

CHAPTER 243

CHARITIES

1979-2

This Act came into operation on 1st January, 1980 by Proclamation (S.I. 1979 No. 189).

Amended by:

1979-44

1988-6

1982-54

2002-6

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

2002

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 243

**CHARITIES
1979-2**

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**BARBADOS****CHARITIES
1979-2**

An Act to make provision respecting charities and for related matters.

[Commencement: 1st January, 1980]

**PART I
PRELIMINARY****Short title**

1. This Act may be cited as the *Charities Act*.

Interpretation

2. For the purposes of this Act,
“Board” means any charity trustees incorporated as a board under this Act;
“charitable objects” has the same meaning as “charitable purposes” as defined by section 3, and *vice versa*;
“charity” means any institution, corporate or not, which is established for charitable objects or purposes, is intended to and does operate for the public

benefit, and is subject to the control of the court in the exercise of its jurisdiction with respect to charities;

“charity trustees” means the persons having general control and management of the administration of a charity;

“court” means the High Court;

“exempt charity” means a charity included in the *First Schedule*;

“institution” includes any society trust or undertaking;

“local newspaper” means a newspaper printed and published in Barbados;

“permanent endowment” means property held for the purposes of a charity the capital of which cannot be expended for those purposes;

“property” means property of every kind and includes money;

“public benefit” has the meaning assigned to it by section 4;

“register” means the register of charities under section 5;

“Registrar” means the Registrar of Corporate Affairs and Intellectual Property”;

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“trusts”, in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and in relation to other institutions has a corresponding meaning.

Meaning of “charitable purposes”

3. For the purposes of this Act, the expression “charitable purposes” includes the following purposes, namely:

- (a) the relief and prevention of poverty, howsoever caused;

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- (b) the relief and prevention of sickness and disability, both physical and mental, including
 - (i) the provision and staffing of hospitals, nursing and convalescent homes and clinics;
 - (ii) the promotion of medical research;
 - (iii) the provision of advice, treatment or comfort; and
 - (iv) the establishment of homes, workshops or other centres for the disabled or the mentally or physically handicapped or any other disadvantaged or needy persons;
 - (c) the relief of the suffering and distress or disability caused by old age, including the provision of homes for the care and maintenance of the old, and of housing for old people adapted to their special needs;
 - (d) the relief of distress caused by natural disasters or sudden catastrophes;
 - (e) the advancement of education, including
 - (i) the improvement of knowledge and its public dissemination in a way not constituting propaganda.
 - (ii) the provision of schools, colleges, universities and other like institutions,
 - (iii) the establishment in such institutions of professorships, fellowships, lectureships and other teaching and research posts,
 - (iv) the provision in such institutions of scholarships, bursaries, prizes and other awards,
 - (v) the provision both within and without such institutions of physical training and sport for young persons, and
 - (vi) the education of the public generally, including those not engaged in full-time study at such institutions;

- (f) the promotion and publication of research with a view to increasing the common stock of knowledge;
- (g) the advancement of science and all recognised branches of learning and the establishment and maintenance of institutions therefor, including the support and maintenance of learned societies;
- (h) the cultivation of public taste in aesthetic matters, including art, music, literature and fine craftsmanship, and the establishment and development of facilities for their practice;
- (i) the provision and maintenance of museums and art galleries;
- (j) the advancement of religion and the encouragement of belief in, and reverence for, a divine power, and of the practice of worship of that power, including
 - (i) the organisation and carrying out of religious instruction and pastoral and missionary work in Barbados and overseas,
 - (ii) the provision and maintenance of buildings for worship and other religious uses,
 - (iii) the payment of stipends to and the provision of houses for ministers of religion, their widows and dependent children, and
 - (iv) other purposes tending to promote the moral or spiritual welfare of the community;
- (k) the advancement of ethical and moral teachings and studies;
- (l) the provision of social welfare services for those in need of them;
- (m) the provision of housing for those in special need;
- (n) the promotion and improvement of the national heritage, whether physical, environmental, artistic, cultural or otherwise;
- (o) without prejudice to the operation of paragraph (e) (v). the promotion of sport and recreation, including the provision of facilities for

recreation or other leisure-time occupations with the object of improving the conditions of life for those who have need of such facilities;

