

CONSTITUTION OF ANAM CARA FASGADH



SCVO Model SCIO Constitution (single tier)

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GENERAL

Type of organisation

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

Scottish principal office

- 2 The principal office of the organisation will be in Scotland (and must remain in Scotland).

Name

- 3 The name of the organisation is Anam Cara Fasgadh.

Purposes

- 4 The organisation's purpose is the relief of those in need by reason of bereavement through the death of a child by providing respite accommodation & support with the object of improving the conditions of life for bereaved families.

Powers

- 5 The organisation has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

In particular, but without limiting the range of powers available under the 2005 Act, the organisation has power:

- 5.1 To encourage and develop a spirit of voluntary or other commitment by, or co-operation with, individuals, unincorporated associations, societies, federations, partnerships, corporate bodies, agencies, undertakings, local authorities, unions, co-operatives, trusts and others and any groups or groupings thereof willing to assist the Organisation to achieve the Purposes.
- 5.2 To promote, develop and manage initiatives, projects and programmes.
- 5.3 To purchase, take on lease, hire, or otherwise acquire any property suitable for the organisation
- 5.4 To construct, convert, improve, develop, conserve, maintain, alter and demolish any buildings or erections whether of a permanent or temporary nature, and manage and operate or arrange for the professional or other appropriate management and operation of the organisation's property.

- 5.5 To sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the property of the organisation.
 - 5.6 To establish and administer a building fund or funds or guarantee fund or funds or endowment fund or funds.
 - 5.7 To employ, contract with, train and pay such staff (whether employed or self-employed) as are considered appropriate for the proper conduct of the activities of the organisation.
 - 5.8 To take such steps as may be deemed appropriate for the purpose of raising funds for the activities of the organisation.
 - 5.9 To accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust.
 - 5.10 To set aside funds not immediately required as a reserve or for specific purposes.
 - 5.11 To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the organisation and to enter into any arrangement for co-operation, mutual assistance, or sharing profit with any charitable organisation.
 - 5.12 To enter into contracts to provide services to or on behalf of the organisation.
 - 5.13 To effect insurance of all kinds (which may include indemnity insurance in respect of Trustees and employees).
 - 5.14 To pay the costs of forming the organisation and its subsequent development.
- 6 No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the members - either in the course of the organisation's existence or on dissolution - except where this is done in direct furtherance of the organisation's charitable purposes.

Liability of Charity Trustees

- 7 The Charity Trustees of the organisation (in their capacity as members - see clause 11) have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the members will not be held responsible.

7.1 Subject to the terms of the 2005 Act and without prejudice to any other indemnity, the Charity Trustees, or member of any sub-committee, the organisation Office Bearers and all employees of the organisation shall be indemnified out of the funds of the organisation

against any loss or liability (including the costs of defending successfully any court proceedings) which he, she or they may respectively incur or sustain, in connection with or on behalf of the organisation and each of them shall be chargeable only for so much money as he or she may actually receive and they shall not be answerable for the acts, receipts, neglects or defaults of each other, but each of them for his or her own acts, receipts, neglects or defaults only.

- 8 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

General structure

- 9 The structure of the organisation consists of the **BOARD** - who hold regular meetings and generally control the activities of the organisation; for example, the board is responsible for monitoring and controlling the financial position of the organisation.
- 10 The Board also appoints charity trustees to fill vacancies, and the people serving on the board (in their capacity as members of the organisation - see clauses 11 & 12) have the authority to make changes to the constitution.
- 11 The people serving on the board are referred to in this constitution as **CHARITY TRUSTEES** and they are also **MEMBERS** of the organisation for the purposes of the Charities and Trustee Investment (Scotland) Act 2005.
- 12 Under the provisions of this constitution no-one can be a member unless they are also a Charity Trustee of the organisation.
- 13 The Charities and Trustee Investment (Scotland) Act 2005 requires certain decisions be taken by the charity trustees in their capacity as members of the organisation.

BOARD

Number of charity trustees

- 14 The maximum number of charity trustees is 10.
- 15 The minimum number of charity trustees is 4 [*must not be less than 3*].

Eligibility

- 16 A person will not be eligible for election or appointment to the board if they are: -
- 16.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
 - 16.2 an employee of the organisation.

