

## Confidential Report for Decision

Agenda Item: 13.1  
Date of Meeting: 27/03/24

To: The Management Committee

From: The Director

Subject: Proposed Constitutional Change and Adoption of Model Charitable Rules 2020

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### 1. Introduction and Purpose

- 1.1 The Management Committee has been reviewing its constitution with support from our Governance Consultant, Linda Ewart, and our solicitor, Lauren Little. It decided in May 2023 that it wished to proceed with changing its constitution to a charitable registered housing association. This would also require a name change from Rosehill Housing Co-operative Limited to Rosehill Housing Association Limited. This was on the basis that a proposal to change our constitution, our name and to adopt the Model Rules 2020 would be put to members at a Special General Meeting (SGM) in Autumn 2024.
- 1.2 The background to Committee's decision is set out in Section 2 of this report.
- 1.3 Committee is reminded that we do not require to obtain consent from the Scottish Housing Regulator (SHR) to the constitutional change and/or the proposal to become a charitable registered housing association but we must submit a notifiable event with particular information as set out in point 6 (2) of 1.5. However, I had emailed our Regulation Manager on 12<sup>th</sup> January to advise of our plans to de-mutualise and apply for charitable status. I received a response on 16<sup>th</sup> January which stated "From our side, we've made a note of your plans and that we'll hear from you nearer the time in terms of the submission of the formal notifiable event. It would, however, be helpful to understand the rationale for the changes in the meantime, and whether opening out management committee membership is part of your thinking" This resulted in a telephone conversation in which I explained the reasons for Committee's decision to demutualise. Our Regulation Manager confirmed this was all the information she needed at this time.
- 1.4 It should be noted however that we do require to obtain the Office of the Scottish Charity Regulator (OSCR)'s consent to attain charitable status. Details of what is required is as noted at point 4.2. Jacqui Baynham of

TC Young will be assisting with this part of the process. Jacqui is one of the paralegals within TC Young and works alongside Lauren Little.

- 1.5 The purpose of this report is to present the final draft of the model rules for Rosehill for Committee's approval following the undernoted process:
1. Committee to approve the revised rules and the following Special Resolutions which are required to be put to the members of Rosehill:
    - “(a) That the Co-operative adopts the Rules in the form attached to this notice in substitution for the existing Rules of the Co-operative subject to any non-material amendments that may be required by the Scottish Housing Regulator or the Financial Conduct Authority.
    - (b) That the name of the Co-operative be changed from “Rosehill Housing Co-operative Limited” to “Rosehill Housing Association Limited” immediately on the registration of the new Rules with the Financial Conduct Authority.”
  2. TC Young will on behalf of the Co-operative submit an application to OSCR to apply for registration as a charitable organisation and obtain OSCR's in principle consent.
  3. Rosehill to check if lender's consent to the rule change is required and obtain such consents, if required. See point 4.1.1 below.
  4. Subject to obtaining OSCR's consent, Committee to formally decide to convene a Special General Meeting of members to be held on the 17<sup>th</sup> of September 2024 at 6:30 pm for the purpose of approving the constitutional change, name change and the adoption of the new rules.
  5. SGM to be held at which members approve the new rules.
  6. Following adoption of the new rules at the SGM, the following steps will then be undertaken by Jacqui Baynham of TC Young:
    - (1) The signed rules and relevant Financial Conduct Authority (FCA) forms will then be sent to FCA for registration of the new rules. Rules and name change will become effective once registered with FCA.
    - (2) The Scottish Housing Regulator (SHR) will then be notified and sent a copy of the registered rules, along with a copy of this report and the minute of the meeting at which Committee agreed to the constitutional change, name change and to adopt the new rules.
    - (3) In terms of OSCR's in principle consent, notify OSCR that rules have been registered with FCA allowing them to enter the housing association on the charity register and issue a charity number.

## **2. Background**

- 2.1 Late in 2022 Committee began discussions about whether the “fully mutual” model remained fit for purpose and continued to be the way forward. The context for this was the increasing challenges of recruiting and retaining Committee Members. In addition, it was recognised that our External Auditor had raised the matter in a previous Audit Report (known also as Management Letter) that as we are not a charity, we are subject to paying tax. The Auditor suggested that we looked into the possibility of changing to charitable registered housing association.
- 2.2 It was recognised that changing our status from “fully mutual co-operative” to a “charitable registered housing association” may have the added benefit of Rosehill being exempt from some taxation e.g. corporation tax, however, the main driver for any potential change was the challenges of recruiting and retaining committee members. It was recognised that by becoming a charitable registered housing association, we could open up our membership to non-tenants e.g. people who live or work in the area or people who support the objectives of Rosehill.
- 2.3 Committee decided that a constitutional review should be included in the plans to commission a governance and assurance review. The review would be done in two parts, with part one the governance and assurance review being carried out first. This was completed by September 2022. The second part which would be the constitutional review would commence at the start of 2023.
- 2.4 The successful consultant appointed was Linda Ewart. Linda produced an initial report for Committee which was considered at its January 2023 meeting. This was in preparation for holding the first session with Committee in February 2023.
- 2.5 A second session was held in May 2023 with Linda Ewart and our solicitor, Lauren Little. Lauren made a presentation on the legal processes and considerations for changing from a fully mutual co-operative to a charitable registered housing association.
- 2.6 Linda’s original report and the presentations and notes from the two sessions held in February and May 2023 were uploaded to Decision Time > Resources under a dedicated folder “Constitutional Review”.
- 2.7 On conclusion of these sessions, Committee made its decision at its May 2023 meeting that it wished to proceed with demutualising and to become a charitable registered housing association, this decision was on the basis that the matter would need to be put to the Members at a Special General Meeting.

- 2.8 The next stage of the process was for Committee to consider the draft model rules (based upon SFHA Charitable Model Rules (Scotland) 2020). A further committee session was held on 30<sup>th</sup> January 2024 to look at the model rules in more detail and to explore the advantages and disadvantages of any potential amendments to the rules, primarily around membership of Rosehill and Committee membership. Linda Ewart led the session with Lauren Little providing clarity and legal advice where necessary to aid the discussion.
- 2.9 At the session Committee indicated its preferences to some variations to the rules. This enabled Linda and Lauren to revise the model rules to reflect Committee's preferences. The revised rules were presented at the February Committee meeting for further consideration and for Committee to decide its preference for a variation to rule 58.1 which proposes a requirement that the position of Chair can only be held by a tenant committee member.
- 2.10 An extract from my committee report, dated 28<sup>th</sup> February 2024 is attached at Appendix 1. This provides a summary of the changes to the Rules including variations that reflect Committee preferences.
- 2.11 At the February meeting Committee decided the following:
- In relation to its preference to restrict the number of places on the Committee for Factored Owners to two places, that it was happy with the proposed wording;
  - That in relation to rule 58.1 that it did not want to vary the wording and there should be no requirement to restrict the position of Chair to a tenant Committee Member.
- 2.12 Both Linda Ewart and Lauren Little were advised of Committee's updated preferences which resulted in the draft rules being further updated.
- 2.13 Lauren Little advised Committee at the session in January 2024 that once Committee had considered and decided on any variations to the rules, that TC Young would contact the Financial Conduct Authority (FCA) to ask them for their non-binding indicative view as to whether such variations would be acceptable. This is not however standard practice, as FCA usually only have sight of the rules at such time as and when the rules are being sent for registration and it may take some time to obtain FCA's input. At the time this report was prepared, an email had been sent from TC Young to FCA asking if they could confirm that they do not foresee anything within the proposed rules that would prevent them from registering the proposed rules at the relevant time. A response is awaited from FCA.

### **3. Proposal to change Constitution, Name and Adoption of New Rules (based upon SFHA Charitable Model Rules (Scotland) 2020).**

- 3.1 Committee made its initial decision to change from a fully mutual housing co-operative to a charitable registered housing association in May 2023. As part of this, a name change is required – Rosehill Housing Co-operative Limited would now become Rosehill Housing Association Limited.
- 3.2 To achieve the constitutional change Rosehill has to adopt new Rules which are based on the SFHA Charitable Model Rules 2020. Attached is a track change copy of the final draft of the Rules to enable Committee to clearly see the changes being made and, a clean version of the final draft of the Rules.

#### Variation to Model Rules 2020

- 3.3 There are a total of 7 proposed variations, 3 of which are new variations and the other 4 are variations we have previously made to our rules and are reflected in our current rules.

#### *New Variations*

- 3.3.1 **Rule 12 – Representing an Organisation.** The SFHA supporting guidance for the Model Rules 2020, state that there is no statutory or regulatory requirement to allow organisations to become members. Rule 12 can therefore be removed by amendment if an RSL does not wish to allow organisations to be members at the option of the Association.
- 3.3.2 After consideration of this matter, we are proposing to delete Rule 12 from our proposed new rules and delete all references to organisations throughout the rules.
- 3.3.3 **Rule 36.1 – Composition of the Committee.** This is a new variation to add the wording “No more than two members of the Committee of Management shall be members who receive a factoring service from the Association.”
- 3.3.4 Committee wished to safeguard against a disproportionate number of non-tenant service users being on the Management Committee and therefore being able to unduly influence the strategy and objectives of Rosehill. It was considered that it was not necessary to make any such provision limiting the number of recipients of any other services provided by Rosehill.

3.3.5 **Rule 42.1.12 – relating to Eligibility for the Committee.** Rule 42.1 states “A person will not be eligible to be a Committee Member and cannot be appointed or elected as such if...”

3.3.6 We considered inserting the optional rule 42.1.12 (as noted in the Supporting Guidance to SFHA Charitable Model Rules 2020) whereby:

“he/she is the spouse, partner, child (including adopted child or step child), parent, parent-in-law, grandparent, grandchild or sibling of a Committee Member or of a governing member of any other organisation in the Group.”

3.3.7 Rosehill does not currently have this optional rule in its rules. However, as a fully mutual housing co-operative its rules do restrict membership and shares to one per person per household. Joint membership can be held but it is the first named member who has the entitlements of membership i.e. attending the AGM and voting on any decisions and being able to stand for election to the Committee. This safeguards against more than one person from the same household being able to be on the Committee at the same time. Rosehill currently has two related Committee Members but who live in different households, and this has presented no issues. Since Rosehill was set up in 1987 only twice has there been Committee Members who have been related (2 Committee Members each time) who have served on the Committee at the same time. Whilst we do not envisage this should change if we adopt the new rules, we do wish to replicate the safeguard that our current rules provide in relation to only one person (first named joint member) per household being able to join the Committee.

On this basis, rather than adopt the optional rule (as provided in the Supporting Guidance to SFHA Charitable Model Rules 2020) it is being proposed that a new rule be inserted as follows:

“he/she lives at the same address as a Committee Member.”

*Variations previously approved and in current rules*

3.3.8 **Rule 19 in relation to “General Meetings”** allows for meetings to be held virtually and as hybrid meetings. As a result of the pandemic, temporary provisions in the Corporate Insolvency and Governance Act 2020 allowed for meetings such as SGMs and AGMs to be held virtually. At the last rule change in 2021, it was decided by Committee that it was better to have more permanent arrangements in place to hold general meetings virtually if needed in the future. Therefore, it is being proposed that Rule 19 be kept in the new rules to maintain the status quo.

- 3.3.9 **Procedure at General Meetings (Rule 23.1)** - This rule contains a departure from the model which requires that if there are more than 70 members at least one-tenth need to be present to form a quorum for General Meetings. Rosehill currently has just over a 1000 members which would require at least 100 members to be present in order for a General Meeting to take place.
- 3.3.10 Retaining the rule, as it stands in the model, would mean that it is very likely that Rosehill would never again have a quorate General Meeting. This would have some adverse effects, including: decisions being made by a very small number of members because turnout at re-scheduled General Meetings is always very likely to be woefully low; low turnout and re-scheduled meetings can lead to members deserting General Meetings because they know they are likely to be inquorate anyhow; bearing in mind that our tenants are all members it could lead to levels of dissatisfaction with Rosehill generally amongst tenants, and our AGM in particular is viewed as an event which is important to the people who attend and we need to ensure that continues to be the case.
- 3.3.11 The amended rule being proposed is in line with what is in our current rules which was accepted by The Financial Conduct Authority when the rules were last changed in 2021:
- “If there are more than 70 members, at least one-tenth or 45 members (whichever is the lower)...”
- 3.3.12 **Proxies/Representatives/Postal Votes** - Deletion of Postal Votes model rules – these have been deleted in previous version of our rules, as all of our members live locally. Members do have the option of appointing a proxy to vote for them and proxies are submitted at every AGM.
- 3.3.13 There is a risk that by holding postal votes this will act as a disincentive for members attending the general meetings and could render the meetings inquorate.
- 3.3.14 It is recognised that under the new rules (and that we are changing from a fully mutual housing co-operative to a charitable registered housing association) membership of Rosehill will be opened up to people other than our tenants. However, as we are a community based organisation, we do not envisage that our membership will extend over a wider geographical location. For this reason and for the risk identified above, it is being proposed that the rules relating to postal votes and any references to postal votes throughout the rules remain deleted.

- 3.3.15 **Composition of the Committee (Rule 36.1)** - This is a variation to the Model which states that “The Association shall have a Committee of Management which shall have a minimum of 7 and a maximum (including co-optees) of 15 persons.”
- 3.3.16 When the rules were last changed in 2021, Committee decided to reduce the maximum number of persons on the Committee to 12. The basis for the decision was that this reflected the historical level of participation in our membership. It was also seen as a more manageable number and likely to be more effective in terms of good governance.
- 3.3.17 There are examples of other Housing Associations with rules that set committee membership at 12.
- 3.3.18 The amended rule being proposed is in line with what is in our current rules which was accepted by The Financial Conduct Authority when the rules were last changed in 2021:

“The Association shall have a Committee of Management which shall have a minimum of 7 and a maximum (including co-optees) of 12 persons.”

## **4. Other Key Considerations**

### **4.1 Lender Consent**

- 4.1.1 Under the terms of our loan agreements with the Bank of Scotland we require its consent to a constitutional and/or rule change. Once Committee approves the final draft of the new rules, I will contact our Relationship Director to seek the bank’s consent on our proposed constitutional change (name change) and proposed adoption of the new rules and will send a copy of the rules.

### **4.2 Office of the Scottish Charity Regulator (OSCR)**

- 4.2.1 Before we can seek our members’ approval to adopt the new rules at the SGM in September, we are required to submit an application to OSCR to obtain its “in principle” consent to Rosehill obtaining charitable status. As part of the application, we would need to provide the following:

- a copy of the proposed new rules which would need to be on a basis acceptable to OSCR.
- a paper setting out the intended activities of Rosehill Housing Association demonstrating that it would meet the charity test. It is usually however sufficient to guide OSCR to the housing association

website and provide a copy of the allocations policy to address any issues they require.

- signed trustee declaration forms signed by the Committee confirming their agreement to become charity trustees. These forms will require to be completed by all members of the Committee and signed.

4.2.2 Jacqui Baynham from TC Young has advised that OSCR usually take up to 3 months to complete an application and enter an organisation on the charity register and issue a charity number.

In determining an application for charitable status, OSCR will consider the terms of the rules and may check the allocation policy in order to satisfy themselves that there are no inappropriate barriers for people in terms of becoming tenants. The model rules have already been approved by both OSCR and the Scottish Housing Regulator (SHR) and will not present any difficulties in terms of obtaining consent unless material changes from the model are sought.

4.2.3 Jacqui is currently drafting the application for OSCR for Committee's approval. All applications for charitable status are submitted online however a printout of the application is provided for Committee approval. Whilst the application is online, the trustee declaration forms are required to be printed off and signed by all members of the Committee and then scanned and returned to TC Young to attach to the application. A copy of the form is attached along with the associated guidance for charity trustees. Committee is asked to read through the form and guidance and, have the required information ready for completing the paper copy of the form at the meeting. It is important that the application can be considered and approved by the Committee and submitted to OSCR as soon as possible to ensure we remain on track for holding a SGM in September. Following submission of the application for consent, OSCR usually aim to provide in principle consent within 28 days.

#### 4.3 Tenant/Member Communication

4.3.1 Once Committee has approved the final draft of the rules, we will begin communicating our plans for the constitutional change (including name change) and adoption of the new rules with our tenants/members. Note there is no statutory obligation to consult but it would be sensible to communicate our plans to tenants/members who will be asked to vote on them.

4.3.2 Attached is a draft of a FAQ (frequently asked questions) style information sheet for our tenants/members. If approved by Committee, the information will be distributed in early April. To ensure our tenants/members are fully informed of our plans and have had the

opportunity to ask any questions they may have, we will send out further information and offer drop-in sessions at our office and virtual sessions (attended by a committee member and me) over the coming months.

## 5. Risk

- 5.1 Changing our constitution is a relatively significant event, therefore, it is important that associated risks are considered. The presentations from both Linda and Lauren set out the potential advantages and disadvantages of changing our constitution to that of a charity. In terms of potential disadvantages/risk, these are:

**Could be seen as reducing/weakening tenant influence and control.**

This could be mitigated by having a clear aim within our new Membership Policy that we have a majority of tenants on the Committee, where possible. It would also be mitigated by ensuring that the communication with members is clear about the reasons for changing our constitution and the benefits. Part of this strategy would involve mechanisms for members (tenants) to ask questions and raise concerns. We will issue information by post, via links sent by email, text and posted on our facebook page. We will also offer tenants/members opportunities to meet with us face-to-face by holding drop-in sessions at various times (morning, afternoon and evening) with a choice of attending in-person or virtually.

**Members don't vote for rule change to become a charitable registered housing association.**

Again, this would be mitigated by ensuring we have an effective communication strategy in place which will provide clear and "plain English" information about the reasons for the change, the benefits and how the change would affect them and to provide assurance that the change in constitution would have no impact on them as tenants. Providing members with ample opportunity to ask questions or raise concerns.

**Additional Regulation.** We would also be registered with OSCR who would be another Regulator. However, there is an agreement between OSCR and the Scottish Housing Regulator (SHR) that SHR will be the primary regulator. We will be required to submit an annual return to OSCR, which is along the lines of the annual return we do to the Financial Conduct Authority and involves providing a copy of our Financial Statements. Therefore, it is not envisaged that being registered with OSCR will be unduly onerous. Obviously, the majority of registered housing associations in Scotland are charitable.

**Restricted to Charitable Activities.** Our activities would require to be permitted under the Housing (Scotland) Act 2010 and a charitable activity

under the Charities Act (e.g. relief of poverty, relief of those in need by reason of age, financial hardship or other disadvantage). This does not present a real risk to Rosehill as fundamentally we are about providing good quality, affordable homes and the provision of good quality services including services such as welfare benefits advice.

- 5.2 Committee is reminded that Linda's and Lauren's presentations covered the challenges and risks of a fully mutual co-operative e.g. the challenges of recruiting committee members from a closed group and the potential regulatory risk if committee membership fell below 7.
- 5.3 From the information provided at both Constitutional Review Sessions, Committee concluded that there were more advantages than disadvantages to changing to a charitable registered housing association. The advantages are clearly set out in both presentations, which are available on DecisionTime, so I do not intend to repeat them here.
- 5.4 Other identified risks are as follows:

**Governance** – not taking appropriate advice and giving the matter full consideration could lead to the wrong decision being made.

*Mitigating measures* - from the beginning of this process Rosehill commissioned external, expert advice from a Governance Consultant to undertake a review of its constitution and to explore alternatives.

**Legislation/Regulation** – linked with the above, if we failed to take appropriate advice including legal advice on changing our constitution and following the required processes, we could breach the associated legal and regulatory requirements.

*Mitigating measures* - Rosehill has continued to work with its Governance Consultant and has taken legal advice. This has included: consideration of the report from the Governance Consultant on the outcome of the review of Rosehill's constitution; holding 2 sessions in 2023 to explore options including retaining the status quo and to consider the risks and benefits of staying as a fully mutual housing co-operative and changing our constitution and becoming a charitable registered housing association. The Governance Consultant facilitated both sessions and our solicitor attended the second session to provide the legal basis and explain the processes for changing our constitution. A further session was held in January 2024 to explore the model charitable rules again facilitated by the Governance Consultant with our solicitor attending to provide clarity on any legal points and answer any questions to aid the discussion.

In conjunction with our Governance Consultant and Solicitor, I produced a timetable of the key processes and timelines for achieving the constitutional change (which also includes a name change) to ensure that we are in a position to hold an SGM in September 2024 to put the proposal to our members. Having a clear timetable in place ensures we will meet our legal and regulatory requirements for changing our constitution e.g. seeking our lender's consent, applying to the Office of the Scottish Charity Regulator, submission of new rules and name change to FCA for registration and a notifiable event to SHR.

