

STARTING UP

## Charitable Trusts: Model Trust Deed



## The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are over 160,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

## Charitable Trusts: Model Trust Deed (GD2)

A trust is likely to be appropriate where the charity:

- will not have a membership; and
- is unlikely to employ a significant number of staff or carry on any kind of business.

### Guidance to consider before you begin

You may find it helpful to begin by reading the following guidance on our website:

- The comprehensive information under *Start up a charity*
- *Registering as a Charity (CC21)*. Its checklist of questions will help you to decide how best to set up the charity.
- *Choosing and Preparing a Governing Document (CC22)*. This gives advice on the practicalities of completing the charity's governing document and on the different provisions which may be needed.
- Our guidance *The Essential Trustee - What you need to know (CC3)*, which sets out the basics that all charity trustees need to know.

### Next steps

#### 1. Completing the trust deed

Once you have decided to apply to register a charitable trust, please read the trust deed and its accompanying guidance notes carefully.

Some clauses contain blank spaces that you will need to fill in.

The model is intended to be sufficiently flexible to deal with most eventualities. If you want to include special or complex provisions which are not contained in it you should consider asking a solicitor to help you. Please make clear any changes you make and why they are necessary. This will help us to consider your application as quickly as possible. We cannot guarantee to accept every organisation which uses the model trust deed as charitable. We must consider each case separately.

#### 2. After you have completed the model trust deed, please:

- execute the deed - this involves signing and dating it in the presence of a witness - the notes give more detail about this; and
- check whether the deed needs to be stamped by HM Revenue & Customs (see next page under 'Does the deed need to be stamped?')

#### 3. Applying to register

To register a new charity, apply online. (The online application material includes *Application for registration – guidance notes*.)

Please attach a copy of your final executed trust deed and your signed *Trustee Declaration* to your application. If you cannot attach these documents to your application please proceed to apply online and we will email you instructions about how to send them to us.

If you cannot apply online, please contact us using the link from our website homepage.

#### 4. How long will it take?

We can normally make a decision in 15 working days if an organisation:

- uses our model wording for its objects (as set out in the *Example charitable objects* on our website);
- shows that its activities are consistent with the objects;
- shows that any private benefit is incidental and is properly managed; and
- uses our model governing document,

Other applications will need closer consideration and so will take longer (especially where the charity's purposes are novel and/or at the boundaries of what is charitable).

#### **Does the deed need to be stamped?**

Deeds executed before 1 December 2003 require stamping.

Deeds executed on or after 1 December 2003 but before 13 March 2008 only require stamping if the deed declares trusts over stocks and shares.

Deeds executed on or after 13 March 2008 do not require stamping.

If your Deed needs to be stamped then you should send it (or a certified copy of it) to:

HM Revenue & Customs  
Birmingham Stamp Office  
City Centre House  
30 Union Street  
Birmingham  
B2 4AR

Further information can be found on the HM Revenue & Customs website ([www.hmrc.gov.uk](http://www.hmrc.gov.uk)) or by ringing the Stamp Duty helpline: 0845 603 0135.

## Notes

First trustees - Insert full names and addresses. (Clause 9 specifies the minimum number of trustees.) The first trustees should be the same people whose signatures are witnessed at the end of this declaration of trust and whose names appear on the Application for charity registration Trustee Declaration. The charity trustees will be subject to a number of legal duties which are set out in our guidance *The Essential Trustee: What you need to know* (CC3). All prospective charity trustees should read that guidance before taking up office.

Starting Sum - Insert a description of the money or other property held. A trust cannot exist unless there is some money or property that is subject to it. A token sum of money is sufficient to create a charitable trust, but may not be enough to enable the trust to qualify for registration: see *Registering as a Charity* (CC21).

**Clause 2** - The power in this clause can be exercised whenever the trustees think that the charity's interests will be served by changing its name. In general, the Commission will object to a new name only if it infringes the principles set out in section 42 of the Charities Act 2011 (briefly, if the name is too similar to that of another charity, or is in some other way misleading or misrepresentative, or is offensive).

## THIS DECLARATION OF TRUST IS MADE

the..... day of .....20 ..... by

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

('the first trustees')

The first trustees hold the sum of

£ .....  
.....

on the trusts declared in this deed and they expect that more money or assets will be acquired by them on the same trusts.

