

BAPTIST UNION OF SCOTLAND (“THE UNION”) WEBSITE
COMMENTARY ON DRAFT MODEL CONSITUTION FOR A
SCOTTISH CHARITABLE INCORPORATED ORGANISATION (SCIO)
SUGGESTED FOR USE BY CHURCHES IN MEMBERSHIP OF THE UNION

This Commentary is intended to explain the terms of the draft Model Constitution for a Scottish Charitable Incorporated Organisation (SCIO) suggested for use by churches in membership of the Baptist Union of Scotland [[LINK TO DRAFT MODEL CONSTITUTION](#)]. It should be read in conjunction with the Companion to re-structuring a Scottish Baptist Church as a SCIO [[LINK TO COMPANION](#)]. Please note the following:

- *The comments follow the same order as the text of the Model Constitution and are set out in numbered paragraphs for ease of reference.*
- *The numbering of the comments does not correspond with the numbering of the clauses in the Model, but clear reference to the clause numbers is included in the comments.*
- *Sometimes several comments are made on the same clause or section of clauses.*
- *Where no comment is made on particular clauses, hopefully the terms of these are self-explanatory.*
- *Square brackets have been used to indicate where there are options or choices for the Church. All these square brackets should have disappeared in the final version of your constitution.*
- *Remember to re-check clause numbering after you make any changes.*
- *The main purpose of the Commentary is to focus on areas of choice for the Church in adapting the Model to the needs, preference and context of the Church. This is not intended to be a full technical analysis of every clause of the Model. The whole terms of the Model should be carefully read and considered, and legal or other appropriate advice taken from duly qualified and experienced solicitors and/or other advisors as required.*
- *The Model may appear dauntingly lengthy. This is unfortunately inevitable as the SCIO Regulations (Scottish Statutory Instrument No 2011/44) prescribe a range of topics that must be included in a SCIO Constitution.*
- *Despite the length of the Model, you may still feel that you want to include more detail about certain areas, such as baptismal practice, the celebration of the Lord’s Supper, qualifications and process in relation to membership applications, election of Charity Trustees, procedure at meetings or in a pastoral vacancy, operation of bank accounts etc. To avoid lengthening the Constitution unnecessarily, it is recommended that such additional detail is included in separate rules or bye-laws (referred to as “the Rules”). One advantage of this is that the Rules can be amended easily without having to change the Constitution.*

1. **Front Page.** See comment 5 below on the name of the Church. You will not be able to fill in the new charity number until after the formation of the new SCIO has been approved by OSCR.
2. **Contents Page.** You may prefer to set out the contents in a different format. However, the format chosen corresponds to that used in the “secular” model SCIO constitution published by the Scottish Council for Voluntary Organisations (SCVO). OSCR is familiar with the SCVO lay out, and therefore adopting this may get you off on the right foot with OSCR!
3. **Note to Contents Page.** Please read this and take note of the need to refer to the full definitions of the defined terms as contained in Clause 123 of the Model. Where defined terms (normally identified by the use of initial capital letters, eg “the Church”, “the Charity Trustees” etc) are used in this commentary, these will correspond with the definitions given in Clause 123.
4. **Clause 2.** There is no need to specify a principal office address, apart from saying that it will be in Scotland. The principal office address from time to time must of course be intimated to OSCR.
5. **Clause 3.** The name of the Church should be inserted where shown. Make sure to delete “Wharf” which has simply been used for illustrative purposes (as the Union’s office is on Speirs Wharf!). The name of the new SCIO must be different from that of the existing unincorporated voluntary association (“UVA”). This can be accomplished by adding “SCIO” or a year (eg “2018”) to the existing name. You may perhaps take the opportunity to change the name of the Church if for example the Church’s main work is now in geographical areas different from those contained in the existing name, though of course you will want to be careful to maintain continuity of recognition with the name by which the Church has previously been known. As and when the “old” UVA has been removed from the Scottish Charities Register you may wish to apply to OSCR for consent to change the name of the SCIO back to the former name of the UVA.
6. **Clause 4.** The Purposes stated are the advancement of religion, which is defined as a Charitable Purpose in terms of Section 7(2) of the Act. There is then a quick summary of numerous means by which the Purposes may be accomplished, most or all of which would typically apply to most Baptist churches. You may wish to “unpack” some of these means in more detail, although please do not try to say too much! The Constitution is intended as a functional and compliance document, and will likely not command a wide public readership. There may be other better places to say more about what the Church is or does.
7. **Clause 4.** Although the advancement of religion (in particular the Christian faith) will always be the Church’s primary purpose, depending on the Church’s particular activities, you may want to consider adding other Charitable Purposes from those stated in Section 7(2) of the Act, for example:
 - a. the prevention or relief of poverty;
 - b. the advancement of education;
 - c. the advancement of health;
 - d. the advancement of citizenship or community development;
 - e. the advancement of the arts, heritage, culture or science;

