



**CONSTITUTION
of
CHANONRY SAILING CLUB**

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GENERAL

Type of organisation

- 1 The organisation will, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO).

Scottish principal office

- 2 The principal office of the organisation will be in Scotland (The Harbour, Fortrose, Highland, IV10 8TP) and must remain in Scotland.

Name

- 3 The name of the organisation is Chanonry Sailing Club hereafter referred to as 'the organisation'.

Purposes

- 4 The purposes of the organisation are:
 - 4.1 The advancement of the public participation in water sports.
 - 4.2 The provision of recreational facilities.
 - 4.3 The advancement of the heritage of Fortrose harbour.

Powers

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

Liability of members

- 7 The members of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the 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 organisation consists of:
- 10 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;
 - 10.1 the BOARD - who hold regular meetings and generally control the activities of the organisation; for example, the board is responsible for monitoring and controlling the financial position of the organisation.
- 11 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

MEMBERS

Qualifications for membership

- 12 The voting membership shall consist of all members age 18 years and over. For the avoidance of doubt each family member 18 years and over shall have an individual vote.
- 13 The board may from time to time create categories including visitor and affiliated organisations who will not be entitled to vote at general meetings of the organisation.
- 14 The definition of membership and other matters such as the entitlements attaching to membership and relevant subscription rates and any other charges shall be set by the board from time to time.
- 15 Employees of the organisation are not eligible for membership.

Application for membership

- 16 Any person who wishes to become a member must sign a written application for membership; the application will then be considered by the board at its next board meeting. Between an application being submitted and the board reaching its decision applicants may make use of the facilities of the organisation as if they were members but shall not be entitled to vote.
- 17 The board may, at its discretion, refuse to admit any person to membership. Refusal of membership cannot be on grounds of protected characteristics.
- 18 The board must notify each applicant promptly (in writing or by e-mail) of its decision on whether or not to admit them to membership.
- 19 The organisation, on the recommendation of the board, may in general meeting elect honorary members to include honorary Rear Commodores.

Membership subscription

- 20 Any decision by the board to admit an applicant to membership shall be deemed conditional upon the payment by the applicant of the full amount of any annual membership subscription for the time being in force.
- 21 Any member who has not paid their subscription by the due date may be requested, in the name of the board, to pay the subscription and if their subscription is not paid within 28 days they shall be expelled from membership at the discretion of the board.

Register of members

- 22 The board must keep a register of members, setting out
 - 22.1 for each current member:
 - 22.1.1 their full name and address; and
 - 22.1.2 the date on which they were registered as a member of the organisation;
 - 22.2 for each former member - for at least six years from the date on which they ceased to be a member:
 - 22.2.1 their name; and
 - 22.2.2 the date on which they ceased to be a member.
- 23 The board must ensure that the register of members is updated within 28 days of any change:
 - 23.1 which arises from a resolution of the board or a resolution passed by the members of the organisation; or
 - 23.2 which is notified to the organisation.
- 24 Visitors will not appear on the register of members.
- 25 If a member or charity trustee of the organisation 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

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

Transfer of membership

- 27 Membership of the organisation may not be transferred by a member.

Re-registration of members

- 28 The board may, at any time, issue notices to the members requiring them to confirm that they wish to remain as members of the organisation and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the board.
- 29 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 organisation before the expiry of the 28-day period referred to in clause 28, the board may expel them from membership.
- 30 A notice under clause 28 will not be valid unless it refers specifically to the consequences (under clause 29) of failing to provide confirmation within the 28-day period.

Expulsion from membership

- 31 Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a members' meeting, providing the following procedures have been observed:
- 31.1 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;
- 31.2 the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

Termination

- 32 Membership of the organisation will terminate on death.

DECISION-MAKING BY THE MEMBERS

Members' meetings

- 33 The board must arrange a meeting of members (an annual general meeting or AGM) in each calendar year.
- 34 The gap between one AGM and the next must not be longer than 15 months.
- 35 Notwithstanding clause 33, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.
- 36 The business of each AGM must include:
- 36.1 a report by the Commodore on the activities of the organisation;
- 36.2 consideration of the annual accounts of the organisation;

36.3 the election/re-election of charity trustees, as referred to in clauses 68 to 70.

37 The board may arrange a special members' meeting at any time.

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

38 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 voting members) by voting members who amount to 10% or more of the total voting membership of the organisation at the time, providing:

38.1 the notice states the purposes for which the meeting is to be held; and

38.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.

