

HK&SD SOLAR FARM WORKING GROUP

A report and recommendations to the Parish Council concerning the establishment of a Charitable Incorporated Organisation (“the CIO”) to be called the Horton Kirby and South Darenth Community Village Trust (HK&SDVT).

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An Office copy this document is available for public display and inspection at the Parish Office.

If you have any questions or seek clarification please address them to the Working Group ^C/o The Parish Clerk at the Parish Office or office@hksdparishcouncil.co.uk

The Working Group:

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Section 1

The Report

HK&SD SOLAR FARM WORKING GROUP A report to the Parish Council

1.0 This report.

A report and recommendations to the HK&SD PC, for consideration at the Parish Council meeting 7th October 2024, on the establishment of a charitable trust, for the purpose of receiving (initially from the Horton Wood development) funds, donations, contributions (from other legitimate sources) and distributing those funds for the purposes set out in the Trust Constitution.

2.0 Background.

The development, by the Working Group (WG), of the Charity has been discussed at various PC meetings as the WG worked through the details and reported back to the PC at appropriate stages.

Substantive and material decisions are recorded in the minutes of the PC meetings, in particular minute 110 PC meeting 9 October 2023, which authorised the WG to proceed with the necessary work and to take appropriate legal advice, to bring documentation to the point of application, to the Charities Commission, to grant legal status to the trust as a Charitable Incorporated Organisation (CIO), is referred to as the Constitution.

The name and principal office of the CIO will be:

The Horton Kirby and South Darenth Community Village Trust.
c/o Parish office Village Hall South Darenth Horton Road Kent DA49AZ

It is likely that this will become colloquially known as The Community Village Trust or some other such abbreviated form.

3.0 The Constitution.

The format of the constitution is largely determined by the need to conform to the requirements of the Commissions model constitution, and the key elements are summarised below: sections not specifically referred to below deal primarily with the administration, regulation and compliance requirements of a CIO.

It should be noted the Implementation of the Charities Act 2022 is as yet still on going and this may give rise to some consequential changes as it is implemented in 2024 and beyond.

Objectives (section 21 of the constitution.)

To receive and administer gifts, grants, funds and property, and distribute funds for the promotion and/or improvement of the environment, social or other benefit of the local resident community within the civil parish of Horton Kirby and South Darenth (HK&SD).

Trustees (section 9&10 of the constitution page 5-7)

This section provides for there to be 5 Trustees in total, being the only voting members of the Trust, comprising two Council Trustees (members of the PC) and three Resident Trustees (resident in the Parish and not members of the PC).

The first trustees (Founder Charity Trustees) will be appointed and serve until the next quadrennial PC elections (2027), thereafter Charity Trustees will serve for four years, being appointed coincidental with the quadrennial PC elections, retiring Trustees will be eligible for reappointment, provided that they meet the eligibility requirements.

The following trustee appointment process will operate either side of the time table for Local Government Elections in England as published by Electoral Commission from time to time in accordance with the template below.

PC Election Event	Working days before Polling day	Trustee Appointment Event	Working Days before Polling day
		Public invitation for nominations	Not later than 40 days
Publication of notice of election	Not later than 25 days.	Invitations close	Not later than 25 days
Publication of statement of persons nominated	Not later than 18 days		
		Due diligence of nominees i.e. nominees fulfil eligibility criteria.	Not later than polling day (0)
Polling day			
PC AGM Nominates Council Trustees	Not later than 14 Days after polling day	Outgoing Trustees meet and appoint trustees (section 10(1) Constitution).	Not later than 14 Days after PC AGM

The submission to the Charity Commission needs to contain the names of the Founding Trustees.

Following the granting of legal status by the Charity Commission the Founding Trustees will develop the administration procedures and guidelines in order to make the Trust operable in time to receive the initial contribution(s), consequently, it would be beneficial, to the immediate work in hand if, the Founder Trustees were largely drawn from the WG members to provide continuity with and experience of bringing the proposals to the current state.

Additionally, it may be necessary to make compliance amendments arising from the further implementation of the Charities Act 2022 after approval by the Commission; these will be made by the Founding Trustees.

