

SC172338

THE COMPANIES ACT 2006

COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

ARTICLES of ASSOCIATION of
HEBRIDEAN WHALE AND DOLPHIN
TRUST LIMITED

(as amended by Special Resolution dated
28 January 2018)

Incorporated 13th February 1997



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HEBRIDEAN WHALE AND DOLPHIN TRUST LIMITED

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GENERAL

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:-
 - (a) "Act" means the Companies Act 2006;
 - (b) "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;
 - (c) "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;
 - (d) "electronic form" has the meaning given in section 1168 of the Act;
 - (e) "OSCR" means the Office of the Scottish Charity Regulator;
 - (f) "property" means any property, heritable or moveable, real or personal, wherever situated;
 - (g) "subsidiary" has the meaning given in section 1159 of the Act;
 - (h) "trust" means the company; and
 - (i) "trustee" means a director of the company.
- 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 trust's objects are:
 - (a) All purposes that are charitable relating to cetaceans, and especially:
 - (b) the advancement of environmental protection or improvement;
 - (c) the advancement of animal welfare;

- (d) the advancement of the arts, culture, heritage and science;
- (e) the advancement of citizenship or community development, including volunteering and the social and economic development of communities;
- (f) education.

5 In pursuit of these purposes the trust has as specific objects:

- (a) the conservation of whales, dolphins and porpoises (cetaceans) and the marine environment, especially in the Hebrides;
- (b) enhancing knowledge and understanding of cetaceans and the marine environment through education, research and working with local communities;
- (c) research and monitoring of the distribution, abundance and habitat use of cetaceans and of factors affecting their conservation;
- (d) education concerning cetaceans and their environment, including interactive education, community engagement and citizen science programmes;
- (e) supporting the arts, culture and heritage, and the social and economic development of communities, in relation to cetaceans and the marine environment;
- (f) informing and influencing the public so as to promote the conservation of cetaceans and their environment.

6 The trust may (subject to first obtaining the consent of OSCR) add to, remove or alter the statement of the trust's objects in articles 4 and 5; 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 articles 4 and 5 (but not otherwise), the trust shall have the following powers:-

- (a) To protect, preserve and conserve for the benefit of the public now and for future generations the special ecosystem to be found in the marine environment and coastal areas of the Hebrides.
- (b) To disseminate information concerning the project by producing scientific publications and using other forms of media.
- (c) To carry on any other activities which further any of the above objects.

- (d) To promote companies whose activities may further one or more of the above objects, or may generate income to support the activities of the trust, acquire and hold shares in such companies and carry out, in relation to any such trust which is a subsidiary of the trust, all such functions as may be associated with a holding trust.
- (e) 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 trust's activities.
- (f) To purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the trust's activities.
- (g) To improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the trust.
- (h) To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the trust.
- (i) To lend money and give credit (with or without security) and to grant guarantees and issue indemnities.
- (j) To borrow money, and to give security in support of any such borrowings by the trust, in support of any obligations undertaken by the trust or in support of any guarantee issued by the trust.
- (k) To employ such staff as are considered appropriate for the proper conduct of the trust'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.
- (l) To engage such consultants and advisers as are considered appropriate from time to time.
- (m) To effect insurance of all kinds (which may include officers' liability insurance).
- (n) To invest any funds which are not immediately required for the trust's activities in such investments as may be considered appropriate (and to dispose of, and vary, such investments).
- (o) 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 trust's objects.
- (p) To establish and/or support any other charity, and to make donations for any charitable purpose falling within the trust's objects.
- (q) To take such steps as may be deemed appropriate for the purpose of raising funds for the trust's activities.
- (r) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).

- (s) To oppose, or object to, any application or proceedings which may prejudice the trust's interests.
- (t) To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the trust, and to enter into any arrangement for co-operation or mutual assistance with any charity.
- (u) To do anything which may be incidental or conducive to the furtherance of any of the trust's objects.

Restrictions on use of the trust's assets

- 8
- (a) The income and property of the trust shall be applied solely towards promoting the trust's objects.
 - (b) No part of the income or property of the trust shall be paid or transferred (directly or indirectly) to the members of the trust, whether by way of dividend, bonus or otherwise.
 - (c) No trustee of the trust shall be appointed as a paid employee of the trust; no trustee shall hold any office under the trust for which a salary or fee is payable.
 - (d) No benefit (whether in money or in kind) shall be given by the trust to any trustee except (i) repayment of out-of-pocket expenses or (ii) reasonable payment in return for particular services (not being of a management nature) actually rendered to the trust.