**Reputation** – if we fail to follow correct procedures, we run the risk that we can't deliver our plans to change our constitution and therefore, lose the confidence of our members (tenants) and stakeholders.

If we fail to adequately inform and engage with our members over the proposed constitutional change (and name change) we could be accused of not being suitably transparent about our plans, which could lead to dissatisfaction amongst our members (tenants).

*Mitigation measures* – the measures outlined under Governance and Legislation/Regulation should mitigate the first risk set out above.

To ensure the support of our Members for the change to our constitution we will embark on an awareness campaign and communication strategy to ensure our Members are fully informed. This will include setting out our reasons for the proposed constitutional change, what the main changes are and what this means for our members. We will use different methods for sharing this information e.g. paper form and emailing/texting links to information on our website. We will give our members the opportunity to attend a mix of in-person and virtual events to hear more about the proposal and ask any questions they may have.

When it is appropriate to do so we will notify other stakeholders and partners e.g. GCC of our plans to demutualise.

## **6. Compliance and Assurance**

6.1 The approach we have undertaken to the proposed constitutional change including taking independent expert advice and legal advice and having a clear timetable of the key stages of the processes required will ensure we are meeting our legal and regulatory requirements.

6.2 In particular:

### **Standard 4**

The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.

### **Guidance**

4.1 The governing body ensures it receives good quality information and advice from staff and, where necessary, expert independent advisers, that is timely and appropriate to its strategic role and decisions. The governing body is able to evidence any of its decisions.

### **Standard 7**

**The RSL ensures that any organisational changes or disposals it makes safeguard the interests of, and benefit, current and future tenants.**

### **Guidance**

Where an RSL is considering organisational or constitutional change, or acquisition or disposal of land or assets:

7.1 The governing body discusses and scrutinises any proposal for organisational change and ensures that the proposal will benefit current and future tenants.

### Evidence Bank

- 6.3 A copy of this report will be added to the evidence bank for Regulatory Standards 1, 2, 4 and 7.
- 6.4 Committee is reminded that the Assurance Exercises (with links to the evidence bank) are available to review on the Committee log-in area of our website.

## **7. Summary and Decisions Sought**

- 7.1 Beginning in late 2022, Committee has been considering changing its constitution to a charitable registered housing association. Taking advice from our Governance Consultant and Solicitor and following committee sessions to explore the proposal further, Committee made its initial decision in May 2023 to proceed with the constitutional change which also involved a name change. This was on the basis that the proposal would need to be put to our Members for approval.
- 7.2 More recently Committee had a discussion session with our Governance Consultant and Solicitor to explore possible amendments/variations to the Charitable Model Rules and to consider the associated potential risks and challenges. Following further consideration of the draft rules at its February meeting, the rules have been updated to reflect Committee's preferences to any variations to the rules.

TC Young has contacted FCA providing a copy of the draft rules (with proposed variations) and asked if they could confirm that they do not foresee anything within the proposed rules that would prevent them from registering the proposed rules at the relevant time. A response is awaited from FCA. The final draft of the rules is attached (a track change version and a clean version).

- 7.3 Section 3 sets out the proposed variations to the Model Rules 2020.
- 7.4 Section 4 sets out the next key steps we need to undertake to ensure we remain on track for seeking our Members' approval to adopt the new rules at a September AGM.
- 7.5 Section 5 sets out the risks and mitigating measures in relation to the constitutional change.
- 7.6 Under Section 6 we have demonstrated our compliance with Regulatory requirements.
- 7.7 Committee is asked to consider this report and the attachments and decide on the following:
- To approve the variations to the Model Rules as set out in Section 3;
  - To approve the revised rules, which are attached and the following resolution which is required to be put to the members of Rosehill:
    - “(a) That the Co-operative adopts the Rules in the form attached to this notice in substitution for the existing Rules of the Co-operative subject to any non-material amendments that may be required by the Scottish Housing Regulator of the Financial Conduct Authority.
    - (b) That the name of the Co-operative be changed from “Rosehill Housing Co-operative Limited” to “Rosehill Housing Association Limited” immediately on the registration of the new Rules with the Financial Conduct Authority.”
  - To convene a Special General Meeting of members to be held, as a hybrid meeting, on the 17<sup>th</sup> of September 2024 at 6:30 pm for the purpose of approving the new rules;
  - To approve the FAQ information sheet to go out to our tenants/members in early April.

## 2. Review of Model Rules – Committee Session 30/01/24

- 2.1 Linda presented the draft rules which had been prepared by Lauren Little and her colleague Jacqui Baynham with input from Linda and myself. A summary of the proposed changes and Committee’s preferences are set out in the table below. Committee is asked to note that the notes from the Session which provide more detail, will be made available on Decision Time shortly. Attached is a copy of the commentary on the proposed changes that Linda Ewart produced and was issued to Committee prior to the session.

Changes	Committee’s preferences
Our name would need to change, as we would no longer be a co-operative, our name would be Rosehill Housing Association.	N/A
Rule 2 - Revises Rosehill’s purpose and objects to (a) allow tenancies to be granted to people who are not members; (b) describe Rosehill’s permitted activities, to align with charitable purposes	N/A
Rule 6 and Rule 7 enable an option to have “organisations” as members. Linda explained that she and I had previously discussed this option and had concluded that we couldn’t see any particular benefit of having organisations as members. Therefore, it was being recommended that we do not include this option in the rules.	See Rule 7 below
Rule 7 – Applying for Membership – this now goes beyond tenants. Tenants can become members if they wish but they are no longer required to do so, which is a big change. Membership would be open to tenants, services users of	Following discussion Committee advised its preference would be to keep the proposed membership categories i.e. tenants, service users and others who support the objects of

<p>Rosehill and other persons who support the objects of Rosehill.</p> <p>Having a clear membership policy in place will be key. The management committee has complete discretion in approving membership applications. Membership applications cannot be considered during the 14-day period leading to a general meeting. Joint membership not possible: one member = one vote</p>	<p>Rosehill but not to include organisations.</p>
<p>Rule 10 – This is a new provision in the model rules and requires non-tenant members to notify Rosehill of a change of address within 3 months.</p>	<p>N/A</p>
<p>Rule 11 - introduces grounds for ending membership but not related to a tenancy ending. The grounds include missing 5 AGMs in a row where no apologies have been submitted or a representative appointed to attend and vote on the member's behalf.</p>	<p>N/A</p>
<p>Rule 13 (will be renumbered as Rule 12) – Specifies that shares cannot be held jointly. Joint tenants of Rosehill may become individual members. This is another big change from our current fully mutual rules, where there is only one member per household but joint tenants can hold joint membership/share with the first named being the member with full membership rights i.e. attend the AGMs and vote on any matters and be able to stand for election to the Committee.</p>	<p>N/A</p>

<p>Rule 37 (will be renumbered as Rule 36) – This relates to Committee Membership. Maximum number of Committee Members to be 12 which maintains the status quo. However there is now a big difference to Committee Membership as anyone who is a member can apply to join the Management Committee. No longer restricted to tenants (as required by fully mutual rules) but membership now also open to service users and others who support the objects of Rosehill. Potential to build in a safeguard that there be a tenant majority for Committee membership.</p> <p>The advantages and disadvantage of such a provision were discussed at length with Lauren Little providing some scenarios of the challenges that may arise if a tenant majority requirement is added to the rules.</p>	<p>Committee concluded its preference would be to keep membership of the Committee more open and therefore not to add a tenant majority requirement to the rules. However, its preference was to restrict the number of places on the Committee for non-tenant service users to 2 places.</p>
<p>Rule 43 (will be renumbered as Rule 42) This relates to eligibility to join the Committee. There is an optional provision 43.1.12 (42.1.12) that can be added in relation to members who are related to existing Committee Members. It is being proposed that this optional provision be amended to prevent two or more members living at the same address being Committee Members at the same time.</p>	<p>Committee’s preference was to go with the amended optional provision i.e. a person can not join the Management Committee if they live at the same address as a Committee Member.</p>
<p>Rule 59.5 (will be renumbered as 58.5) Proposes a requirement that the Chair must be a tenant member (59.5): this is not included in the Model Rules,</p>	<p>Committee discussed the pros and cons of this but advised it wished to give this further consideration. It was agreed that this would be discussed further at</p>

although other RSLs have similar requirements.	the Management Committee meeting in February.
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These are the Rules

of

Rosehill Housing Association Limited

Based upon  
SFHA Charitable Model Rules (Scotland) 2020

Registered under the  
Co-operative and Community Benefit Societies Act 2014  
and the Housing (Scotland) Act 2010

**Published by**  
**the Scottish Federation of Housing Associations**  
**in co-operation with The Scottish Housing Regulator**

3<sup>rd</sup> Floor, Sutherland House,  
149 St Vincent Street,  
Glasgow, G2 5NW  
Tel: 0141 332 8113  
Fax: 0141 332 9684

## **Further guidance**

### **Further Advice**

A separate document is also available from the SFHA Rules Service, which gives guidance on the use of these rules and the options. Advice is also available from staff at The Scottish Housing Regulator.

Advice on the procedural aspects of making a Rule registration application or Rule Amendment application is also available from the SFHA Rules Service.

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## **INTRODUCTION**

### **Name**

- 1 The name of the Society shall be Rosehill Housing Association Limited (hereinafter referred to as "the Association").

### **Objects**

- 2 The objects of the Association are:
  - 2.1 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
  - 2.2 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.
- 3 The permitted activities and powers of the Association will include anything which is necessary or expedient to help the Association achieve these objects.
- 4.1 The Association shall not trade for profit and any profits shall only be applied for the purpose of furthering the Association's objects and/or in accordance with these Rules.
- 4.2 Nothing shall be paid or transferred by way of profit to Members.
- 5 The registered office of the Association is at : 250 Peat Road, Glasgow, G53 6SA.

## **MEMBERSHIP**

- 6 The Members of the Association shall be those persons who hold a share in the Association and whose names are entered in the Register of Members.

### **Applying for Membership**

- 7.1 The Committee shall set, review and publish its membership policy for admitting new Members. Subject to the provisions of Rule 7.2 the following shall be eligible to become Members:-
  - 7.1.1 Tenants of the Association;
  - 7.1.2 Service users of the Association;
  - 7.1.3 Other persons who support the objects of the Association.

- 7.2 If you are applying for membership you must send a completed and signed application form and the sum of one pound (which will be returned to you if the application is not approved) to the Association's registered office. Whilst it is the Association's intention to encourage membership, the Committee has absolute discretion in deciding on applications for membership and the following shall constitute grounds for refusal of an application for membership:-
- 7.2.1 Where membership would be contrary to the Association's Rules or policies; or
- 7.2.2 Where a conflict of interest may exist which, even allowing for the disclosure of such an interest, may adversely affect the work of the Association; or
- 7.2.3 Where the Committee considers that accepting the application would not be in the best interests of the Association.
- 7.3 Your application shall be considered by the Committee as soon as reasonably practicable after its receipt by the Association. An application for membership will not be considered by the Committee within the period of fourteen days before the date of a general meeting. The Committee has the power in its absolute discretion to accept or reject the application.
- 7.4 If the Committee approve your application, you will immediately become a Member and your name and other necessary particulars will be included in the Register of Members within seven working days. You will then be issued one share in the Association.
- 8 You can apply for membership of the Association from the age of 16.
- 9 No Member can hold more than one share in the Association.
- 10 If you change your address, you must let the Association know by writing to the Secretary at the registered office within three months. This requirement does not apply if you are a tenant of the Association and have moved home by transferring your tenancy to another property owned and managed by the Association.

## **ENDING YOUR MEMBERSHIP**

- 11.1 Your membership of the Association will end and the Committee will cancel your share and record the ending of your membership in the Register of Members if:-
- 11.1.1 You resign your membership giving seven days' notice in writing to the Secretary at the registered office; or
- 11.1.2 The Committee reasonably believes that you have failed to tell the Association of a change of address as required by Rule 10; or
- 11.1.3 For five annual general meetings in a row you have not attended, submitted apologies or appointed a representative to attend and vote on your behalf by proxy; or
- 11.1.4 The Association receives a complaint about your behaviour and two-thirds of the Members voting at a special general meeting agree to end your membership. The following conditions apply to this procedure:
- 11.1.4.1 the complaint must be in writing and must relate to behaviour which could harm the interests of the Association.

- 11.1.4.2 the Secretary must notify the Member of the complaint in writing not less than one calendar month before the meeting takes place;
  - 11.1.4.3 the notice for the special general meeting will give details of the business for which the meeting is being called;
  - 11.1.4.4 you will be called to answer the complaint at the meeting. The Members present will consider the evidence supporting the complaint and any evidence you decide to introduce;
  - 11.1.4.5 the Members can vote in person or through a representative by proxy;
  - 11.1.4.6 if you receive proper notice but do not go to the meeting without providing a good reason, the meeting will go ahead without you and the Members will be entitled to vote to end your membership.
- 11.2 If your membership is ended in accordance with Rule 11.1.4, you will immediately cease to be a Member from the date that the resolution to end your membership was passed and any further application for membership by you will need to be approved by two-thirds of the Members voting at a general meeting.

## **SHARE CAPITAL**

### **Shares**

- 12 The share capital of the Association will be raised by issuing one-pound shares to Members. Shares cannot be held jointly. Joint tenants of the Association may each become individual Members.
- 13 There is no interest, dividend or bonus payable on shares.

### **Transferring Shares**

- 14 You shall not be entitled to any property of the Association in your capacity as Member and your share is not withdrawable or transferable save in the circumstances set out in Rules 15 and 16.
- 15 You cannot sell your share but you can transfer it if the Committee agrees.
- 16.1 If you die or end your membership or have your membership ended the Committee will cancel your share (except in those circumstances outlined in Rules 16.2 and 16.3) and the value of the share will then belong to the Association.
- 16.2 You can nominate the person to whom the Association must transfer your share in the Association when you die, as long as the person that you nominate is eligible for membership under these Rules and in terms of the Association's membership policies. On being notified of your death, the Committee shall transfer or pay the full value of your share to the person you have identified. Your nomination must be in the terms required by the Co-operative and Community Benefit Societies Act 2014.
- 16.3 If you die or become bankrupt and your personal representative or trustee in bankruptcy seeks to claim your share, the Committee (to the extent that your personal representative or trustee in bankruptcy has right) will transfer or pay the value of your share in terms of your representative's or trustee's instructions.

## **BORROWING POWERS**

- 17.1 The Association can borrow money as long as the total borrowing at any time is not more than £100 million.
- 17.2 In respect of any proposed borrowing for the purposes of Rule 17.1, the amount remaining undischarged of any index-linked loan previously borrowed by the Association 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.
- 17.3 For the purposes of Rule 17.1 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 Association at the time of the proposed borrowing.
- 17.4 The Association will not pay more than the market rate of interest as determined by the Committee having regard to the terms of the loan on any money borrowed.
- 17.5 The Association will not accept money on deposit.
- 17.6 The Association can lend money to an organisation which is a subsidiary of the Association 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 Committee having regard to the terms of the loan. Where the Association 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.
- 17.7 The Association may borrow money from such lawful sources as is permitted by its Treasury Management Policy subject always to the requirement that the Association will comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time.
- 17.8 Subject to the foregoing provisions the Committee can determine and change the conditions under which the Association borrows or lends money.
18. The Association shall not lend money to Members.

## **GENERAL MEETINGS**

19. Notwithstanding any other provisions of the Rules (which shall be subject to the terms of this Rule 19) a Member cannot insist on attending a general meeting of the Members, or voting at the meeting, by any particular means. Further, the following provisions shall apply to the conduct of general meetings when so determined by the Committee:-
- 19.1 a general meeting need not be held in any particular place and the meeting may be held without any number of those participating in the meeting being together at the same place.

- 19.2 a general meeting may be held by any means which permits the Members attending to hear and comment on the proceedings during the meeting. Members attending the meeting by such means shall be present at the meeting for the purposes of Rule 23.1.
- 19.3 a Member is able to exercise the right to vote at a meeting (including if a poll is required) by such means as is determined by the Chairperson and which permits the Member's vote to be taken into account in determining whether or not a resolution is passed.

## **Annual General Meeting**

- 20. The Association will hold a general meeting known as the annual general meeting within six months of the end of each financial year of the Association. The functions of the annual general meeting are to:
  - 20.1 present the Chairperson's report on the Association's activities for the previous year;
  - 20.2 present the accounts, balance sheet and auditor's report;
  - 20.3 elect Committee Members.
  - 20.4 appoint the auditor for the following year; and
  - 20.5 consider any other general business included in the notice calling the meeting.

## **Special General Meeting**

- 21.1 All general meetings other than annual general meetings are known as special general meetings. The Secretary will call a special general meeting if:
  - 21.1.1 the Committee requests one; or
  - 21.1.2 at least four Members request one in writing. If there are more than 40 Members, at least one tenth of all the Members must ask for the meeting.
- 21.2 Whoever asks for the meeting must give the Secretary details of the business to be discussed at the meeting.
- 21.3 If a special general meeting is requested, the Secretary must within 10 days of having received the request give all Members notice calling the meeting. The meeting must take place within 28 days of the Secretary receiving the Members' request. The Secretary should decide on a time, date and place for the meeting in consultation with the Committee or the Chairperson, but if such consultation is not practicable the Secretary can on his/her own decide the time, date and place for the meeting.
- 21.4 If the Secretary fails to call the meeting within 10 days, the Committee or the Members who requested the meeting can arrange the meeting themselves.
- 21.5 A special general meeting must not discuss any business other than the business mentioned in the notice calling the meeting.

## **Notice for Meetings**

- 22.1 The Secretary will call all general meetings by written notice posted or sent by fax or email to every Member at the address, fax number or email address given in the Register of Members at least 14 days before the date of the meeting. This notice will give details of:

- 22.1.1 the time, date and place of the meeting;
- 22.1.2 whether the meeting is an annual or special general meeting;
- 22.1.3 the business for which the meeting is being called.

- 22.2 The Committee may ask the Secretary to include with the letter or send separately to Members any relevant papers or accounts. If a Member does not receive notice of a meeting or papers relating to the meeting, this will not stop the meeting going ahead as planned. Each communication sent to a Member by post, addressed to his or her registered address, shall be deemed to have arrived forty eight hours after being posted. Each communication sent to a Member by fax or email shall be deemed to have arrived on the day it is sent.
- 22.3 The proceedings of a meeting shall not be invalidated by the inadvertent failure of the Association to send a notice calling the meeting to any Member.

## **Procedure at General Meetings**

- 23.1 For a meeting to take place there must be at least seven Members either present at the meeting or represented by a representative approved in terms of Rule 26.1. If there are more than 70 Members, at least one-tenth or 45 members (whichever is the lower) must either be present or represented by a representative in terms of Rule 26.1.
- 23.2 If not enough Members are present in person or by representative within half an hour of the time the meeting was scheduled to start, the meeting shall be rescheduled to the same day the following week at the same time and at such place as may be fixed by the Chairperson of the meeting and announced at the meeting. There is no need to give notice to Members of the rescheduled meeting. If at that meeting there are not enough Members present in person or by representative at the scheduled starting time the meeting can still go ahead.
- 24 If a majority of Members present agree, the Chairperson of a meeting can adjourn the meeting. No business can be discussed at the adjourned meeting other than the business not reached or left unfinished at the original meeting. There is no need to give notice to Members of the adjourned meeting.
- 25.1 The Chairperson of the Committee will be Chairperson at all meetings of the Association. If there is no Chairperson or he/she is not present or willing to act, the Members present must elect a Member of the Committee to be Chairperson of the meeting. If no Committee Members are present, the Members present must elect a Member to be Chairperson of the meeting.
- 25.2 If the Chairperson arrives later, after the meeting has commenced, s/he will take over as Chairperson of the meeting as soon as the current agenda item is concluded.

## **Proxies/Representatives**

- 26.1 To appoint a representative to vote on your behalf by proxy, you must let the Association have a properly completed document in the form shown in Appendix 1. Your representative does not need to be a Member. The document must reach the Association at least five days before the meeting at which you want to be represented. The Chairperson shall not be entitled to act as a representative for any other Member.

- 26.2 If there is any doubt about whether your representative has authority to vote, the Chairperson will decide and his/her decision will be final.
- 26.3 The maximum number of proxy votes that may be cast by any one person is 10.
- 26.4 To reverse your appointment of a representative, you must let the Association have a properly completed document in the form shown in Appendix 2. The document must be presented to the Association before the meeting at which you no longer want to be represented convenes. Alternatively, if you declare yourself present before the meeting convenes, the appointment of a representative to vote on your behalf will automatically fall.
- 26.5 The Chairperson will report to the meeting the details of any documents seeking to appoint a representative received but which are not valid.

