

CONSTITUTION OF The Scotland Malawi Partnership SCIO

Charity Number SC050781

CONSTITUTION

of

The Scotland Malawi Partnership

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 (and must remain in Scotland).

Name

- 3 The name of the Organisation is The Scotland Malawi Partnership SCIO.

Purposes

- 4 The purpose of the Organisation is to act as an umbrella network for individuals, charities, churches, groups, companies, local authorities and others who have an interest in Malawi, and are based in or have a connection to Scotland. To that end, activities will coordinate, represent, support and develop the links that unite Scotland and Malawi, and in so doing will help reduce poverty, advance education, advance health, improve wellbeing and increase social justice in both our nations, through our members' work.

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 the Charity Trustees, either in the course of the Organisation's existence or on dissolution - except where this is done in direct furtherance of the Organisation's purposes. This does not preclude the repayment of legitimate expenses of the Organisation incurred by the Charity Trustees on behalf of the Organisation in pursuit of the aims of the Organisation.

Liability of Charity Trustees

- 7 Neither the Members nor the Charity Trustees of the Organisation (in their capacity as Members - see clause **Error! Reference source not found.**) have any 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 and Charity Trustees will not be held responsible.

- 8 The 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 the Board of Charity Trustees and Members. The Board hold regular meetings, and generally govern the Organisation including the financial position of the Organisation.
- 10 The Members in General Meeting appoint Charity Trustees from within the Membership; in addition, the Board may co-opt Charity Trustees to fill skills gaps.
- 11 Individuals and organisations falling within clause 4 may apply for membership; applications will be considered by the Board. Members are those admitted to membership.
- 12 The Board can make proposals regarding membership subscriptions, to be agreed at General Meeting by the Membership. The Board is empowered to cancel membership or restrict voting rights on non-payment of agreed subscriptions.
- 13 Members are required to adhere to the values of the Organisation. Membership continues from year to year unless cancelled either by the Member or by the Board.
- 14 The Charities and Trustee Investment (Scotland) Act 2005 requires certain decisions to be taken by the Members of the organisation.

BOARD

Number of charity trustees

- 15 The maximum number of Charity Trustees is 16.
- 16 The minimum number of Charity Trustees is 6.

Eligibility

- 17 A person will not be eligible for election or appointment to the Board if they are:-
- 17.1 disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
 - 17.2 an employee of the Organisation.

Initial charity trustees

- 18 The Charity Trustees of The Scotland Malawi Partnership, charity number SC037048, at the date of setting up the Organisation will become the first Trustees of the Organisation and will continue for the remainder of their term of office in that charity. At the first AGM, the trustees who would have retired at

the next Annual General Meeting of the Company Limited by Guarantee number SC294378, the forerunner to this Organisation, shall retire as if by rotation, together with any who might have been appointed since the previous AGM.

Appointment/retiral

- 19 The Organisation will strive to appoint a diverse range of voices to the Board, which would include but is not limited to age, gender and ethnicity.
- 20 At the conclusion of each AGM (other than the first, which is considered in paragraph 18):-
 - 20.1 any Charity Trustees co-opted during the period since the preceding AGM shall retire from office but may stand for election;
 - 20.2 out of the remaining Charity Trustees, one third (to the nearest round number) shall retire from office.
- 21 The Charity Trustees to retire under paragraph 20.2 shall be those who have been longest in office since they were last appointed or re-appointed; as between persons who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method.
- 22 A Charity Trustee can serve for a maximum of three consecutive terms of office, each of up to three years. After this, Charity Trustees will be eligible for re-election again after a gap of at least one year.
- 23 Members shall have one vote for each vacancy on the Board.

Termination of office

- 24 A Charity Trustee can be suspended by the Board, with immediate effect, if serious wrongdoing is alleged while an investigation is conducted.
- 25 A Charity Trustee will automatically cease to hold office if: -
 - 25.1 they become disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 25.2 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;
 - 25.3 they become an employee of the Organisation;
 - 25.4 they give the Organisation written notice of resignation;
 - 25.5 they are absent without apology or good reason from more than three consecutive meetings of the Board;

- 25.6 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 values and principles of the Organisation;
 - 25.7 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.
- 26 A resolution under paragraph **Error! Reference source not found.** or **Error! Reference source not found.** shall be valid only if:-
- 26.1 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;
 - 26.2 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
 - 26.3 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

