

2017 No. 783

CHARITIES, ENGLAND AND WALES

The Charities (Shakespeare Birthplace Trust) Order 2017

<i>Made</i> - - - -	<i>20th July 2017</i>
<i>Laid before Parliament</i>	<i>20th July 2017</i>
<i>Coming into force</i> - -	<i>1st September 2017</i>

The Charity Commission for England and Wales has settled the Scheme set out in the Schedule to this Order in accordance with section 73(1)(a) of the Charities Act 2011^(a) with a view to its being given effect under section 73(2)(b) of that Act.

The Scheme does not go beyond the powers exercisable apart from section 73 of the Charities Act 2011 in altering any statutory provision contained in, or having effect under, any public general Act of Parliament.

The Secretary of State makes the following Order in exercise of the power conferred by section 73(2) of the Charities Act 2011.

Citation and commencement

1. This Order may be cited as the Charities (Shakespeare Birthplace Trust) Order 2017 and comes into force on 1st September 2017.

The Scheme

2. The Schedule has effect.

20th July 2017

Tracey Crouch
Parliamentary Under Secretary of State
Department for Digital, Culture, Media and Sport

(a) 2011 c. 25.
(b) Subsection (2) was amended by SI 2016/997.

Scheme for the administration of the Charity known as the Shakespeare Birthplace Trust

The charity known as the Shakespeare Birthplace Trust is registered with the Charity Commission for England and Wales and is regulated by the Shakespeare Birthplace, &c., Trust Act, 1961(a).

In pursuance of section 73(7) of the Charities Act 2011 (“the 2011 Act”) the Trust has made an application to the Commission for a scheme for the administration of the Trust and the Trust has been notified of the Commission’s intention to proceed with the Scheme.

In pursuance of section 88 of the 2011 Act public notice of the Commission’s proposals has been given and all representations made in response to the notice have been taken into account by the Commission.

The Commission in pursuance of section 73(1) of the 2011 Act settles the Scheme.

Interpretation

1. In this Scheme —

“the 1961 Act” means the Shakespeare Birthplace, &c., Trust Act., 1961;

“the 2011 Act” means the Charities Act 2011;

“the Commission” means the Charity Commission for England and Wales;

“the Trust” means the Shakespeare Birthplace Trust, registered charity number 209302.

Administration of Trust

2. The Trust and its property must be administered in accordance with the 1961 Act as amended by the provisions of this Scheme.

Amendment of section 2 of the 1961 Act

3. In section 2(1) (interpretation) of the 1961 Act, in the relevant place insert—

““the Act of 2000” means the Trustee Act 2000(b);”.

Amendment of section 6 of the 1961 Act

4. In section 6(2)(e) (objects of trust and powers of trustees) of the 1961 Act, for the words “section 29 of the Charities Act 1960(c)” substitute “the Charities Act 2011”.

Power of investment

5. For sections 8 (powers of investment) and 9 (duty of trustees in choosing investments) of the 1961 Act, substitute—

“Powers of investment

8. Any money in the hands of the trust and available for investment may be invested by the trustees in any investments in which trustees may invest under section 3 of the Act of 2000 (general power of investment).

(a) 9 & 10 ELIZ 2 Ch. xxxviii.

(b) 2000 c. 29.

(c) 8 & 9 ELIZ 2. Ch. 58; the whole of that act was repealed by Schedule 9 to the Charities Act 2006 (c. 50).

Duty of trustees in choosing investments

9.—(1) Sections 4(a) (standard investment criteria) and 5 of the Act of 2000 (restrictions on exercise of investment powers) apply in relation to the power in section 8 (reading references in those sections to a trustee as references to the trustees).

(2) The provisions specified in subsection (3) apply in relation to the Trust as they apply in relation to a charitable trust, but with the modifications specified in subsection (4).

(3) The provisions are—

- (a) Part 4 of the Act of 2000 (agents, nominees and custodians) other than sections 11(2), 12(3), 13(3) to (5), 18, 25(2) and 27; and
- (b) section 32 of that Act (remuneration of agents, nominees and custodians).