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- (p) the welfare of children, including prevention of cruelty to them;
- (q) the promotion of the social welfare of the family, including the provision of facilities for family planning;
- (r) the welfare of animals, including prevention of cruelty to them;
- (s) the rehabilitation and resettlement of persons who have need of such services;
- (t) the establishment in life of young people;
- (u) the promotion and encouragement of projects for community development;
- (v) the establishment of organisations to assist members of the community with special needs such as one-parent families, single persons with dependents, battered spouses, specially gifted children and minority groups;
- (w) the provision of public work for the benefit of the community and the protection of the lives and property of the community;
- (x) the advancement and improvement of the standards of efficiency of industry, commerce and agriculture;
- (y) the maintenance and improvement of the efficiency of the armed forces and the Police Force and their welfare; and
- (z) any purpose within the spirit of, and analogous to, the foregoing.

Meaning of “public benefit”

4. “Public benefit” includes benefit of a kind comprised within the scope of charitable purposes which is available to members of the public at large or to

a section of the public ascertained by reference to some specified geographical area, but does not include such a benefit if the persons for whom it is intended to be available are to be ascertained by reference to their relationship with some body or other person, whether that relationship is one of blood, status, contract or otherwise.

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PART II
REGISTRATION OF CHARITIES

Registration of charities

5.(1) There shall be a register of charities which shall be established and maintained by the Registrar and in which there shall be entered such particulars as the Registrar may from time to time determine of any charity there registered.

(2) There shall be entered in the register every charity not excepted by subsection (4), and a charity so excepted may be entered in the register at the request of the charity, but (whether or not it was excepted at the time of registration) may at any time, and shall at the request of the charity, be removed from the register.

(3) Any institution which no longer appears to the Registrar to be a charity shall be removed from the register, with effect, where the removal is due to any change in its purposes or trusts, from the date of that change; and there shall also be removed from the register any charity which ceases to exist or does not operate.

(4) The following charities are not required to be registered

- (a) any exempt charity;
- (b) any charity which is excepted by order made by the Attorney-General;

- (c) any charity having neither any permanent endowment, nor any income from property amounting to more than \$100 a year or such other sum as the Attorney-General may specify by order from time to time.
- (5) On submission of any application for a charity to be registered, there shall be supplied to the Registrar copies of its trusts (or, if they are not set out in any extant document, particulars of them), and such other documents or information as may be prescribed or as the Registrar may require for the purpose of the application.
- (6) It shall be the duty of
- (a) the charity trustees of any charity which is not registered nor excepted from registration to apply for it to be registered, and to supply the documents and information required by subsection (5); and
 - (b) the charity trustees (or last charity trustees) of any institution which is for the time being registered to notify the Registrar if it ceases to exist, or if there is any change in its trusts, or in the particulars of it entered in the register, and to supply to the Registrar particulars of any such change and copies of any new trusts or alterations of the trusts,
- and any person who makes default in carrying out any of the duties imposed by this subsection may be required by order of the Registrar to make good that default.
- (7) The register (including the entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times; and copies (or particulars) of the trusts of any registered charity as supplied to the Registrar under this section shall, so long as it remains on the register, be kept by him and be open to public inspection at all reasonable times on payment of the prescribed fee.
- (8) This section shall not apply to charities taking effect before 1st January, 1980, until such date as the Attorney-General may appoint by order made by statutory instrument; and different dates may be appointed for different cases or classes of cases.

Effect of failure to register charity

6. Where charity trustees of any charity fail to register that charity in accordance with section 5, the charity trustees shall not be entitled to claim any tax exemptions under any enactment in respect of that charity for the income year during which it remains unregistered.

Effect of and claims and objections to registration

7.(1) An institution shall for all purposes other than rectification of the register be conclusively presumed to be or to have been a charity at any time when it is or was on the register of charities.

(2) Any person who is affected by the registration of an institution as a charity may, on the ground that it is not a charity, object to its being entered by the Registrar in the register, or apply to him for it to be removed from the register; and provision may be made by regulations as to the manner in which any such objection or application is to be made, prosecuted, or dealt with.

