



The best start for Scotland's children

SCIO CONSTITUTION

of

UPSTART SCOTLAND

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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 'Upstart Scotland'.

Purposes

- 4 The organisation's purposes are the advancement of children's education, health and well-being. In furtherance of this we shall:
 - 5 advance awareness of the need for Scottish children - up to and including the age of seven - to benefit from a statutory play-based 'kindergarten stage' before beginning formal schooling.
 - 6 promote the role of Early Years education in 'levelling the educational playing field' by ensuring all children have secure foundations for school-based learning underpinned by play - especially outdoors - as being vital for all aspects of children's physical, emotional and cognitive development including health and well-being and, where practicable, outdoor play in the natural environment.
 - 7 disseminate information about the importance of supporting children's social, emotional and spoken language development as the foundation for successful educational achievement, having regard to the need for a well-qualified, highly-respected, child-centric workforce, well-informed about the principles of child development in the Early Years.
 - 8 relieve stress engendered by premature schoolification and testing, which research now suggests is counterproductive to children's long-term well-being and educational success and therefore more likely to increase than decrease the achievement gap between rich and poor.

Powers

- 9 The organisation 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 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

- 11 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.
- 12 The Members and Charity Trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005 and therefore 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

- 13 The structure of the organisation consists of:
- 14 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;
 - 15 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.
- 16 The people serving on the Board are referred to in this constitution as Charity Trustees.

MEMBERS

Qualifications for membership

- 17 Membership is open to any individual aged 16 or over who supports the purposes contained in clause 4 hereof.
- 18 Employees of the organisation are not eligible for membership.

Application for membership

- 19 Any person who wishes to become a Member must sign a written application for membership; the application will then be considered by the Board at its next Board meeting.
- 20 The Board may, at its discretion, refuse to admit any person to membership.
- 21 The Board must notify each applicant promptly (in writing or by e-mail) of its decision on whether or not to admit her/him to membership.

Membership subscription

- 22 No membership subscription will be payable.

Register of Members

- 23 The Board must keep a register of Members, setting out:
 - 24 for each current Member:
 - 25 her/his full name and address; and
 - 26 the date on which she/he was registered as a Member of the organisation;
 - 27 for each former member - for at least six years from the date on she/he ceased to be a Member:
 - 28 her/his name; and
 - 29 the date on which she/he ceased to be a Member.
- 30 The Board must ensure that the register of Members is updated within 28 days of any change:
 - 31 which arises from a resolution of the Board or a resolution passed by the Members of the organisation; or
 - 32 which is notified to the organisation.
- 33 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 her/him 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

- 34 Any person who wants to withdraw from membership must give a written notice of withdrawal to the organisation, signed by her/him.

She/he will cease to be a Member as from the time when the notice is received by the organisation.

Transfer of membership

35 Membership of the organisation may not be transferred by a Member.

Re-registration of Members

36 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.

37 If a Member fails to provide confirmation to the board (in writing or by e-mail) that she/he wishes to remain as a Member of the organisation before the expiry of the 28-day period referred to in clause 22, the Board may expel her/him from membership.

38 A notice under clause 22 will not be valid unless it refers specifically to the consequences (under clause 23) of failing to provide confirmation within the 28-day period.

Expulsion from membership

39 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:

40 at least 21 days' notice of the intention to propose the resolution must be given to the Member concerned, specifying the grounds for the proposed expulsion;

41 the Member concerned will be entitled to be heard on the resolution at the Members' meeting at which the resolution is proposed.

Termination

42 Membership of the organisation will terminate on death.

DECISION-MAKING BY THE MEMBERS

Members' meetings

43 The Board must arrange a meeting of Members (an annual general meeting or "AGM") in each calendar year.

- 44 The gap between one AGM and the next must not be longer than 15 months.
- 45 Notwithstanding clause 27, 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.
- 46 The business of each AGM must include:-
- 47 a report by the Chair on the activities of the organisation;
 - 48 consideration of the annual accounts of the organisation;
 - 49 the election/re-election of Charity Trustees, as referred to in clauses 59 to 62.
- 50 The Board may arrange a special Members' meeting at any time.

Power to request the Board to arrange a special Members' meeting

- 51 The Board must arrange a special Members' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more Members) by Members who amount to 5% or more of the total membership of the organisation at the time, providing:
- 52 the notice states the purposes for which the meeting is to be held; and
 - 53 those purposes are not inconsistent with the terms of this Constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.
- 54 If the Board receive a notice under clause 32, 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

- 55 At least 14 clear days' notice must be given of any AGM or any special Members' meeting.
- 56 The notice calling a Members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 57 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
 - 58 in the case of any other resolution falling within clause 45 (requirement for two-thirds majority) must set out the exact terms of the resolution.

- 59 The reference to 'clear days' in clause 34 shall be taken to mean that, in calculating the period of notice,
- 60 the day after the notices are posted (or sent by e-mail) should be excluded; and
- 61 the day of the meeting itself should also be excluded.
- 62 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.
- 63 Any notice which requires to be given to a member under this constitution must be: -
- 64 sent by post to the Member, at the address last notified by her/him to the organisation; *or*
- 65 sent by e-mail to the Member, at the e-mail address last notified by her/him to the organisation.