(4) The modifications are—

- (a) any reference to a charitable trust or a trust is to be read as a reference to the trust;
- (b) any reference to the trustees of a trust, or to the trustees, is to be read as a reference to the trustees;
- (c) any reference to property or assets subject to the trust, or of the trust, is to be read as a reference to the property or assets of the trust;
- (d) any reference to the acquisition of property which is to be subject to the trust is to be read as a reference to the acquisition of property by the trust;
- (e) any reference to the trust instrument is to be read as a reference to this Act;
- (f) any reference to a provision of the Act of 2000 is to be read as a reference to a provision of that Act as it applies in relation to the trust (and any reference to the Act of 2000 is to the provisions of that Act so far as they apply in relation to the trust);
- (g) any reference to trust funds is to be read as a reference to the funds of the trust;
- (h) any reference to section 12(3), 13(5) or 18 is omitted;
- (i) the reference in section 11(3)(d) to any other function prescribed by an order made by the Secretary of State is to be read as a reference to any function prescribed by an order made by the Secretary of State under that provision in relation to a charitable trust and any such order applies in relation to the trust in so far as it applies to a charity which is not an exempt charity, with appropriate modifications;
- (j) in sections 14(1) and 20(1) the references to sections 29 to 32 are to be read as references to section 32;
- (k) in sections 14(3)(b) and 20(3)(b) the words “or any beneficiary” are omitted;
- (l) in sections 16(3) and 17(4) the words “to any trust having a custodian trustee or” are omitted;
- (m) in section 19(4) the words “which is not an exempt charity” are omitted;
- (n) in section 23(1) and (2) the words “under paragraph 3 of Schedule 1” are omitted;
- (o) in section 25(1) the words “Subject to subsection (2)” are omitted.”.

Repeal of section 11 of the 1961 Act

6. Section 11 of the 1961 Act is repealed.

Substitution of the Second Schedule to the 1961 Act

7. For the Second Schedule to the 1961 Act (appointment, constitution and functions of the trustees of the trust) substitute—

(a) Section 4 was amended by section 15(3) of the Charities (Protection and Social Investment) Act 2016 (c. 4).

“SECOND SCHEDULE

Appointment, constitution and functions of the trustees

Interpretation

1.—(1) In this Schedule—

“Charity Commission” means the Charity Commission of England and Wales;

“former ex-officio trustees” means the ex-officio trustees holding office immediately before the relevant day;

“former life trustees” means the life trustees holding office immediately before the relevant day;

“former representative trustees” means the representative trustees holding office immediately before the relevant day;

“honorary fellows” means the individuals who were honorary fellows of the trust immediately before the relevant day;

“relevant day” means the day that the Charities (Shakespeare Birthplace Trust) Order 2017 comes into force;

(2) In this Schedule, in relation to the giving of a notice, any period of time comprising a number of clear days, means a period excluding the day when the notice is given or deemed to be given, and the day for which it is given or on which it is to take effect.

Board of trustees

2.—(1) Unless otherwise determined by resolution of the trustees, the maximum number of trustees is 12 and the minimum number of trustees is eight.

(2) Any person who is willing to act as a trustee, and is permitted by law to do so, may be appointed to be a trustee by a simple majority of all the trustees entitled to attend and vote at any meeting of the trustees.

(3) A person described in paragraph (2) must sign a declaration declaring that he or she is a fit and proper person to act as a trustee before he or she is appointed.

(4) The trustees may delegate the selection of candidates for appointment as trustees to the Nominations Committee of the trust, or to such other committee as has been established under paragraph 9 to perform similar functions.

(5) The following criteria must be taken into account when selecting and appointing trustees—

(a) such guidance as may be issued by the Charity Commission from time to time;

(b) such qualifications as the trustees may specify from time to time;

(c) the need for the trustee body to contain the appropriate balance of skills, knowledge and experience; and

(d) the composition, aims and objectives of the trust as a whole.

(6) No appointment of a trustee may be made which would cause the number of trustees to exceed any number fixed as the maximum number of trustees.

(7) Subject to paragraphs 3 and 4, a trustee must hold office until his or her retirement in accordance with paragraph 5.

