

C/o 15 Ravensbridge Drive  
Leicester  
LE4 0BZ

15<sup>th</sup> Jan. 2008

Re: Maher Community Association UK charity draft constitution

To all Maher Association committees and members,

Since getting elected in the UK committee, this body has set certain top priority targets and one of them is getting a charitable status for the UK Association. We have worked very hard towards it. At last we are in a position to circulate a proposed draft constitution for wider community consultation.

We have tried to look at all possible scenarios and tried to cover them. This draft document is being sent to charity commissioners, all sub committees, past presidents and certain individuals for their opinions. We will expect the local committees to do further distribution of the copy amongst their members. We can also send you copies by emails. You can either send your comments at the above address or alternatively send them by either of these emails. Vimaljibhai - [vim2001@tiscali.co.uk](mailto:vim2001@tiscali.co.uk) or Jaimal – [maher.maher@hotmail.co.uk](mailto:maher.maher@hotmail.co.uk) All comments and suggestions will be considered seriously and will wait for a month for all responses. The closing date for any comments is **29<sup>th</sup> Feb. 2008**

Before we can proceed with charity registration, we need to have five trustee names. Instead of forwarding our own chosen trustees, we would like them to be nominated by the local associations and the public. In case there are more than five nominations, the first five with a majority preference will be selected. As you can read from the proposed constitution, these trustees will be serving on a rotation basis and so there is always a next time.

We hope for full public support.

Thanking you,  
Yours truly,  
On behalf of the UK Association  
Sec. Jaimal Odedra

Copies to Committees:

1) Leicester – Lakhansibhai Modhwadia, 2) Loughborough – Bhimabhai Keshwala, 3) Birmingham – Bhimabhai Odedra, 4) Peterborough – Devshibhai Karavadra, 5) Northampton – Pratapbhai Sisodiya, 6) London – Vimaljibhai Odedra, 7) Luton – Uttambhai Modhwadia, 8) Milton Keynes – Dr. Nathabhai Odedra, 9) London Mahila mandal – Vanitaben Khunti, 10) Leicester Mahila mandal – Motiben Khunti, 11) UK Sports – Suresh Modhwadia

Other members: 1) Keshubhai Rama Odedra, 2) Nathubhai Gorania, 3) Nagajanbhai Bapodra, 4) late Jethabhai Visana family, 5) Late Karabhai Sisodia family, 6) Late Nathabhai Odedra family, 7) Parbatjibhai Sundavadra, 8) Nageshbhai Odedra-B'ham, 9) Lakhubhai Keshwala-B'ham 10) Kanubhai Maher-L'bro, 11) Rajshibhai Malde Odedra-P'bro, 12) Nishaben Karavadra-P'bro, 13) Saudasbhai Odedra-M'keynes, 14) Batukbhai Odedra-N'ton, 15) Matrabhai Khistriya-N'ton, 16) Pratapbhai L. Odedra-leic, 17) Rambhai Odedra (maheronline website) –Leic, 18) Harbhambhai Keshwala- Leic, 19) Rajbhai Visana-Hemel, 20) Dr. Virambhai-Rickmansworth, 21) Ajaybhai Modhwadia-L'don, 22) Karsanbhai Ram Modhwadia-L'don, 23) Murubhai Ala Odedra-Cheltenham. 24) Karsanbhai Godhania-L'don. 25) Rajeshbhai Natha Karavadra-L'don.

DATED

2007

DECLARATION OF TRUST

By

Mr Jaimal V. Odedra

And

Mr Vimanji N. Odedra

**Spearing Waite Solicitors**

**41 Friar Lane**

**Leicester**

**Ref: RG/AH/T949/001**

**THIS DECLARATION OF TRUST IS MADE**

the                      day of    2007    by

- 1.
- 2.

