***Version 2 - August 2021***

**Company Limited by Guarantee (“CLBG”)**

**Model Articles of Association (“AofA”) (Governing Document)**

**Developed for use in forming a community body that is a CLBG and complies with community right to buy legislation**

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**1. To Be Aware**

Whilst great care has been taken in preparing this CLBG model, **the Scottish Government does not** accept any responsibility for any consequences arising from its use.

The model associated to this guidance has been prepared to assist in the formation of a community body **in order to**:

* Use Part 2 of the Land Reform (Scotland) Act 2003;
* Use Part 3A of the Land Reform (Scotland) Act 2003;
* Use Part 5 of the Land Reform (Scotland) Act 2016;
* Applying to the Scottish Land Fund for funding;
* Undertake an Asset Transfer Request. Please note that it is for the Relevant Authority to check and approve your company constitution, prior to using Asset Transfer legislation.

The model **is not** intended as a substitute for legal advice. It is intended to make the legal process simpler for all concerned and more cost effective. You may still wish to obtain independent legal advice.

Please note the filled in blue text boxes contain information that relates specifically to CLBG’s who wish to obtain charitable status.

If the sole intention, initially, is simply registering an interest in land under Part 2 of the Land Reform (Scotland) Act, this alone is unlikely to be regarded by OSCR as sufficient activity to provide public benefit and the organisation would therefore be unlikely to pass the Charity Test. Therefore it is not likely to be appropriate for any such organisation to apply for charitable status at the outset, as you can always apply to become a charity at a later time more suitable to meet the needs of the organisation.

You should **carefully read** the model and all accompanying notes (both here and in the right-hand column within the model).

The model is a template and you can adjust the template where necessary to suit your own needs.

However, if you are planning to obtain charitable status and you make changes to the purposes, the purposes must continue to be exclusively charitable, and the proposed purposes will require OSCR’s approval.

**Please remember that deletion of any articles may require consequential renumbering, both of subsequent articles and of textual references to article numbers within other articles.**

**Information contained within this document is correct as of August 2021.**

Within the CLBG model constitution:

* Phrases which are highlighted in yellow will require to be completed by the CLBG;
* The third column guidance should be deleted once the model is completed;
* Red Phrases in the third column are optional;
* Black bold phrases in the third column are highlighting Land Reform (Scotland) Act 2003 and 2016 requirements or contribute towards helping to meet the requirements; and
* Standard black italic phrase in the third column are useful guidance notes for you.

**2. Charitable status**

The CLBG model template has been designed to comply with the requirements of the legislation, and would meet the charitable requirements should you wish to obtain charitable status.

**3. Points to consider before using the Model**

Before starting, we recommend you read the Scottish Government Guidance on the relevant Right To Buy that you are looking to use. This can be found on the Scottish Government webpages, details of which are found in section 6.

The main points to consider and which require input for the development of your Articles of Association (AofA) are:

If there is an urgent need to submit a CRtB application, and you are planning on obtaining charitable status, then you may wish to consider applying and obtaining charitable status **after** Scottish Ministers have made a decision on your CRtB application, as it may take longer for OSCR to award charitable status to your company than it takes Scottish Ministers to confirm your Articles are compliant with the Act. Delays in obtaining approval and registration into the charity register from OSCR may impact on your ability to submit a CRtB application.

**The name of your CLBG (your company) (front page, clause 1 and schedule 2)**. Consideration of your name should be carefully taken. The name could be based on the community’s geographical, historic or generic name. Care must be taken that your chosen name does not contain sensitive words or expressions. Further details on this can be found on Companies House website, details of which can be found in section 6.

If seeking charitable status, care must be taken to ensure that your chosen charitable company name would not be objectionable under Section 10 of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”).

**Does your company want to obtain charitable status?** CLBG’s can apply for charitable status.

If you are a new or existing CLBG and consider that charitable status is advantageous and appropriate, you can apply to OSCR for your company to be entered in the Scottish Charity Register. Further details on applying for charitable status can be found on the OSCR website, details of which can be found in section 6.

It is recommend however, if you are planning on submitting a CRtB application soon after you receive notification of being Act compliant that you first register with Companies House as a CLBG, and then seek charitable status at a later date.

If you do not plan on submitting a CRtB application, then you can seek and obtain charitable status (in principle) before registering with Companies House.

**The geographical definition of your community (Clause 4).** For the purpose of the Land Reform (Scotland) Acts 2003 and 2016 a community must be defined by reference to a postcode unit or postcode units, or by other types of area as prescribed, or by both units and types of area. The following are examples of how a community could be defined.

