

**The Companies Act 2006**

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**Company Limited by Guarantee and not Having a Share Capital**

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Articles of Association

of

**Outer Hebrides Fisheries Trust**

## 1 Constitution of the Trust

The model Articles as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of this Trust.

## 2 Defined Terms and Interpretation

- 2.1 In these Articles the following definitions and rules of interpretation shall apply:
- 2.2 “**Act**” means the Companies Act 2006;
- 2.3 “**Articles**” means the Articles of Association of the Trust for the time being in force;
- 2.4 “**Board of Trustees**” and “**trustees**” means the directors of the Trust;
- 2.5 “**Trust**” means Outer Hebrides Fisheries Trust;
- 2.6 “**Trustee Approval**” means a vote of at least 75% of the trustees present and entitled to vote at a meeting of the Board of Trustees;
- 2.7 “**Electronic Communication**” has the same meaning as is assigned to that expression in the Electronic Communications Act 2000;
- 2.8 “**Nominated Member**” and “**member**” means the current members of the Trust and any individual, institution or organisation who supports the objects of the Trust and whom the Board of Trustees with Trustee Approval nominate for membership;
- 2.9 reference in these Articles to the singular shall be deemed to include the plural;
- 2.10 reference to a “person” includes a corporate or unincorporated body, whether or not having a separate legal personality; and
- 2.11 reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it and any former statute or statutory provision which it amends or re-enacts.
- 2.12 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the Trust.

## 3 Liability of Members

- 3.1 The liability of the members is limited.
- 3.2 The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the Trust in the event of its being wound up while they are a member or within one year after they cease to be a member, for:

3.2.1 payment of the Trust's debts and liabilities contracted before they cease to be a member;

3.2.2 payment of the costs, charges and expenses of winding up; and

3.2.3 adjustment of the rights of the contributories among themselves.

3.3 If upon the winding up or dissolution of the Trust there remains after the satisfaction of all debts and liabilities any property whatsoever the same shall be made over to some organisation who the Trustees believe will continue to promote the objects of the Trust.

## 4 Objects and assets

4.1 The objects of the Trust are: -

4.1.1 To conduct scientific research and monitoring of living creatures which live in, around or are dependent upon water habitats and such habitats themselves primarily, but not limited to, in the Outer Hebrides;

4.1.2 To advance and to assist in promoting the education of the public and any association, company, local authority, administrative or governmental agency or public body or representative body in: -

(a) the understanding of aquatic ecosystems, economic or social activity and river catchment management;

(b) the need for, and benefits of, conservation, rehabilitation and improvement of aquatic environments;

(c) catch and release and further good practice in angling and the promotion of associated activities; and

4.1.3 to carry out all activities related to the above objects as approved by the Trustees from time to time.

4.2 The members of the Trust may at any time before, and in expectation of, its dissolution resolve that any net assets of the Trust after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the Trust be applied or transferred in any of the following ways:-

(a) directly for the objects of the Trust set out at 4.1.1 and 4.1.2;

(b) by transfer to any charity or charities, for purposes similar to such objects;

(c) to any charity for use for particular purposes that fall within such objects.

4.3 Subject to any such resolution of the members of the Trust, the Board of Trustees may at any time before, and in expectation of, its dissolution resolve that any net assets of the Trust after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the Trust be applied or transferred:-

(a) directly for the Objects of the Trust set out at 4.1.1 and 4.1.2;

(b) by transfer to any charity or charities, for purposes similar to such objects;

(c) to any charity for use for particular purposes that fall within such objects.

4.4 In no circumstances shall the net assets of the Trust be paid to or distributed among the members of the Trust and if no such resolution is passed by the members or the trustees the net assets of the Trust shall be applied for charitable purposes as directed by the Office of the Scottish Charity Regulator.

4.5 For the avoidance of doubt, charitable purpose means a charitable purpose under section 7 of the Charities and Trustees Investment (Scotland) Act 2005 which is also regarded as charitable purpose in relation to the application of the Taxes Acts and charity shall mean a body on the Scottish Charity Register or the Charity Commission for England and Wales which is also regarded as a charity in relation to the application of the Taxes Acts.

