STATUTORY INSTRUMENTS

2017 No. 783

CHARITIES, ENGLAND AND WALES

The Charities (Shakespeare Birthplace Trust) Order 2017

Made - - - -	*20th July 2017*
Laid before Parliament	*20th July 2017*
Coming into force - -	*1st September 2017*

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(**1**) with a view to its being given effect under section 73(2)(**2**) 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.

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

20th July 2017

(**1**) 2011 c. 25.
(**2**) Subsection (2) was amended by SI 2016/997.

SCHEDULE Article 2

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(**3**).

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(**4**);".

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(**5**)" 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).

(**3**) 9 & 10 ELIZ 2 Ch. xxxviii.
(**4**) 2000 c. 29.
(**5**) 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(**6**) (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.

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

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—

"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 —