

The Spence Bequest – proposed amendments to Governing Document

Introduction

The current Governing Document is HIGH COURT (CHANCERY DIVISION) SCHEME DATED 18TH JULY 1966 and, in pursuance to section 74D Charities Act 1993, the provisions set out within this document are proposed to be incorporated into the current Governing Document (without amending the current Governing Document which makes no provision for, and therefore does not conflict with, the administrative procedures set out within this document).

If proposed amendments are so brought into effect a revised Governing Document will be produced and a copy of the same will be lodged with the Charity Commission so that the register entry relating to The Spence Bequest can be updated.

Proposed Amendments

1. Powers

In addition to any other powers they have, the trustees may exercise any of the following powers in order to further the objects (but not for any other purpose):

- (1) to raise funds. In exercising this power, the trustees must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations;
- (2) to buy, take on lease or in exchange, hire or otherwise acquire property and to maintain and equip it for use;
- (3) to sell, lease or otherwise dispose of all or any part of the property belonging to the charity. In exercising this power, the trustees must comply as appropriate with sections 36 and 37 of the Charities Act 1993, as amended by the Charities Act 2006;
- (4) to borrow money and to charge the whole or any part of the property belonging to the charity as security for repayment of the money borrowed. The trustees must comply as appropriate with sections 38 and 39 of the Charities Act 1993, as amended by the Charities Act 2006, if they wish to mortgage land owned by the charity;
- (5) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- (6) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects;
- (7) to acquire, merge with or enter into any partnership or joint venture arrangement with any other charity formed for any of the objects;
- (8) to create such advisory committees as the trustees think fit;
- (9) to employ and remunerate such staff as are necessary for carrying out the work of the charity;
- (10) to do any other lawful thing that is necessary or desirable for the achievement of the objects.

2. Statutory powers

Nothing in this governing document restricts or excludes the exercise by the trustees of the powers given by the Trustee Act 2000 as regards investment, the acquisition or disposal of land and the employment of agents, nominees and custodians.

3. Delegation

(1) In addition to their statutory powers, the trustees may delegate any of their powers or functions to a committee of two or more trustees. A committee must act in accordance with any directions given by the trustees. It must report its decisions and activities fully and promptly to the trustees. It must not incur expenditure on behalf of the charity except in accordance with a budget previously agreed by the trustees.

(2) The trustees must exercise their powers jointly at properly convened meetings except where they have:

(a) delegated the exercise of the powers (either under this provision or under any statutory provision), or

(b) made some other arrangements, by regulations under clause 18.

(3) The trustees must consider from time to time whether the powers or functions which they have delegated should continue to be delegated.

4. Duty of care and extent of liability

(1) When exercising any power (whether given to them by this governing document, or by statute, or by any rule of law) in administering or managing the charity, each of the trustees must use the level of care and skill that is reasonable in the circumstances, taking into account any special knowledge or experience that he or she has or claims to have ('the duty of care').

(2) No trustee, and no one exercising powers or responsibilities that have been delegated by the trustees, shall be liable for any act or failure to act unless, in acting or in failing to act, he or she has failed to discharge the duty of care.

5. Appointment of trustees

(1) There must be at least 3 trustees. Apart from the first trustees, every trustee must be appointed by a resolution of the trustees passed at a meeting.

(2) In selecting individuals for appointment as trustees, the trustees must have regard to the skills, knowledge and experience needed for the effective administration of the charity

(3) The trustees must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each trustee. If ex-officio trustees are appointed the trustees must keep a record of the name of any new post holder who, by virtue of their employment/position within an organisation, is an ex-officio trustee

(4) The trustees must make available to each new trustee, on his or her first appointment:

(a) a copy of the governing document and any amendments made to it;

(b) a copy of the charity's statement of accounts.

6. Eligibility for trusteeship

(1) No one shall be appointed as a trustee:

(a) if he or she is under the age of 18 years; or

(b) if he or she would at once be disqualified from office under the provisions of clause 7.

(2) No one shall be entitled to act as a trustee whether on appointment or on any re-appointment as trustee until he or she has expressly acknowledged, in whatever way the trustees decide, his or her acceptance of the office of trustee of the charity.