## NOW THIS DEED WITNESSES AS FOLLOWS:

### 1. Administration

The charitable trust created by this deed ('the charity') shall be administered by the trustees. (In this deed, the expression 'the trustees' refers to the individuals who are the trustees of the charity at any given time. It includes the first trustees and their successors. The word 'trustee' is used to refer to any one of the trustees.)

### 2. Name

The charity shall be called

.....  
.....



## Notes

**Clause 5** - Include any of the powers from the following sub-clauses which you consider necessary, numbered in sequence. Some powers are implicit in a charity's objects (for example, if the object is to provide a school, the trustees have an implicit power to acquire premises). Other powers are given by statute, often only if specific conditions are met. For example, the Trustee Act 2000 gives trustees power to acquire and dispose of land, to borrow money in many circumstances, to delegate much of the running of the charity and to invest. However, there are some things that can be done only if the charity's governing document provides express power to do them. It is sensible to set out all the powers that the charity is likely to need, for the avoidance of doubt and to remind trustees of the conditions that have to be met when they exercise those powers.

**Clause 5(1)** - This sub-clause provides a general power to raise funds through a wide variety of methods including inviting and receiving donations and legacies. The only restriction here is that it does not allow the charity to engage in taxable permanent trading for the purpose of raising funds. Although trading on a small scale is allowed: HM Revenue & Customs provides guidance on the tax treatment of different sorts of trading. If your charity is likely to raise funds from trading, our guidance *Charities and Trading* (CC35) provides detailed advice. This sub-clause does not prevent trading in order to carry out the charity's object - for example, an educational charity can charge fees for the educational services it provides.

**Clause 5(2)** - This power is helpful if the trustees wish to acquire property either for use as office premises or functionally (such as a playground or school site). Our guidance *Acquiring Land* (CC33) contains further guidance on the issue. When the trustees acquire land for the charity, the ownership of the land cannot rest with the charity directly as it has no separate legal identity. The trustees will therefore need to ensure that title to the charity's land is held in the name of individuals, or a company, in trust on behalf of the charity. Typically this can be some or all of the trustees, the Official Custodian for Charities (see *The Official Custodian for Charities' Land Holding Service* - CC13) or a nominee - see clause 6 notes.

**Clause 5(3)** - This power enables the charity to dispose of its property. Sections 117 - 122 of the Charities Act 2011 apply to most charities and require trustees to comply with certain conditions to ensure that they dispose of the property for the

## 5. 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 117 - 122 of the Charities Act 2011;
- (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 124 - 126 of the Charities Act 2011 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.

## 6. Statutory powers

Nothing in this deed 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.

## Notes

best price reasonably obtainable. Our guidance *Disposing of Charity Land* (CC28) provides more information about this.

**Clause 5(4)** - This provides the trustees with an explicit power to borrow. It also makes clear that if this power to borrow involves securing the loan on assets of the charity the trustees must comply with the requirements of the Charities Act 2011. Briefly, the Act requires that the trustees take advice and provide certain certificates/statements when they are borrowing money by way of mortgage. Our Operational Guidance *Borrowing and mortgages* on our website provides detailed information on this.

**Clause 5(9)** - This power cannot be used to employ trustees as staff. See clause 28.

Clause 6 - The trustees will have the wide powers conferred by the Trustee Act 2000, whether or not they are expressly included in this document. The statutory power of investment requires the trustees to take advice and to consider the need to invest in a range of different investments. Our guidance *Investment of Charitable Funds: Basic Principles* (CC14) provides more information about charity investments. The powers to employ agents, nominees and custodians is of particular use where a charity wishes to use an investment manager or where it owns land and needs a nominee to hold land on its behalf - see note to clause 5(2).

**Clause 7** - The trustees are responsible for supervising the activities of their delegates.

**Clause 9** - Insert the number of trustees in the square brackets. Unless the charity is to be administered by a company, we recommend that there are at least three trustees. This will help with the quality of decision making and the sharing of the responsibilities and duties that attach to trusteeship. (There must be at least two trustees to give a receipt for capital.) Refer also to clause 12 of the deed about trustee numbers. We would recommend that trustees are appointed for a fixed term and if you choose this option, delete the square brackets and complete the number for the term of years. If the appointment is not to be for a fixed term, delete the text in the square brackets.

**Clause 9(4)** - Our guidance *Finding New Trustees - What charities need to know* (CC30) provides guidance on effective methods of recruiting new trustees. This includes advice on what information to provide new trustees with - in addition to

## 7. 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 22.
- (3) The trustees must consider from time to time whether the powers or functions which they have delegated should continue to be delegated.

