

Charities: incorporated trustees

Latest Update

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Author(s)

Richard King - Tozers LLP

First introduced under the Charitable Trustees Incorporation Act 1872, the concept of incorporated trustees was designed to overcome certain practical difficulties for charity trustees. Before companies limited by guarantee became used as vehicles for charity (from the early 20th Century, although they did not catch on until much later), most charities were unincorporated. The charity itself was not a legal entity, so its trustees had to hold property, enter into contracts and sue or be sued in their own names. This was inconvenient when investments or land had to be transferred on any change of trustee, or where the correct parties to a contract or legal action had to be identified.

The 1872 Act empowered trustees of a charity established for "religious, educational, literary, scientific or public charitable" purposes to apply to the Charity Commission for a certificate of incorporation. This would gather the individual trustees into a legal entity that could be used in all legal documents. Directions on certain specified matters relating to the how the trustee body was made up could be added to the certificate.

In practice, the Charity Commission discouraged such applications, preferring to recommend the services of the Official Custodian. It tended only to grant certificates to long-established, well reputed, permanently endowed charities of some substance. So certificates were granted mainly to certain religious charities, some of whom had religious objections to the Official Custodian's office (in 1995, the Charity Commission reported that there were then only 118 charities incorporated under the 1872 Act. Of these, 63 were incorporated after 1 January 1960 - the era when the register of charities was introduced and several religious and institutions had to adopt new constitutions to achieve registration).

In a reversal of that policy, changes brought about by the [Charities Act 1992](#) (and consolidated into the Acts of 1993 and 2011) were intended to encourage trustee incorporation. It was made available to all charities that were not already incorporated as companies or by Royal Charter or Act of Parliament. The Commission was given much greater powers and flexibility in dealing with applications and post-incorporation changes. But the concept is not widely understood, and the requirement (see below) for the charity to have explored other options, as well as the introduction of the Charitable Incorporated Organisation (CIO) (see [Charitable incorporated organisations](#)) from January 2013, has made it less likely that new incorporations will take place. But those who encounter these incorporations will need to understand them.

Overview of Topic

1. **The concept:** Under the terms of what is now the [Charities Act 2011](#) (statutory references in this article are to the Charities Act 2011 unless otherwise stated), all charities (whether registered or unregistered) can apply to the [Charity Commission](#) to incorporate their trustees. Incorporation gives the trustees a legal identity. Only the trustees (and not the

charity) will be incorporated. An incorporated body of trustees can act in its corporate name as a legal person with the same powers, restrictions, rights and liabilities as the trustees had before incorporation. It is different from charity incorporation which (unless achieved by Act of Parliament or Royal Charter) involves the registration of a charity with Companies House or as a CIO.

2. **The power to incorporate:** The provisions allowing and managing trustee incorporation are contained in [ss.251 - 258](#).
3. Under [s.251](#), the Charity Commission has the power to grant a Certificate of Incorporation to trustees, upon receipt of which the trustees become a body corporate. Any real or personal property held by the trustees is vested in the incorporated body, and, by [s.251\(4\)\(b\)](#), any rights or liabilities relating to that property, such as covenants and mortgage debts, become the rights and liabilities of the incorporated body (but see below).
4. The Charity Commission keeps a record of all the applications it receives and of all certificates granted - and, if an application is received from a registered charity, a note is made on the [Register of Charities](#) that the charity has incorporated.
5. **Basis upon which Certificate of Incorporation is granted:** The Charity Commission will not grant a Certificate of Incorporation to trustees unless it considers that doing so will be in the best interests of the charity in question. The Charity Commission will consider whether there is any other way the trustees could achieve the same purpose for their charity, and require them to have informed themselves of the other available forms of incorporation before making an application to incorporate as trustees.
6. The Charity Commission must also be satisfied that the trustees of the charity are properly appointed. The [trustees must demonstrate this in the supporting documentation they send in with their application to incorporate](#).
7. **The Certificate of Incorporation:** The Certificate of Incorporation must bear the name of the incorporated body (which must include the word "Trustees" or "Governors") and the date of incorporation - which is the date from which the incorporated body exists. The Certificate is used to prove legal identity in the same way that a company's certificate is used.
8. **Conditions of incorporation:** Under [s.251\(2\)](#), the Charity Commission may impose upon the incorporated trustees any conditions or directions it thinks necessary. These will bind the trustees and, if they do not adhere to them, the Charity Commission can make an order requiring the trustees to comply.
9. **Effects of incorporation:** Incorporation of charity trustees differs from other methods of incorporation in that the trustees *do not lose their liability* for (for example) contractual failures or negligence by the charity. Under [s.254](#), the trustees remain liable for any property that comes into their hands, and for any failures in administration of the charity and its assets, as if there had been no incorporation. The transfer to the incorporated body of liability for property ([s.251\(4\)\(b\)](#)) is expressly overridden by [s.254 \(s.251\(4\)\)](#). As with all other forms of incorporation, trustees remain personally liable for breaches of trust, and trustee indemnity insurance will not cover them for criminal or reckless acts or omissions.
10. Since, upon incorporation, all property of any kind previously held by or for the charity automatically vests in the incorporated body, those holding the property must take whatever steps are necessary to transfer it into the name of the incorporated body. If the trustees have been holding land on behalf of the charity, they must inform the Land Registry of the change of ownership.

