

DATE

2016

Company No []

Charity No []

**The Companies Act 2006
Company Limited by Guarantee
And not having a Share Capital**

**Articles of Association of
Sheffield Hospitals Charity**

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Contents

1.	Name	1
2.	Registered office.....	1
3.	Objects.....	1
4.	Powers.....	1
5.	The Trustees.....	3
6.	Trustees' proceedings	4
7.	Trustees' powers	4
8.	Secretary	4
9.	Committees.....	5
10.	Benefits and conflicts.....	5
11.	Records and accounts	6
12.	Membership	7
13.	General meetings	7
14.	Limited liability	8
15.	Guarantee.....	8
16.	Communications.....	8
17.	Dissolution	9
18.	Interpretation.....	9

Companies Act 2006
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Sheffield Hospitals Charity

1. **Name**

The name of the company is Sheffield Hospitals Charity.

2. **Registered office**

The registered office of the **Charity** will be in England and Wales.

3. **Objects**

3.1 The **Objects** of the Charity are, for the public benefit:

- (a) to further any charitable purpose or purposes relating to the general or any specific purposes of the **Foundation Trusts** or the purposes of the health service (as described in section 1 of the NHS Act 2006 or any statutory modification of that section); and
- (b) to promote, protect, preserve and advance all or any aspects of the health and welfare of the public.

3.2 This **Article 3** may be amended by **special resolution** but only with the prior **written** consent of **the Commission**.

4. **Powers**

The Charity has the following powers, which may be exercised only in promoting the Objects:

- (a) to provide advice or information;
- (b) to carry out research;
- (c) to consult, advise, co-operate with or assist others;
- (d) to support, administer or establish other charities or other organisations;
- (e) to accept gifts and raise funds (but not by means of **Taxable Trading**);
- (f) to borrow money;
- (g) to give security for loans or other obligations (but only in accordance with the restrictions imposed by the **Charities Act**);
- (h) to acquire, hire or charge property and/or any interest in, or relating to, land of such kind and on such terms and to appoint such advisers, surveyors, managers and builders and other advisers and contractors on such terms as the Trustees shall determine;
- (i) to let, license or dispose of any interest in property of any kind (but only in accordance with the restrictions imposed by the Charities Act);
- (j) to set aside funds for special purposes or as reserves against future expenditure;
- (k) to deposit or invest its funds in any manner as may be thought fit (including, but not limited to, the establishment of trading or other subsidiaries of any kind), but only after obtaining

such advice from a **Financial Expert** as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification;

- (l) to delegate the management of investments to a Financial Expert, but only on terms that:
 - (i) the investment policy is set down **in writing** for the Financial Expert by the Trustees;
 - (ii) the performance of the investments is reviewed regularly with the Trustees;
 - (iii) the Trustees are entitled to cancel the delegation arrangement at any time;
 - (iv) the investment policy and the delegation arrangement are regularly reviewed by the Trustees;
 - (v) all payments due to the Financial Expert are on a scale or at a level that is agreed in advance and are notified promptly to the Trustees on receipt; and
 - (vi) the Financial Expert must not do anything outside the powers of the Charity;
- (m) to arrange for investments or other property of the Charity to be held in the name of a **nominee company** acting under the direction of the Trustees or of a Financial Expert acting under their instructions, and to pay any reasonable fee required;
- (n) to deposit documents and physical assets with any company registered or having a place of business in England or Wales as **Custodian**, and to pay any reasonable fee required;
- (o) to insure the property of the Charity (including, for the avoidance of doubt, any property not owned by the Charity but under its control) against any foreseeable risk and to take out other insurance policies to protect the Charity when required;
- (p) subject to Article 10.3, to employ or otherwise contract for the services of agents, staff or advisers (upon such terms and conditions as may be thought fit) and, subject to Article 10, to remunerate any person, **firm** or company rendering services to the Charity and provide and contribute to pension and other death-in-service or other benefits for employees and former employees of the Charity and their dependants;
- (q) to acquire and take over to such an extent as may be thought fit (and permitted by law) the assets, liabilities and undertakings of any person or body whatsoever;
- (r) to provide goods, services or other assistance or support by way of grants, scholarships, donations, loans or otherwise (whether or not for valuable consideration) and to make rules as to their value, methods of ascertainment and selection;
- (s) to act as trustee of **charitable** trusts jointly with one or more other trustees or, where it may legally do so, as sole trustee;
- (t) to enter into any funding or other arrangement with any government or any other authority;
- (u) to guarantee the performance of the contracts or obligations of any person or organisation and to give any warranties, indemnities, guarantees or undertakings on account of any covenants, promises, pledges, assurances or trusts that might be undertaken by the Charity or in connection with any agreement or arrangement whatsoever, whether or not the Charity is a party to the same;
- (v) subject to the provisions of **the Companies Act**, but without prejudice to any indemnity to which the person concerned may otherwise be entitled to indemnify every Trustee or other officer of the Charity (other than any person engaged by the Charity as auditor) to the extent permitted by the Companies Act and to pay for **indemnity insurance** for the Trustees;