- f. the advancement of public participation in sport;
 - g. the provision/organisation of recreational facilities/activities to improve the condition of life;
 - h. the advancement of human rights, conflict resolution or reconciliation
 - i. the promotion of religious or racial harmony;
 - j. the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage.
8. **Clause 4.** You may wish to specify the primary geographical area or areas, perhaps a town(s) or district(s)/region(s) in Scotland within which the Church will operate. Remember to delete “Wharville”.
9. **Clause 4.** Adherence to the Christian Bible and the Union’s Declaration of Principle (stated in Part 1 of the Appendix) should be a given. Although this is not essential, you may wish also to make reference to a Statement of Foundation Values in Part 2 of the Appendix. This gives the opportunity to include any statement of faith to which the Church has historically subscribed, perhaps providing continuity with earlier constitutions of the Church. However, the contents of a previous constitution or document should not be uncritically unpacked into a Statement of Foundation Values. Archaic wording may benefit from updating (or deletion), and care should be taken with gender specific language. Provisions regarding the administration of the Church may have to be weeded out or edited so as not to be inconsistent with what is stated in the new Constitution.
10. **Clause 5.** In terms of Section 50(5) of the Act, a SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so. Therefore there is no need to state an exhaustive list of powers, as the SCIO can do these things anyway. In theory, you could dispense with Clause 5 totally. However, regardless of what the law says, some organisations and individuals with whom the Church deals or contracts may want to see a specific power listed. This may apply in particular to banks/lenders and those contracting in relation to property and/or staff matters. Therefore a few major powers have been listed, and you may wish to consider whether it would be appropriate to add any other specific powers in the context of the Church’s activities.
11. **Clause 7.** This states the general principle that the Members of the Church SCIO have no liability for the debts of the Church. However, this is subject to comment 12 below.
12. **Clause 8.** Charity Trustees have numerous duties, primarily set out in Section 66 of the Act and summarised in the publication ***Guidance and Good Practice for Charity Trustees*** available on the OSCR website [[LINK](#)]. In terms of Section 51 of the Act, some of these duties, in particular in relation to acting in the interests of the Church and seeking in good faith to ensure that the Church acts in a manner consistent with its Purposes, also apply to Members. Therefore Charity Trustees and/or Members may potentially incur some liability if they are in breach of these duties or other legal obligations.
13. **Clauses 9-10.** These speak for themselves, outlining the structure of the Church, summarising the respective involvements and inter-relationship of the Members

and the Leadership Team, and stating that the Church will be in membership of the Union.