4.0 Recommendations.

The Working Group recommends that the Parish Council:

4.1 Approves the Constitution and authorises the Working Group to submit it to the Charities Commission for approval.

4.2 Authorises the WG to proceed to make compliance amendments to the Constitution, as may arise during the submission.

4.3 Appoint the following persons, who have indicated that they are willing to be appointed as Founder Trustees and have made the necessary Declarations.

Council Trustee:

Councillor Ian Blackamore, until the next quadrennial elections of HK&SDPC

Council Trustee:

Councillor Dawn Wakefield, until the next quadrennial elections of HK&SDPC

Resident Trustee:

Roger House, until the next quadrennial elections of HK&SDPC

And authorises the above so appointed Trustees to seek and appoint the two further Founder Resident Trustees

SECTION 1 END

Section 2

2 Foundation Model Constitution of a Charitable Incorporated Organisation.

Constitution of a Charitable Incorporated Organisation whose only voting members are its charity trustees

(‘Foundation’ model constitution)

Date of constitution (last amended):

Name

The name of the Charitable Incorporated Organisation (“the CIO”) is

The Horton Kirby and South Darenth Community Village Trust
(HK&SDVT)

1. National location of principal office

The CIO must have a principal office in England or Wales. The principal office of the CIO is in England.

2. Objects

The objects of the CIO are:

To receive and administer gifts, grants, funds and property, and distribute funds for the promotion and/or improvement of the environment, social or other benefit of the local resident community within the civil parish of Horton Kirby and South Darenth (HK&SD).

3. Powers

The CIO has power to do anything which is calculated to further its objects or is conducive or incidental to doing so. In particular, the CIO has power to:

- (1) borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The CIO must comply as appropriate with sections 124 and 125 of the Charities Act 2011, if it wishes to mortgage land;
- (2) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- (3) sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;
- (4) employ and remunerate such staff as are necessary for carrying out the work of the CIO. The CIO may employ or remunerate a charity trustee only to the extent that it is permitted to do so by clause 6 (Benefits and payments to charity trustees and connected persons) and provided it complies with the conditions of that clause;
- (5) deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the CIO to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000.

4. Application of income and property

- (1) The income and property of the CIO must be applied solely towards the promotion of the objects.
 - (a) A charity trustee is entitled to be reimbursed from the property of the CIO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the CIO.
 - (b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- (2) None of the income or property of the CIO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the CIO.
- (3) Nothing in this clause shall prevent a charity trustee or connected person receiving any benefit or payment which is authorised by Clause 6.

5. Benefits and payments to charity trustees and connected persons

(1) General provisions

No charity trustee or connected person may:

- (a) buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the CIO;
- (c) be employed by, or receive any remuneration from, the CIO;
- (d) receive any other financial benefit from the CIO;

unless the payment or benefit is permitted by sub-clause (2) of this clause or authorised by the court or the prior written consent of the Charity Commission (“the Commission”) has been obtained. In this clause, a “financial benefit” means a benefit, direct or indirect, which is either money or has a monetary value.

(2) Scope and powers permitting trustees’ or connected persons’ benefits

- (a) A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that a majority of the trustees do not benefit in this way.
- (b) A charity trustee or connected person may enter into a contract for the supply of services and/or goods to the CIO where that is permitted in accordance with, and subject to the conditions in, sections 185 to 188 of the Charities Act 2011.
- (c) A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (d) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must

be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.

- (e) A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.

(3) In sub-clause (2) of this clause:

- (a) “the CIO” includes any company in which the CIO:
 - (i) holds more than 50% of the shares; or
 - (ii) controls more than 50% of the voting rights attached to the shares; or
 - (iii) has the right to appoint one or more directors to the board of the company;
- (b) “connected person” includes any person within the definition set out in clause 30 (Interpretation).

6. Conflicts of interest and conflicts of loyalty

A charity trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the CIO or in any transaction or arrangement entered into by the CIO which has not previously been declared; and
- (2) absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the CIO and any personal interest (including but not limited to any financial interest).