(3) An appeal against any decision of the Registrar to enter or not to enter an institution in the register of charities, or to remove or not to remove an institution from the register, may be brought in the court by the Attorney-General, or by the persons who are or claim to be the charity trustees of the institution, or by any person whose objection or application under subsection (2) is disallowed by the decision.

(4) If there is an appeal to the court against any decision of the Registrar to enter an institution in the register, or not to remove an institution from the register, then, until the Registrar is satisfied whether his decision is or is not to stand, the entry in the register shall be maintained, but shall be in suspense and marked to indicate that it is in suspense; and for the purposes of subsection (1) an institution shall be deemed not to be on the register during any period when the entry relating to it is in suspense under this subsection.

(5) Any question affecting the registration or removal from the register of an institution may, notwithstanding that it has been determined by a decision on

appeal under subsection (3), be considered afresh by the Registrar and shall not be concluded by that decision, if it appears to the Registrar that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision, whether given on such an appeal or not.

Registrar and Commissioner of Inland Revenue may exchange information

8.(1) The Registrar may furnish the Commissioner of Inland Revenue and other Government departments and statutory boards, and the Income Tax Commissioner and other Government departments and statutory boards may furnish the Registrar, with the names and addresses of institutions which have for any purpose been treated by the person furnishing the information as established for charitable purposes, or, in order to give or obtain assistance in determining whether an institution ought to be treated as so established, with information as to the purposes of the institution and the trusts under which it is established or regulated.

(2) The Registrar shall supply any person, on payment of the prescribed fee, with copies of, or extracts from, any document in his possession which is for the time being open to public inspection in accordance with this Act.

PART III

INCORPORATION OF INSTITUTIONS

Charity trustees may apply for incorporation

9.(1) Trustees of a charity registered under section 5 may apply to the Registrar for their incorporation as a Board under this Part, unless they are already incorporated under another Act or otherwise.

(2) No application shall be made on behalf of a society unless it is authorised by the society

(3) Every application shall be in the form prescribed in the Second Schedule or to the like effect and shall be signed by the majority of the trustees.

Manner in which society may authorise application

10. For the purposes of section 9 an application shall be deemed to be authorised by a society if

- (a) it is authorised by a majority of the members of that society; or
- (b) a resolution authorising the making of the application is passed by a majority of those present at a meeting of that society, and the Registrar is satisfied that such notice of intention to hold that meeting and of its purpose was given as may be reasonable in the circumstances; or
- (c) the application is authorised by the rules of the society or by any other means provided in those rules.

Registration of Boards

11.(1) The Registrar, on being satisfied that the procedural requirements of this Part have been observed, shall

- (a) enter the name of the Board in the register kept by him under this Part, together with particulars as to the composition of the Board, the place of its registered office, and such other particulars as he thinks fit;
- (b) issue under his seal a certificate that the Board has been incorporated under this Part on the date mentioned in the certificate.

(2) From the date of incorporation mentioned in the certificate of incorporation the Board shall be a body corporate, and shall consist of the persons who are for the time being the charity trustees.

(3) Section 21 of the *Interpretation Act*, Cap. 1 shall apply to every Board incorporated under this Part.

Evidence of incorporation

12. Every certificate of incorporation issued under the seal of the Registrar shall be sufficient evidence, in the absence of proof to the contrary, that the Board named was incorporated on the date specified in the certificate, and that the procedural requirements of this Part have been observed.

Vesting of property

13.(1) All property held by the charity trustees shall immediately upon their incorporation as a Board vest without transfer, conveyance, or assignment in the Board for the same purposes, with the same powers, and upon and subject to the same trusts, contracts, and equities as then affect the same.

(2) Where any land, lease or charge under the *Land Registration Act*, Cap. 229, is vested in a Board by virtue of this section, the Registrar of Titles shall, on receiving a written application under the common seal of the Board, register the Board as proprietor of that land, lease or charge.

Name of Board

14.(1) No charity trustees shall be incorporated under a name which is identical with that of any other Board, or of any company carrying on business in Barbados (whether registered in Barbados or not) or of any other body corporate established or registered in Barbados under any Act or of any name registered under the *Registration of Business Names Act*, Cap. 317, or which so nearly resembles that name as to be calculated to deceive, except where the other Board, company, body corporate, or business as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the Board by that name will not be contrary to the public interest.