14. **Clauses 11-12.** This is sufficient detail on baptism and the Lord's Supper for the Constitution. You may want to address either or both of these more deeply in the Rules.
15. **Clause 13.** A closed membership church would include the words "and has been baptised as a Christian believer and disciple", whereas an open membership church would omit these words.
16. **Clauses 14-16.** The final decision as to whether to admit a new member must rest with the Members Meeting. Nevertheless the rejection of an application should not be arbitrary but only if the meeting is not reasonably satisfied that the applicant fulfils the qualifications for membership and/or is able to fulfil his/her membership obligations.
17. **Clauses 19-20.** The Register of Members is a compulsory requirement of the SCIO Regulations
18. **Clause 21.** The Leadership Team is obliged to supply to any Member on request a copy of the Register of Members, though some or all of the addresses can be blanked out. The Church should be mindful of this statutory obligation and the permissions required in carrying through its General Data Protection Regulation (GDPR) process.
19. **Clause 22.** The general character of the obligations of membership will be recognisable from previous commonly used constitutional wordings, but the language has been updated and some archaic expressions removed. Clause 22.8 is based on "the rule in Matthew 18, 15-17".
20. **Clause 25.** Exclusion from membership is a potential consequence of failure to fulfil the obligations of membership. This could include lack of attendance, and the Church may choose to include a specific procedure for such lapsed membership in the Rules. However, there can be many good reasons why someone does not attend church services, and prescribing fixed periods of non-attendance may be difficult to police. The general wording adopted here may avoid the drawbacks of a more legalistic approach.
21. **Clause 26.** "Hear the other side", is an essential element of natural justice and the serious step of excluding someone from membership of the Church should not be taken without the person concerned having a reasonable opportunity to explain his/her position.
22. **Clause 30.** In Clause 30.3, please choose the appropriate numbers from Clauses 60, 62, 63 and 64 depending on which options for election and/or re-election of Charity Trustees are chosen (see comments 51-54 below).
23. **Clause 31.** The Model requires at least one annual Members Meeting (the traditional "half-yearly") in addition to the AGM, and you can of course amend this to three additional meetings if you hold Members Meetings quarterly, or otherwise in accordance with the custom and practice of the Church.
24. **Clauses 32-33.** This relates to the proportion or number of Members who can compel the Leadership Team to call a Members Meeting. 10% of the total membership is suggested, but you may prefer an actual number of Members rather

than a percentage (or something more sophisticated such as the lower or higher of a number and a percentage). The appropriate proportion may be higher for a low membership church and lower for a high membership church.

25. **Clause 34.** A minimum 14 days' notice of a Members Meeting is fairly well standard, but it would be possible to specify a different time period if you prefer.
26. **Clause 35.** A resolution falling within Clause 45 requires a two-thirds majority.
27. **Clause 36.** The occasional inevitable failure to intimate a meeting to every Member must not be allowed to bring the process of church administration grinding to a halt. This is of course no excuse for sloppy procedures, and every effort must be made to minimise and eliminate such lapses, which can be the cause of so much upset and discontent.
28. **Clause 38.** Similar to comment 24 above, the Church should give consideration to the appropriate number and/or proportion of members to form a quorum and whether this should be calculated on a "greater of" or "lesser of" basis.
29. **Clause 39.** 15 minutes seems to be a reasonable time to wait for a quorum to assemble before abandoning the Members Meeting, but some churches may prefer a different period.
30. **Clause 40.** This refers to a Designated Chairperson (see comment 62 below). Some churches may prefer to specify the pastor or senior pastor for this role. However, giving the opportunity to designate a chairperson allows maximum flexibility and can be applied to numerous situations such as an interim moderator in a vacancy or a team or part time ministry, or simply where the (senior) pastor is not particularly gifted as a chairperson or prefers not to chair meetings.
31. **Clause 42.** The preference is for decisions at Members Meetings to be reached by consensus as the appropriate conclusion of a process of communal discernment. This has been defined elsewhere by the Union as "the ecclesial practice of attentive listening, deliberating and agreeing together, in seeking after God's perceived will, with regards to an appropriate action or response to be undertaken". This is far preferable to an adversarial process of arguing from entrenched positions, culminating in a competitive vote which the "losing side" may find difficult to accept. The Chair is entitled to remind Members of this preference. Sometimes formal voting will be required for the record.
32. **Clause 43.** The Member's vote must be given in person. The alternative is of course to allow Members unable to attend to vote by proxy. It would be possible to amend the Model to include such proxy voting. However, the Union's recommendation would be not to permit proxy voting, as this seems contrary to Baptist principles in relation to the Holy Spirit's guidance of the Members gathered together in the church meeting. Members not present should trust and abide by the process of communal discernment outlined in comment 31 above.
33. **Clause 45.** This lists 9 circumstances in which the decision is of such a fundamental nature that the majority necessary to carry the motion is two-thirds. It would of course be possible for the Church to choose to add other important issues to this list.
34. **Clause 46.** Hopefully, if communal discernment is operating as it should, then equality of votes would be a rarity. There does have to be some means of resolving

