

**THE COMPANIES ACT 2006**

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

**ARTICLES of ASSOCIATION**

of

**ANNANDALE AND NITHSDALE COMMUNITY BENEFIT COMPANY LIMITED**

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**Constitution of company**

- 1 The model articles of association as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of this company.

**Defined terms and interpretation**

- 2 In these articles of association, unless the context requires otherwise:-
- 2.1 "Act" means The Companies Act 2006;
- 2.2 "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 2006, providing (in either case) that its objects are limited to charitable purposes;

- 2.3 “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;
  - 2.4 “electronic form” has the meaning given in section 1168 of the Act;
  - 2.5 “OSCR” means the Office of the Scottish Charity Regulator;
  - 2.6 “property” means any property, heritable or moveable, real or personal, wherever situated; and
  - 2.7 “subsidiary” has the meaning given in section 1159 of the Act.
  - 2.8 “Community” and “Communities” has the meaning of those areas defined by Community Council boundaries, as determined by Dumfries and Galloway Council under its Scheme for the Establishment of Community Councils
- 3 Any reference to a provision of any legislation (including any statutory instrument) shall include any statutory modification or re-enactment of that provision in force from time to time.

## **Objects**

- 4 The company has been formed to benefit the communities of:
1. Eskdalemuir
  2. Johnstone
  3. Kirkpatrick Juxta
  4. Kirkmichael
  5. Royal Burgh of Lochmaben and District
  6. Lockerbie and District
  7. Moffat and District
  8. Templand
  9. Thornhill
  10. Tynron
  11. Ae
  12. Tinwald Parish
  13. Dalton & Carrutherstown
  14. Heathhall
  15. Holywood and Newbridge
  16. Irongray
  17. Lochside and Woodlands
  18. Loreburn
  19. Royal Four Towns
  20. Torthorwald
  21. Troqueer Landward
  22. Wamphray
  23. Auldgirth and District
  24. Carronbridge
  25. Closeburn

26. Dunscore
27. Glencairn
28. Keir
29. Kirkmahoe
30. Penpont
31. Terregles
32. Durisdeer
33. Summerville and Stakeford
34. St Michaels
35. Ryedale
36. Locharbriggs
37. Lincluden
38. Kingholm Quay
39. Corberry and Laurieknowe
40. North Milk
41. Georgetown
42. Mouswald

for the following objects:-

- 4.1 To promote, for the public benefit, rural regeneration within the Community, for the benefit of the general public;
- 4.2 To advance environmental protection and/or improvement within the Community and in particular through:-
  - 4.2.1 the provision, maintenance and/or improvement of public open space and other public amenities and other environmental and regeneration projects (but subject to appropriate safeguards to ensure that the public benefits so arising clearly outweigh any private benefit thereby conferred on private landowners); and
  - 4.2.2 encouraging the more efficient use of the world's resources, and in particular greater use of renewable energy sources so as (a) to minimise the proliferation of mines, wells and other extraction facilities which degrade the natural environment and (b) to reduce greenhouse gas emissions and thus avoid the damage to the natural environment caused by global warming;
- 4.3 To advance education among residents of the Community;
- 4.4 To provide recreational facilities and/or to organise recreational activities, within the Community, with such facilities/activities being available to members of the public at large with the object of improving their conditions of life;
- 4.5 To advance heritage through preserving, for the benefit of the general public, the historical, architectural and constructional heritage that may exist in and around the Community in buildings (including any structure or erection and any part of a building as so defined) of particular beauty or historical, architectural or constructional interest;
- 4.6 To prevent or relieve poverty among the residents of the Community;

- 4.7 To relieve unemployment among residents of the Community, including the provision of training and skills of all kinds (particularly such skills as will assist the participants in obtaining paid employment);
- 4.8 To advance health among residents of the Community;
- 4.9 To relieve those in need, among residents of the Community by reason of ill health, disability, financial hardship or other disadvantage which may include providing, arranging for, assisting in or promoting the provision of housing and/or other services for such individuals;
- 4.10 To advance citizenship and/or community development through: -
  - 4.10.1 giving young people in the Community opportunities for enjoyable and constructive leisure time;
  - 4.10.2 enabling young people within the Community to find new interests and to form effective relationships with other people through leisure time and educational activities;
  - 4.10.3 encouraging, stimulating and supporting volunteering, principally within the Community;
  - 4.10.4 operating community transport services;
  - 4.10.5 developing a community information network;
- 4.11 To advance the art, heritage and/or culture within the Community;
- 4.12 To promote, operate and/or support other projects and initiatives which further similar charitable purposes for the benefit of the Community,

and in particular through raising funds and other contributions for and providing support to a range of projects which advance any one or more of the above aims and to do so in a manner which (a) respects the principles of equality of opportunity and avoids any form of discrimination whether on the grounds of sex, marital status, race, ethnic origin, gender, sexual preference, age, disability, religion, political views or otherwise; and (b) respects and supports development priorities and action plans identified by the individual communities which are comprised within the Community.

- 5 The company's objects are restricted to those set out in article 4 (but subject to article 6).
- 6 The company may (subject to first obtaining the consent of OSCR) add to, remove or alter the statement of the company's objects in article 4; on any occasion when it does so, it must give notice to the registrar of companies and the amendment will not be effective until that notice is registered on the register of companies.

