or from any interest in any such company;

and no such transaction or arrangement shall be liable to be treated as void on the ground of any such interest or benefit.

**75** For the purposes of the preceding article, an interest of which a director has no knowledge and of which it is unreasonable to expect him/her to have knowledge shall not be treated as an interest of his/hers; the references to "associated company" shall be interpreted as references to any subsidiary of the company or any other company in which the company has a direct or indirect interest.

**76** The directors shall be entitled, for the purposes of section 175 of the Act, to authorise (by way of resolution to that effect) any Conflict Situation that may arise (such that the duty of the director concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.

**77** For the avoidance of doubt, article 76 shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the company; any conflict of interest of that nature shall be governed by the provisions of articles 74, 75 and 99 and the code of conduct referred to in article 81.

**78** The directors shall procure that a register of directors' interests is maintained in accordance with the provisions in this regard contained in the code of conduct for directors referred to in article 81.

#### **Conduct of directors**

**79** It is the duty of each director of the company to take decisions (and exercise his/her other powers and responsibilities as a director) in such a way as he/she considers, in good faith, will be most likely to promote the success of the company in achieving its objects (as set out in article 4) and will be in the interests of the company, and irrespective of any office, post, engagement or other connection which he/she may have with any other body which may have an interest in the matter in question.

**80** Without prejudice to the principle set out in article 79, each of the directors shall have a duty, in exercising functions as a charity trustee, to act in the interests of the company; and, in particular, must:

**80.1** seek, in good faith, to ensure that the company acts in a manner which is in accordance with its purposes;



80.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

80.3 in circumstances giving rise to the possibility of a conflict of interest between the company and any party responsible for the appointment of that director

80.3.1. put the interests of the company before that of the other party;

80.3.2. where any other duty prevents him/her from doing so, disclose the conflicting interest to the company and refrain from participating in any deliberation or decision of the other directors with regard to the matter in question;

80.4 ensure that the company complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.

81 Each of the directors shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board of directors from time to time.

82 For the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association; and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

#### **Directors' remuneration and expenses**

83 No director may serve as an employee of the company, and no director may be given any remuneration by the company for carrying out his/her ordinary duties as a director or as chair or as the holder of any other office under article 69.

84 The directors may be paid all travelling and other expenses properly incurred by them in connection with their attendance at meetings of directors, general meetings, meetings of committees of directors or otherwise in connection with the carrying-out of their duties.

#### **Powers of directors**

85 Subject to the provisions of the Act, and these articles, and subject to any directions given by special resolution, the company and its assets and undertaking shall be managed by the directors, who may exercise all the powers of the company.

86 A meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

#### **Procedure at directors' meetings**

- 87 Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.
- 88 Any two directors may call a meeting of the directors or request the secretary to call a meeting of the directors.
- 89 Questions arising at a meeting of the directors shall be decided by a majority of votes; if an equality of votes arises, the chairperson of the meeting shall have a casting vote.
- 90 No business shall be dealt with at a meeting of the directors unless a quorum is present; the quorum for meetings of the directors shall be as follows:
- 90.1 if there are 8 or 9 directors in office at the time, the quorum shall be 5;
- 90.2 if there are 7 or fewer directors in office at the time, the quorum shall be 4.
- 91 A director may participate in a meeting of the directors by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the directors participating in the meeting can hear each other; a director participating in a meeting in this manner shall be deemed to be present in person at the meeting.
- 92 If at any time the number of directors in office falls below the number fixed as the quorum, the remaining director(s) may act only for the purpose of filling vacancies or of calling a general meeting.
- 93 Unless he/she is unwilling to do so, the chair of the company shall preside as chairperson at every directors' meeting at which he/she is present; if the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the vice-chair shall preside as chairperson.
- 94 If neither the chair nor the vice-chair is present and willing to act as chairperson of a directors' meeting within 15 minutes after the time when the meeting was due to commence, the directors present shall elect from among themselves the person who will act as chairperson of the meeting.
- 95 The directors may, at their discretion, allow any person who they reasonably consider appropriate, to attend and speak at any meeting of the directors; for the avoidance of doubt, any such person who is invited to attend a directors' meeting shall not be entitled to vote.
- 96 A person invited to attend a meeting of the directors under article 95 shall not be entitled to exercise any of the powers of a director, and shall not be deemed to constitute a director for the purposes of the Act or any provision of these articles.