deadlock, and giving the Chair a casting vote is one way of dealing with this. However, depending on the circumstances it may be appropriate for the Chair and the meeting to agree that a deciding vote should not be cast, but instead the matter should be deferred for further prayerful reflection before coming again to the point of decision.

35. **Clause 47.** Open voting by show of hands should be the norm, but it is appreciated that where personally sensitive matters are involved, a secret ballot may be necessary.
36. **Clauses 49-50.** These clearly state the position as regards conflict of interest as affecting any Member of the Church, and only if the procedures are followed to the letter should any Member receive remuneration or similar benefit from any arrangement with the Church. An obvious example would be where the Member concerned has an interest in a business which provides paid for services to the Church. There are additional requirements for Members who are also Charity Trustees (see comments 68, 70 and 77 below).
37. **Clause 53.** The “Leadership Team” is the collective and the “Charity Trustees” are the individuals who make up the collective. Therefore the two terms can be used interchangeably. There are no “floating” Charity Trustees who are not part of the Leadership Team, and equally there is no one on the Leadership Team who is not a Charity Trustee. Generally “Leadership Team” is used where the emphasis is on the collective meeting and working together, while “Charity Trustees” is used in relation to the individual duties and responsibilities of the members of the collective.
38. **Clause 53.** Depending on the pre-existing structure of church leadership, the Leadership Team may equate to an existing group such as a Diaconate or Eldership or a combination of such groups. It would be possible to use the older name instead of “Leadership Team” in the Constitution, but care should be taken to ensure that all cross-referencing is correct. It may be better to keep “Leadership Team” in the Constitution, and in general church parlance to start to refer to the Leadership Team interchangeably with the pre-existing terms such as Diaconate and/or Eldership.
39. **Clause 53.** It is necessary to recognise that those whom the Church may call “Charity Trustees” are not the last word on whom the law may deem to be charity trustees. By Section 106 of the Act “charity trustees” means “the persons having the general control and management of the administration of a charity”. Thus, if you are part of the control and management team then you are a charity trustee whether or not the church or you regard you as such. To avoid confusion as regards named trustees and “deemed trustees”, it would be helpful if so far as possible all those involved in control and management functions are named and appointed as “Charity Trustees”.
40. **Clause 53.** While Clause 61 allows for co-option to fill gaps pending a proper election, this is intended as a temporary expedient, and it would be generally expected that such co-optees would be in the minority. 2 has been suggested as the maximum, but a different figure may be appropriate, depending on the size of the Church.
41. **Clauses 53-54.** The appropriate minimum and maximum numbers of Charity Trustees should be the subject of careful consideration by the Church. The figures tentatively suggested are 5 and 12, but a smaller church may choose to go for less

(though in terms of Section 50 (1) (b) of the Act a SCIO must have at least 3 trustees) and a larger church may choose to go for more. There should be a sufficient number to avoid the whole weight falling on a very few, with consequent crisis if any of these few are no longer able to serve for whatever reason. Equally, there should not be so many that decision making and management become protracted and unwieldy.