Liability of members

- 9 Each member undertakes that if the trust is wound up while he/she is a member (or within one year after he/she ceases to be a member), he/she will contribute - up to a maximum of £1 - to the assets of the trust, to be applied towards:
- (a) payment of the trust's debts and liabilities contracted before he/she ceases to be a member;
 - (b) payment of the costs, charges and expenses of winding up; and
 - (c) adjustment of the rights of the contributories among themselves.

General structure

- 10 The structure of the trust consists of:-
- (a) 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 elect people to serve as trustees and take decisions in relation to changes to the articles themselves.

- (b) the TRUSTEES - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the trust; in particular, the trustees are responsible for monitoring the financial position of the trust.

MEMBERS

Membership

- 11 The admission and classification of members of the Trust and the rights and privileges of such Members and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members shall be determined by resolution of a General Meeting.
- 12 The trustees 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 person ceased to be a member.

GENERAL MEETINGS

General meetings (meetings of members)

- 13 The trustees shall convene an annual general meeting yearly.
- 14 Not more than 15 months shall elapse between one annual general meeting and the next.
- 15 The business of each annual general meeting shall include:-
 - (a) a report by the chair on the activities of the trust
 - (b) consideration of the annual accounts of the trust
 - (c) the election/re-election of trustees, as referred to in articles 32 to 33.
- 16 In addition to annual general meetings, the trustees may convene a general meeting at any time.
- 17 The trustees 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

- 18 At least 14 clear days' notice must be given of a general meeting.
- 19 The reference to "clear days" in article 18 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.
- 20 A notice calling a meeting shall specify the time and place of the meeting; it shall (a) indicate the general nature of the business to be dealt with at the

meeting and (b) if a special resolution (see article 80) (or a resolution requiring special notice under the Act) is to be proposed, shall also state that fact, giving the exact terms of the resolution.

- 21 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
- 22 Notice of every general meeting shall be given
 - (a) in hard copy form
 - (b) in writing or (where the individual to whom notice is given has notified the trust of an address to be used for the purpose of electronic communication) in electronic form; or
 - (c) (subject to the trust 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

- 23 No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be 5 individuals entitled to vote (each being a member or a proxy for a member).
- 24 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.
- 25 The chair of the trust 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 trustees present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.
- 26 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.
- 27 A resolution put to the vote at a general meeting shall be decided on by a vote of those present, unless a ballot of all members 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 ballot of all members may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.
- 28 Any member who wishes may appoint a proxy to vote on his/her behalf at any meeting or adjourned meeting, in accordance with sections 324 to 331 of the Act.
- 29 Trustees may at any time put a resolution to a ballot of all members. In any such ballot, members shall be given the exact terms of the resolution together with an explanation of arguments for and against the resolution as trustees

judge appropriate. In any ballot, members shall be given at least 3 clear weeks in which to vote, either by post or electronically.

TRUSTEES

Number of trustees

- 30 The maximum number and minimum number respectively of the Trustees may be determined from time to time by ordinary resolution. Subject to and in *default of any such determination there shall be no maximum number of Trustees* and the minimum number of Directors shall be three.

Eligibility

- 31 A person shall not be eligible for election/appointment as a trustee unless he/she is a member of the trust.

Election, retiral, re-election

- 32 At each AGM, the members may elect any member (unless he/she is debarred from membership under clause 34) to be a charity trustee. If there are more candidates than vacancies, an election by all members shall be held in which members may vote by post or electronically, using the Single Transferable Vote method.
- 33 At each AGM, one third of the charity trustees shall retire from office – but shall then be eligible for re-election under clause 32. The trustees to retire shall be those who have served longest since last being elected/appointed; in the case of equal lengths of service they shall be chosen by drawing lots.

Termination of office

- 34 A trustee shall automatically vacate office if:-
- (a) he/she ceases to be a trustee through the operation of any provision of the Act or becomes prohibited by law from being a trustee
 - (b) he/she becomes debarred under any statutory provision from being a charity trustee
 - (c) he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months
 - (d) he/she ceases to be a member of the trust
 - (e) he/she becomes an employee of the trust
 - (f) he/she resigns office by notice to the trust

- (g) he/she is absent (without permission of the trustees) from more than three consecutive meetings of the trustees, and the trustees resolve to remove him/her from office
 - (h) he/she is removed from office by resolution of the trustees on the grounds that he/she is considered to have committed a material breach of the code of conduct for trustees in force from time to time (as referred to in article 61);
 - (i) he/she is removed from office by resolution of the trustees on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under sub-sections 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
 - (j) he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act.
- 35 A resolution under paragraph (h) or (i) of article 34 shall be valid only if:-
- (a) the trustee who is the subject of the resolution is given reasonable prior written notice by the trustees of the grounds upon which the resolution for his/her removal is to be proposed;
 - (b) the trustee concerned is given the opportunity to address the meeting of trustees 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 trustees then in office vote in favour of the resolution.