7. Termination of trusteeship

A trustee shall cease to hold office if he or she:

- (1) is disqualified for acting as a trustee by virtue of section 72 of the Charities Act 1993 or any statutory re-enactment or modification of that provision;
- (2) becomes incapable by reason of mental disorder, illness or injury of managing his or her own affairs;
- (3) is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated; or
- (4) notifies to the trustees a wish to resign (but only if enough trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).

8. Vacancies

If a vacancy occurs the trustees must note the fact in the minutes of their next meeting. Any eligible trustee may be re-appointed. If the number of trustees falls below the quorum in Clause 13, none of the powers or discretions conferred by this governing document or by law on the trustees shall be exercisable by the remaining trustees except the power to appoint new trustees.

9. Ordinary meetings

The trustees must hold at least one ordinary meeting each year with the opportunity to call extra meetings as necessary. One such meeting in each year must involve the physical presence of those trustees who attend the meeting. Other meetings may take such form, including videoconferencing, as the trustees decide provided that the form chosen enables the trustees both to see and to hear each other.

10. Calling meetings

The first meeting of the trustees, which shall be a ordinary meeting followed immediately after by a special meeting, is to be at a venue and time to be confirmed. The trustees must arrange at each of their meetings the date, time and place of their next meeting, unless such arrangements have already been made. Ordinary meetings may also be called at any time by the person elected to chair meetings of the trustees or by any two trustees. In that case not less than ten days' clear notice must be given to the other trustees.

11. Special meetings

A special meeting may be called at any time by the person elected to chair meetings of the trustees or by any two trustees. Not less than four days' clear notice must be given to the other trustees of the matters to be discussed at the meeting. However, if those matters include the appointment of a trustee or a proposal to amend any of the trusts of this governing document, not less than 21 days' notice must be given. A special meeting may be called to take place immediately after or before an ordinary meeting.

12. Chairing of meetings

The trustees at their first ordinary meeting in each year must elect one of their number to chair their meetings. The person elected shall always be eligible for re-election. If that person is not present within ten minutes after the time appointed for holding a meeting, or if no one has been elected, or if the person elected has ceased

to be a trustee, the trustees present must choose one of their number to chair the meeting.

The person elected to chair meetings of the trustees shall have no other additional functions or powers except those conferred by this governing document or delegated to him or her by the trustees.

13. Quorum

(1) Subject to the following provision of this clause, no business shall be conducted at a meeting of the trustees unless at least one-third of the total number of trustees at the time, or two trustees (whichever is the greater) are present throughout the meeting.

(2) The trustees may make regulations specifying different quorums for meetings dealing with different types of business.

14. Voting

At meetings, decisions must be made by a majority of the trustees present and voting on the question. The person chairing the meeting shall have a casting vote whether or not he or she has voted previously on the same question but no Trustee in any other circumstances shall have more than one vote.

15. Conflicts of interests and conflicts of loyalties

A charity trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not been previously declared; and
- (2) absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the charity and any personal interest (including but not limited to any personal financial interest).

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

16. Saving provisions

(1) Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of the charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:

- (a) who is disqualified from holding office;
- (b) who had previously retired or who had been obliged by this governing document to vacate office;
- (c) who was not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise if without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.

(2) Sub-clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for sub-clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 15 (Conflicts of interests and conflicts of loyalties).

17. Minutes

The trustees must keep minutes, in books kept for the purpose or by such other means as the trustees decide, of the proceedings at their meetings. In the minutes the trustees must record their decisions and, where appropriate, the reasons for those decisions. The trustees must approve the minutes in accordance with the procedures, laid down in regulations made under clause 18 of this governing document.

18. General power to make regulations

- (1) The trustees may from time to time make regulations for the management of the charity and for the conduct of their business, including
- (a) the calling of meetings;
 - (b) methods of making decisions in order to deal with cases or urgency when a meeting is impractical;
 - (c) the deposit of money at a bank;
 - (d) the custody of documents; and
 - (e) the keeping and authenticating of records. (If regulations made under this clause permit records of the charity to be kept in electronic form and requires a trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.)
- (2) The trustees must not make regulations which are inconsistent with anything in this governing document.