(the “first trustees”) and by

1. Jaimal Odedra of
2. Vimanji N. Odedra of

(the “first executive committee members”)

**NOW THIS DEED WITNESSES AS FOLLOWS**

**1. Administration**

The charitable trust created by this deed (the “Charity”) shall be administered by the Trustees and by the Executive Committee Members. (In this deed, the expression the Trustees and Executive Committee Members refers to the individuals who are the Trustees and Executive Committee Members of the Charity at any given time. It includes the First Trustees and First Executive Committee Members and their successors. The word “Trustee” and “Executive Committee Members” is used to refer to any one of the Trustees and Executive Committee Members.)

**2. Name**

The Charity shall be called Maher Community Association UK but the Executive Committee Members may by resolution change the Charity’s name from time to time. Before doing so they must obtain the written approval of the Charity Commission for England and Wales (“the Commission”) for the new name.

**3. Application of income**

The Trustees and Executive Committee Members must apply the income of the Charity in furthering the following objects (“the objects”):

The Charity's objects are as follows: To promote educational, social and religious values within the Maher Community and to relieve the poverty of affected groups within the Community, of those in the state of Gujarat (India) and of those affected by natural disasters (as further detailed in clause 5 below).

**4. Application of capital**

At their discretion, the trustees and the Executive Committee Members may spend all or part of the capital of the Charity in furthering the objects.

**5. Activities:**

The Trustees and Executive Committee Members aim to further the Charity's objects by doing the following:

- (i) Developing and establishing contacts with members of the Maher Community residing in various parts and places in the UK and encouraging the formation of associations wherever possible;
- (ii) Promoting and developing the general welfare and prosperity of members of the community and fostering the spirit of unity, co-operation, harmony, social services, brotherhood and goodwill amongst members and others. This will be achieved through cultural, educational, artistic, intellectual, social and religious functions, meetings and conferences and by letter writings, bulletins, reports and lectures;
- (iii) To build up harmonious relations and mutual respects through human service and contacts with members of various races and communities in multi-racial and cultural society and to associate with multi-racial organisations;
- (iv) To raise necessary funds for the purposes and activities of the organisation by voluntary contributions from members of the community and by fund-raising functions;
- (v) To associate with organisations and institutions of the Maher Community wherever they are formed for the promotion of general welfare and progress of the community and fully participate and support their activities and functions and to promote and maintain the unity of members of the entire community in all parts of the world.

- (vi) To advance the education of Community members by subsidising the cost of their school fees and holding educational seminars and Community functions;
- (vii) To relieve poverty for those affected by natural disasters through the application of funds to provide food, clothing, shelter, health and medical care and emergency assistance;
- (viii) To relieve the poverty of the underprivileged people in the State of Gujarat (India) by applying funds to utilise local infrastructure.

## **6. Powers**

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

- (i) To raise funds. In exercising this power, the Executive Committee Members must not undertake any substantial permanent trading activity other than those specified in this document and must comply with any relevant statutory regulations;
- (ii) To buy, take on lease or in exchange, hire or otherwise acquire property and to maintain and equip it for use;
- (iii) 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;
- (iv) 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 if they wish to mortgage land owned by the Charity;
- (v) To co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
- (vi) To establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects;
- (vii) To acquire, merge with or enter into any partnership or joint venture arrangement with any other Charity formed for any of the objects;
- (viii) To create such additional co-operative committees as the Executive Committee Members think fit;

- (ix) To employ and remunerate such staff as are necessary for carrying out the work of the Charity;
- (x) To do any other lawful thing that is necessary or desirable for the achievement of the objects.

## **7. Duty of Care and extent of liability**

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 Executive Committee Members 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”).

No Executive Committee Member, and no one exercising powers or responsibilities that have been delegated by the Executive Committee Member, 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.