- (w) to establish or acquire subsidiary companies (whether or not wholly owned by the Charity);
- (x) to amalgamate with any other bodies that are charitable and have objects similar to the Objects and that restrict the payment of any dividend or profit to, and the distribution of assets amongst, their members at least to the same extent as such payments are restricted under these Articles;
- (y) to pay out of the funds of the Charity the costs of and incidental to the formation and registration of the Charity; and
- (z) to do anything else within the law which promotes or helps to promote the Objects.

5. The Trustees

- 5.1 The Trustees as **charity trustees** have control of the Charity and its property and funds.
- 5.2 The Trustees shall consist of at least six and not more than twelve persons who being individuals are over the age of 18, all of whom must be Members, support the Objects and have signed a written declaration of willingness to act as a charity trustee of the Charity.
- 5.3 The subscribers to the **Memorandum** (being the first **Members**) are also the first Trustees. Subsequent Trustees are elected by the Trustees for a term of up to three **years**. In appointing any Trustee, the Trustees must have regard to the skills, knowledge and experience required for the effective administration of the Charity.
- 5.4 Sheffield Teaching Hospitals NHS Foundation Trust will have the right to nominate one individual for appointment by the Trustees on the board of the Charity. In nominating any individual, Sheffield Teaching Hospitals NHS Foundation Trust must have regard to the skills, knowledge and experience required for the effective administration of the Charity and any direction regarding the same given to it by the Trustees or any relevant committee (established under Article 9). If any such nominee is not appointed by the Trustees to the board of the Charity, Sheffield Teaching Hospitals NHS Foundation Trust will have the right to nominate further candidates until any such vacancy is filled. Any Trustee appointed pursuant to this Article 5.4 will be appointed for a term of up to three years.
- 5.5 An outgoing Trustee may be re-appointed under Articles 5.3 or 5.4 for two further terms of up to three years but no individual may serve as a Trustee for more than nine years in total unless the Trustees consider there to be exceptional circumstances which justify a longer term.
- 5.6 A Trustee's term of office as such automatically terminates if he/she:
- (a) ceases to be a Member;
 - (b) is disqualified under the Charities Act from acting as a charity trustee;
 - (c) is incapable, whether mentally or physically, of managing his/her own affairs;
 - (d) is absent without permission, whether given in advance or subsequently, from four consecutive meetings of the Trustees;
 - (e) resigns by written notice to the Trustees (but only if at least two Trustees will remain in office); or
 - (f) is removed by the Members pursuant to the provisions of the Companies Act.
- 5.7 In the case of a Trustee nominated by Sheffield Teaching Hospitals NHS Foundation Trust and appointed under Article 5.4, his or her term of office as a Trustee shall automatically terminate upon Sheffield Teaching Hospitals NHS Foundation Trust giving written notice to the Charity of its withdrawal of nomination in relation to his or her appointment.