Register of trustees

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

Officebearers

- 37 The trustees shall elect from among themselves a chair and a treasurer, and such other office bearers (if any) as they consider appropriate.
- 38 All of the office bearers shall cease to hold office at the conclusion of each annual general meeting, but shall then be eligible for re-election.
- 39 A person elected to any office shall cease to hold that office if he/she ceases to be a trustee, or if he/she resigns from that office by written notice to that effect.

Powers of trustees

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

- 41 A meeting of the trustees at which a quorum is present may exercise all powers exercisable by the trustees.

Personal interests

- 42 A trustee who has a personal interest in any transaction or other arrangement which the trust is proposing to enter into, must declare that interest at a meeting of the trustees; he/she will be debarred (in terms of article 57) from voting on the question of whether or not the trust should enter into that arrangement.
- 43 For the purposes of the preceding article, a trustee shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited trust of which he/she is a substantial shareholder or trustee or any limited liability partnership of which he/she is a member or any Scottish charitable incorporated organisation of which he/she is a charity trustee or any registered society or unincorporated association of which he/she is a management committee member (or any other party who/which is deemed to be connected with him/her for the purposes of the Act) , has a personal interest in that arrangement.
- 44 Provided
- (a) he/she has declared his/her interest
 - (b) he/she has not voted on the question of whether or not the trust should enter into the relevant arrangement and
 - (c) the requirements of article 48 are complied with,
- a trustee will not be debarred from entering into an arrangement with the trust in which he/she has a personal interest (or is deemed to have a personal interest under article 43) and may retain any personal benefit which he/she gains from his/her participation in that arrangement.
- 45 The trustees shall be entitled, for the purposes of section 175 of the Act, to authorise (by way of resolution to that effect) any conflict situation (as defined for the purposes of that section of the Act) that may arise (such that the duty of the trustee concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the trustees may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.
- 46 For the avoidance of doubt, the provisions of section 175 of the Act and article 45 do not apply to a conflict of interest relating to a transaction or arrangement with the trust; conflicts of that kind are regulated by the provisions of articles 42 to 44 and articles 57 to 60.
- 47 No trustee may serve as an employee (full time or part time) of the trust, and no trustee may be given any remuneration by the trust for carrying out his/her duties as a trustee.
- 48 Where a trustee provides services to the trust or might benefit from any remuneration paid to a connected party for such services, then

- (a) the maximum amount of the remuneration must be specified in a written agreement and must be reasonable
 - (b) the trustees must be satisfied that it would be in the interests of the trust to enter into the arrangement (taking account of that maximum amount); and
 - (c) less than half of the trustees must be receiving remuneration from the trust (or benefit from remuneration of that nature).
- 49 The trustees may be paid all travelling and other expenses reasonably incurred by them in connection with their attendance at meetings of the trustees, general meetings, or meetings of committees, or otherwise in connection with the carrying-out of their duties.

TRUSTEES' MEETINGS

Procedure at trustees' meetings

- 50 Any trustee may call a meeting of the trustees or request the secretary to call a meeting of the trustees.
- 51 The Board may agree to conduct meetings using remote access, including telephone or skype; in that case those using such remote access shall be deemed to be present in person.
- 52 Questions arising at a meeting of the trustees shall be decided by a majority of votes; if an equality of votes arises, the chairperson of the meeting shall have a casting vote.
- 53 No business shall be dealt with at a meeting of the trustees unless a quorum is present; the quorum for meetings of the trustees shall be 3.
- 54 If at any time the number of trustees in office falls below the number fixed as the quorum, the remaining trustee(s) may act only for the purpose of filling vacancies or of calling a general meeting.
- 55 Unless he/she is unwilling to do so, the chair of the trust shall preside as chairperson at every trustees' 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 trustees present shall elect from among themselves the person who will act as chairperson of the meeting.
- 56 The trustees may, at their discretion, allow any person who they reasonably consider appropriate, to attend and speak at any meeting of the trustees; for the avoidance of doubt, any such person who is invited to attend a trustees' meeting shall not be entitled to vote.
- 57 A trustee shall not vote at a trustees' 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 trust; he/she must withdraw from the meeting while an item of that nature is being dealt with.