## **8. Appointment of Trustees**

- (i) There must be only five Trustees. Apart from the First Trustees, every Trustee must be appointed for a term of five years by a resolution of the Executive Committee Members passed at a meeting;
- (ii) All trustees must retire every five years;
- (iii) In selecting individuals for appointment as Trustees:
  - a) the Trustee cannot be an Executive Committee Member;
  - b) a maximum of five Trustees may be nominated from the U.K;
  - c) any number of nominations may be received from the UK. If more than five nominations are received, the nominees’ names will be sent to all the UK towns in which the community is based, to vote for five trustees from the list. In case of a tie for the fifth trustee, the winning candidate will be selected by the first four trustees; and
  - d) an existing Trustee can be re-nominated and re-appointed as a Trustee.
- (iv) The Managing Trustee must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each Trustee;

- (v) The Trustee must make available to each new Trustee, on his or her first appointment a copy of this deed and any amendments made to it. The outgoing Managing Trustee must make all paperwork available to the incoming Managing Trustee;
- (vi) The elected Trustees will be eligible to nominate a chair person who will act as a Managing Trustee;
- (vii) When trustees retire, elections for new trustees will be overseen by the executive committee.

**9. Appointment of Executive Committee Members**

- (i) In selecting individuals for Executive Committee Members, Community representatives from individual UK towns will nominate one candidate per every two hundred and fifty members.
- (ii) Nomination forms must be completed from interested persons. Members of the local Maher Community will be notified by the Maher Community Association UK. If more than the eligible number of nominations for a town is received, the Maher Community Association UK will notify that town and its elected committee will democratically decide to eliminate extra nominees.
- (iii) The Executive Committee Members will hold office for a term of three years. The elected members will be eligible to nominate and select a President, Vice President, Secretary, Vice Secretary Treasurer and Vice Treasurer;
- (iv) The Secretary of the Executive Committee Members' must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each Executive Committee Members;
- (v) There will be an annual general meeting every year. Every third year the meeting must be held before the election of the Executive Committee Members. If the Executive Committee fails to organise a meeting within 90 days, then a petition signed by 50 members may be used to organise the meeting, provided it is presented to the office bearer with 21 days' notice.

**10. Eligibility for trusteeship or committee membership**

- (i) No one shall be appointed as a Trustee or Executive Committee Member:
  - (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.
- (ii) No one shall be entitled to act as a Trustee or Executive Committee Member whether on appointment or on any re-appointment as Trustee or Executive Committee Member until he or she has expressly acknowledged, in whatever way the Trustees and Executive Committee Members decide, his or her acceptance of the office of Trustee and/or Executive Committee Members of the Charity.

**11. Termination of trusteeship or committee membership**

A Trustee or Executive Committee Member shall cease to hold office if he or she:

- (i) 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;
- (ii) becomes incapable by reason of mental disorder, illness or injury of managing his or her own affairs;
- (iii) is absent without the permission of the Trustees and Executive Committee Members from all their meetings held within a period of twelve months and the Trustees and Executive Committee Members resolve that his or her office be vacated;
- (iv) notifies to the Trustees or Executive Committee Members a wish to resign; or
- (v) a trusteeship will automatically terminate every five years.

**12. Meetings between the Executive Committee Members and Trustees**

The Trustees and Executive Committee Members must hold at least two meetings each year. A notice must be given to all Trustees and Executive Committee Members not less than 28 clear days. An emergency meeting can be called at any time by the person elected as managing trustee and by the president of the Executive Committee Members. A record of every meeting must be kept by the executive committee in the form of minutes.

**13. Executive Committee Members' meetings**

The Executive Committee Members must hold at least three meetings each year. A notice must be given to all Executive Committee Members of not less than 28 clear



days. An emergency meeting can be called at any time by the person elected as President of the Executive Committee Members. A record of every meeting must be kept by the secretary in the form of minutes. Executive members may call an emergency meeting with seven days' written notice.

**14. A withdrawal voucher**

Details of the amount and payee ("the Voucher") must be presented to the person elected as the treasurer ("the Treasurer"). The Treasurer and one Executive Committee Member will be authorised to sign the Voucher of up to the sum of £3,000.00.