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

7. Liability of members to contribute to the assets of the CIO if it is wound up

If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

8. Charity trustees

(1) Functions and duties of charity trustees

The charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO. It is the duty of each charity trustee:

- (a) to exercise his or her powers and to perform his or her functions in his or her capacity as a trustee of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO; and
- (b) to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:
 - (i) any special knowledge or experience that he or she has or holds himself or herself out as having; and,
 - (ii) if he or she acts as a charity trustee of the CIO in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

(2) Eligibility for trusteeship

- (a) Every charity trustee must be a natural person.
- (b) No individual may be appointed as a charity trustee of the CIO:
 - if he or she is under the age of 18 years; or

- if he or she would automatically cease to hold office under the provisions of clause 11(1)(e).

(c) No one is entitled to act as a charity trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the charity trustees decide, his or her acceptance of the office of charity trustee.

(3) Number of charity trustees

(a) There will be five charity trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.

(b) The maximum number of charity trustees is 5. The charity trustees may not appoint any charity trustee if as a result the number of charity trustees would exceed the maximum.

(4) Founder charity trustees

(1)The Founder charity trustees are as follows , and are appointed for the following terms –

Council Trusteeuntil the next quadrennial elections of HK&SDPC

Council Trusteeuntil the next quadrennial elections of HK&SDPC

Resident Trustee.....until the next quadrennial elections of HK&SDPC

Resident Trustee.....until the next quadrennial elections of HK&SDPC

Resident Trustee.....until the next quadrennial elections of HK&SDPC

- (2) The Founder charity trustees shall comprise two members' of HK&SD Parish Council (Council Trustees) and three Members of the public, resident in HK&SD (Resident Trustees).

9. Appointment of charity trustees

- (1) Apart from the first charity trustees, every trustee must be appointed for a term of four years by a resolution passed at a properly convened meeting of the charity trustees.
- (2) In selecting individuals for appointment as charity trustees, the charity trustees must have regard to the skills, knowledge and experience needed for the effective administration of the CIO.
- (3) The charity trustees shall comprise two Council Trustees appointed by HK&SDPC at its Annual General Meeting following the quadrennial elections.
- (4) Three Resident Trustees who shall be residents of the civil parish of HK&SD or who reside within three miles of the civil parish of HK&SD and apart from the first charity trustees, whose nomination has support in writing of 5 residents of the civil parish of HK&SD
- (5) No trustee can be appointed as a Council Trustee and a Resident Trustee during the same term.

10. Information for new charity trustees

The charity trustees will make available to each new charity trustee, on or before his or her first appointment:

- (a) a copy of the current version of this constitution; and
- (b) a copy of the CIO's latest Trustees' Annual Report and statement of accounts.

11. Retirement and removal of charity trustees

- (1) A charity trustee ceases to hold office if he or she:
 - (a) retires by notifying the CIO in writing (but only if enough

charity trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);

(b) is absent without the permission of the charity trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated;

(c) dies;

(d) in the written opinion, given to the CIO, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;

(e) is disqualified from acting as a charity trustee by virtue of sections 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).

(2) Any person retiring as a charity trustee is eligible for reappointment.

(3) A charity trustee who has served for three consecutive terms may not be reappointed for a fourth consecutive term but may be reappointed after an interval of at least one year.

12. Taking of decisions by charity trustees

Any decision may be taken either:

- at a meeting of the charity trustees; or
- by resolution in writing or electronic form agreed by a majority of all of the charity trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to which the majority of all of the charity trustees has signified their agreement. Such a resolution shall be effective provided that
 - a copy of the proposed resolution has been sent, at or as near as reasonably practicable to the same time, to all of the charity trustees; and

- the majority of all of the charity trustees has signified agreement to the resolution in a document or documents which has or have been authenticated by their signature, by a statement of their identity accompanying the document or documents, or in such other manner as the charity trustees have previously resolved, and delivered to the CIO at its principal office or such other place as the trustees may resolve within 28 days of the circulation date.

