



2008 CHAPTER 12

PART 9

CHARITY TRUSTEES

CHAPTER 1

INCORPORATION OF CHARITY TRUSTEES

Incorporation of trustees of a charity

73.—(1) Where—

- (a) the trustees of a charity, in accordance with section 75, apply to the Commission for a certificate of incorporation of the trustees as a body corporate, and
- (b) the Commission considers that the incorporation of the trustees would be in the interests of the charity,

the Commission may grant such a certificate, subject to such conditions or directions as the Commission thinks fit to insert in it.

(2) On the grant of such a certificate—

- (a) the trustees of the charity shall become a body corporate by such name as is specified in the certificate; and
- (b) (without prejudice to the operation of section 77) any relevant rights or liabilities of those trustees shall become rights or liabilities of that body.

(3) After their incorporation the trustees—

- (a) may sue and be sued in their corporate name; and
- (b) shall have the same powers, and be subject to the same restrictions and limitations, as respects the holding, acquisition and disposal of property

for or in connection with the purposes of the charity as they had or were subject to while unincorporated;

and any relevant legal proceedings that might have been continued or commenced by or against the trustees may be continued or commenced by or against them in their corporate name.

(4) A body incorporated under this section need not have a common seal.

(5) In this section—

“relevant rights or liabilities” means rights or liabilities in connection with any property vesting in the body in question under section 74; and

“relevant legal proceedings” means legal proceedings in connection with any such property.

Estate to vest in body corporate

74. The certificate of incorporation shall vest in the body corporate all real and personal estate, of whatever nature or tenure, belonging to or held by any person or persons in trust for the charity, and thereupon any person or persons in whose name or names any stocks, funds or securities are standing in trust for the charity, shall transfer them into the name of the body corporate, except that the foregoing provisions shall not apply to property vested in the official custodian.

Applications for incorporation

75.—(1) Every application to the Commission for a certificate of incorporation under this Chapter shall—

- (a) be in writing and signed by the trustees of the charity concerned; and
- (b) be accompanied by such documents or information as the Commission may require for the purpose of the application.

(2) The Commission may require—

- (a) any statement contained in any such application, or
- (b) any document or information supplied under subsection (1)(b),

to be verified in such manner as it may specify.

Nomination of trustees, and filling up vacancies

76.—(1) Before a certificate of incorporation is granted under this Chapter, trustees of the charity must have been effectually appointed to the satisfaction of the Commission.

(2) Where a certificate of incorporation is granted vacancies in the number of the trustees of the charity shall from time to time be filled up so far as required by the constitution or settlement of the charity, or by any conditions or directions in the certificate, by such legal means as would have been available for the

appointment of new trustees of the charity if no certificate of incorporation had been granted, or otherwise as required by such conditions or directions.

Liability of trustees and others, notwithstanding incorporation

77. After a certificate of incorporation has been granted under this Chapter all trustees of the charity, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity and its property, in the same manner and to the same extent as if no such incorporation had been effected.

Certificate to be evidence of compliance with requirements for incorporation

78. A certificate of incorporation granted under this Chapter shall be conclusive evidence that all the preliminary requirements for incorporation under this Chapter have been complied with, and the date of incorporation mentioned in the certificate shall be deemed to be the date at which incorporation has taken place.

Power of Commission to amend certificate of incorporation

79.—(1) The Commission may amend a certificate of incorporation either on the application of the incorporated body to which it relates or of the Commission's own motion.

(2) Before making any such amendment of the Commission's own motion, the Commission shall by notice in writing—

- (a) inform the trustees of the relevant charity of its proposals, and
- (b) invite those trustees to make representations to it within a time specified in the notice, being not less than one month from the date of the notice.

(3) The Commission shall take into consideration any representations made by those trustees within the time so specified, and may then (without further notice) proceed with its proposals either without modification or with such modifications as appear to it to be desirable.

(4) The Commission may amend a certificate of incorporation either—

- (a) by making an order specifying the amendment; or
- (b) by issuing a new certificate of incorporation taking account of the amendment.

Records of applications and certificates

80.—(1) The Commission shall keep a record of all applications for, and certificates of, incorporation under this Chapter and shall preserve all documents sent to it under this Chapter.

(2) Subject to subsection (3), any person may inspect such documents, under the direction of the Commission, and any person may require a copy or extract of any such document to be certified by a certificate signed by a member of the staff of the Commission.

(3) If the Commission so determines, subsection (2) shall not apply to any particular document, or to any document of a description, specified in the determination.

Enforcement of orders and directions

81. All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustees as trusts of the charity, and section 174 shall apply to any trustee who fails to perform or observe any such condition or direction as it applies to a person guilty of disobedience to any such order of the Commission as is mentioned in that section.