- 58 For the purposes of article 57, 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 trust of which he/she is a substantial shareholder or trustee or any limited liability partnership of which he/she is a member or any Scottish charitable incorporated organisation of which he/she is a charity trustee or any registered society or unincorporated association of which he/she is a management committee member has a personal interest in that matter.
- 59 A trustee 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.
- 60 The company may, by ordinary resolution, suspend or relax to any extent – either generally or in relation to any particular matter – the provisions of articles 57 to 59.

Conduct of trustees

- 61 Each of the trustees shall, in exercising his/her functions as a trustee of the trust, act in the interests of the trust; and, in particular, must
- (a) seek, in good faith, to ensure that the trust acts in a manner which is in accordance with its objects.
 - (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 of interest between the trust and any other party
 - (i) put the interests of the trust before that of the other party, in taking decisions as a trustee; or
 - (ii) where any other duty prevents him/her from doing so, disclose the conflicting interest to the trust and refrain from participating in any discussions or decisions involving the other trustees with regard to the matter in question
 - (d) ensure that the trust complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.
- 62 Each of the trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board of trustees from time to time.
- 63 For the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of trustees 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.

ADMINISTRATION

Delegation to sub-committees

- 64 The trustees may delegate any of their powers to any sub-committee consisting of one or more trustees and such other persons (if any) as the trustees may determine; they may also delegate to the chair of the trust (or the holder of any other post) such of their powers as they may consider appropriate.
- 65 Any delegation of powers under article 64 may be made subject to such conditions as the trustees may impose and may be revoked or altered.
- 66 The rules of procedure for any sub-committee shall be as prescribed by the trustees.

Operation of bank accounts

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

Secretary

- 68 The trustees shall (notwithstanding the provisions of the Act) appoint a trust secretary, and on the basis that the term of the appointment, the remuneration (if any) payable to the trust secretary, and the such conditions of appointment shall be as determined by the trustees; the trust secretary may be removed by them at any time.

Minutes

- 69 The trustees shall ensure that minutes are made of all proceedings at general meetings, trustees' meetings and meetings of committees; a minute of any meeting shall include the names of those present, and (as far as possible) shall be signed by the chairperson of the meeting.

Accounting records and annual accounts

- 70 The trustees shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
- 71 The trustees shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if they otherwise think fit, they shall ensure that an audit of such accounts is carried out by a qualified auditor.
- 72 No member shall (unless he/she is a trustee) have any right of inspecting any accounting or other records, or any document of the trust, except as conferred by statute or as authorised by the trustees or as authorised by ordinary resolution of the trust.

Notices

- 73 Any notice which requires to be given to a member under these articles shall be given either in writing or by electronic means; such a notice may be given personally to the member or be sent by post in a pre-paid envelope addressed to the member at the address last intimated by him/her to the trust or (in the case of a member who has notified the trust of an address to be used for the purpose of electronic communications) may be given to the member by electronic means.
- 74 Any notice, if sent by post, shall be deemed to have been given at the expiry of 24 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.
- 75 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.

MISCELLANEOUS

Winding-up

- 76 If on the winding-up of the trust any property remains after satisfaction of all the trust's debts and liabilities, such property shall be transferred to such body or bodies (whether incorporated or unincorporated) as may be determined by the members of the trust at or before the time of dissolution (or, failing such determination, by such court as may have or acquire jurisdiction), to be used solely for a charitable purpose or charitable purposes.
- 77 For the avoidance of doubt, a body to which property is transferred under article 76 may be a member of the trust.
- 78 To the extent that effect cannot be given to article 76 (as read with article 77), the relevant property shall be applied to some charitable purpose or purposes.

Indemnity

- 79 Every trustee or other officer or auditor of the trust shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the trust against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office; that may include, 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 any liability in connection with an application in which relief is granted to him/her by the court from liability for negligence, default or breach of trust in relation to the affairs of the trust.
- The trust shall be entitled (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) to purchase and maintain for any trustee insurance against any loss or liability which any trustee or other officer of the trust 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 trustee).

Changes to the Articles of Association

- 80 These Articles may, subject to and in accordance with the terms of the Act, be amended by the passing of a special resolution of a General Meeting, with the resolution supported by not less than 75% of those voting.