## **Voting**

- 27 If a decision of a meeting is put to the vote, the outcome will be determined by the majority of those Members voting. Voting will be by a show of hands except where a poll is requested or required. Votes cannot be taken on resolutions which conflict with any provisions of these Rules or the law.
- 28.1 Where a vote is by a show of hands every Member present in person has one vote. Where a vote is by a poll every Member present in person or who has appointed a representative has one vote. Where an appointed proxy is present, and he/she advises the Chairperson, the Chairperson shall direct that the vote is by a poll.
- 28.2 In relation to the election of Committee Members, the vote is by a poll.
- 29 If there is an equal number of votes for and against a resolution, or in relation to the election of Committee Members, the Chairperson will have a second and deciding vote. The Chairperson's announcement of the decision of a vote will be final and conclusive. The decision is then recorded in the minutes of the meeting. There is no need to record the number of votes for or against the decision.
- 30.1 A poll can be required before or immediately after a vote by a show of hands, if at least one-tenth of the Members present at the meeting (in person or by proxy through a representative appointed in accordance with Rule 26.1) request this.
- 30.2 A poll must take place as soon as the Chairperson has agreed to it, in line with the Chairperson's instructions. The result of the poll will stand as the decision of the meeting.

## **Proceedings at General Meetings**

- 31 All speakers must direct their words to the Chairperson. All Members must remain quiet and orderly while this is happening.
- 32 You will not be allowed to speak more than once on any individual matter unless it is to explain something or ask for an explanation until every other Member has had the chance to speak. You will then have the opportunity to speak a second time on a matter but only if the Chairperson agrees. Where the Chairperson raised the matter for discussion initially, she/he shall be permitted to make a final reply on the matter.

- 33 The Chairperson will decide how long each speaker is allowed to speak, allowing equal time to each speaker.
- 34 If any point arises which is not covered in these Rules, the Chairperson will give his/her ruling. If the Chairperson's ruling is challenged by more than one person, the Chairperson will step down and those present will decide the point raised on a majority vote. If the vote is tied, the Chairperson's original ruling is carried.
- 35 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.

## **THE COMMITTEE OF MANAGEMENT**

### **Composition of the Committee**

- 36.1 The Association shall have a Committee of Management which shall have a minimum of 7 and a maximum (including co-optees) of 12 persons. No more than two members of the Committee of Management shall be members who receive a factoring service from the Association. The Association shall keep up to date a register of the names of the Committee Members which shall be made available to any person at no cost. The names of Committee Members will also be published by the Association on its website, and in its annual reports and other similar documentation.
- 36.2 The first Committee Members will be the Members who have signed the application to register the Association. The first Members and all subsequent Members who are eligible shall be Committee Members until there are more than seven Members. Once there are more than seven Members of the Association, at the end of the next annual general meeting, all of the Committee Members shall retire.
- 36.3 A person must be aged 18 or over and a Member to become a Committee Member (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.
- 36.4 An employee of the Association, or a Close Relative of an employee, may not be a Committee Member.
- 36.5 No Committee Member may take office until they have agreed to and signed the Association's code of conduct for Committee Members.
- 36.6 The Committee shall assess annually the skills, knowledge, diversity and objectivity that it needs for its decision making and what is contributed by the Committee Members by way of annual performance reviews. The Committee must be assured that any Committee Member who has continuous service on the Committee of nine years or more and who is seeking re-election is able to demonstrate his/her continued effectiveness as a Committee Member before he/she may stand for re-election.
- 36.7 Each of the Committee Members shall, in exercising his/her role as a Committee Member, act in the best interests of the Association, its tenants and service users and will not place any personal or other interests ahead of his/her primary duty to the Association; and, in particular, must:-

- 36.7.1 seek, in good faith, to ensure that the Association acts in a manner which is in accordance with its objects.
  - 36.7.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person.
  - 36.7.3 in circumstances giving rise to the possibility of a conflict of interest between the Association and any other party:-
    - 36.7.3.1 put the interests of the Association before that of the other party, in taking decisions as a Committee Member;
    - 36.7.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the Association and refrain from participating in any discussions or decisions involving the other Committee Members with regard to the matter in question
  - 36.7.4 ensure that the Association complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.
- 36.8 The Committee can require that a Committee Member who is being investigated for a potential breach of the Association's Code of Conduct for Committee Members take leave of absence and not attend any meeting in his or her capacity as Committee Member until the Committee has completed its consideration of the potential breach. When on such leave of absence, the Committee Member will not be entitled to receive minutes and/or documents in his or her capacity as a Committee Member relating to the business of the Association.

## Interests

- 37.1 The Committee shall set and periodically review its policy on payments and benefits. If a person is a Member, employee of the Association or serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the policy. In making any payment or conferring any benefit the Association shall act at all times with transparency, honesty and propriety.
- 37.2 If a person serves on the Committee or any sub-committee he/she must declare any personal or other external interests on an annual basis in accordance with the Association's Code of Conduct for Committee Members. If while serving on the 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 Committee. 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. If that person is inadvertently allowed to stay in the meeting and vote on the matter, his/her vote will not be counted.
- 37.3 If a person serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the Charities and Trustee Investment (Scotland) Act 2005 and as set out in the Association's policy referred to in Rule 37.1. 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.

## **ELECTING COMMITTEE MEMBERS**

- 38.1 At the end of the first annual general meeting after the total membership of the Association has risen to seven or more, all Committee Members must retire. From then on, at the end of every annual general meeting, one-third of the Committee Members or the nearest whole number thereto, must retire. Anybody appointed as a co-optee under Rule 41.1 or to fill a casual vacancy under Rule 40 and who retires for that reason, shall not count towards the one third provision. The retiring Committee Members should be selected in accordance with Rule 38.2.
- 38.2 In the absence of Committee Members standing down voluntarily, the retiring Committee Members should be those who have served the longest on the Committee since the date of their last election. If two or more Committee Members have served equally long and cannot agree who should retire, they must draw lots.
- 38.3 Committee Members must also retire if they have been co-opted onto the Committee under Rule 41.1 or have filled casual vacancies under Rule 40.
- 38.4 If a Committee Member retires from the Committee in terms of Rule 38 on the date of the next annual general meeting, that Committee Member can stand for re-election without being nominated.
- 39.1 If, at the annual general meeting the number of Members standing for election is less than or equal to the number of vacant places, the Chairperson will declare them elected without a vote. If there are more Members standing for election than there are vacant places, those present at the general meeting will elect Members onto the Committee, in accordance with Rule 28.2. Each Member present or who has appointed a representative will have one vote for each place to be filled on the Committee. A Member must not give more than one vote to any one candidate.
- 39.2 Nominations for election to the Committee can be made only by Members, must be in writing and in the form specified by the Association and must give the full name, address and occupation of the Member being nominated. A Member cannot nominate himself/herself for election to the Committee. Nominations must be signed by and include a signed statement from the Member being nominated to show that they are eligible to join the Committee in accordance with Rules 36.4 and 42, and that they are willing to be elected. Nomination forms can be obtained from the Association and must be completed fully and returned by hand or by post to the Association's registered office at least 7 days before the general meeting.
- 39.3 A nomination for election to the Committee can be rejected by a decision by not fewer than three quarters of the Committee Members on one or more of the following grounds:-
- 39.3.1 where election to the Committee would be contrary to the Association's Rules or policies; or
  - 39.3.2 where a conflict of interest may exist which, even allowing for the disclosure of such an interest may adversely affect the work of the Association; or
  - 39.3.3 where there is clear evidence of relevant circumstances from which it is concluded that election to the Committee would not be in the best interests of the Association.

- 39.4 The rejection of a nomination for election to the Committee shall be notified to the Member concerned in writing at any time prior to the date of the relevant annual general meeting.
- 40 If an elected Committee Member leaves the Committee between the annual general meetings, this creates a casual vacancy and the Committee can appoint a Member to take their place on the Committee until the next annual general meeting.

## **Co-optees**

- 41.1 The Committee can co-opt to the Committee or to a sub-committee anyone it considers is suitable to become a Committee Member or member of a sub-committee. Co-optees do not need to be Members, but they can only serve as co-optees on the Committee or sub-committee until the next annual general meeting or until removed by the Committee. A person co-opted to the Committee can also serve on any sub-committees.
- 41.2 A person appointed as a co-optee shall undertake the role of Committee Member or member of a sub-committee and accordingly will be subject to the duties and responsibilities of a Committee Member. Co-optees can take part in discussions at the Committee or any sub-committees and vote at Committee and sub-committee meetings on all matters except those which directly affect the Rules, the membership of the Association or the election of the Association's Office Bearers. Co-optees may not stand for election, nor be elected as one of the Office Bearers of the Committee.
- 41.3 Committee Members co-opted in this way must not make up more than one-third of the total number of the Committee or sub-committee members at any one time. The presence of co-optees at Committee Meetings will not be counted when establishing whether the minimum number of Committee Members are present to allow the meeting to take place as required by Rule 47 and the presence of co-optees will not count towards the quorum for sub-committee meetings.

## **Eligibility for the Committee**

- 42.1 A person will not be eligible to be a Committee Member and cannot be appointed or elected as such if:-
- 42.1.1 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
  - 42.1.2 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; or
  - 42.1.3 he/she is a party to any legal proceedings in any Court of Law by or against the Association; or
  - 42.1.4 he/she is or will be unable to attend the Committee Meetings for a period of 12 months; or
  - 42.1.5 he/she has been removed from the Committee of another registered social landlord within the previous five years; or
  - 42.1.6 he/she has resigned from the Committee in the previous five years in circumstances where the resignation was submitted after the date of his/her receipt of notice of a special committee meeting convened to consider a resolution for his/her removal from the Committee in terms of Rule 43.5; or
  - 42.1.7 he/she has been removed from the Committee in terms of Rules 43.4 or 43.5 within the previous five years; or

- 42.1.8 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; or
  - 42.1.9 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 Her 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; or
  - 42.1.10 a 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); or
  - 42.1.11 his/her nomination for election to the Committee has been rejected in accordance with Rule 39.3 during the period between the return of the completed nomination form and the commencement of the relevant Annual General Meeting; or
  - 42.1.23 he/she lives at the same address as a Committee Member.
- 42.2 A person cannot be re-elected as a Committee Member if the Committee is not satisfied under Rule 36.6 of the individual's continued effectiveness as a Committee Member. In these circumstances the Committee must not allow the individual to stand for re-election
- 43 A Committee Member will cease to be a Committee Member if:
- 43.1 he/she resigns his/her position as a Committee Member in writing; or
  - 43.2 he/she ceases to be a Member unless he/she is a co-optee in terms of Rule 41.1 or an appointee of The Scottish Housing Regulator; or
  - 43.3 he/she misses four Management Committee meetings in a row without special leave of absence previously being granted by the Committee either at his/her request or by exercise of the Committee's discretion; or
  - 43.4 the majority of Members voting at a general meeting decide this. (The Members at the meeting may then elect someone to take his/her place. If a replacement is not elected at the meeting, the Committee may appoint a Committee Member in terms of Rule 40); or
  - 43.5 the majority of those remaining Committee Members present and voting at a special meeting of the Committee convened for the purpose decide to remove him/her as a Committee Member. The resolution to remove him/her as a Committee Member must relate to one of the following issues:
    - 43.5.1 failure 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 Association;
    - 43.5.2 failure to sign or failure to comply with the Association's Code of Conduct for Committee Members; or
    - 43.5.3 a breach of the Association's Rules, standing orders or other policy requirements;
  - 43.6 he/she becomes ineligible as a Committee Member in terms of Rule 42; or
  - 43.7 he/she is a co-optee or was appointed to fill a casual vacancy and whose period of office is ended in accordance with Rules 38.1 or 41.1; or
  - 43.8 he/she is a Committee Member retiring in accordance with Rule 38.1.

## **POWERS OF THE COMMITTEE OF MANAGEMENT**

- 44 The Committee is responsible for directing the affairs of the Association and its business and may do anything lawful which is necessary or expedient to achieve the objects of the Association. The Committee is not permitted to exercise any powers which are reserved to the Association in general meetings either by these Rules or by statute. The Committee is responsible for the leadership, strategic direction and control of the Association with the aim of achieving good outcomes for its tenants and other service users in accordance with Regulatory Standards and Guidance issued by The Scottish Housing Regulator from time to time. The Committee is responsible for ensuring that the Association 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.
- 45 The Committee acts in the name of the Association 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 Committee have been restricted, unless they are already aware that such a restriction may exist.
- 46 Amongst its most important powers, the Committee can:-
- 46.1 buy, sell, build upon, lease or exchange any land and accept responsibility for any related contracts and expenses.
  - 46.2 agree the terms of engagement and remuneration of anyone employed in connection with the business of the Association and act as employer for anyone employed by the Association.
  - 46.3 grant heritable securities over land owned by the Association and floating charges over all or any part of property and assets both present and in future owned by the Association. This includes accepting responsibility for any related expenses.
  - 46.4 decide, monitor and vary the terms and conditions under which property owned by the Association is to be let, managed, used or disposed of.
  - 46.5 appoint and remove solicitors, surveyors, consultants, managing agents and employees, as required by the Association's business.
  - 46.6 refund any necessary expenses as are wholly necessary incurred by Committee Members and sub-committee members in connection with their duties.
  - 46.7 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 Association.
  - 46.8 accept donations in support of the activities of the Association.

## **COMMITTEE PROCEDURE**

- 47 It is up to the Committee to decide when and where to hold its ordinary meetings, but it must meet at least six times a year. There must be at least four Committee Members present for the meeting to take place.
- 48 The Committee will continue to act while it has vacancies for Members. However, if at any time the number of Committee Members falls below seven, the Committee can continue to act only for another two months. If at the end of that period the Committee has not found new Members to bring the number of Committee Members up to seven, the only power it will have is to act to bring the number of Committee Members up to seven.

- 49 Committee Members must be sent written notice of Committee meetings posted, or delivered, by hand or sent by fax or email to the last such address for such communications given to the Secretary at least seven days before the date of the meeting. The accidental failure to give notice to a Committee Member or the failure of the Committee Member to receive such notice shall not invalidate the proceeding of the relevant meeting.
50. Meetings of the Committee can take place in any manner which permits those attending to hear and comment on the proceedings.
- 51 All speakers must direct their words to the Chairperson. All Committee Members must remain quiet and maintain order while this is happening. The Chairperson will decide who can speak and for how long.
- 52 If any point arises which is not covered in these Rules, the Chairperson will give his/her ruling which will be final.
- 53 All acts done in good faith as a result of a Committee Meeting or sub-committee meeting will be valid even if it is discovered afterwards that a Committee Member was not entitled to be on the Committee.
- 54 A written resolution signed by not fewer than three quarters of the Committee Members or three quarters of the members of a sub-committee will be as valid as if it had been passed at a Committee Meeting or sub-committee meeting duly called and constituted.

### **Special Committee Meetings**

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

## **Sub-committees**

- 57.1 The Committee can delegate its powers to sub-committees or to staff or to Office Bearers. The Committee will establish the terms of reference for such delegation, which will be set down in writing and communicated to the recipient of the delegated powers. Such delegation will be set down in writing in standing orders, schemes of delegated authority or other appropriate documentation. In the case of a sub-committee such delegation shall include the purposes of the sub-committee, its composition and quorum for meetings. A minimum number of members for a sub-committee shall be three. There must be at least three of the members of a sub-committee present for the meeting to take place. The Committee shall be responsible for the on-going monitoring and evaluation of the use of delegated powers.
- 57.2 The meetings and procedures of sub-committees or otherwise must comply with the relevant terms of reference.
- 57.3 Any decision made by sub-committee must be reported to the next Committee Meeting.
- 57.4 The Committee can establish and delegate powers to sub committees, designated as Area Committees, to take decisions relating to the management and maintenance of properties within a particular geographical area. The Committee will determine the membership and delegated responsibility of an Area Committee in its terms of reference. An Area Committee shall exercise such delegated powers notwithstanding the provisions of Rules 41.1 and 41.3 which provisions shall not apply to Area Committees.

## **THE SECRETARY AND OFFICE BEARERS**

- 58.1 The Association must have a Secretary, a Chairperson and any other Office Bearers the Committee considers necessary. The Office Bearers, except for the Secretary, must be elected Committee Members or Committee Members appointed to fill casual vacancies in accordance with Rule 40 but cannot be co-optees. An employee may hold the office of Secretary although not be a Committee Member. The Committee will appoint these Office Bearers. If the Secretary cannot carry out his/her duties, the Committee, or in an emergency the Chairperson, can ask another Office Bearer or employee to carry out the Secretary's duties until the Secretary returns.
- 58.2 The Secretary and the other Office Bearers will be controlled, supervised and instructed by the Committee.
- 58.3 The Secretary's duties include the following (these duties can be delegated to an appropriate employee with the Secretary assuming responsibility for ensuring that they are carried out in an effective manner):
- 58.3.1 calling and going to all meetings of the Association and all the Committee Meetings;
  - 58.3.2 keeping the minutes for all meetings of the Association and Committee;
  - 58.3.3 sending out letters, notices calling meetings and relevant documents to Members before a meeting;
  - 58.3.4 preparing and sending all the necessary reports to the Financial Conduct Authority and The Scottish Housing Regulator;
  - 58.3.5 ensuring compliance with these Rules;
  - 58.3.6 keeping the Register of Members and other registers required under these Rules; and

58.3.7 supervision of the Association's seal.

58.4 The Secretary must produce or give up all the Association's books, registers, documents and property whenever requested by a resolution of the Committee, or of a general meeting.

58.5 At its first meeting after registration of the Association, the Committee will elect the Chairperson of the Association, the Secretary and any other Office Bearers the Committee considers necessary. Thereafter a Chairperson and other Office Bearers will be appointed on an annual basis at the next scheduled Committee Meeting held after each annual general meeting.

## **Role of the Chair**

58.6 The Chairperson is responsible for the leadership of the Committee and ensuring its effectiveness in all aspects of the Committee's role and to ensure that the Committee properly discharges its responsibilities as required by law, the Rules and the standing orders of the Association. 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:-

58.6.1 the Committee works effectively with the senior staff;

58.6.2 an overview of business of the Association is maintained;

58.6.3 the Agenda for each meeting is set;

58.6.4 meetings are conducted effectively;

58.6.5 minutes are approved and decisions and actions arising from meetings are implemented;

58.6.6 the standing orders, code of conduct for Committee Members and other relevant policies and procedures affecting the governance of the Association are complied with;

58.6.7 where necessary, decisions are made under delegated authority for the effective operation of the Association between meetings;

58.6.8 the Committee monitors the use of delegated powers;

58.6.9 the Committee receives professional advice when it is needed;

58.6.10 the Association is represented at external events appropriately;

58.6.11 appraisal of the performance of Committee Members is undertaken, and that the senior staff officer's appraisal is carried out in accordance with the agreed policies and procedures of the Association; and

58.6.12 the training requirements of Committee Members, and the recruitment and induction of new Committee Members is undertaken.

- 58.7 The Chairperson must be elected from the Committee Members (excluding co-optees) and must be prepared to act as Chairperson until the end of the next annual general meeting (unless s/he resigns the post). The Chairperson can only be required to resign if a majority of the remaining Committee Members present at a special meeting agree to this.
- 58.8 If the Chairperson is not present at a Committee meeting or is not willing to act, the Committee Members present will elect another Committee Member to be Chairperson for the Committee Meeting. If the Chairperson arrives at the meeting late, s/he will take over as Chairperson of the Committee meeting as soon as the current agenda item is concluded.
- 58.9 If the votes of the Committee Members are divided equally for and against an issue, the Chairperson will have a second and deciding vote.
- 58.10 The Chairperson can resign his/her office in writing to the Secretary and must resign if s/he leaves the Committee or is prevented from standing for, or being elected to the Committee under Rule 42. The Committee will then elect another Committee Member as Chairperson.
- 58.11 The Chairperson can be re-elected but must not hold office continuously for more than five years.