Gifts to charity before incorporation to have same effect afterwards

82. After the incorporation of the trustees of any charity under this Chapter every donation, gift and disposition of property, real or personal, lawfully made before the incorporation but not having actually taken effect, or thereafter lawfully made, by deed, will or otherwise to or in favour of the charity, or the trustees of the charity, or otherwise for the purposes of the charity, shall take effect as if made to or in favour of the incorporated body or otherwise for the like purposes.

Execution of documents by incorporated body

83.—(1) This section has effect as respects the execution of documents by an incorporated body.

(2) If an incorporated body has a common seal, a document may be executed by the body by the affixing of its common seal.

(3) Whether or not it has a common seal, a document may be executed by an incorporated body either—

(a) by being signed by a majority of the trustees of the relevant charity and expressed (in whatever form of words) to be executed by the body; or

(b) by being executed in pursuance of an authority given under subsection (4).

(4) For the purposes of subsection (3)(b) the trustees of the relevant charity in the case of an incorporated body may, subject to the trusts of the charity, confer on any 2 or more of their number—

(a) a general authority, or

(b) an authority limited in such manner as the trustees think fit,

to execute in the name and on behalf of the body documents for giving effect to transactions to which the body is a party.

(5) An authority under subsection (4)—

- (a) shall suffice for any document if it is given in writing or by resolution of a meeting of the trustees of the relevant charity, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;
- (b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;
- (c) subject to any such restriction, and until it is revoked, shall, notwithstanding any change in the trustees of the relevant charity, have effect as a continuing authority given by the trustees from time to time of the charity and exercisable by such trustees.

(6) In any authority under subsection (4) to execute a document in the name and on behalf of an incorporated body there shall, unless the contrary intention appears, be implied authority also to execute it for the body in the name and on behalf of the official custodian or of any other person, in any case in which the trustees could do so.

(7) A document duly executed by an incorporated body which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(8) In favour of a purchaser a document shall be deemed to have been duly executed by such a body if it purports to be signed—

- (a) by a majority of the trustees of the relevant charity, or
- (b) by such of the trustees of the relevant charity as are authorised by the trustees of that charity to execute it in the name and on behalf of the body,

and, where the document makes it clear on its face that it is intended by the person or persons making it to be a deed, it shall be deemed to have been delivered upon its being executed.

For this purpose “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

Power of Commission to dissolve incorporated body

84.—(1) Where the Commission is satisfied—

- (a) that an incorporated body has no assets or does not operate, or
- (b) that the relevant charity in the case of an incorporated body has ceased to exist, or

- (c) that the institution previously constituting, or treated by the Commission as constituting, any such charity has ceased to be, or (as the case may be) was not at the time of the body's incorporation, a charity, or
- (d) that the purposes of the relevant charity in the case of an incorporated body have been achieved so far as is possible or are in practice incapable of being achieved,

the Commission may of its own motion make an order dissolving the body as from such date as is specified in the order.

(2) Where the Commission is satisfied, on the application of the trustees of the relevant charity in the case of an incorporated body, that it would be in the interests of the charity for that body to be dissolved, the Commission may make an order dissolving the body as from such date as is specified in the order.

(3) Subject to subsection (4), an order made under this section with respect to an incorporated body shall have the effect of vesting in the trustees of the relevant charity, in trust for that charity, all property for the time being vested—

- (a) in the body, or
- (b) in any other person (apart from the official custodian),

in trust for that charity.

(4) If the Commission so directs in the order—

- (a) all or any specified part of that property shall, instead of vesting in the trustees of the relevant charity, vest—
 - (i) in a specified person as trustee for, or nominee of, that charity, or
 - (ii) in such persons (other than the trustees of the relevant charity) as may be specified;
- (b) any specified investments, or any specified class or description of investments, held by any person in trust for the relevant charity shall be transferred—
 - (i) to the trustees of that charity, or
 - (ii) to any such person or persons as is or are mentioned in paragraph (a) (i) or (ii);

and for this purpose “specified” means specified by the Commission in the order.

(5) Where an order to which this subsection applies is made with respect to an incorporated body—

- (a) any rights or liabilities of the body shall become rights or liabilities of the trustees of the relevant charity; and
- (b) any legal proceedings that might have been continued or commenced by or against the body may be continued or commenced by or against those trustees.

- (6) Subsection (5) applies to any order under this section by virtue of which—
- (a) any property vested as mentioned in subsection (3) is vested—
 - (i) in the trustees of the relevant charity, or
 - (ii) in any person as trustee for, or nominee of, that charity; or
 - (b) any investments held by any person in trust for the relevant charity are required to be transferred—
 - (i) to the trustees of that charity, or
 - (ii) to any person as trustee for, or nominee of, that charity.

Interpretation of Chapter 1

85. In this Chapter—

“incorporated body” means a body incorporated under section 73;

“the relevant charity”, in relation to an incorporated body, means the charity the trustees of which have been incorporated as that body;

“the trustees”, in relation to a charity, means the charity trustees.