Initial charity trustees

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

Election, retiral, re-election

- 18 The board may at any time appoint any member (unless they are debarred from membership) to be a charity trustee by way of a resolution passed by a majority vote at a Board Meeting.
- 19 At each AGM, all of the charity trustees elected/appointed shall retire from office – but shall then be eligible for re-election.
- 20 A charity trustee retiring at an AGM will be deemed to have been re-elected unless: -
- 20.1 they advise the board prior to the conclusion of the AGM that they do not wish to be re-appointed as a charity trustee; or
 - 20.2 an election process was held at the AGM and they were not among those elected/re-elected through that process; or
 - 20.3 a resolution for the re-election of that charity trustee was put to the AGM and was not carried.

Appointment/re-appointment of co-opted charity trustees

- 21 The board may at any time appoint any non-member of the organisation to be a charity trustee either on the basis that they have been nominated by a body with which the organisation has close contact in the course of its activities *or* on the basis that they have

specialist experience and/or skills which could be of assistance to the board.

- 22 At each AGM, all of the charity trustees appointed under clause 21 **Error! Reference source not found.** shall retire from office – but shall then be eligible for re-appointment under that clause.

Termination of office

- 23 A charity trustee will automatically cease to hold office if: -
- 23.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 23.2 they become incapable for medical reasons of carrying out their duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
 - 23.3 they cease to be a member of the organisation;
 - 23.4 they become an employee of the organisation;
 - 23.5 they give the organisation a notice of resignation, signed by them;
 - 23.6 they are absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove them from office;
 - 23.7 they are removed from office by resolution of the board on the grounds that they are considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 71);
 - 23.8 they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under the Charities and Trustee Investment (Scotland) Act 2005; or
- 24 A resolution under paragraph 23.8 or 23.9 shall be valid only if: -
- 24.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed;
 - 24.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
 - 24.3 at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

Register of charity trustees

- 25 The board must keep a register of charity trustees, setting out
- 25.1 for each current charity trustee:
 - 25.1.1 their full name and address;
 - 25.1.2 the date on which they were appointed as a charity trustee; and
 - 25.1.3 any office held by them in the organisation;
 - 25.2 for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee:
 - 25.2.1 the name of the charity trustee;
 - 25.2.2 any office held by them in the organisation; and
 - 25.2.3 the date on which they ceased to be a charity trustee.
- 26 The board must ensure that the register of charity trustees is updated within 28 days of any change:
- 26.1 which arises from a resolution of the board or a resolution passed by the members of the organisation; or
 - 26.2 which is notified to the organisation.
- 27 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the organisation, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.
- 28 The members of the organisation are identical to its charity trustees and therefore the organisation does not require to keep a separate register of members.

Office-bearers

- 29 The charity trustees must elect (from among themselves) a chair, a treasurer and a secretary.
- 30 In addition to the office-bearers required under clause 29, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

- 31 All of the office-bearers will cease to hold office at the conclusion of each AGM but may then be re-elected under clause 29 or 30.
- 32 A person elected to any office will automatically cease to hold that office: -
- 32.1 if they cease to be a charity trustee; *or*
- 32.2 if they give to the organisation a notice of resignation from that office, signed by them.

Powers of board

- 33 Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the organisation.
- 34 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.

Charity trustees - general duties

- 35 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation; and, in particular, must: -
- 35.1 seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
- 35.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
- 35.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:
- 35.3.1 put the interests of the organisation before that of the other party;
- 35.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
- 35.4 ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 36 In addition to the duties outlined in clause 35, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -

- 36.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
- 36.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 37 Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest; and (subject to clause 36 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), they may retain any personal benefit which arises from that arrangement.
- 38 No charity trustee may serve as an employee (full time or part time) of the organisation; and no charity trustee may be given any remuneration by the organisation for carrying out their duties as a charity trustee.
- 39 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for charity trustees

- 40 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.
- 41 The code of conduct referred to in clause 40 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time

DECISION-MAKING BY THE CHARITY TRUSTEES - IN THEIR CAPACITY AS MEMBERS

- 42 For certain purposes of the Charities and Trustee Investment (Scotland) Act 2005, the charity trustees make decisions in their capacity as *members* of the organisation, rather than as a board; the provisions of clauses 43 to **Error! Reference source not found.** relate to those situations.

