

# Scotland's Gardens Constitution

## 1. Name

The name of the Organisation, which is registered with the Office of the Scottish Charity Regulator (OSCR) and has its principal office in Scotland, shall be Scotland's Gardens (SG).

## 2. Objects of SG

The objects of SG shall be the opening of gardens in Scotland to the public, and the collection of funds for Charity through such opening of gardens, by acceptance of donations, bequests and by other means or initiatives for the benefit of Charities. Without prejudice to the foregoing, Charities of the individual Garden Owner's choice may be benefited in terms of the Rules of SG.

## 3. Funds

The Funds, including income accruing thereon, shall be held and applied for charitable purposes only and specifically for the objects of SG. Income may be withheld and applied in a later year and a General Reserve created and held as a provision for administrative expenses.

## 4. Vesting of Funds

Any Funds, property or leasehold rights or other assets shall be invested and or held on behalf of SG in the names of the Office Bearers of SG and their successors in office on trust for SG, and shall be operable on the signatures of the Chairman, Deputy Chairman, Honorary Treasurer and Chief Executive in such manner as the Trustees may determine.

## 5. Rules

The affairs and business of SG shall be conducted in accordance with the terms of this constitution in the manner regulated by the Rules of SG which shall inter alia prescribe the powers, conduct of proceedings, appointments of Trustees and others, their indemnification, the appointment of a Management Committee and other sub-committees, and which shall make provision for General Meetings, Special Meetings, amendments of Articles of this Constitution and the Rules, the interpretation of terms and all other matters appropriate and necessary.

## 6. Books, Minutes and Records

All books of account, records, securities and documents of SG shall be kept at the headquarters of SG, or elsewhere, in such manner and with such provisions for their security as the Trustees from time to time determine.

## **7. Amendments of Constitution and Rules**

Any Article of the Constitution or any Rule of SG not declared to be fundamental may be rescinded or amended, or any new Article or Rule made, by a resolution carried by 75% of the votes given thereon at any Special Meeting of which notice has been given specifying the intention to propose such rescission, amendment or new Article or Rule.

## **8. Fundamental Provisions**

The provisions in the constitution that require that SG must be a Charitable Organisation registered in Scotland and its beneficiaries must be charitable organisations registered in Scotland, England, Wales or Northern Ireland and the Rules relating to Dissolution and procedures relating thereto are hereby declared to be fundamental.

# Rules under the Constitution of Scotland's Gardens.

## MEMBERS

1. Membership of SG shall consist of only the Trustees of SG, and all persons that are appointed as Trustees of SG shall automatically become Members of SG. A person will be deemed to have been admitted as a Member with effect from the date of his appointment as a Trustee, and any event which terminates the office of Trustee for any reason shall automatically terminate Membership.

## TRUSTEES

2. The Trustees shall be appointed by a Meeting held in terms of Rule 16 or 17 and shall be responsible for central administration of SG, for holding and applying funds and income and for the annual distribution of monies to Charity. No individual Office Bearer, or the Chief Executive or other Officer shall enter into commitments on behalf of, or bind SG unless authorised by the Trustees.
3. The body of Trustees shall consist of not less than eleven (11) and not more than fifteen (15) members. The Trustees shall be the only members of SG entitled to attend and vote at Trustees' Meetings. A Trustee desirous of retiring prior to the end of his term shall give three months' written notice to the Chairman.
4. The Trustees shall appoint from amongst their own number a Chairman, an Honorary Treasurer and may appoint a Deputy Chairman. The Chairman shall be appointed for a period of five (5) years and will not be eligible for re-appointment as a Trustee for at least

twelve months. The other Trustees shall each serve for three years but shall be eligible for re-appointment for further three year terms.