## **FINANCIAL GUARANTEES FOR OFFICERS**

- 59.1 The Committee shall take out fidelity guarantee insurance to cover all Office Bearers and employees who receive or are responsible for the Association's money, or, these office bearers and employees must be covered by a bond as set out in Schedule 1 of the Co-operative and Community Benefit Societies Act 2014, or a guarantee under which they promise to account for and repay money due to the Association accurately.
- 59.2 The Committee shall have the power to purchase and maintain indemnity insurance for, or for the benefit of, persons who are, or were at any time, Committee Members, officers or employees of the Association. A Committee Member may form part of a quorum and vote at a meeting where such insurance is under consideration notwithstanding the terms of Rules 37.1 and 37.2.
- 60 Office Bearers and employees will not be responsible for the Association's loss while they are carrying out their duties unless there has been gross negligence or dishonesty. If an Office Bearer or employee is dishonest, the Association will try to recover any loss that it has suffered and may alert the police or other relevant authority.

## **THE COMMITTEE'S MINUTES, SEAL, REGISTERS AND BOOKS**

### **Minutes**

- 61 Minutes of every general meeting, Committee Meeting and sub-committee meeting must be kept. Those minutes must be presented at the next appropriate meeting and if accepted as a true record, signed by the Chairperson of the meeting at which they are presented. All minutes signed by the Chairperson of the meeting shall be conclusive evidence that the minutes are a true record of the proceedings at the relevant meeting.

### **Execution of Documents and Seal**

- 62 The Association shall execute deeds and documents in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 and record the execution in the register. The use of a common seal is not required. The Association may have a seal which the Secretary must keep in a secure place unless the Committee decides that someone else should look after it. The seal must only be used if the Committee decides this. When the seal is used, the deed or document must be signed by the Secretary or a Member of the Committee or another person duly authorised to subscribe the deed or document on the Association's behalf and recorded in the register.

### **Registers**

- 63 The Association must keep at its registered office a Register containing:
- 63.1 the names and addresses of the Members and where provided for the purposes of electronic communication, fax numbers and e-mail addresses;
  - 63.2 a statement of the share held by each Member and the amount each Member paid for it;
  - 63.3 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 Association;
  - 63.4 a statement of other property in the Association, whether in loans or loan stock held by each Member; and
  - 63.5 the names and addresses of the Office Bearers of the Association, their positions and the dates they took and left office.
- 64.1 The Association must also keep at its registered office:
- 64.1.1 a second copy of the Register showing the same details as above but not the statements of shares and property. This second register must be used to confirm the information recorded in the main Register.
  - 64.1.2 a register of loans and to whom they are made.
  - 64.1.3 a register showing details of all loans and charges on the Association's land.
- 64.2 The inclusion or omission of the name of any person from the original Register of Members shall, in the absence of evidence to the contrary, be conclusive that the person is or is not a Member of the Association.

## **Registered Name**

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

## **Documentation**

- 66 The Association's books of account, registers, securities and other documents must be kept at the registered office or any other place the Committee decides is secure.
- 67 At the last Committee Meeting before the annual general meeting, the Secretary must confirm in writing to the Committee that Rules 61 to 66 have been followed or, if they have not been followed, the reasons for this. The Secretary's confirmation or report must be recorded in the minutes of the Committee Meeting.

## **ACCOUNTS**

- 68 The Association must keep proper books of accounts to cover its income, expenditure transactions and its assets, liabilities and reserves in line with Part 7 of the Co-operative and Community Benefit Societies Act 2014. It must also set up and maintain a suitable system for controlling its books of accounts, its cash and its receipts and invoices.
- 69 The Committee must send the Association's accounts and balance sheet to the Association's auditor. The auditor must then report to the Association on the accounts it has examined. In doing this, the auditor must follow the conditions set out in Part 7 of the Co-operative and Community Benefit Societies Act 2014 and Part 6 of the Housing (Scotland) Act 2010.
- 70 The Association must provide The Scottish Housing Regulator and the Financial Conduct Authority with a copy of its accounts and the auditor's report within six months of the end of the period to which they relate.

## **THE AUDITOR**

- 71.1 Each year the Association must appoint, at a general meeting of the Association, a qualified auditor to audit the Association's accounts and balance sheet. In this Rule "qualified auditor" means someone who is a qualified auditor under Section 91 of the Co-operative and Community Benefit Societies Act 2014.
- 71.2 None of the following can act as auditor to the Association:-
- 71.2.1 a Committee Member or employee of the Association; or
  - 71.2.2 a person who is a partner of, or an employee or employer of a Committee Member or employee of the Association.

- 72 The Association must appoint an auditor within three months of being registered by the Financial Conduct Authority. The Committee will appoint the auditor unless there is a meeting of the Association within that time. The Committee may appoint an auditor to fill in a casual vacancy occurring between general meetings of the Association. The Committee shall take such steps as it considers necessary to ensure the continuing independence of the Association's auditor including the periodic review of the need for audit rotation. The Association 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.
- 73.1 An auditor appointed to act for the Association one year will be re-appointed for the following year unless:-
- 73.1.1 a decision has been made at a general meeting to appoint someone else or specifically not to appoint them again; or
  - 73.1.2 they have given the Association notice in writing that they do not want to be re-appointed; or
  - 73.1.3 they are not a qualified Auditor or are excluded under Rule 71.2; or
  - 73.1.4 they are no longer capable of acting as Auditor to the Association; or
  - 73.1.5 notice to appoint another Auditor has been given.
- 73.2 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 Association that the matter requires to be discussed at the next meeting of the Association.
- 73.3 The Association 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 Association. If possible the Association will also give proper notice of this matter to the Members but if this is not possible, the Association can give notice by advertising in the local newspaper at least 14 days before the meeting.
- 73.4 The retiring Auditor may make representations to the Association or give notice that he/she intends to make representations at the meeting and the Association 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**

- 74.1 Every year, within the time allowed by the law, the Secretary shall send to the Financial Conduct Authority the annual return in the form required by the Financial Conduct Authority.
- 74.2 The Secretary must also send:
- 74.2.1 a copy of the auditor's report on the Association's accounts for the period covered by the return; and
  - 74.2.2 a copy of each balance sheet made during that period and of the auditor's report on that balance sheet.
- 75 If requested, the Association must provide a free copy of the latest annual return and auditor's reports to Members or people with a financial interest in the Association.

- 76 The Association must always keep a copy of the latest balance sheet and auditor's report publicly displayed at its registered office.
- 77 The Association must comply with the requests of The Scottish Housing Regulator for annual returns.

## **SURPLUSES AND DONATIONS**

- 78.1 The Association must not distribute its surpluses to Members.
- 78.2 The Committee shall set and review periodically its policy for the donation of funds to charities or other voluntary groups. Such donations must further the objects of the Association and the Committee shall report to the Members on such donations.

## **INVESTMENTS**

- 79 The Association's funds may be invested by the Committee in such manner as is permitted by its Investment Policy subject always to the requirement that the Association will comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time.

## **INSPECTING THE REGISTER**

- 80 Any Member or person having a financial interest in the Association can inspect their own account. They may also inspect the second copy of the Register of Members which shall be made available to them for inspection within 7 days of the request of a Member or eligible person. The books must be available for inspection at the place they are kept at all reasonable hours. The Committee may set conditions for inspecting the books.

## **DISPUTES**

- 81 Every dispute between the Association or the Committee and:-
- 81.1 a Member; or
  - 81.2 a person aggrieved who has ceased to be a Member within the previous six months; or
  - 81.3 a person claiming under the Rules of the Association

shall be dealt with in accordance with these Rules and any procedures determined by the Committee 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 Sherriffdom in which the Association's registered office is located.

## **STATUTORY APPLICATIONS TO THE FINANCIAL CONDUCT AUTHORITY**

- 82 Any 10 Members of the Association who have been Members for at least the 12 previous months can apply to the Financial Conduct Authority to appoint an accountant or actuary to inspect and report on the Association's books on payment to the Financial Conduct Authority of the costs required.
- 83.1 One-tenth of Members can apply to the Financial Conduct Authority to:
- 83.1.1 appoint an inspector to examine and report on the affairs of the Association; or
  - 83.1.2 call a special general meeting of the Association.
- 83.2 If there are more than 1000 Members in the Association, only 100 Members need to apply to the Financial Conduct Authority in terms of Rule 83.1.

## **COPIES OF RULES**

- 84 The Secretary shall, on demand, provide a copy of the Rules of the Association free of charge to any Member who has not previously been given a copy and, upon payment of such fee as the Association may require, not exceeding the amount specified by law, to any other person.

## **CLOSING DOWN THE ASSOCIATION**

- 85.1 The Association may be closed down in either of the following ways:
- 85.1.1 by an order or resolution to wind up the Association as set out in the Insolvency Act 1986; or
  - 85.1.2 In accordance with Section 119 of the Co-operative and Community Benefit Societies Act 2014, by an instrument of dissolution to which not less than three-fourths of the Members have given their consent testified by their signatures to the instrument.
- 85.2 The prior approval of the Office of the Scottish Charity Regulator is required before the Association can be dissolved. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to dissolve.
- 86 If any property remains after the Association has paid its debts, this property will be transferred to such other charitable registered social landlord as determined by The Scottish Housing Regulator.

## **CHANGING THE RULES**

- 87.1 Any of these Rules can be changed or deleted and new Rules can be introduced if three-quarters of the votes at a special general meeting are in favour of the change(s).
- 87.2 Where an amendment of these Rules affects the purposes of the Association the prior approval of the Office of the Scottish Charity Regulator is required. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to amend its purposes. Any other amendment of these Rules requires to be notified to them within three months of the change having been made.
- 87.3 The Association must apply to the Financial Conduct Authority to register every rule change as set out in treasury regulations. Each Member must receive a copy of the change. No change is valid until it has been registered by the Financial Conduct Authority. The Association must notify The Scottish Housing Regulator within 28 days of the change or amendment being made.
- 87.4 The Association can change its name if:
- 87.4.1 three-quarters of the votes at a special general meeting are in favour of the change; and
  - 87.4.2 the Financial Conduct Authority approves the change in writing.
  - 87.4.3 the Office of the Scottish Charity Regulator has given its prior approval. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to change its name.
- 87.5 If the Association changes its name in terms of Rule 87.4 it must notify The Scottish Housing Regulator in writing within 28 days of the change being made.
- 87.6 The Association can change its registered or principal office but must:
- 87.6.1 notify The Scottish Housing Regulator of the change in registered office within 28 days of the change having been made; and the Financial Conduct Authority as soon as possible after the change in registered office has been made.
  - 87.6.2 notify the Office of the Scottish Charity Regulator within 3 months of the change having been made.

## **INTERPRETING THESE RULES**

- 88 In these Rules, the following words and phrases have the meanings given below:
- 88.1 "A person claiming through a Member":- includes an heir, executor, assignee or nominee. This heading would be used in connection with disputes about the transfer of a Member's share after his death. It would also cover executors of a former Member
  - 88.2 "Association" means the registered social landlord referred to in Rule 1 whose Rules these are.

- 88.3 “Chairperson” means the Chairperson (or such other term that is used by the Association to denote the holder of this office) of the Association referred to in Rule 58.1.
- 88.4 “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.
- 88.5 “Committee” means the Committee of Management (or such other term that is used by the Association to denote the governing body of the Association) referred to in Rule 36.1.
- 88.6 “Committee Meeting” means a meeting of the Committee.
- 88.7 “Committee Member” means a member of the Committee.
- 88.8 “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.
- 88.9 “Group” means the Association and any organisation which is its parent, its subsidiary or is a subsidiary of its parent.
- 88.10 “Meeting” means a general meeting of the Association, whether special, general or annual referred to in Rules 19-22.
- 88.11 “Member” means a member of the Association whose name is entered in the Register of Members.
- 88.12 “Office Bearer” means the Chairperson, Secretary, and such other Officer Bearer appointed under Rule 58.1.
- 88.13 “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.
- 88.14 “organisation” means a legal body which exists separately and distinctly from its members and includes companies, building societies, community benefit societies, local authorities and so on and also for the purposes of these Rules includes unincorporated organisations such as social clubs, branches of political parties or trade unions and other voluntary bodies.
- 88.15 “property” includes everything which can be passed on by inheritance (including loans, certificates, books and papers).
- 88.16 A reference to law or statute is a reference to that law or statute as re-enacted, amended or replaced.
- 88.17 “Register of Members” means the register of members referred to in Rule 63.
- 88.18 “Rules” means the registered Rules of the Association.
- 88.19 “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.
- 88.20 “The Scottish Housing Regulator” means The Scottish Housing Regulator as established pursuant to Section 1 of the Housing (Scotland) Act 2010.
- 88.21 “Secretary” means the Office Bearer appointed by the Committee to be the Secretary of the Association or anyone authorised by the Committee to stand in for the Secretary.
- 88.22 Words in the singular also include the plural. Words in the plural also include the singular.

# APPENDIX 1

## PROXY FORM

You must use the wording shown below to appoint a representative to vote at a meeting for you. Please see Rule 26.1 for more details.

I (insert name) am a member of (insert name) \_\_\_\_\_ Limited.

My address is: (please insert).

I hereby appoint (insert name) who lives at (insert address) to be my representative and vote for me at the Association's meeting on (insert date) and any other dates that meeting continues on.

Your name \_\_\_\_\_

Your signature \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX 2

### CANCELLATION OF PROXY

You must use the wording shown below to reverse your application to send a representative to vote at a meeting for you. Please see Rule 26.4 for more details.

I (insert name) am a member of (insert name) \_\_\_\_\_ Limited.

My address is: (please insert).

I hereby revoke the appointment of (insert name) as my representative to vote for me at the Association's meeting on (insert date) made by me on the (insert date).

I no longer authorise the person referred to above to represent me at the meeting referred to above.

Your name \_\_\_\_\_

Your signature \_\_\_\_\_

# SIGNATURE OF COMMITTEE MEMBERS

Date

---

1.

---

2.

---

3.

---

Members

---

Secretary

# Application For Charitable Status



## Rosehill Housing Association Limited

### Section 1: Application contact

Full Name

Jacqui Baynham

Address

TC Young 7 West George Street GLASGOW

Postcode

G2 1BA

Telephone Number

01412252559

Email Address

jba@tcyoung.co.uk

State your relationship or role within the organisation

Legal Advisor

## Section 2: Data Protection Statement

OSCR processes information only in accordance with its regulatory functions under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act), and to inform research into the charity sector in Scotland. Any information you give us will be held securely and in accordance with the rules on data protection. Information may be shared with other regulatory bodies including HMRC, and if your application to become a charity is successful, certain information will appear on the Scottish Charity Register. Further information about data protection is available on the OSCR website on our [Privacy Policy](#) page and in our application specific [Privacy Notice](#).



I agree with this statement

## Section 3: Organisation Details

Proposed legal name (this must be exactly as it appears on the draft governing document). If you are applying to be a SCIO and your name contains a [sensitive word or expression](#) you must get approval from Companies House before you apply to OSCR and send evidence of the approval with your application.

Rosehill Housing Association Limited

English translation (if applicable)

Any other name by which the organisation will be known

Does the organisation have a parent charity?

No

Is the organisation registered with any other Regulators?

Yes

### Other Regulator

Regulator

Financial Conduct Authority

Reference/registration number\*

2220RS

### Other Regulator

Regulator

Scottish Housing Regulator

Reference/registration number\*

174

## Section 4: The Organisation's Legal Form

Please choose the [legal form](#) and type of governing document

Community Benefit Society

Upload the governing document (a draft document is acceptable at this stage)

## Section 5: Principal Contact Details

Full name

Geri Mogan

Position in the organisation

Director

Address

250 Peat Road, Glasgow

Postcode

G53 6SA

Is this address the:

Principal Office

The principal office address of the charity, or the name and address of a charity trustee will be published on the Scottish Charity Register unless doing so is likely to jeopardise the safety or security of any person or premises.

We will not withhold a Principal Contact address from the Register simply on the grounds that it is a private residence.

Would publishing this address jeopardise anyone's safety or security?

No

Main Telephone Number

0141 881 0595

Alternative Contact Number

First Email Address

geri.mogan@rosehillhousing.co.uk

Second Email Address

Website Address

www.rosehillhousing.co.uk

Facebook Address

Twitter Address

# Section 6: Replacing an existing charity or organisation

Is this proposed charity being set up to replace an existing charity or organisation?

No

## Section 7: Activities

Please copy and paste the organisation's [charitable purposes](#) as set out in the (draft) governing document.

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 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.

What are the activities or projects the organisation intends to run?

The charity's activities are to provide housing to its tenants.

How will these activities help achieve the organisation's charitable purposes?

The activities would be carried out by constructing, improving and managing the accommodation, regenerating and providing care for those in need by reason of age, health or disability. By providing such housing we are providing relief to those in need of such housing and are therefore furthering the purposes set out in our rules.

Who will benefit from these activities?

The charity's activities provide a benefit to the public by providing affordable social housing. The aim will be to provide services that address the needs of local people.

Is the organisation already up and running?

Yes

For how long?

16 January 1986

Does the organisation have accounts ?

Yes

Upload the most recent copy of the accounts

Rosehill Accounts to 30Sep22.pdf

The following questions will help us assess whether your organisation provides or intends to provide [public benefit](#) if it undertakes particular kinds of activity.

Will the organisation be involved in training and education?

No

Will the organisation be carrying out trading activities?

No

Will the organisation be supporting and engaging in overseas activity?

No

Will the organisation work with children or vulnerable adults?

Yes

Have you read OSCR's guidance on [safeguarding](#)?

Yes

Will the organisation be providing grants to individuals or other organisations?

No

## Section 8: Private Benefit

Does the organisation employ or intend to employ anyone, or pay anyone to work for it?

Please answer Yes or No

Yes

Employee

Job description

How much will they get paid?

Which of these descriptions best fits the employee?

Does the organisation buy goods or services or intend to buy goods or services from any of the following?

- A charity trustee
- its founder
- a person related to the founder
- a person connected to the founder
- an organisation connected to a charity trustee
- an organisation connected to the founder
- a person connected to a charity trustee
- Not connected to any of the above

Please answer Yes or No

No

Will any other kind of private benefit be received by

- A charity trustee
- its founder
- a person related to the founder
- a person connected to the founder
- an organisation connected to a charity trustee
- an organisation connected to the founder
- a person connected to a charity trustee

Please answer Yes or No

No

Does or will the organisation rent or lease premises to provide its services?

No

## Section 9: Restrictions on access to benefit

Does your organisation operate a membership scheme?

Yes

Who is eligible to become a member?

The members shall be those persons or organisations who hold a share in the organisation and whose names are entered in the register of members.

How do you become a member?

You must send a completed application form to the organisation.

Is there a membership fee?

Yes

How much is the fee?

Each member will pay £1 at time of application for membership.

Please enter any concessionary rates

None

Do you have any benefits restricted only to members?

No

Please tell us whether there are any physical or practical restrictions to accessing the benefit your organisation will provide. (For example will your organisation operate limited opening hours, or is there a lack of disabled access to the building where you will carry out your services?)

None.

Will the organisation charge people to access its services or facilities?

No

Does the organisation restrict benefit on the basis of any of these protected characteristics?

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Please answer Yes or No

No

## **Section 10: Financial year end date**

Has a financial year end date been agreed?

Yes

Please enter the financial year end date in DD/MM/YYYY format.

31/03/2025

# Section 11: Documents that must be included with application

## Charity Trustee Declaration

Your governing document will state what the minimum number of charity trustees should be. You should attach declarations for all intended charity trustees, but this should be at least this minimum.

Name of Trustee

Trustee Declaration

## Charity Trustee Declaration

Your governing document will state what the minimum number of charity trustees should be. You should attach declarations for all intended charity trustees, but this should be at least this minimum.

Name of Trustee

Trustee Declaration

## Charity Trustee Declaration

Your governing document will state what the minimum number of charity trustees should be. You should attach declarations for all intended charity trustees, but this should be at least this minimum.

Name of Trustee

Trustee Declaration

## Other supplementary Documents

Name of Document

Allocations Policy

Add Document

Allocations-Policy-April-22-2024\_03\_18\_17\_19\_01.pdf

[Click to add more documents](#)

## Section 12: Declaration



I confirm that the information has been approved by the trustees and I confirm that I am authorised to submit this application on their behalf.



I understand that it is an offence under section 26(1) of the 2005 Act to knowingly or recklessly provide false or misleading information to OSCR.



## DECLARATION BY CHARITY TRUSTEE/CORPORATE TRUSTEE

If the organisation has a corporate trustee (another organisation which acts as trustee, such as a company) its directors should complete this declaration.

In this form we ask you for some personal information. This information may be used by OSCR for the following purposes:

- to identify charity trustees;
- to carry out checks on information provided to ensure that you are not disqualified from being a trustee;
- to contact you if necessary, for example where we cannot make contact with the person the charity has named as its Principal Contact for OSCR; and
- for any other purpose in line with our [Data Protection and Privacy Policy](#).
- Please find and read our [Privacy Notice](#) for more information relating your data as the Principal contact or a Charity Trustee.

