

**COMPANIES ACT 2006**

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

**MEMORANDUM OF ASSOCIATION**

**OF**

**WAVERLEY HOUSING  
(Company Number: SC115066)**

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

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Name of each Subscriber	Authentication of each subscriber
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**COMPANIES ACT 2006**

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

**ARTICLES OF ASSOCIATION**

**of**

**WAVERLEY HOUSING  
(Company Number: SC115066)**

**PRELIMINARY**

**Name**

- 1.1 The Company's name is Waverley Housing ("the Company").

**Registered Office**

- 1.2 The Company's Registered Office is situated in Scotland.

**Constitution of the Company**

2. The model Articles as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of the Company.

**INTERPRETATION AND LIMITATION OF LIABILITY**

**Definitions and Interpretation**

- 3.1 In these articles, the following definitions apply throughout (unless the context requires otherwise):

"articles" means the Company's articles of association;

"Board" means the board of Directors;

"charity" means a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts.

"charitable object" means a charitable object or purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable object or purpose in relation to the application of the Taxes Acts.

"Close Relative" means someone who is the spouse or civil partner of a person, or (being either of the same or different sex) who cohabits with that person, or is that person's parent, grandparent, child, stepchild, grandchild, brother or sister.

"Companies Acts" means the Companies Acts (as defined in section 2 of the

Companies Act 2006), in so far as they apply to the Company and “Companies Act” means that Companies Act 2006;

“Derivative Transaction” means any transaction which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, or any combination of these transactions.

“Director” means a director of the Company, and includes any person occupying the position of director, by whatever name called;

“document” includes, unless otherwise specified, any document sent or supplied in electronic form;

“electronic form” has the meaning given in section 1168 of the Companies Act 2006;

“member” has the meaning given in section 112 of the Companies Act 2006;

“Financial Conduct Authority” means the registering authority for societies registered under the Co-operative and Community Benefit Societies Act 2014 and the Credit Unions Act 1979 set up in terms of the Financial Services Act 2012 or its successor body.

“Objects” has the meaning given in article 5;

“Office Bearer” means the Chairperson, Vice-Chairperson, Company Secretary and any such other office bearer of the Company as may be appointed under article 25;

“Office of the Scottish Charity Regulator” means the body set up under the Charities and Trustee Investment (Scotland) Act 2005 to regulate charities in Scotland;

“ordinary resolution” has the meaning given in section 282 of the Companies Act 2006;

“proxy notice” has the meaning given in articles 18 and 19;

“The Scottish Housing Regulator” means The Scottish Housing Regulator as established pursuant to Section 1 of the Housing (Scotland) Act 2010;

“Secretary” means the Office Bearer appointed by the Board to be the Secretary of the Association or anyone authorised by the Board to stand in for the Secretary;

“special resolution” has the meaning given in section 283 of the Companies Act 2006;

“subsidiary” has the meaning given in section 1159 of the Companies Act 2006; and

“Taxes Acts” means Part 11 of the Corporation Tax Act 2010 as read with Schedule 6 of the Finance Act 2010 and any statute or statutory provision which amends, extends, consolidates or replaces the same.

3.2 Words importing one shall include all genders and the singular includes the plural and vice versa.

3.3 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Acts as in force on the date when these articles become binding on the Company. Any words or expressions

defined in the Companies Acts shall, if not inconsistent with the subject or content, bear the same meaning in the articles.

### **Liability of members**

- 4.1 The liability of members is limited.
- 4.2 Every member of the Company undertakes to contribute such amount as may be required (not exceeding £1) to the property of the Company if it should be wound up while he/she is a member or within one year after he/she or it ceases to be a member (for whatever reason) for payment of the Company's debts and liabilities contracted before he/she cease to be a member, and of the costs, charges and expenses of winding up.

### **Objects**

- 5. The Objects are specifically restricted to the following:-
  - 5.1 to provide for the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage through the provision, construction, improvement and management of land and accommodation and the provision of care; and
  - 5.2 any other purpose or object permitted under Section 24 of the Housing (Scotland) Act 2010 which is charitable both for the purposes of Section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and also in relation to the application of the Taxes Acts.

### **Powers**

- 6. The Company has power to do anything which is calculated to further its Objects or is conducive or incidental to doing so, including without prejudice:-
  - 6.1 to raise funds for the activities of the Company and to accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely, conditionally or in trust;
  - 6.2 to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain, manage, operate and equip it for use;
  - 6.3 to construct, alter, improve, conserve and demolish any buildings or other property;
  - 6.4 to sell, lease, licence or otherwise dispose of all or any part of the property belonging to the Company to make grants or loans of money and to give guarantees;
  - 6.5 to borrow or raise money and to give in security the whole or any part of the property belonging to the Company for repayment of the money borrowed or as security for a grant or the discharge of an obligation;

- 6.6 to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- 6.7 to establish, manage or support any other charitable trusts, associations or institutions and to make donations for any of the charitable purposes included in the Objects;
- 6.8 to acquire, merge with or to enter into any partnership or joint venture arrangement with any other Company;
- 6.9 to set aside income as a reserve against future expenditure and to invest funds as may be considered appropriate which may be held in the name of a nominee Company under the instruction of the Directors, and to dispose of, and vary such investments;
- 6.10 to employ, contract with, train and pay such staff (whether employed or self-employed) as are necessary for carrying out the work of the Company;
- 6.11 to establish, operate, acquire and administer any separate trading company or association whether charitable or not;
- 6.12 to enter into arrangements with any organisation, government or authority which may be advantageous for the Objects of the Company and to enter into any arrangement for co-operation with any charitable organisation and to enter into contracts to provide services to or on behalf of others;
- 6.13 to effect insurance of all kinds (which may include indemnity insurance for the Directors and employees);
- 6.14 to pay out of the funds of the Company the costs of forming and registering the Company both as a company and as a charity;

#### **Application of income and property**

- 7.1 Subject to Article 7.2:
  - 7.1.1 The income and property of the Company shall be applied solely towards the promotion of its objects as set out in these articles;
  - 7.1.2 No part of the income and property of the Company shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the Members/Directors of the Company;
  - 7.1.3 No Director of the company shall be appointed as a paid employee or to any office under the Company in respect of which a salary or fee is payable; and
  - 7.1.4 No benefit in money or money's worth shall be given by the Company to any Director except repayment of out-of-pocket expenses.
- 7.2 The Company shall subject to complying with sections 67 and 68 of the 2005 Act and notwithstanding the provisions of Article 7.1, be entitled:
  - 7.2.1 to pay reasonable and proper remuneration to any Director/ Member of the Company in return for services actually rendered to the Company;
  - 7.2.2 to pay interest at a rate not exceeding the commercial rate on money lent to

the Company by any Director/ Member of the Company;

7.2.3 to pay rent at a rate not exceeding the open market rent for premises let to the Company by any Director/ Member of the Company;

7.2.4 to purchase assets from, or sell assets to, any Director / Member of the Company providing such purchase or sale is at market value.