If the Voucher is for a sum above £3,000.00, one Trustee and the Treasurer and one Executive Committee Member will be authorised to sign. The cheque signatories are at the discretion of the Executive Committee Members with a minimum of the Treasurer and one executive committee member. The Treasurer will be responsible to keep up to date records and details of all financial matters.

**15. Quorum**

- (i) Subject to the following provision of this clause, no business shall be conducted at a meeting of the Trustees or Executive Committee Members unless at least one third of the total number of Trustees or Executive Committee Members at the time, or two Trustees or Executive Committee Members (whichever is the greater) are present throughout the meeting.
- (ii) The Trustees or Executive Committee Members may make regulations specifying different quorums for meetings dealing with different types of business.

**16. Voting**

At meetings, decisions must be made by a majority of the Trustees or Executive Committee Members 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 or Executive Committee Member in any other circumstances shall have more than one vote.

**17. Conflict of interest**

A Trustee or Executive Committee Member must absent himself or herself from any discussions of the Trustees or Executive Committee Members 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).

**18. Minutes**

The Trustees and Executive Committee Members must keep minutes, in books kept for the purpose or by such other means as the Trustees and Executive Committee Members decide, of the proceedings at their meetings. In the minutes the Trustees and Executive Committee Members must record their decisions and, where appropriate, the reasons for those decisions.

**19. General power to make regulations**

The Executive Committee Members may from time to time make regulations for the management of the Charity and for the conduct of their business, including:

- (i) the calling of meetings;
- (ii) methods of making decisions in order to deal with cases or urgency when a meeting is impractical;
- (iii) the deposit of money at a bank;
- (iv) the custody of documents; and
- (v) 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 an Executive Committee Member to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.)

The Executive Committee Members must not make regulations which are inconsistent with anything in this deed.

**20. Accounts, Annual Report and Annual Return**

The Executive Committee Members must comply with their obligations under the Charities Act 1993 with regard to:

- (i) the keeping of accounting records for the Charity;
- (ii) the preparation of annual statements of account for the Charity;
- (iii) the auditing or independent examination of the statements of account of the Charity;
- (iv) the transmission of the statements of account of the Charity to the Commission;
- (v) the preparation of an annual report and its transmission to the Commission; and
- (vi) the preparation of an annual return and its transmission to the Commission.

**21. Registered particulars**

The Trustees or the Executive Committee Members 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 Executive Committee Members and held in the name of the Charity.

**23. Trustees not to benefit financially from their Trusteeship**

Unless expressly authorised in writing in advance by the Commission to do so, no Trustee or Executive Committee Member will receive any financial reward of any nature from the Charity, or receive remuneration, or receive any other financial benefit.

**24. 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 suitability in respect of public liability and employer's liability.

## **25. Amendment of Trust Deed**

- (i) Any amendment of this deed must be made by deed following a two-thirds majority decision of the Trustees and Executive Committee Members.
- (ii) The Executive Committee Members must send to the commission a certified copy of the deed effecting any amendment made under this clause within three months of it being made.

## **26. Dissolution**

The Executive Committee Members and 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:

- (i) a meeting of the Trustees, by a two-thirds majority;
- (ii) a meeting of the Executive Committee Members, by a two-thirds majority; and
- (iii) an extraordinary general meeting of the charity, by a two-thirds majority.

Any assets of the Charity that are left after the Charity's debts have been paid ('the net assets') must be given:

- (i) to another Charity (or other Charities) with objects that are no wider than the Charity's own, for the general purposes of the recipient Charity (or Charities);  
or
- (ii) to any Charity for use for particular purposes which fall within the Charity's objects.

The Commission must be notified promptly that the Charity has been dissolved and, if the Trustees and Executive Committee Members 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.

## **27. Interpretation**

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.