39 If the board receive a notice under clause 38, 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

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

41 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and

41.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or

41.2 in the case of any other resolution falling within clause 51 (requirement for two-thirds majority) must set out the exact terms of the resolution.

42 The reference to "clear days" in clause 40 shall be taken to mean that, in calculating the period of notice,

42.1 the day after the notices are posted (or sent by e-mail) should be excluded; and

42.2 the day of the meeting itself should also be excluded.

43 Notice of every members' meeting must be given to all the members of the organisation 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.

44 Any notice which requires to be given to a member under this constitution must be: -

- 44.1 sent by post to the member, at the address last notified by them to the organisation; *or*
- 44.2 sent by e-mail to the member, at the e-mail address last notified by them to the organisation.

Procedure at members' meetings

- 45 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 46 The quorum for a members' meeting is 15 voting members, or 50% of the voting membership if the membership falls below 30, present in person.
 - 46.1 The board may make arrangements, in advance of any members' meeting, to allow members to participate in the members' meeting by means of a conference telephone, video conferencing facility or similar communications method – so long as all those participating in the meeting can hear each other; a member participating in a members' meeting in this manner shall be deemed to be present in person at the meeting.
- 47 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; fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 48 The Commodore of the organisation should act as chairperson of each members' meeting.
- 49 If the Commodore 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

- 50 Every voting member has one vote, which must be given personally. For the avoidance of doubt, a vote given by a member participating in the meeting through any of the methods referred to in clause 46.1 will be taken to be given personally for the purpose of this clause.
- 51 All decisions at members' meetings will be made by majority vote except for the types of resolution listed in clause 52.
- 52 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 56):
 - 52.1 a resolution amending the constitution;
 - 52.2 a resolution expelling a person from membership under clause 31;

- 52.3 a resolution directing the board to take any particular step (or directing the board not to take any particular step);
 - 52.4 a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
 - 52.5 a resolution to the effect that all of the organisation's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
 - 52.6 a resolution for the winding up or dissolution of the organisation.
- 53 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 54 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot.
- 55 The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.

Written resolutions by members

- 56 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

- 57 The board must ensure that proper minutes are kept in relation to all members' meetings.
- 58 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

BOARD

Number of charity trustees

- 59 The maximum number of charity trustees is 11;
- 60 The minimum number of charity trustees is 5.

Eligibility

- 61 A person shall not be eligible for election/appointment to the board under clauses 62, 63, 67 to 69, unless they are a member of the organisation. A person will not be eligible for election or appointment to the board if they are:-

- 61.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
- 61.2 an employee of the organisation.

Initial charity trustees

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

Office-bearers

- 63 The office-bearers of the organisation will serve on the board and shall consist of:

- 63.1 Commodore

- 63.2 Treasurer

- 63.3 Club Secretary

- 64 All office-bearers will cease to hold office at the conclusion of each AGM but may then be re-elected under clause 68.

- 65 A person elected to any office will automatically cease to hold that office if they cease to be a charity trustee; or if they give to the club a notice of resignation from that office, signed by them.

Rear Commodore

- 66 The immediate past Commodore shall serve for one year only as Rear Commodore to advise the board for continuity purposes but shall not be a member of the board.

General board members

- 67 Up to 8 general board members can be elected. The board can appoint general board members to specific roles for the management of club activities.

Election, retiral, re-election

- 68 At each AGM, the members may elect any member (unless they are debarred from membership under clause 61) to the board. Office-bearers will be elected directly to post by members.

- 69 In the event of a vacancy arising in an officer-bearer post, for whatever reason, or when there is a vacancy among the general board members, the board may co-opt an organisation member to fill the vacancy until the next AGM (unless they are debarred from membership under clause 61).

- 70 At each AGM, all of the charity trustees elected/appointed under clauses 68 and 69 (and, in the case of the first AGM, those deemed to have been appointed under clause 62) shall retire from office – but shall then be eligible for re-election under clause 68.