7.3 No Director shall be appointed as a paid employee of the Company.

## **MEMBERS**

8.1 Membership is open to persons willing to act as Directors who are not disqualified from acting as a director under the Companies Act or as a trustee under the Charities and Trustee Investment (Scotland) Act 2005. Such persons shall, upon appointment/election and together with other Members (Directors) provide a fit-for-purpose comprehensive skill-set to take forward the charitable purposes of the Company.

8.2 Membership of the Company shall consist of the Directors and shall commence on the date of appointment of a Director.

8.3 Membership is not transferable. If a Member dies or ends their membership or has their membership ended, the Board will cancel their membership.

8.4 The Directors must keep a register of names and addresses of the members.

8.5 If a Member changes their address, he/she must let the Company know by writing to the Secretary at the Company's registered office within three months. This requirement does not apply if you are a tenant of the Company and have moved home by transferring your tenancy to another property owned and managed by the Company.

### **Termination of membership**

9. Membership is terminated if:-

9.1 the member dies;

9.2 the member resigns by written notice to the Company;

9.3 the Board reasonably believes that a member has failed to tell the Company of a change of address as required by Article 8.5;

9.5 the member ceases to hold office as a Director of the Company;

9.6 No employee of the Company may become a Member; a person admitted to membership shall automatically cease to be a Member if he becomes an employee of the Company.

### **General meetings**

10.1 An annual general meeting must be held within six months of the end of each financial year of the Company. The functions of the annual general meeting are to: present the Chairperson's report on the Company's activities for the previous year;

present the accounts, balance sheet and auditor's report; elect Board Members; and consider any other general business included in the notice calling the meeting.

- 10.2 The Board of Directors may call a general meeting at any time.
- 10.3 All general meetings other than annual general meetings shall be called special general meetings.
- 10.4 The Board of Directors must call a general meeting of the Company if there is a valid requisition of Members (under section 303 of the Companies Act) or a requisition by a resigning auditor (if any) (under section 518 of the Companies Act). The requisition may take the form of several documents in like form each signed by one or more members. Whoever asks for the meeting must give the Secretary details of the business to be discussed at the meeting.

### **Notice of general meetings**

- 11.1 The minimum period of notice required to hold a general meeting of the Company is fourteen clear days.
- 11.2 Notice of the meeting may be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to the Members of the Company, to the Directors and to the auditors of the Company; provided that a meeting shall, notwithstanding that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed by a majority of the Members at that meeting (representing not less than 90 (ninety) per cent of the total voting rights of all the Members of the Company) in accordance with section 307 of the Companies Act
- 11.3 The notice must specify the date, time and (if the meeting is in-person and not via audio/audio-visual link) place of the meeting and the nature of the business to be transacted. The notice must also contain a statement setting out the right of members to appoint a proxy under section 324 of the Companies Act 2006 and article 17.
- 11.4.1 Notice of a general meeting may be given either in writing by post in which case the notice shall be deemed to have been delivered 48 hours after it was sent or (where a Member has notified the Company of an address to which communication in electronic form may be sent) in electronic form in which case the notice shall be deemed to have been delivered on the day that it was sent.
- 11.4.2 The notice must be given to all the members and to the Directors.
- 11.4.3 If it is proposed to move any special resolution at the meeting, the full text of the special resolution must also be included in the notice of the meeting.
- 11.5 The accidental omission to give notice of any general meeting of the Company to, or the non- receipt of a notice of a general meeting of the Company by, any Member or other person entitled to receive notice shall not invalidate the proceedings at that meeting.

- 11.6 If members and directors are to be permitted to participate in a general meeting by way of audio and/or audio-visual link(s) (see article 12.1), the notice (or notes accompanying the notice) must set out details of how to connect and participate via that link or links.

#### **Proceedings at general meetings**

- 12.1 The Board may if they consider appropriate (and must, if that is required under article 12.2) make arrangements for members and directors to participate in general meetings by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting, providing;
- 12.1.1 the notice calling the meeting (or notes accompanying the notice) contains the information required under article 11.6; and
- 12.1.2 the manner in which the meeting is conducted ensures, so far as reasonably possible, that those members and directors who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those members and directors (if any) who are attending in person (and vice versa).
- 12.2 An individual participating in a general meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if he/she are not a member, will be deemed to be in attendance) at the meeting.
- 12.3 References in articles 11.6 and 11.7 and article 12.1 to members should be taken to include proxies for members.
- 12.4 No business shall be transacted at any general meeting unless a quorum is present.
- 12.5 A quorum is four members or one tenth of the total membership at the time present in person or by proxy whichever is the greater.
- 12.6 If a quorum is not present within half an hour from the time appointed for the meeting; or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time, date and place as the chairperson shall determine.
- 12.7 If no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting the members present in person or by proxy at that time shall constitute the quorum for that meeting.
- 12.8 General meetings must not last longer than two hours unless at least two-thirds of the Members present agree after the end of that time to continue the meeting.
- 13.1 General meetings shall be chaired by the Chairperson. If the Chairperson is not present within fifteen minutes of the time appointed for the meeting the Members present shall elect one or their number to act as chairperson.
- 14.1 The members present in person or by proxy at a meeting may resolve by ordinary resolution that the meeting shall be adjourned.



- 14.2 The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution.
- 14.3 No business shall be conducted at a reconvened meeting unless it could properly have been conducted at the meeting had the adjournment not taken place.
- 14.4 If a meeting is adjourned by a resolution of the members for thirty days or more, at least seven clear days' notice shall be given of the reconvened meeting stating the date, time and place of the meeting.
- 15.1 Any vote at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded:
- 15.1.1 by the person chairing the meeting; or
- 15.1.2 by at least two members present in person or by proxy and having the right to vote at the meeting; or
- 15.1.3 by a member or members present in person or by proxy representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.
- 15.2 Where members are participating in a meeting via an audio or audio-visual link, they may cast their vote on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically – and providing the Board have no reasonable grounds for suspicion as regards authenticity, any such action shall be deemed to be a vote cast personally via a show of hands.
- 15.3 The declaration by the person who is chairing the meeting of the result of a vote shall be conclusive unless a poll is demanded.
- 15.4 The result of the vote must be recorded in the minutes of the Company but the number or proportion of votes cast need not be recorded.
- 15.5 If a poll is demanded, it shall be taken at the meeting by means of a secret ballot of all the Members present in person or by proxy and entitled to vote and shall be conducted in such manner as the chairperson may direct; the result of the poll shall be declared at the meeting at which the poll was demanded.
- 15.6 Where members are participating in a meeting via audio and/or audio/visual links, the chairperson's directions regarding how a poll is to be conducted may allow those members to cast their votes on the poll via any or all of the methods referred in article 15.2, providing reasonable steps are taken to preserve anonymity(which at the same time, addressing any risk of irregularities in the process).
- 15.7 A demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the person who is chairing the meeting.
- 15.8 If the demand for a poll is withdrawn the demand shall not invalidate the result of a show of hands declared before the demand was made.