## 8. Duty of care and extent of liability

- (1) When exercising any power (whether given to them by this deed, 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.

## 9. Appointment of trustees

- (1) There must be at least [ ] trustees. Apart from the first trustees, every trustee must be appointed [for a term of ..... years] by a resolution of the trustees passed at a special meeting called under clause 15 of this deed.
- (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.
- (4) The trustees must make available to each new trustee, on his or her first appointment:
  - (a) a copy of this deed and any amendments made to it;
  - (b) a copy of the charity's latest report and statement of accounts.

**Notes**

(a) and (b) here, the trustees might wish to provide a copy of the minutes covering the previous year's meetings.

**Clause 9(5)** - The first trustees are those individuals named at the beginning of this deed. There is no need to include sub-clause (5) if the trustees will continue in post until they retire. There are, however, benefits in including fixed periods of appointment, not least by ensuring that the appointments are regularly reviewed. If this sub-clause is included, we recommend that you 'stagger' the terms of office of the first trustees to ensure that they do not all go out of office at the same time. For example, if there are three trustees, one might be appointed for five years, one for four years and one for three years.

**Clause 11(1)** - Our guidance *Finding New Trustees - What charities need to know* (CC30) explains what sections 178 and 179 of this Act covers. In very broad terms, someone who has been convicted of offences involving deception or fraud, or who is an undischarged bankrupt or who has been removed from office as a trustee by us will be disqualified for acting as a trustee.

(5) The first trustees shall hold office for the following periods respectively:

.....  
.....  
.....  
.....  
.....  
.....

**10. 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 11 of this deed.
- (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.

**11. 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 sections 178 and 179 of the Charities Act 2011 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).

**12. 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 17(1), none of the powers or discretions conferred by this deed or by law on the trustees shall be exercisable by the remaining trustees except the power to appoint new trustees.

## Notes

**Clause 13** - We provide guidance on meetings in our guidance *Charities and Meetings* (CC48).

**Clause 14** - Insert the name of one of the first trustees who will call the first meeting. 'Clear days' does not include the day on which the notice would be received by the trustee or the day on which the meeting is held. Section 332 of the Charities Act 2011 sets out how notice may be given by post. In broad terms, the charity may send notice to each trustee at the UK address held in the charity's records: no notice is required for trustees living outside the UK. The notice would be regarded as being received on the day when 'in the ordinary course of post' it is expected to arrive: so a first class letter should be expected to arrive 1 day after posting and that is the day on which the notice would be regarded as being received.

### 13. Ordinary meetings

The trustees must hold at least two ordinary meetings each year. 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.

### 14. Calling meetings

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. The first meeting of the trustees must be called by ..... or, if no meeting has been called within three months after the date of this deed, by any two of the trustees.

### 15. 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 deed, 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.

### 16. 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 deed or delegated to him or her by the trustees.

### 17. 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.

**Clause 19** - This reflects good practice on managing conflicts of interests and loyalties.

**Clause 20** - This reduces the risk of trustees' decisions being declared invalid for purely technical reasons.

### 18. 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.

### 19. 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.

### 20. 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 deed 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 19 (Conflicts of interests and conflicts of loyalties).

**Clause 22(1)(e)** - The Electronic Communications Act 2000 and the Electronic Signatures Regulations 2002 permit electronic signatures to be accepted as evidence, subject to certain conditions. This sub-clause summarises those conditions. Regulations are effectively the internal procedures adopted by the trustees for the effective administration of the charity. They cannot be used to change any of the provisions in this deed - clause 31 of this deed sets out the procedure for amending the provisions of this deed.

**Clause 23** - Disputes: It is good practice to include provisions for dealing with any disputes that arise between trustees. Litigation can be expensive, and litigation about the internal affairs of a charity would almost certainly constitute 'charity proceedings', which can be taken only with the Commission's authority. We would usually require the parties to a dispute to have tried mediation first.

**Clause 24** - Guidance on our website sets out the key accounting requirements for charities. All charities with incomes over £10,000 must send accounts to the Charity Commission within 10 months of the end of the financial year to which the accounts relate.

**Clause 24(5)** - All charities with annual incomes of over £10,000 must send us their Annual Report within 10 months of the end of their financial year.