Termination of office

- 71 A charity trustee will automatically cease to hold office if: -
- 71.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 71.2 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;
 - 71.3 (in the case of a charity trustee elected/appointed under clauses 62, 63, 67 and 69) they cease to be a member of the organisation;
 - 71.4 they become an employee of the organisation;
 - 71.5 they give the organisation a notice of resignation, signed by them;
 - 71.6 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;
 - 71.7 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 84);
 - 71.8 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
 - 71.9 they are removed from office by a resolution of the members passed at a members' meeting.
- 72 A resolution under paragraph 71.7, 71.8 or 71.9 shall be valid only if: -
- 72.1 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;
 - 72.2 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
 - 72.3 (in the case of a resolution under paragraph 71.7 or 71.8) 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

- 73 The board must keep a register of charity trustees, setting out

- 73.1 for each current charity trustee:
 - 73.1.1 their full name and address;
 - 73.1.2 the date on which they were appointed as a charity trustee;
and
 - 73.1.3 any office held by them in the organisation;
- 73.2 for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee:
 - 73.2.1 the name of the charity trustee;
 - 73.2.2 any office held by them in the organisation; and
 - 73.2.3 the date on which they ceased to be a charity trustee.
- 74 The board must ensure that the register of charity trustees is updated within 28 days of any change:
 - 74.1 which arises from a resolution of the board or a resolution passed by the members of the organisation; or
 - 74.2 which is notified to the organisation.
- 75 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the organisation, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

Powers of board

- 76 Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the organisation.
- 77 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 78 The members may, by way of a resolution passed in compliance with clause 51 (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

- 79 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation; and in particular must:
 - 79.1 seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;

- 79.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 79.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:
 - 79.3.1 put the interests of the organisation before that of the other party;
 - 79.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
 - 79.4 ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 80 In addition to the duties outlined in clause 79, all the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring:-
- 80.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
 - 80.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 81 Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest; and (subject to clause 82 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.
- 82 No charity trustee may serve as an employee (full time or part time) of the organisation; and no charity trustee may be given any remuneration by the organisation for carrying out their duties as a charity trustee.
- 83 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for charity trustees

- 84 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.
- 85 The code of conduct referred to in clause 84 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

- 86 Any charity trustee may call a meeting of the board *or* ask the club secretary to call a meeting of the board.
- 87 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

- 88 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 4 charity trustees, present in person.
- 88.1 A charity trustee may participate in a meeting of the board by means of a conference telephone, video conferencing facility or similar communications method – so long as all the charity trustees participating in a meeting in this manner can hear each other, a charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting.
- 89 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 88, 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.
- 90 The Commodore should act as chairperson of each board meeting.
- 91 If the Commodore 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.
- 92 Every charity trustee has one vote, which must be given personally. For the avoidance of doubt, a vote given by a charity trustee participating in the meeting through any of the methods referred to in clause 88.1 will be taken to be given personally for the purposes of this clause.
- 93 All decisions at board meetings will be made by majority vote.
- 94 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 95 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.

- 96 A charity trustee must not vote at a board meeting (or at a meeting of a committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.
- 97 For the purposes of clause 96:
- 97.1 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;
- 97.2 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.
- 98 Trustees shall produce and maintain written procedures for the governance and management of the organisation

Minutes

- 99 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of committees.
- 100 The minutes to be kept under clause 99 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

ADMINISTRATION

Delegation to committees

- 101 The board may delegate any of their powers to committees; a committee must include at least one charity trustee, but other members of a committee need not be charity trustees.
- 102 The board may also delegate to the Commodore (or the holder of any other post) such of their powers as they may consider appropriate.
- 103 When delegating powers under clause 101 or 102, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 104 Any delegation of powers under clause 101 or 102 may be revoked or altered by the board at any time.
- 105 The rules of procedure for each committee, and the provisions relating to membership of each committee, shall be set by the board.

Operation of accounts

- 106 Subject to clause 107, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the organisation; at least one out of the two signatures must be the signature of a charity trustee.
- 107 Where the organisation uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 106.

Accounting records and annual accounts

- 108 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 109 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

Moorings

- 110 The organisation may enter in to a moorings lease with the Crown Estates Commissioners or their successors. The use of the moorings will be subject to a further lease between the organisation and the individual members who wish to be moorings holders.

Winding-up

- 111 If the organisation is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 112 Any surplus assets available to the organisation immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the organisation as set out in this constitution.

Alterations to the constitution

- 113 This constitution may (subject to clause 114) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 51) or by way of a written resolution of the members.

114 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

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

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

115.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 115.1 above.

116 In this constitution:

116.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;

116.2 "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.