(2) The name of a Board need not include

(a) the words “Trust Board”; or

- (b) any of the following words, namely, “Trust”, “Board”, “Society”, and “Incorporated”.

Change of name

15.(1) Any Board incorporated under this Part may, in accordance with a resolution passed at a meeting of the Board, apply to the Registrar to change the name under which it is registered.

(2) Where a Board applies to the Registrar under this section to change the name under which it is registered and the Registrar approves of the change, he shall enter the new name in the register in place of the former name, and shall alter the certificate of incorporation to meet the circumstances of the case.

(3) A change of name by a Board under this section shall not affect any rights or obligations of the Board, or render defective any legal proceedings by or against the Board, and any legal proceedings that may have been continued or commenced by or against it in its new name.

Service of notice on a Board

16. Any notice, document or legal process shall be deemed to be served upon a Board if it is served in accordance with section 25 of the *Interpretation Act*, Cap. 1.

Acts of Board members presumed valid

17. Acts done or proceedings taken by any person acting in good faith as a member of a Board incorporated under this Part are presumed valid and shall not be questioned on the ground of

- (a) the existence of any vacancy in the membership of the Board; or
(b) any omission, defect or irregularity not affecting the merits of the case.

Powers in respect of property

18.(1) Without restricting its powers exercisable by or under any enactment or otherwise, any Board may

- (a) notwithstanding any trusts that may affect its property, with the consent of the court, dedicate all or any part of its property for any public purpose;
- (b) notwithstanding any trusts that may affect its property, sell or exchange any part of its property for any purpose upon such terms as it deems expedient; but no property subject to any trust shall be sold or exchanged in exercise of the power conferred by this paragraph without the consent of the court in any case where it is of the essence of the trust that the particular property should be used for the purpose of the trust;
- (c) subject to the rules or other documents providing for the constitution of the Board, purchase any property situated in Barbados, and apply any money for the time being held by the Board for or towards any such purpose; and any property so purchased shall be held upon the same trusts as affected the money applied in payment for the property.

(2) Any money or other property received in consequence of any such dedication or sale or exchange shall be held upon the same trusts as affected the property so dealt with, and any such money may be invested in any investments for the time being authorised by the *Trustee Act*, Cap. 250, for the investment of trust funds.

Variation of trusts and change of registered office

19.(1) If any variation is made by the court under Part IV in the trusts on which any Board holds any property, or if any additional property becomes vested in any Board on trusts not completely shown in the documents or other information lodged with the Registrar at the time of the incorporation of the Board

under this Part, then, within 1 month from the date of the variation or vesting, there shall be lodged with the Registrar

- (a) a copy of the documents showing the trusts as varied and the trusts on which the additional property is vested in the Board; or
 - (b) a statutory declaration by a member of the Board setting forth the variation of the trusts or the trusts on which the additional property is held so far as they are not shown in any such document.
- (2) If any Board desires to alter the address of its registered office, notice of the alteration or desired alteration shall be given to the Registrar within 1 month from the date thereof.
- (3) Where any Board gives notice under subsection (2) of its desire to alter the address of its registered office and specifies a new address for its registered office with sufficient particularity to enable documents to be served by hand and served by post, the Registrar shall alter the registered address accordingly.
- (4) If in any case the requirements of this section are not complied with within any such period of 1 month, each member of the Board, and each officer of the Board is guilty of an offence and liable on summary conviction to a fine of \$250 and an additional fine of \$25 for every day during which the default continues after a conviction is first obtained.

Voluntary winding-up of Board

20. Subject to this Act, the voluntary winding-up of a Board shall *mutatis mutandis* be governed by the same rules as the voluntary winding-up of a company under the *Companies Act*, Cap. 308.

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Winding-up of a Board by the court

21.(1) A Board may be wound up by the court if the court is satisfied that it is just and equitable that the Board should be wound up.

(2) Any application to the court for the winding-up of a Board may be presented by any of the following

- (a) the Attorney-General;
- (b) the Board;
- (c) a member of the Board;
- (d) a creditor of the Board;
- (e) the Registrar; or
- (f) any other person who adduces proof of circumstances which in the opinion of the court make it proper that he should make the application.