### **Technical objections to remote participation in general meetings**

16. These articles impose certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at general meetings; providing the arrangements made by the Board in relation to a given general meeting (and the manner in which the general meeting is conducted) are consistent with those requirements:
- 16.1 a member cannot insist on participating in the general meeting, or voting at the general meeting, by any particular means;
  - 16.2 the general meeting need not be held in any particular place;
  - 16.3 the general meeting may be held without any particular number of those participating in the meeting being present in person at the same place (but notwithstanding that, the quorum requirements - taking account of those participating via audio and/or audio-visual links - must still be met);
  - 16.4 the general meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting;
  - 16.5 a member will be able to exercise the right to vote at the general meeting (including where a poll is to be held) by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by the Board) and which permits that member's vote to be taken into account in determining whether or not a resolution is passed.

### **Members may appoint proxies**

17. Every member shall be entitled to appoint a proxy but a member may not appoint more than one proxy to attend on the same occasion. A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member to speak at the meeting. A proxy need not be a member of the Company.

### **Form of proxy (general)**

18. An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointor and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form, which is usual or which the Board may approve):

\*\*\*\*\* ("the Company")

I/We,

,

of

, being a member/members of the Company, hereby

appoint

of

, or failing him,

of

as

my/our proxy to vote in my/our name(s) and on my/our behalf at the general meeting of the Company to be held on [date], and at any adjournment thereof.

Signed on [date]”.

#### **Form of proxy (specific)**

19. Where it is desired to afford members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Board may approve):

“\*\*\*\*\*” (“the Company”)

I/We, \_\_\_\_\_, of \_\_\_\_\_, being a member/members of the Company, hereby appoint \_\_\_\_\_ of \_\_\_\_\_, or failing him, \_\_\_\_\_ of \_\_\_\_\_, as my/our proxy to vote in my/our name[s] and on my/our behalf at the general meeting of the Company to be held on [date], and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:-

Resolution No 1 \* for \* against

Resolution No 2 \* for \* against

*\* Delete as appropriate*

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed on [date]”

#### **Depositing a form of proxy**

20. The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the Board shall be deposited at the registered office of the Company or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours (excluding weekends and bank holidays) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

#### **Expiry of proxies**

21. An instrument appointing a proxy shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting to which it relates. No instrument of proxy shall be valid after twelve months from the date of its execution except at an adjourned meeting or on a poll demanded at a meeting or adjourned meeting in cases where the meeting was originally held within twelve months from that date.

#### **Notice of cessation of proxy’s authority to be given to Company**

22. A vote given or poll demanded by proxy shall be valid notwithstanding the previous

termination of the authority of the person voting or demanding a poll unless notice of the termination was received by the Company at the registered office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

#### **Written resolutions**

- 23 A resolution in writing agreed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be as effective as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more Members.

#### **Votes of members**

- 24.1 Every member shall have one vote which may be given personally or by the use of a proxy. In constituting a quorum a member present by proxy shall be counted as present.
- 24.2 Any objection to the qualification of any voter must be raised at the meeting at which the vote is tendered and every vote not disallowed at the meeting shall be valid; any such objection shall be referred to the Chairperson of the meeting whose decision shall be final and conclusive.
- 24.3 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting shall be entitled to a casting vote in addition to any other vote he may have, except in relation to a vote on the appointment to the office of Chairperson.
- 24.4 Votes cannot be taken on resolutions which conflict with any provisions of these articles or the law.

#### **The Company Secretary and Office Bearers**

- 25.1 Subject to the provisions of the Companies Act, the Office Bearers shall be appointed by the Board and upon such conditions as it may think fit and any Office Bearers so appointed may be removed by the Board. The Office Bearers, except for the Company Secretary, must be elected Directors or Directors appointed to fill casual vacancies in accordance with Article 38 but cannot be Co-opted Directors. An employee of the Company may hold the office of Company Secretary although shall not be a Director. If the Company Secretary cannot carry out his/her duties, the Board, or in an emergency the Chairperson, can ask another Office Bearer or

employee to carry out the Company Secretary's duties until the Company Secretary returns.

- 25.2 The Office Bearers will be controlled, supervised and instructed by the Board in respect of performance of their respective duties. The Company Secretary's duties include the following (these duties can be delegated to an appropriate employee with the Company Secretary assuming responsibility for ensuring that they are carried out in an effective manner):
- 25.2.1 calling and going to all meetings of the Company and all Board meetings;
  - 25.2.2 keeping the minutes for all meetings of the Company and the Board;
  - 25.2.3 sending out letters, notices calling meetings and relevant documents to Members before a meeting;
  - 25.2.4 preparing and sending all the necessary reports to the Financial Conduct Authority and The Scottish Housing Regulator;
  - 25.2.5 ensuring compliance with these articles; and
  - 25.2.6 keeping the Register of Members and other registers required under these articles.
- 25.3 The Secretary must produce or give up all the Company's books, registers, documents and property whenever requested by a resolution of the Board, or of a general meeting.
- 25.4 At its first meeting after incorporation, the Board will appoint the Chairperson of the Company and any other Office Bearers the Board considers necessary. Thereafter a Chairperson and any other Office Bearers will be appointed on an annual basis at the next scheduled Board Meeting held after each annual general meeting.

### **Role of the Chair**

- 26.1 The Chairperson is responsible for the leadership of the Board and ensuring its effectiveness in all aspects of the Board's role and to ensure that the Board properly discharges its responsibilities as required by law, these articles and the standing orders of the Company. The Chairperson will be delegated such powers as is required to allow the Chairperson to properly discharge the responsibilities of the office. Among the responsibilities of the Chairperson are that:
- 26.1.1 the Board works effectively with the senior staff;
  - 26.1.2 an overview of business of the Company is maintained;
  - 26.1.3 the agenda for each meeting is set;
  - 26.1.4 meetings are conducted effectively;
  - 26.1.5 minutes are approved and decisions and actions arising from meetings are implemented;
  - 26.1.6 the standing orders, code of conduct for Directors and other relevant policies and procedures affecting the governance of the Company are complied with;

- 26.1.7 where necessary, decisions are made under delegated authority for the effective operation of the Company between meetings;
  - 26.1.8 the Board monitors the use of delegated powers;
  - 26.1.9 the Board receives professional advice when it is needed;
  - 26.1.10 the Company is represented at external events appropriately;
  - 26.1.11 appraisal of the performance of Directors is undertaken, and that the senior staff officer's appraisal is carried out in accordance with the agreed policies and procedures of the Company; and
  - 26.1.12 the training requirements of Directors, and the recruitment and induction of new Directors is undertaken.
- 26.2 The Chairperson must be elected from the Directors (excluding Co-opted Directors). The Chairperson must be prepared to act as Chairperson until the end of their office term (unless he/she resigns the post). The Chairperson can only be required to resign if a majority of the remaining Directors present at a Board Meeting agree to this.
- 26.3 If the Chairperson is not present at a Board Meeting or is not willing to act, the Directors present will elect another Director to be chairperson for the Board Meeting. If the Chairperson arrives at the meeting late, he/she will take over as chairperson of the Board Meeting as soon as the current agenda item is concluded.
- 26.4 If the votes of the Directors are divided equally for and against an issue, the Chairperson will have a second and deciding vote.
- 26.5 The Chairperson can resign his/her office in writing to the Company Secretary and must resign if he/she leaves the Board or is prevented from standing for or being elected to the Board under article 40.1. The Board will then elect another Director as Chairperson.
- 26.6 The Chairperson can be re-elected but must not hold office continuously for more than five years.