**Powers**

- 7 In pursuance of the objects listed in article 4 (but not otherwise), the company shall have the following powers:-

- 7.1 To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them), including the receipt of funds from wind farm developments and other renewable funds within the Community.
- 7.2 To provide financial support through the award of grants and/or other means in pursuance of the company's objects.
- 7.3 To take such steps as may be deemed appropriate for the purpose of raising funds and obtaining in-kind donations for the company's activities.
- 7.4 To establish, maintain, develop and/or operate a centre or centres providing facilities for childcare, community learning, healthy living initiatives, educational, art, heritage and cultural activities, training activities, leisure pursuits and accommodation for community groups, and for public sector agencies which provide services of benefit to the community, and which may include refreshment facilities.
- 7.5 To liaise with local authorities, central government authorities and agencies, charities/community benefit bodies and others, all with a view to furthering the objects of the company.
- 7.6 To promote partnership and integration of organisations and activities for the benefit of the community and its integrated and sustainable development.
- 7.7 To operate community transport services.
- 7.8 To initiate, promote, conduct, participate in (whether via a wholly-owned subsidiary, a joint venture company or a limited liability partnership or otherwise), co-ordinate, monitor and/or assist (whether financially or otherwise), projects, initiatives and schemes of all kinds which further any of the objects of the company.
- 7.9 To advise in relation to, prepare, organise, conduct and/or support conferences, seminars and workshops, and educational and training events, courses and programmes of all kinds.
- 7.10 To develop and deliver community engagement and development initiatives directly or in conjunction with other agencies.
- 7.11 To commission and/or conduct research, and to publish and promote the results of such research.
- 7.12 To design, prepare, publish and/or distribute information packs, leaflets, books, newsletters, magazines, posters and other publications, audio and video recordings, multimedia products and display materials, and to create and maintain a database or databases.
- 7.13 To provide information, advisory, support and/or consultancy services which further any of the objects of the company.
- 7.14 To liaise with European, UK, Scottish and local government authorities and agencies, local enterprise companies, local economic development companies, voluntary sector bodies and others, all with a view to maximising the effectiveness of the company in pursuing its objectives.

- 7.15 To carry on any other activity which may be appropriately carried on in connection with any of the objects of the company.
- 7.16 To establish and/or participate in joint ventures and to promote companies and/or other bodies whose activities may further one or more of the above objects or may generate income to support the activities of the company, acquire and hold shares, stocks, debentures and other interests in such companies or other bodies, and carry out in relation to any such company which is a subsidiary of the company, all such functions as may be associated with a holding company.
- 7.17 To acquire and take over the whole or any part of the undertaking and liabilities of any person entitled to any property or rights suitable for any of the objects of the company.
- 7.18 To purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the company's activities.
- 7.19 To improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the company.
- 7.20 To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the company.
- 7.21 To lend money and give credit (with or without security) and to grant guarantees and issue indemnities.
- 7.22 To borrow money, and to give security in support of any such borrowings by the company, in support of any obligations undertaken by the company or in support of any guarantee issued by the company.
- 7.23 To employ such staff as are considered appropriate for the proper conduct of the company's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants.
- 7.24 To engage such consultants and advisers as are considered appropriate from time to time.
- 7.25 To effect insurance of all kinds (which may include officers' liability insurance).
- 7.26 To invest any funds which are not immediately required for the company's activities in such investments as may be considered appropriate (and to dispose of, and vary, such investments).
- 7.27 To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the company's objects.
- 7.28 To establish and/or support any charity, and to make donations for any charitable purpose falling within the company's objects.
- 7.29 To take such steps as may be deemed appropriate for the purpose of raising funds for the company's activities.

- 7.30 To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).
- 7.31 To oppose, or object to, any application or proceedings which may prejudice the company's interests.
- 7.32 To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the company, and to enter into any arrangement for co-operation or mutual assistance with any charity.
- 7.33 To do anything which may be incidental or conducive to the furtherance of any of the company's objects.

### **Restrictions on use of the company's assets**

- 8 The income and property of the company shall be applied solely towards promoting the company's objects (as set out in article 4) and in particular (but without limiting the generality of that provision) any surplus funds or assets of the company must be applied for the benefit of the Community.
- 9 No part of the income or property of the company shall be paid or transferred (directly or indirectly) to the members of the company, whether by way of dividend, bonus or otherwise.
- 10 No director of the company shall be appointed as a paid employee of the company; no director shall hold any office under the company for which a salary or fee is payable.
- 11 No benefit (whether in money or in kind) shall be given by the company to any director except:-
  - 11.1 repayment of out-of-pocket expenses; or
  - 11.2 reasonable payment in return for particular services (not being of a management nature) actually rendered to the company.

### **Liability of members**

- 12 The liability of the members is limited.
- 13 Each member undertakes that if the company is wound up while he/she/it is a member (or within one year after he/she/it ceases to be a member), he/she/it will contribute - up to a maximum of £1 - to the assets of the company, to be applied towards:-
  - 13.1 payment of the company's debts and liabilities contracted before he/she/it ceases to be a member;
  - 13.2 payment of the costs, charges and expenses of winding up; and
  - 13.3 adjustment of the rights of the contributories among themselves.

