



# Charities Act 2011

## 2011 CHAPTER 25

### PART 12

#### INCORPORATION OF CHARITY TRUSTEES

##### *General*

#### **251 Incorporation of charity trustees**

- (1) The Commission may grant a certificate of incorporation of the charity trustees of a charity as a body corporate if—
  - (a) the charity trustees of the charity, in accordance with section 256, apply to the Commission for such a certificate, and
  - (b) the Commission considers that the incorporation of the charity trustees would be in the interests of the charity.
- (2) Such a certificate is subject to such conditions or directions as the Commission thinks fit to insert in it.
- (3) But the Commission must not grant such a certificate if the charity—
  - (a) appears to the Commission to be required to be registered in accordance with section 30, but
  - (b) is not so registered.
- (4) On the grant of such a certificate—
  - (a) the charity trustees of the charity become a body corporate by such name as is specified in the certificate, and
  - (b) any rights or liabilities of those trustees in connection with any property vesting in the body under section 252 become rights or liabilities of that body.  
Paragraph (b) does not affect the operation of section 254 (liability of charity trustees not affected by incorporation).
- (5) After their incorporation the charity trustees—

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- (a) may sue and be sued in their corporate name, and
- (b) have the same powers, and are 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 charity trustees may be continued or commenced by or against them in their corporate name.

- (6) In subsection (5) “relevant legal proceedings” means legal proceedings in connection with any property vesting in the incorporated body under section 252.
- (7) An incorporated body need not have a common seal.

## **252 Estate to vest in incorporated body**

- (1) The certificate of incorporation vests in the incorporated body all real and personal estate, of whatever nature or tenure, belonging to or held by any person or persons in trust for the relevant charity.
- (2) On the vesting of all real and personal estate under subsection (1), any person or persons in whose name or names any stocks, funds or securities are standing in trust for the relevant charity must transfer them into the name of the incorporated body.
- (3) Subsections (1) and (2) do not apply to property vested in the official custodian.

## **253 Gifts to take effect as gifts to incorporated body**

- (1) After the incorporation under this Part of the charity trustees of any charity, every relevant donation, gift and disposition of property made—
  - (a) to or in favour of the charity, or the charity trustees of the charity, or
  - (b) otherwise for the purposes of the charity,
 takes effect as if made to or in favour of the incorporated body or otherwise for the same purposes.
- (2) For the purposes of subsection (1), a donation, gift or disposition of property is a relevant one if (whether of real or personal property and whether made by deed, will or otherwise)—
  - (a) it was lawfully made before the incorporation but has not actually taken effect, or
  - (b) it is lawfully made after the incorporation.

## **254 Liability of charity trustees not affected by incorporation**

After a certificate of incorporation has been granted under this Part, all charity trustees of the charity are, despite their incorporation—

- (a) chargeable for such property as comes into their hands, and
- (b) 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.

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## **255 Charity trustees bound by conditions in certificate etc.**

- (1) All conditions and directions inserted in any certificate of incorporation are binding upon and must be performed or observed by the charity trustees as trusts of the charity.
- (2) Section 336 (enforcement of orders of Commission) applies to any charity 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.

### *Application procedure*

## **256 Applications for incorporation**

- (1) Every application to the Commission for a certificate of incorporation under this Part must be—
  - (a) in writing and signed by the charity trustees of the charity concerned, and
  - (b) 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.

## **257 Requirement to be met before certificate is granted**

Before a certificate of incorporation is granted under this Part, charity trustees of the charity must have been effectually appointed to the satisfaction of the Commission.

## **258 Certificate conclusive as to compliance with incorporation requirements etc.**

- (1) A certificate of incorporation granted under this Part is conclusive evidence that all the preliminary requirements for incorporation under this Part have been complied with.
- (2) The date of incorporation mentioned in the certificate is to be treated as being the date at which incorporation has taken place.

### *Administration etc. of charity whose charity trustees are incorporated*

## **259 Filling up of vacancies in charity trustees**

- (1) This section applies where a certificate of incorporation is granted under this Part.
- (2) Vacancies in the number of the charity trustees of the charity must 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—
  - (a) by such legal means as would have been available for the appointment of new charity trustees of the charity if no certificate of incorporation had been granted, or
  - (b) otherwise as required by such conditions or directions.