### **Borrowing Powers**

- 27.1 The Company can borrow money as long as the total borrowing at any time is not more than £100 million.
- 27.2 In respect of any proposed borrowing for the purposes of Article 27.1, the amount remaining undischarged of any index-linked loan previously borrowed by the Company or any deep discounted security shall be deemed to be the amount needed to repay such borrowing in full if the pre-existing borrowing became repayable in full at the time of the proposed borrowing.
- 27.3 For the purposes of Article 27.1 in respect of any proposed borrowing intended to be index-linked or on any deep discounted security the amount of borrowings shall be deemed to be the proceeds of such proposed borrowings that would be receivable by the Company at the time of the proposed borrowing.

- 27.4 The Board will not pay more than the market rate of interest as determined by the Board of Directors having regard to the terms of the loan on any money borrowed.
- 27.5 The Company will not accept money on deposit.
- 27.6 The Company can lend money to an organisation which is a subsidiary of the Company within the meaning of the Companies Act 2006 or the Co-operative and Community Benefit Societies Act 2014 at a market rate of interest as determined by the Board of Directors having regard to the terms of the loan. Where the Company is using a loan facility to on lend it must comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time.
- 27.7 The Company may borrow money from such lawful sources as is permitted by its Treasury Management Policy subject always to the requirement that the Company will comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time.
- 27.8 The Company may enter into and perform any Derivative Transaction on such terms as the Company thinks fit for the purposes of hedging or otherwise managing any treasury risk or other financial exposure of the Company.
- 27.9 Subject to the foregoing the Board of Directors can determine and change the conditions under which the Company borrows or lends money.
- 27.10 The Company shall not lend money to Members.

#### **Directors**

- 28.1 The Directors of the Company shall comprise the Members (with effect from the date of their appointment/election as a Director, such date also being the date of their admission as a Member).
- 28.2 The Directors shall maintain at all times a document setting out the key-skills required from its Directors for the specific purpose of assisting in relation to the appointment of replacement and/or additional Directors pursuant to these articles so as to ensure a skill -set -fit-for-purpose to take forward the Charitable Purposes of the Company.
- 28.3 As part of article 28.2, the Directors shall take steps to ensure, so far as possible, opportunity for Tenants of the Company to put themselves forward for appointment election as Directors/Members.

#### **Composition of the Board**

- 29.1 The Company shall have a Board which shall have a minimum of seven and a maximum (including Co-opted Directors) of fifteen persons who shall be the Directors of the Company. The Company shall keep up to date a register of the names of the Directors (also serving as a Register of Members) which shall be made available to any person at no cost. The names of the Directors will also be published by the Company on its website, and in its annual reports and other similar documentation.

- 29.2 A person must be aged 18 or over and a Member to become a Director (including any person appointed to fill a casual vacancy) other than a person appointed as a co-optee or appointed by The Scottish Housing Regulator who must be aged 18 or over but need not be a Member.
- 29.3 An employee of the Company, or a Close Relative of an employee, may not be a Director.
- 29.4 No Director may take office until they have agreed to and signed the Company's code of conduct for Directors.
- 29.5 The Board shall assess annually the skills, knowledge, diversity and objectivity that it needs for its decision making and what is contributed by the Directors by way of annual performance reviews. The Board must be assured that any Director who has continuous service on the Board of nine years or more and who is seeking re-election is able to demonstrate his/her continued effectiveness as a Director before he/she may stand for re-election.

#### **Interests**

- 30. The Board shall set and periodically review its policy on payments and benefits. If a person is a Member, employee of the Company or serves on the Board or any committee he/she must not receive any payment or benefit unless it is permitted by the Charities and Trustee Investment (Scotland) Act 2005, these articles or as set out in the Company's said policy. He/she shall also comply with the requirements of the Charities and Trustee Investment (Scotland) Act 2005 in respect of any conflict of interest that might arise. In making any payment or conferring any benefit the Company shall act at all times with transparency, honesty and propriety.
- 31. A Director must comply with the requirements of the Charities and Trustee Investment (Scotland) Act 2005 in respect of any conflict of interest that might arise. If a person serves on the Board or any committee he/she must declare any personal or other external interests on an annual basis in accordance with the Company's code of conduct for Board Members. If while serving on the Board/committee that person has any conflict of interest in any contract or other matter about to be discussed at a meeting, he/she must tell the Board. He/she will be required to leave the meeting while the matter is discussed and will not be allowed to vote on the matter or to stay in the meeting while any vote on the matter is being held unless permitted to do so in terms of these articles or the Company's code of conduct for Board Members. If that person is inadvertently allowed to stay in the meeting and vote on the matter, his/her vote will not be counted. If no quorum exists for the purpose of voting on a matter only because of the operation of this article 31, provided that there are at least three remaining Board Members/members of the committee who are entitled to remain in terms of this article 31, such remaining Board Members/members of the committee



are deemed to constitute a quorum for the purposes of voting and may proceed to make a decision as a quorate Board/committee.

### **Powers of the Board of Directors**

- 32. The Board of Directors shall manage the business of the Company and may exercise all the powers of the Company unless they are subject to any restrictions imposed by the Companies Acts, the articles or any special resolution.
- 33. No alteration of the articles or any special resolution shall have retrospective effect to invalidate any prior act of the Directors.
- 34. Any meeting of Directors at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the Board of Directors.

### **Electing Directors**

- 35.1 Directors shall be elected by the Members at an annual general meeting. Each Director elected under these articles shall be elected for a fixed term of office expiring at the conclusion of an annual general meeting (a "fixed term"). The fixed term shall be for a term of three annual general meetings (not counting the annual general meeting at which the Director was elected), unless the Board has set a lower number of annual general meetings for the relevant Director on their election or nomination.
- 35.2 At every annual general meeting each Director who has served their fixed term shall retire from office. Any Director who retires from office at an annual general meeting under this article shall be eligible for re-election subject to nomination in accordance with article 35.4. For the avoidance of doubt, any Director re-appointed in this way shall be deemed to have held the position of Director/Member continuously.
- 35.3 Directors, if they are a Co-opted Director or have filled casual vacancies under article 37 must retire at the first annual general meeting which occurs after the date of their appointment.
- 35.4 Subject to article 35.2, no person shall be eligible for election as a Director at any annual general meeting unless he/she is nominated by the Board. The Directors shall be individuals who have skills and/or experience that are necessary or desirable to further the objects of the Company. The skills and/or experience which prospective Directors must have shall be as determined by the Board from time to time.
- 35.5 Each of the Directors shall in exercising his/her role as a Director, act in the best interests of the Company, its tenants and service users and will not place any personal or other interests ahead of his/her primary duty to the Company; and, in particular, must:
  - 35.5.1 seek, in good faith, to ensure that the Company acts in a manner which is in accordance with its objects;
  - 35.5.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

