CONSTITUTION OF

BADENOCH HERITAGE (SCIO)

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of

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CONTENTS		
GENERAL	type of organisation, Scottish principal office, name, purposes, powers, liability, general structure	clauses 1- 10
MEMBERS	qualifications for membership, application, minimum number, subscription, register of members, withdrawal, transfer, re-registration, expulsion	clauses 11 - 29
DECISION-MAKING BY THE MEMBERS	members' meetings, power to request members' meeting, notice, procedure at members' meetings, voting at members' meetings, written resolutions, minutes	clauses 30 - 57
BOARD (CHARITY TRUSTEES)	number, eligibility, election/retiral/re-election, termination of office, register of charity trustees, office bearers, powers, general duties, code of conduct	clauses 58 - 85
DECISION-MAKING BY THE CHARITY TRUSTEES	notice, procedure at board meetings, minutes	clauses 86 - 101
ADMINISTRATION	sub-committees, operation of accounts, accounting records and annual accounts	clauses 102 - 110
MISCELLANEOUS	winding up, alterations to the constitution, interpretation	clauses 111 - 116

GENERAL

Type of organisation

1 The organisation will, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO).

Scottish principal office

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

Name

3 The name of the organisation is Badenoch Heritage (SCIO).

Purposes

4 The organisation has been formed to benefit the communities which lie within the Community Council areas of Kincraig and Vicinity, Kingussie and Vicinity, Newtonmore and Vicinity, Laggan and Dalwhinnie ("the Community") with the following purposes:

4.1 To advance citizenship or community development, including rural regeneration

4.2 To increase the provision of educational opportunities in the Community, for the advancement of arts, heritage, culture or science

4.3 To advance environmental protection or improvement including:

a) preservation, sustainable development and conservation of the natural environment

b) maintenance, improvement or provision of environmental amenities for the Community

But such that the charity shall do so following principles of sustainable development.

Powers

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

6 No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the members - either in the course of the organisation's existence or on dissolution - except where this is done in direct furtherance of the organisation's charitable purposes.

Liability of members

7 The members of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the members will not be held responsible.

8 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 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.

General structure

9 The structure of the organisation consists of:-

9.1 the MEMBERS - who have the right to attend members' meetings (including any annual general meeting) and have important powers under the constitution; in particular, the members appoint people to serve on the board and take decisions on changes to the constitution itself;

9.2 the BOARD - who hold regular meetings, and generally control the activities of the organisation; for example, the board is responsible for monitoring and controlling the financial position of the organisation and ensuring compliance with relevant legislation.

10 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

MEMBERS

Qualifications for membership

11 ORDINARY MEMBERSHIP is open to any individual aged 16 or over who lives in the Community and supports the aims and activities of the organisation.

12 ASSOCIATE MEMBERSHIP is open to organisations wherever located, or individuals who live outwith the Community, that support the aims and activities of the organisation. Associate Members are neither eligible to stand for election to the Board nor to vote at any general meeting.

13 Employees of the organisation are not eligible for membership. A person admitted to membership shall automatically cease to be a member if they become an employee of the organisation.

Application for membership

14 No individual or organisation may become a Member unless that individual or organisation has submitted a written application for membership in the form prescribed by the Trustees and the Trustees have approved the application. An application submitted by an organisation must be signed on behalf of that organisation.

15 All applications will be considered by the Trustees at the next board meeting following submission of the application, to determine whether the applicant meets the criteria for becoming an Ordinary Member or Associate Member. The applicant will then be notified promptly (in writing or by e-mail) of their admission to membership of the organisation.

Minimum number of members

16 The minimum number of members is 20 (twenty); in the event that the number of members falls below 20, the Trustees may not conduct any business other than to ensure the admission of sufficient members to achieve the minimum number.

17 For the avoidance of doubt, at least 75% of the members of the organisation will, at all times, be those persons who are eligible for Ordinary Membership under clause 11.

Membership subscription

18 The amount of the membership subscription will be set at each annual general meeting.

19 If a membership subscription is payable by any member, but remains outstanding more than four weeks after the date on which it fell due (and providing they have been given at least one written reminder) the Trustees may, by resolution to that effect, expel them from membership; for the avoidance of doubt, it will be open to an individual expelled from membership under this article to reapply for membership if they so wish.

20 A person who ceases (for whatever reason) to be a member shall not be entitled to any refund of the membership subscription.

Register of members

21 The board must keep a register of members, setting out

21.1 for each current member:

21.1.1 their full name and address; and

21.1.2 the date on which they were registered as a member of the organisation;

21.2 for each former member - for at least six years from the date on which they ceased to be a member:

21.2.1 their name; and

21.2.2 the date on which they ceased to be a member.

22 The board must ensure that the register of members is updated within 28 days of any change:

22.1 which arises from a resolution of the board or a resolution passed by the members of the organisation; or

22.2 which is notified to the organisation.

23 If a member or charity trustee of the organisation requests a copy of the register of members, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses blanked out.

Withdrawal from membership

24 Any person who wants to withdraw from membership must give a written notice of withdrawal by signed letter or email to the organisation; they will cease to be a member as from the time when the notice is received by the organisation.