6. **Trustees' proceedings**

- 6.1 The minimum number of meetings of the Trustees to be held each year may be fixed by the Trustees from time to time and unless so fixed the minimum number of meetings to be held each year shall be three meetings.
- 6.2 A quorum at a meeting of the Trustees may be fixed by the Trustees and unless so fixed shall be four Trustees.
- 6.3 A Trustee may attend a meeting of the Trustees either in person or by suitable **Electronic Means** agreed by the Trustees in which all participants may communicate with all the other participants but at least one meeting in each year must be held in person.
- 6.4 The **Chairman** or (if the Chairman is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting.
- 6.5 The Chairman shall be elected from among the Trustees for a term not exceeding his or her term of office as Trustee and a retiring Chairman may be re-elected by the Trustees for further such terms but always subject to Article 5.5.
- 6.6 Any issue may be determined by a simple majority of the votes cast at a meeting, but a resolution in writing agreed by all the Trustees (other than any **Conflicted Trustee** who has not been authorised to vote) is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than one document.
- 6.7 Every Trustee has one vote on each issue but, in the case of an equality of votes, the Chairman of the meeting has a second or casting vote.
- 6.8 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a Trustees' meeting (including, but not limited to, a technical defect in relation to the appointment of a Trustee or the service of any notice).

7. **Trustees' powers**

- 7.1 Subject to the provisions of these Articles and the Companies Act, the Trustees may regulate their proceedings as they think fit. The Chairman, or two or more Trustees who are not in office as Chairman, may call a meeting of the Trustees.
- 7.2 The Trustees have the following powers in the administration of the Charity in their capacity as Trustees:
- (a) to admit or remove Members;
 - (b) to appoint and remove a Chairman and any other honorary officers from among their number;
 - (c) to delegate any of their functions to committees;
 - (d) to make standing orders, rules and/or regulations consistent with the constitution and the Companies Act to govern proceedings at meetings and the administration of the Charity; and
 - (e) to exercise in their capacity as Trustees any powers of the Charity which are not reserved to them in their capacity as Members.

8. **Secretary**

The Charity may, but is not required to, have a **Secretary**. Any such Secretary will be appointed by the Trustees for such term, at such remuneration and upon such conditions as the Trustees

may think fit and any Secretary so appointed may be removed by the Trustees. A Secretary may not be a Trustee.

9. **Committees**

9.1 The Trustees may establish a committee or committees comprising such persons as they shall think fit provided that each committee must include at least two Trustees.

9.2 The proceedings and powers of committees established by the Trustees shall be governed by such rules as the Trustees may from time to time prescribe.

9.3 No meeting of any committee shall be quorate unless at least two Trustees are present and no resolution of any committee shall be passed unless the majority of the Trustees present vote in favour of the resolution.

9.4 All proceedings of committees must be reported to the Trustees at the meeting of the Trustees immediately following a committee meeting.

10. **Benefits and conflicts**

10.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the Members but, subject to compliance with Article 10.4:

- (a) Members and **Connected Persons** may be paid interest at a reasonable rate on money lent to the Charity;
- (b) Members and Connected Persons may be paid a reasonable rent or hiring fee for property let or hired to the Charity; and
- (c) Members and Connected Persons may receive charitable benefits on the same terms as any other person.

10.2 A Trustee must not receive any payment of money or other **material benefit** (whether directly or indirectly) from the Charity except:

- (a) as mentioned in Article 10.1 or 10.3;
- (b) reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in running the Charity;
- (c) the benefit of indemnity insurance as permitted by the Charities Act;
- (d) an indemnity in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings); and
- (e) in exceptional cases, other payments or benefits (but only with the written consent of the Commission in advance and where required by the Companies Act the approval of the Members).