## 5 Membership

5.1 The number of members of the Trust shall be not less than three. The maximum number of members may be determined from time to time by ordinary resolution of the Trust and subject to and in default of such determination shall be fourteen.

5.2 Membership of the Trust shall consist only of the Nominated Members subject to Article 5.5.

5.3 Where the Board of Trustees has decided an individual, body or association should be admitted as a Nominated Member, it shall give notice to such individual, body or association of its decision. Such person will be deemed to have been admitted as a Nominated Member with effect from the date on which such person has notified the Trust of its acceptance of such membership.

5.4 Each Nominated Member other than an individual shall appoint a representative who shall be entitled to speak at meetings of the members of the Trust and to exercise all voting and other rights to which that Nominated Member is entitled. In the event such representative is not the trustee nominated by such member the chairperson of the meeting attended by such representative shall require to be satisfied that they are authorised to represent the member at such meeting before they can exercise any voting and other rights to which such Nominated Member is entitled.

5.5 The Board of Trustees may from time to time establish one or more categories of honorary or affiliate membership as 'Outer Hebrides Fisheries Trust Supporters' provided that the rights of such categories of membership do not extend to voting at general meetings. Such categories of membership may be under whatever title or nomenclature the resolution may specify and may bestow upon the persons concerned such rights and privileges, duties and obligations (except the right to vote at general meetings) as may be specified in the resolution. For the avoidance of doubt, an Outer Hebrides Fisheries Trust Supporter shall not be a member for the purposes of the Act or the Articles unless appointed as a Nominated Member.

5.6 The Board of Trustees may at its discretion levy subscriptions on all or any categories of membership at such rates as it shall determine and may levy subscriptions at different rates for different members of the category.

## 6 Termination of membership

6.1 Membership is not transferable.

6.2 A member shall cease to be a member if they:

6.2.1 die or ;

6.2.2 withdraw from membership by giving 7 days' notice to the Board of Trustees in writing;

6.2.3 becomes bankrupt or, if a corporate body, on the passing of a resolution for its winding up;

6.2.4 are removed in accordance with Article 6.3.

6.3 If the Board of Trustees determines that any member's continued membership is harmful to or is not contributing to the aims of the Trust, such member may be removed from membership with Trustee Approval. Such member may only be removed if:

(a) the member has been given at least 21 days' notice in writing of the meeting of trustees at which Trustee Approval will be determined and the reasons why it is to be proposed; and

(b) the matter is considered in the light of any written representations that the member submits within 14 clear days after receiving notice.

## 7 Register of members

The trustees shall maintain a register of members, setting out the full name and address of each member, the date of admission to membership, and the date on which any person ceased to be a member.

## 8 General meetings

8.1 The trustees may, at any time, convene general meetings of the members.

8.2 The trustees must convene a general meeting if there is a valid requisition by members (under section 303 of the Act) or a requisition by a resigning auditor (under section 518 of the Act).

## 9 Notice of general meetings

9.1 At least 14 clear days' notice must be given in respect of a general meeting.

9.2 The reference to "clear days" in article 9.1 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 contained in an electronic communication, the day after it was sent) and also the day of the meeting, shall be excluded.

9.3 A notice calling a meeting shall specify:

9.3.1 the date and time of the meeting;

9.3.2 the place of the meeting;

9.3.3 the general nature of the business to be dealt with at the meeting; and

9.3.4 if a special resolution, or a resolution requiring special notice under the Act, is to be proposed, the notice shall also specify the intention to propose such a resolution and include the exact text of the resolution.

9.4 Notice of every general meeting shall be given (either in writing or, where the party to whom notice is given has notified the Trust of an address to be used for the purpose of electronic communications, by way of an electronic communication) to all the members and trustees, and (if there are auditors in office at the time) to the auditors.

9.5 A general meeting may be called by shorter notice with the consent of at least 75% of the members.

## 10 Special resolutions and ordinary resolutions

10.1 For the purposes of these Articles, a “special resolution” means a resolution passed by 75% or more of the votes cast on the resolution, provided that proper notice of the general meeting and of the intention to propose the resolution has been given in accordance with articles 9.1 to 9.5(inclusive).