5. A Trustee will be required to vacate his office if:
  - (a) he becomes bankrupt, or compounds with his creditors or becomes apparently insolvent, or
  - (b) a registered medical practitioner who is treating the Trustee gives a written opinion to SG stating that the Trustee has become physically or mentally incapable of acting as a Trustee and may remain so for more than three months, or
  - (c) he is convicted of an offence involving fraud or dishonesty or if he is otherwise disqualified from acting as a charity trustee or ceases to be a charity trustee by virtue of any provision of the Charities and Trustee Investment (Scotland) Act 2005, or
  - (d) he absents himself from two (2) consecutive Meetings of the Trustees without special leave of absence and the other Trustees resolve that his office be vacated, or
  - (e) in the opinion of the other Trustees, he shall have acted in such a way as would bring SG into disrepute and in all the circumstances his removal from office is justified to preserve the reputation of SG, or
  - (f) he is removed from office by resolution of the other Trustees on the ground that he is considered to have been in serious or persistent breach of his duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005.
6. The services of the Trustees will be strictly non-remunerative. A Trustee may claim the repayment of reasonable travel expenses and other appropriate disbursements incurred by him in attending Meetings and in performance of his duties at a rate agreed by the Trustees.

#### CHIEF EXECUTIVE and other OFFICE BEARERS

7. SG may have a Chief Executive, and such other Office Bearers, Officers or other consultants or advisers, honorary or otherwise, as the Trustees may from time to time determine, who shall be appointed and may be removed by the Trustees.
8. The aforesaid Office Bearers shall act under the superintendence, control and direction of the Trustees. Any of them may be required to attend meetings of the Trustees, the Management Committee or other sub-committee constituted under Rule 14 and General Meetings but no persons other than the Trustees shall have any right of vote.
9. Without prejudice thereto the Chief Executive shall in particular:

- a) be responsible for the day to day management, promotion and marketing of SG; the formulation of policy and strategic planning for the ongoing development and wellbeing of SG and the implementation of its Disaster Recovery Plan;
  - b) call the Meetings referred to in Rule 16 and 17 and keep the Minutes referred to in Rule 26;
  - c) unless the Trustees otherwise direct, keep all the books of account and other records;
  - d) receive contributions from District and Area Organisers or their District Treasurers or other persons;
  - e) produce or give up all books documents and property of SG in his possession whenever required to do so by a resolution of the Trustees.
10. Every Office Bearer shall be indemnified by SG against all costs losses claims and expenses which he may incur in the proper discharge of his duties. No office bearer shall be liable for any loss happening to SG- unless the same happened through his own dishonesty or gross negligence.

#### POWERS of the TRUSTEES

11. The Trustees shall act in all things for and in the name of SG and shall have full powers to conduct and superintend the business of SG, and may exercise all such powers and do all such acts as may be exercised or done to publicise, promote and fulfil the objects of SG, which by these Rules are not expressly directed or required to be done in General Meeting.
12. Without prejudice to the general powers conferred upon the Trustees by these Rules, it is hereby expressly declared that the Trustees may exercise the following powers:
  - (a) to enter into all contracts of employment with the Officers or other consultants or advisers as defined by Rule 7;
  - (b) to pursue, compromise, settle, conduct, enforce or resist either in a Court of Law, Tribunal, or by arbitration, any suit, debt, liability or claim by or against SG, its office bearers, officers, advisers or consultants;
  - (c) to appoint and remove all Bankers, Consultants and Solicitors or other professional advisers or other agents and to determine the remuneration to which they shall be entitled;
  - (d) without prejudice to Article 4 of the Constitution, to operate an account or accounts with any clearing bank or other financial institution operating in Scotland and to empower any two of the Chief Executive, the Chairman, the Deputy Chairman and the Honorary Treasurer to sign on behalf of SG in terms of Article 4 of the Constitution, or

to empower any of them by himself alone to sign on behalf of SG where the payment is below such limit as the Management Committee may authorise and intimate to the Bank or institution from time to time, but without the power to him to overdraw said account or accounts or to guarantee the obligations of others;

(e) to pay reasonable travelling expenses and other disbursements as are incurred by any Trustee, or member of the Management Committee or other sub-committee in the execution of his duties.

13. All parties contracting with SG shall be entitled to accept that all intromissions of SG, its Trustees, committees, office bearers and officers have been properly conducted.