10.3 No Trustee or Connected Person may be employed by the Charity except in accordance with Article 10.2(e), but any Trustee or Connected Person may enter into a written contract with the Charity to supply goods or services in return for a payment or other material benefit, but only if:

- (a) the goods or services are actually required by the Charity, and the Trustees decide that it is in the best interests of the Charity to enter into such a contract;
- (b) the nature and level of the consideration is no more than is reasonable in relation to the value of the goods or services and is set in accordance with the procedure in Article 10.4; and

- (c) fewer than half of the Trustees are subject to such a contract in any **financial year**.
- 10.4 Subject to Article 10.5, any Trustee who becomes a Conflicted Trustee in relation to any matter must:
- (a) declare the nature and extent of his/her interest before discussion begins on the matter;
 - (b) withdraw from the meeting for that item after providing any information requested by the Trustees;
 - (c) not be counted in the quorum for that part of the meeting; and
 - (d) be absent during the vote and have no vote on the matter.
- 10.5 When any Trustee is a Conflicted Trustee, the Trustees who are not Conflicted Trustees, if they form a quorum without counting the Conflicted Trustee and are satisfied that it is in the best interests of the Charity to do so, may by resolution passed in the absence of the Conflicted Trustee authorise the Conflicted Trustee, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Trustee, to:
- (a) continue to participate in discussions leading to the making of a decision and/or to vote;
 - (b) disclose to a third party information confidential to the Charity;
 - (c) take any other action not otherwise authorised which does not involve the receipt by the Conflicted Trustee or a Connected Person of any payment or material benefit from the Charity; or
 - (d) refrain from taking any step required to remove the conflict.
- 10.6 This provision may be amended by special resolution but, where the result would be to permit any material benefit to a Trustee or Connected Person, only with the prior written consent of the Commission.
11. **Records and accounts**
- 11.1 The Trustees must comply with the requirements of the Companies Act and of the Charities Act as to keeping records, the audit or independent examination of accounts and the preparation and transmission to the Registrar of Companies and the Commission of information required by law including:
- (a) annual returns;
 - (b) annual reports; and
 - (c) annual statements of account.
- 11.2 The Trustees must also keep records of:
- (a) all proceedings at meetings of the Trustees;
 - (b) all resolutions in writing;
 - (c) all reports of committees; and
 - (d) all professional advice obtained.
- 11.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours.

11.4 A copy of the Charity's constitution and latest available statement of account must be supplied on request to any Trustee. Copies of the latest accounts must also be supplied in accordance with the Charities Act to any other person who makes a written request and pays the Charity's reasonable costs.

12. **Membership**

12.1 The Charity must maintain a register of Members.

12.2 The subscribers to the Memorandum are the first Members.

12.3 **Membership** is open only to the Trustees and is terminated immediately if the Member concerned ceases to be a Trustee.

12.4 The form and the procedure for applying for Membership is to be prescribed by the Trustees.

12.5 Membership is not transferable.

13. **General meetings**

13.1 Trustees in their capacity as Members are entitled to attend **general meetings** in person or by proxy (but only if the appointment of a proxy is in writing and notified to the Charity before the commencement of the meeting).

13.2 Subject to Article 13.12, general meetings are called on at least 14 and not more than 28 **clear days'** written notice indicating the business to be discussed and (if a special resolution is to be proposed) setting out the terms of the proposed special resolution.

13.3 A general meeting may be called by shorter notice if it is so agreed by a majority in number of Members having a right to attend and vote, being a majority together holding not less than 90% of the total voting rights at the meetings of all the Members.

13.4 There is a quorum at a general meeting if the number of Members present in person or by proxy is at least four.

13.5 The Chairman shall chair general meetings. In the absence of the Chairman or in the event of his or her unwillingness to act as chair, the Members shall appoint one or their number to chair the general meeting.

13.6 Except where otherwise provided by the **Articles** or the Companies Act, every issue before a general meeting is decided by **ordinary resolution**.

13.7 Every Member present in person or by proxy has one vote on each issue.

13.8 Except where otherwise provided by the Articles or the Companies Act, a **written resolution** (whether an ordinary or a special resolution) is as valid as an equivalent resolution passed at a general meeting. For this purpose the written resolution may be set out in more than one document.