### **General structure**

- 14 The structure of the company consists of:-

- 14.1 the MEMBERS - who have the right to attend the annual general meeting (and any other general meeting) and have important powers under the articles of association and the Act; in particular, the members elect people to serve as directors and take decisions in relation to changes to the articles themselves;
- 14.2 the DIRECTORS - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the company; in particular, the directors are responsible for monitoring the financial position of the company.

### **Membership**

- 15 The membership of the company shall consist of such individuals as are admitted to membership under the articles of association of the company in force from time to time.
- 16 Membership shall cease on death..
- 17 A member may not transfer his/her/its membership to any other individual.

### **Qualifications for membership**

- 18 Membership shall (subject to articles 19 - 22) be open to the following:-
  - 18.1 any two individuals nominated by the Councillors of Eskdalemuir Community Council;
  - 18.2 any two individuals nominated by the Councillors of Johnstone Community Council;
  - 18.3 any two individuals nominated by the Councillors of Kirkpatrick Juxta Community Council;
  - 18.4 any two individuals nominated by the Councillors of Kirkmichael Community Council;
  - 18.5 any two individuals nominated by the Councillors of Royal Burgh of Lochmaben and District Community Council;
  - 18.6 any two individuals nominated by the Councillors of Lockerbie and District Community Council;
  - 18.7 any two individuals nominated by the Councillors of Moffat and District Community Council;
  - 18.8 any two individuals nominated by the Councillors of Templand Community Council;
  - 18.9 any two individuals nominated by the Councillors of Thornhill Community Council;
  - 18.10 any two individuals nominated by the Councillors of Tynron Community Council;



- 18.11 any two individuals nominated by the Councillors of Ae Community Council;
- 18.12 any two individuals nominated by the Councillors of Tinwald Parish Community Council;
- 18.13 any two individuals nominated by the Councillors of Dalton and Carrutherstown Community Council;
- 18.14 any two individuals nominated by the Councillors of Heathhall Community Council;
- 18.15 any two individuals nominated by the Councillors of Holywood & Newbridge Community Council;
- 18.16 any two individuals nominated by the Councillors of Irongray Community Council;
- 18.17 any two individuals nominated by the Councillors of Lochside & Woodlands Community Council;
- 18.18 any two individuals nominated by the Councillors of Loreburn Community Council;
- 18.19 any two individuals nominated by the Councillors of Royal Four Towns Community Council;
- 18.20 any two individuals nominated by the Councillors of Torthorwald Community Council;
- 18.21 any two individuals nominated by the Councillors of Troqueer Landward Community Council;
- 18.22 any two individuals nominated by the Councillors of Wamphray Community Council;
- 18.23 any two individuals nominated by the Councillors of Auldgirth and District Community Council;
- 18.24 any two individuals nominated by the Councillors of Carronbridge Community Council;
- 18.25 any two individuals nominated by the Councillors of Closeburn Community Council;
- 18.26 any two individuals nominated by the Councillors of Dunscore Community Council;
- 18.27 any two individuals nominated by the Councillors of Glencairn Community Council;
- 18.28 any two individuals nominated by the Councillors of Keir Community Council;
- 18.29 any two individuals nominated by the Councillors of Kirkmahoe Community Council;

- 18.30 any two individuals nominated by the Councillors of Penpont Community Council;
  - 18.31 any two individuals nominated by the Councillors of Terregles Community Council;
  - 18.32 any two individuals nominated by the Councillors of Georgetown Community Council;
  - 18.33 any two individuals nominated by the Councillors of Summerville and Stakeford Community Council;
  - 18.34 any two individuals nominated by the Councillors of St Michaels Community Council;
  - 18.35 any two individuals nominated by the Councillors of Ryedale Community Council;
  - 18.36 any two individuals nominated by the Councillors of Locharbriggs Community Council;
  - 18.37 any two individuals nominated by the Councillors of Lincluden Community Council;
  - 18.38 any two individuals nominated by the Councillors of Kingholm Quay Community Council;
  - 18.39 any two individuals nominated by the Councillors of Corberry and Laurieknowe Community Council;
  - 18.40 any two individuals nominated by the Councillors of North Milk Community Council;
  - 18.41 any two individuals nominated by the Councillors of Durisdeer Community Council.
  - 18.42 Any two individuals nominated by the Councillors of Mouswald Community Council
- 19 For the avoidance of doubt, no individual nominated by the Councillors of any Community Council listed in article 18 above, shall be eligible for membership of the Company unless the Community Council which has nominated them is established under Dumfries and Galloway Council's Scheme for the Establishment of Community Councils.
- 20 If any Community Council listed in article 18 is not established, another community organisation shall not be entitled to nominate any individual for membership of the Company.
- 21 An individual shall not be eligible for nomination by the Councillors of a Community Council under article 18 unless he/she is aged 18 or over and is ordinarily resident within the Community (as defined in article 4).

- 22 Employees of the company shall not be eligible for membership; an individual who becomes an employee of the company after admission to membership shall automatically cease to be a member.

