

CONSTITUTION

of

Solway Sinfonia SCIO

CONTENTS		
GENERAL	type of organisation, Scottish principal office, name, purposes, powers, liability, general structure	clauses 1 - 10
MEMBERS	qualifications for membership, application, subscription, register of members, withdrawal, transfer, re-registration, expulsion, termination	clauses 11 - 22
DECISION-MAKING BY THE MEMBERS	members' meetings, power to request members' meeting, notice, procedure at members' meetings, voting at members' meetings, written resolutions, minutes	clauses 23 - 46
BOARD (CHARITY TRUSTEES)	number, eligibility, election/retiral/re-election, termination of office, register of charity trustees, office bearers, powers, general duties, code of conduct	clauses 47 - 76
DECISION-MAKING BY THE CHARITY TRUSTEES	notice, procedure at board meetings, minutes	clauses 77 - 90
ADMINISTRATION	sub-committees, operation of accounts, accounting records and annual accounts	clauses 91 - 99
MISCELLANEOUS	winding up, alterations to the constitution, interpretation	clauses 100 - 105

GENERAL

Type of organisation

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

Scottish principal office

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

Name

- 3 The name of the organisation is “Solway Sinfonia SCIO” hereinafter referred to as “Solway Sinfonia”.

Purposes

- 4 The organisation’s purposes are:
 - 1 to promote, improve, develop and maintain public education in and appreciation of the art and science of orchestral music in all its aspects by the presentation of public orchestral concerts.
 - 2 to further such other purposes of an exclusively charitable nature as the trustees may from time to time decide.

Powers

- 5 The organisation has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- 6 No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the members - either in the course of the organisation’s existence or on dissolution - except where this is done in direct furtherance of the organisation’s charitable purposes.

Liability of members

- 7 The members of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the members will not be held responsible.
- 8 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

General structure

- 9 The structure of the organisation consists of:-

9.1 the MEMBERS - who have the right to attend members' meetings (including any annual general meeting) and have important powers under the constitution; in particular, the members appoint people to serve on the board and take decisions on changes to the constitution itself;

9.2 the BOARD - who hold regular meetings, and generally control the activities of the organisation; for example, the board is responsible for monitoring and controlling the financial position of the organisation.

10 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

MEMBERS

Qualifications for membership

11 Membership is open to musicians who play orchestral instruments and who have achieved a sufficiently high standard of proficiency in their instrument or instruments. Whether any individual meets the standard required will be entirely within the discretion of the board.

12 Employees of the organisation are not eligible for membership.

Application for membership

13 Any person who wishes to become a member may apply for membership either verbally or in writing or by e-mail to the board; the application will then be considered by the board as soon as possible after receipt of the application.

14 The board may, at its discretion, refuse to admit any person to membership and its decision shall be final.

15 The board must notify each applicant promptly (verbally, in writing or by e-mail) of its decision on whether or not to admit them to membership.

Membership subscription

16 There will be a subscription for membership levied in respect of each of the autumn and spring concerts. The level of subscription will be reviewed each year at the annual general meeting. A subscription may, at the board's discretion, be charged for other events organised by the charity.

Register of members

17 The board must keep a register of members, setting out:

17.1 for each current member their full name and address and the date on which they were registered as a member of the organisation;

17.2 for each former member - for at least six years from the date on which they ceased to be a member - their name and the date on which they ceased to be a member.

17.3 a current member shall be deemed to be a person who, in the opinion of the board, has contributed to the charitable objectives of the organisation within the preceding 12 months.

18 If a member or charity trustee of the organisation requests a copy of the register of members, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses blanked out.

Withdrawal from membership

19 Any person who wishes to withdraw from membership shall advise any member of the board and, on receipt, he or she shall cease to be a member.

Transfer of membership

20 Membership of the organisation may not be transferred by a member to any other person.

Expulsion from membership

21 Any person may be expelled from membership by way of a resolution passed by two thirds of those present and voting at a members' meeting, providing the following procedures have been observed:-

21.1 There is a quorum of members present;

21.2 at least 21 clear days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;

21.3 the member concerned has been given the opportunity to be heard on the resolution at the members' meeting at which the resolution is proposed.

Termination

22 Membership of the organisation will terminate on death.

DECISION-MAKING BY THE MEMBERS

Members' meetings

23 The board must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year.

24 The gap between one AGM and the next must not be longer than 15 months.

- 25 Notwithstanding clause 23, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.
- 26 The business of each AGM must include:
- 26.1 a report by the convener on the activities of the organisation;
 - 26.2 consideration and approval of the annual accounts of the organisation;
 - 26.3 the election/re-election of charity trustees, as referred to in clauses 52 to 55.
- 27 The board may arrange a special members' meeting at any time.