### COMMITTEES

14. The Trustees shall select out of their number and others, a sub-committee, called the Management Committee, which shall be chaired by the Chairman of the Trustees. The Trustees may appoint any other sub-committee from amongst its own number or otherwise. The powers, composition, function and proceedings of the Management Committee and any other sub-committee shall be determined by the Trustees. The Management Committee shall report their proceedings to the Trustees and shall exercise only such powers as may be delegated from time to time by the Trustees. Except where the Trustees determine otherwise, all resolutions at Management Committee Meetings will be passed by a simple majority of the votes cast by committee members present and voting. In the case of an equality of votes at any meeting under this Rule, the Chairman of the meeting shall have a casting vote.

15. The Management Committee constituted in terms of Rule 14 shall have power to co-opt individual new Trustees to the Management Committee in the event of vacancy, and any such interim appointment shall be put to the next Trustees' or General Meeting for confirmation.

### MEETINGS

16. *Trustees' Meetings*

The business of SG will be managed by the Trustees, who shall meet at such times and places as they decide and may regulate their meetings as they see fit. In total, not fewer than three (3) Trustees' or General Meetings shall be held each year, of which one will be the Annual General Meeting which is held in accordance with Rule 17(ii). Trustees' Meetings shall be called by the Chief Executive at twenty one (21) days' notice.

## 17. *Members' Meetings*

Meetings of the Members may be classified as General Meetings, the Annual General Meeting, or Special Meetings. Unless the context requires otherwise, references to General Meetings shall be taken to include references to Annual General Meetings or Special Meetings. Other than the Annual General Meeting, General Meetings shall not normally be held unless required in order for the Members to pass a resolution which the Constitution or Rules requires to be passed by the Members, but such number of General Meetings may be held as is thought necessary or desirable.

### i) *General Meetings*

All General Meetings shall be called by the Chief Executive stating the purpose for which the meeting is to be convened. A General Meeting shall be convened by notice in writing or electronic communication posted not less than twenty one (21) clear days before the Meeting stating the time and place thereof and every purpose for which it is convened. No General Meeting shall be invalidated by accidental non receipt of notice thereof.

### ii) *Annual General Meeting*

SG shall within four (4) calendar months after the close of each financial year hold a General Meeting which shall be its Annual General Meeting. The functions of the Annual General Meeting shall be:

- a) to adopt the Minutes of the previous Annual General Meeting;
- b) to appoint and re-appoint Trustees and Office Bearers under Rules 2 and 4;
- c) to receive and approve the Accounts for the Financial Year;
- d) to receive the Report of the Chief Executive;
- e) to receive the Chairman's Statement on the activities and results of SG for the year;
- f) to appoint Funds to Charity in line with Article two (2) of the Constitution;
- g) to appoint or re-appoint, as the case may be, the external accountant for the ensuing year;
- h) to transact any business which the Chairman rules to be competent.

A person interested in SG may be invited to the Annual General Meeting and may request or be invited by the Chairman to speak, but shall have no right to vote.

### iii) *Special Meetings*

A Special Meeting may be called by the Chief Executive either upon the order of the Chairman or upon a written requisition signed by not less than six (6) Trustees stating the purpose for which the Special Meeting is to be convened. The Chief Executive shall communicate every such notice to all the Trustees as soon as possible after the receipt thereof and the Special Meeting shall be held not earlier than twenty one (21) days after the issue by the Chief Executive of such notice. Should the Chief Executive fail to convene the Special Meeting within ten (10) days after delivery to him of the requisition, the persons who have signed the requisition, may themselves give notice of and convene the Special Meeting. No other business shall be done at the Special Meeting than the business named in the said notice.

#### 18. *Quorum*

No business shall be transacted at any Meeting unless a quorum of persons entitled to attend and vote is present.

- a. At any Trustees' Meeting, except where a Meeting is called only for the purposes of making co-options to bring the number of Trustees to the maximum number (in which case the quorum will be one half of the Trustees then acting), seventy five percent (75%) of the total number of appointed Trustees shall form a quorum.
- b. At any General Meeting, seventy five percent (75%) of the total number of Members appointed at any given time shall form a quorum. If within half an hour from the time appointed for the meeting a quorum is not present or if, during the meeting, a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Trustees may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Trustees present shall be a quorum.