### **Application for membership**

- 23 An individual eligible for membership who wishes to become a member shall lodge with the company a written application for membership (in such form as the directors require) signed by him/her and by one of the community councillors of the community council nominating him/her for membership.
- 24 An individual eligible for membership under articles 18 to 22 shall automatically constitute a member of the company immediately upon receipt by the company of the application for membership, duly signed in accordance with article 23.

### **Register of members**

- 25 The directors shall maintain a register of members, setting out the full name and address of each member, the date on which he/she was admitted to membership, and the date on which any individual ceased to be a member, together with details of the Community Council which nominated him/her for membership.

### **Withdrawal from membership**

- 26 Any individual who wishes to withdraw from membership shall lodge with the company a written notice of retiral (in such form as the directors require), signed by him/her; on receipt of the notice by the company he/she shall cease to be a member.
- 27 If any Community Council referred to at article 18 above becomes disestablished, in accordance with article 20, and is not re-established within one year, the individuals nominated for membership of the Company by the Community Councillors of that Community Council shall cease to be members of the Company.

### **Expulsion from membership**

- 28 Subject to articles 29 to 34, the company may, by special resolution, expel any individual from membership.
- 29 Any member who wishes to propose at any meeting a resolution for the expulsion of any individual or body from membership shall lodge with the company written notice of his/her intention to do so (identifying the member concerned and specifying the grounds for the proposed expulsion) not less than six weeks before the date of the meeting.
- 30 The company shall, on receipt of a notice under the preceding article, forthwith send a copy of the notice to the member concerned, and the member concerned shall be entitled to make written representations to the company with regard to the notice.
- 31 If representations are made to the company in pursuance of the preceding article, the company shall (unless such representations are received by the company too late for it to do so):-
- 31.1 state the fact of the representations having been made in the notice convening the meeting at which the resolution is to be proposed; and

- 31.2 send a copy of the representations to every individual to whom notice of the meeting is or was given.
- 32 Whether or not a copy of written representations has been given to each of the individuals entitled to receive notice of the meeting, the individual concerned shall be entitled to be heard on the resolution at the meeting.
- 33 Failure to comply with any of the provisions of articles 29 to 32 shall render any resolution for the expulsion of an individual from membership invalid.
- 34 An individual expelled from membership under articles 29 to 33 shall cease to be a member with effect from the time at which the relevant resolution is passed and shall not be eligible for readmission to membership for a period of five years following his/her expulsion.

### **General meetings**

- 35 The directors shall convene an annual general meeting in each year (but excluding the year in which the company is formed); the first annual general meeting shall be held not later than 18 months after the date of incorporation of the company.
- 36 Not more than 15 months shall elapse between one annual general meeting and the next.
- 37 The business of each annual general meeting shall include:-
- 37.1 a report by the Chair on the activities of the company;
- 37.2 a financial report by the Treasurer on financial activities of the company;
- 37.3 the election/re-election of directors, as referred to in articles 72 to 77.
- 38 The directors must convene a general meeting if there is a valid requisition by 10 members or a requisition by a resigning auditor (under section 518 of the Act).
- 39 Subject to the provisions of articles 35, 36 and 38 the directors may convene general meetings whenever they think fit.

### **Notice of general meetings**

- 40 At least 14 clear days' notice of each general meeting must be given to all the members and directors, and (if auditors are in office at the time) to the auditors.
- 41 The reference to "clear days" in article 40 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted (or, in the case of a notice sent by electronic means, the day after it was sent), and also the day of the meeting, is excluded.
- 42 A notice calling a meeting shall specify the time, date and place of the meeting; it shall (a) indicate the general nature of any business to be dealt with at the meeting; (b) if a special resolution (see article 60) (or a resolution requiring special notice under the Act) is to be proposed, state that fact, giving the exact terms of the resolution; and (c) contain a statement informing members of their right to appoint a proxy.

- 43 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
- 44 Notice of every general meeting shall be given:-
- 44.1 in hard copy form; or
- 44.2 (where the individual or body to whom/which notice is given has notified the company of an address to be used for the purpose of electronic communication) in electronic form; or
- 44.3 (subject to the company notifying members of the presence of the notice on a website and complying with the other requirements of section 309 of the Act) by means of a website.

### **Proceedings at general meetings**

- 45 No business shall be transacted at any meeting unless a quorum is present; the quorum shall be one quarter of the members rounded up to the nearest whole number, present in person or represented by proxy.
- 46 A member or proxy for a member may participate in a general meeting by means of conference telephone, video conferencing facility or similar communications equipment whereby all those participating in the meeting can hear each other; a member or proxy for a member participating in a meeting in this manner shall be deemed to be present at the meeting.
- 47 If the quorum required under article 45 is not present within half an hour after the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.
- 48 The Chair of the company shall (if present and willing to act) preside as chairperson of the meeting; if the Chair of the company is not present and willing to act as chairperson of the meeting within half an hour of the time appointed for holding the meeting, the directors present shall elect one of their number to act as chairperson of the meeting, or, if there is only one director present and willing to act, he/she shall be chairperson of the meeting.
- 49 The chairperson of the meeting may, with the consent of the meeting at which a quorum is present (and must, if the meeting requests him/her to do so), adjourn the meeting but not for a period in excess of 30 days; no notice need be given of an adjourned meeting.
- 50 A resolution put to the vote of a meeting shall be decided on a show of hands unless before the show of hands, or immediately after the result of the show of hands is declared, a secret ballot is demanded by the chairperson of the meeting or by any person present at the meeting and entitled to vote (whether as a member or as the proxy for a member).
- 51 If a secret ballot is demanded in accordance with the preceding article, it shall be taken at once and shall be conducted in such manner as the chairperson of the meeting may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.