Annual general meetings

- 43 The board must convene a meeting of the charity trustees - in their capacity as members of the organisation - in each calendar year; that meeting will be called an annual general meeting or "AGM".
- 44 The gap between one AGM and the next must not be longer than 15 months.
- 45 Notwithstanding clause 43, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.
- 46 The business of each AGM must include:-
- 46.1.1 a report by the chair on the activities of the organisation; and
 - 46.1.2 consideration of the future strategy for the organisation, including a review of key risks and opportunities.
- 47 The board may convene any other meeting of the charity trustees - in their capacity as members of the organisation - at any time.

Notice of board meetings

- 48 Any charity trustee may call a meeting of the board *or* ask the secretary to call a meeting of the board.
- 49 At least 7 clear days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.
- 50 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and, in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s).
- 51 The reference to "clear days" in clause 49 shall be taken to mean that, in calculating the period of notice,
- 51.1.1 the day after the notices are posted (or sent by e-mail) should be excluded; and

- 51.1.2 the day of the meeting itself should also be excluded.
- 52 Notice of every members' meeting must be given to all the charity trustees; but the accidental omission to give notice to one or more charity trustees will not invalidate the proceedings at the meeting.
- 53 Any notice of a members' meeting which requires to be given to a charity trustee - in their capacity as a member of the organisation - under this constitution must be: -
- 53.1.1 sent by post to the charity trustee, at the address last notified by them to the organisation; *or*
- 53.1.2 sent by e-mail to the charity trustee, at the e-mail address last notified by them to the organisation.
- 54 The board may make arrangements, in advance of any members' meeting, to allow members to participate in the members' meeting by means of a conference telephone, video-conferencing facility or similar communications equipment – so long as all those participating in the meeting can hear each other; a member participating in a members' meeting in this manner shall be deemed to be present in person at the meeting.

Procedure at board meetings

- 55 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 4 charity trustees.
- 56 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 45, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.
- 57 The chair of the organisation should act as chairperson of each board meeting.
- 58 If the chair is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 59 Every charity trustee has one vote, which must be given personally.
- 60 All decisions at board meetings will be made by majority vote.
- 61 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 62 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that they are not a charity trustee - but on the basis that they must not participate in decision-making.

- 63 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.
- 64 For the purposes of clause 53: -
- 64.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
- 64.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

Voting at members’ meetings

- 65 Every charity trustee shall have one vote in their capacity as a member, which must be given personally.
- 66 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 66.
- 67 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 71):
- 67.1 a resolution amending the constitution;
- 67.2 a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
- 67.3 a resolution to the effect that all of the organisation’s property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
- 67.4 a resolution for the winding up or dissolution of the organisation.
- 68 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

- 69 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot.
- 70 The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.

Written resolutions

- 71 A resolution agreed to in writing (or by e-mail) by all the charity trustees, in their capacity as members of the organisation, will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last charity trustee agreed to it.

Minutes

- 72 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 73 The minutes to be kept under clause 72 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 74 The board shall (subject to clause 76) make available copies of the minutes referred to in clause 72 to any member of the public requesting them.
- 75 The board shall display copies of the minutes referred to in clause 72 on the website (subject to clause 76).
- 76 The board may exclude from any copy minutes made available to a member of the public under clause 72 any material which the board considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

ADMINISTRATION

Delegation to sub-committees

- 77 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 78 The board may also delegate to the chair of the organisation (or the holder of any other post) such of their powers as they may consider appropriate.
- 79 When delegating powers under clause 77 or 78, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 80 Any delegation of powers under clause 77 or 78 may be revoked or altered by the board at any time.
- 81 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

Operation of accounts

- 82 Subject to clause 83, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the organisation; at least one out of the two signatures must be the signature of a charity trustee.
- 83 Where the organisation uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 82.

Accounting records and annual accounts

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

MISCELLANEOUS

Winding-up

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

Alterations to the constitution

- 88 This constitution may (subject to clause 95) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 75) or by way of a written resolution of the members.
- 89 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

- 90 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 90.1 any statutory provision which adds to, modifies or replaces that Act; and
 - 90.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 90.1 above.
- 91 In this constitution: -
- 91.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;
 - 91.2 "charitable purpose" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.