10.2 For the avoidance of doubt, the reference in article 10.1 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

10.3 In addition to the matters expressly referred to elsewhere in these Articles, the provisions of the Act allow the Trust, by special resolution:

10.3.1 to alter its name; or

10.3.2 to alter any provision of these Articles or adopt new Articles.

10.4 For the purposes of these Articles, an “ordinary resolution” means a resolution passed by majority vote (taking account only of those votes cast in favour as compared with those votes against), providing proper notice of the meeting has been given in accordance with articles 9.1 to 9.5 (inclusive).

## 11 Procedure at general meetings

11.1 No business other than the appointment of the chair of the meeting shall be dealt with at any general meeting unless a quorum is present.

11.2 The quorum for a general meeting shall be one third of the members subject to a minimum of two.

- 11.3 If a quorum is not present within 30 minutes after the time at which a general meeting was due to commence or if, during a meeting, a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be fixed by the chair of the meeting.
- 11.4 The chairperson of the Trust shall (if present and willing to act as chair) preside as chair of each general meeting; if the chairperson is not present and willing to act as chair within 15 minutes after the time at which the meeting was due to commence, the trustees present at the meeting shall elect from among themselves the person who will act as chair of that meeting.
- 11.5 The chair of a general meeting may, with the consent of the meeting, adjourn the meeting to such time and place as the chair may determine.
- 11.6 The chair of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 11.7 When adjourning a general meeting, the chair of the meeting must:
- 11.7.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the trustees, and
  - 11.7.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 11.8 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given) must be given —
- 11.8.1 to the same persons to whom notice of the Trust's general meetings is required to be given; and
  - 11.8.2 containing the same information which such notice is required to contain.
- 11.9 Every member shall have one vote, given by either a show of hands or secret ballot.
- 11.10 A resolution put to the vote at a general meeting shall be decided on a show of hands unless a secret ballot is demanded by at least two members entitled to vote at the meeting; a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.
- 11.11 If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such a manner as the chair of the meeting may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.
- 11.12 The demand for a secret ballot may be withdrawn before it is taken with consent of the chair of the meeting. The withdrawal of a demand for a secret ballot shall not invalidate the result of a show of hands declared before the demand was made.
- 11.13 In the case of an equality of votes, the chair shall be entitled to a casting vote in addition to any other vote they may have.

## 12 Content of proxy notices

- 12.1 Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which:
- 12.1.1 states the name and address of the member appointing the proxy;
  - 12.1.2 identifies the person appointed to be that member’s proxy and the general meeting in relation to which that person is appointed;
  - 12.1.3 is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the trustees may determine; and
  - 12.1.4 is delivered in accordance with these Articles and any instructions contained in the notice of the general meeting to which they relate.
- 12.2 The Trust may require proxy notices to be delivered in a particular form and may specify different forms for different purposes.
- 12.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- 12.4 Unless a proxy notice indicates otherwise, it must be treated as:
- 12.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - 12.4.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.
- 12.5 For the avoidance of doubt, a person attending as a proxy shall exercise only those voting rights as are analogous to the eligibility to vote of the member for whom they are a proxy.

## 13 Delivery of proxy notices

- 13.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the chairperson of the Board of Trustees or in their absence to at least two other trustees by or on behalf of that person.
- 13.2 An appointment under a proxy notice may be revoked by delivering to the chairperson of the Board of Trustees or in their absence to at least two other trustees a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 13.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 13.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

## 14 Appointment and removal of trustees



14.1 The trustees of the Trust shall be such persons as are appointed as trustees in accordance with Articles 14.2 to 14.6.

14.2 Subject to article 15, any person who has been nominated in accordance with Article 14.3, is willing to act as a trustee and is permitted by law to do so, may be appointed to be a trustee:

14.2.1 by ordinary resolution of the Trust; or

14.2.2 by Trustee Approval.

14.3 Each Nominated Member shall be entitled to nominate one person to be appointed as a trustee. Nominations shall be lodged with the Trust in such form as shall be intimated to the members by the trustees from time to time. Where a Nominated Member is an individual such Nominated Member may only nominate themselves as a trustee.

14.4 The right to appoint a trustee shall include a right to appoint a trustee in place of any trustee who retires or otherwise ceases to be a trustee. Each member shall be entitled to remove any trustee appointed by that Nominated Member and to appoint another person as trustee in their place.