## **Votes of members**

- 52 Every member shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.
- 53 A member who wishes to appoint a proxy to vote on his/her behalf at any meeting (or adjourned meeting):-
- 53.1 shall lodge with the company, at the company's registered office, a written instrument of proxy (in such form as the directors require), signed by him/her; or
- 53.2 shall send by electronic means to the company at such electronic address as may have been notified to the members by the company for that purpose, an instrument of proxy (in such form as the directors require);
- providing (in either case) the instrument of proxy is received by the company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting); for the avoidance of doubt, in calculating the 48-hour period referred to in the preceding provisions of this article 53, no account shall be taken of any part of a day that is not a working day.
- 54 An instrument of proxy which does not conform with the provisions of article 53, or which is not lodged or sent in accordance with such provisions, shall be invalid.
- 55 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 56 With the exception of the Chair of the meeting or an appointed officer of the company; a proxy shall not be entitled to cast more than one vote in his/her capacity as a proxy (in addition to his/her own vote, if he/she is a member of the company), notwithstanding that he/she may have been appointed as proxy by more than one member.
- 57 A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed him/her to speak at the meeting and need not be a member of the company.
- 58 A vote given, or ballot demanded, by proxy shall be valid notwithstanding that the authority of the person voting or demanding a ballot had terminated prior to the giving of such vote or demanding of such ballot unless notice of such termination was received by the company at the company's registered office (or, where contained in an electronic communication, was received by the company at the address notified by the company to the members for the purpose of electronic communication) before the commencement of the meeting at which the vote was given or the ballot demanded.
- 59 A member of the company who is the chairperson of a general meeting shall be entitled to a second or casting vote, in the case of an equality of votes, whether on a show of hands or on a ballot.

## **Special resolutions and ordinary resolutions**

- 60 For the purposes of these articles, a “special resolution” means (but subject to articles 63 to 66) a resolution of the members, which is passed by 75% or more of the votes cast on the resolution at a general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 40 to 44 (for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the number of votes cast against the resolution, and accordingly no account shall be taken of abstentions or members absent from the meeting).
- 61 In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution: -
- 61.1 to alter its name;
  - 61.2 to alter any provision of these articles or adopt new articles of association.
- 62 For the purposes of these articles (but subject to articles 63 to 66), an “ordinary resolution” means a resolution, which is passed by majority vote (taking account only of those votes cast in favour as compared with those votes cast against) at a general meeting, providing proper notice of the meeting has been given in accordance with articles 40 to 44.

#### **Written resolutions**

- 63 A written resolution can be passed by the members of the company (having been proposed by either the members or the directors in accordance with the procedures detailed in Chapter 2 of Part 13 of the Act) and will have effect as if passed by the members of the company in general meeting; a written resolution is passed when the required majority of eligible members have signified their agreement to it by sending to the company (in hard copy or electronic form) an authenticated document which identifies the resolution to which it relates and which indicates the member’s agreement to it (agreement to which cannot thereafter be revoked).
- 64 For the purposes of the preceding article:-
- 64.1 the reference to “eligible members” is to those members who would have been entitled to vote on the resolution on the circulation date of the resolution (which is either (a) the date on which copies of the written resolution are sent or submitted to the members in accordance with the procedures detailed in Chapter 2 of Part 13 of the Act; or (b) if copies are sent or submitted to members on different days, the first of those dates);
  - 64.2 the reference to “required majority” is to the majority required to pass an ordinary or a special resolution under the Act, as follows:-
    - 64.2.1 in order to pass an ordinary resolution by way of written resolution, it must be passed (in accordance with article 63) by members representing a simple majority of the total voting rights of eligible members;
    - 64.2.2 in order to pass a special resolution by way of written resolution, it must be passed (in accordance with article 63) by members representing not less than 75% of the total voting rights of eligible members and the resolution must specifically state that it was proposed as a special resolution.

65 For the avoidance of doubt, a resolution to remove a director (under section 168 of the Act) or a resolution to remove an auditor (under section 510 of the Act) cannot be proposed as a written resolution under article 63.

66 For the purposes of article 63, a proposed written resolution will lapse if it is not passed before the end of a period of 28 days beginning with the circulation date (as defined in article 64, and the agreement of any member to a written resolution will be ineffective if signified after the expiry of that period.