13. Delegation by charity trustees

- (1) The charity trustees may delegate any of their powers or functions to a committee or committees, and, if they do, they shall determine the terms and conditions on which the delegation is made. The trustees may at any time alter those terms and conditions, or revoke the delegation.
- (2) This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the charity trustees, but is subject to the following requirements:
 - (a) a committee may consist of two or more persons, but at least one member of each committee must be a charity trustee;
 - (b) the acts and proceedings of any committee must be brought to the attention of the charity trustees as a whole as soon as is reasonably practicable; and
 - (c) the charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

14. Meetings of charity trustees

(1) Calling meetings

- (a) Any charity trustee may call a meeting of the charity trustees.
- (b) Subject to that, the charity trustees shall decide how

their meetings are to be called, and what notice is required.

(2) Chairing of meetings

The charity trustees may appoint one of their number to chair their meetings and may at any time revoke such appointment. If no-one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time of the meeting, the charity trustees present may appoint one of their number to chair that meeting.

(3) Procedure at meetings

- (a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is two resident nominated charity trustees, and one Horton Kirby & South Darenth Parish Council appointed charity trustee. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.
- (b) Questions arising at a meeting shall be decided by a majority of those eligible to vote.
- (c) In the case of an equality of votes, the person who chairs the meeting shall have a second or casting vote.

(4) Participation in meetings by electronic means

- (a) A meeting may be held by suitable electronic means agreed by the charity trustees in which each participant may communicate with all the other participants.
- (b) Any charity trustee participating at a meeting by suitable electronic means agreed by the charity trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
- (c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

15. Membership of the CIO

- (1) The members of the CIO shall be its charity trustees for the time being. The only persons eligible to be members of the CIO are its charity trustees. Membership of the CIO cannot be transferred to anyone else.
- (2) Any member and charity trustee who ceases to be a charity trustee automatically ceases to be a member of the CIO.

16. Informal or associate (non-voting) membership

- (1) The charity trustees may create associate or other classes of non-voting membership, and may determine the rights and obligations of any such members (including payment of membership fees), and the conditions for admission to, and termination of membership of any such class of members.
- (2) Other references in this constitution to “members” and “membership” do not apply to non-voting members, and non-voting members do not qualify as members for any purpose under the Charities Acts, General Regulations or Dissolution Regulations.

17. Decisions which must be made by the members of the CIO

- (1) Any decision to:
 - (a) amend the constitution of the CIO;
 - (b) amalgamate the CIO with, or transfer its undertaking to, one or more other CIOs, in accordance with the Charities Act 2011; or
 - (c) wind up or dissolve the CIO (including transferring its business to any other charity)must be made by a resolution of the members of the CIO (rather than a resolution of the charity trustees).

- (2) Decisions of the members may be made either:
- (a) by resolution at a general meeting; or
 - (b) by resolution in writing, in accordance with sub-clause (4) of this clause.
- (3) Any decision specified in sub-clause (1) of this clause must be made in accordance with the provisions of clause 27 (amendment of constitution), clause 28 (Voluntary winding up or dissolution), or the provisions of the Charities Act 2011, the General Regulations or the Dissolution Regulations as applicable. Those provisions require the resolution to be agreed by a two thirds majority of those members voting at a general meeting, or agreed by all members in writing.
- (4) Except where a resolution in writing must be agreed by all the members, such a resolution may be agreed by a simple majority of all the members who are entitled to vote on it. Such a resolution shall be effective provided that:
- (a) a copy of the proposed resolution has been sent to all the members eligible to vote; and
 - (b) the required majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature, by a statement of their identity accompanying the document, or in such other manner as the CIO has specified.

The resolution in writing may comprise several copies to which one or more members has signified their agreement. Eligibility to vote on the resolution is limited to members who are members of the CIO on the date when the proposal is first circulated

18. General meetings of members

(1) Calling of general meetings of members

The charity trustees may designate any of their meetings as a general meeting of the members of the CIO. The purpose of such a meeting is to discharge any business which must by law be discharged by a resolution of the members of the CIO as specified in clause 18 (Decisions which must be made by the members of the CIO).

(2) Notice of general meetings of members

- (a) The minimum period of notice required to hold a general meeting of the members of the CIO is 14 days.
- (b) Except where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations, a general meeting may be called by shorter notice if it is so agreed by a majority of the members of the CIO.
- (c) Proof that an envelope containing a notice was properly addressed, prepaid and posted; or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that the notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.

