

NOTES ON REVISED DRAFT MEMORANDUM & ARTICLES 13-06-2008 & 10-06-2008

Charles Dixon-Spain on behalf of the Colintraive and Glendaruel Development Trust Steering Group

The Community Assets Branch of the Scottish Executive who look at Mem & Arts meeting the requirements of the Land Reform (Scotland) Act 2003 commented on our draft. Our actions are marked in bold.

Section 34(1)(a) – definition of community & reference to postcode – Memorandum 3 refers. Postcode PA22 3AG is within your current postcode boundary and should therefore be included in your postcode listing. To complete the PA22 3 boundary you may wish to include postcode PA22 3AF. I enclose a map of these areas and a map covering all the postcodes within PA22 3 which I hope you find useful.

DONE

There is no definition of the term "Community" in the Memorandum. You should insert the words ("the Community") after the last post code unit in clause 3 of the Memorandum. If this is done, the references to "Colintraive and Glendaruel" and "the community" in clause 3 should be replaced with the reference to "the Community".

DONE

Other comments:

The company name should be the same throughout the M&A. We note that the name on the front sheet of the M&A states the company name as "Colintraive & Glendaruel Development Trust" but in clause 1 of the memorandum it is stated as "the Colintraive and Glendaruel Development Trust".

DONE

Clause 2 of the memorandum should state that the registered office is to be situated in Scotland rather than give the actual registered office address. This is a fundamental requirement of section 2(1)(b) of the Companies Act 1985 and your company may not be incorporated by Companies House without this.

DONE

We recommend the insertion of a provision in the Articles of Association based on article 73 of the Highland and Islands Enterprise (HIE) model M&A. Article 73 repeats the provisions of clause 7 of the memorandum relating to the winding-up of the company. I attach a link to the HIE model for reference: www.hie.co.uk/CLU-General/ModelmemoandartsMar08.doc.

DONE for 7 in total as it seemed that the HIE model sorted this more succinctly.

Table C in the Companies (Tables A to F) Regulations 1995 has not been disapplied in the articles and you may wish to insert a clause within the articles to this effect. I refer you to article 1 of the HIE model M&A.

DONE along with consequent renumbering

Article 10 could be made clearer and you may wish to use the following wording "For the avoidance doubt, no person may be a member of the company unless they are an individual eligible under article 3 (individuals ordinarily resident in the Community)."

DONE

The following have been renumbered accordingly, and account taken of the inclusion of the Table C addition.

In article 18 the reference to "article 26" should be to "article 31".

DONE

In article 46(a) the references to "articles 52 to 57" should be to "articles 51 to 56" and the references in article 46(b) to "articles 58 and 59" should be to "articles 57 and 58".

DONE

In article 54(a) the reference to "article 51" should be to "article 52".

DONE

In article 66 the reference to "article 81" should be to "article 80".

DONE

Article 92 refers to a Treasurer in relation to the maintenance of the accounting records, but there are no provisions dealing with the appointment of the Treasurer. You may wish to consider inserting a provision based on article 58 of the HIE model M&A.

NOT DONE. Optional and somewhat addressed by clauses present, particularly, 62 so no action necessary

NOTES:

The relevant HIE model M&A clause reads:

"The Board may appoint a Treasurer for such term and upon such conditions as it may think fit. The Treasurer may be removed by the Board at any time. Whilst in post, the Treasurer may be required to attend (but shall have no vote at) Board meetings during his or her tenure as Treasurer, except any part or parts thereof dealing with his or her employment or remuneration, or any other matter which the Board wish to keep confidential to itself."

And the advice which pertains to this is:

"Optional This could be a Director (or perhaps the Convenor of a separate Finance Committee). If to be remunerated, the terms of Clause 5.3 of the Memorandum and Article 30 would both have to be amended and also a Remuneration Agreement entered into in terms of Section 67 of the Charities and Trustee Investment (Scotland) Act 2005."

In our Mem and Arts we have

"61. The directors shall elect from among themselves a chair and a treasurer, and such other office bearers (if any) as they consider appropriate."

There does not appear to be any provision with regards to future amendments to the M&A being approved by Scottish Ministers. Please note that section 35(1) of the Land Reform (Scotland) Act 2003 still applies and any future changes to the Memorandum and Articles of Association will require the written consent of the Scottish Ministers, through the Scottish Executive Environment and Rural Affairs Department (or its successors).

NOW INCLUDED as a new 103.

ALSO: clause 100 on Winding-up has been replaced with a new clause 104 which seemed to put things more succinctly

Further note on changes made 18th June 2008

Further to the alterations of the June 13th draft, on advice from Development Trust consultant Colin Roxburgh and Ian Heron at the CRtB Unit we replaced clause 95 which read;

“Subject to article 96, the directors shall ensure that an audit of such accounts is carried out by an auditor”

to;

“The Directors shall prepare annual accounts which will be subject to external and independent examination in accordance with all relevant statutory requirements”

As Colin Roxburgh states;

“Making the change will save you incurring full audit costs unless your turnover is over £250K however as you are probably aware you will still need to have the accounts independently examined by an Independent Examiner as set out in Scottish Charity Accounts: A guide to the 2006 Regulations. “