### **Number of directors**

67 The maximum number of directors shall be 12.

68 The minimum number of directors shall be 6.

69 In exercising their powers in relation to election/appointment of directors, the members and the directors shall ensure that at any time:-

69.1 at least one and no more than four directors shall be drawn from those members who have been nominated for membership by the Community Councils in the area nominated as East and listed below

- Eskdalemuir
- Johnstone
- Kirkpatrick Juxta
- Kirkmichael
- Royal Burgh of Lochmaben and District
- Lockerbie and District
- Moffat and District
- North Milk
- Templand
- Wamphray

69.2 at least one and no more than four directors shall be drawn from those members who have been nominated for membership by the Community Councils in the area nominated as South and listed below

- Dalton & Carrutherstown
- Heathhall
- Royal Four Towns
- Holywood and Newbridge
- Irongray
- Ae
- Tinwald Parish
- Lochside and Woodlands
- Loreburn
- Terregles
- Torthorwald
- Troqueer Landward
- Summerville and Stakeford
- St Michaels
- Ryedale



- Locharbriggs
- Lincluden
- Kingholm Quay
- Corberry and Laurieknowe
- Georgetown
- Mouswald

69.3 at least one and no more than four directors shall be drawn from those members who have been nominated for membership by the Community Councils in the area nominated as West and listed below

- Auldgirth and District
- Carronbridge
- Closeburn
- Dunscore
- Durisdeer
- Glencairn
- Keir
- Kirkmahoe
- Penpont
- Thornhill
- Tynron

### **Eligibility**

- 70 An individual shall not be eligible for election/appointment as a director unless he/she is a member.
- 71 A person shall not be eligible for election/appointment as a director if he/she is an employee of the company.

### **Election, retiral, re-election of directors**

- 72 At each annual general meeting, the members may (subject to articles 67, 69, 70 and 71) elect any individual as a director, providing written notice, signed by him/her, confirming his/her willingness to serve as a director has been received at least 7 days prior to the annual general meeting.
- 73 The directors may at any time appoint any individual (providing he/she is willing to act and subject to articles 69, 70 and 71) to be a director, either to fill a vacancy or (subject to article 67) as an additional director.
- 74 At the first annual general meeting, all of the directors shall retire from office.
- 75 At each annual general meeting (other than the first): -
- 75.1 any director appointed under article 73 during the period since the preceding annual general meeting shall retire from office;
- 75.2 out of the remaining directors, one third (to the nearest round number) shall retire from office.

- 76 The directors to retire under article 75.2 shall be those who have been longest in office since they were last elected or re-elected; as between individuals who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method.
- 77 The members may (subject to articles 67, 69, 70 and 71) at any annual general meeting re-elect any director who retires from office at the meeting under article 74 or 75 (providing he/she is willing to act); if any such director is not re-appointed, he/she shall retain office until the meeting appoints someone in his/her place or, if it does not do so, until the end of the meeting.

### **Disqualification and removal of directors**

- 78 A director shall vacate office if:-
- 78.1 he/she ceases to be a director by virtue of any provision of the Act or becomes prohibited by law from being a director;
  - 78.2 he/she becomes debarred under any statutory provision from being a charity trustee;
  - 78.3 he/she is sequestered;
  - 78.4 he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity has continued, or is expected to continue, for a period of more than six months;
  - 78.5 he/she becomes an employee of the company;
  - 78.6 he/she ceases to be a member;
  - 78.7 he/she resigns office by notice to the company;
  - 78.8 he/she is absent (without permission of the directors) from more than three consecutive meetings of directors and the directors resolve to remove him/her from office;
  - 78.9 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have committed a material breach of the code of conduct for directors in force from time to time (as referred to in article 91);
  - 78.10 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
  - 78.11 he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the 2006 Act.
- 79 A resolution under article 78.9 shall be valid only if:-
- 79.1 the director who is the subject of the resolution is given reasonable prior written notice by the directors of the grounds upon which the resolution for his/her removal is to be proposed;

- 79.2 the director concerned is given the opportunity to address the meeting of directors at which the resolution is proposed, prior to the resolution being put to the vote; and
- 79.3 at least two thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.

### **Register of directors**

- 80 The directors shall maintain a register of directors, setting out full details of each director, including the date on which he/she became a director, and also specifying the date on which any person ceased to hold office as a director.

### **Office bearers**

- 81 The directors shall elect from among themselves a Chair, a Treasurer, and such other office bearers (if any) as they consider appropriate.
- 82 For the avoidance of doubt, a director shall not be eligible to hold more than one office referred to at article 81, at any given time.
- 83 The office of Chair shall be held (so far as reasonably possible) on a rotating basis, such that during each year the office shall be capable of being held only by directors drawn from a particular community council, during the next year only by directors drawn from another community council and so on; the directors shall be free to depart from the principle of a rotating chairperson, however, if circumstances so dictate (whether through the unwillingness of any particular director to hold office as Chair or otherwise).
- 84 For the purposes of article 83:-
- 84.1 the period between the date of incorporation of the company and the first annual general meeting shall be deemed to be a year;
- 84.2 the period between one annual general meeting and the next shall be deemed to be a year.
- 85 All of the office bearers shall cease to hold office at the conclusion of each annual general meeting, but shall then be eligible for re-election.
- 86 A person elected to any office shall cease to hold that office if he/she ceases to be a director, or if he/she resigns from that office by written notice to that effect.