**Clause 24(6)** - All charities with annual incomes of over £10,000 must complete an Annual Return and send it to us within 10 months of the end of their financial year: the return provides a

## 21. 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 22 of this deed.

## 22. 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 deed.

## 23. Disputes

If a dispute arises between the trustees about the validity or propriety of anything done by the charity trustees under this deed, 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.

## 24. Accounts, Annual Report and Annual Return

The trustees must comply with their obligations under the Charities Act 2011 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.

## Notes

summary of key financial data and is used by us for monitoring purposes to detect issues which might require our attention or guidance.

**Clause 25** - A charity's entry includes its name, correspondence address, objects and governing document. The Commission issues to every charity once a year an Annual Update form on which these details can conveniently be supplied. Trustees must provide details of any change in the entry although they do not have to use this form.

**Clause 26** - The trustees can make regulations (under clause 22) to allow others associated with the operation of the charity such as employees or volunteers to sign cheques and other orders in relation to the charity's bank accounts so long as these activities are properly managed so as to reduce the risk of fraud. For example, the trustees might allow two senior employees or volunteers to sign cheques up to a defined face value, with a limit on the total value of cheques which they are authorised to sign in any one month. For charities which operate electronic bank accounts, there is guidance on trustee duties and operational best practice in *Internal Controls for Charities* (CC8) on our website.

**Clause 27** – Application of income and property

**(1)** sets out a trustees' entitlement to reasonable expenses and reflects the provisions in the 1993 Act about a charity trustee's entitlement to benefit from trustee indemnity insurance. It is included in the deed to inform people involved with the charity.

**(2)** reflects charity law requirements that the income and property of a charity must be applied solely to further its objects and not to benefit the charity trustees (except as permitted by the governing document - see clause 28 - or other express power). The trustees have a duty to ensure that the funds are correctly applied in accordance with this principle.

**Clause 28** - Benefits and payments to charity trustees and connected persons – Charity trustees may only benefit from their charity if they have express legal authorisation to do so (such as a clause in the trust deed). This restriction extends to people closely connected to a trustee ('connected persons' – this term is defined in Interpretation clause 33). This clause clarifies the restrictions that apply to the charity trustees. Even where trustees are allowed to benefit from the

## 25. Registered particulars

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

## 26. 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.

## 27. 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 pay out 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 189 of the Charities Act 2011.
- (2) Subject to clause 28, 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.

## 28. Benefits and payments to charity trustees and connected persons

### (1) General provisions

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 permitted by sub-clause (2) of this clause or 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.

## Notes

charity, this must only happen where the benefit is in the interests of the charity. Our guidance *Trustee expenses and payments* (CC11) provides more information about trustee benefits.

This clause permits a minority of the charity trustees or connected persons to receive payments and other benefits in certain instances (such as for goods and services they supply to the charity), subject to the stated controls. The option also allows other types of trustee benefit, subject to the Commission's prior consent.

These powers cannot be adopted by existing charities without the authority of the Charity Commission.

No part of the clause allows trustees to receive payment for acting as a trustee.

**Clause 28(2)(a)** - If your charity will benefit all local inhabitants in a specific geographical area (eg as a community trust) you may wish to substitute the following wording: 'A trustee or connected person may receive a benefit from the charity as a beneficiary provided that it is available generally to the beneficiaries of the charity.'

**Clause 28(2)(d)** - The charity should document the amount of, and the terms of, the trustee's or connected person's loan.

## (2) Scope and powers permitting trustees' or connected persons' benefits

- (a) A charity trustee or connected person may receive a benefit from the charity in the capacity of a beneficiary of the charity provided that a majority of the trustees do not benefit in this way.
- (b) A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the charity where that is permitted in accordance with, and subject to, the conditions in, section 185 of the Charities Act 2011.
- (c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the charity with goods that are not supplied in connection with services provided to the charity by charity trustee or connected person.
- (d) A charity trustee or connected person may receive interest on money lent to the charity at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the charity. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the charity on the same terms as members of the public.

## (3) Payment for the supply of goods only – controls

The charity and its charity trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

- (a) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the charity and the charity trustee or connected person supplying the goods ('the supplier') under which the supplier is to supply the goods in question to or on behalf of the charity.
- (b) The amount or maximum of the payment for the goods in question does not exceed what is reasonable in the circumstances for the supply of the goods in question.