14.5 A trustee shall be removed as a trustee by Trustee Approval in favour of the removal if:

(a) the trustees and, if the trustee proposed to be removed has been nominated by a member who is not an individual, such member, have been given at least 21 days' notice in writing of the meeting of trustees at which Trustee Approval will be determined and the reasons why it is to be proposed; and

(b) the matter is considered in the light of any written representations that the trustee proposed to be removed and/or the member who nominated them submits within 14 clear days after receiving notice.

If a trustee is so removed from office they may not be appointed as the nominee of a Nominated Member for at least 12 months from the date of removal.

14.6 Such removal shall take effect upon the date of lodgement of the notice of the special meeting at the registered office of the Trust or such later date as may be specified in the notice.

## 15 Termination of office

A person cannot become or remain as and shall immediately cease to be a trustee if:

15.1 they (or if not a member, the Nominated Member who appointed them) cease to be a member of the Trust;

15.2 to be a trustee through the operation of any provision of the Act or becomes prohibited by law from being a trustee;

15.3 a registered medical practitioner who is treating that person gives a written opinion to the Trust stating that that person has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;

- 15.4 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- 15.5 they resign office by notice to the Trust;
- 15.6 they are absent (without permission of the trustees) from more than three consecutive meetings of the trustees, and the trustees resolve to remove them from office;
- 15.7 they are declared bankrupt under the Bankruptcy (Scotland) Act 1985;
- 15.8 they are involved in a formal arrangement with all of their creditors;
- 15.9 they are sentenced to prison for a month or more or has been convicted of a crime of dishonesty for which the rehabilitation period in terms of the Rehabilitation of Offenders Act 1974 has not expired or for which rehabilitation is excluded in terms of the said Act;
- 15.10 they are involved in any legal proceedings in any court or tribunal by or against the Trust; or
- 15.11 they are removed from office by special resolution (special notice having been given) pursuant to section 303 of the Act or has otherwise been required to vacate office in terms of this article 15.

## **16 Trustees' remuneration**

- 16.1 No benefit (whether in money or in kind) shall be given by the Trust to any trustee except (i) repayment of out-of-pocket expenses or (ii) reasonable payment in return for particular services (not being of a management nature) actually rendered to the Trust.
- 16.2 The Trust may pay any reasonable expenses which the trustees properly incur in connection with their attendance at—
- 16.2.1 meetings of trustees or committees of trustees,
- 16.2.2 general meetings, or
- 16.2.3 separate meetings of the holders of debentures of the Trust,
- or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Trust.

## **17 Register of trustees**

The trustees shall maintain a register of trustees, setting out full details of each trustee, including the date on which they became a trustee, and also specifying the date on which any person ceased to hold office as a trustee.

## **18 Office bearers**

18.1 The trustees shall elect from among themselves a chairperson and such other office bearers (if any) as they consider appropriate.

18.2 All of the office bearers shall cease to hold office at the conclusion of each triennial general meeting, but shall then be eligible for re-election.

18.3 A person elected to any office shall cease to hold that office if they cease to be a trustee or if they resign from that office by written notice to that effect.

## 19 Powers of trustees

19.1 Subject to the provisions of the Act, and these Articles, and subject to any directions given by special resolution, the Trust and its assets and undertaking shall be managed by the trustees, who may exercise all the powers of the Trust.

19.2 The members may, by special resolution, direct the trustees to take, or refrain from taking, specified action.

19.3 No alteration of these Articles and no direction given by special resolution shall invalidate any prior act of the trustees which would have been valid if that alteration had not been made or that direction had not been given.

19.4 A meeting of the trustees at which a quorum is present may exercise all powers exercisable by the trustees.

## 20 Personal interests

20.1 A trustee who has a personal interest in any transaction or other arrangement which the Trust is proposing to enter into must declare that interest at a meeting of the trustees; they will be debarred from voting on the question of whether or not the Trust should enter into that arrangement and must leave the meeting while such transaction or other arrangement is being considered.

20.2 For the purposes of article 20.1, a trustee shall be deemed to have a personal interest in an arrangement if any partner or other close relative of theirs or any firm of which they are a partner or any limited company of which they are a substantial shareholder or trustee (or any other party who/which is deemed to be connected with them for the purposes of section 317 of the Act), has a personal interest in that arrangement.

