

*Discussion draft May 2019, Update November 2019*

## **ST JOHN'S CHURCH 2020**

### **SCIO CONSTITUTION**

Drafting note – this constitution provides that the Trustees (who are also the members of the SCIO) have autonomy in appointing their successors without reference to “ordinary” church members. The same procedure applies whether the Trustee is an Elder in the Church but the assumption would be made that the Elders will always form the majority of Trustees. Under that practice, the church members do of course have a consultative role in the process of Trustee selection but this is not part of the SCIO's formal constitution.

## ST JOHN'S CHURCH 2020

### CONSTITUTION

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#### INTERPRETATION

- 1 References in this constitution to the Act include: -
  - 1.1 any statutory provision which adds to, modifies or replaces that Act; and
  - 1.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 1.1 above.
- 2 In this constitution: -

- 2.1 “the Act” means the Charities and Trustee Investment (Scotland) Act 2005 as amended, consolidated and re-enacted from time to time.
- 2.2 “Basis of Faith” has the meaning given in Article 8.
- 2.3 “Chairman” means the Trustee so appointed under paragraph 26.
- 2.4 “charity” means a body which is either a “Scottish charity” within the meaning of section 13 of the Act or a “charity” within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes.
- 2.5 “charity law” means the Act and any other rule of law applying to the formation, governance and operation of Scottish charities.
- 2.6 “charitable purpose” means a charitable purpose under section 7 of the Act which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.
- 2.7 *[“Heritable Property Commitment” means the incurring of any obligation to acquire, dispose of, charge or encumber any interest in land.]*
- 2.8 “OSCR” means the Office of the Scottish Charity Regulator.
- 2.9 “Special Resolution” means (a) a resolution of not less than 75% of the Trustees in office from time to time being passed at a meeting of which full notice of the proposed alteration has been given or (b) a written resolution to that effect signed by not less than 75% of the Trustees in office from time to time.
- 2.10 “Trustees” means the persons appointed as charity trustees under paragraphs 18 or 21 and holding that office from time to time and “Trustee” means one of them.

## **GENERAL**

### **Type of organisation**

- 3 The organisation will, upon registration, be a Scottish Charitable Incorporated Organisation.

### **Scottish principal office**

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

### **Name**

- 5 The name of the organisation is “ST JOHN’S CHURCH 2020” and it is referred to throughout this constitution as “the Church”.

### **Purposes**

- 6 The purpose of the Church is the advancement of the Christian faith in Scotland and the world for the public benefit through the continuance of a body of believers founded on the Basis of Faith.
- 7 The Church has been established as a Scottish Charitable Incorporated Organisation in order to succeed to the Scottish Charity operating under the name St John's Church (SC011833).
- 8 The Basis of Faith of the Church comprises the fundamental truths of the Christian faith as revealed in the Scriptures and in the Apostles Creed.

### **Powers**

9. The Church has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

10. No part of the income or property of the Church may be paid or transferred (directly or indirectly) to the Trustees as members or charity trustees - either in the course of the Church's existence or on dissolution - except where this is done in direct furtherance of the Church's charitable purposes and in accordance with the rules of charity law.

11. The income and property of the Church will be applied:

11.1 solely towards promoting the Church's objects;

11.2 will not, except as provided in paragraphs 10 and 31, be paid or transferred to any Trustee;

11.3 will, in the event of any surplus arising on winding up, be paid over to one or more bodies established for exclusively charitable purposes with objects similar to those of the Church.

### **Liability of charity trustees**

12 The Trustees as charity trustees of the Church have no liability to pay any sums to help to meet the debts (or other liabilities) of the Church if it is wound up. Accordingly, if the Church is unable to meet its debts, and subject to the remaining provisions of this constitution and the law of Scotland, the Trustees will not be held responsible.

13 Charity trustees have certain legal duties under the Act. Paragraph 12 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

### **Indemnity**

14 Subject to the applicable provisions of charity law but without prejudice to any indemnity to which a Trustee may otherwise be entitled, each Trustee will be indemnified out of the assets of the Church against any loss or liability which that Trustee may sustain or incur in connection with the execution of that Trustee's duties of office including, without

prejudice to that generality, any liability incurred in defending any proceedings, whether civil or criminal, in which judgement is given in favour of that Trustee or in which that Trustee is acquitted or in connection with any application in which relief is granted by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Church.

### **General structure**

- 15 The governance, management and administration of the Church will be the responsibility of the Trustees who are the charity trustees.
- 16 For the purposes of the Act the Trustees are both the charity trustees and members under this constitution.

