

ORKNEY HERITAGE SOCIETY – CONSTITUTION

OHS new Constitution as proposed by the Board to the 19th November 2020 AGM

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GENERAL

Type of organisation

- 1 The organisation is a Scottish Charitable Incorporated Organisation (SCIO).
- 2 The principal office of the organisation will be in Scotland (and must remain in Scotland).

Name

- 3 The name of the organisation is Orkney Heritage Society (the “Society”)

Purposes

- 4 The Society’s purposes are:
 - 4.1 To stimulate public interest in, and care for, the beauty, history and character of Orkney.
 - 4.2 To encourage the preservation, development and improvement of features of general public amenity or historic interest.
 - 4.3 To encourage high standards of architecture and planning in Orkney.

And in furtherance thereof:

to organise public lectures, conferences, exhibitions and trips, publish various publications and organise a series of awards.

Powers

- 5 The Society 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 Society may be paid or transferred (directly or indirectly) to the members - either in the course of the Society’s existence or on dissolution - except where this is done in direct furtherance of the Society’s charitable purposes.

Liability of members

- 7 The members of the Society have no liability to pay any sums to help to meet the debts (or other liabilities) of the Society if it is wound up; accordingly, if the Society is unable to meet its debts, the members will not be held responsible.
- 8 The members and 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 Society consists of:-
- 9.1 the MEMBERS - who have the right to attend members' meetings (including any annual general meeting) and have important powers under the constitution; in particular, the members appoint people to serve on the board and take decisions on changes to the constitution itself;
 - 9.2 the BOARD - who hold regular meetings, and generally control the activities of the Society; for example, the board is responsible for monitoring and controlling the financial position of the Society.
- 10 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

MEMBERS

Qualifications for membership

- 11 Membership is open to any individual aged 16 or over who is interested in the aims of the Society.
- 12 Employees of the Society are eligible for membership, but may not be elected as a Trustee

Application for membership

- 13 Any person who wishes to become a member must sign an application for membership in the form prescribed by the board.

Membership subscription

- 14 Annual membership subscriptions will be decided by the Board of the Society each year. Membership will lapse if the subscription is unpaid six months after notification that it is due.

Register of members

- 15 The board must keep a register of members, setting out
- 15.1 for each current member:
 - 15.1.1 their full name and address; and
 - 15.1.2 the date on which they were registered as a member of the Society;

15.2 for each former member - for at least six years from the date on they ceased to be a member:

15.2.1 their name; and

15.2.2 the date on which they ceased to be a member.

16 The board must ensure that the register of members is updated within 28 days of any change:

16.1 which arises from a resolution of the board or a resolution passed by the members of the Society; or

16.2 which is notified to the Society.

17 If a member or charity trustee of the Society requests a copy of the register of members, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses blanked out.

Withdrawal from membership

18 Any person who wants to withdraw from membership must give a written notice of withdrawal to the Society, signed by them; they will cease to be a member as from the time when the notice is received by the Society.

Transfer of membership

19 Membership of the Society may not be transferred by a member.

Re-registration of members

20 The board may, at any time, issue notices to the members requiring them to confirm that they wish to remain as members of the Society, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the board.

21 If a member fails to provide confirmation to the board (in writing or by e-mail) that they wish to remain as a member of the Society before the expiry of the 28-day period referred to in clause 20, the board may terminate their membership.

22 A notice under clause 20 will not be valid unless it refers specifically to the consequences (under clause 21) of failing to provide confirmation within the 28-day period.