**Any personal information provided by you will be held by OSCR in accordance with the Data Protection Act 2018 and the General Data Protection Regulations. We will only use it for the purposes listed above.**

The information supplied on this form is for internal purposes only and will not appear on the public Scottish Charity Register, unless you are the principal contact for the charity and the (proposed) charity **does not** have a principal office. In that case your name and address will be displayed.

## Section 1 Organisation details

Proposed charity name

## Section 2 Personal Details

Title

First name(s)

Last name

Previous names

Home address

Postcode

Home Tel no.

Mobile no.

Email

Date of birth

Occupation

Are you a trustee of any other charity?

Yes

No

If yes, please provide details of the charity name(s) and charity number (s)

### Section 3 Declaration

Please read our [Guidance for Charity Trustees](#) before signing this declaration.

I declare that:

- I am willing to act as a charity trustee of the above named organisation.
- I understand the organisations purposes and rules set out in its governing document.
- I am aware of my duties and responsibilities as a charity trustee in terms of section 66 of the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act').
- I am not disqualified from being a charity trustee in terms of the 2005 Act – that is:
  - I am not an undischarged bankrupt
  - I have not granted a Protected Trust Deed (PTD)
  - I do not have an unspent conviction for an offence involving dishonesty
  - I do not have an unspent conviction for an offence under the 2005 Act
  - I have not been removed by the Court of Session under the 2005 Act (or earlier legislation) from being a charity trustee or being concerned in the management or control of any charity or body
  - I have not been removed from being a charity trustee by the Charity Commission or the High Court in England due to misconduct or mismanagement
  - I have not entered into an individual voluntary arrangement (IVA) to pay off debts with creditors. (This only applies to trustees living in England or Wales)
  - I am not disqualified from being a company director.
- **I understand that it is an offence under section 26 of the 2005 Act to knowingly or recklessly provide false or misleading information.**
- **I understand and agree that the personal information I have provided OSCR in this form may be used for the purposes listed above in line with the [Data Protection and Privacy Policy](#).**

Signature

Print name

Date

D	D	M	M	Y	Y	Y	Y
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# GUIDANCE AND GOOD PRACTICE

for Charity Trustees

**OSCR**  
Scottish Charity Regulator

June 2016  
Scottish Charity Regulator

**We have updated our guidance to reflect the practical experience of many Scottish charities. The law and charity trustees duties have not changed. What we are trying to do is set out in a more straightforward way what charity trustees must consider, so that they meet legal requirements, ensure that their charities are well-run, and avoid some of the common problems that can arise.**









# CHARITY TRUSTEE GUIDANCE

## Charity Trustee Duties





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# INTRODUCTION

## SUMMARY

**Charities make a big difference in all aspects of our society. Achieving this requires the hard work and commitment of thousands of [charity trustees](#) who give their time and energy to Scotland's charities.**

Charity trustees are the people who have general control and management of the [charity](#) and are responsible for making sure that the charity works to achieve its [charity's purposes](#) (the reasons the charity exists).

The role of a charity trustee is extremely important and can be very rewarding. It is important for both you and your charity, that you know what your responsibilities are, and understand what you are expected to do. This guidance will help you do this.

### What this guidance covers

The charity trustee duties are set out in [The Charities and Trustee Investment \(Scotland\) Act 2005](#), referred to in this guidance as the [2005 Act](#). We, the [Scottish Charity Regulator](#), are responsible for regulating charities registered in Scotland and their charity trustees. This guidance explains what the 2005 Act says charity trustees must do or must not do.

The guidance does not cover all the laws that might be applicable to your charity. It covers the legal duties of charity trustees set out in the 2005 Act, with good practice recommendations and links to sources of advice.

As charities come in all different shapes and sizes, not everything in this guidance will apply to all charities registered in Scotland. In addition, many charities have to comply with other legislation and regulation, for example, charitable companies must also comply with [company law](#).

### Who is the guidance for?

This guidance is for:

- Anyone who is a trustee of a charity registered in Scotland.
- Anyone thinking of becoming a charity trustee.
- People working with, or advising, charity trustees.

### How to use the guidance

In this guidance, we explore the [general duties](#) and [specific duties](#) of charity trustees in the 2005 Act. We give you examples of how these might work and share good practice from our experience as Regulator and from organisations in the charity sector.

---

Legal requirements are something that the law says you **must do** and are highlighted by the 'Legal Duty' icon:



LEGAL DUTY

Good practice is not required by law but is something you **could do** to help to make sure that your charity is doing its best to comply. What is good practice for your charity might depend on the size or type of charity you are. In this guidance, we try to give examples of good practice that will be applicable to many Scottish charities. Examples of good practice are highlighted with the 'Good Practice' icon:



GOOD PRACTICE

The **glossary** provides you with further information, definitions and descriptions of some key terms. We have highlighted these key terms in **bold purple type**. Clicking on these terms will take you straight to the glossary or the relevant section of the guidance.

The guidance is split into sections to help you find the information most relevant to you and your charity.

## MORE DETAIL

### Who are the charity trustees?

The people in charge of a charity and responsible for controlling its management and administration are its 'charity trustees'. You may call yourselves a committee, a board, Directors or something less formal but the 2005 Act says you are the charity's trustees and have legal responsibilities.

**Charity trustees are the people who control and manage a charity. They are responsible for complying with the law.**

There is no minimum age for charity trustees stated in the 2005 Act; however, we would expect charity trustees to be over the age of 16. If any charity trustees are under the age of 16, it would be best to get professional advice to determine if this is suitable and if there are any legal implications. Some model governing documents or specific legal forms (such as a company) state the minimum age of a charity trustee.

The 2005 Act states that charity trustees are the people who have "the general control and management" of a charity. However, there can be situations where people who are not formally appointed as charity trustees can exercise influence and even control over a charity. For example, an elected member or employee of a local authority attends meetings of the charity trustees. The 2005 Act makes the following two points clear:

1. Charity trustees are responsible for the charity and may not pass this responsibility onto anyone else as long as they remain a charity trustee.
2. Any person who, though not formally elected or appointed as a charity trustee, exercises some degree of control over a charity, may still be held legally liable as a charity trustee.

### Who cannot be a charity trustee?

Some people are not allowed by law to be a charity trustee. Every charity trustee must make sure that he or she is not breaking the law by being a charity trustee.

Certain people are disqualified from acting as charity trustees:

- Someone with an unspent conviction for an offence involving dishonesty or an offence under the 2005 Act.
- Someone who is an undischarged bankrupt or has a Protected Trust Deed.
- Someone who has been removed under either Scottish or English Law or the courts from being a charity trustee.
- Someone who is disqualified from being a company director.

It is the responsibility of individuals to make sure they are not disqualified from being a charity trustee. Anyone who acts as a charity trustee whilst disqualified is guilty of an offence punishable by a fine or imprisonment, or both.

It is also the collective responsibility of all the charity trustees to make sure that none of them are disqualified. If you know that one of your fellow charity trustees is disqualified and you do not do anything about it, you could be in breach of your charity trustee duties.

If you are not sure if you can be a charity trustee, you can [ask us](#).

Good practice is to:

- Get prospective charity trustees to sign a declaration before their election or appointment to confirm they are not disqualified from acting as a charity trustee.
- Consider whether any other checks need to be carried out. For example, a [Disclosure Scotland](#) check for charity trustees working with vulnerable beneficiaries.

In some cases a charity's governing document might say who can and cannot be a charity trustee, for example some charity trustees can only be chosen from the membership of the charity.

### Waivers

A disqualified person can apply to us for a waiver to lift the disqualification. You can do this in relation to a specific charity, type of charity or for charities in general. We will take into account all the circumstances when deciding if we can grant a waiver of disqualification. If you want to apply for a waiver please [contact us](#).

### What does being a charity trustee mean?

Being a charity trustee means you are fully responsible for how your charity is run and what it does. It does not necessarily mean running the charity on a day-to-day basis and making operational decisions. Your charity might have volunteers or staff that do this.

### All the charity trustees share responsibility

All of the group of charity trustees have charity trustee duties – no matter how small your charity is. A duty is something that you must do. The group shares the responsibility equally. No individual charity trustee, for example the Chair or Treasurer, has more responsibility than the other charity trustees do. We call this [collective responsibility](#).

---

See the section on [charity trustee duties](#) for more details.

### How many charity trustees should your charity have?

Your charity's governing document may set a minimum and/or maximum number of charity trustees needed and the minimum number required for a **quorum**. A **Scottish Charitable Incorporated Organisation (SCIO)** must have at least three charity trustees as stated in the [SCIO Regulations](#). For other **legal forms** the law does not set a minimum number of charity trustees, but it is good practice to have at least three.

### EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

### SOURCES OF HELP, ADVICE AND BEST PRACTICE

#### Sources of help, advice and best practice:

- Local [Third Sector Interfaces](#) offer support to voluntary organisations.
- The [Scottish Council for Voluntary Organisations \(SCVO\)](#).
- You may also wish to consult a professional advisor. The [Law Society of Scotland](#) and the [Institute of Chartered Accountants in Scotland](#) may be able to help you to identify a professional firm with expertise in charity law and accounting.
- The [Association of Charity Independent Examiners](#) can help you find a qualified Independent Examiner.
- [HMRC](#) will be able to help you with any questions you may have about tax.

### LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Charity trustee general duties: [section 66 of the 2005 Act](#)
- Disqualification from being a charity trustee and waivers: [sections 69 and 70 of the 2005 Act](#)
- SCIO provisions: the [Scottish Charitable Incorporated Organisations General Regulations 2011](#)

# CHARITY TRUSTEE DUTIES

## SUMMARY

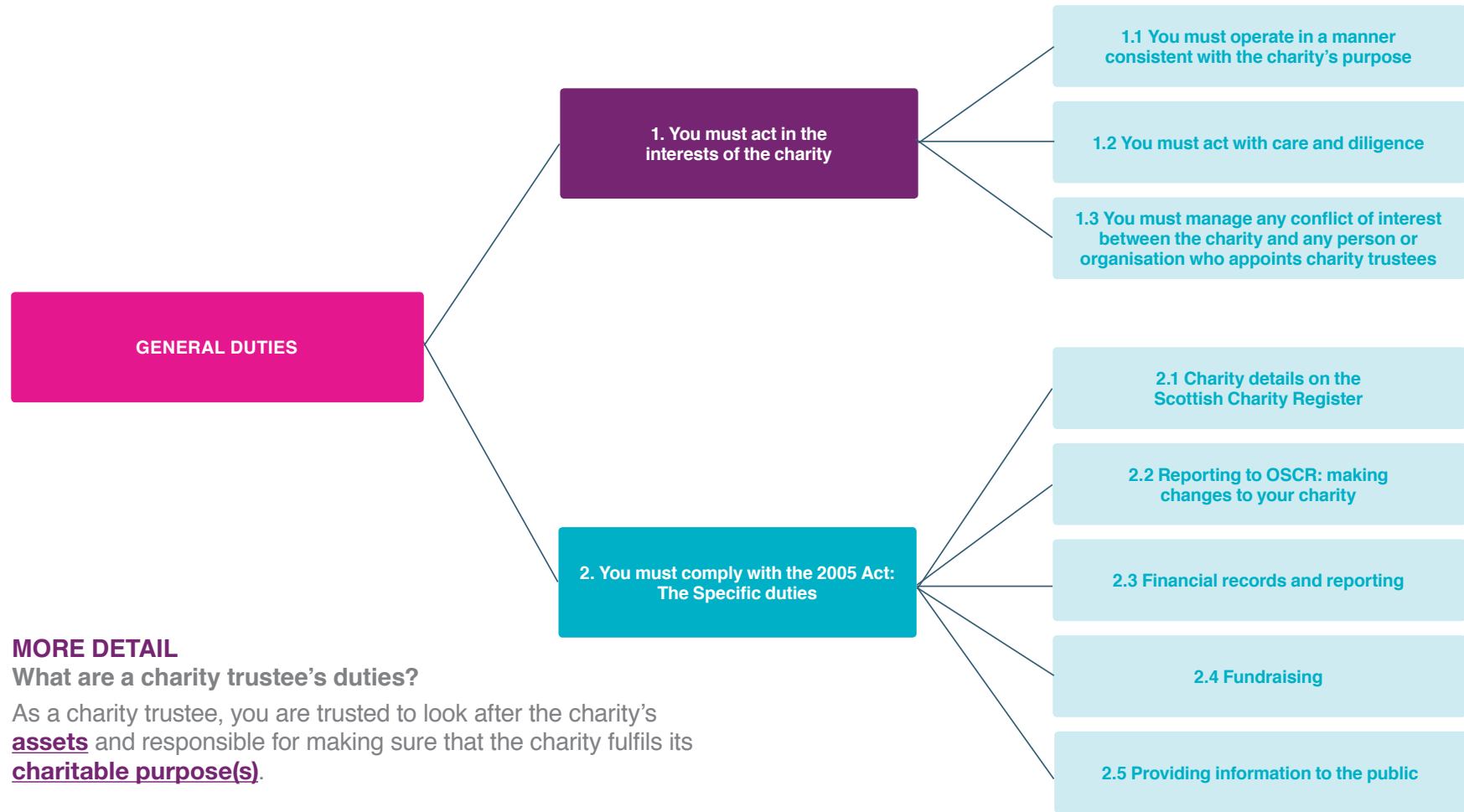
**All charity trustees have legal duties and responsibilities under the [2005 Act](#). A duty is something that you must do, and all the duties must be met. These duties are separated out into general duties, that set out a broad framework that all charity trustees must work within, and specific duties detailed in the [2005 Act](#).**

The general and specific duties apply equally to **all** charity trustees and to **all** charities registered in Scotland. All of the charity's trustees should work together to make sure that these duties are met.

We, the [Scottish Charity Regulator](#), work with charity trustees to make sure these duties are understood and complied with. We also have powers to take action where we have concerns about particular charities and their trustees. See our [Inquiry Policy](#) for more details.

In this section we explain what the duties are, what the law says you must do and ways that you can meet the duties.

# General duties for all trustees



## MORE DETAIL

### What are a charity trustee's duties?

As a charity trustee, you are trusted to look after the charity's **assets** and responsible for making sure that the charity fulfils its **charitable purpose(s)**.

The charity trustee duties under the **2005 Act** set out a broad framework that all charity trustees must work within.

### 1. YOU MUST ACT IN THE INTERESTS OF THE CHARITY



- You must do what is best for the charity and its **beneficiaries**, not what is best for you, your friends or family or your business interests.
- You must put the needs of the charity before the needs of any other organisation that you are involved with, either in a personal or professional capacity.

Where you are faced with a decision where one option would be in your interest and the other in the interest of the charity you must choose the option that is in the charity's interest. To do this properly, you must declare what your interests are, know when it would be better that you did not take part in certain decisions and take appropriate action.

#### Good practice



- The charity has an up to date list (**register of interests**) detailing where charity trustees work and any other organisations they are involved with.
- The charity has a conflict of interest policy that says what charity trustees should do if there is a conflict of interest and what happens if a charity trustee does something wrong. See the **conflict of interest section** for more details.
- There is a policy that makes it clear when a charity trustee, their family or the organisation they work for can be paid, for services provided to the charity. See the **remuneration (payment) section** for more details.

- The charity has the power in its **governing document** to remove charity trustees if they are in serious or persistent breach of the charity trustee duties, or a breach of the requirements of that governing document.

If you are at all unsure, you should declare a potential conflict and the other charity trustees can decide whether it poses a conflict.

#### 1.1 You must seek in good faith to ensure the charity operates in a manner consistent with its purposes



Your charity's purposes are set out in your governing document (often called a constitution, trust deed or articles of association).

- A charity's purposes are what your charity has been set up to achieve and are the reason your charity exists.
- You must always act honestly and reasonably ("in good faith") when acting for the charity and make sure that the activities advance its charitable purposes.
- You must make sure that the charity's assets are used to advance its charitable purposes. This can be done directly by using an asset to undertake activities or indirectly by investing assets to generate funds for the charity.
- You should understand what the governing document says and means.
- You must make sure that the other charity trustees and people working at the charity follow the rules in the governing document.
- When the charity makes plans, the charity trustees must make sure that any decisions or actions fit with the purposes and powers set out in the governing document.

### Good practice

- Every charity trustee has the most recent copy of the charity's **governing document**.
- Every charity trustee gets an induction into the charity and their role when they start.



GOOD PRACTICE

See the **governing document and meetings section** for more details.



LEGAL DUTY

### 1.2 You must act with care and diligence

The role of a charity trustee will vary from charity to charity. Some charities have staff who are responsible for daily operations, with the charity trustees providing strategic oversight and governance. Other charities are run solely by charity trustees on a voluntary basis. Whatever your charity trustee role involves – hands on or strategic oversight – the decisions you make about the charity should show that you are acting with care and diligence that is reasonable to expect of a person who is managing the affairs of another person.

When you are dealing with the charity's affairs, you should do so as carefully as you would if you were looking after someone else's affairs, for example a relative or a friend.

#### For example:

You might decide to invest some of your own money on a high risk investment with potentially large returns. You would not be able to do that with the charity's money.

- As charity trustees, you must all work together to advance the charitable purposes, including making sure the charity is run properly, responsibly and lawfully.
- You have to protect your charity including its beneficiaries, assets and reputation. This means understanding and assessing potential risks to make sure decisions are as robust as possible.
- You should have a clear, up-to-date picture of how the charity is doing financially, and the charity should have procedures in place to reduce any risks. All the charity trustees should know what **assets** the charity has and understand any restrictions on how money can be spent. The charity must keep clear financial records and share them with all the charity trustees. See the **charity finances section** for more details.
- You can use the charity's money to get professional advice for the charity if needed.

#### For example:

If the charity was thinking about undertaking trading activities, it would be appropriate to seek professional advice around setting up a subsidiary company to carry out that trading.

Or

If the charity employs staff, some professional advice on HR matters might be needed.

As charity trustees:

- You must make sure that the charity has enough money to pay staff and other costs.
- You must make sure that any staff are treated properly and fairly.
- You must make sure that the charity's name and any logo are not used without the charity's permission.
- You are responsible for making sure your charity complies with any relevant laws. For example, health and safety, employment, data protection and equality laws.



LEGAL DUTY

### Good practice

As charity trustees, you should:

- Review and update the charity's plans regularly.
- Agree financial budgets and monitor financial performance.
- Review the performance of the charity and, where necessary, agree steps to improve performance.
- Regularly compare what the charity proposes to do with the governing document to see if anything needs to be changed or updated. See our [Making Changes to Your Charity](#) guidance if the governing document needs to be amended.
- Make sure there are rules in place which set out what happens if the charity trustees cannot agree with each other. For example, set out in a **code of conduct**.



GOOD PRACTICE

- Provide charity trustee induction packs and review the training needs of the charity trustees every year.
- Agree expectations of charity trustees' attendance at meetings and what to do if these are not met.
- Keep up to date with changes in the law that might affect your charity, and make changes when necessary.
- If your charity employs staff make sure there are rules in place to deal with any grievances raised by the charity's staff and/or volunteers. For example, an internal complaints procedure.
- Treat volunteers properly and fairly.
- Report any [notifiable events to OSCR](#), and/or other relevant regulators.

You do not need to be a legal expert yourself but you should know the basics and the laws that apply to your charity's activities and where to get help if you need it. See the **Sources of help, advice and best practice** for details of organisations that can help.

### 1.3 You must manage any conflict of interest between the charity and any person or organisation who appoints trustees



As a charity trustee, you are required to act in the interests of the charity.

A conflict of interest which arises between a charity trustee and a person or organisation that appointed them is called an 'appointment conflict'. Where such a conflict arises, the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- Disclose the conflict to the charity and
- not participate in any discussion or decision on the matter.

#### For example:

A charity trustee appointed to the charity by a Local Authority would need to put the interests of the charity first, above those of the Local Authority.

Conflicts of interest can and do happen in all shapes and sizes of charity, so we have a separate section of the guidance for how to manage them. See the [conflict of interest section](#) for more details.

Charitable companies also need to be aware of what [Company law](#) says about conflicts of interest.