(3) Procedure at general meetings of members

The provisions in clause 14 (2)-(4) governing the chairing of meetings, procedure at meetings and participation in meetings by electronic means apply to any general meeting of the members, with all references to trustees to be taken as references to members.

19. Saving provisions

- (1) Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:

- who was disqualified from holding office;
- who had previously retired or who had been obliged by the constitution to vacate office;
- who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;
- for whom there is a technical defect in their appointment as a trustee of which the trustees were unaware at the time;

if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.

(2) Sub-clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for sub-clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 7 (Conflicts of interest).

20. Execution of documents

- (1) The CIO shall execute documents either by signature or by affixing its seal (if it has one).
- (2) A document is validly executed by signature if it is signed by at least two of the charity trustees of which one must be a Council Trustee and one which must be a Resident Trustee.

21. Use of electronic communications

The CIO will comply with the requirements of the Communications Provisions in the General Regulations and in particular:

- (a) the requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form;

- (b) any requirements to provide information to the Commission in a particular form or manner.

22. Keeping of Registers

The CIO must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, a (combined) register of its members and charity trustees.

23. Minutes

The charity trustees must keep minutes of all:

- (1) appointments of officers made by the charity trustees.
- (2) proceedings at general meetings of the CIO;
- (3) meetings of the charity trustees and committees of charity trustees including:
 - the names of the trustees present at the meeting;
 - the decisions made at the meetings; and
 - where appropriate the reasons for the decisions;
- (4) decisions made by the charity trustees otherwise than in meetings.

24. Accounting records, accounts, annual reports and returns, register maintenance

- (1) The charity trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of account, and to the preparation of annual reports and returns. The statements of account, reports and returns must be sent to the Charity Commission, regardless of the income of the CIO, within 10 months of the financial year end.
- (2) The charity trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the CIO entered on the Central Register of Charities.

25. Rules

The charity trustees may from time to time make such reasonable and proper rules or byelaws as they may deem necessary or expedient for the proper conduct and management of the CIO, but such rules or bye laws must not be inconsistent with any provision of this constitution. Copies of any such rules or bye laws currently in force must be made available to any member of the CIO on request.

26. Disputes

If a dispute arises between members of the CIO about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

27. Amendment of constitution

As provided by sections 224-227 of the Charities Act 2011:

(1) This constitution can only be amended:

(a) by resolution agreed in writing by all members of the CIO;
or

(b) by a resolution passed by a 75% majority of those voting at a general meeting of the members of the CIO called in accordance with clause 19 (General meetings of members).

(2) Any alteration of the CIO's objects, of any provision of the CIO's constitution directing the application of property on its dissolution or any provision of the CIO's constitution where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them, requires the prior written consent of the Charity Commission.

(3) No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.

(4) A copy of every resolution amending the constitution, together with a copy of the CIO's constitution as amended must be sent to the

Commission by the end of the period of 15 days beginning with the date of passing of the resolution.

28. Voluntary winding up or dissolution

(1) As provided by the Dissolution Regulations, the CIO may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the CIO can only be made:

(a) at a general meeting of the members of the CIO called in accordance with clause 18 (General meetings of members), of which not less than 14 days' notice has been given to those eligible to attend and vote:

(i) by a resolution passed by a two thirds majority of those voting, or

(ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or

(b) by a resolution agreed in writing by all members of the CIO.

(2) Subject to the payment of all the CIO's debts:

(a) Any resolution for the winding up of the CIO, or for the dissolution of the CIO without winding up, may contain a provision directing how any remaining assets of the CIO shall be applied.

(b) If the resolution does not contain such a provision, the charity trustees must decide how any remaining assets of the CIO shall be applied.

(c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO.