Expulsion from membership

23 Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present, as defined in clause 36, and voting at a members' meeting, providing the following procedures have been observed:-

- 23.1 at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;
- 23.2 the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

DECISION-MAKING BY THE MEMBERS

Members' meetings

- 24 The board must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year.
- 25 The gap between one AGM and the next must not be longer than 15 months.
- 26 The business of each AGM must include:-
 - 26.1 a report by the chair on the activities of the Society;
 - 26.2 consideration of the annual accounts of the Society;
 - 26.3 the election/re-election of charity trustees, as referred to in clauses 55 to 58.

and may include

- 26.4 The election, and removal, of a president (and vice-president) if one or both is desired). Once appointed, a president and vice-president shall remain in post unless a subsequent members' meeting terminates either appointment. The president and vice-president will have all the powers and responsibilities of a charity trustee unless otherwise determined at the time of the initial appointment or as stated in other clauses.
- 27 The board may arrange a special members' meeting at any time.

Power to request the board to arrange a special members' meeting

- 28 The board must arrange a special members' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more members) by members who amount to 5% or more of the total membership of the Society at the time, providing:
 - 28.1 the notice states the purposes for which the meeting is to be held; and
 - 28.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.

- 29 If the board receive a notice under clause 28, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

Notice of members' meetings

- 30 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 31 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 31.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
- 31.2 in the case of any other resolution falling within clause 43 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 32 The reference to "clear days" in clause 30 shall be taken to mean that, in calculating the period of notice,
- 32.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
- 32.2 the day of the meeting itself should also be excluded.
- 33 Notice of every members' meeting must be given to all the members of the Society, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.
- 34 Any notice which requires to be given to a member under this constitution must be: -
- 34.1 sent by post to the member, at the address last notified by them to the Society;
or
- 34.2 sent by e-mail to the member, at the e-mail address last notified by them to the Society; *and*
- 34.3 by means of a website; *or*
- 34.4 partly by one such means and partly by another to addresses last notified by the member.

Procedure at members' meetings

- 35 Meetings can take place digitally in whole or in part subject to any digital arrangements (a) being notified to members with the notice sent under clauses 30-34 (b) using a readily available system and (c) identifying the names of those attending to the chair of the meeting and, as appropriate, to other attendees. Decisions on whether to accept digital participation in whole or individually will rest with the chair of the meeting.

- 36 No valid decisions can be taken at any members' meeting unless a quorum is present in person or digitally where digital attendance has been approved by the chair of the meeting.
- 37 The quorum for a members' meeting is 7 persons entitled to vote, each being a member or a proxy for a member.
- 38 If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted. Any such resumed meeting may transact business with a quorum of 3, transacting only those items of business set out in the original notice.
- 39 The chair of the Society should act as chairperson of each members' meeting.
- 40 If the chair of the Society 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.

Voting at members' meetings

- 41 Every member has one vote, which (whether on a show of hands or on a secret ballot) may be given either personally, by proxy or by such digital means as approved by the chair of the meeting
 - 41.1 A member who wishes to appoint a proxy to vote on their behalf at any meeting must lodge with the Society, prior to the time when the meeting commences, a written proxy form, signed by them.
 - 41.2 A member shall not be entitled to appoint more than one proxy to attend the same meeting.
- 42 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 43.
- 43 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 47):
 - 43.1 a resolution amending the constitution;
 - 43.2 a resolution expelling a person from membership under clause 23;
 - 43.3 a resolution directing the board to take any particular step (or directing the board not to take any particular step);

- 43.4 a resolution approving the amalgamation of the Society with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
- 43.5 a resolution to the effect that all of the Society'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);
- 43.6 a resolution for the winding up or dissolution of the Society.
- 44 If there is an equal number of votes for and against any resolution, the chair of the meeting will be entitled to a second (casting) vote.
- 45 A resolution put to the vote at a members' meeting will be decided on a show of hands of those present in person and by such means as the Chair agrees for digital presence - unless the chair (or at least two persons present at the meeting in person or digitally and entitled to vote, whether as members or as proxies for members) ask for a secret ballot.
- 46 The chair will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.

Written resolutions by members

- 47 A resolution agreed to in writing (or by e-mail) by all the members 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 member agreed to it.