Removal of trustees

3. The trustees may remove any trustee before the expiration of his or her period of office by a resolution at a meeting of the trustees passed by at least two thirds of the total number of trustees provided that—

- (a) the trustee proposed to be removed must have received at least 14 clear days' notice in writing of the proposed resolution and the reasons for the proposal;
- (b) the trustee or, at the option of the trustee, the trustee's representative, who need not be a trustee, has been permitted to make representations to the meeting; and
- (c) the trustees passing the resolution determine that it is in the best interests of the trust to do so.

Disqualification or vacation of office of trustees

4. The office of trustee is vacated if—

- (a) the trustee becomes prohibited by law from being a trustee;
- (b) the trustee becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) a registered medical practitioner who is treating the trustee gives a written opinion to the trust stating that the trustee has become physically or mentally incapable of acting as a charity trustee or as a company director and may remain so for more than three months;
- (d) a court makes an order which wholly or partly prevents the trustee from personally exercising any powers or rights which he or she would otherwise have and the trustees resolve that his or her office be vacated;
- (e) the trustee resigns his or her office by written notice to the trust provided at least eight trustees remain in office after the resignation takes effect;
- (f) the trustee is absent from all trustees' meetings without approved leave for one year and the trustees resolve that his or her office be vacated;
- (g) the trustee is directly or indirectly interested in any contract with the trust and fails to declare the nature of his or her interest and the trustees resolve that the office be vacated;
- (h) the trustee is deemed by HM Revenue & Customs not to be a fit and proper person to be a trustee of the trust and the trustees resolve that his or her office be vacated;
- (i) the trustee fails to agree to a reasonable request by the trustees that the trustee signs a declaration that they are a fit and proper person to act as such and the trustees resolve that his or her office be vacated; or
- (j) the trustee fails to agree to a reasonable request by the trustees for a Disclosure and Barring Service check (or equivalent).

Retirement of trustees

5.—(1) For the purposes of this paragraph, a year means the 12-month period beginning with 1st November and ending with 31st October.

(2) Each individual specified in the first column of the table—

- (a) is to be a trustee;
- (b) is to hold office for the period —
 - (i) beginning with the relevant day; and
 - (ii) ending with the end of the board meeting which falls closest in time to the date specified in column 2 of the table which corresponds to the entry in respect of his or her name; and
- (c) must retire at the end of the period described in sub-paragraph (b).

Table

<i>Column 1</i>	<i>Column 2</i>
Ralph Mitchell Bernard	31st October 2018

Peter William Kyle	31st October 2018
John Kennedy Russell	31st October 2018
Carol Chillington Rutter	31st October 2018
Nicholas Quilter Abell	31st October 2019
Penelope, Viscountess Cobham	31st October 2019
Rosaleen Mary Haigh	31st October 2019
Albert John Leon	31st October 2019
Colin Christopher Bennett	31st October 2020
Rebecca Ysabel Dobbs	31st October 2020
Kathryn Olive Perry Gee	31st October 2020
Lena Cowen Orlin	31st October 2020

(3) Any other trustee is appointed for a term of three years and must retire at the end of the board meeting which falls closest in time to 31st October in the year during which his or her period of office is due to end.

(4) Subject to sub-paragraph (5), a person retiring from the office of trustee is eligible for re-election.

(5) Save in exceptional circumstances and with the approval of at least two thirds of the other trustees, no trustee may serve for a consecutive period of more than nine years (not including any period that was not a full year).

Powers and duties of the trustees

6.—(1) Subject to the provisions of this Act, the business of the trust must be managed by the trustees, who may exercise all the powers of the trust.

(2) A meeting of the trustees at which a quorum is present may exercise all powers exercisable by the trustees.

Proceedings and decisions of the trustees

7.—(1) Subject to the provisions of this Act, the trustees may regulate their proceedings as they think fit.

(2) The trustees must meet at least twice a year.

(3) A meeting of the trustees—

(a) may be called by three trustees; and

(b) must, at the request of three trustees, be called by the secretary (if any).

(4) Subject to the urgency of any matter to be decided by the trustees, meetings of the trustees must be called by at least five clear days' notice.

(5) Notice of a meeting of the trustees must be given to each trustee, but need not be in writing.

(6) Notice of any meeting of the trustees must indicate—

(a) its proposed date, time and subject matter;

(b) where it is to take place; and

(c) if it is anticipated that trustees participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(7) Notice of a meeting of the trustees need not be given to trustees who waive their entitlement to notice of that meeting, which they may do by giving notice to that effect to the trust seven days before or after the date on which the meeting is held.