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## **260 Execution of documents by incorporated body: general**

- (1) This section and section 261 have 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 by being—
  - (a) signed by a majority of the charity trustees of the relevant charity and expressed (in whatever form of words) to be executed by the body, or
  - (b) executed in pursuance of an authority given under section 261(1).
- (4) 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 is presumed, unless a contrary intention is proved, to be delivered upon its being so executed.
- (5) In favour of a purchaser a document is to be treated as having been duly executed by an incorporated body if it purports to be signed by—
  - (a) a majority of the charity trustees of the relevant charity, or
  - (b) such of the charity trustees of the relevant charity as are authorised by the charity trustees of that charity to execute it in the name and on behalf of the body,

and, if the document makes it clear on its face that it is intended by the person or persons making it to be a deed, it is to be treated as having been delivered upon its being executed.
- (6) For the purposes of subsection (5) “purchaser”—
  - (a) means a purchaser in good faith for valuable consideration, and
  - (b) includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

## **261 Conferral of authority to execute documents**

- (1) For the purposes of section 260(3)(b) the charity trustees of the relevant charity in the case of an incorporated body may, subject to the trusts of the charity, confer on any two or more of their number—
  - (a) a general authority, or
  - (b) an authority limited in such manner as the charity 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.
- (2) An authority under subsection (1)—
  - (a) suffices for any document if it is given in writing or by resolution of a meeting of the charity trustees of the relevant charity, despite 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 charity trustees, or may be restricted to named persons or in any other way;
  - (c) subject to any such restriction, and until it is revoked, has effect, despite any change in the charity trustees of the relevant charity, as a continuing authority

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given by the charity trustees from time to time of the charity and exercisable by such charity trustees.

- (3) In any authority under subsection (1) to execute a document in the name and on behalf of an incorporated body there is, unless the contrary intention appears, 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 charity trustees could do so.

*Commission's powers to amend certificate or dissolve body*

## **262 Amendment of certificate of incorporation**

- (1) The Commission may amend a certificate of incorporation—
- (a) on the application of the incorporated body to which it relates, or
  - (b) of its own motion.
- (2) Before making any such amendment of its own motion, the Commission must by notice in writing—
- (a) inform the charity trustees of the relevant charity of its proposals, and
  - (b) invite those charity trustees to make representations to it within a time specified in the notice.
- (3) The time so specified must be not less than one month from the date of the notice.
- (4) The Commission—
- (a) must take into consideration any representations made by those charity trustees within the time so specified, and
  - (b) may then (without further notice) proceed with its proposals either without modification or with such modifications as appear to it to be desirable.
- (5) The Commission may amend a certificate of incorporation by—
- (a) making an order specifying the amendment, or
  - (b) issuing a new certificate of incorporation taking account of the amendment.

## **263 Dissolution of incorporated body**

- (1) The Commission may of its own motion make an order dissolving an incorporated body from such date as is specified in the order, if the Commission is satisfied—
- (a) that the body has no assets or does not operate,
  - (b) that the relevant charity has ceased to exist,
  - (c) that the institution previously constituting, or treated by the Commission as constituting, the relevant 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—
    - (i) have been achieved so far as is possible, or
    - (ii) are in practice incapable of being achieved.
- (2) The Commission may make an order dissolving an incorporated body from such date as is specified in the order, if the Commission is satisfied, on the application of the charity trustees of the relevant charity, that it would be in the interests of the charity for the body to be dissolved.

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- (3) Subject to subsection (4), an order made under this section with respect to an incorporated body has the effect of vesting in the charity 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, instead of vesting in the charity trustees of the relevant charity, vests in—
    - (i) a specified person as trustee for, or nominee of, that charity, or
    - (ii) such persons (other than the charity 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 are to be transferred to—
    - (i) the charity trustees of that charity, or
    - (ii) any such person or persons as is or are mentioned in paragraph (a) (i) or (ii).
- 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 become rights or liabilities of the charity 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 charity 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 charity trustees of that charity, or
    - (ii) to any person as trustee for, or nominee of, that charity.

### *Supplementary*

## **264 Records of applications and certificates**

- (1) The Commission must keep a record of all applications for, and certificates of, incorporation under this Part.
- (2) Documents sent to the Commission under this Part are to be kept by the Commission for such period as it thinks fit.
- (3) Documents kept under this section are to be open to public inspection at all reasonable times.

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- (4) Any person who is provided with a copy or extract of any document kept under this section may require it to be certified by a certificate signed by a member of the staff of the Commission.

## **265 Meaning of “incorporated body” and “relevant charity”**

In this Part—

“incorporated body” means a body incorporated under section 251;

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

## **266 Effect of provisions relating to vesting or transfer of property**

No vesting or transfer of any property in pursuance of any provision of this Part operates as a breach of a covenant or condition against alienation or gives rise to a forfeiture.

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