## **TRUSTEES**

### **Appointment of Trustees**

- 17 To be appointed as a Trustee a person <sup>1</sup> must (a) be aged 18 or over, (b) must not be disqualified from being a charity trustee under the Act and (c) must confirm personal acceptance of the Basis of Faith to the satisfaction of the Trustees.
- 18 Appointment as a Trustee will be solely by Special Resolution of the Trustees.
- 19 There is no maximum number of Trustees.
- 20 The minimum number of Trustees is three. <sup>2</sup>

### **Initial charity trustees**

- 21 The persons who signed the charity trustee declaration forms which accompanied the application for incorporation of the Church were deemed to have been appointed as Trustees with effect from the date of incorporation of the Church.

### **Termination of office**

- 22 A Trustee will cease to hold office on the earliest to occur of the following:
  - 22.1 without any resolution of the Trustees if that Trustee becomes disqualified from being a charity trustee under the Act;
  - 22.2 upon delivery by that Trustee to the Church of a signed notice of resignation;
  - 22.3 by Special Resolution of the Trustees where (A) that Trustee has been absent from more than three consecutive meetings of the Trustees without giving any reason which satisfies the Trustees or (B) that Trustee has committed a material

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<sup>1</sup> Trustees may be male or female?

<sup>2</sup> OSCR requires minimum of three – should this minimum also be your quorum?

breach of the code of conduct for charity trustees (as referred to in paragraph 32) or of charity law or is under church discipline pursuant to the Church Rules.

### **Roll of Trustees**

- 23 The Church will keep a roll or register of Trustees, setting out
- 23.1 for each Trustee in office, the Trustee's full name and residential address, the date on which the Trustee was appointed as a Trustee and any office held by the Trustee in the Church;
  - 23.2 for each former Trustee - for at least six years from the date on which the Trustee ceased to be a Trustee - the name of the Trustee, any office formerly held by the Trustee in the Church and the date on which the Trustee ceased to be a Trustee.
- 24 The Church will update the roll of Trustees within 14 days of any change:
- 24.1 which arises from a resolution of the Trustees; or
  - 24.2 which is notified to the Church.
- 25 The Church will provide a copy of the roll of Trustees to any person (who is not a Trustee) within 28 days of such person making such a request but only where individual addresses are redacted.

### **Chairman**

- 26 The Trustees may, by Special Resolution and from time to time, appoint, and may remove and substitute, one of their number to act as Chairman.
- 27 A person elected as Chairman will automatically cease to hold that office upon ceasing to be a Trustee for any reason.

### **Powers and duties of Trustees**

- 28 Except where this constitution states otherwise, the Church (and its assets and activities) will be managed by the Trustees who may exercise all the powers of the Church in relation to its property and assets.
- 29 Each of the Trustees has a duty, in exercising functions as a Trustee, to act in the interests of the Church and, in particular, must:
- 29.1 seek, in good faith, to ensure that the Church acts in a manner which is in accordance with its purposes;
  - 29.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

- 29.3 in circumstances giving rise to the possibility of a conflict of interest between the Church and any other party:
    - 29.3.1 put the interests of the Church before that of the other party;
    - 29.3.2 where any other duty prevents the Trustee from doing so, disclose the conflicting interest to the Church and refrain from participating in any deliberation or decision of the other Trustees with regard to the matter in question;
  - 29.4 ensure that the Church complies with any direction, requirement, notice or duty imposed under the Act.
- 30 In addition to the duties outlined in paragraph 29, all of the Trustees must take such steps as are reasonably practicable for the purpose of ensuring:
- 30.1 that any breach of any of those duties by a Trustee is corrected by that Trustee and not repeated; and
  - 30.2 that any Trustee who has been in serious and persistent breach of those duties is removed as a Trustee.
- 31 Provided that a Trustee has declared an interest, that the Trustee has not voted on the question of whether or not the Church should enter into the arrangement, and subject to the provisions of charity law, the Church will be entitled
- 31.1 to pay reasonable and proper remuneration to that Trustee in return for professional, commercial, trade or other services actually rendered to the Church in a capacity other than that of Trustee;
  - 31.2 to pay interest at a rate not exceeding two per cent over Bank of England base rate from time to time on money advanced as a loan to the Church by that Trustee;
  - 31.3 to pay rent at a rate not exceeding the open market rent for premises let to the Church by that Trustee;
  - 31.4 to purchase assets from that Trustee providing that the consideration for such purchase is not more than market value;
  - 31.5 to sell assets to that Trustee providing that the consideration for such sale is not less than market value;
  - 31.6 to make payment to that Trustee in reimbursement of travelling and other out of pocket expenses incurred by that Trustee in providing services for the Church; and
  - 31.7 to pay remuneration to that Trustee, including the provision of living accommodation, under a bona fide contract in a form approved by the Trustees.