* A postcode unit or postcode units – for example “PH16 5BU”

 and/or an area prescribed:

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 and/or an area prescribed:

* An electoral ward – for example Broxburn, Uphall and Winchburgh
* A Community Council Area – for example Old Aberdeen
* A postcode area – for example “PH”
* A postcode district – for example “PH16”
* A postcode sector – for example “PH16 5”
* An island – for example “the island of Fetlar”
* A settlement – for example, “settlement of Stornoway”
* A locality – for example, “locality of Prestwick”

You may wish to visit the CRtB webpages (see section 5) where you can access our mapping tool and guidance. If you require further clarification regarding the prescribed areas please contact the Community Land Team – crtb@gov.scot

**The Purposes accurately reflect what your company intends to do (Articles 4.1.1 to 4.1.4).**

The purposes, as worded in the model would be acceptable to OSCR. They have been designed in such a way that they cover a wide range of purposes that your company may intend to pursue. Providing you retain Article 4.1 regarding the main purpose furthering the achievement of Sustainable Development, your choice in regard to the remaining purposes is more flexible, and your Governing Document should meet the requirements of the legislation.

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| Articles |  Activities can cover such things as(examples below are only to give an indication and is not an infinitive list) |
| 4.1.1 | Park land/play-parks/organising community events/providing services to improve the health and wellbeing |
| 4.1.2 | Re-development (or new creation) of facilities or buildings/providing areas to provide services (shops/office space/health/halls)/promotion of citizenship/housing provision |
| 4.1.3 | Interpretation boards/promotional leaflets/education and learning/history events and promotion |
| 4.1.4 | Land management and conservation work, land improvement work/preserving land and buildings |

Article 4.1 will apply to all CLBG companies. If you retain Articles 4.1.1 to 4.1.4 within the model, or any one of them, in your Governing Document and you are seeking charitable status, you will have to demonstrate to OSCR, with background information, that your company’s planned purposes will achieve this purpose.

A full list of charitable purposes can be found at Section 7(2) of “the 2005 Act”. If you wish to amend or use these charity purposes or use alternative purposes, it is recommend that you consult with OSCR to ensure that they are acceptable.

**The structure of the CLBG (Articles 7 to 9) –** You should give consideration to the structure of the CLBG.

* + In order to be Land Reform Act compliant the minimum number of members is **10** (in order to apply for an Asset Transfer Request, the minimum number must be **20**)
	+ If you wish to set your minimum number of members higher you are able to do so. This will not make your company non-compliant with the legislation.

**Membership (Articles 7 and 9).** A requirement in the CRtB legislation is that “*at least three quarters of the members of the company are members of the community*” and that “*the members of the company who consist of members of the community have control of the company*”. This contributes to the requirement of community control both for membership and Directorship (Board level).

In the model, only members of the community as stated in Article 8.1 of the AofA are eligible to become what we refer to in the model as **“Ordinary Members**”. Only Ordinary Members have the ability to vote at meetings, or stand to be Directors, be able to submit special resolutions, be chairperson, be in a majority for General Meetings, and be a majority of the Directors (which we call Elected Directors) on the board and at board meetings.

The model allows for the following members:

* **Associate Members** - those people and organisations who don’t meet the Ordinary Membership criteria but might support the purposes or have skills needed by the CLBG; and
* **Junior Members** – those between the ages of 12 and 15.

In the model, both Associate and Junior members have the right to attend general meetings but have **no vote** and are **not eligible** for election to the board. It is important to note the balance of Associated and Junior Members to Ordinary Membership i.e. at least 75% of the company membership **MUST BE** made up of members residing within the community, who are eligible to vote in a local government election (Ordinary Members). This will ensure compliance with the three quarters requirement and contribute towards to the requirement that the community are always in control of the CLBG.

It is possible to extend voting rights to Associate and/or Junior Members. If you wish to do this, additional safeguards would need to be included to ensure that it is Ordinary members resident in the community, and eligible to vote in a local government election aged 16 and over who are always in the majority of meetings and retain control of the company. You should therefore seek legal advice if you wish to extend voting rights in this way.

**The maximum numbers of directors (Article 30) –** All CLBG’s are run by a board (with those serving on the board known as Directors). Consideration needs to be given to the maximum number of directors you wish the CLBG to have. The minimum number **can’t** be less than 3 Directors.