(3) The CIO must observe the requirements of the Dissolution Regulations in applying to the Commission for the CIO to be removed from the Register of Charities, and in particular:

- (a) the charity trustees must send with their application to the Commission:
 - (i) a copy of the resolution passed by the members of the CIO;
 - (ii) a declaration by the charity trustees that any debts and other liabilities of the CIO have been settled or otherwise provided for in full; and
 - (iii) a statement by the charity trustees setting out the way in which any property of the CIO has been or is to be applied prior to its dissolution in accordance with this constitution;
 - (b) the charity trustees must ensure that a copy of the application is sent within seven days to every member and employee of the CIO, and to any charity trustee of the CIO who was not privy to the application.
- (4) If the CIO is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

29. Interpretation

In this constitution:

“connected person” means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the charity trustee;
- (b) the spouse or civil partner of the charity trustee or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the charity trustee or with any person falling within sub-clause (a) or (b) above;
- (d) an institution which is controlled –
 - (i) by the charity trustee or any connected person falling within sub-clause (a), (b), or (c) above; or

- (ii) by two or more persons falling within sub-clause (d)(i), when taken together
- (e) a body corporate in which –
 - (i) the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
 - (ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

Section 118 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this constitution.

“General Regulations” means the Charitable Incorporated Organisations (General) Regulations 2012.

“Dissolution Regulations” means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

The **“Communications Provisions”** means the Communications Provisions in Part 9, Chapter 4 of the General Regulations.

“charity trustee” means a charity trustee of the CIO.

A **“poll”** means a counted vote or ballot, usually (but not necessarily) in writing.

“HK&SDPC” means Horton Kirby & South Darenth Parish Council

“Council Trustee” means a charity trustee who is a member of HK&SDPC

“Resident Trustee” means a charity trustee who is a resident of the civil parish of Horton Kirby & South Darenth or who resides within a three mile radius of the civil parish of Horton & South Darneth.

SECTION 2 END

SECTION 3

Ancillary reference documents

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Trustee Eligibility Declaration

Disqualification reasons table



Trustee Eligibility Declaration

PLEASE COMPLETE USING BLOCK CAPITALS AND BLACK INK (complete additional forms if you have more than 4 trustees)

Organisation name [Your organisation name as it appears in your governing document]

Total number of trustees your organisation has

Trustee 1	Trustee 2	Trustee 3	Trustee 4
Name	Name	Name	Name
Signature:	Signature:	Signature:	Signature
Date	Date	Date	Date
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Working with vulnerable groups

Tick this box if your organisation works with vulnerable people (including children) and you declare that you have:

- Read and understood the Charity Commission's safeguarding guidance
- Carried out all trustee eligibility checks the law requires and on the basis of those checks are satisfied that the people acting as trustees are both eligible and suitable to act as trustees of this charity

☐

Corporate Trusteeship

Tick this box if your organisation has a corporate trustee (another organisation which acts as trustee such as a local authority) and its directors are making this declaration)

☐

Personal benefit

If your organisation pays (or will pay) any trustee for being a trustee OR any trustee or person connected to them for providing goods and services, you declare that this will:

- be in the organisation's best interests
- be lawful and authorised
- help the organisation carry out its purposes (or be a necessary by-product of it carrying out its purposes)

You also declare that:

- the information you provide to the Charity Commission is true, complete and correct
- you understand that it's an offence under section 60(1)(b) of the Charities Act 2011 to knowingly or recklessly provide false or misleading information
- your organisation's funds are held (or will be held) in its name in a bank or building society account in England or Wales
- you will comply with your responsibilities as trustees - these are set out in the Charity Commission guidance 'The essential trustee (CC3)'
- (if applicable) the primary address and residency details you provide in a charity registration application are correct and you will notify the Charity Commission if they change

* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820804/Disqualification_Reasons_Table_v2.pdf

Disqualification reasons table

A. Unspent convictions for specific offences

Legal disqualifying reason	Legislation (where relevant)	Exceptions and notes
<p>1. Unspent conviction for an offence involving dishonesty or deception</p> <p>2. Unspent conviction for specified terrorism offences</p> <p>3. Unspent conviction for a specified money laundering offence</p> <p>4. Unspent conviction for specified bribery offences</p>	<p>There is more information about what is meant by a dishonesty/deception offence at Annex A in the automatic disqualification guide</p> <p>Offences:</p> <ul style="list-style-type: none"> to which Part 4 of the Counter-Terrorism Act 2008 applies; or under sections 13 or 19 of the Terrorism Act 2000 under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to the offence <p>A money laundering offence within the meaning of section 415 of the Proceeds of Crime Act 2002</p> <p>An offence under sections 1, 2, 6 or 7 of the Bribery Act 2010</p>	<p>A person is no longer disqualified by the automatic disqualification rules if and when their conviction is spent</p> <p>You can use this guidance from the charity Unlock to work out when your conviction becomes spent, and so no longer disqualifies you from being a charity trustee and from holding certain senior manager positions at a charity</p> <p>You can also look at the Nacro website or at GOV.UK for information about when convictions become spent</p>