- (c) The other charity trustees are satisfied that it is in the best interests of the charity to contract with the supplier rather than someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.
  - (d) The supplier is absent from the part of the meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the charity.
  - (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of trustees is present at the meeting.
  - (f) The reason for their decision is recorded by the charity trustees in the minute book.
  - (g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 28.
- (4) In sub-clauses (2)-(3) of this clause:
- (a) 'charity' shall include any company in which the charity:
    - (i) holds more than 50% of the shares; or
    - (ii) controls more than 50% of the voting rights attached to the shares; or
    - (iii) has the right to appoint one or more trustees to the board of the company.
  - (b) In sub-clauses (2) and (3) of this clause 'connected person' includes any person within the definition set out in clause 33 (Interpretation).

**Clause 29** - These are the minimum requirements and trustees should consider if any other forms of insurance are needed.

### 29. 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.

### 30. Expenses

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

**Clause 31(2)** – Note that a change of name under clause 2 need only be made by resolution; it does not require to be confirmed by deed.

### 31. Amendment of trust deed

- (1) The trustees may amend the provisions of this deed, provided that:
  - (a) no amendment may be made to clause 3 (Objects), clause 8 (Duty of care and extent of liability), clause 27 (Application of income and property) and clause 28 (Benefits and payments to charity trustees and connected persons), clause 32 (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.
- (2) Any amendment of this deed must be made by deed following a decision of the trustees made at a special meeting.
- (3) The trustees must send to the Commission a copy of the deed effecting any amendment made under this clause within three months of it being made.

### 32. Dissolution

- (1) The trustees may dissolve the charity if they decide that it is necessary or desirable to do so. To be effective, a proposal to dissolve the charity must be passed at a special meeting by a two-thirds' majority of the trustees. Any assets of the charity that are left after the charity's debts have been paid ('the net assets') must be given:
  - (a) to another charity (or other charities) with objects that are the same or similar to the charity's own, for the general purposes of the recipient charity (or charities); or
  - (b) to any charity for use for particular purposes which fall within the charity's objects.
- (2) The Commission must be notified promptly that the charity has been dissolved and, if the trustees were obliged to send the charity's accounts to the Commission for the accounting period which ended before its dissolution, they must send the Commission the charity's final accounts.

### 33. Interpretation

- (1) In this deed:

all references to particular legislation are to be understood as references to legislation in force at the date of this deed 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) Sections 350 – 352 of the Charities Act 2011 apply for the purposes of interpreting the terms used in sub-clause (2) above.

**Notes**

This is set out to enable up to six trustees to sign and for these signatures to be witnessed so that the document has the formality of a deed. The first trustees named at the beginning of the document should sign. The witness(es) should be independent and not, for example, a close family relation of any of the first trustees. The first trustee should sign at 1(a) and the witness should sign at 1(b) and put his or her name and address where indicated; the next trustee should sign at 2(a) and the witness to that signature should complete 2(b) and so on until all the trustees have signed. If there are more than six trustees, please add further space following the pattern adopted for the first six sets of details.

**IN WITNESS of this deed the parties to it have signed below**

**1. Signed as a deed by:**

1(a).....

on this .....(day) of .....(month).....(year)

in the presence of:

1(b).....

Witness's name:

.....

Witness's address:

.....

.....

.....

**2. Signed as a deed by:**

2(a).....

on this .....(day) of .....(month).....(year)

in the presence of:

2(b).....

Witness's name:

.....

Witness's address:

.....

.....

.....

**3. Signed as a deed by:**

3(a).....

on this .....(day) of .....(month).....(year)

in the presence of:

3(b) .....

Witness's name:

.....

Witness's address:

.....

.....

.....

**4. Signed as a deed by:**

4(a).....

on this .....(day) of .....(month)..... (year)

in the presence of:

4(b) .....

Witness's name:

.....

Witness's address:

.....

.....

.....

**5. Signed as a deed by:**

5(a).....

on this .....(day) of .....(month)..... (year)

in the presence of:

5(b) .....

Witness's name:

.....

Witness's address:

.....

.....

.....

**6. Signed as a deed by:**

6(a).....

on this .....(day) of .....(month)..... (year)

in the presence of:

6(b) .....

Witness's name:

.....

Witness's address:

.....

.....

.....

## Notes

---

© Crown copyright 2009. This publication (excluding the Royal Arms and departmental logos) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

**You can obtain large-print versions  
of this publication from the Charity  
Commission on 0845 300 0218**

**Charity Commission**

Telephone: 0845 300 0218

Typetalk: 0845 300 0219

Website: [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)