Procedure at Members' meetings

- 66 No valid decisions can be taken at any Members' meeting unless a quorum is present.
- 67 The quorum for a Members' meeting is ten Members, present in person.
- 68 If a quorum is not present within 20 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 need to be dispatched to deal with the business (or remaining business) which was intended to be conducted.
- 69 The Chair of the organisation should act as Chairperson of each Members' meeting.
- 70 If the Chair of the organisation is not present within 20 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

- 71 Every Member has one vote which must be given personally.

- 72 All decisions at Members' meetings will be made by majority vote with the exception of the types of resolution listed in clause 46.
- 73 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 50):
- 74 a resolution amending the constitution;
 - 75 a resolution expelling a person from membership under clause 25;
 - 76 a resolution directing the Board to take any particular step (or directing the Board not to take any particular step);
 - 77 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);
 - 78 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);
 - 79 a resolution for the winding up or dissolution of the organisation.
- 80 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.
- 81 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 Members present at the meeting) asks for a secret ballot.
- 82 The Chairperson will decide how any secret ballot is to be conducted, and she/he will declare the result of the ballot at the meeting.

[Written resolutions by Members](#)

- 83 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](#)

- 84 The Board must ensure that proper minutes are kept in relation to all Members' meetings.

- 85 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.
- 86 The board shall make available copies of the minutes referred to in clause 51 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 99.

BOARD

Number of Charity Trustees

- 87 The maximum number of Charity Trustees is twelve of which:
- 88 no more than nine shall be Charity Trustees who were elected/appointed under clauses 59 and 60 (or deemed to have been appointed under clause 58); and
- 89 no more than three shall be Charity Trustees who were co-opted under the provisions of clauses 63 and 64.
- 90 The minimum number of Charity Trustees is three.

Eligibility

- 91 A person shall not be eligible for election/appointment to the Board under clauses 58 to 61 unless she/he is a Member of the organisation. A person appointed to the Board under clause 63 need not, however, be a Member of the organisation.
- 92 A person will not be eligible for election or appointment to the board if she/he is:
- 93 disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
- 94 an employee of the organisation.

Initial Charity Trustees

- 95 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

- 96 At each AGM, the Members may elect any Member (unless she/he is debarred from membership under clause 57) to be a Charity Trustee.

- 97 The Board may at any time appoint any Member (unless she/he is debarred from membership under clause 57) to be a Charity Trustee.
- 98 At each AGM, all of the Charity Trustees elected/appointed under clauses 59 and 60 (and, in the case of the first AGM, those deemed to have been appointed under clause 58) shall retire from office but shall then be eligible for re-election under clause 59.
- 99 A Charity Trustee retiring at an AGM will be deemed to have been re-elected unless:
- 100 she/he advises the Board prior to the conclusion of the AGM that she/he does not wish to be re-appointed as a Charity Trustee; or
 - 101 an election process was held at the AGM and she/he was not among those elected/re-elected through that process; or
 - 102 a resolution for the re-election of that Charity Trustee was put to the AGM and was not carried.

Appointment/re-appointment of Co-opted Charity Trustees

- 103 In addition to their powers under clause 60, the Board may at any time appoint any non-member of the organisation to be a Charity Trustee (subject to clause 54, and providing she/he is not debarred from membership under clause 57) on the basis she/he has specialist experience and/or skills which could be of assistance to the Board.
- 104 At each AGM, all of the Charity Trustees appointed under clause 63 shall retire from office but shall then be eligible for re-appointment under that clause.

Termination of office

- 105 A Charity Trustee will automatically cease to hold office if: -
- 106 she/he becomes disqualified from being a Charity Trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 107 she/he becomes incapable for medical reasons of carrying out her/his duties as a Charity Trustee but only if that has continued (or is expected to continue) for a period of more than six months;
 - 108 (in the case of a Charity Trustee elected/appointed under clauses 58 to 62) she/he ceases to be a Member of the organisation;
 - 109 she/he becomes an employee of the organisation;

- 110 she/he gives the organisation a notice of resignation, signed by her/him;
 - 111 she/he is 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 her/him from office;
 - 112 she/he is removed from office by resolution of the Board on the grounds that she/he is considered to have committed a material breach of the code of conduct for Charity Trustees (as referred to in clause 82);
 - 113 she/he is removed from office by resolution of the Board on the grounds that she/he is considered to have been in serious or persistent breach of her/his duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
 - 114 she/he is removed from office by a resolution of the Members passed at a Members' meeting.
- 115 A resolution under paragraph 65.7, 65.8 or 65.9 shall be valid only if:
- 116 the Charity Trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for her/his removal is to be proposed;
 - 117 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
 - 118 (in the case of a resolution under paragraph 65.7 or 65.8) 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

- 119 The Board must keep a register of Charity Trustees, setting out
- 120 for each current Charity Trustee:
 - 121 her/his full name and address;
 - 122 the date on which she/he was appointed as a Charity Trustee; and
 - 123 any office held by her/him in the organisation;
- 124 for each former Charity Trustee, for at least 6 years from the date on which she/he ceased to be a Charity Trustee:
 - 125 the name of the Charity Trustee;