Power to request the board to arrange a special members' meeting

- 28 The board must arrange a special members' meeting if they are requested to do so by a notice by members who amount in number to 10% or more of the total membership of the organisation at the time, providing:
- 28.1 the notice states the purposes for which the meeting is to be held; and
 - 28.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.
- 29 If the board receives a notice under clause 28, the date for the meeting which they arrange in accordance with the notice must not be later than 28 clear days' from the date on which they received the notice.

Notice of members' meetings

- 30 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 31 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 31.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
 - 31.2 in the case of any other resolution falling within clause 42 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 32 All references to "clear days" shall be taken to mean that, in calculating the period of notice,
- 32.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
 - 32.2 the day of the meeting itself should also be excluded.

- 33 Notice of every members' meeting must be given to all the members of the organisation, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.
- 34 Any notice which requires to be given to a member under this constitution must be sent by post to the member, at the address last notified by them to the organisation; *or* sent by e-mail to the member, at the e-mail address last notified by them to the organisation.

Procedure at members' meetings

- 35 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 36 The quorum for a members' meeting is one quarter of the registered members, present in person.
- 37 If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 38 The convener of the organisation should act as convener of each members' meeting.
- 39 If the convener of the organisation is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as convener), the charity trustees present at the meeting must elect (from among themselves) the person who will act as convener of that meeting.

Voting at members' meetings

- 40 Every member has one vote, which must be given personally.
- 41 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 42.
- 42 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting:
- 42.1 a resolution amending the constitution;
 - 42.2 a resolution directing the board to take any particular step (or directing the board not to take any particular step);
 - 42.3 a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
 - 42.4 a resolution to the effect that all of the organisation's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);
 - 42.5 a resolution for the winding up or dissolution of the organisation.

43 If there is an equal number of votes for and against any resolution, the convener of the meeting will be entitled to a second (casting) vote.

44 A resolution put to the vote at a members' meeting will be decided on a show of hands.

Minutes

45 The board must ensure that proper minutes are kept in relation to all members' meetings.

46 Minutes of members' meetings must include the names of those present.

BOARD (CHARITY TRUSTEES)

Number of charity trustees

47 The maximum number of charity trustees shall be 12 persons and of these:

47.1 no more than 2 shall be charity trustees who were co-opted under the provisions of clauses 56 and 57.

48 The minimum number of charity trustees shall be 3.

Eligibility

49 A person shall not be eligible for election/appointment to the board under clauses 51 to 54 unless they are a member of the organisation; a person appointed to the board under clause 56 need not, however, be a member of the organisation.

50 A person will not be eligible for election or appointment to the board if they are:

50.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

50.2 an employee of the organisation.

Initial charity trustees

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

Election, retiral, re-election

52 At each AGM, the members may elect any member (unless they are debarred from membership under clause 50) to be a charity trustee.

53 The board may at any time appoint any member (unless they are debarred from membership under clause 50) to be a charity trustee.

- 54 At each AGM, all of the charity trustees elected/appointed under clauses 52 and 53 (and, in the case of the first AGM, those deemed to have been appointed under clause 51) shall retire from office – but shall then be eligible for re-election under clause 52.
- 55 A charity trustee retiring at an AGM will be deemed to have been re-elected unless:
- 55.1 they advise the board prior to the conclusion of the AGM that they do not wish to be re-appointed as a charity trustee; or
 - 55.2 an election process was held at the AGM and they were not among those elected/re-elected through that process; or
 - 55.3 a resolution for the re-election of that charity trustee was put to the AGM and was not carried.

Appointment/re-appointment of co-opted charity trustees

- 56 In addition to their powers under clause 53, the board may at any time appoint any non-member of the organisation to be a charity trustee (subject to clause 47, and providing they are not debarred from membership under clause 50) either on the basis that they have been nominated by a body with which the organisation has close contact in the course of its activities *or* on the basis that they have specialist experience and/or skills which could be of assistance to the board.
- 57 At each AGM, all of the charity trustees appointed under clause 56 shall retire from office – but shall then be eligible for re-appointment under that clause.

Termination of office

- 58 A charity trustee will automatically cease to hold office if:
- 58.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 58.2 they become incapable for medical reasons of carrying out their duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
 - 58.3 (in the case of a charity trustee elected/appointed under clauses 52 to 55) they cease to be a member of the organisation;
 - 58.4 they become an employee of the organisation;
 - 58.5 they give the organisation a notice of resignation, signed by them;
 - 58.6 they are absent (without good reason in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove them from office;

- 58.7 they are removed from office by resolution of the board on the grounds that they are considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 75);
- 58.8 they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- 58.9 they are removed from office by a resolution of the members passed at a members' meeting.