### **Directors' interests**

- 87 Subject to the provisions of the Act and the Charities and Trustee Investment (Scotland) Act 2005 and articles 8 to 11 and provided that he/she has disclosed to the directors the nature and extent of any personal interest which he/she has (unless immaterial), and has complied with the code of conduct as referred to in article 91), a director (notwithstanding his/her office):-
- 87.1 may be a party to, or have some other personal interest in, any transaction or arrangement with the company or any associated company;

- 87.2 may be a party to, or have some other personal interest in, any transaction or arrangement in which the company or any associated company has an interest;
- 87.3 may be a director or secretary of, or employed by, or have some other personal interest in, any associated company; and
- 87.4 shall not, because of his/her office, be accountable to the company for any benefit which he/she derives from any such office or employment or from any such transaction or arrangement or from any interest in any such company,

and no such transaction or arrangement shall be liable to be treated as void on the ground of any such interest or benefit.

- 88 For the purposes of the preceding article, an interest of which a director has no knowledge and of which it is unreasonable to expect him/her to have knowledge shall not be treated as an interest of his/hers; the references to “associated company” shall be interpreted as references to any subsidiary of the company or any other company in which the company has a direct or indirect interest.

### **Conduct of directors**

- 89 It is the duty of each director of the company to take decisions (and exercise his/her other powers and responsibilities as a director) in such a way as he/she considers, in good faith, will be most likely to promote the success of the company in achieving its objects.
- 90 Without prejudice to the principle set out in article 89, each of the directors shall have a duty, in exercising functions as a charity trustee, to act in the interests of the company; and, in particular, must:-
  - 90.1 seek, in good faith, to ensure that the company acts in a manner which is in accordance with its purposes;
  - 90.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 90.3 in circumstances giving rise to the possibility of a conflict of interest between the company and any party responsible for the appointment of that director
    - 90.3.1 put the interests of the company before that of the other party;
    - 90.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the company and refrain from participating in any deliberation or decision of the other directors with regard to the matter in question;
  - 90.4 ensure that the company complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 91 Each of the directors shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board of directors from time to time;

for the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association, and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

- 92 The directors shall be entitled, for the purposes of section 175 of the 2006 Act, to authorise (by way of resolution to that effect) any Conflict Situation that may arise (such that the duty of the director concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.
- 93 For the purposes of article 92, a “Conflict Situation” means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company; and such that
- 93.1 the situations and matters which fall within this definition may include (without limitation) (a) a situation where a director of the company becomes an employee, director, member of the management committee, officer or elected representative of a body which is a party to a significant contract with the company (or which is competing with the company in the context of any grant application) and (b) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);
- 93.2 “conflict of interest” for this purpose includes a conflict of interest and duty, and a conflict of duties.
- 94 For the avoidance of doubt, article 92 shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the company; any conflict of interest of that nature shall be governed by the provisions of articles 87 and 88 and articles 114 to 118 and the code of conduct referred to in article 91.

#### **Directors’ remuneration and expenses**

- 95 No director may serve as an employee of the company, and no director may be given any remuneration by the company for carrying out his/her duties as a director or as Chair or as the holder of any other office under article 81.
- 96 The directors may be paid all travelling and other expenses properly incurred by them in connection with their attendance at meetings of directors, general meetings, meetings of committees of directors or otherwise in connection with the carrying-out of their duties.

#### **Powers of directors**

- 97 Subject to the provisions of the Act, these articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company.

- 98 No alteration of these articles and no direction given by special resolution shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given.
- 99 The powers conferred by article 97 shall not be limited by any special power conferred on the directors by these articles.
- 100 A meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

### **Proceedings of directors**

- 101 Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.
- 102 Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.
- 103 Questions arising at a meeting of directors shall be decided by a majority of votes; in the case of an equality of votes, the chairperson of a meeting of directors shall have a second or casting vote.
- 104 The quorum for the transaction of the business of the directors shall be four.
- 105 If the quorum required under article 104 is not present within 15 minutes after the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.
- 106 The continuing directors or a sole continuing director may act notwithstanding vacancies, but if the number of remaining directors is less than the number fixed as the quorum they may act only for the purpose of filling vacancies or of calling a general meeting.
- 107 Unless he/she is unwilling to do so, the Chair of the company shall preside as chairperson at every meeting of directors at which he/she is present; if the Chair of the company is unwilling to act as chairperson of a meeting of directors or is not present within 15 minutes after the time appointed for the meeting, the directors may appoint one of their number to be chairperson of the meeting.
- 108 A director may participate in a meeting of the directors or a meeting of a committee of directors by means of conference telephone, video conferencing facility or similar communications equipment whereby all the directors participating in the meeting can hear each other; a director participating in a meeting in this manner shall be deemed to be present in person at the meeting.
- 109 The directors shall be entitled to allow any individual to attend and speak (but not vote) at any meeting of the directors.
- 110 The directors shall be entitled to allow any person to attend and speak (but not vote) at any meeting of the directors in the capacity of adviser; the persons appointed may include (without limitation) a) a representative of Scottish Power Renewables and b) elected members of Dumfries and Galloway Council, representing the areas of Annandale and Nithsdale.