- 27 The Board must keep a register of Charity Trustees, setting out, subject to compliance with General Data Protection Regulations in force from time to time,
- 27.1 for each current Charity Trustee:-
 - 27.1.1 their full name, address, telephone number and email address (or any subsequent method of contact);
 - 27.1.2 the date on which they were appointed as a Charity Trustee;
 - 27.1.3 their date of birth; and
 - 27.1.4 any office held by them in the Organisation;
 - 27.2 for each former Charity Trustee, for at least 6 years from the date on which they ceased to be a Charity Trustee:
 - 27.2.1 the name of the Charity Trustee;
 - 27.2.2 any office held by them in the Organisation; and
 - 27.2.3 the date on which they ceased to be a Charity Trustee.
- 28 The Board must ensure that the register of Charity Trustees is updated within 28 days of any change:
- 28.1 which arises from a resolution of the Board;

- 28.2 which arises from the AGM; or
 - 28.3 which is notified to the Organisation.
- 29 The Organisation will make publicly available the names of Charity Trustees.

Register of Members

- 30 The Organisation must keep a register of Members, which includes contact details and the date on which they became a Member.

Office-bearers

- 31 The Charity Trustees must elect (from among themselves) a Chair, up to 3 Vice-Chairs and a Treasurer.
- 32 In addition to the office-bearers required under clause 31, the Charity Trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 33 Office bearers are elected for a three-year term. Appointments are ratified annually by the Board at the meeting following the AGM.
- 34 A person elected to any office will automatically cease to hold that office:-
- 34.1 if they cease to be a Charity Trustee; *or*
 - 34.2 if they give to the Organisation a notice of resignation from that office, signed by them.

Powers of Board

- 35 The Organisation will be governed by the Board. The powers and duties of management may be delegated to the Chief Executive, who will provide regular updates to the Board.
- 36 A meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.

Charity Trustees - general duties

- 37 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:-
- 37.1 seek, in good faith, to ensure that the Organisation acts in a manner which is in accordance with its purposes;
 - 37.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 37.3 in circumstances giving rise to the possibility of a conflict of interest between the Organisation and any other party: -

37.3.1 put the interests of the Organisation before that of the other party;

37.3.2 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;

37.4 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.

37.5 comply with current safeguarding regulations in regard to their own conduct.

37.6 ensure that the Organisation complies with all current safeguarding regulations as a minimum standard.

38 In addition to the duties outlined in clause 37, all of the Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring:-

38.1 that any breach of any of those duties by a Charity Trustee is corrected by the Charity Trustee concerned and not repeated; and

38.2 that any Charity Trustee who has been in serious and persistent breach of those duties is removed as a Charity Trustee.

39 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 40 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.

40 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.

41 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, but not attendance fees.

Code of Conduct for Charity Trustees

42 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.

- 43 The Code of Conduct referred to in clause 42 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

- 44 Any Charity Trustee may call a meeting of the Board; all Board Members must be informed of this meeting.
- 45 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

- 46 No valid decisions can be taken at a Board meeting unless a quorum is present; the quorum for Board meetings is 30% of the number of Charity Trustees.
- 47 A Charity Trustee may participate in a meeting of the Board by means of audio, video conferencing facility or similar communications equipment, as long as all the Charity Trustees participating in the meeting can hear each other; a Charity Trustee participating in this manner shall be deemed to be present at the meeting.
- 48 If at any time the number of Charity Trustees in office falls below the number stated as the quorum in clause 46, the remaining Charity Trustee(s) will have power to fill the vacancies and must call a Members' meeting within 30 days; but will not be able to take any other valid decisions. The sole business to be conducted shall be the appointment of additional charity trustees. The management of the Organisation shall continue during this period.
- 49 The Chair of the Organisation or an appointed Vice-Chair should act as chairperson of each Board meeting.
- 50 If the Chair of the Organisation 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), one of the vice-chairs present at the meeting will act as chairperson of that meeting with the assent of the other Board members present.
- 51 Subject to clause 55, every Charity Trustee has one vote, which must be given personally. For the avoidance of all doubt, a vote cast by a Charity Trustee in accordance with the procedure laid out in section 47 shall be a vote cast personally.
- 52 All decisions at Board meetings will be made by majority vote.

- 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 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.
- 55 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.
- 56 For the purposes of clause 55:-
- 56.1 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;
- 56.2 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, trustee, director, member of the management committee, officer or elected representative has an interest in that matter.