Minutes

- 48 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 49 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chair of the meeting or an agreed digital copy be securely stored.
- 50 The board shall make available copies of the minutes referred to in clause 48 to any member of the public requesting them; but on the basis that the board may exclude confidential material to the extent permitted under clause 94.

BOARD

Number of charity trustees

- 51 The maximum number of charity trustees is 20 including any president or vice-president appointed under clause 26.4 subject to the terms of appointment.

52 The minimum number of charity trustees is 5.

Eligibility

53 A person will not be eligible for election or appointment to the board unless they are a member of the Society.

54 A person will not be eligible for election or appointment to the board if: -

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

54.2 an employee of the Society.

Election, retiral, re-election

55 At each AGM, the members may elect any member (unless they are debarred from membership under clause 54) to be a charity trustee.

56 The board may at any time appoint any member (unless they are debarred from membership under clause 54) to be a charity trustee.

57 At each AGM, all of the charity trustees, apart from any president or vice-president, must retire from office - but may then be re-elected under clause 58.

58 A charity trustee retiring at an AGM will be deemed to have been re-elected unless: -

58.1 they advise the board prior to the conclusion of the AGM that they do not wish to be re-appointed as a charity trustee; or

58.2 an election process was held at the AGM and they were not among those elected/re-elected through that process; or

58.3 a resolution for the re-election of that charity trustee was put to the AGM and was not carried.

Termination of office

59 A charity trustee, apart from any president or vice-president, will automatically cease to hold office if: -

59.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;

59.2 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;

59.3 they cease to be a member of the Society;

- 59.4 they become an employee of the Society;
 - 59.5 they give the Society a notice of resignation, signed by them;
 - 59.6 they are absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove them from office;
 - 59.7 they are removed from office by resolution of the board on the grounds that they are considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 76);
 - 59.8 they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
 - 59.9 they are removed from office by a resolution of the members passed at a members' meeting.
 - 59.10 Any president or vice-president shall cease to hold office only if (a), where they are charity trustees, clause 59.1, 59.2, 59.3, 59.4, 59.5, 59.7 or 59.8 applies or (b) they are removed in accordance with clause 26.4 whether or not they are charity trustees
- 60 A resolution under paragraph 59.7, 59.8 or 59.9 shall be valid only if: -
- 60.1 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;
 - 60.2 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
 - 60.3 (in the case of a resolution under paragraph 59.7 or 59.8) 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

- 61 The board must keep a register of charity trustees, setting out
- 61.1 for each current charity trustee:
 - 61.1.1 their full name and address and any email address supplied;
 - 61.1.2 the date on which they were appointed as a charity trustee; and
 - 61.1.3 any office held by them in the Society;

61.2 for each former charity trustee - for at least 6 years from the date on which they cease to be a charity trustee:

61.2.1 the name of the charity trustee;

61.2.2 any office held by them in the Society; and

61.2.3 the date on which they cease to be a charity trustee.

62 The board must ensure that the register of charity trustees is updated within 28 days of any change:

62.1 which arises from a resolution of the board or a resolution passed by the members of the Society; or

62.2 which is notified to the Society.

63 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the Society, the board may provide a copy which has the addresses blanked out - if the Society is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

Office-bearers

64 The charity trustees must elect (from among themselves) a chair, a vice-chair, a treasurer, a secretary, and a membership secretary.

65 In addition to the office-bearers required under clause 64, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

66 All of the office-bearers, apart from any president or vice-president, will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 64 or 65.

67 A person elected to any office will automatically cease to hold that office: -

67.1 if they cease to be a charity trustee; or

67.2 if they give to the Society a notice of resignation from that office, signed by **them**.

Powers of board

68 Except where this constitution states otherwise, the Society (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the Society.

69 A meeting of the board at which a quorum, as defined by clause 81, is present in person or digitally may exercise all powers exercisable by the board.

- 70 The members may, by way of a resolution passed in compliance with clause 43 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.