42. **Clauses 53-55.** Reference should be made to Clause 123 for the definitions of Qualifying Trustees, Non-Qualifying Trustees and Remunerated Trustees. Non-Qualifying Trustees are either themselves remunerated (ie paid) by the Church or are “connected” to a paid trustee. Connected Persons are defined in Section 68(2) of the Act. It is a long list that includes spouses, partners, siblings, children, grandchildren, parents, grandparents and in-laws. To comply with Section 67 of the Act, Non-Qualifying Trustees must always be in the minority on the Leadership Team. This is an over-riding consideration that trumps all others and must never be breached.
43. **Clause 56.** Whether a Baptist Church has open or closed membership, generally it would require its Leadership Team to be baptised believers (though a church may wish to specify some exceptions to this rule). An open membership church would include the words in square brackets whereas a closed membership church would not need to include these as any Member would by definition (see Clause 13) already be a baptised believer.
44. **Clause 57.** The grounds for disqualification from being a Charity Trustee are specified in Section 69 of the Act and include:
 - a. conviction of an offence involving dishonesty or an offence under the Act;
 - b. being an undischarged bankrupt;
 - c. having been removed by order of court and/or regulatory authority (ie OSCR or the Charity Commission) from being involved in the management or control of a charity or other relevant body;
 - d. being subject to disqualification from acting as a company director.The Church may wish to take the precaution of obtaining from any current or prospective Charity Trustee a formal written declaration that none of these grounds for disqualification apply.
45. **Clause 58.** This permits a Charity Trustee to be appointed and/or to continue in office even if he/she (or a person connected to him/her-see comment 42 above) is or becomes an employee of the Church. For example a Charity Trustee would not have to step down simply because his/her spouse or child was employed as a youth worker or in the Church’s office or shop. However, and with reference to comment 42 above, please note that the Charity Trustee in question would then become a Non-qualifying Trustee. The over-riding requirement is that the Non-qualifying Trustees must be in the minority on the Leadership Team. Therefore if the balance between Qualifying Trustees and Non-qualifying Trustees is disturbed, it may be that the Charity Trustee would have to step down (or at least to do so temporarily until the balance can be rectified by the co-option or election of sufficient Qualifying Trustees).
46. **Clause 59.** When the Church applies to OSCR for the incorporation of the new SCIO as a charity, the initial trustees (as appointed or authorised by the Church) require

to sign declaration forms to accompany the application and the Constitution. Such signatories would automatically become Charity Trustees. This enables the Church to be managed and administered pending an election of Charity Trustees at the first AGM.

47. **Clause 59.** Ministers of the Church (see the definition of “Minister” in Clause 123), up to a maximum of 2, are automatically deemed to be Charity Trustees. Therefore a third minister appointed would not automatically become a Charity Trustee unless specifically co-opted or elected. A large multi-staffed church might want to increase this maximum above 2. Again, if any or all of the Ministers are remunerated, regard must be had to the need for a majority of Qualifying Trustees (see comment 42 above).
48. **Clause 60.** This provides for Leadership Team elections to take place at each AGM. It would be possible to change this to allow for election at “half-yearly” or indeed any other Members Meetings. No specification has been made as to the precise method of election, as there are so many possibilities and each church will have its own preferences and traditions. If more detail is wanted, this would be better placed in the Rules. A 3 year term is suggested as this is probably the approximate average in practice, but anywhere between one year and 5 years may be appropriate.
49. **Clause 61.** This allows for co-option of Charity Trustees to the Leadership Team without having to wait for the next AGM. This might be helpful in any of the following circumstances:
 - a. to fill gaps caused by death, ill-health, temporary unavailability or resignation;
 - b. to bring on board those with specific skills relevant to a current situation or project;
 - c. to restore a majority of Qualifying Trustees.
50. **Clause 62.** Deemed appointment of initial trustees (see comment 46 above) and appointment by co-option (see comment 49 above) are temporary expedients to hold the position pending the next AGM. It is appropriate that appointment for a full term of service should be endorsed by election by the Members Meeting.
51. **Clause 63.** This permits re-election of Charity Trustees for successive 3 year periods of service (but see comments 52-53 below).
52. **Clause 64.** This is an optional clause requiring that a Charity Trustee must “take a sabbatical” and step down for at least a year, after completing the equivalent of two full terms of service. This is a good principle, allowing rest and re-invigoration for the trustee, facilitating the refreshing of the Leadership Team by the influx of new blood and new ideas, and preventing a culture of indispensability developing around certain individuals. An exception is made for Ministers and Office-bearers.
53. **Clause 64.** Some, especially smaller, churches may feel uneasy about the compulsory step down provision, fearing even the temporary loss of one of a restricted pool of able leaders. If this option is not chosen then the square bracketed words “subject to Clause 64” should be deleted from Clause 63, Clause 65 should be re-numbered as Clause 64, and all subsequent clauses must be re-numbered. A possible “halfway house” would be to include Clause 64, but delete the square