19. Disputes

If a dispute arises between the trustees about the validity or propriety of anything done by the charity trustees under this governing document, and the dispute cannot be resolved by agreement, the trustees party to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

20. Accounts, Annual Report and Annual Return

The trustees must comply with their obligations under the charities Act 1993, as amended by the charities Act 2006, with regard to;

- (1) the keeping of accounting records for the charity;
 - (2) the preparation of annual statements of account for the charity;
 - (3) the auditing or independent examination of the statements of account of the charity;
 - (4) the transmission of the statements of account of the charity to the Commission;
 - (5) the preparation of an Annual Report and its transmission to the Commission;
 - (6) the preparation of an Annual Return and its transmission to the Commission.
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21. Registered particulars

The trustees must notify the Commission promptly of any changes to the charity's entry on the Central Register of charities.

22. Bank account

Any bank or building society account in which any of the funds of the charity are deposited must be operated by the trustees and held in the name of the charity. Unless the regulations of the trustees make other provision, all cheques and orders for the payment of money from such an account shall be signed by at least two trustees.

23. Application of income and property

(1) The income and property of the charity must be applied solely towards the promotion of the objects.

(a) A charity trustee is entitled to be reimbursed out of the property of the charity or may payout of such property reasonable expenses properly incurred by him or her when acting on behalf of the charity.

(b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the charity's expense in accordance with, and subject to the conditions in, section 73F of the charities Act 1993.

(2) Subject to clause 24, none of the income or property of the charity may be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise by way of profit to any charity trustee.

24. Benefits and payments to charity trustees and connected persons

No charity trustee or connected person may:

(a) buy or receive any goods or services from the charity on terms preferential to those applicable to members of the public;

(b) sell goods, services or any interest in land to the charity;

(c) be employed by, or receive any remuneration from, the charity;

(d) receive any other financial benefit from the charity;

unless the payment or benefit is authorised by the court or the Charity Commission ('the Commission'). In this clause a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value.

25. Repair and insurance

The trustees must keep in repair and insure to their full value against fire and other usual risks all the buildings of the charity (except those buildings that are required to be kept in repair and insured by a tenant). They must also insure suitably in respect of public liability and employer's liability.

26. Expenses

The trustees may use the charity's funds to meet any necessary and reasonable expenses ("out of pocket expenses") which they incur in the course of carrying out their responsibilities as trustees of the charity

27 . Amendment of governing document

(1) The trustees may amend the provisions of this governing document, provided that:

(a) no amendment may be made to clause 4 (Duty of care and extent of liability), clause 27 (Application of income and property) and clause 23

(Benefits and payments to charity trustees and connected persons), clause 28 (Dissolution) or this clause without the prior consent in writing of the Commission; and

(b) no amendment may be made that would have the effect of making the charity cease to be a charity at law.

(c) no amendment may be made to alter the objects if the change would undermine or work against the previous objects of the charity and any amendment to alter the object must be made in pursuance to section 74C of the Act.

(2) Any amendment must be made following a decision of the trustees made at a special meeting.

(3) The trustees must send to the Commission a copy of any decision effecting any amendment made under this clause within three months of it being made.

28. Dissolution

(1) The trustees may seek consent from the Commission to dissolve the charity if they decide, by passing a resolution at a special meeting, to seek such consent.

29. Interpretation

(1) In this document:

all references to particular legislation are to be understood as references to legislation in force at the date of this governing document and also to any subsequent legislation that adds to, modifies or replaces that legislation

(2) 'connected person' means:

(a) a child, parent, grandchild, grandparent, brother or sister of the trustee;
(b) the spouse or civil partner of the trustee or of any person falling within sub-clause

(a) above;

(c) a person carrying on business in partnership with the trustee or with any person falling within sub-clause (a) or

(b) above;

(d) an institution which is controlled -

(i) by the trustee or any connected person falling within sub-clause (a), (b), or (c) above; or

(ii) by two or more persons falling within sub-clause (d) (i), when taken together

(e) a body corporate in which -

(i) the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or

(ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

(3) Paragraphs 2 to 4 of schedule 5 to the Charities Act 1993 apply for the purposes of interpreting the terms used in sub-clause (2) above.

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