20.3 Provided:

20.3.1 they have declared their interest; and

20.3.2 they have not voted on the question of whether or not the Trust should enter into the relevant arrangement;

a trustee will not be debarred from entering into an arrangement with the Trust in which they have a personal interest (or is deemed to have a personal interest under article 20.2) and may retain any personal benefit which they gain from their participation in that arrangement.

## 21 Number of trustees and procedure at trustees' meetings

- 21.1 The maximum number and minimum number respectively of the trustees may be determined from time to time by ordinary resolution of the members of the Trust. Subject to and in default of such determination the maximum number of trustees shall be fourteen and the minimum number of trustees shall be three.
- 21.2 Any trustee may call a meeting of the trustees or request the Trust secretary (if applicable) to call a meeting of the trustees.
- 21.3 A meeting of the trustees shall be called by at least seven clear days' notice but may be called by shorter notice if it is so agreed by a majority of the trustees. The notice calling a meeting of the trustees shall specify the date, time and place of the meeting and shall set out in reasonable detail the general nature of the business to be transacted at the meeting. The accidental omission to give notice of a meeting of the trustees to, or the non-receipt of notice of a meeting by, any trustee shall not invalidate the proceedings at that meeting.
- 21.4 Questions arising at a meeting of the trustees shall be decided by a majority of votes; if an equality of votes arises, the chairperson of the meeting shall have a casting vote, unless, in accordance with the Articles, the chairperson is not to be counted as participating in the decision-making process for quorum or voting purposes. If any issue arises which is not dealt with in terms of these Articles, the chairperson of the meeting at which such issue arises shall decide how the issue shall be dealt with and such decision shall be final and binding on the other trustees.
- 21.5 No business shall be dealt with at a meeting of the trustees unless a quorum is present. The quorum for trustees' meetings is one third of the trustees subject to a minimum of two.
- 21.6 If the number of trustees is less than the number fixed as the quorum, the continuing trustees may act only for the purpose of filling vacancies or of calling a general meeting.
- 21.7 Unless they are unwilling to do so, the chairperson of the Board of Trustees shall preside as chair at every trustees' meeting at which they are present; if the chairperson is unwilling to act as chair or is not present within 15 minutes after the time when the meeting was due to commence, the trustees present shall elect from among themselves the person who will act as chair of the meeting.
- 21.8 The trustees may, at their discretion, allow any person who they reasonably consider appropriate, to attend and speak at any meeting of the trustees; for the avoidance of doubt, any such person who is invited to attend a trustees' meeting shall not be entitled to vote and shall not be deemed to constitute a trustee for the purposes of the Act or any provision of these Articles.
- 21.9 A trustee shall not be counted in the quorum present at a meeting in relation to a resolution on which they are not entitled to vote.
- 21.10 The Trust may, by ordinary resolution, suspend or relax to any extent, either generally or in relation to any particular matter, the provisions of article 21.9.

## 22 Conduct of trustees

Each of the trustees shall, in exercising their functions as a trustee of the Trust, act in the interests of the Trust and, in particular, must:

22.1 seek, in good faith, to ensure that the Trust acts in a manner which is in accordance with its objects (as set out in these Articles);

22.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

22.3 in circumstances giving rise to a conflict of interest or which may give rise to a conflict of interest between the Trust and any other party:

22.3.1 put the interests of the Trust before that of the other party, in taking decisions as a trustee; and

22.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the Trust and refrain from participating in any discussions or decisions involving the other trustees with regard to the matter in question;

22.4 ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by the Act; and

22.5 take such steps as are reasonably practicable for the purposes of ensuring:

22.5.1 that any breach of a duty under Articles 22.1 to 22.4 inclusive is corrected by the trustee concerned and not repeated; and

22.5.2 that any trustee who has been in serious or persistent breach of any such duties is removed as a trustee in terms of article 15.

## 23 Delegation to sub-committees and others

23.1 Subject to the Articles, the trustees may delegate any of the powers which are conferred on them under the Articles:

23.1.1 to such person or committee;

23.1.2 by such means (including by power of attorney);

23.1.3 to such an extent;

23.1.4 in relation to such matters or territories; and

23.1.5 on such terms and conditions;

as they think fit.