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

**CHARITIES ACT 1993:**

**PART V CHARITY LAND**

**36 Restrictions on dispositions**

(1) Subject to the following provisions of this section and section 40 below, no land held by or in trust for a charity shall be sold, leased or otherwise disposed of without an order of the court or of the Commissioners.

(2) Subsection (1) above shall not apply to a disposition of such land if—

(a) the disposition is made to a person who is not—

(i) a connected person (as defined in Schedule 5 to this Act), or

(ii) a trustee for, or nominee of, a connected person; and

(b) the requirements of subsection (3) or (5) below have been complied with in relation to it.

(3) Except where the proposed disposition is the granting of such a lease as is mentioned in subsection (5) below, the charity trustees must, before entering into an agreement for the sale, or (as the case may be) for a lease or other disposition, of the land—

(a) obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity;

(b) advertise the proposed disposition for such period and in such manner as the surveyor has advised in his report (unless he has there advised that it would not be in the best interests of the charity to advertise the proposed disposition); and

(c) decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(4) For the purposes of subsection (3) above a person is a qualified surveyor if—

(a) he is a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers or satisfies such other requirement or requirements as may be prescribed by regulations made by the Secretary of State; and

(b) he is reasonably believed by the charity trustees to have ability in, and experience of, the valuation of land of the particular kind, and in the particular area, in question;

and any report prepared for the purposes of that subsection shall contain such information, and deal with such matters, as may be prescribed by regulations so made.

(5) Where the proposed disposition is the granting of a lease for a term ending not more than seven years after it is granted (other than one granted wholly or partly in consideration of a fine), the charity trustees must, before entering into an agreement for the lease—

(a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition; and

(b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

(6) Where—

(a) any land is held by or in trust for a charity, and

(b) the trusts on which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the charity,

then (subject to subsections (7) and (8) below and without prejudice to the operation of the preceding provisions of this section) the land shall not be sold, leased or otherwise disposed of unless the charity trustees have previously—

(i) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of the notice; and

(ii) taken into consideration any representations made to them within that time about the proposed disposition.

(7) Subsection (6) above shall not apply to any such disposition of land as is there mentioned if—

(a) the disposition is to be effected with a view to acquiring by way of replacement other property which is to be held on the trusts referred to in paragraph (b) of that subsection; or

(b) the disposition is the granting of a lease for a term ending not more than two years after it is granted (other than one granted wholly or partly in consideration of a fine).

(8) The Commissioners may direct—

(a) that subsection (6) above shall not apply to dispositions of land held by or in trust for a charity or class of charities (whether generally or only in the case of a specified class of dispositions or land, or otherwise as may be provided in the direction), or

(b) that that subsection shall not apply to a particular disposition of land held by or in trust for a charity,

if, on an application made to them in writing by or on behalf of the charity or charities in question, the Commissioners are satisfied that it would be in the interests of the charity or charities for them to give the direction.

(9) The restrictions on disposition imposed by this section apply notwithstanding anything in the trusts of a charity; but nothing in this section applies—

(a) to any disposition for which general or special authority is expressly given (without the authority being made subject to the sanction of an order of the court) by any statutory provision contained in or having effect under an Act of Parliament or by any scheme legally established; or

(b) to any disposition of land held by or in trust for a charity which—

(i) is made to another charity otherwise than for the best price that can reasonably be obtained, and

(ii) is authorised to be so made by the trusts of the first-mentioned charity; or

(c) to the granting, by or on behalf of a charity and in accordance with its trusts, of a lease to any beneficiary under those trusts where the lease—

- (i) is granted otherwise than for the best rent that can reasonably be obtained; and
- (ii) is intended to enable the demised premises to be occupied for the purposes, or any particular purposes, of the charity.

(10) Nothing in this section applies—

- (a) to any disposition of land held by or in trust for an exempt charity;
- (b) to any disposition of land by way of mortgage or other security; or
- (c) to any disposition of an advowson.

(11) In this section “land” means land in England or Wales.