**The number of Directors to be Elected or Appointed or Co-Opted (Article 33) –** Once you have identified the number of Directors, further consideration should be given to the individual breakdown of these Directors. The model allows for:

* **Elected Directors** - Those who are elected from the Ordinary Membership.
* **Appointed Directors** - It is sometimes the case that the local Councillor, or a representative of the Community Council or other appropriate outside body, should have a close tie with the Company by having Board representation.
* **Co-opted Directors** - An individual person can be co-opted onto the Board in order to ensure the required skills are available to the board. This individual does not need to come from Ordinary membership.

You should therefore give consideration to the total number of each type of Director you opt to have. You will need to ensure that Elected Directors are in the majority (i.e. the total number of Appointed and/or Co-Opted Directors combined **CAN’T** outnumber the total number of Elected Directors).

**Quorums (Articles 21, 22, 45,46) –** You will need to give consideration to the quorum required for board and general meetings, ensuring that, if other types of members have a vote, Ordinary Members are in the majority. This helps to meet the community control criteria in the Land Reform (Scotland) Acts 2003 and 2016.

**Proxy Voting (Article 25)** - Allowing proxy voting for ordinary members is a legal requirement of the Companies Act 2006. A Proxy template form can be found at Schedule 2 at the end of the model.

**Internal documents and procedures** - They are a number of articles (for example, in Articles 11, 27, 52, 53 and 74) which will involve the CLBG creating their own internal documents and procedures. You should give consideration to developing such documents and procedures. You will also need to give consideration on how any surplus funds or assets will be applied at any given time to help benefit the community.

**Future Responsibility** - It will be the Director’s responsibility to ensure the CLBG is run in accordance with the requirements of the AofA and relevant legislation. More details on the requirements CLBG need to adhere to can be found on Companies House website, or on OSCR’s website (if charitable), details of which can be found at section 6.

**4. What to do once the Model has been drafted**

**For new CLBG’s and for existing CLBG’s who are updating their AofA to the Land Reform Act compliant version** - Submit your “draft AofA” to the Scottish Governments Community Land Team (Contact details are provided at section 6). They will review them for compliance with the legislation. If any amendments are needed they will notify you of the required changes, and once the changes are complete, you should submit the “final version” of the AofA to them.

If the Community Land Team are satisfied that the draft Articles meet “the Act” requirements, they will arrange written confirmation from Scottish Ministers advising that your body is compliant with furthering the achievement of sustainable development. It is recommended only once you receive this compliance letter that you send your Land Reform Act compliant AofA to Companies House. You will then be able to; submit a final application to register a community interest in land under Part 2 (the Community Right to Buy); undertake any pre-application tasks in relation to Part 3A (Abandoned, Neglected or Detrimental Land) and Part 5 (Land to Further Sustainable Development) legislative requirements.

**Deciding on your CLBG office -** If you are a brand new CLBG you need to decide where the Registered Office is to be (usually the address of the place from which your company intends to operate).

**Once you receive your Confirmation letter (New CLBG’s only)** - It is recommended that only once you have received a confirmation letter should you register with Companies House. If you are intending on submitting a CRtB application you must register with Companies House before a final application will be accepted.

More detailed on information on applying with Companies House can be on found on Companies House website, details of which can be found at section 6.

**Obtaining Charitable Status -** It is possible that you wish to seek charitable status from OSCR once you receive confirmation from Scottish Ministers that your AofA are compliant with the relevant sustainable development criteria.

Under “the 2005 Act”, charities must provide or intend to provide Public Benefit in line with their charitable purposes. It is likely that a company which is set up solely to register an interest in land but then does nothing else (unless or until it is able to consider purchasing the registered land) will not be carrying out sufficient activity to provide public benefit (although it may be able to demonstrate this once it is given an opportunity to proceed with a purchase of registered land).

The company will need to pass the charity test.

If OSCR determine that the company meets the charity test, they will incorporate the company and enter the charity onto the Charity register and send you a Charity Registration Letter together with a charity number and details of how to obtain tax relief from HM Revenue & Customs, and enter the company in the Scottish Charity Register. You CAN’T call the company a charity until you receive the Charity Registration Letter.

**More information on obtaining charitable status, how to apply, what happens once your company is registered and any conditions on your company thereafter can be found on OSCR’s website, details of which can be found at Section 6.**

**Once you receive your Confirmation letter (Existing CLBG’s only)** – Please see under Amending your Articles of Association (section 5).

If you already have charitable status, you are legally required to notify or gain consent (depending on the nature of the change) from OSCR, of any changes to your AofA. See Part 5 of this guidance document for more information.