bracketed words “or re-appointment”. That would allow the temporarily retired Charity Trustee to be re-appointed by co-option if this turned out to be essential for the good governance of the Church!

54. **Clause 65.** The square bracketed numbering should be adjusted depending on whether or not the suggested Clause 64 has been included.
55. **Clause 66.** This gives a list of circumstances in which the Leadership Team may suspend a Charity Trustee. The first two speak for themselves. As regards the third, Sections 66(1) and 66(2) of the Act set out the general duties of Charity Trustees, most of which are re-stated in Clauses 83 and 84 of the Constitution. Clause 66.4 is required only if the Church chooses to adopt a Code of Conduct for Charity Trustees (see comment 71 below).
56. **Clause 67.** Suspension of a Charity Trustee is a serious step and therefore requires a two-thirds majority of the other members of the Leadership Team. In keeping with the principles of natural justice, the viewpoint of the trustee concerned must be heard.
57. **Clauses 68-69.** These restrictions on the suspended trustee are essential to protect the Church’s position and finances, pending a final decision by the Members Meeting.
58. **Clause 70.** The possible decisions are straightforward. However, in view of the requirement for a two-thirds majority to remove a Charity Trustee from office, it may be that no effective decision will be made, for example if a motion to remove the trustee receives simple majority backing but falls below the two-thirds required. In that case, the default option outlined in the final paragraph of Clause 70 comes into play.
59. **Clauses 71-72.** Clause 71.5 addresses the possibility of a motion to remove a Charity Trustee being brought direct to a Members Meeting, rather than coming from the Leadership Team after the trustee is suspended. Again the principles of natural justice apply. The Charity Trustee must be made aware of the grounds for the proposed removal and be given the opportunity to present his/her case.
60. **Clauses 73-74.** The Register of present and former Charity Trustees is a compulsory requirement of the SCIO Regulations.
61. **Clause 75.** The Leadership Team is obliged to supply a copy of the Register to any person who makes a reasonable request. The copy supplied may have the addresses of any or all of the Charity Trustees blanked out. Even some or all of the names may be blanked out if the Leadership Team is satisfied that including this information is likely to jeopardise the safety or security of any person or premises. As in comment 18 above, the Church should be mindful of this statutory obligation and the permissions required in carrying through its GDPR process.
62. **Clauses 76-78.** It is not compulsory for a Church to have Office-bearers. Accordingly in theory these clauses could be omitted (although cross-referencing and re-numbering would be required). Generally it will be helpful to have Office-bearers in place as public representatives of the Leadership Team and to provide a focus of responsibility for certain functions. There is flexibility as regards the named roles of the Officebearers. The Designated Chairperson may be the Minister or the senior member of a team ministry. “Secretary” and “Treasurer” are traditional titles, but

“Administrator” and “Finance Director” or a range of different labels could be applied.