- 97 All acts done by a meeting of directors or by a meeting of a committee of directors or by a person acting as a director shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any director or that any of them was disqualified from holding office or had vacated office or was not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.
- 98 A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors, or (as the case may be) a committee of directors, duly convened and held; it may consist of several documents in the same form, each signed by one or more directors.
- 99 A director shall not vote at a directors' meeting (or at a meeting of a committee) on any resolution concerning a matter in which he/she has a personal interest which conflicts (or may conflict) with the interests of the company; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 100 For the purposes of article 99, a person shall be deemed to have a personal interest in a particular matter if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or director or any limited liability partnership of which he/she is a member or any Scottish charitable incorporated organisation or charitable incorporated organisation of which he/she is a charity trustee or any registered society or unincorporated association of which he/she is a member of the governing organ has a personal interest in that matter.
- 101 A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- 102 The company may (subject to the Charities and Trustee Investment (Scotland) Act 2005), by ordinary resolution, suspend or relax to any extent – either generally or in relation to any particular matter – the provisions of articles 99 to 101.
- 103 If a question arises at a meeting of directors or at a meeting of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairperson of the meeting; his/her ruling in relation to any director other than himself/herself shall be final and conclusive

#### **Delegation to sub-committees**

- 104 The directors may delegate any of their powers to any sub-committee consisting of one or more directors and such other persons (if any) as the directors may determine; they may also delegate to the chair of the company (or the holder of any other post) such of their powers as they may consider appropriate.

105 Any delegation of powers under article 104 may be made subject to such conditions as the directors may impose and may be revoked or altered.

106 The terms of reference and rules of procedure for each sub-committee shall be as prescribed by the directors.

#### **Nominations Committee**

107 The directors shall establish a committee (referred to in these articles as the "Nominations Committee") to guide the directors in relation to the selection of appropriate individuals for appointment (or re-appointment) as directors.

108 The Nominations Committee shall consist of 2 directors and 1 non-director, in each case, as nominated by the board of directors.

109 The proceedings of the Nominations Committee shall be governed by such standing orders as may be issued by the directors from time to time.

110 In carrying out its functions, the Nominations Committee shall give effect to the following principles:

110.1 vacancies for directors should be advertised widely;

110.2 the Nominations Committee should engage with the various stakeholder bodies and networks to which the company has access, in order to encourage a wide range of potential candidates to come forward;

110.3 all expressions of interest should be considered by the Nominations Committee; and

110.4 the Nominations Committee should maintain a register of suitable candidates for future reference.

#### **Operation of bank accounts**

111 The signatures of two out of the signatories appointed by the directors shall be required in relation to all operations (other than lodgement of funds) on the bank and building society accounts held by the company; at least one out of the two signatures must be the signature of a director.

#### **Secretary**

112 The directors shall (notwithstanding the provisions of the Act) appoint a company secretary, and on the basis that the term of office, remuneration (if any), and other terms and conditions attaching to the appointment of the company secretary shall be

as determined by the directors; the company secretary may be removed by the directors at any time.

#### **Minutes**

- 113 The directors shall ensure that minutes are made (in books kept for the purpose) of all proceedings at general meetings, meetings of the directors and meetings of committees of directors; a minute of a meeting of directors or of a committee of directors shall include the names of the directors present, and the minutes of each meeting shall be signed by the chairperson of that meeting.

#### **Accounting records and annual accounts**

- 114 Accounting records shall be kept in accordance with all applicable statutory requirements and such accounting records shall, in particular, contain entries from day to day of all sums of money received and expended by the company and the matters in respect of which such receipt and expenditure take place and a record of the assets and liabilities of the company; such accounting records shall be open to inspection at all times by any director of the company.
- 115 The directors shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required (as opposed to an independent examination) under any statutory provisions, or if the directors consider that an audit would be appropriate for some other reason, the directors shall ensure that an audit of the accounts is carried out by a qualified auditor.

#### **Notices**

- 116 Any notice to be given in pursuance of these articles shall be in writing.
- 117 The company may give any notice to a member in pursuance of these articles either personally or by sending it by post in a pre-paid envelope addressed to the member at his/her registered address or by leaving it at that address; alternatively, in the case of a member who has notified the company of an electronic address to be used for this purpose, the company may give any notice to that member by electronic means.
- 118 Any notice, if sent by post, shall be deemed to have been given at the expiry of twenty four hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
- 119 Any notice sent by electronic means shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any notice sent by electronic means was indeed sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.

- 120 A member may give any notice to the company either by sending it by post in a pre-paid envelope addressed to the company at its registered office or by leaving it, addressed to the company secretary, at the company's registered office.
- 121 A member present or represented at any meeting of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

#### **Winding-up**

- 122 If on the winding-up of the company any property remains after satisfaction of all the company's debts and liabilities, such property shall be paid or transferred to some charity or charities with similar purposes to those of the company, as determined (prior to the winding up) by the members of the company. Objects and artefacts on loan to the Trust shall be returned to local and national museums, as per the loan agreements in place with Dumfries and Galloway Council, National Museums Scotland and Historic Environment Scotland. Items on public display owned by the Trust shall be distributed to charities with similar purposes or to the local authority's Museum Service, as shall be determined by the Members of the company.
- 123

To the extent that effect cannot be given to article 122, the relevant property shall be applied to some charitable purpose or purposes.

#### **Indemnity**

- 124 Every director or other officer or auditor of the company shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the company against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office including, without prejudice to that generality (but only to the extent permitted by those sections of the Act), any liability incurred by him/her in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application in which relief is granted to him/her by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company.
- 125 For the avoidance of doubt, the company shall be entitled (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) to purchase and maintain insurance against any loss or liability which any director or other officer of the company may sustain or incur in connection with the execution of the duties of his/her office; and such insurance may (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).