13.9 The Charity may (but need not) hold an **AGM** in any year.

13.10 Members must annually:

- (a) receive the accounts of the Charity for the previous financial year;
- (b) receive a written report on the Charity's activities;
- (c) be informed of the retirement of those Trustees who wish to retire; and
- (d) appoint reporting accountants or auditors for the Charity;

- 13.11 Members may also from time to time:
- (a) confer on any individual (with his/her consent) any honorary title in respect of the Charity; and
 - (b) discuss and determine any issues of policy or deal with any other business put before them by the Trustees.
- 13.12 A general meeting may be called by the Trustees at any time and must be called within 21 clear days of a written request from one or more Trustees, to be held on a date not more than 28 clear days after the date of the notice convening the meeting.
- 13.13 A technical defect in the appointment of a Member of which the Members are unaware at the time does not invalidate a decision taken at a general meeting or a written resolution.
14. **Limited liability**
- The liability of Members is limited.
15. **Guarantee**
- Every Member promises, if the Charity is dissolved while he/she remains a Member or within one year after he/she ceases to be a member, to pay up to £1 towards:
- (a) payment of those debts and liabilities of the Charity incurred before he/she ceased to be a Member;
 - (b) payment of the costs, charges and expenses of winding up; and
 - (c) the adjustment of rights of contributors among themselves.
16. **Communications**
- 16.1 Notices and other documents to be served on Members or Trustees under the Articles or the Companies Act may be served:
- (a) by hand;
 - (b) by post; or
 - (c) by suitable Electronic Means.
- 16.2 The only address at which a Member is entitled to receive notices sent by post is an address in the United Kingdom shown in the register of Members.
- 16.3 Any notice given in accordance with these Articles is to be treated for all purposes as having been received:
- (a) 24 hours after being sent by Electronic Means;
 - (b) two clear days after being sent by first class post to that address;
 - (c) three clear days after being sent by second class or overseas post to that address;
 - (d) immediately on being handed to the recipient personally; or, if earlier,
 - (e) as soon as the recipient acknowledges actual receipt.

17. **Dissolution**

17.1 If the Charity is dissolved, the assets (if any) remaining after providing for all its liabilities must be applied in one or more of the following ways:

- (a) by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects;
- (b) directly for the Objects or for charitable purposes which are within or similar to the Objects;
- (c) in such other manner as the Commission approves in writing in advance.

17.2 A final report and statement of account must be sent to the Commission.

17.3 This Article 17 may be amended by special resolution but only with the prior written consent of the Commission.

18. **Interpretation**

18.1 The Articles are to be interpreted without reference to the model articles under the Companies Act, which **do not** apply to the Charity.

18.2 In the Articles, unless the context indicates another meaning:

'AGM'	means an annual general meeting of the Charity;
'Articles'	means the Charity's articles of association and 'Article' refers to a particular article;
'Chairman'	means the chairman of the Trustees;
'charitable purposes'	means purposes that are exclusively charitable under the laws of England and Wales and 'charitable' shall be construed accordingly;
'the Charities Act'	means the Charities Acts 1992 and 2011;
'Charity'	means the company governed by these Articles;
'charity trustee'	has the meaning prescribed to it in the Charities Act;
'clear day'	does not include the day on which notice is given or the day of the meeting or other event;
'the Commission'	means the Charity Commission for England and Wales or any body which replaces it;
'the Companies Act'	means the Companies Act 2006;
'Conflicted Trustee'	means a Trustee in respect of whom a conflict of interest arises or may reasonably arise because the Conflicted Trustee or a Connected Person is receiving or stands to receive a benefit (other than payment of a premium for indemnity insurance) from the Charity, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Charity. For the avoidance of doubt, a Trustee nominated by Sheffield Teaching Hospitals NHS Foundation Trust and appointed under Article 5.4 is not ordinarily to be regarded as a Conflicted Trustee in respect of any decisions to be made by the Trustees in respect of grants to or other arrangements with Sheffield Teaching

Hospitals NHS Foundation Trust, but must consider, on each relevant occasion, whether special circumstances constitute him or her as such;