11. Following incorporation, any gifts or donations made to the charity will be considered to be made to the incorporated body and not to the individual trustees.
12. **How is the trustee body and governing document affected?** Incorporation of charity trustees does not affect either the composition of the trustee body or the provisions of the governing document. Appointment, removal and retirement of trustees will continue to be dealt with as they were prior to the incorporation, except that there will be no need for deeds of appointment or transfers of property. The names of those appointed will simply be recorded in a register with their dates of appointment.
13. **Execution of documents by incorporated entity:** There are three options open to the incorporated trustees regarding execution of documents by the incorporated body. The first is that a document may be executed on behalf of the incorporated body by the majority of the trustees.
14. The second option, assuming that it is permitted by the charity's governing document, is that the trustees may authorise ([s.261](#)) two or more of their number to execute documents on behalf of the incorporated body. Such authority must be granted in writing or by resolution, and may be a general authority to execute documents or an authority limited to an individual matter or specific matters.
15. As a third option, the trustees may choose to adopt a common seal for the incorporated body which they can use to execute documents. A seal must bear the name of the incorporated body. The arrangements for keeping it safely, and regulations for its use, must be noted in the Certificate of Incorporation. Although some charities still like the formality of having a seal, they are becoming increasingly rare.
16. It is now generally accepted that merely fixing a seal in the presence of the authorised signatories is not enough to give the certificate of compliance required on disposals or mortgages of charity land ([ss.122](#) and [125](#) respectively), so that (assuming it is impractical to have all the trustees sign) two trustees must be authorised ([s.333](#)) to give the certificate on behalf of them all.
17. **Amendments to the Certificate of Incorporation:** The trustees cannot alter the Certificate of Incorporation themselves, but may apply to the Charity Commission for an amendment. Any such application must be made in writing (nowadays, all such applications are made online), signed by the trustees, and accompanied by details of why the trustees feel the alteration should be made. They should provide any relevant supporting paperwork. If the Charity Commission agrees that the alteration should be made, it will either make an order amending the existing Certificate or issue a new one.
18. The Charity Commission has the power to amend the Certificate without an application by the trustees should this be necessary (for example if the trustees are unwilling to make an application but an amendment is required).
19. **Dissolution of Incorporated Body:** The Charity Commission may dissolve the incorporated body on application by the trustees, or without such an application if dissolution is necessary.
20. An application for dissolution must be in writing, signed or sealed, with a statement of the reasons why dissolution would be in the best interests of the charity. As with initial incorporation, the Charity Commission will only make the order to dissolve the incorporated body if satisfied as to those reasons.

21. The grounds on which the Charity Commission may decide it is best to dissolve the incorporated body without an application, are that the charity:
- no longer has any assets;
 - is no longer operating;
 - has ceased to exist or was not a charity at the time incorporation took place; or
 - has, as far as possible, achieved its purposes, or its purposes cannot in practice be achieved.
22. Once satisfied, the Charity Commission will make an order dissolving the incorporated body of trustees and vesting in the individual trustees all the property which was formerly vested in the incorporated body or any other body (except the Official Custodian). So essentially the effect of incorporation is completely reversed and the individual trustees reassume all responsibility. Sanctions for failure to comply with the order are available against the trustees as if for "disobedience" to an order of the High Court ([s.336](#)).
23. **Summary:** Whilst not a widely used model, there are advantages to the incorporation of trustees:
- a. Property vests in the incorporated body without the need for numerous transfer deeds whenever land or investments have to be transferred to new holding trustees.
 - b. The incorporated body can enter contracts, and sue or be sued, rather than the trustees having to do this personally.
24. However, incorporating as trustees does not limit the trustees' liability in the same way that becoming a CIO or a Limited Company would do, so most charities wishing to incorporate will now use those more complete alternatives rather than opting for the older trustee incorporation route. But a charity that is comfortable with its existing trust deed or constitution might prefer to incorporate the trustees rather than have to adopt a completely new and unfamiliar constitution as either a company or a CIO.

Key Acts

[Charities Act 2011 Pt 12 \(ss. 251-266\)](#)

Key Subordinate Legislation

None.

Key Quasi-legislation

None.

Key European Union Legislation

None.

Key Cases

None.

Key Texts

None.

Further Reading

None.

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