- 35.5.3 in circumstances giving rise to the possibility of a conflict of interest between the Company and any other party put the interests of the Company before that of the other party, in taking decisions as a Director;
  - 35.5.4 put the interests of the Company before that of the other party, in taking decisions as a Director; and
  - 35.5.5 where any other duty prevents him/her from doing so, disclose the conflicting interest to the Company and refrain from participating in any discussions or decisions involving the other Directors with regard to the matter in question; and
  - 35.5.6 ensure that the Company complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.
36. If, at the annual general meeting the number of candidates standing for election as a Director is less than or equal to the number of vacant places, the Chairperson will declare them elected without a vote. If there are more candidates standing for election than there are vacant places, those present at the general meeting will elect Directors onto the Board, in terms of article 35.4. Each Member present or who has appointed a proxy representative will have one vote for each place to be filled on the Board. A Member must not give more than one vote to any one candidate.
37. The Company will post or send by fax or email intimation of the intended date of the annual general meeting and information on the nomination procedure to each Member at the address, fax number or email address given in the Register of Members of the Company not less than 28 days before the date of the meeting. Nominations for election to the Board must be in writing and in the form specified by the Company and must give the full name, address and occupation of the candidate, and their reasons for their suitability to be a Director. Nominations must be signed by and include a signed statement from each nominee to show that they are eligible to join the Board in accordance with article 40.1, and that they are willing to be elected. Nomination forms can be obtained from the Company and must be completed fully and returned by hand or by post to the Company's registered office at least seven days before the general meeting.
38. If a Director leaves the Board between the annual general meetings, this creates a casual vacancy and the Board can appoint any Member to take their place on the Board until the next annual general meeting.

#### **Co-opted Directors**

- 39.1 Subject to the maximum number of Directors provided for in article 29.1, the Board can co-opt to the Board or to a committee of the Board anyone it considers is suitable to become a Director or a member of a committee ("Co-opted Director"). Co-opted Directors do not need to be Members, but they can only serve as Co-opted Directors

on the Board or committee until the next annual general meeting or until removed by the Board. A Co-opted Director can also serve on any committees.

- 39.2 A person appointed as a Co-opted Director shall undertake the role of Director or member of a committee and accordingly will be subject to the duties and responsibilities of a Director. Co-opted Directors can take part in discussions at the Board or any committees and vote at Board and committee meetings on all matters except those which directly affect the Articles, the membership of the Company or the election of the Company's Office Bearers. Co-opted Directors may not stand for election, nor be elected as one of the Office Bearers of the Board.
- 39.3 Co-opted Directors in this way must not make up more than one-third of the total number of the Board or committee members at any one time. The presence of Co-opted Directors at Board Meetings will not be counted when establishing whether a quorum is present to allow the meeting to take place and the presence of Co-opted Directors will not count towards the quorum for committee meetings.

#### **Eligibility for the Board**

- 40.1 A person will not be eligible to be a Director or be co-opted to a committee and cannot be appointed or elected as such if:
- 40.1.1 he/she is an undischarged bankrupt, has granted a trust deed which has not been discharged or is in a current Debt Payment Plan under the Debt Arrangement Scheme; or;
  - 40.1.2 he/she has been convicted of an offence involving dishonesty which is not spent by virtue of the Rehabilitation of Offenders Act 1974 or an offence under the Charities and Trustee Investment (Scotland) Act 2005;
  - 40.1.3 he/she is a party to any legal proceedings in any Court of Law by or against the Company;
  - 40.1.4 he/she is or will be unable to attend Board Meetings for a period of 12 months;
  - 40.1.5 he/she has been removed from the board of another registered social landlord within the previous five years;
  - 40.1.6 he/she resigned from the Board in the previous five years in circumstances where his/her resignation was submitted after the date of his/her receipt of notice of a special Board Meeting convened to consider a resolution for his/her removal from the Board in terms of article 41.2;
  - 40.1.7 he/she has been removed from the Board in terms of articles 41.2 within the previous five years;
  - 40.1.8 he/she has been removed, disqualified or suspended from a position of management or control of a charity under the provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or the Charities and Trustee Investment (Scotland) Act 2005;

- 40.1.9 he/she has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners for England and Wales or by His Majesty's High Court of Justice in England on the grounds of any misconduct in the administration of the charity for which he/she were responsible or to which he/she were privy, or which his/her conduct contributed to or facilitated;
- 40.1.10a disqualification order or disqualification undertaking has been made against that person under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (which relate to the power of a Court to prevent someone from being a director, liquidator or administrator of a company or a receiver or manager of company property or being involved in the promotion, formation or management of a company).
- 40.2 A person cannot be re-elected as a Director if the Board is not satisfied of the individual's continued effectiveness as a Director in accordance with Article 29.5. In these circumstances the Board must not allow the individual to stand for re- election.

#### **Disqualification and Removal of Directors**

- 41.1 A Director shall cease to be a Director if:
- 41.1.1 he/she resigns his/her position as a Director in writing;
- 41.1.2 he/she ceases to be a Member unless he/she is a Co-opted Director in terms of article 39 or is an appointee of The Scottish Housing Regulator;
- 41.1.3 he/she misses four Board Meetings in a row without special leave of absence previously granted by the Board either at his/her request or by exercise of the Board's discretion;
- 41.1.4 the majority of the Members voting at a general meeting decide this. The Members may then appoint another person to take his/her place. If a replacement is not appointed at the general meeting, the Board may appoint a Director in accordance with article 38;
- 41.1.5 the majority of those remaining Directors present and voting at a special meeting of the Board convened for the purpose decide to remove him/her as a Director in terms of article 41.2;
- 41.1.6 he/she becomes ineligible as a Director in terms of article 40;
- 41.1.7 he/she is a Co-opted Director whose period of office is ended in accordance with articles 39.1;
- 41.1.8 he/she is a Director retiring in accordance with article 36.2;
- 41.1.9 he/she has failed to sign and deliver to the Board a statement confirming that the Director will meet his/her obligations to the Board and to the Company as set out in the Company's code of conduct for Directors; or

- 41.1.10 if the Board determines that the person has gained or will be likely to gain material financial advantage from Membership of the Company other than as may be permitted under these articles.
- 41.2 If, at a special Board Meeting convened for the purpose, a majority of the Directors present and voting determine that a Director has:
- 41.2.1 failed to perform to the published standards laid down by the Scottish Federation of Housing Associations and/or The Scottish Housing Regulator adopted and operated by the Company;
- 41.2.2 failed to sign or failed to comply with the Company's code of conduct for Directors;
- 41.2.3 committed a breach of the Company's articles, standing orders or other policy requirements;
- 41.2.6 the Board may by a majority vote of those Directors present and voting (excluding abstentions) at such special meeting of the Board: (a) remove that Director from office; (b) suspend that Director from office on such terms and for such period as they may determine; (c) censure that Director in such manner as they may determine; or (d) make a direction requiring that Director to act or refrain from acting in a particular manner.
- 41.3 Any Director suspended in accordance with article 41.2 shall not, for the period of suspension, be entitled to attend or vote at any Board Meeting nor to receive notice of any such meeting during the period of such suspension.
42. The Board can require that a Director who is being investigated for a potential breach of the Company's code of conduct for Board members take leave of absence and not attend any meeting in his or her capacity as Director until the Board has completed its consideration of the potential breach. When on such leave of absence, the Board Member will not be entitled to receive minutes and/or documents in his or her capacity as a Board member relating to the business of the Company.