- 111 An individual invited to attend a meeting of the directors under articles 109 and 110 shall not be entitled to exercise any of the powers of a director, and shall not be deemed to constitute a director for the purposes of the Act or any provision of these articles.
- 112 All acts done by a meeting of directors or by a meeting of a committee of directors or by a person acting as a director shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any director or that any of them was disqualified from holding office or had vacated office or was not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.
- 113 A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held; it may consist of several documents in the same form, each signed by one or more directors.
- 114 A director shall not vote at a meeting of directors or at a meeting of a committee of directors on any resolution concerning a matter in which he/she has, directly or indirectly, a personal interest or duty (unless immaterial) which conflicts or may conflict with the interests of the company.
- 115 For the purposes of the preceding article:-
- 115.1 an interest of a person who is taken to be connected with a director for any purpose of the Act, shall be treated as a personal interest of the director; and
- 115.2 a director shall be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 116 A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- 117 The company may (subject to the Charities and Trustee Investment (Scotland) Act 2005) by ordinary resolution suspend or relax to any extent, either generally or in relation to any particular matter, the provisions of articles 114 to 116.
- 118 If a question arises at a meeting of directors or at a meeting of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairperson of the meeting; his/her ruling in relation to any director other than himself/herself shall be final and conclusive.

#### **Delegation to committees of directors and holders of offices**

- 119 The directors may delegate any of their powers to any committee consisting of two or more directors (one from each community council); they may also delegate to the Chair of the company or a director holding any other office such of their powers as they consider appropriate.
- 120 Any delegation of powers under the preceding article may be made subject to such conditions as the directors may impose and either collaterally with or to the exclusion of their own powers and may be revoked or altered.

- 121 Subject to any condition imposed in pursuance of the preceding article, the proceedings of a committee consisting of two or more directors shall be governed by the articles regulating the proceedings of meetings of directors so far as they are capable of applying.
- 122 In addition to their powers under article 119, the directors may delegate their powers to any committee consisting of two or more directors (one from each community council) and such other individuals (who need not be directors or employees of the company) as the directors may consider appropriate; the provisions of articles 120 and 121 shall apply in relation to any such committee, subject to the qualification that the role of any committee formed under the preceding provisions of this article shall be limited (except to the extent that the directors otherwise determine) to the issue of reports and recommendations for consideration by the board of directors.

### **Operation of bank accounts**

- 123 The signatures of two out of the signatories appointed by the directors shall be required in relation to all operations (other than lodgement of funds) on the bank and building society accounts held by the company; at least one out of the two signatures must be the signature of a director.

### **Secretary**

- 124 The directors shall (notwithstanding the provisions of the Act) appoint a company secretary, and on the basis that the term of office, remuneration (if any) and other terms and conditions attaching to the appointment of the company secretary shall be as determined by the directors; the company secretary may be removed by the directors at any time.

### **Minutes**

- 125 The directors shall ensure that minutes are made (in books kept for the purpose) of all proceedings at general meetings, meetings of the directors and meetings of committees of directors; a minute of a meeting of directors or of a committee of directors shall include the names of the directors present, and the minutes of each meeting shall be signed by the chairperson of that meeting.

### **Accounts**

- 126 The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
- 127 The directors shall prepare annual accounts, complying with all relevant statutory requirements.
- 128 No member shall (unless he/she is a director) have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or as authorised by the directors or by ordinary resolution of the company.

### **Notices**

- 129 Any notice to be given in pursuance of these articles shall be given either in writing or by way of electronic means.



- 130 The company may give any notice to a member either personally or by sending it by post in a pre-paid envelope addressed to the member at his/her registered address or by leaving it at that address; in the case of a member who/which has notified the company of an electronic address to be used for this purpose, the company may give any notice to that member by way of electronic means.
- 131 A member may give any notice to the company either by sending it by post in a pre-paid envelope addressed to the company at its registered office or by leaving it, addressed to the company secretary, at the company's registered office or (where the company has notified the member of an electronic address to be used for this purpose) by way of electronic means.
- 132 Any notice, if sent by post, shall be deemed to have been given at the expiry of 24 hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
- 133 Any notice sent by electronic means shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any notice sent by electronic means was indeed sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.
- 134 A member present or represented at any meeting of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

### **Winding-up**

- 135 If on the winding-up of the company any property remains after satisfaction of all the company's debts and liabilities, such property shall not be paid to or distributed among the members of the company but shall instead be transferred to some other charity or charities (whether incorporated or unincorporated) whose objects are altogether or in part similar to the objects of the company and whose constitution restricts the distribution of income and assets among members to an extent at least as great as do articles 8 to 11.
- 136 The charity or charities to which property is transferred under article 135 shall be determined by the members of the company at or before the time of dissolution or, failing such determination, by such court as may have or may acquire jurisdiction.
- 137 To the extent that effect cannot be given to the provisions of articles 135 and 136, the relevant property shall be applied to some other charitable purpose or purposes.

### **Indemnity**

- 138 Every director or other officer or auditor of the company shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the company against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office including, without prejudice to that generality (but only to the extent permitted by those sections of the Act), any liability incurred by him/her in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application in which relief is granted to him/her

by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company.

- 139 For the avoidance of doubt, the company shall be entitled to purchase and maintain for any director insurance against any loss or liability which any director or other officer of the company may sustain or incur in connection with the execution of the duties of his/her office, and such insurance may extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).