### **37 Supplementary provisions relating to dispositions**

(1) Any of the following instruments, namely—

(a) any contract for the sale, or for a lease or other disposition, of land which is held by or in trust for a charity, and

(b) any conveyance, transfer, lease or other instrument effecting a disposition of such land, shall state—

- (i) that the land is held by or in trust for a charity,
- (ii) whether the charity is an exempt charity and whether the disposition is one falling within paragraph (a), (b) or (c) of subsection (9) of section 36 above, and
- (iii) if it is not an exempt charity and the disposition is not one falling within any of those paragraphs, that the land is land to which the restrictions on disposition imposed by that section apply.

(2) Where any land held by or in trust for a charity is sold, leased or otherwise disposed of by a disposition to which subsection (1) or (2) of section 36 above applies, the charity trustees shall certify in the instrument by which the disposition is effected—

(a) (where subsection (1) of that section applies) that the disposition has been sanctioned by an order of the court or of the Commissioners (as the case may be), or

(b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to effect the disposition, and that they have complied with the provisions of that section so far as applicable to it.

(3) Where subsection (2) above has been complied with in relation to any disposition of land, then in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money’s worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

(a) any land held by or in trust for a charity is sold, leased or otherwise disposed of by a disposition to which subsection (1) or (2) of section 36 above applies, but

(b) subsection (2) above has not been complied with in relation to the disposition,

then in favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money’s worth, the disposition shall be valid whether or not—

(i) the disposition has been sanctioned by an order of the court or of the Commissioners, or



(ii) the charity trustees have power under the trusts of the charity to effect the disposition and have complied with the provisions of that section so far as applicable to it.

(5) Any of the following instruments, namely—

(a) any contract for the sale, or for a lease or other disposition, of land which will, as a result of the disposition, be held by or in trust for a charity, and

(b) any conveyance, transfer, lease or other instrument effecting a disposition of such land, shall state—

(i) that the land will, as a result of the disposition, be held by or in trust for a charity,

(ii) whether the charity is an exempt charity, and

(iii) if it is not an exempt charity, that the restrictions on disposition imposed by section 36 above will apply to the land (subject to subsection (9) of that section).

(6) In section 29(1) of the [1925 c. 18.] Settled Land Act 1925 (charitable and public trusts)—

(a) the requirement for a conveyance of land held on charitable, ecclesiastical or public trusts to state that it is held on such trusts shall not apply to any instrument to which subsection (1) above applies; and

(b) the requirement imposed on a purchaser, in the circumstances mentioned in section 29(1) of that Act, to see that any consents or orders requisite for authorising a transaction have been obtained shall not apply in relation to any disposition in relation to which subsection (2) above has been complied with;

and expressions used in this subsection which are also used in that Act have the same meaning as in that Act.

(7) Where—

(a) the disposition to be effected by any such instrument as is mentioned in subsection (1)(b) or (5)(b) above will be a registered disposition, or

(b) any such instrument will on taking effect be an instrument to which section 123(1) of the [1925 c. 21.] Land Registration Act 1925 (compulsory registration of title) applies,

the statement which, by virtue of subsection (1) or (5) above, is to be contained in the instrument shall be in such form as may be prescribed.

(8) Where—

(a) an application is duly made—

(i) for registration of a disposition of registered land, or

(ii) for registration of a person's title under a disposition of unregistered land, and

(b) the instrument by which the disposition is effected contains a statement complying with subsections (5) and (7) above, and

(c) the charity by or in trust for which the land is held as a result of the disposition is not an exempt charity,

the registrar shall enter in the register, in respect of the land, a restriction in such form as may be prescribed.

(9) Where—

(a) any such restriction is entered in the register in respect of any land, and  
(b) the charity by or in trust for which the land is held becomes an exempt charity,  
the charity trustees shall apply to the registrar for the restriction to be withdrawn; and on receiving any application duly made under this subsection the registrar shall withdraw the restriction.