23.2 If the trustees so specify, any such delegation may authorise further delegation of the trustees' powers by any person to whom they are delegated.

23.3 The trustees may revoke any delegation in whole or part, or alter its terms and conditions.

23.4 Committees to which the trustees delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Articles which govern the taking of decisions by trustees.

23.5 The trustees may make rules of procedure for all or any committees, which prevail over rules derived from the Articles if they are not consistent with them.

## 24 Operation of bank accounts

Any bank account in which any part of the assets of the Trust is deposited shall indicate the name of the Trust.

## 25 Secretary

The trustees may appoint a Trust secretary for such term, at such remuneration (if any), and upon such conditions, as they may think fit; the Trust secretary may be removed by them at any time.

## 26 Minutes

The trustees shall ensure that minutes are made of all proceedings at general meetings, trustees' meetings and meetings of committees; a minute of any meeting shall include the names of those present, and (as far as possible) shall be signed by the chair of the meeting.

## 27 Accounting records and annual accounts

27.1 The trustees shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.

27.2 The trustees shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if they otherwise think fit, they shall ensure that an audit of such accounts is carried out by a qualified auditor.

27.3 Except as provided by law or authorised by the trustees or an ordinary resolution of the Trust, no person is entitled to inspect any of the Trusts accounting or other records or documents merely by virtue of being a member.

## 28 Notices

28.1 Any notice which requires to be given to a member under these Articles shall be given either in writing or by way of an electronic communication; such a notice may be given personally to the member or be sent by post in a pre-paid envelope addressed to the member at the address last intimated by them to the Trust or (in the case of a member

who has notified the Trust of an address to be used for the purpose of electronic communications) may be given to the member by way of an electronic communication.

28.2 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.

28.3 Any notice contained in an electronic communication shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any electronic communication was 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.

28.4 A member present or represented at any meeting of the Trust shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

## 29 Winding-up

If the Trust is wound up, the liquidator shall give effect to the provisions of article 3.

## 30 Indemnity

30.1 Every trustee or other officer or auditor of the Trust shall be indemnified (to the extent permitted by section 232, 234, 235, 532 and 533 of the Act) out of the assets of the Trust against any loss or liability which they may sustain or incur in connection with the execution of the duties of their office; that may include, without prejudice to that generality, (but only to the extent permitted by those sections of the Act), any liability incurred by them in defending any proceedings (whether civil or criminal) in which judgement is given in their favour or in which they are acquitted or any liability in connection with an application in which relief is granted to them by the court from liability for negligence, default or breach of trust in relation to the affairs of the Trust.

30.2 The Trust shall be entitled to purchase and maintain for any trustee insurance against any loss or liability which any trustee or other officer of the Trust may sustain or incur in connection with the execution of the duties of their office, and such insurance may extend to liabilities of the nature referred to in section 232 (2) of the Act.

## **Commentary**

*We have been asked to prepare updated Articles of Association of the Trust to ensure that they reflect current practice along with other recommendations we may suggest. It is noted that the Trust is a company limited by guarantee and so members do not benefit financially from their membership by the distribution of profits or on any sale.*

*Although set up as a company in many aspects of its operation the company operates as a trust. In our review, we have regarded trustees i.e. the individuals who are nominated to represent any members as the equivalent of directors – they will make decisions on key matters; members will, however, have the opportunity to consider major issues themselves at an annual general meeting or at any special general meetings called for a particular purpose. We have retained this distinction but given the fact that in practice trustees would in addition to being the representative on the board of trustees also be the representative of a member at any member's meeting, we have sought to extend as many decisions as appropriate to the board of trustees leaving only fundamental matters for members.*

*Turning to the Articles.*

*Article 3 – this has not been amended other than with references to the company as the Trust and to ensure that any references to individuals are inclusive of genders or non-genders. This also confirms (not changing anything) that by becoming a member each member guarantees the debts of the trust up to a maximum of £1 for the term of their membership and for twelve months after they cease to be a member. This is a requirement of the Companies Act and cannot be contracted out of.*