### **Remuneration of Directors**

- 43.1 Subject to the terms of this Article 43 and Article 7, if a person serves on the Board or any committee, he/she must not receive any payment or benefit unless it is permitted by the Charities and Trustee Investment (Scotland) Act 2005, these articles or as set out in the Association's policy on payments and benefits referred to in article 30.
- 43.2 The Directors may be paid all travelling and other expenses properly incurred by them in connection with their attendance at meetings of Directors, general meetings, meetings of committees of Directors or meetings of General Committees (as defined in Article 47.1) or otherwise in connection with the discharge of their duties.
- 43.3 Except as permitted under the 2005 Act and expressly provided below or in Articles 7.1 and 7.2, no Director shall be eligible to be paid remuneration, whether in respect of his or her office as Director or as holder of any office of the Company. In addition,

and without prejudice to the foregoing generality, the Company shall not make a payment or grant a benefit to:-

- (a) an officer or employee of the Company;
- (b) a person who at any time within the preceding twelve months has held any post or office within sub-article (a) above;
- (c) a close relative of a person within sub-articles (a) or (b) above; or
- (d) a business trading for profit of which a person falling within sub-articles (a) to (c) above is a principal proprietor or in the management of which such a person is directly concerned

except that the Company may make payments or grant benefits as follows:-

- (a) reasonable and proper remuneration and payments made or benefits granted to an officer or employee of the Company (whether or not he is a Director) under his or her contract of employment;
- (b) the payment of proper and reasonable expenses actually incurred in carrying out the business of the Company to an officer who does not have a contract of employment with the Company; or
- (c) where a tenancy of a house owned by the Company has been granted to a person, or close relative of a person, who later becomes a Director or officer or employee of the Company, the grant to that tenant of a new tenancy, whether of the same house or another house.

43.4 If payments are to be made to Board Members (or any of them) the Board Members must take account of any independent guidance and good practice in fixing the amount of such payments. Any payments will be linked to specified duties to be undertaken by the relevant Board Members and the Company will have in place a clear and robust process for assessing the performance of Board Members in carrying out such duties. The Company must ensure that any such payments to Board Members are disclosed in the audited accounts of the Company.

### **Powers of the Board**

44.1 Subject to the provisions of the Companies Act and these articles, the Board is responsible for directing the affairs of the Company and its business and may do anything lawful which is necessary or expedient to achieve the objects of the Company. The Board is not permitted to exercise any powers which are reserved to the Company in general meetings either by these articles or by statute. The Board is responsible for the leadership, strategic direction and control of the Company with the aim of achieving good outcomes for its tenants and other service users in accordance with the Regulatory Standards and Regulatory Guidance issued by The Scottish Housing Regulator from time to time. The Board is responsible for ensuring that the Company can demonstrate its governance and financial arrangements are such as to

allow The Scottish Housing Regulator to regulate effectively and exercise its full regulatory powers.

- 44.2 Subject to the provisions of the Companies Act, the Board acts in the name of the Company in everything it does. A third party acting in good faith and without prior notice does not need to check if the powers of the Board have been restricted, unless they are already aware that such a restriction may exist.
- 44.3 Without prejudice to its general powers conferred by these articles, the Board may exercise the following powers:
- 44.3.1 buy, sell, build upon, lease or exchange any land and accept responsibility for any related contracts and expenses;
  - 44.3.2 agree the terms of engagement and remuneration of anyone employed in connection with the business of the Company and act as employer for anyone employed by the Company;
  - 44.3.3 grant heritable securities over land owned by the Company and floating charges over all or any part of property and assets both present and in future owned by the Company. This includes accepting responsibility for any related expenses;
  - 44.3.4 decide, monitor and vary the terms and conditions under which property owned by the Company is to be let, managed, used or disposed of;
  - 44.3.5 appoint and remove solicitors, surveyors, consultants, managing agents and employees, as required by the Company's business;
  - 44.3.6 refund any necessary expenses as are wholly necessary incurred by Directors and committee members in connection with their duties;
  - 44.3.7 compromise, settle, conduct, enforce or resist either in a Court of Law or by arbitration any suit, debt, liability or claim by or against the Company; and
  - 44.3.8 accept donations in support of the activities of the Company.
45. No alteration of these articles shall invalidate any prior act of the Board which would have been valid if that alteration had not been made. The powers given by this article shall not be limited by any special power given to the Board by these articles and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.

### **Delegation**

- 46.1 The Directors may delegate any of their powers or functions to an individual Director or to a committee of three or more Directors or other persons, or to staff but the terms of any delegation must be recorded in writing in standing orders, schemes of delegated authority or other appropriate documentation.
- 46.2 The Directors may impose conditions when delegating.
- 46.3 The Directors may revoke or alter a delegation.

- 46.4 All acts and proceedings of any delegated individual or any committee must be fully and promptly reported to the Directors.
- 46.5 For the purposes of these articles, "General Committee" means a committee appointed by the Directors whose constitution complies with articles 46.7 to 46.11.
- 46.6 The Directors may, subject to Article 46.10, delegate to any General Committee all such powers as the Directors may think fit; any such delegation shall be made collateral with, and not to the exclusion of, the Directors' powers and may be revoked or altered.
- 46.7 The majority of the members of the General Committee shall be members of the Company; the remaining members need not be members of the Company.
- 46.8 The Director appointed to such office at a meeting of the Board shall hold office as convenor of a General Committee.
- 46.9 Each General Committee shall regulate its proceedings in accordance with the directions issued by the Board and shall give effect to any instruction or decision on matters of principle issued or made by the Board.
- 46.10 Unless otherwise determined by special resolution, the following matters shall be excluded from delegation to any General Committee:-
- 46.10.1 any introduction of new policy or any change in policy which could have a significant impact on the Company or which would fall within the responsibility of another committee or conflict with the declared policy of another committee;
- 46.10.2 any matter involving expenditure not in accordance with the financial regulations of the Company;
- 46.10.3 any capital building project; and
- 46.10.4 the appointment or dismissal of any employee of the Company.
- 46.11 All contact with third parties in connection with the discharge of the functions of a General Committee shall be entered into by the convenor of the committee or, in his absence, by some other Director of the Company; no member of a General Committee (other than a Director) shall contract, or hold himself out as contracting, on behalf of the Company.
- 46.12 All acts done by a General Committee shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any member of the committee or that any member of the committee was not qualified to act as such, be as valid as if every such person had been duly appointed or was so qualified.
- 46.13 A resolution in writing signed by all the members of a General Committee shall be as valid and effectual as if it had been passed at a meeting of the committee duly convened and held; it may consist of several documents in the same form each signed by one or more members of the committee.