(10) Where—

(a) any registered land is held by or in trust for an exempt charity and the charity ceases to be an exempt charity, or

(b) any registered land becomes, as a result of a declaration of trust by the registered proprietor, land held in trust for a charity (other than an exempt charity),

the charity trustees shall apply to the registrar for such a restriction as is mentioned in subsection (8) above to be entered in the register in respect of the land; and on receiving any application duly made under this subsection the registrar shall enter such a restriction in the register in respect of the land.

(11) In this section—

(a) references to a disposition of land do not include references to—

(i) a disposition of land by way of mortgage or other security,

(ii) any disposition of an advowson, or

(iii) any release of a rentcharge falling within section 40(1) below; and

(b) “land” means land in England or Wales;

and subsections (7) to (10) above shall be construed as one with the [1925 c. 21.] Land Registration Act 1925.

### **38 Restrictions on mortgaging**

(1) Subject to subsection (2) below, no mortgage of land held by or in trust for a charity shall be granted without an order of the court or of the Commissioners.

(2) Subsection (1) above shall not apply to a mortgage of any such land by way of security for the repayment of a loan where the charity trustees have, before executing the mortgage, obtained and considered proper advice, given to them in writing, on the matters mentioned in subsection (3) below.

(3) Those matters are—

(a) whether the proposed loan is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which the loan is sought by them;

(b) whether the terms of the proposed loan are reasonable having regard to the status of the charity as a prospective borrower; and

(c) the ability of the charity to repay on those terms the sum proposed to be borrowed.

(4) For the purposes of subsection (2) above proper advice is the advice of a person—

(a) who is reasonably believed by the charity trustees to be qualified by his ability in and practical experience of financial matters; and

(b) who has no financial interest in the making of the loan in question;

and such advice may constitute proper advice for those purposes notwithstanding that the person giving it does so in the course of his employment as an officer or employee of the charity or of the charity trustees.

(5) This section applies notwithstanding anything in the trusts of a charity; but nothing in this section applies to any mortgage for which general or special authority is given as mentioned in section 36(9)(a) above.

(6) In this section—

- “land” means land in England or Wales;
- “mortgage” includes a charge.

(7) Nothing in this section applies to an exempt charity.

### **39 Supplementary provisions relating to mortgaging**

(1) Any mortgage of land held by or in trust for a charity shall state—

(a) that the land is held by or in trust for a charity,

(b) whether the charity is an exempt charity and whether the mortgage is one falling within subsection (5) of section 38 above, and

(c) if it is not an exempt charity and the mortgage is not one falling within that subsection, that the mortgage is one to which the restrictions imposed by that section apply;

and where the mortgage will be a registered disposition any such statement shall be in such form as may be prescribed.

(2) Where subsection (1) or (2) of section 38 above applies to any mortgage of land held by or in trust for a charity, the charity trustees shall certify in the mortgage—

(a) (where subsection (1) of that section applies) that the mortgage has been sanctioned by an order of the court or of the Commissioners (as the case may be), or

(b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to grant the mortgage, and that they have obtained and considered such advice as is mentioned in that subsection.

(3) Where subsection (2) above has been complied with in relation to any mortgage, then in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money’s worth, it shall be conclusively presumed that the facts were as stated in the certificate.

(4) Where—

(a) subsection (1) or (2) of section 38 above applies to any mortgage of land held by or in trust for a charity, but

(b) subsection (2) above has not been complied with in relation to the mortgage,

then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money’s worth, the mortgage shall be valid whether or not—

(i) the mortgage has been sanctioned by an order of the court or of the Commissioners, or

(ii) the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered such advice as is mentioned in subsection (2) of that section.