*Article 4 – the objects of the Trust are set out in Article 4.1. Generally, companies can carry out whatever they wish to do. However, where a company is established for charitable purposes, it is common to ensure that its activities are restricted to those charitable purposes to ensure that it can maintain charitable status. In the case of the Trust, the members would wish to ensure that it carries out specific activities. We have looked to reword these to cover what we understand to be the Trust's current activities. Reference to the type of creature and habitats which will be considered have been worded quite widely to ensure that it covers both water-living and water-dependent creatures.*

*We have included additional wording at Article 4.1.3 to expressly allow particular activities related to such overall objects which are approved by the Trustees from time to time. This would, in particular, ensure that the Trust could carry out commercial activities which allowed skills which it has available to it to be used for the purposes of its objects or to ensure that there is additional finance which may be used to further such objects.*

*Article 4.2/4.3 – reflecting current wording that ensures that if there is to be a winding-up of the Trust, members and/or the Board of Trustees can direct that its assets are passed to a successor who would carry out similar activities.*

*Article 5 – Membership – this has not changed significantly, but states that membership shall be no less than 3. If membership fell below this amount, the continuing trustees/members would look to admit a new member to achieve the minimum number. The maximum is stated as fourteen but this could be agreed by the members (it effectively dilutes voting interests of members) at a meeting of the members as opposed to trustees.*



*Article 6 – one significant change which we have made here is at Article 6.3 to allow the Trustees (acting by 75% majority) to agree that a member should be expelled from the membership. As this is a significant step it is stated to require a 75% majority and for at least twenty-one days' notice to be given that the member is entitled to submit representations to the Trust to advise why they should not be removed. But without this addition no membership may ever be terminated.*

*Article 8/9 – references to general meetings are meetings of the members, not the trustees. This would be the annual general meeting and specific members' meeting called for a particular purpose.*

*Article 10 – at meetings of the members, a decision can either be made by majority (an ordinary resolution requiring more than 50% to vote in favour of it) or a special resolution (requiring a majority of more than 75%). Unless stated otherwise the required majority would be over 50%.*

*Article 11 – given the possibility of a fluctuating membership or that people would not attend, we suggest that rather than a fixed number we provide that the quorum for a general meeting shall be one-third of the members subject to a minimum of two. At Article 11.9 decisions may be made either on a show of hands or by secret ballot. These would normally be made on a show of hands but there may be concern over a particularly sensitive vote (possibly regarding expulsion of a member) where members would prefer any such decision to be made by secret ballot and therefore retain this option.*

*Article 12/13 – It is possible that a member is unable to attend a general meeting but will still wish someone else to represent them – this could be another trustee or the chairman. This would allow them to vote by proxy which is at the discretion of the chairman i.e. he may decide that a vote is taken on a show of hands and if the resolution is passed that is the end of the matter. If it is not passed, the chairman may then decide to exercise his voting rights under proxy to be included.*

*Article 14 – most meetings of the trust will, however be of the trustees themselves. These provisions govern the appointment and removal of trustees where they acknowledge that each member may appoint a representative as a trustee. Similar provisions to the removal of members have been added to allow for the removal of a trustee while retaining the member's membership. If there were concerns among the trustees with the actions of the individual representative i.e. one of the trustees, if an approach to the member to suggest an alternative trustee may be nominated by them is unsuccessful, this allows the trustees by 75% majority to agree that such individual trustee should be removed from office as a trustee. The member then requires to appoint another trustee in their place and under this heading is prohibited from appointing a trustee who has been removed from office for a period of twelve months. This deals with the issue where there is concern over the identity of actions of an individual trustee as opposed to the organisation which they represent. Ultimately, if an organisation which is a member was unwilling to cooperate or it was the organisation itself which was considered to be unsuitable, then there would require to be a removal of them as a member not simply their representative as a trustee.*

*Most meeting of the Trust will, often, be meetings of the trustees. However, there are specific matters which require to be approved by the members and this will require a separate meeting to be called of members as opposed to a trustees meeting. In practice, this may be the same individuals but would give the opportunity for the organisations an individual trustee may represent to consider the matter more widely and, possibly, appoint an alternative representative for the purposes of such meetings. This would cover the AGM and also key decision such as an alteration to the Articles.*