**5. Amending your Governing Documents**

Under the Land Reform (Scotland) Acts, your CLBG is restricted from making any amendments to your AofA where Scottish Ministers are making a decision on whether to approve or decline an application.

Equally, while your CLBG has an interest or remains the landowner, as a result of purchasing land through the Land Reform (Scotland) Acts, you need to notify Scottish Ministers of any amendments you make to your AofA.

It is recommended that you alert Scottish Ministers to any proposed amendments in advance of officially making the amendments, in order that Scottish Ministers can confirm that the AofA would still remain compliant with the requirements of the Land Reform (Scotland) Acts.

As a CLBG you will also need to update Companies House if you change your AofA. Companies House must be notified of the change **within 15 days** of the special resolution being passed.

Further details regarding notifying Companies House of changes can be found on Companies House website, details of which are found at section 6.

If your Company has taken any of the following actions (in order to receive a compliance letter from Scottish Ministers) (or if in future) you **must notify** OSCR about them within **three months** of it having taken place:

* any change to your charity's principal office (or the name, or address of the charity trustee specified in the Scottish Charity Register if there is no office);
* any change in other details set out in your charity's Register entry;
* any change to your charity's AofA (other than those relating to your charity's purposes); and
* any action taken to amalgamate, or wind up, or dissolve your charity, or if there is an application to court to do so.

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If your company has taken any of the following actions (in order to receive a compliance letter from Scottish Ministers) (or in the future) the Directors **must apply and** **seek prior consent** from OSCR at least 42 days before the proposed date of change:

* before changing the name of the charity;
* before amending the objects or purposes of the charity;
* before amalgamating the charity with another body; and
* before winding-up the charity.

Should OSCR request further amendments to the AofA, after Scottish Ministers have issued a compliance letter, you should perform the requested amendments from OSCR. You can then re-submit the AofA to Scottish Ministers who will check for compliance. If content that the AofA still complies with the Land Reform (Scotland) Acts 2003 and 2016, a compliance letter for, Right to Buy, will be issued.

If as a Director you take action without consent from OSCR where it is required or fail to tell OSCR of changes made, you will be in breach of Section 66 of the 2005 Act. Any breach will be treated as misconduct, and action may be taken.

If you fail to notify, or gain consent from, OSCR, your company will be in breach of “the 2005 Act” and the trustees in breach of their trustee duties under the 2005 Act.

If you make any changes to your AofA please remember to follow the clauses in the articles that outline how to make amendments.

* **The Scottish Governments Community Land Team can provide assistance in relation to the requirements of the various Right to Buys within the Land Reform (Scotland) Act 2003 and 2016.**
* **OSCR can help in ensuring your AofA meet the requirements of being charitable.**
* **Equally you may wish to consult with your own solicitor to help ensure compliance with the Land Reform Acts and being charitable.**

**6. Useful Contacts**

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| **DIRECTORATE FOR AGRICULTURE AND RURAL ECONOMY** Community Land Team, Q Spur Saughton HouseBroomhouse DriveEdinburgh EH11 3XD**Tel:** 0300 244 9822**Email:** crtb@gov.scot**Web:** [www.gov.scot](https://www.gov.scot/) |  An Lòchran10 Inverness CampusInvernessIV2 5NA**Tel:** 01463 245 245**Email:** enquiries@hient.co.uk**Web:** https://www.hie.co.uk/ |
| **(also contact for Community Ownership Support Scotland)**1B Washington LaneEdinburgh, EH11 2HA**Tel:** 0131 220 2456**Email:** info@dtascot.org.uk**Web:** https://dtascot.org.uk/ |  2nd Floor, Quadrant House, 9 Riverside Drive, Dundee, DD1 4NY**Tel:** 01382 220446**Email:** info@oscr.org.uk**Web:** https://www.oscr.org.uk/ |
|  **Registrar of Companies (Scotland))**4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, EH3 9FF | **Tel:** 0303 1234 500**Email:** enquiries@companieshouse.gov.uk**Web:** https://www.gov.uk/government/organisations/companies-house |
|  * The Land Reform (Scotland) Act 2003 (and supporting regulations)

<https://www.legislation.gov.uk/asp/2003/2/contents>* The Land Reform (Scotland) Act 2016 (and supporting regulations)

<https://www.legislation.gov.uk/asp/2016/18/contents>* The Charities and Trustee Investment (Scotland) Act 2005 (and supporting regulations)

<https://www.legislation.gov.uk/asp/2005/10/contents>* Plus all other relevant regulations
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