## **Board Procedure**

- 47.1 The Directors may regulate their proceedings as they think fit, subject to the provisions of the articles. It is up to the Board to decide when and where to hold its ordinary meetings, but it must meet at least six times a year. The quorum for the transaction of the business of the Board at the time when the meeting proceeds to business shall be four Directors.
- 47.2 The Board will continue to act while it has vacancies for Directors. However, if at any time the number of Directors falls below seven, the Board can continue to act only for another two months. If at the end of that period the Board has not found new Directors to bring the number of Directors up to seven, the only power it will have is to act to bring the number of Directors up to seven.
- 47.3.1 Any Director may call a meeting of the Directors.
- 47.3.2 The Company Secretary (if any) must call a meeting of the Directors if requested to do so by a Director.
- 47.3.3 Directors must be sent written notice of Board Meetings posted, or delivered, by hand or by email to the last such address for such communications given to the Secretary at least seven days before the date of the meeting. Notices delivered by post shall be deemed to have been received 48 hours after posting and notices delivered in electronic form shall be deemed to have been received on the day they were sent. The accidental failure to give notice to a Director or the failure of the Director to receive such notice shall not invalidate the proceedings of the relevant meeting.
- 47.3.4 Notice of any meeting of the Directors must indicate its proposed date and time, where it is to take place and if it is anticipated that the Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 47.3.5 Board meetings can take place in any manner which permits those attending to hear and comment on the proceedings. If Directors are to be permitted to participate in a Board meeting by way of audio and/or audio-visual link(s), the Directors must, in advance of the meeting, be provided with details of how to connect and participate via that link or links. A Director participating in a Board Meeting in this manner shall be deemed to be present in person at the Board Meeting.
- 47.3.6 A Director shall not be counted in the quorum present when any decision is made about a matter upon which that Director is not entitled to vote.
- 47.3.7 The Chairperson shall chair all meetings of the Directors. If the Chairperson is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the Directors present may appoint one of their number to chair that meeting.

- 47.3.8 The person appointed to chair meetings of the Directors shall have no functions or powers except those conferred by the articles or delegated to him or her by the Directors.
- 47.3.9 Questions arising at a meeting shall be decided by a majority of votes.
- 47.3.7 In the case of an equality of votes, the person who is chairing the meeting shall have a second or casting vote.
- 47.3.8 All speakers must direct their words to the Chairperson. All Directors must remain quiet and maintain order while this is happening. The Chairperson will decide who can speak and for how long.
- 47.3.9 If any point arises which is not covered in these articles, the Chairperson will give his/her ruling which will be final.
- 47.4 All acts done in good faith as a result of a Board Meeting or committee meeting will be valid even if it is discovered afterwards that a Director was not entitled to be on the Board.
- 47.5 A written resolution agreed (including by way of Electronic Communication) by not fewer than three quarters of the Directors or three quarters of the members of a committee will be as valid as if it had been passed at a Board Meeting or committee meeting duly called and constituted.

### **Special Board Meetings**

- 48.1 The Chairperson or two Directors can request a special meeting of the Board by writing to the Secretary with details of the business to be discussed. The Secretary will send a copy of the request to all Directors within three working days of receiving it. The meeting will take place at a place mutually convenient for the majority of Directors, normally the usual place where Board Meetings are held, between 10 and 14 days after the Secretary receives the request.
- 48.2 No other business may be discussed at the meeting other than the business for which the meeting has been called.
- 48.3 If the Secretary does not call the special meeting as set out above, the Chairperson or the Directors who request the meeting can call the meeting. In this case, they must write to all Directors at least seven days before the date of the meeting.
- 48.4 If a Director does not receive notice of the special meeting, this will not prevent the meeting going ahead.

### **Minutes**

49. The Directors shall ensure that minutes are made (in books kept for the purpose) of all proceedings at general meetings, meetings of the Directors, meetings of committees of Directors and meetings of General Committees; a minute of a meeting of Directors or of a committee of Directors shall include the names of the Directors present.

### **Execution of formal documents and Seal**

50. The Company shall execute deeds and documents in accordance with the provisions of the Companies Act and the Requirements of Writing (Scotland) Act 1995 and record the execution in the register. The use of a common seal is not required, therefore the Company shall not have a seal.

### **Registers**

- 51.1 The Company must keep at its registered office a Register containing:
- 51.1.1 the names and addresses of the Members and where provided for the purposes of Electronic Communication, fax numbers and email addresses;
  - 51.1.2 the date each person was entered in the Register as a Member and the date at which any person ceased to be a Member of the Company;
  - 51.1.3 a statement of other property in the Company whether in loans or loan stock held by each Member; and
  - 51.1.4 the names and addresses of the Office Bearers of the Company, their positions and the dates they took and left office.
- 51.1.5 The Company must also keep at its registered office all other registers required by the Companies Act.

### **Registered name**

52. The registered name of the Company must be clearly shown on the outside of every office or place where the Company's business is carried out. The name must also be printed on all its business letters, notices, adverts, official publications, website and legal and financial documents.

## **Accounts and Auditor**

- 53.1 Accounting records shall be kept in accordance with all applicable statutory requirements as required by the Companies Acts and/or Charities & Trustee Investment (Scotland) Act 2005 and Charities Accounts (Scotland) Regulations 2006 and such accounting records shall, in particular, contain day to day entries of all sums of money received and expended by the Company and the matters in respect of which such receipt and expenditure take place and a record of the assets and liabilities of the Company.
- 53.2 The Board must send the Company's accounts and balance sheet to the Company's auditor. The auditor must then report to the Company on the accounts it has examined. In doing this, the auditor must follow the conditions set out in the Companies Act and Part 6 of the Housing (Scotland) Act 2010.
- 53.3 The Company must provide The Scottish Housing Regulator and such other organisations as the Board determines appropriate with a copy of its accounts and the auditor's report within six months of the end of the period to which they relate.
- 53.4 The Company must appoint an auditor within three months of being registered by the Financial Conduct Authority. The Board will appoint the auditor unless there is a meeting of the Company within that time. The Board may appoint an auditor to fill in a casual vacancy occurring between general meetings of the Company. The Board shall take such steps as it considers necessary to ensure the continuing independence of the Company's auditor including the periodic review of the need for audit rotation. The Company must send a copy of its accounts and the auditor's report to The Scottish Housing Regulator within six months of the end of the period to which they relate.
- 53.5 None of the following can act as auditor to the Company:-
- 53.5.1 a Director or employee of the Company;
  - 53.5.2 a person who is a partner of, or an employee or employer of a Director or employee of the Association.
- 53.6 An auditor appointed to act for the Company one year will be re-appointed for the following year unless:-
- 53.6.1 a decision has been made at a general meeting to appoint someone else or specifically not to appoint them again; or
  - 53.6.2 they have given the Company notice in writing that they do not want to be re-appointed; or
  - 53.6.3 they are not a qualified Auditor or are excluded under Article 53.5; or
  - 53.6.4 they are no longer capable of acting as Auditor to the Company; or
  - 53.6.5 notice to appoint another Auditor has been given.
- 53.7 To prevent an auditor being re-appointed or to appoint another person as auditor, not less than 28 days' notice must be given to the Company that the matter requires to be discussed at the next meeting of the Company.