Minutes

- 57 The Board must ensure that proper minutes are kept in relation to all Board meetings and meetings of Committees.
- 58 The minutes to be kept under clause 57 must include the names of those present; and should be approved by Charity Trustees who were named as present at the meeting.
- 59 A summary of the minutes referred to in clause **Error! Reference source not found.** will be publicly available.
- 60 The Board may exclude from any published minutes any material which the Board considers ought properly to be kept confidential.

DECISION-MAKING BY THE MEMBERS

Annual General Meetings

- 61 The Board must convene a meeting of the Members in each calendar year; that meeting will be called an Annual General Meeting or "AGM".
- 62 The gap between one AGM and the next must not be longer than 15 months.
- 63 Notwithstanding clause 62, the first AGM must be held at an equivalent time to that which would have been held under the rules of the preceding Organisation.

- 64 The business of each AGM must include:-
- 64.1 a report by the Chair on the activities of the Organisation;
 - 64.2 consideration of the future strategy for the Organisation, including a review of key risks and opportunities.
 - 64.3 approval of the previous year's accounts'
 - 64.4 election of Trustees in line with this Constitution
 - 64.5 appointment of Auditors or Independent Examiners as appropriate
- 65 The Board may convene any other meeting of the Members at any time and must do so on request by the lower of 5% of the Membership or 50 members.

Notice of Annual and Extraordinary General Meetings

- 66 At least 14 clear days' notice must be given of any AGM or EGM.
- 67 The notice calling an AGM must specify in general terms what business is to be dealt with at the meeting. The notice calling the EGM must give specific details of the business to be considered. In the case of a resolution to alter the Constitution, the notice must set out the exact terms of the proposed alteration(s).
- 68 The reference to "clear days" in clause 66 shall be taken to mean that, in calculating the period of notice,
- 68.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
 - 68.2 the day of the meeting itself should also be excluded.
- 69 Notice of every AGM or EGM must be given to all the Organisation's Members; but the accidental omission to give notice to one or more Member will not invalidate the proceedings at the meeting.

Procedure at Members' meetings

- 70 The provisions of clauses 46, 49 and **Error! Reference source not found.** (quorum and chairperson) shall apply in relation to all AGMs and EGMs.
- 71 The Board may make arrangements, in advance of any Members' meeting, to allow Members to participate by means of a conference telephone, video conferencing facility or similar communications equipment; a Member participating in the Members' meeting in this manner shall be deemed to be present at the meeting.

Voting at Members' meetings

- 72 Every Member shall have one vote in their capacity as a member, which must be given personally.
- 73 All decisions at Members' meetings will be made by majority vote, with the exception of the types of resolution listed in clause **Error! Reference source not found..**
- 74 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:
- 74.1 a resolution amending the Constitution;
 - 74.2 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);
 - 74.3 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);
 - 74.4 a resolution for the winding up or dissolution of the Organisation.
- 75 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.
- 76 A resolution put to the vote at a Members' meeting will be decided on a show of hands or electronic equivalent, unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot.
- 77 The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting, if possible.
- 78 A proposal made in writing (or by e-mail) by one hundred members shall be considered by the Charity Trustees. If the proposal is approved, it shall be as valid as if it had been passed at a Members' meeting.

Minutes

- 79 The Board must ensure that written records are kept in relation to all Members' meetings.
- 80 Minutes of Members' meetings must include the names of those present; and (so far as possible) should be approved by the Chairperson of the meeting.
- 81 The Board shall make available copies of the minutes referred to in clause 79 to any member of the public requesting them; but on the basis that the Board may exclude confidential material to the extent permitted under clause **Error! Reference source not found..**

ADMINISTRATION

Delegation to Committees

- 82 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.
- 83 The Board may also delegate to the Chair of the Organisation (or the holder of any other post) such of their powers as they may consider appropriate.
- 84 When delegating powers under clause 82 or 83, the Board must set out appropriate conditions which must include an obligation to report regularly to the Board.
- 85 Any delegation of powers under clause 82 or **Error! Reference source not found.** may be revoked or altered by the Board at any time.
- 86 The rules of procedure for each Committee, and the provisions relating to membership of each Committee, shall be set by the Board.

Accounting records and annual accounts

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

MISCELLANEOUS

Winding-up

- 89 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.
- 90 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 and as decided by the Board.

Alterations to the constitution

- 91 This Constitution may be altered by resolution of the Members passed at a Members' meeting (subject to achieving the two thirds majority referred to in clause 74).

Interpretation

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

- 92.1 any statutory provision which adds to, modifies or replaces that Act; and
- 92.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph **Error! Reference source not found.** above.