(8) Where a trustee waives his or her entitlement to notice of a meeting within the period of seven days after the meeting has been held, this does not affect the validity of the meeting, or of any business conducted at it.

(9) Trustees are to be treated as having waived their entitlement to notice of a meeting if they have not supplied the trust with the information necessary to ensure that they receive the notice before the meeting takes place.

(10) Any trustee may participate in a meeting of the trustees by means of video conference, telephone or any suitable electronic means agreed by the trustees whereby all persons participating in the meeting can communicate with all the other participants and participation in such a meeting constitutes presence in person at that meeting.

(11) In relation to the quorum for a meeting of the trustees—

- (a) no decision other than a decision to call a meeting of the trustees or a general meeting may be taken by the trustees unless a quorum participates in the decision-making process;
- (b) the quorum for decision-making by the trustees is a majority of the total number of trustees for the time being in office, or such higher number as may be fixed from time to time by a decision of the trustees;
- (c) if the total number of trustees for the time being is less than the quorum required for decision-making by the trustees, or if it is not otherwise possible for a quorum to participate in the decision-making process, the trustees may not take any decision other than a decision to appoint further trustees;
- (d) a trustee must not be counted in the quorum present at a meeting in relation to a resolution on which he or she is not entitled to vote.

(12) Questions arising at a meeting must be decided by a majority of votes.

(13) The trustees must elect a chairperson and a vice-chairperson from among their number and must determine the period for which they are to hold office although the duration of that period must not be longer than the duration of his or her term of office as trustee.

(14) If at any meeting neither the chairperson nor the vice-chairperson is present within ten minutes after the time appointed for holding the same, or if there is no chairperson or vice-chairperson, the trustees present must choose one of their number to chair the meeting.

(15) In the case of an equality of votes—

- (a) the chairperson has a second or casting vote; but
- (b) the chairperson does not have a second or casting vote if, in accordance with the provisions of this Act, the chairperson is not to be counted as participating in the decision-making process for quorum or voting purposes.

(16) Save for the circumstance described in paragraph (15), and subject to paragraph 9(2)(g) no trustee may have more than one vote.

(17) All acts done by any meeting of the trustees or of a committee, or by any person acting as a trustee, are, notwithstanding that it is afterwards discovered that—

- (a) there was some defect in the appointment of any such trustee or person acting as a trustee;
- (b) they, or any of them were disqualified; or
- (c) they or any of them were not entitled to vote on the matter,

as valid as if every such person had been duly appointed, was qualified to be a trustee and was entitled to vote on the matter in question.

(18) Save for a resolution to remove a trustee from office under paragraph 3, a resolution in writing, or submitted electronically, signed by all the trustees entitled to receive notice of a meeting of the trustees and to vote upon the resolution is as valid as if it had been passed

at a meeting of the trustees duly convened and held and may consist of several documents in like form each signed by one or more trustees.

(19) Subject to the provisions of this Act, the trustees may make any rules which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to the trustees.

The Council

8.—(1) The trustees must establish and maintain a consultative committee, to be known as the Council.

(2) Subject to sub-paragraphs (4) to (6), the membership, functions and procedures of the Council may be prescribed in regulations made under paragraph 13.

(3) Life membership of the Council must be extended to such of the former life trustees and honorary fellows of the trust as may wish to take up such membership.

(4) The trustees may appoint such other persons as they think fit to be members of the Council, provided that the trustees may be entitled to delegate the selection of candidates to the Council.

(5) Appointments made by the trustees under sub-paragraph (4) may be for such periods as the trustees think fit.

(6) In exercising their powers under this paragraph, the trustees and the Council must have regard to—

- (a) the need for the Council to consist of individuals who, in their opinion, are best able to contribute to the furtherance of the objects of the trust; and
- (b) the skills, knowledge and experience that are available within Warwickshire, and within organisations with which the trust has a working relationship or other close connection.

(7) For a period of at least three years from the relevant day, membership of the Council must be extended to the former ex-officio trustees and to the former representative trustees.