(5) In section 29(1) of the [1925 c. 18.] Settled Land Act 1925 (charitable and public trusts)—

(a) the requirement for a mortgage of land held on charitable, ecclesiastical or public trusts (as a “conveyance” of such land for the purposes of that Act) to state that it is held on such trusts shall not apply to any mortgage to which subsection (1) above applies; and

(b) the requirement imposed on a mortgagee (as a “purchaser” for those purposes), in the circumstances mentioned in section 29(1) of that Act, to see that any consents or orders requisite for authorising a transaction have been obtained shall not apply in relation to any mortgage in relation to which subsection (2) above has been complied with;

and expressions used in this subsection which are also used in that Act have the same meaning as in that Act.

(6) In this section—

- “mortgage” includes a charge, and “mortgagee” shall be construed accordingly;
- “land” means land in England or Wales;
- “prescribed” and “registered disposition” have the same meaning as in the [1925 c. 21.] Land Registration Act 1925.

## **72 Persons disqualified for being trustees of a charity**

(1) Subject to the following provisions of this section, a person shall be disqualified for being a charity trustee or trustee for a charity if—

(a) he has been convicted of any offence involving dishonesty or deception;

(b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged;

(c) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

(d) he has been removed from the office of charity trustee or trustee for a charity by an order made—

(i) by the Commissioners under section 18(2)(i) above, or

(ii) by the Commissioners under section 20(1A)(i) of the [1960 c. 58.] Charities Act 1960 (power to act for protection of charities) or under section 20(1)(i) of that Act (as in force before the commencement of section 8 of the [1992 c. 41.] Charities Act 1992), or

(iii) by the High Court,

on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated;

(e) he has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;

(f) he is subject to a disqualification order under the [1986 c. 46.] Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the [1986 c. 45.] Insolvency Act 1986 (failure to pay under county court administration order).

(2) In subsection (1) above—

(a) paragraph (a) applies whether the conviction occurred before or after the commencement of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the [1974 c. 53.] Rehabilitation of Offenders Act 1974;

(b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration occurred before or after the commencement of that subsection;

(c) paragraph (c) applies whether the composition or arrangement was made, or the trust deed was granted, before or after the commencement of that subsection; and

(d) paragraphs (d) to (f) apply in relation to orders made and removals effected before or after the commencement of that subsection.

(3) Where (apart from this subsection) a person is disqualified under subsection (1)(b) above for being a charity trustee or trustee for any charity which is a company, he shall not be so disqualified if leave has been granted under section 11 of the [1986 c. 46.] Company Directors Disqualification Act 1986 (undischarged bankrupts) for him to act as director of the charity; and similarly a person shall not be disqualified under subsection (1)(f) above for being a charity trustee or trustee for such a charity if—

(a) in the case of a person subject to a disqualification order, leave under the order has been granted for him to act as director of the charity, or

(b) in the case of a person subject to an order under section 429(2)(b) of the [1986 c. 45.] Insolvency Act 1986, leave has been granted by the court which made the order for him to so act.

(4) The Commissioners may, on the application of any person disqualified under subsection (1) above, waive his disqualification either generally or in relation to a particular charity or a particular class of charities; but no such waiver may be granted in relation to any charity which is a company if—

(a) the person concerned is for the time being prohibited, by virtue of—

(i) a disqualification order under the Company Directors Disqualification Act 1986, or

(ii) section 11(1) or 12(2) of that Act (undischarged bankrupts; failure to pay under county court administration order),

from acting as director of the charity; and

(b) leave has not been granted for him to act as director of any other company.

(5) Any waiver under subsection (4) above shall be notified in writing to the person concerned.

(6) For the purposes of this section the Commissioners shall keep, in such manner as they think fit, a register of all persons who have been removed from office as mentioned in subsection (1)(d) above either—

(a) by an order of the Commissioners made before or after the commencement of subsection (1) above, or

(b) by an order of the High Court made after the commencement of section 45(1) of the [1992 c. 41.] Charities Act 1992;

and, where any person is so removed from office by an order of the High Court, the court shall notify the Commissioners of his removal.

(7) The entries in the register kept under subsection (6) above shall be available for public inspection in legible form at all reasonable times.