Transfer of membership

25 Membership of the organisation may not be transferred by a member.

Re-registration of members

26 The board may, at any time, issue notices to the members requiring them to confirm that they wish to remain as members of the organisation, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the board.

27 If a member fails to provide confirmation to the board (in writing or by e-mail) that they wish to remain as a member of the organisation before the expiry of the 28-day period referred to in clause 26, the board may expel them from membership.

28 A notice under clause 26 will not be valid unless it refers specifically to the consequences (under clause 27) of failing to provide confirmation within the 28-day period.

Expulsion from membership

29 Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a members' meeting, providing the following procedures have been observed:-

29.1 at least 21 (twenty-one) days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;

29.2 the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

DECISION-MAKING BY THE MEMBERS

Members' meetings

30 The board must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year.

31 The gap between one AGM and the next must not be longer than 15 months.

32 Notwithstanding clause 30, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.

33 The business of each AGM must include:-

33.1 a report by the chair on the activities of the organisation;

33.2 consideration and adoption of the annual accounts of the organisation;

33.3 the election/re-election of charity trustees, as referred to in clauses 63 to 66

34 The board may arrange a special members' meeting at any time.

Power to request the board to arrange a special members' meeting

35 The board must arrange a special members' meeting if they are requested to do so by a notice from at least 10 (ten) Ordinary Members, providing:

35.1 the notice states the purposes for which the meeting is to be held; and

35.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.

36 If the board receive a notice under clause 35, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

Notice of members' meetings

37 At least 14 (fourteen) clear days' notice must be given of any AGM or any special members' meeting.

38 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and

38.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or

38.2 in the case of any other resolution falling within clause 50 (requirement for two-thirds majority) must set out the exact terms of the resolution.

39 The reference to "clear days" in clause 37 shall be taken to mean that, in calculating the period of notice,

40 the day after the notices are posted (or sent by e-mail) should be excluded; and

40.1 the day of the meeting itself should also be excluded.

41 Notice of every members' meeting must be given to all the members of the organisation, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.

42 Any notice which requires to be given to a member under this constitution must be: -

42.1 sent by post to the member, at the address last notified by them to the organisation; *or*

42.2 sent by e-mail to the member, at the e-mail address last notified by them to the organisation.

Procedure at members' meetings

43 No valid decisions can be taken at any members' meeting unless a quorum is present.

44 The quorum for a members' meeting is 11 (eleven) persons entitled to vote, each being a member or a proxy for a member.

45 If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.

46 The chair of the organisation should act as chairperson of each members' meeting.

47 If the chair of the organisation is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

Voting at members' meetings

48 Every Ordinary Member has one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy.

48.1 An Ordinary Member who wishes to appoint a proxy to vote on their behalf at any meeting must lodge with the organisation, prior to the time when the meeting commences, a written proxy form, signed by themselves.

48.2 A proxy need not be a member of the organisation.

48.3 A member shall not be entitled to appoint more than one proxy to attend the same meeting.

48.4 A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member who appointed them to speak at the meeting.

49 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 50.

50 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 54):

50.1 a resolution amending the constitution;

50.2 a resolution expelling a person from membership under article 29;

50.3 a resolution directing the board to take any particular step (or directing the board not to take any particular step);

50.4 a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);

50.5 a resolution to the effect that all of the organisation's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);

50.6 a resolution for the winding up or dissolution of the organisation.

51 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

52 A resolution put to the vote at a members' meeting will be decided on a show of hands – unless the chairperson (or at least two other persons present at the meeting and entitled to vote whether as members or as proxies for members) ask for a secret ballot.

53 The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.

Written resolutions by members

54 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.

Minutes

55 The board must ensure that proper minutes are kept in relation to all members' meetings.

56 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

57 The board shall make available copies of the minutes referred to in clause 55 to any member of the public requesting them; but on the basis that the board may exclude confidential material to the extent permitted under clause 101.

BOARD

Number of charity trustees

58 The maximum number of charity trustees is 15 (fifteen); out of that, no more than 3 (three) shall be charity trustees who were co-opted under the provision of clauses 64.

59 The minimum number of charity trustees is 5 (five). Where the number of charity trustees stands at the minimum of five (5), only one (1) may be co-opted.

Eligibility

60 A person will not be eligible for election or appointment to the board unless they are a member of the organisation.

61 A person will not be eligible for election or appointment to the board if they are: -

61.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

61.2 an employee of the organisation.

Initial charity trustees

62 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the organisation.

Election, retiral, re-election

63 At each AGM, the members may elect any member (unless they are debarred from membership under clause 61) to be a charity trustee.

64 The board may at any time appoint any member (unless they are debarred from membership under clause 61) to be a charity trustee.

65 At each AGM, all of the charity trustees must retire from office - but shall then (subject to clause 66.1 and 66.2) be eligible for re-election.

66 A charity trustee retiring at an AGM will be deemed to have been re-elected unless: -

66.1 they advise the board prior to the conclusion of the AGM that they do not wish to be re-appointed as a charity trustee; or

66.2 an election process was held at the AGM and they were not among those elected/re-elected through that process; or

66.3 a resolution for the re-election of that charity trustee was put to the AGM and was not carried.