Delegation by the trustees

9.—(1) The trustees may delegate any of their powers to any other committee consisting of two or more trustees and may determine the terms of any delegation to such a committee and may impose conditions, including that—

- (a) the relevant powers are to be exercised exclusively by the committee to whom the trustees delegate;
- (b) no expenditure may be incurred on behalf of the trust except in accordance with a budget previously agreed with the trustees.

(2) Subject to or in default of any other terms imposed by the trustees—

- (a) the chairperson and vice-chairperson are ex-officio members of every committee appointed by the trustees;
- (b) the members of a committee may, with the approval of the trustees, appoint such persons, not being trustees, as they think fit to be members of that committee, provided that the persons so appointed do not outnumber the members of the committee who are trustees;
- (c) a committee may elect a chairperson of its meetings, but—
 - (i) if no such chairperson is elected; or
 - (ii) if at any meeting the chairperson is not present within ten minutes after the time appointed for holding the same,

the members present may choose one of their number to chair the meeting;

- (d) a committee may meet and adjourn as it thinks proper;

- (e) questions arising at any meeting must not be determined at that meeting unless the majority of committee members present are trustees;
- (f) subject to paragraph (e), questions arising at any meeting must be determined by a majority of votes of all the committee members present; and
- (g) in the case of an equality of votes the chairperson of the committee has a second or casting vote.

(3) Subject to sub-paragraph (2), any committee to which the trustees delegate any of their powers must follow procedures which are based, as far as possible, on those provisions of this Act which govern the taking of decisions by the trustees.

(4) The terms of any delegation to a committee must be recorded in writing.

(5) The trustees may revoke or alter a delegation and any revocation or alteration of the terms of delegation must be recorded in writing.

(6) All acts and proceedings of committees must be reported to the trustees fully and promptly.

Honorary officers

10.—(1) The trustees may from time to time appoint a president, one or more vice-presidents, patrons, honorary fellows and such other honorary officers as they think fit, and may invest them respectively with such titles, duties and privileges (not being of an executive nature) as they deem suitable.

(2) The trustees may remove any honorary officer without giving any reason for doing so.

(3) Each honorary officer is to hold office for such period as the trustees may on his or her election specify or, if no period was so specified, until he or she resigns or dies or is removed by the trustees or until another person is appointed to his or her office.

Accounts

11.—(1) The trustees must comply with all applicable statutory requirements for the keeping of financial records, the audit or other scrutiny of accounts (as required) and the preparation and transmission to the Charity Commission of—

- (a) annual reports;
- (b) annual returns; and
- (c) annual statements of account.

(2) Accounting records relating to the trust must be made available for inspection by any trustee at any reasonable time during normal office hours.

(3) The trustees must supply a copy of the trust's latest available statement of account to any trustee on request, and within two months of the request to any other person who makes a written request and pays the trust's reasonable costs of complying with the request.

Audit

12. Auditors must be appointed and their duties regulated as required in accordance with the 2011 Act.

Regulations

13.—(1) The trustees may from time to time make such regulations as they may deem necessary or convenient for the proper conduct and administration of the trust or for the purpose of prescribing classes and conditions of membership of any group established to support the trust.

(2) Regulations made under sub-paragraph (1) may regulate the procedure at meetings of the trustees and committees in so far as such procedure is not regulated by this Act.

(3) Any regulations in force immediately before the relevant day are deemed to have been made under this paragraph.”.

Signed by authority of the Commission

Kenneth Dibble
Director of Legal Services
The Charity Commission

18th July 2017

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to the Charity Commission’s Scheme for the administration of the Shakespeare Birthplace Trust, a charity regulated by the Shakespeare Birthplace Trust Act 1961; this Order amends that Act. The Scheme only brings about administrative changes and does not alter the objectives of the Trust or otherwise affect its activities or operations.

The main purpose of the Scheme is to provide for a smaller board of between eight and twelve trustees, who will be appointed on the basis of their skills, knowledge and expertise. The Scheme also establishes a new consultative Council to the board.

The Scheme also modernises provision relating to the proceedings of the board of trustees. The Scheme additionally introduces an express power for the Trustees to delegate certain functions to sub-committees.

An impact assessment has not been produced for this Order as no impact on the private or wider voluntary sectors is foreseen.

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