## 2. YOU MUST COMPLY WITH THE 2005 ACT

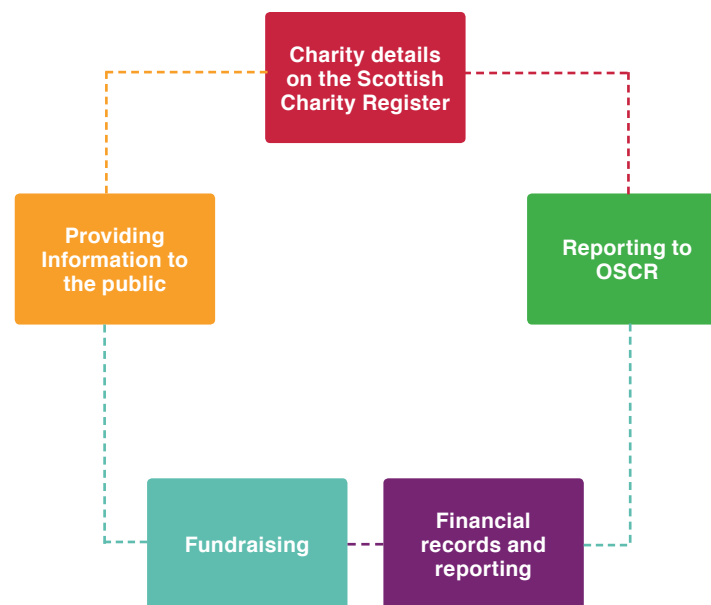


- You must understand the legal requirements of being a charity.
- You must comply with the specific duties of the 2005 Act.

See the **specific duties section** below for more information.

### Specific duties for all charity trustees

There are **specific duties** in [the 2005 Act](#) that all charity trustees must meet. You might delegate the practical details of these duties to your charity's staff, volunteers or professional advisers (if you have them), but you, as charity trustees, are responsible for making sure the specific duties are met.



## 2.1 Charity details on the Scottish Charity Register

Your charity must give us the information we need to keep the **Scottish Charity Register** accurate and up to date.



This means making sure that we hold the latest information about your charity:

- The name of the charity.
- The principal office or the name and address of one of the charity trustees.
- The charity's purposes.

Your charity **must tell us** as soon as possible about any changes to the **principal contact** for the charity.

## 2.2 Reporting to OSCR: Making changes to your charity

If you want to make any changes to your charity, first check what the rules set out in your **governing document** say. If you do not follow these rules then any decisions you make could be invalid and we may refuse our consent to make the changes if it is required.

Under the 2005 Act you must seek our consent before making any of the changes listed below. You need to ask for our **consent** at least 6 weeks (42 days) before you plan to make the proposed change.



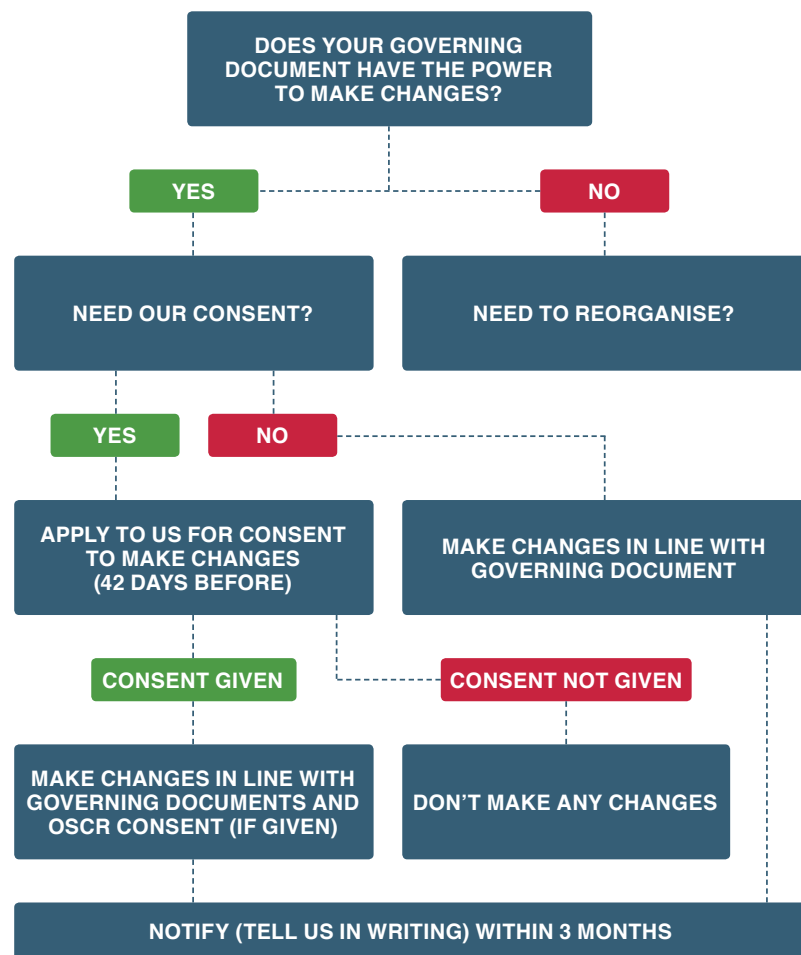
Changes that need our consent are:

- Changing the name of the charity.
- **Winding up or dissolving** the charity.
- Amending the **objects and purposes** of the charity.
- Amalgamating the charity with another body.
- Applying to the court to change purposes, amalgamate or wind-up.
- Changing your charity's **legal form**.

If we consent to the change you must notify us (tell us in writing) once you have made the change. Where a change to the governing document has been made you should send us the updated version.

If you have the power to make other changes to your governing document (that do not need our consent) you must tell us what the changes are and send an updated version of your governing document **within 3 months** of the changes being made.

See the flow chart below to decide if you can make changes and, if so, how. See our [Making Changes to Your Charity](#) page for more details.



## 2.3 Financial records and reporting

Every year, every charity must:

- Keep proper accounting records.
- Prepare a statement of account, including a report on its activities, at the end of each financial year.
- Have the statement of account independently examined or audited.
- Send a copy of the accounts, along with the **annual return**, to us, the Scottish Charity Regulator.

You must keep a copy of the accounting records for at least 6 years. Other laws or funding arrangements might require you to keep records for longer.

See our [charity finance section](#) and [Charity Accounting page](#) for more details.

## 2.4 Fundraising

As charity trustees you are responsible for taking control of how your charity raises funds.

You must make sure that anyone who professionally raises funds for the charity has an agreement that says how much they will get paid to do it.

See our [Fundraising page](#) for more details.

## 2.5 Providing information to the public

There is information that you must give to the public:



1. You must state your charity's name and Scottish charity number (SC0[zero]xxxxx) on your charity's website home page and all external documents, like letters, emails, adverts, posters, invoices and other publications. See the [publicising that you are a charity section](#) for more details.
2. You must give a copy of your [governing document](#) and/or the latest examined or audited [accounts](#) to anyone that asks for them. The reason a person asks for a copy of these documents does not matter; provided it is a reasonable request, you must give them a copy.

Good practice is to publish your governing document and accounts on the charity's website, if you have one.

### What is an unreasonable request?

What is reasonable or unreasonable will depend on the circumstances of each case. It is important to understand that it is the request that must be unreasonable not the reasons for the request or the identity of the requester.

The examples below are when a request might be unreasonable:

- A request for copies of accounts and/or governing document that are already publicly available, in which case you should tell the person where to get the information, for example on the charity's website.
- A request for documents that the person already has.
- A request for the documents within an unreasonable timescale, for example within 24 hours, or in an unreasonable format.

If you decide a request is unreasonable you should be able to justify your decision, bearing in mind that a concern could be raised with us about it. Where appropriate, you should work with the requester to fulfil their request.

### Can you charge a fee for the request?

Yes, you can, but only for any administrative costs in producing and sending a copy of the document, for example, the cost of photocopying and postage. You cannot charge for the costs associated with preparing the accounts or staff time taken to copy and post the documents.

Many charities publish their governing document and annual accounts on their own websites. You can put a link to your accounts on your entry in the [Scottish Charity Register](#) by emailing us the link and your charity's details.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is [misconduct](#) and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

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Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

## EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

## SOURCES OF HELP, ADVICE AND BEST PRACTICE

These organisations can help with some or all of the duties.

- Local [Third Sector Interfaces](#) offer support to voluntary organisations.
- The [Scottish Council for Voluntary Organisations](#) (SCVO).
- You may also wish to consult a professional advisor. The [Law Society of Scotland](#) and the [Institute of Chartered Accountants in Scotland](#) may be able to help you to identify a professional firm with expertise in charity law and accounting.
- The [Association of Charity Independent Examiners](#) can help you find a qualified Independent Examiner
- [HMRC](#) will be able to help you with any questions you may have about tax.
- [Consent Flowchart pdf](#)

## LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

### Specific duties:

- Charity details: [section 3 of the 2005 Act](#)  
Reporting changes:
  - [sections 10 – 12 \(consent for change of name\)](#)
  - [sections 16 – 17 \(consent for changes including purposes\)](#)
  - [sections 39 – 43D \(reorganisation\)](#)
- Financial reporting: [sections 44 – 45 of the 2005 Act](#) and [The Charities Accounts \(Scotland\) Regulations 2006](#) as amended
- Fundraising: [sections 79 – 83 of the 2005 Act](#)
- Charity trustee general duties: [section 66 of the 2005 Act](#)
- OSCR's powers and duties following inquiries: [Sections 29 – 35 of the 2005 Act](#)

# GOVERNING DOCUMENTS AND MEETINGS

## SUMMARY

Knowing what your **governing document** says and understanding what it means, having well-run charity meetings and keeping good records of the meetings are all important factors in making sure that you are carrying out your **general charity trustee duties** set out in the **2005 Act**.

## MORE DETAIL

### Governing documents

A charity's governing document is the written statement that sets out its purpose, structure and describes how it will operate. The trustees must make sure that the charity complies with its governing document, which usually contains key information about:

- What the charity exists to do (its charitable purposes).
- What powers it has to further its charitable purposes.
- Who the trustees are, how many charity trustees there should be and how they are appointed and removed.
- Whether the charity has any members and if so who can be a member.
- Rules about charity trustees' and members' (if any) meetings, how they are arranged and conducted and how decisions are made and recorded, etc.
- How to change the governing document.
- How to close the charity down.

The name given to your charity's governing document will depend on its legal form.

The most common legal forms for charities are:

LEGAL FORM	TYPE OF CONSTITUTION OR GOVERNING DOCUMENT
Company	Articles of association
Unincorporated association	Constitution
Trust	Trust deed
Scottish Charitable Incorporated Organisation (SCIO)	SCIO constitution
Community Benefit Society	Rules

Some governing documents are made up of a combination of items, such as standing orders, rules or supplemental deeds. The key to any governing document and to the overall governance of the charity are the charity's purposes, which are the reason the charity exists.



LEGAL DUTY

**Charity trustees** must make sure that:

- The activities of the charity advance the **charitable purposes** set out in the governing document.
- The charity follows the rules of its governing document.
- The charity's **assets** are only used to advance the charitable purposes set out in the governing document.

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### Good practice

- Every charity trustee has an up-to-date copy of the governing document. You should know what it says and understand what it means.
- All new charity trustees get an induction pack which includes the governing document and up-to-date information about the activities of the charity.
- When planning what the charity will do, you make sure the plans fit with what the governing document says you can do.
- You read and review the governing document regularly to make sure it is still fit for purpose. You should do this at least once a year.



### Can you change your governing document?

If you do want to make changes to your **governing document**, you need to follow any rules about changes set out in your document. This flows from the general principle that charities have to follow the specific terms of their governing document.

If you want to make any changes to your governing document see our [Making Changes to Your Charity](#) page. You must tell us of any changes that you make and in some cases ask for our **consent** first.



### For example:

If you want to change the wording of charitable purposes in your governing document, you will need to get our consent first. This is because any changes to the charitable purposes could affect your ability to meet the charity test and to continue to be a charity.

Some charities do not have the power in their governing document to make changes. If you are not sure whether you have the power to make changes you should get professional advice.

If you do not have the power to make changes you can apply to us to reorganise your charity. See our [Charity reorganisation](#) page for more details.

### Charity Trustee Meetings

Charity trustees have collective responsibility for running the charity. Meetings are often the best way to make decisions and make sure that you keep all of the charity trustees informed.

When and how meetings will be held will usually be set out in your governing document. You must follow the rules set out in your governing document about meetings. If you do not, any decisions you make could be invalid and you will not be acting in accordance with your charity trustee duties.

### What should a governing document say about meetings?

If your governing document does not mention meetings or is not clear about how meetings should be run, then you may want to add some rules about:

- When you have meetings and how often you have them.
  - Plan your charity trustee meetings so you can meet at the right time to look at the **charity's accounts** before submitting them to OSCR.
- What type of meetings you have.
  - For example charity trustee meetings, annual general meetings (AGMs), membership meetings.
- Who is entitled to vote at meetings and how **proxies** can be appointed.
- Who can attend the meetings (just the charity trustees or members too?) and how many people have to be there to form a **quorum**.



- What you do if charity trustees have a **conflict of interest**.
- How you minute meetings and how long you keep records of the meetings.
  - It is a good idea to decide how long you will keep records of meetings and decisions, bearing in mind any other legal requirements you have to follow. For example, financial records must be kept for 6 years.
- What to do if a charity trustee misses too many meetings and/or does not follow the rules.
- What your governing document says about removing charity trustees.

### What else do you need to think about for meetings?

- Make sure everyone knows about the meeting – when and where it is.
  - Make sure you know who should or can attend the meeting.
- Make sure everyone has the agenda and relevant papers – know what you are going to be talking about!
- Do not be afraid to ask questions if you do not understand or something is not clear – you all have responsibility, not just the chair or the treasurer.
- Follow the voting rules in your governing document – if you do not, any decisions you make could be invalid.
- Assign someone to prepare minutes of the meeting – note the decisions taken and the reasons for them.
- Make sure the minutes are agreed and approved at the next meeting.
- Have clear action points – know who is responsible for them and for following up on them.

**NOTE: if you are a SCIO or a company and want to use telephone or video conferencing you must state this in your governing document.**

**A SCIO's governing document is a constitution.**

**A company's governing document is its Article of Association. For more information on the rules about meetings in company law, see the Companies House website.**

See **Sources of help, advice and best practice** for agenda and minutes templates.

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## Quorum

This is the minimum number or proportion of people (members, charity trustees or their proxies) that can vote and must be present or represented at a meeting to make the proceedings and any decisions taken valid.

### For example:

Your governing document says that 50% of trustees must be present at a meeting. If you have 10 trustees in total but only four are present at the meeting, then you will not have a quorum and the meeting will not be valid.

If you are having trouble always getting enough charity trustees to form a **quorum** then you may need to recruit more charity trustees or look at alternative ways of holding meetings such as telephone or video conferencing. You may need to amend your governing document to do so.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

## EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

## SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Trustee Meetings: Agenda template](#)
- [Trustee Meetings: Minutes template](#)
- [SCVO model governing documents](#)
- [SCVO guide to Board meetings](#)
- OSCR: [Who's in charge](#)

The Charity Commission for England and Wales:

- [Charity trustee meetings: 15 questions you should ask](#)
- [Charities and meetings \(CC48\)](#)

## LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Charity trustee general duties and misconduct: [section 66 of the 2005 Act](#).
- OSCR's powers and duties following inquiry: [sections 29 to 35 of the 2005 Act](#).

# CONFLICT OF INTEREST

## SUMMARY

**As a charity trustee, you must put the interests of the charity before your own interests or those of any other person or organisation including those responsible for your appointment. Where you cannot do that, there may be a conflict of interest.**

A conflict of interest exists when your duty to act in the interests of the charity conflicts with:

- The interest of the person or organisation that appointed you as a charity trustee (an “appointment conflict”), or
- Conflicts with your own personal or business interest in relation to that matter (a “personal conflict”).

**Conflicts of interest can and do come up: it is how you manage them that is important**

In this section we explain how you as a charity trustee can prepare for potential conflicts of interest, what you could do if a conflict arises, and highlight common examples of conflicts of interest.

## MORE DETAIL

### What is a conflict of interest?

A conflict of interest is any situation where there is a potential for a **charity trustee’s** personal or business interests (or the interests of someone they are connected with) to be different from the interests of the **charity**. In this situation, it may sometimes be difficult for the charity trustee to make an impartial decision. However, with proper handling charity trustees can overcome these difficulties.

There are two main types of conflict of interest:

- 1. Appointment conflict:** This is a conflict of interest which can arise between a charity trustee and the person or organisation which appointed them.



LEGAL DUTY

### For example:

A charity trustee appointed by a local school, church or Local Authority and a decision is required on a matter which affects both the charity and the other organisation.

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**2. Personal conflict:** When you might not be able to do what is best for the charity because it conflicts with your own personal or business interest in relation to that matter.

**For example:**

When a charity is considering a contract with a business and one of the charity trustees is also a director of that business.

In both cases, the **charity trustee duties** require you to act in the interests of the charity.

Where there is an ‘appointment conflict’ the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- disclose the conflict to the charity; and
- not participate in any discussion or decision making on the matter.

It is important that even where there appears to be a conflict of interest, whether it materialises or not, you take appropriate steps to manage the conflict and be seen to be acting in the best interests of the charity.

The term ‘conflict of interest’ can cover a range of situations and may also be called a ‘conflict of roles’ or ‘conflict of duty’.

**For example:**

- a charity trustee could get direct financial benefit from a decision the charity has to make
- a charity trustee is discussing a contract or business arrangement with an organisation their family have links to
- a charity trustee is also an employee of a company that the charity is doing business with
- an employee, or potential employee, of the charity is connected to one of the charity trustees.
- being a trustee of two or more charities that are competing with each other for the same grant(s) or funding
- being a trustee of a charity that gives out grants and a trustee of another charity applying for one of these grants
- being a trustee of a charity that is part of a group structure and being on the board of the parent charity
- being a trustee of a charity where you are also a service user or customer
- a charity trustee applying for a job in the charity.

**Examples of what is not a conflict of interest:**

- being a charity trustee and donating funds to the charity
- being both a volunteer and a trustee of charity.

### What should you do if there is a conflict of interest?

Having a conflict of interest does not necessarily mean that anyone has acted improperly. As charity trustees you all have a **collective responsibility** to manage conflicts of interest and to act clearly in the charity's best interests.

There are four key steps to dealing with conflict of interest.

#### 1. Identify:

- Have a conflict of interest policy so that all the charity trustees (and potential charity trustees) understand what could be a conflict of interest.
- Know what the charity's **governing document** says about conflicts of interest.
- Set up a **register of interests** for all charity trustees and make sure it is kept up to date.
- Have conflict of interest as a regular agenda item at the beginning of the charity trustee meetings.
- Declare any potential conflict of interest as soon as you become aware of them.



#### 2. Manage:

- Have clear procedures in place that state what should happen if there is a conflict of interest and how the charity trustees will deal with it. For example, the conflicted charity trustee might withdraw from the meeting or part of the meeting.
- If the charity has a **conflict of interest policy** make sure it is applied in all situations where there is a conflict or potential conflict. The policy should also distinguish between the two different types of conflict, 'appointment conflicts' and 'personal conflicts'.

- Decide if the person(s) with a conflict of interest should be involved in any discussions or decisions about the situation – if it is decided they should be involved be prepared to justify that decision.
- Where there is a conflict, make sure that decisions are taken in the charity's interests.
- Make sure that your charity can still carry on its business and still form a quorum even if a number of charity trustees have to withdraw.

#### 3. Record:

- Keep a written record of the situation and what the charity did about it, including:
  - Recording who the conflict affected.
  - Recording when the conflict was identified and declared.
  - Recording what was discussed and decided.
  - Recording who withdrew from the decisions and how the remaining charity trustees made a decision in the best interests of the charity.
  - Maintaining the charity's register of interests.

#### 4. Learn:

- Learn from the experience, make improvements to the charity's policy and procedures and where necessary seek professional advice.
- Where conflicts of interest arise frequently and a number of charity trustees must withdraw from discussion, the charity should consider whether the make up of the Board is preventing the effective management of the charity.
- Make sure the charity's governing document has the power to remove charity trustees who are in serious or persistent breach of **the 2005 Act**.

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If members from a linked organisation dominate the make-up of your Board of charity trustees this can lead to a risk of recurrent conflict of interest. How you manage this risk is very important.

### What should be included in a conflict of interest policy?

A conflict of interest policy should set out:

- What a conflict of interest is and the conflicts that are likely to be relevant to your charity.
- The distinction between a “personal” conflict and an “appointment” conflict.
- When and how the charity trustees should declare a potential conflict of interest.
- What the charity’s governing document says (if anything) about conflicts of interest.
- When a conflicted charity trustee should withdraw from decision making and the procedures for making decisions in those circumstances.