63. **Clause 76.** A Designated Chairperson brings continuity in the conduct of Members Meetings and Leadership Team Meetings. “Secretary” or similar title provides a focus for all administrative matters, including for example such major issues as GDPR, PVG and other compliance. “Treasurer” or similar title provides a focus for all financial and budgetary matters. Therefore, no matter how the functions are delegated or divided up, there is a locus for reporting and accountability which may prevent key matters being fudged, forgotten or falling through the cracks.
64. **Clause 76.** To minimise the potential for conflict, it is recommended that the Treasurer (or equivalent) is a Qualifying Trustee. Thus his or her leadership in financial or budgetary matters cannot be perceived to have been prejudiced by issues relating to his/her remuneration or that of a connected person.
65. **Clause 77.** To prevent overload on, or excessive influence by, one individual, it is recommended that the same person cannot simultaneously hold more than one office. The only way to change this would be to alter the Constitution. It is possible that for a smaller church, such combining of offices may be perceived to be the only practical way forward in certain circumstances. At least then the drastic step of having to amend the Constitution might help to focus minds as to whether an alternative solution can be found.
66. **Clause 81.** Baptist principles give a high significance to God’s will being revealed to the Members of the Church gathered together in the Members Meeting. The Leadership Team must not govern and manage the assets and operations of the Church in isolation from the Members. This is given practical effect in this clause which compels the Leadership Team to comply with any direction given by a two-thirds majority decision of a Members Meeting. Ideally with communal discernment operating (see comments 31 and 34 above), such decision would be unanimous.
67. **Clause 82.** Hopefully the Leadership Team and the Members Meeting will work harmoniously together and there will never be a direct confrontation. Nevertheless, in all that they do, the Leadership Team should be sensitive and responsive to the values and preferences of the Members and be alive to the messages which are being given to them through the decisions and considerations of the Members Meetings.
68. **Clause 83.** This clause mirrors the terms of Section 66 of the Act. The particular importance of complying with the conflict of interest provisions in Clause 83.3 cannot be over-stated.
69. **Clause 84.** This is largely self-explanatory. The last sentence of Clause 84.3 is not compulsory, but is perhaps useful as a statement that help is available, and that the staff and resources of the Union may bring fresh perspective and facilitate the resolution of what might seem to be an intractable dispute.
70. **Clause 85.** This sets out the strict conflict of interest and other procedures to be followed in relation to any employment or other arrangement in which a Charity Trustee or a Connected Person (“the Service Provider”) has an interest or receives remuneration or other benefit. In terms of Sections 67 and 68 of the Act:

- a. the maximum amount of any remuneration must be set out in a written agreement between the Service Provider and the Church, and must be reasonable in the circumstances;
- b. the Leadership Team must be satisfied that it is in the interests of the Church for the services to be provided by the Service Provider for that maximum amount.

Furthermore, as previously mentioned (see comment 42 above), any such arrangement will result in the Charity Trustee in question becoming a Non-qualifying Trustee. The majority of Qualifying Trustees must be maintained.

71. **Clauses 87-88.** These are optional clauses that should be included only if the Church already has, or intends to put in place, a formal Code of Conduct for its Charity Trustees. This is not compulsory. The terms of the Constitution, especially Clauses 83-85, give clear guidance as to the duties of the Charity Trustees and the manner in which they should approach these duties. The publication *Guidance and Good Practice for Charity Trustees* available on the OSCR website [[LINK](#)] fills in a lot more detail. If it is felt that adding a Code of Conduct is unnecessary then these clauses should be omitted and the Constitution re-numbered appropriately. Nevertheless, there may be particular reasons in the specific context why a Church may consider that a Code of Conduct is helpful or indeed essential.
72. **Clause 89.** You should specify the minimum number of Leadership Team Meetings to be held each year. Monthly is probably the ideal, with some flexibility for holiday periods. 8 is the suggested minimum, but 9, 10 or 11 may be more appropriate, depending on the size of the Church and the scale of its activities.
73. **Clause 91.** Again there is a question as to the appropriate figure for a quorum. 5 is suggested but this could be less (but not below 3) or more, depending on the size of the Leadership Team. The second sentence is not compulsory, but it would be recommended good practice not just to have a majority of Qualifying Trustees on the Leadership Team, but also to have a majority of Qualifying Trustees participating at any Leadership Team Meeting for this to be quorate.
74. **Clause 92.** Proxy voting at Leadership Team Meetings has been excluded for similar reasons to those explained in relation to the Members Meeting (see comment 32 above). Remote participation has been permitted, so long as all the Charity Trustees can hear each other and therefore can participate fully in the meeting. If the Church would prefer that only Charity Trustees present physically in person should participate, then of course this clause can be omitted.
75. **Clause 93.** This clause does require careful consideration. If the Leadership Team becomes inquorate and/or loses its Qualifying Trustee majority, it cannot effectively manage the affairs of the Church. Until the quorum and/or majority is restored, all that the Leadership Team can do is to convene a Members Meeting, so that the Members can take the requisite decisions themselves.
76. **Clause 96.** Similar principles as regards consensus and communal discernment in preference to formal voting apply to Leadership Team Meetings as apply to Members Meetings (see comments 31 and 34 above).