A. Unspent convictions for specific offences (cont.)

5. Unspent conviction for the offence of contravening a Charity Commission Order or Direction	An offence under section 77 of the Charities Act 2011 - contravening a Commission Order or Direction	
6. Unspent conviction for offences of misconduct in public office, perjury, or perverting the course of justice		
7. Unspent convictions for aiding attempting or abetting the above offences	In relation to offences at 1 - 6 above, an offence of: <ul style="list-style-type: none">• attempt, conspiracy, or incitement to commit the offence• aiding, or abetting, counselling or procuring the commission of the offence• under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to the offence	

B. Other legal disqualifying reasons – non financial

Legal disqualifying reason	Legislation (where relevant)	Exceptions and notes
Being on the sex offenders register	Where a person is subject to notification requirements of Part 2 of the Sexual Offences Act 2003, commonly referred to as being on the sex offenders register	Note - If these notification requirements apply to a person, they are disqualified by the automatic disqualification rules even if their offence is spent
Unspent sanction for contempt of Court	Where a person has been found to be in contempt of court for making, or causing to be made, a false statement or making (or causing to be made) a false statement in a document verified by a statement of truth	A person is no longer disqualified by the automatic disqualification rules if and when the sanction for contempt becomes spent
Disobeying a Commission Order	Where a person has been found guilty of disobedience to an order or direction of the Commission under section 336(1) of the Charities Act 2011	
Being a designated persons (under specific anti-terrorist legislation)	Where a person is a designated person for the purposes of: <ul style="list-style-type: none"> • Part 1 of the Terrorist Asset-Freezing etc. Act 2010; or • The Al Qaida (Asset Freezing) Regulations 2011 	

B. Other legal disqualifying reasons – non financial (cont.)

Legal disqualifying reason	Legislation (where relevant)	Exceptions and notes
Being a person who has been removed from a relevant office	<p>Where a person has been removed:</p> <ul style="list-style-type: none"> from the office of charity trustee, officer, agent or employee of a charity by an Order of the Commission under s79 of the Charities Act 2011, or earlier relevant legislation, or by a High Court Order, on the grounds of any misconduct or mismanagement in the administration of the charity under s34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005, or earlier relevant legislation, from being concerned in the management or control of any body 	
Director disqualification	<p>Where a person is subject to:</p> <ul style="list-style-type: none"> a disqualification Order or disqualification undertaking under the Company Directors Disqualification Act 1986 or The Company Directors Disqualification (Northern Ireland) Order 2002 (SI2002/3150; (N.I.4)); or an Order made under s429(2) of the Insolvency Act 1986 (failure to pay under a County Court administration order) 	<p>Exception</p> <p>There is no disqualification if the court has granted leave for a person to act as director of the charity (as described in section 180 of the Charities Act 2011)</p>

B. Other legal disqualifying reasons – financial (cont.)

Title	Legislation (where relevant)	<u>Exceptions and notes</u>
Insolvency	<p>Where a person is:</p> <ul style="list-style-type: none">• an undischarged bankrupt• subject to any of the following:<ul style="list-style-type: none">○ an undischarged sequestration Order○ a bankruptcy restrictions Order○ an interim Order○ a moratorium period under a debt relief Order under Part 7A of the Insolvency Act 1986○ a debt relief restrictions Order or an interim Order under Schedule 4ZB to the Insolvency Act 1986 <p>Where a person has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it</p>	<p>Exception</p> <p>There is no disqualification for these reasons if the charity concerned is a company or CIO and leave has been granted under s11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts) for a person to act as director of the charity (s180 Charities Act 2011)</p>

END