Charity trustees - general duties

- 71 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the Society; and, in particular, must:-
- 71.1 seek, in good faith, to ensure that the Society acts in a manner which is in accordance with its purposes;
 - 71.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 71.3 in circumstances giving rise to the possibility of a conflict of interest between the Society and any other party:
 - 71.3.1 put the interests of the Society before that of the other party;
 - 71.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the Society and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
 - 71.4 ensure that the Society complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 72 In addition to the duties outlined in clause 71, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 72.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
 - 72.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 73 Provided they declared their interest - and have not voted on the question of whether or not the Society should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the Society in which they have a personal interest; and (subject to clause 74 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.
- 74 No charity trustee may serve as an employee (full time or part time) of the Society; and no charity trustee may be given any remuneration by the Society for carrying out their duties as a charity trustee.

- 75 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties.

Code of conduct for charity trustees

- 76 Each of the charity trustees shall comply with any code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.
- 77 The code of conduct referred to in clause 76 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of board meetings

- 78 Board meetings can take place digitally in whole or in part subject to any digital arrangements being (a) notified to all charity trustees and (b) using a readily available system. Decisions on whether to accept digital participation in whole or individually will rest with the chair of the meeting.
- 79 Any charity trustee may call a meeting of the board or ask the secretary to call a meeting of the board.
- 80 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

Procedure at board meetings

- 81 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 5 charity trustees present in person or digitally or by a combination of both. The president, and vice-president, will count towards establishing the quorum subject to the terms of appointment as set out in clause 26.4.
- 82 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 81, 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.
- 83 The chair of the Society should act as chairperson of each board meeting.
- 84 If the chair 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.

- 85 Every charity trustee has one vote, which must be given personally or digitally.
- 86 All decisions at board meetings will be made by majority vote.
- 87 If there is an equal number of votes for and against any resolution, the chair of the meeting will be entitled to a second (casting) vote.
- 88 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that they are not a charity trustee - but on the basis that they must not participate in decision-making.
- 89 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the Society; they must withdraw from the meeting while an item of that nature is being dealt with.
- 90 For the purposes of clause 89: -
- 90.1 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;
- 90.2 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

- 91 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 92 The minutes to be kept under clause 91 must include the names of those present; and (so far as possible) should be signed by the chair of the meeting or an agreed digital copy securely stored.
- 93 The board shall (subject to clause 94) make available copies of the minutes referred to in clause 91 to any member of the public requesting them.
- 94 The board may exclude from any copy minutes made available to a member of the public under clause 93 any material which the board considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

ADMINISTRATION

Delegation to sub-committees

- 95 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 96 The board may also delegate to the chair of the Society (or the holder of any other post) such of their powers as they may consider appropriate.
- 97 When delegating powers under clause 95 or 96, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 98 Any delegation of powers under clause 95 or 96 may be revoked or altered by the board at any time.
- 99 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

Operation of accounts

- 100 Subject to clause 101 and and approval by another charity trustee, the physical or on line authorisation of one those authorised signatories appointed by the board will be required in relation to all operations (other than the lodging of funds where no signature is required) on the bank, building society and other types of accounts held by the Society; the signature must be the signature of a charity trustee.

Accounting records and annual accounts

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

MISCELLANEOUS

Winding-up

- 103 If the Society 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.

- 104 Any surplus assets available to the Society 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 Society as set out in this constitution.

Alterations to the constitution

- 105 This constitution may (subject to clause 106) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 43) or by way of a written resolution of the members.
- 106 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (e.g. change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

- 107 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 107.1 any statutory provision which adds to, modifies or replaces that Act; and
 - 107.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 107.1 above.
- 108 In this constitution: -
- 108.1 "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 2006, providing (in either case) that its objects are limited to charitable purposes;
 - 108.2 "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.

This constitution was adopted on

Signature	Name	Address	Position
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