- 126 any office held by her/him in the organisation; and
 - 127 the date on which she/he ceased to be a Charity Trustee.
- 128 The Board must ensure that the register of Charity Trustees is updated within 28 days of any change:
- 129 which arises from a resolution of the Board or a resolution passed by the Members of the organisation; or
 - 130 which is notified to the organisation.
- 131 If any person requests a copy of the register of Charity Trustees, the Board must ensure that a copy is supplied to her/him 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 it is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

Office-bearers

- 132 The Charity Trustees must elect (from among themselves) a Chair, a Treasurer and a Secretary.
- 133 In addition to the office-bearers required under clause 70, the Charity Trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 134 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 70 or 71.
- 135 A person elected to any office will automatically cease to hold that office: -
- 136 if she/he ceases to be a Charity Trustee; or
 - 137 if she/he gives to the organisation a notice of resignation from that office, signed by her/him.

Powers of Board

- 138 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.
- 139 A meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.
- 140 The Members may, by way of a resolution passed in compliance with clause 46 (requirement for two-thirds majority), direct the Board to take any particular step or direct the Board not to take any

particular step. The Board shall give effect to any such direction accordingly.

Charity Trustees - general duties

- 141 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:
 - 142 seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
 - 143 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 144 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:
 - 145 put the interests of the organisation before that of the other party;
 - 146 where any other duty prevents her/him 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;
 - 147 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.
- 148 In addition to the duties outlined in clause 77, all of the Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
 - 149 that any breach of any of those duties by a Charity Trustee is corrected by the Charity Trustee concerned and not repeated; and
 - 150 that any Charity Trustee who has been in serious and persistent breach of those duties is removed as a Charity Trustee.
- 151 Provided she/he has declared her/his interest - and has not voted on the question of whether or not the organisation should enter into the arrangement - a Charity Trustee will not be debarred from entering into an arrangement with the organisation in which she/he has a personal interest and (subject to clause 80 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), she/he may retain any personal benefit which arises from that arrangement.

- 152 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 her/his duties as a Charity Trustee.
- 153 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](#)

- 154 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.
- 155 The code of conduct referred to in clause 82 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

- 156 Any Charity Trustee may call a meeting of the Board or ask the Secretary to call a meeting of the Board.
- 157 At least 7 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

- 158 No valid decisions can be taken at a Board meeting unless a quorum is present; the quorum for board meetings is three Charity Trustees, present in person.
- 159 If at any time the number of Charity Trustees in office falls below the number stated as the quorum in clause 86, 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.
- 160 The Chair of the organisation should act as Chairperson of each Board meeting.
- 161 If the Chair is not present within 20 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.
- 162 Every Charity Trustee has one vote which must be given personally.
- 163 All decisions at Board meetings will be made by majority vote.
- 164 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.
- 165 The Board may, at its discretion, allow any person to attend and speak at a Board meeting notwithstanding that she/he is not a Charity Trustee but on the basis that she/he must not participate in decision-making.
- 166 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 she/he has a personal interest or duty which conflicts (or may conflict) with the interests of the organisation. She/he must withdraw from the meeting while an item of that nature is being dealt with.
- 167 For the purposes of clause 94: -

- 168 an interest held by an individual who is ‘connected’ with the Charity Trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister or other relative) shall be deemed to be held by that Charity Trustee;
- 169 a Charity Trustee will be deemed to have a personal interest in relation to a particular matter if a body of which she/he is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

Minutes

- 170 The Board must ensure that proper minutes are kept in relation to all Board meetings and meetings of sub-committees.
- 171 The minutes to be kept under clause 96 must include the names of those present and (so far as possible) should be signed by the Chairperson of the meeting.
- 172 The Board shall (subject to clause 99) make available copies of the minutes referred to in clause 96 to any member of the public requesting them.
- 173 The Board may exclude from any copy minutes made available to a member of the public under clause 98 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

- 174 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.
- 175 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.
- 176 When delegating powers under clause 100 or 101, the Board must set out appropriate conditions (which must include an obligation to report regularly to the Board).
- 177 Any delegation of powers under clause 100 or 101 may be revoked or altered by the Board at any time.

- 178 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

- 179 Subject to clause 106, the signatures of two out of three signatories 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.
- 180 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 105.

Accounting records and Annual Accounts

- 181 The Board must ensure that proper accounting records are kept in accordance with all applicable statutory requirements.
- 182 The Board must prepare Annual Accounts 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 an Independent Examiner.

MISCELLANEOUS

Winding-up

- 183 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.
- 184 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

- 185 This Constitution may (subject to clause 112) be altered by resolution of the Members passed at a Members' meeting (subject to achieving the two thirds majority referred to in clause 46) or by way of a written resolution of the Members.
- 186 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (e.g. change of name, an alteration to the

purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

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

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

189 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 113.1 above.

190 In this Constitution:

191 '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 2011, providing (in either case) that its objects are limited to charitable purposes;

192 '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.