#### 19. *Chairing of Meetings*

At all Trustees' or General Meetings the Chairman of the Trustees appointed under Rule 4, or in his absence the Deputy Chairman of the Trustees shall preside as Chairman. If there is no such Chairman or Deputy Chairman, the persons present entitled to attend and vote at the Meeting shall elect a member of the Trustees to be Chairman of the Meeting.

#### 20. *Adjournment*

The Chairman of any Trustees' or General Meeting may, with the consent of those present and entitled to vote, adjourn any Meeting, but no business shall be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place.

## 21. *Votes*

Trustees shall have at all Trustees' and General Meetings one vote each.

## 22. *Majority Required*

(a) Except where the Trustees determine or the Constitution or the Rules provide otherwise, all resolutions at Trustees' Meetings will be passed by a simple majority of the votes cast by Trustees present and voting.

(b) Except where the Constitution or the Rules provide otherwise, a resolution put to the vote at any General Meeting shall be carried if a simple majority of the votes is recorded in its favour. For the avoidance of doubt, any resolution at a Special Meeting to amend the Constitution or Rules, or to dissolve SG, shall require a 75% majority of votes in accordance with, respectively, Clause 7 of the Constitution and Rule 33 of these Rules.

In the case of an equality of votes at any Trustees' or General Meeting where a resolution requires a simple majority, the Chairman of the Meeting shall have a casting vote.

## 23. *Method of Voting*

Save as otherwise provided in terms of the Constitution or these Rules, a resolution put to the vote at a Trustees' or General Meeting shall be decided on a show of hands. The Chairman of the Meeting in his discretion shall be entitled to call for a vote to be recorded by voting paper to take the place of a show of hands if the result is in doubt, or for any other reason.

## 24. *Written resolutions*

A resolution in writing agreed by a majority of the Trustees or Members (as the case may be) entitled to receive notice of a Trustees' or General Meeting (as applicable) and to vote upon the resolution shall be as effective as a resolution passed at a Trustees' or General Meeting duly convened and held, provided that a copy of the resolution has first been sent to all Trustees or Members eligible to vote and provided always that where a resolution is one for which the Constitution or these Rules requires a majority other than a simple majority, the majority of Trustees or Members who must signify their agreement to the resolution in order for it to be passed will be the majority required in terms of the Constitution or these Rules. The resolution may consist of several documents in the like form, to each of which one or more of the Trustees or Members has signified their agreement.

## 25. *Electronic Participation*



Where there are, in the opinion of the Chairman, exceptional circumstances which justify it, the Chairman may authorise any one or more (including without limitation, all) of the Trustees or Members to participate in a Trustees' or General Meeting (as applicable):-

- (a) by means of a conference telephone or similar communications equipment or any other suitable electronic means allowing all persons participating in the meeting to communicate with all the other participants; or
- (b) by a succession of telephone calls to Trustees or Members from the Chairman of the meeting following disclosure to them of all material points.

Participating by such means shall constitute presence in person at a meeting. Such meeting shall be deemed to have occurred either (i) at the place where most of the Members or Trustees (as applicable) participating are present or, if there is no such majority, (ii) at the place where the Chairman of the meeting is present.

## RECORDS

- 26. Minutes shall be kept of every Meeting of the Trustees and Management Committee and other sub-committee and of every General Meeting, and such minutes shall be circulated before as read or read at the next of such Meetings and if approved signed by the Chairman. All Minutes so signed shall be a conclusive record of the Meeting.
- 27. The records of all District and Area Organisers and their District Treasurers within each District shall be kept in such manner as the Trustees may direct.
- 28. The Financial Year of SG shall be to the 31<sup>st</sup> December. The District Treasurers shall make their Returns to the Chief Executive by that date. In the case of late Returns or of Returns from gardens after the 31<sup>st</sup> December, such takings may be included in the income of the following year.
- 29. End of year District Financial Returns shall be made on forms issued by the Chief Executive as approved by the Management Committee, which shall show:
  - i) gross takings from individual garden openings less the Garden Owners' catering and out of pocket expenses;
  - ii) the percentage of the above individual garden income payable or paid to the Charity or Charities of each individual Garden Openers' choice, which percentage shall be determined by the Trustees;
  - iii) any Bank interest, donations, and all other Income in the hands of District and Area Organisers or their District Treasurers which, subject to District expenses as detailed,

shall all be attributable to Head Office. The annual Financial Returns shall be accompanied by any outstanding remittance and sent to the Chief Executive.