SCIOs must have procedures for dealing with any conflict of interest within their SCIO constitution.

See the **sources of help, advice and best practice** section for links to example conflict of interest policies.

### When should a charity trustee withdraw from a meeting?

When a charity trustee is aware of a conflict of interest and they feel unable to put the interests of the charity first, they must withdraw from the discussion or decision concerned.

It may also be appropriate for charity trustees to withdraw from discussions in other circumstances of conflict of interest. Where they do not, they should be able to demonstrate that they have acted in the interests of the charity.

The charity trustees should make sure there is a record of who took part in the discussions and decisions. Where there is a conflict and the conflicted charity trustee still takes part, how this is in the best interests of the charity needs to be explained.

### For example:

A Board made up mainly of service users is asked to vote on an increase to the fees that service users pay to the charity. It is not practical for all the service user trustees to withdraw as there wouldn’t be enough trustees to form a quorum and make a valid decision.

The trustees need to put their own interests to one side and choose what is best for the charity. A clear record should be taken of the decision and why it was made.

However, if there is only one service user on the Board then it might be felt that they should withdraw, which would be easier for the person concerned and does not affect the quorum.

### What should you do if another charity trustee has a conflict of interest?



All charity trustees must act in line with the duty to **protect the interests of the charity**. This means that you and the other charity trustees must take collective responsibility to make sure that a breach of charity trustee duties is corrected and not repeated.

If you know another charity trustee is conflicted, and it is not declared, it is your duty to speak up.

If there is serious or persistent breach of duty by an individual, the other charity trustees should look at whether the governing document has the power to remove the charity trustee.

### What happens if a conflict of interest is not managed properly?

As charity trustees you must try to make sure that any breach of duty regarding conflict of interest is corrected and not repeated. Where there is a serious or persistent breach the charity trustee should be removed, providing the governing document allows. If the other charity trustees fail to do so, this could be considered **mismanagement or misconduct** in the administration of the charity.

As regulator, we are required to identify and investigate any apparent misconduct and, where appropriate can take protective action. See our [Inquiry Policy](#) for more details. Our response will be proportionate; where a charity trustee has acted honestly and reasonably.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

## EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

## SOURCES OF HELP, ADVICE AND BEST PRACTICE

- OSCR: [Who's in charge?](#)
- SCVO: [how to avoid conflicts of interest](#)

## LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

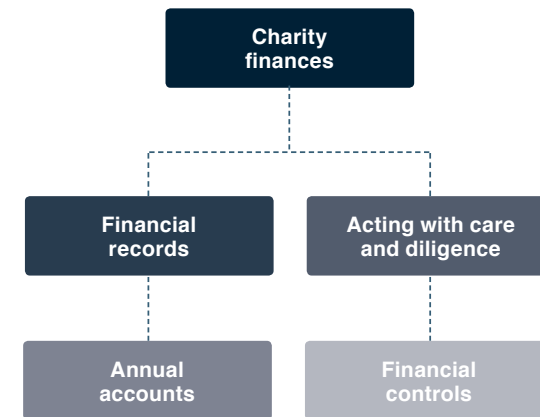
- Charity trustee general duties and misconduct: [section 66 of the 2005 Act](#).
- SCIO conflict of interest provision in constitution: [The Scottish Charitable Incorporated Organisations General Regulations 2011](#).

# CHARITY FINANCES

## SUMMARY

In this section, we explain the legal requirements and good practice for protecting your charity's finances. The section splits into two areas of charity finance:

- 1. Financial Records:** Charities have specific duties under the **2005 Act** to maintain financial records, prepare annual **accounts** and submit these accounts to us. It is the responsibility of all the charity trustees to make sure that these requirements are met.
- 2. Financial Controls:** The 2005 Act requires you, as charity trustees, to act with **care and diligence** when managing the affairs of the charity. This means that you must make sure you have suitable controls over financial procedures to protect the **assets** of the charity.



## MORE DETAIL



### Financial records and accounts

The **2005 Act** requires that as charity trustees, you must:

- keep proper accounting records
- prepare a statement of accounts, including a report on the charity's activities, each financial year
- have the accounts independently examined or audited
- send a copy of the accounts to us
- keep the accounting records for 6 years.

Anyone who has given time or money to a charity will have an interest in seeing its resources used properly. A well prepared and informative set of accounts will give members, funders, donors and anyone else with an interest in your charity a good picture of the activities and how well you are using the resources.

### What are proper accounting records?

Proper accounting records must detail day by day the money received and spent by the charity, the assets and liabilities of the charity and show the financial position of the charity at any time.

How you keep the records will depend on the size and complexity of your charity. For small charities, a manual record or simple spreadsheet may be enough. Larger charities may need specialist accounting software.

However you keep the records they should be easy to follow and kept up to date so that the financial position of the charity is clear at all times.

### What do I need to include in the accounts?



What you need to put in the accounts is set out in the [Charities Accounts \(Scotland\) Regulations 2006 \(as amended\)](#). These Regulations detail the different types of accounts that can be prepared and what you must include in them.

The Regulations also contain specific rules for reporting on the activities of the charity, as well as the financial information. This activities report is called the [Trustees' Annual Report](#).

For more details, please see our [guide to the accounts Regulations](#).

### External scrutiny of the accounts

All sets of charity accounts must be scrutinised by someone outside of the charity. This means that an independent person checks that the information in the accounts is a fair reflection of the charity's financial position.



The type of scrutiny required is dependent on the charity's turnover, [governing document](#) and the requirements of any funders.

For more details, please see our [Independent Examination: Guidance for Charities and Independent Examiners](#).



### What financial information do you need to submit?

Every year you need to send us:

1. the [Annual Return](#)
2. [statement of accounts](#)
3. [trustees' annual report](#) and
4. [external scrutiny report](#)

We use the annual return to gather information about your charity. Depending on the income of your charity, we may ask more questions about the charity's finances and how it operates.

### Note: Charitable Companies, Charities registered in England and Wales and Registered Social Landlords.

You will also need to follow the accounting requirements of the other regulators. See our [accounts guidance](#) for more information.

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## Financial controls

As a charity trustee, you have a duty under the 2005 Act to act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.

This means that you must act with a higher level of care than you do with your own finances and affairs. You must make sure that you protect the charity's resources and that you do not put the assets of the charity at risk. One way of doing this is to make sure that there are proper **financial controls** in place.

### What do we mean by financial controls?

Good financial controls are tools for making sure that you manage the charity effectively and meet your legal duty to act with care and diligence.

Financial controls are the systems you have in place to make sure that you protect the **assets** of the charity. The controls aim to identify and manage the risks of theft or fraud, loss and **conflicts of interest**.

#### ■ Reviewing accounts

A major part of financial control is to review the accounts. A useful way to do this is to compare the amounts spent on individual expense categories since they were last reviewed with what was expected to be spent in that period. Ideally, a budget will be prepared and approved by the charity trustee board before the beginning of the financial year. Then the actual results can be compared to the expected or budgeted results, making it easier to investigate any differences or 'variances'.

In a small organisation it may be appropriate just to compare the expenditure of one period with that of the corresponding previous period, for example the month before.

#### ■ Controls offer protection

It is important to remember that being a charity trustee is a significant responsibility. Where controls are correctly set up and used they will both protect the assets of the charity and you as a charity trustee.

### What areas do you need to consider?

#### ■ Collective responsibility

All of the charity trustees have responsibility for the financial records, not just the treasurer. As charity trustees, it is important that you all have a basic understanding of the finances of your charity and can quickly identify if there are any problems.

The financial information should be discussed at meetings to make sure that everyone knows the charity's financial situation. For example, finance should be a recurring item on the agenda of every board meeting. It is good practice that someone other than the treasurer also has an understanding of how the charity's financial records are kept.

#### ■ Finance Committee

Some organisations find it helpful to set up a finance sub-committee of charity trustees and advisors with financial or accounting knowledge. They have additional meetings to spend extra time on detailed finance matters, like budget preparation, and then report back to the charity trustee board. Having a committee does not absolve the other charity trustees of their collective responsibility but can be helpful in clarifying matters that are submitted to the full charity trustee board.

### ■ Separation of duties

Where possible, you should separate out the administrative tasks so that no one individual has sole responsibility for the financial transactions of your charity. We call this '**separation of duties**'.

For example, when your charity makes a purchase the same individual (whether it is a charity trustee, employee or volunteer) should not be responsible for arranging the purchase, authorising the payment and making the payment. In very small charities, it can be difficult to have a separation of duties. You should make sure that checks are regularly carried out on financial records and transactions to compensate for this.



### ■ Written procedures

Your financial procedures should be documented. This will help where charity trustees change regularly and if something unexpected happens such as a treasurer being taken ill.

You should review your procedures annually to make sure they are still fit for purpose, being followed correctly and understood.

### ■ Controls over cash

Where possible, it is best to avoid the use of cash, as it is harder to maintain a trail of cash and much easier for theft or fraud to happen. You should encourage donations to be made by bank transfer, cheques or online and you should make payments in this way wherever possible.

If you do receive cash donations, two people should count these and then make sure the money is banked as soon as possible. You should issue receipts for the donations and not make any payments out of this cash before taking it to the bank.

You should keep petty cash to a minimum. Receipts should be required for all items of petty cash. Access to the petty cash box should be restricted. It should be held in a secure place, counted and agreed. A cash book should be kept to record what goes into the petty cash and what is paid out of it. Each time there is money added to or taken out of the petty cash it should be recorded in the cash book with supporting documentation, such as a copy of a donation receipt or expenditure receipt. The amount in the petty cash box should be regularly counted and compared to the balance in the cashbook to make sure that all money is properly recorded and accounted for.

### ■ Banking

Banking is an important part of the financial controls. When considering your charity's banking arrangements, you should think about the full range of services that you need and look for a bank that can provide them.

Banks will ask for details of all signatories and usually all the charity trustees, so be prepared to have this information available. You should be aware of the terms and conditions of your banking arrangements and advise the bank immediately of any changes that may affect these for example, a change of signatories. Bank statements should be agreed to the accounting records regularly, at least monthly, and someone other than the person who is otherwise involved in the banking process should review these reconciliations.

Bank reconciliations should be reviewed at trustee meetings. In smaller charities, bank statements and transactions may be checked at trustee meetings.

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### ■ Cheque payments

Cheques should have a minimum of two signatories to make sure that it is not just one person who can make payments. You should have systems in place to check invoices and authorise payments before they are made.

You should not sign cheques where the amount and the recipient are not already filled in (blank cheques). You should ensure that the details on the cheque stub match the corresponding cheque. If this is not done the cheques may not be accounted for correctly and might result in lost or stolen money.

### ■ Automated payments

Automated payments from the bank account such as Direct Debits and Standing Orders should be subject to the same controls as other payments. A review of all such automated expenditure should take place regularly.

**Internet banking and online payments:** it can be more difficult to develop tight financial controls for bank transfers as access may be restricted to a single log in. You should consider making a rule that two people have to be present when large transactions are being processed.

- Some banks allow charities to provide more than one person to authorise payments (dual authority). You should ask your charity's bank for details of their dual authority options so that you can consider what is right for your charity.
- **Credit cards:** credit cards are often required to pay for travel or purchase items online. There should be internal control procedures to cover this including credit limits, authorisation procedures and review and authorisation of credit card statements.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

## EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

## SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Guides to Independent Examination](#)
- [A Guide to Charity Accounts](#)
- The Charity Commission for England and Wales have produced detailed [guidance on internal financial controls](#) that are applicable to Scottish charities.
- [Banking for charities](#)

## LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Financial reporting: [sections 44 – 45 of the 2005 Act](#) and [The Charities Accounts \(Scotland\) Regulations 2006](#) as amended

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# REMUNERATION (PAYING CHARITY TRUSTEES AND CONNECTED PERSONS)

## SUMMARY

The **2005 Act** sets out when charity trustees (and people who are connected to them) can receive payment from the charity for services provided to it. A charity must not pay charity trustees, and people who are connected to them, unless the charity can satisfy the conditions set out in the 2005 Act.

This section explains what those conditions are and gives examples of when it is and is not appropriate to pay **charity trustees** and **people connected** with them.

The rules on paying charity trustees do not apply to reclaiming expenses, like train fares to get to a charity trustee meeting.

## MORE DETAIL

### What is remuneration?

Remuneration in the **2005 Act** means any payment received for services provided to the charity either as a charity trustee or under a contract of employment with the charity, and includes **people connected** with charity trustees. It is any such payment from the charity's funds. Payment may be received in the form of a salary, payment for services or in the form of other benefits such as a company car, medical plan or pension plan.

### For example:

Out of pocket expenses paid to charity trustees, for instance travel expenses to attend meetings, are not considered remuneration, although receipts for expenses are still required.

In this guidance, we refer to **remuneration** as 'payment' or 'paying charity trustees'.

### What are the rules on paying charity trustees?

The **2005 Act** states that **you must not pay a charity trustee**, for services provided to the charity, either as a charity trustee or under contract, **unless** you meet **all** of these conditions:

- there is no restriction to the payment in the charity's **governing document**



- less than half the total number of charity trustees are getting paid (directly or indirectly) from the charity
- there is a written agreement between the charity and the charity trustee
- the written agreement sets out the maximum amount to be paid, and
- the charity trustees are satisfied it is in the interest of the charity for the services to be provided by the charity trustee for that maximum amount.

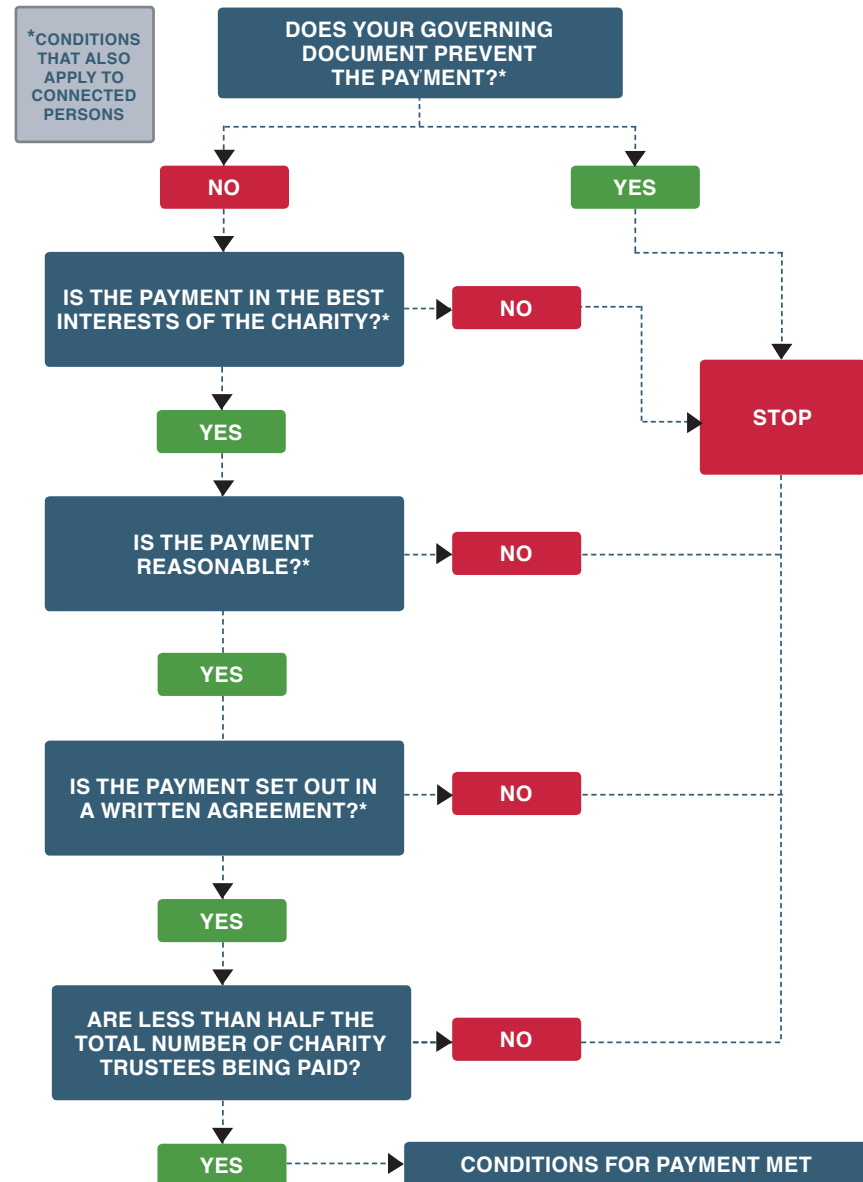
If your governing document says that the charity trustees cannot be paid, then even if the other rules from the 2005 Act are met, you will not be able to pay any of the charity trustees.

Examples of when it might be reasonable to pay a charity trustee, provided the conditions above are met:

- When a local tradesman is a charity trustee and provides services to the charity at a competitive rate.
- When employees of the charity are also charity trustees because of their position: for example, as chief executive or because they are elected as a staff representative.

An indirect payment to a charity trustee is where two or more charity trustees are connected and one of them is being paid.

See the flowchart opposite to see if a payment meets the conditions.



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### What are the rules for paying a connected person?

The **2005 Act** states that **you must not pay** a person connected to a charity trustee for services provided to the charity, **unless** you meet **all** of these conditions:

- there is no restriction on the payment within the charity's governing document
- the payment is reasonable
- there is a written agreement between the charity and the connected person
- the written agreement sets out the maximum amount to be paid
- the charity trustees are satisfied it is in the interest of the charity for the services to be provided by the connected person for that amount.

### What happens if you want to pay charity trustees and/or connected persons for services provided to the charity?

In order to pay a charity trustee or connected person, provided the exemptions do not apply, the conditions detailed above must be met. If a decision is taken to pay a charity trustee or connected person, you should keep a record of the charity trustees considerations and must enter into a written agreement with them setting out the maximum amount to be paid.

### What is a reasonable amount?

What is reasonable will depend on the circumstances. The important thing is that whatever the decision is, the interests of the charity come first and you can demonstrate that.

The process for deciding the level of payment must be open and transparent and **must not** involve the charity trustee who is to receive payment or is connected to the person who will.



You could compare payment amounts with similar roles at other charities or the wider market place.

If the payment appears to be excessive, there may have been a breach of charity trustee duties, which would be **misconduct**.

### Good practice



- Have a payment policy that makes sure any payments to charity trustees and/or connected people complies with the conditions set out in the 2005 Act
- establish a register of charity trustees' interests
- obtain at least two separate quotes for services
- clearly minute the decision that paying a particular charity trustee or a person connected to them for services is in the charity's interest.

If you are not sure if a charity trustee, or connected person, can be paid for services you should get professional advice.

### What else do you need to consider about payments?

If you are thinking about employing a charity trustee or connected person, you must make sure that:

- there is a genuine need for a paid position or for the services to be provided
- as charity trustees, you assess any potential risks, manage any conflicts of interest and are open and transparent about the decision
- any charity trustee who has a **conflict of interest** is not involved in the decision
- no one individual takes a decision about employment on their own

- any payments to charity trustees are declared in the **annual accounts**.

We have particular concerns where the charity trustees of a charity are the people benefiting from it as private individuals, or where those benefiting most are people connected with the charity trustees such as family members or companies in which the charity trustees have an interest.

Where there is such **private benefit** we may need to consider whether it causes the charity to fail the **charity test**. This is the legal test as to whether or not your organisation can be, or remain, a charity.

#### **What is an honorarium?**

An honorarium is generally a small amount of money paid to someone for a service; unlike a fee or salary, an honorarium is not contractual but is a gift.

We would not expect honoraria payments to be paid on a regular basis as a matter of course. As charity trustees, you should review the situation every year and only award a payment if there are exceptional reasons for doing so. We would expect you to clearly explain and record your decision.

In order to make payment of honoraria to a charity trustee or a connected person the remuneration conditions detailed above would have to be met.

#### **Charities registered in England and Wales and Registered Social Landlords**

If you are also registered with the Charity Commission for England and Wales you will also need to follow their rules on payments to charity trustees.

If you are a cross-border charity and you are paying charity trustees in line with the law of England and Wales you will need to take into account the rules under the 2005 Act and whether those rules allow the payment in question.

Registered Social Landlords must follow the rules set out by the Scottish Housing Regulator about payments to charity trustees.

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### Trustee indemnity insurance

You are allowed to use your charity's funds to provide your charity trustees with indemnity insurance.

### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

### EXCEPTIONS

These rules for paying charity trustees and connected persons do not apply if:

- there is a provision authorising payment of the charity trustees (and/or connected persons) in the charity's **governing document** and this was in force on or before the 15 November 2004
- there is legislation or an order made by the Court of Session that allows charity trustees (or connected persons) to receive payment.

### EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

### SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Meeting the Charity Test – Private Benefit section](#)
- [Payment Flowchart pdf](#)

### LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Remuneration: [sections 67 and 68 of the 2005 Act](#)
- Trustee indemnity insurance: [section 127 of the Public Services Reform \(Scotland\) Act 2010](#)

# PUBLICISING THAT YOU ARE A CHARITY

## SUMMARY

Making sure that people know you are a charity is one of the **specific charity trustee duties** set out in the **2005 Act**. You must provide certain **charity details** in certain **external documents** (hard copy and electronic). What you need to tell people and how you need to do this are set out in specific **Regulations**. This section sums up what you need to do, and gives suggestions about how best to do it.

## MORE DETAIL

All charities registered in Scotland must publicise the fact that they are a charity. **Charity trustees** must make sure that certain **charity details** are on all of the charity's **external documents** listed below.

These rules also apply to any third parties who publish documents on behalf of your charity, for example legal advisors, accountants, or organisations working on your behalf.

### What do you need to tell people?

You need display your **charity's details**. This means:

- your charity's name, as entered in the **Scottish Charity Register**
- any other name your charity is known as (the 'known as' name)
- your **Scottish Charity Number** (SC0[zero]xxxxx)
- the fact that you are a charity, if this is not already clear from your name.



It is good practice to state that the charity is regulated by OSCR.



### For example:

'Monkstown After School Club (known as Monkey Club) is a Scottish Charity, SC098765, regulated by the Scottish Charity Regulator (OSCR).'

If you are a **Scottish Charitable Incorporated Organisation (SCIO)**, you need to tell people:

- the SCIO's name as entered in the Scottish Charity Register
- if the name does not include the terms 'Scottish Charitable Incorporated Organisation' or 'SCIO', the fact that it is a SCIO.

As a SCIO, you do not have to include your Scottish Charity Number but we strongly recommend that you do.

### For example:

'Monkstown After School Club (known as Monkey Club) is a Scottish Charitable Incorporated Organisation (SCIO) regulated by the Scottish Charity Regulator (OSCR), Scottish Charity number: SC098765.'

## Which external documents need to have these details?

You must put the charity's details on:

1. all your external letters and emails
2. your website's home page
3. all your adverts, notices and official publications
4. documents that ask for donations for your charity
5. bills your charity issues
6. direct debit and standing order mandates
7. all invoices and receipts
8. annual accounts
9. educational, promotional or campaign materials
10. legal conveyance documents about land rights (buying, selling or transferring land)
11. contracts.

## In addition to above requirements, it is good practice to put charity details on:

- all your website pages
- your charity's social media accounts
- campaigns or adverts that are online, on the radio or television
- business cards
- signs and displays.

Add the '[charity registration](#)' logo to your website to help you show the public that you're entered in the Scottish Charity Register.

## Why do you need to tell people that you are a charity?

It is important that the people you come into contact with, the public, funders, contractors and other organisations, know and can check that you are a genuine **charity**.



It also gives people confidence in supporting your charity and knowing that we regulate you.



## When do you have to put your charity's details on documents?

If you are a SCIO, you must have the details on your **external documents** as soon as possible after your charity is registered. For all other charities, you must put the charity details on your external documents as soon as possible and no later than **6 months** of becoming a charity.

## What happens if you do not put the charity details on documents?

The rules about having these details on the documents are set out in [regulations](#). All charity trustees have responsibility for making sure that their charity complies with these regulations. A breach of the regulations is a breach of your **general duties** and is **misconduct**.

If you are a SCIO it is an offence to issue or sign any of the **external documents** which do not include the charity's details, or to authorise such actions.

## Charitable companies

Charities whose **legal form** is a company must comply with both company law and charity law. Charitable companies must include **charity details** set out above and the information required by company law, for example the company number.

Find out more about company law requirements at the [Companies House website](#).



### What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

### EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

### SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Publicising Charitable Status](#)
- [The Charities References in Documents \(Scotland\) Regulations 2007](#) and [The Charities references in Documents \(Scotland\) Amendment Regulations 2008](#): these Regulations set out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents.
- [SCIO's: A Guide](#)

### LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- [The Charities References in Documents \(Scotland\) Regulations 2007](#) and [The Charities references in Documents \(Scotland\) Amendment Regulations 2008](#): these Regulations set out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents.

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## GLOSSARY OF TERMS

This glossary provides you with further information, definitions and descriptions of some key terms. Where appropriate, it links to the relevant sections of law that underpin the terms.

TERMS	EXPLANATION	TERMS	EXPLANATION
2005 Act	The <a href="#">Charities and Trustee Investment (Scotland) Act 2005</a> : the primary piece of charity law in Scotland.	Assets	This means everything a charity owns; property, money, equipment, including heritable property (such as land and buildings and rights attached to it).
Accounts	Accounts represent the organisations finances for a particular period (usually a year). They show how much money was received and how much was spent, broken down into different categories. Charities must prepare accounts each year and must send a copy of to us (the Scottish Charity Regulator) each year.  For more information see <a href="#">Charity Accounting</a> .	Beneficiaries	These are the people your charity is set up to help, those who benefit from what you do.
Annual return	The online form charities complete each year to provide us with information about the charity (in particular for the Scottish Charity Register, and including information about the charity's finances).  This can be completed in <a href="#">OSCR online</a> .	Care and diligence	This means a very high level of care and thoroughness.  This is set out in <a href="#">Section 66 of the 2005 Act</a> .

TERMS	EXPLANATION	TERMS	EXPLANATION
Charitable Purposes	<p>A charity's purposes are usually set out in the objects, aims or purposes section of its governing document. The purposes say what your organisation has been set up to achieve, and should reflect its broad aims rather than the day-to-day activities. Each purpose your charity has must fit within at least one of the 16 charitable purposes set out in <a href="#">section 7(2) of the 2005 Act</a>, that is:</p> <ul style="list-style-type: none"> <li>(a) the prevention or relief of poverty,</li> <li>(b) the advancement of education,</li> <li>(c) the advancement of religion,</li> <li>(d) the advancement of health,</li> <li>(e) the saving of lives,</li> <li>(f) the advancement of citizenship or community development,</li> <li>(g) the advancement of the arts, heritage, culture or science,</li> <li>(h) the advancement of public participation in sport,</li> <li>(i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,</li> </ul>	Charitable Purposes	<ul style="list-style-type: none"> <li>(j) the advancement of human rights, conflict resolution or reconciliation,</li> <li>(k) the promotion of religious or racial harmony,</li> <li>(l) the promotion of equality and diversity,</li> <li>(m) the advancement of environmental protection or improvement,</li> <li>(n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,</li> <li>(o) the advancement of animal welfare,</li> <li>(p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.</li> </ul>
		Charity	<p>An organisation is a charity in Scotland when it is entered on the <a href="#">Scottish Charity Register</a>.</p>

TERMS	EXPLANATION	TERMS	EXPLANATION
Charity Test	<p>This is the test set out under the <a href="#">Charities and Trustee Investment (Scotland) Act 2005</a>, which determines whether an organisation can be a charity.</p> <p>The charity test has two main elements:</p> <ol style="list-style-type: none"> <li>1. an organisation has to show that it has only charitable purposes and</li> <li>2. that it provides public benefit in achieving those purposes.</li> </ol> <p>This is set out in <a href="#">sections 7 and 8 of the 2005 Act</a>.</p>	Connected person	<p>The term connected person includes:</p> <ul style="list-style-type: none"> <li>■ spouses, civil partners and cohabitees of a charity trustee</li> <li>■ child, stepchild, parent, grandchild, grandparent, brother or sister of a charity trustee (and a spouse of any such person)</li> <li>■ an institution controlled by a charity trustee or a person connected with them or two or more trustees/connected persons when taken together</li> <li>■ a body corporate or company in which the charity trustee or a person connected with them has a substantial interest, or</li> <li>■ a Scottish partnership (business) in which the charity trustee or, a person connected with them is a partner.</li> </ul>
Charity Trustee	<p>'Charity trustees' are defined in <a href="#">section 106 of the 2005 Act</a> as people having the general control and management of the administration of a charity. Charity trustees can also sometimes be known as committee members, directors or board members.</p>	Conflict of interest (policy)	<p>A conflict of interest may arise in a situation where a charity trustee may obtain personal benefit from a particular decision in relation to the charity. A policy setting out what a conflict of interest is and how you will manage situations where a conflict arises is strongly recommended. See the <a href="#">Conflict of interest sources of help, advice and best practice</a> section for links to example policies.</p>
Collective responsibility	<p>Charity trustees are not only responsible for their own actions, they are also responsible for the actions and decisions taken by the charity trustees when acting together.</p>		

TERMS	EXPLANATION	TERMS	EXPLANATION
Consent	<p><a href="#">Section 16 of the 2005 Act</a> says that you must seek OSCR's consent before making any of the changes listed below. You need to ask for our consent at least 6 weeks (42 days) before you plan to implement the proposed change.</p> <p>Changes that need our consent are:</p> <ul style="list-style-type: none"> <li>■ changing the name of the charity</li> <li>■ winding up the charity</li> <li>■ amending the objects or purposes of the charity</li> <li>■ amalgamating the charity with another body</li> <li>■ changing the charity's legal form</li> <li>■ applying to the court to change purposes, amalgamate or wind-up.</li> </ul> <p>For more information, see <a href="#">Making Changes to Your Charity</a>.</p>	External scrutiny report	Your charity's accounts must be externally scrutinised. That is, someone who is independent of your charity must review the accounts and produce a report, attached to the accounts, that highlights any issues to the reader.
		Governing Document	<p>A governing document (or constitution) is the document (or set of documents) that sets up an organisation and says what its purposes are. It will usually deal with other matters, including who will manage and control the organisation, what its powers are, what it can do with the organisation's money and other assets, and membership of the organisation. For more information, see our <a href="#">FAQs</a>.</p> <p>This is defined in <a href="#">section 106 of the 2005 Act</a>.</p>
Disbenefit	<p>This is the opposite of benefit and is equivalent to detriment or harm.</p> <p>This is set out in <a href="#">section 8 (2) (ii) of the 2005 Act</a>.</p>		

TERMS	EXPLANATION	TERMS	EXPLANATION
Legal Form	<p>Charities can take a number of legal forms. The legal form is the structure or entity, which then becomes a charity. For example:</p> <ul style="list-style-type: none"> <li>■ Unincorporated associations</li> <li>■ Companies</li> <li>■ Scottish Charitable Incorporated Organisations (SCIO)</li> <li>■ Trusts</li> <li>■ Community Benefit Society</li> <li>■ Statutory corporation established by an Act of Parliament or Royal Charter</li> <li>■ Educational endowment</li> </ul>	Misconduct	<p>Misconduct (which includes mismanagement) means any action by charity trustees which may result in a significant loss or harm to the charity (and this includes failing to act). It arises where the general duties are not met and/or where charity trustees fail to comply with any direction, requirement, notice or duty imposed under the 2005 Act (<a href="#">section 66(2) of the 2005 Act</a>).</p>
Ministerial direction or control	<p>This is where a governing document gives Scottish or UK Ministers the power to direct or otherwise control an organisation's activities.</p> <p>This is set out in <a href="#">section 7 (4) (b) of the 2005 Act</a>.</p>	Principal contact	<p>The person who will act as the main point of contact for the charity.</p> <p>This can be updated in <a href="#">OSCR online</a>.</p>
		Private Benefit	<p>This is where benefit from the charities activities is provided to members of the organisation or other individuals not as a member of the public.</p> <p>This is set out in <a href="#">Section 8 (2) (a) (i) of the 2005 Act</a>.</p>
		Property	<p>By 'property' we mean all property and assets (money and other assets) belonging to a charity, including heritable property (such as land and buildings and rights attached to it).</p>

TERMS	EXPLANATION
Protect the interests of the charity	Trustees should put the interests of their charity before their own interests, or those of any other person or organisation. They must actively work towards the achievement of the charity's purposes.  This is set out in <a href="#">Section 66 of the 2005 Act</a> .
Proxy	Someone who is authorised to act as a substitute for another.
Public Benefit	This is the way a charity makes a positive difference to the public through the activities it carries out when advancing its charitable purposes.  This is set out in <a href="#">Section 8 of the 2005 Act</a> .
Quorum	The minimum number of people necessary to make decisions and conduct the charity's business. A quorum can refer to: <ul style="list-style-type: none"> <li>■ the number of charity trustees required for board meetings, or</li> <li>■ the number of the charity's members required for membership meetings, for example Annual General Meetings (AGMs).</li> </ul> <p>This number is often set out in the charity's governing document.</p>
Register of interests	A record of the personal, business and financial interests of a charity trustee that may potentially lead to a conflict of interest.

TERMS	EXPLANATION
Remuneration	Remuneration in the 2005 Act means any payment or benefit in kind. <a href="#">Sections 67 and 68 of the 2005 Act</a> state that a charity trustee must not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) from a charity's funds unless certain conditions are met.  For more information, see <a href="#">Trustee Remuneration guide</a> .
SCIO	The Scottish Charitable Incorporated Organisation is a legal form unique to Scottish charities and is able to enter into contracts, employ staff, incur debts, own property, sue and be sued.  For more information see <a href="#">SCIO guidance</a> .
Scottish Charity number	This is the unique number given to all Scottish charities, beginning with SC0 (zero) followed by five numbers.
Scottish Charity Register	This means the register of all Scottish charities kept by OSCR.  For more information, see the <a href="#">Scottish Charity Register</a> .

TERMS	EXPLANATION
Scottish Charity Regulator	<p>The independent regulator and registrar for over 23,500 Scottish charities, established by the 2005 Act.</p> <p>For more information, see <a href="#">About OSCR</a>.</p>
Trustees Annual Report	<p>The Trustees Annual Report is a part of the annual Accounts and contains information about the charity and its activities and achievements in that year.</p>
Undue Restriction	<p>This is a restriction on who can access the benefit provided by a charity: it will be undue if excessive or unnecessary. It includes fees and charges.</p> <p>This is set out in <a href="#">Section 8 (2) (b) of the 2005 Act</a>.</p>
Wind up	<p>To wind up or dissolve a charity means that the charity ceases to exist. Before winding up a charity must get OSCR's consent.</p> <p>This is set out in <a href="#">Section 16 of the 2005 Act</a>. For more information, see <a href="#">Making Changes to Your Charity</a>.</p>





OSCR Contact details:

The Scottish Charity Regulator (OSCR)

2nd Floor

Quadrant House

9 Riverside Drive

Dundee

DD1 4NY

E: [info@oscr.org.uk](mailto:info@oscr.org.uk)

P: 01382 220446

W: [www.oscr.org.uk](http://www.oscr.org.uk)

## Rosehill is looking to make changes to its Constitution

Rosehill is currently a fully mutual housing co-operative. This means that membership of Rosehill is only open to its tenants and all tenants must be members before they can enter into a tenancy agreement with us.

Rosehill wishes to change from a fully mutual housing co-operative to a charitable registered housing association. If we make this change, we would become Rosehill Housing Association Limited. This change to our constitution will not affect your tenancy either now or in the future.

### **Why does Rosehill want to do this?**

Over the last few years, we have found it increasingly challenging to recruit people to our Management Committee. As the only people who can be members of Rosehill are our tenants, this means that our recruitment pool for the Management Committee is our tenant base. If we don't have enough people to form the Committee, the future of Rosehill, in its current form, could be weakened.

The landscape which Committees operate within has changed over the years. Committees no longer consider operational matters, their focus is more strategic and key objectives relate to governance, compliance and assurance and regulation. Against this backdrop, the role of a Committee Member has become less attractive to tenants.

We want to change to a charitable registered housing association as this will allow our membership to be opened up to others who are interested in Rosehill's work. Membership would be open to:

- Tenants
- Service Users
- Other persons who would support the objects of Rosehill

By opening up our membership this would help to strengthen the membership of the Committee in terms of numbers and skills.

There are also other benefits to becoming a charitable registered housing association. These include:

- Exemption of Corporation Tax for charitable activities. This would be a saving in our costs which is important at a time when we are trying to reduce our costs and achieve better value for money. The money we would save could be put to better use in terms of services to tenants;
- Access to various funding sources. Being a charitable association may enable us to access different funding streams to provide initiatives that would support our tenants.

## **What happens to my current Membership of Rosehill?**

If we change to a charitable housing association your current membership will simply transfer over. However, if you wish to cancel your membership you can and still remain a tenant of Rosehill, as membership would be optional.

## **Are there any other differences to Membership under a Charitable Registered Housing Association?**

Apart from the fact that membership would be opened up to others, there are a few other differences...

- There can be more than one member per household (must be aged 16 or over). Currently under the fully mutual constitution membership is restricted to one person per household and this must be the main tenant (first named tenant if there is a joint tenancy).
- Being a member would be optional for tenants. Currently under the fully mutual constitution, tenants must be members and vice versa.
- If you end your tenancy and move out of Rosehill your membership will not automatically cease as is the case under the fully mutual constitution. You can choose to remain as a member even if you are no longer a tenant.
- If you do not attend the AGM five years in a row and you haven't submitted apologies or have appointed a representative to attend and vote on your behalf by proxy, your membership will be ended and your share cancelled.
- If you change your address, you must let the Association know by writing to the Secretary at the registered office within three months. This requirement does not apply if you are a tenant of the Association and have moved home by transferring your tenancy to another property owned and managed by the Association.

## **Does the change in constitution affect my tenancy agreement?**

Your Scottish Secure Tenancy Agreement (SSTA) will continue as normal. All tenants of social rented landlords have a SSTA regardless of whether their landlord is a local authority, a housing association or a housing co-operative.

## **What impact does this change in constitution have on tenant control at Rosehill?**

Opening up our membership to others, does mean we can recruit non-tenants to the Management Committee. Tenant control in terms of the Management Committee has been fundamental to the management of Rosehill over the years. We would still like to see a majority of tenants serving on the Committee. To support this, we would have a new Membership Policy that clearly sets out our aim to have a tenant majority on the Committee, where possible. However, as explained under our reasons for changing our constitution it has become increasingly difficult to recruit tenants to the Committee.

We continue to look at ways we can improve tenant engagement and participation at Rosehill so tenants can share their views and be involved in driving improvements to service delivery. The Management Committee is expected to take account of what

tenants think when making decisions and Rosehill will continue to consult with tenants e.g. about rent increases, services, business plan priorities etc. We have our tenants' Group – Rosehill Tenants' Voice who undertake reviews of the services we deliver and the work we do and make recommendations for implementing improvements. The group is always looking for other tenants to join.

### **Would Rosehill still be called Rosehill Housing Co-operative Limited?**

No, if we change from being a fully mutual housing co-operative to a charitable registered housing association, we will need to change our name. We would be called Rosehill Housing Association Limited.

### **When would the change to Rosehill's constitution happen?**

We need to undertake a range of legal procedures to enable the change to our constitution. We plan to hold a Special General Meeting (SGM) in September (on the same night as our AGM) to put a resolution to our Members to vote on the proposed change to our constitution. If the majority of members (75% of members in attendance or who have submitted a proxy) vote in favour of the constitutional change, we then need to submit the new constitution (otherwise known as the rules of the Association) and name change to the Financial Conduct Authority ("FCA") to register. The new rules and name change will be effective as of the date of registration with FCA. We also need to notify the Scottish Housing Regulator of the changes.

Following adoption at the SGM, the Office of the Scottish Charity Regulator (otherwise known as "OSCR") will also be notified at which time they will complete the processes involved to enter Rosehill Housing Association Limited on the charity register and issue a charity number.

We envisage that the processes involved will be complete by October or November 2024.

### **How do I find out more?**

We want to ensure our members (tenants) have sufficient information to enable them to vote at the SGM in September. Therefore, we plan to hold a series of "drop-in sessions" at our office over late Spring, early Summer to enable members (tenants) to come in and ask any questions they may have about the proposed change to our constitution. We will hold the sessions at different times, mornings, afternoons and evenings to allow as many people as possible to come in and speak to us. The sessions will be attended by our Director and at least one of our Committee Members. In addition, we will offer the choice of attending the sessions in-person or virtually.

In the meantime, if you have any specific questions you can contact us by:

Phoning the office on 0141 881 0595

Emailing us – [admin@rosehillhousing.co.uk](mailto:admin@rosehillhousing.co.uk)

Requesting an appointment (using one of the above methods) to come in and speak to our Director, Geri Mogan.

Please note that all enquiries will be passed to our Director to deal with.