77. **Clauses 101-102.** This again addresses conflict of interest and in particular makes clear that a Remunerated Trustee or a Connected Person must not vote in relation to the remuneration of that Trustee.
78. **Clauses 105-111.** The provisions for delegation to Committees or Office-bearers speak for themselves and can of course be amended to fit the particular committee/task group or other delegated structure of the Church.
79. **Clause 112.** Each Church will have its own particular financial and banking arrangements and these are likely to change and develop as new systems and services are introduced, as witness the decline in the use of cheques and the increased usage of online facilities. Therefore this clause sets the principles in place rather than detailing the practice. This saves having to amend the Constitution constantly (or being stuck with an outmoded practice). The Church may wish to include more detail in the Rules and to keep these updated as required.
80. **Clause 114.** This clause as drafted retains some flexibility as regards accounts being audited or independently examined, as appropriate.
81. **Clause 116.** A clause of this nature is required in terms of the SCIO regulations. The Government and OSCR are of course anxious to ensure that in the last days of a charity there is no careless or disorganised distribution of surplus assets, and that these or their proceeds are used strictly for Charitable Purposes as close as reasonably practicable to the Purposes outlined in the Constitution.
82. **Clause 117.** In a winding up, the priority is for the Church to meet its debts and obligations. Thereafter any surplus must be used for Charitable Purposes. The clause as drafted provides for such surplus to be made over to the Union, to be used to fulfil the Union's purposes throughout Scotland in line with the Declaration of Principle to which the Church has subscribed. If the Church has a preferred Charitable Purpose (which must of course be consistent with the Church's Purposes), then it is possible to change the ultimate destination of the surplus by a two-thirds majority vote at a Members Meeting.
83. **Clauses 118-119.** These are self-explanatory. The Church can alter its Constitution, but certain changes, as summarised, will require advance consent from OSCR. Other changes must still be notified to OSCR, even though OSCR approval is not required.
84. **Clauses 120-121.** There are many different ways for the Church to send notices to the Members and equally for Members to notify the Church of various matters. There is huge potential for dispute and upset as regards whether somebody was told or received certain information, and quick words exchanged on a Sunday morning can easily be forgotten or misinterpreted. This clause makes written or emailed rather than (or at least in addition to) spoken words essential and hopefully clarifies all the potential issues. You may want to word this differently, but it is recommended that something of this nature is in place to minimise the possibility of grievance or discontent.
85. **Clause 123.** Please do read and refer to this definitions section to understand the Constitution fully. In particular you might note:
 - a. "the Church" is defined so as to emphasise continuity with the previous UVA. This is useful for example in helping to re-direct legacies in favour of the

former UVA, so that these may go to the Church (although specific legal advice in that respect should be taken).

- b. “Minister”. This is widely defined and you may wish to define this more closely in the context of the Church.
- c. “the Union” as currently structured as a UVA will soon be re-structured as a charitable company limited by guarantee and therefore the definition encompasses both the present and the future entities.

86. **Appendix Part 2.** This can be used if so wished to insert the Church’s Statement of Foundation Values (see comment 9 above). If no Statement of Foundation Values is required, then the references to Part 1 and Part 2 can simply be deleted, and the Union’s Declaration of Principle becomes the whole Appendix.

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