## ACCOUNTS

30. The Trustees shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
31. The Trustees shall prepare annual accounts, complying with all statutory requirements; if an audit or independent examination is required under any statutory provisions or if the Trustees otherwise think fit, the Trustees shall ensure that an audit or examination of such accounts is carried out by a qualified auditor or independent examiner as appropriate.
32. An accountant or other suitably qualified individual engaged in an audit or independent examination of the accounts of SG shall be entitled to have access to all accounting records and such other documents relating to SG as may be required in relation to the audit or examination of the accounts.

## DISSOLUTION

33. SG may be dissolved if a resolution carried by 75% of the votes given thereon at a Special Meeting of which notice has been given specifying the intention, the reasons for dissolution, and the proposed final destination of available net funds is passed determining that SG ought to be dissolved.
34. In the event of the aforesaid resolution being carried, the Meeting shall forthwith:
  - a) seek the consent of the Office of the Scottish Charity Regulator for the dissolution of SG;
  - b) appoint a Liquidator not being a Trustee, who shall be a practising Solicitor or Chartered Accountant or other professional person, and who shall assume all powers and protections conferred on the Trustees by these Rules, which Trustee body and any other sub-committee shall then cease to exist;
  - c) determine which Charity or Charities in Scotland shall succeed to the ultimate beneficial interest in the net assets of SG (after liquidator's and audit expenses); and
  - d) instruct the acting auditor or independent examiner of SG at the time of resolution to audit or examine the Liquidator's statement of accounts (which shall be prepared not later than six months from the date of his appointment), to report thereon, and thereafter the Liquidator shall send the final financial statement to the former Trustees, District and Area Organisers and Garden Owners.

The Liquidator shall inform the Office of the Scottish Charity Regulator of dissolution.

## INTERPRETATION of TERMS

35. In the Constitution and in these Rules, including this Rule, unless the subject matter or context are inconsistent therewith:

- a) words importing the singular or plural shall include the plural and singular respectively;
- b) words importing the masculine gender shall include the feminine;
- c) “Scotland’s Gardens” or “SG” shall mean the unincorporated charity governed by its Constitution and these Rules and registered with the Office of the Scottish Charity Regulator (OSCR) with charity number SC011337;
- d) “These Rules” shall mean the Rules of SG for the time being;
- e) “Office Bearer” shall mean any person acting as Patron, Chairman, Deputy Chairman, Honorary Treasurer or Trustee;
- f) “Trustee” shall mean a person appointed as a Trustee of SG under Rule 2 above;
- g) “Garden Opener” shall mean a person or persons or institution which opens its garden(s) to the general public for the benefit of SG;
- h) “District” shall mean one of the districts into which the mainland and islands of Scotland have been divided;
- i) “District and Area Organiser(s)” shall mean those people who have volunteered to oversee and manage the business of SG in the Districts;
- j) “District Treasurer” shall mean the volunteer within each district charged with handling the takings of Garden Openers and maintaining proper financial accounts for the Districts;
- k) “Head Office” shall mean the head office of the Trustees of Scotland’s Gardens;
- l) “Charity” shall mean a charity under the law of Scotland, England, Wales, or Northern Ireland which is also regarded as a charity for tax purposes and to which SG may make payments for charitable purposes without prejudicing its own charitable tax reliefs;
- m) “charitable purpose” shall mean a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose for tax purposes;
- n) “Disaster Recovery Plan” shall mean the plan in place, and overseen by the Chief Executive, to restore the Head Office functions to working order in the event of a catastrophic event immobilising or destroying it together with its records.