'connected'	as defined in sections 252 and 254 of the Companies Act;
'Connected Person'	means, in relation to a Trustee, a person with whom the Trustee shares a common interest such that he/she may reasonably be regarded as benefiting directly or indirectly from any material benefit received by that person, being either a member of the Trustee's family or household or a person or body who is a business associate of the Trustee or other person with whom the Trustee is connected, and (for the avoidance of doubt) does not include a company with which the Trustee's only connection is an interest consisting of no more than 1% of the voting rights;
'constitution'	means the Memorandum and the Articles and any special resolutions relating to them;
'Custodian'	means a person or body who undertakes safe custody of assets or documents or records relating to them;
'Electronic Means'	refers to communications addressed to specified individuals by telephone, fax or email or, in relation to meetings, by telephone conference call or video conference;
'Financial Expert'	means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;
'financial year'	means the Charity's financial year;
'firm'	includes a limited liability partnership;
'Foundation Trusts'	<p>Means Sheffield Teaching Hospitals NHS Foundation Trust, Sheffield Health and Social Care NHS Foundation Trust and Sheffield Children's NHS Foundation Trust or their respective successors, including in particular:</p> <ul style="list-style-type: none">i) any new NHS Foundation Trust(s) established pursuant to an application made by one or more of them (jointly between them, or by one or more of them jointly with another NHS Foundation Trust or an NHS Trust) under Part 2 of the National Health Service Act 2006; orii) any other NHS Foundation Trust to which the assets and liabilities of one or more of them are transferred under part 2 of the National Health Service Act 2006;
'general meeting'	means a meeting of the Members;
'indemnity insurance'	means insurance against personal liability incurred by any Trustee or other officer (other than any person engaged by the Charity as auditor) for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the act or omission amounts to a criminal offence or the Trustee concerned knew that, or was reckless

	whether, the act or omission was a breach of trust or breach of duty;
'material benefit'	means a benefit, direct or indirect, which may not be financial but has a monetary value;
'Member' and 'Membership'	refer to company membership of the Charity;
'Memorandum'	means the Charity's Memorandum of Association;
'nominee company'	means a corporate body registered or having an established place of business in England and Wales which holds title to property for another;
'Objects'	means the objects of the Charity as set out in Article 3;
'ordinary resolution'	means a resolution agreed by a simple majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold a simple majority of the voting power;
'Secretary'	means a company secretary;
'Sheffield Teaching Hospitals NHS Foundation Trust'	means Sheffield Teaching Hospitals NHS Foundation Trust or its successor, including in particular: <ul style="list-style-type: none"> i) any new NHS Foundation Trust established pursuant to an application made by Sheffield Teaching Hospitals NHS Foundation Trust (jointly with another NHS Foundation Trust or an NHS Trust) under Part 2 of the National Health Service Act 2006; or ii) any other NHS Foundation Trust to which the assets and liabilities of Sheffield Teaching Hospitals NHS Foundation Trust are transferred under part 2 of the National Health Service Act 2006;
'special resolution'	means a resolution of which at least 14 days' notice has been given agreed by a 75% majority of the Members present and voting at a general meeting or in the case of a written resolution by Members who together hold 75% of the voting power;
'Taxable Trading'	means carrying on a trade or business on a continuing basis which is for the principal purpose of raising funds rather than for the purpose of actually carrying out the Objects, unless the income of the Charity from that trade or business is exempt from tax by reason of any legislation from time to time in force;
'Trustee'	means a director of the Charity and 'Trustees' means the directors;
'written' or 'in writing'	refers to a legible document on paper or a document sent by Electronic Means which is capable of being printed out on paper;
'written resolution'	refers to an ordinary or a special resolution which is in writing; and
'year'	means calendar year.

18.3 In these Articles, unless the context indicates another meaning:

- (a) expressions not otherwise defined which are defined in the Companies Act have the same meaning;
- (b) references to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it;
- (c) use of the singular includes the plural and vice versa; and
- (d) use of any gender includes the other genders.

Companies Act 2006
Company limited by guarantee
and not having a share capital
Memorandum of Association of
Sheffield Hospitals Charity

Each subscriber to this Memorandum of Association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

Name of each subscriber

Authentication by each subscriber

Dated:

2016