## **Code of conduct for Trustees**

- 32 Each of the Trustees will comply with (A) the Church Handbook and (B) any code of conduct prescribed by the Trustees from time to time.
- 33 Any code of conduct referred to in paragraph 32 will be supplemental and subordinate to the provisions relating to the conduct of Trustees contained in this constitution and the duties imposed on charity trustees under charity law.

## **DECISION-MAKING BY THE TRUSTEES**

### **Notice of meetings**

- 34 Any Trustee may call a meeting of the Trustees but in any event the Trustees must meet at least once in each calendar year to approve the report and accounts described in paragraph 54.
- 35 At least seven days' notice must be given of each meeting of the Trustees, unless, not later than the start of the meeting, shorter notice has been approved by Special Resolution of the Trustees.

### **Procedure at meetings**

- 36 No valid decisions can be taken at a meeting unless a quorum is present. The quorum for meetings is [three][four] <sup>3</sup> Trustees present in person one of whom must, except for the limited purpose of considering and passing a resolution for the appointment or removal of a chairman pursuant to paragraph 26, be the Chairman.
- 37 If at any time the number of Trustees in office falls below the minimum number stated in paragraph 20, the Trustees will have power to make appointments to achieve that number but will not be able to take any other valid decisions.
- 38 The Chairman will act as chairman of each meeting of the Trustees.

### **Voting**

- 39 Each Trustee has one vote, which must be given personally.
- 40 No Heritable Property Commitment can be made by the Church unless the terms are approved by Special Resolution of the Trustees.
- 41 Except where provided otherwise in this constitution, all decisions at meetings will be made by simple majority vote of those Trustees present.
- 42 If there is an equal number of votes cast for and against any resolution presented to a meeting of the Trustees, the Chairman will be entitled to exercise a second (casting) vote.

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<sup>3</sup> Quorum – three or four?



- 43 The Trustees may, in their absolute discretion, (A) admit persons having an interest in the business to be discussed to attend all or part of their meetings as observers and in addition (B) allow any person to speak at a meeting notwithstanding that such person is not a Trustee but on the basis that such person will not participate in decision-making.
- 44 A Trustee must not vote at a meeting (or at a meeting of a committee) on any resolution which relates to a matter in which that Trustee has a personal interest or duty which conflicts (or may conflict) with the interests of the Church and that Trustee must withdraw from the meeting while that matter is being discussed.
- 45 For the purposes of paragraph 44: -
- 45.1 an interest held by an individual who is “connected” with the Trustee under section 68(2) of the Act (husband/wife, partner, child, parent, brother/sister etc) will be deemed to be held by that Trustee;
- 45.2 a Trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which that Trustee is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 46 Except as otherwise provided in this constitution, any matter which may be determined by the vote of the Trustees at a validly convened meeting may also be determined by written resolution signed by a majority of the Trustees in office from time to time.

## **Minutes**

- 47 The Trustees will ensure that proper minutes are kept in relation to their own meetings and meetings of any committees formed under paragraph 50.1.
- 48 The minutes to be kept under paragraph 47 will include the names of those present and will be signed by the chairman of the meeting.
- 49 The Trustees will keep confidential all minutes except as required by law.

## **ADMINISTRATION**

### **Delegation to sub-committees**

- 50 The Trustees may delegate any of their powers to
- 50.1 committees which have been authorised by the Trustees and whose members have received prior approval from the Trustees to serve on these committees.
- 50.2 any one or more of their own number.

in each case for such purpose and on such conditions as the Trustees may prescribe from time to time.

## **Operation of accounts**

- 51 The Trustees will determine the basis on which operations are conducted on the bank and other accounts held by the Church having due regard to security of funds.
- 52 Where the Church uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the arrangements made by the Trustees under paragraph 51.

## **Accounting records and annual accounts**

- 53 The Trustees will ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 54 The Trustees will prepare an annual report and statement of accounts, complying with all relevant statutory requirements including those relating to the correct format of the accounts and the appropriate external scrutiny required by either a registered auditor or an appropriately qualified independent examiner.

## **Winding-up**

- 55 If the Church is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Act.
- 56 The Trustees may resolve by Special Resolution that the Church be wound up under the Act.
- 57 Any surplus assets available to the Church immediately preceding its winding up or dissolution must be used for purposes which are the same as, or which closely resemble, the purposes of the Church as set out in this constitution.

## **Alterations to the constitution**

- 58 This constitution may (subject to paragraph 59) be altered by Special Resolution of the Trustees.
- 59 The Act prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of OSCR.

## **CHURCH HANDBOOK**

- 60 The Trustees will have power from time to time by Special Resolution to adopt initially, and from time to time to supplement and amend, a handbook describing how the Church will operate within the terms of this constitution.