Termination of office

67 A charity trustee will automatically cease to hold office if: -

67.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;

67.2 they become incapable for medical reasons of carrying out their duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;

67.3 they cease to be a member of the organisation;

67.4 they become an employee of the organisation;

67.5 they give the organisation a notice of resignation, signed by themselves;

67.6 they are absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove them from office;

67.7 they are removed from office by resolution of the board on the grounds that they are considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 84);

67.8 they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or

67.9 they are removed from office by a resolution of the members passed at a members' meeting.

68 A resolution under paragraph 67.7, 67.8 or 67.9 shall be valid only if: -

68.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed;

68.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and

68.3 (in the case of a resolution under paragraph 67.7 or 67.8) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

Register of charity trustees

69 The board must keep a register of charity trustees, setting out

69.1 for each current charity trustee:

69.1.1 their full name and address;

69.1.2 the date on which they were appointed as a charity trustee; and

69.1.3 any office held by them in the organisation;

69.2 for each former charity trustee - for at least 6 (six) years from the date on which they ceased to be a charity trustee:

69.2.1 the name of the charity trustee;

69.2.2 any office held by them in the organisation; and

69.2.3 the date on which they ceased to be a charity trustee.

70 The board must ensure that the register of charity trustees is updated within 28 days of any change:

70.1 which arises from a resolution of the board or a resolution passed by the members of the organisation; or

70.2 which is notified to the organisation.

71 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the organisation, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

Office-bearers

72 The charity trustees must elect (from among themselves) a chair and a treasurer.

73 In addition to the office-bearers required under clause 72, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

74 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 72 or 73.

75 A person elected to any office will automatically cease to hold that office: -

75.1 if they cease to be a charity trustee; *or*

75.2 if they give to the organisation a notice of resignation from that office, signed by themselves.

Powers of board

76 Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the organisation.

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

78 The members may, by way of a resolution passed in compliance with clause 50 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.

Charity trustees - general duties

79 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation; and, in particular, must:-

79.1 seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;

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

79.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:

79.3.1 put the interests of the organisation before that of the other party;

79.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;

79.4 ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.

80 In addition to the duties outlined in clause 79, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -

80.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and

80.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.

81 Provided that the Charity Trustee has declared their interest and has not voted on the question of whether or not the SCIO should enter into the arrangement, a charity trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest; and (subject to clause 82 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), they may retain any personal benefit which arises from that arrangement.

82 No charity trustee may serve as an employee (full time or part time) of the organisation; and no charity trustee may be given any remuneration by the organisation for carrying out their duties as a charity trustee.

83 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for charity trustees

84 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.

85 The code of conduct referred to in clause 84 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this

constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of board meetings

86 Any charity trustee may call a meeting of the board *or* ask the secretary to call a meeting of the board.

87 At least 7 (seven) days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

Procedure at board meetings

88 No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 4 (four) charity trustees, present in person.

89 If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 88, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.

90 The chair of the organisation should act as chairperson of each board meeting.

91 If the chair is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

92 Every charity trustee has one vote, which must be given personally.

93 All decisions at board meetings will be made by majority vote.

94 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

95 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that they are not a charity trustee - but on the basis that they must not participate in decision-making.

96 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest which conflicts (or may conflict) with the interests of the SCIO. In such event, they must withdraw from the meeting for as long as the conflicted matter is dealt with by the other Charity Trustees.

97 For the purposes of clause 96, a person is taken to have a personal interest if a member of that person's close family, or an organisation with which that person (or a member of that person's close family) is affiliated would stand to benefit from, or otherwise have an interest in, the arrangement.

Minutes

98 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.

99 The minutes to be kept under clause 98 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

100 The board shall (subject to clause 101) make available copies of the minutes referred to in clause 98 to any member of the public requesting them.

101 The board may exclude from any copy minutes made available to a member of the public under clause 100 any material which the board considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

ADMINISTRATION

Delegation to sub-committees

102 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.

103 The board may also delegate to the chair of the organisation (or the holder of any other post) such of their powers as they may consider appropriate.

104 When delegating powers under clause 102 or 103, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).

105 Any delegation of powers under clause 102 or 103 may be revoked or altered by the board at any time.

106 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

Operation of accounts

107 Subject to clause 108, the signatures of two out of any of the signatories (minimum of three) appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the organisation; at least one out of the two signatures must be the signature of a charity trustee.

108 Where the organisation 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 approach reflected in clause 107.

Accounting records and annual accounts

109 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.

110 The board must prepare annual accounts which will be independently examined, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the board consider that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.

MISCELLANEOUS

Winding-up

111 If the organisation 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 Charities and Trustee Investment (Scotland) Act 2005.

112 Any surplus assets available to the organisation 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 organisation as set out in this constitution.

Alterations to the constitution

113 This constitution may (subject to clause 114) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 50) or by way of a written resolution of the members.

114 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

115 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -

115.1 any statutory provision which adds to, modifies or replaces that Act; and

115.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 115.1 above.

116 In this constitution: -

116.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 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;

116.2 "charitable purpose" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.