59 A resolution under paragraph 58.7, 58.8 or 58.9 shall be valid only if:

- 59.1 the charity trustee who is the subject of the resolution is given 21 clear days' written notice of the grounds upon which the resolution for their removal is to be proposed;
- 59.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
- 59.3 in the case of a resolution under paragraph 58.7 or 58.8 at least two thirds of the charity trustees then in office vote in favour of the resolution.

Register of charity trustees

60 The board must keep a register of charity trustees, setting out:

- 60.1 for each current charity trustee: their full name and address; the date on which they were appointed as a charity trustee; and any office held by them in the organisation;
- 60.2 for each former charity trustee - for at least 6 years from the date on which they ceased to be a charity trustee: the name of the charity trustee; any office held by them in the organisation; and the date on which they ceased to be a charity trustee.

61 The board must ensure that the register of charity trustees is updated within 28 days of any change:

- 61.1 which arises from a resolution of the board or a resolution passed by the members of the organisation; or
- 61.2 which is notified to the organisation.

62 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the organisation, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that

including that information is likely to jeopardise the safety or security of any person or premises.

Office-bearers

- 63** The charity trustees must elect from among themselves a convener, a treasurer and a secretary.
- 64** In addition to the office-bearers required under clause 63, the charity trustees may elect from among themselves further office-bearers if they consider that appropriate.
- 65** All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 63 or 64.
- 66** A person elected to any office will automatically cease to hold that office:
- 66.1 if they cease to be a charity trustee; *or*
 - 66.2 if they give to the organisation a notice of resignation from that office, signed by them.

Powers of the board

- 67** Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the organisation.
- 68** A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 69** The members may, by way of a resolution passed in compliance with clause 42 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.

Charity trustees - general duties

- 70** Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation; and, in particular, must:
- 70.1 seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
 - 70.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 70.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:
 - 1 put the interests of the organisation before that of the other party;

- 2 where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
- 70.4 ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 71 In addition to the duties outlined in clause 70, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring:
- 71.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
- 71.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 72 Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest; and (subject to clause 73 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), they may retain any personal benefit which arises from that arrangement.
- 73 No charity trustee may serve as an employee (full time or part time) of the organisation; and no charity trustee may be given any remuneration by the organisation for carrying out their duties as a charity trustee.
- 74 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for charity trustees

- 75 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.
- 76 The code of conduct referred to in clause 75 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of board meetings

- 77 Any charity trustee may call a meeting of the board *or* ask the secretary to call a meeting of the board.

78 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

Procedure at board meetings

79 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is half the number of trustees holding office at any time or such other number as the trustees may from time to time decide.

80 If at any time the number of charity trustees in office falls below minimum number as stated in clause 48, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.

81 The convener of the organisation should act as convener of each board meeting.

82 If the convener is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as convener), the charity trustees present at the meeting must elect (from among themselves) the person who will act as convener of that meeting.

83 Every charity trustee has one vote, which must be given personally.

84 All decisions at board meetings will be made by majority vote.

85 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

86 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that they are not a charity trustee - but on the basis that they must not participate in decision-making.

87 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.

88 For the purposes of clause 87:

88.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc.) shall be deemed to be held by that charity trustee;

88.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

Minutes

- 89** The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 90** The minutes to be kept under clause 89 must include the names of those present. The adoption of minutes of board meetings, as reflected in the subsequent minutes, shall be sufficient evidence that they have been approved by the board and the signature of the convener on minutes shall not be necessary.

ADMINISTRATION

Delegation to sub-committees

- 91** The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 92** The board may also delegate to the convener of the organisation (or the holder of any other post) such of their powers as they may consider appropriate.
- 93** When delegating powers under clause 91 or 92, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 94** Any delegation of powers under clause 91 or 92 may be revoked or altered by the board at any time.
- 95** The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

Operation of accounts

- 96** Subject to clause 97, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the organisation; at least one out of the two signatures must be the signature of a charity trustee.
- 97** Where the organisation uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 96.

Accounting records and annual accounts

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

MISCELLANEOUS

Winding-up

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

Alterations to the constitution

- 102** This constitution may (subject to clause 103) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 42).
- 103** The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (e.g. change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

- 104** References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include:
- 104.1 any statutory provision which adds to, modifies or replaces that Act; and
 - 104.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 104.1 above.
- 105** In this constitution:
- 105.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;
 - 105.2 "charitable purpose" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.