- 53.8 The Company shall give notice to the auditor who is to be asked to step down that the matter will be discussed at the next meeting of the Company. If possible, the Company will also give proper notice of this matter to the Members but if this is not possible, the Company can give notice by advertising in the local newspaper at least 14 days before the meeting.
- 53.9 The retiring Auditor may make representations to the Company or give notice that he/she intends to make representations at the meeting and the Company must tell the Members of any representations made by the Auditor under Section 95 of the Co-operative and Community Benefit Societies Act 2014.

#### **Annual Returns and Balance Sheet**

- 54.1 Every year, within the time allowed by law, the Company Secretary shall send to the Registrar of Companies the confirmation statement in the prescribed form, together with all such documentation required by the Companies Act.
- 54.2 If requested, the Company must provide a free copy of the latest confirmation statement and auditor's reports to Members or people with a financial interest in the Company.
- 54.3 The Company must always keep a copy of the latest balance sheet and auditor's report available for inspection at its registered office.
- 54.4 The Company must comply with the requests of The Scottish Housing Regulator for annual returns.

#### **Donations**

55. The Board shall set and review periodically its policy for the donation of funds to charities. Such donations must further the objects of the Company and the Board shall report to the Members on such donations.

#### **Investments**

56. The Company's funds may be invested by the Board in such manner as is permitted by its investment policy subject always to the requirement that the Company will comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time.

#### **Indemnity**

- 57.1 Every Director or other Office Bearer or auditor of the Company shall be indemnified (to the extent permitted by section 232, 234, 235, 532 and 533 of the Companies Act) out of the assets of the Company against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office. That may include, without prejudice to that generality (but only to the extent permitted by those sections of the Companies 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 Company.

57.2 The Company shall be entitled to purchase and maintain for any Director insurance against any loss or liability which any Director or other Office Bearer of the Company may sustain or incur in connection with the execution of the duties of his/her office, and such insurance may extend to liabilities of the nature referred to in section 232 (2) of the Companies Act.

57.3 In this article a "Director" means any Director or former Director of the Company.

### **Rules**

58. The Directors may from time to time make such reasonable and proper policies, rules or as they may deem necessary or expedient for the proper conduct and management of the Company. No such policy or rule shall be inconsistent with, or such alter or repeal anything contained in the articles.

### **Inspecting The Register**

59. Any Member or person having a financial interest in the Company can inspect their own account and the books containing the names of Members. The books must be available for inspection at the place they are kept at all reasonable hours. The Board may set conditions for inspecting the books.

### **Disputes**

60. Every dispute between the Company or the Board and:

60.1 a Member;

60.2 a person aggrieved who has ceased to be a Member within the previous six months;  
or

60.3 a person claiming under these articles,  
shall be dealt with in accordance with any procedures determined by the Board from time to time but without prejudice to all rights which any person may have to raise an action on the matter in any court with competent jurisdiction including without prejudice the Sheriff Court in the Sheriffdom in which the Company's registered office is located.

### **Copies of Articles**

61. The Company Secretary shall, on demand, provide a copy of these articles free of charge to any Member who has not previously been given a copy and, upon payment of such reasonable fee as the Company may require to any other person.

### **Closing Down the Company**

- 62.1 Subject to Article 62.2, the Company may be dissolved in the following ways:
- 62.1.1 by an order or resolution to wind up the Company as set out in the Companies Act, Insolvency Act 1986 and/or Section 105 of the Housing (Scotland) Act 2010; or
- 62.1.2 by special resolution of the Members.
- 62.2 The prior approval of the Office of the Scottish Charity Regulator is required before the Company can be dissolved. The Company must submit its application for approval to the Office of the Scottish Charity Regulator within a reasonable period of time before the date on which the Company intends to dissolve.
- 62.3 If on the winding up of the Company any property remains after satisfaction of all the Company's debts and liabilities, such property shall not be paid to or distributed among the Members of the Company but shall be transferred to some other Charitable Body or Bodies (whether incorporated or unincorporated) whose Charitable Purposes are altogether or in part similar to the objects of the Company and whose constitution restricts the distribution of income and assets among Members to an extent at least as great as under these articles.
- 62.4 The Charitable Body or Charitable Bodies to which property is transferred under Article 12.1 shall be determined by the Scottish Housing Regulator in accordance with section 106 of the Housing (Scotland) Act 2010.
- 62.5 To the extent that effect cannot be given to the provisions of articles 62.3 and 62.4, the relevant property shall be applied to some other Charitable Purpose or Charitable Purposes.

### **Amending These Articles**

- 63.1 These articles can be changed or deleted and new articles can be introduced if three quarters of the votes at a special general meeting are in favour of the amendment(s) all in accordance with the Companies Act and these articles.
- 63.2 The Company can change its name if three quarters of the votes at a special general meeting are in favour of the change.
- 63.3 If the Company changes the articles in terms of article 63.1 or changes its name in terms of article 63.2 it must notify The Scottish Housing Regulator in writing within 28 days of the change being made.
- 63.4 When an amendment of these articles affects the Objects of the Company the prior approval of the Office of the Scottish Charity Regulator is required. The Company must submit its application for approval to the Office of the Scottish Charity Regulator within a reasonable period of time before the date on which the Company intends to amend its Objects. Any other amendment of these articles requires to be notified to them within three months of the change having been made.
- 63.5 The prior approval of the Office of the Scottish Charity Regulator is required to the change of name of the Company. The Company must submit its application for

approval to the Office of the Scottish Charity Regulator within a reasonable period of time before the date on which the Company intends to change its name.

- 63.6 The Company can change its registered office but must:
  - 63.6.1 notify The Scottish Housing Regulator of the change in registered office within 28 days of the change having been made; and
  - 63.6.2 notify the Registrar of Companies of the change within 14 days of the change being made; and
  - 63.6.3 notify the Office of the Scottish Charity Regulator within 3 months of the change being made.

#### **Means of communication to be used**

- 64.1 Subject to the articles, anything sent or supplied by or to the Company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of the Companies Act to be sent or supplied by or to the Company.
- 64.2 Subject to the articles, any notice or document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or documents for the time being.
- 64.3. Any notice to be given to or by any person pursuant to the articles:
  - 64.3.1 must be in writing; or
  - 64.3.2 must be given in electronic form.
- 64.4 The Company may give any notice to a member either:
  - 64.4.1 personally; or
  - 64.4.2 by sending it by post in a prepaid envelope addressed to the member at his or her address; or
  - 64.4.3 by leaving it at the address of the member; or
  - 64.4.4 by giving it in electronic form to the member's address.
- 64.5 A member who does not register an address with the Company or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the Company.
- 65. A member present in person at any meeting of the Company shall be deemed to have received notice of the meeting and of the purposes for which it was called.
- 65.1 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.
- 65.2 Proof that an electronic form of notice was given shall be conclusive where the Company can demonstrate that it was properly addressed and sent, in accordance with Section 1147 of the Companies Act 2006.
- 65.3 In accordance with section 1147 of the Companies Act 2006, subject to any other provision of these articles notice shall be deemed to be given:



65.3.1 48 hours after the envelope containing it was posted; or

65.3.2 in the case of an electronic form of communication, 48 hours after it was sent.