(3) All costs incurred by the Attorney-General or the Registrar in making application for the winding-up of a Board shall, unless the court otherwise orders, be a first charge on the assets of the Board.

(4) Subject to this Act, every application to the court for the winding-up of a Board, and every winding-up of a Board by the court, shall be governed by the same rules as in the case of the winding-up of a company by the court under the *Companies Act*, Cap. 308.

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Dissolution by Registrar

22.(1) Subject to subsection (6), if at any time the Registrar is satisfied that a Board is no longer carrying on its operations or has been registered by reason of a mistake of fact or law, he may make under his seal a declaration that the Board is dissolved as from the date of the declaration, and shall thereupon publish the declaration in the *Official Gazette*, and make in the register an entry of the dissolution of the Board.

(2) On the making of that entry the incorporation of the Board shall cease as from the date of the declaration.

(3) If any time thereafter the Registrar is satisfied that the declaration was made in error and ought to be revoked, he may, subject to subsection (6), revoke the same by a declaration in the *Official Gazette*, and shall thereupon make an entry of that revocation in the register, and the Board shall thereupon be revived from the date of the dissolution thereof as if no such dissolution had taken place.

(4) The Registrar may at any time send to any Board, by registered letter addressed to it at its registered office, an inquiry as to whether or not the Board is still carrying on its operations, and if no reply is received to that letter within 6 months after the date of the posting thereof, or if the letter is not delivered and is returned to the Registrar, that shall be sufficient to satisfy the Registrar that the Board is no longer carrying on its operations.

(5) Notwithstanding subsection (4), the Registrar may satisfy himself as to whether or not a Board is still carrying on its operations in any other manner he deems fit.

(6) Where the Registrar proposes to make a declaration in accordance with subsection (1) or subsection (3), he shall first give notice of the proposed declaration to the Attorney-General.

Distribution of surplus assets on winding-up or dissolution

23. On the winding-up of a Board or on its dissolution by the Registrar, all surplus assets after the payment of all costs, debts, and liabilities shall be disposed of as the court directs.

PART IV
SCHEMES IN RESPECT OF CHARITABLE TRUSTS

Application of property *cy-pres*

24.(1) Subject to subsection (3), where any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and

- (a) it is impossible, impracticable or inexpedient to carry out that purpose; or
- (b) the amount available is inadequate to carry out that purpose; or
- (c) that purpose has been effected already; or
- (d) that purpose has ceased, as being useless or harmful to the community or for other reasons, to be in law charitable, or
- (e) that purpose has ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift or trust,

then, whether or not there is any general charitable intention, the property and income, or any part or residue thereof, or the proceeds of sale thereof, shall be disposed of for some other charitable purpose, or a combination of such purposes, in the manner directed, and subject to the provisions contained in this Part.

(2) Subject to subsection (3), where any property or income is given or held upon trust, or is to be applied for any charitable purpose, and the property or income that accrues is more than necessary for the purpose, then, whether or not there is any general charitable intention, any excess property or income or proceeds of sale may be disposed of for some other charitable purpose, or a combination of such purposes, in the manner directed, and subject to the provisions contained in this Part.

(3) Without prejudice to section 25, this section shall not operate to cause any property or income to be disposed of as provided in subsection (1) or (2) if in

accordance with any rule of law, the intended gift thereof would otherwise lapse or fail and the property or income would not be applicable for any other charitable purpose.

(4) This section applies to cases where the charitable purpose affecting any property or income is defined by a scheme approved by the court under this Part or otherwise, and in any such case the original purpose may be restored, with or without modification.

(5) The provisions of this section apply with respect to trusts created, and to schemes approved, before or after 1st January, 1980.

Application *cy-pres* of gifts of donors unknown or disclaiming

25.(1) Property given for charitable purposes which fail shall be applicable *cy-pres* where it was given

- (a) by a donor who, after advertisements and reasonable inquiries have been made, cannot be identified or cannot be found; or
- (b) by a donor who has executed a written disclaimer of his right to have the property returned.

(2) For the purposes of this section, property shall be conclusively presumed (without any advertisement or inquiry) to have been given by donors who cannot be identified, in so far as it consists of

- (a) the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
- (b) the proceeds of any lottery, competition, entertainment, or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.

(3) The court may by order direct that property not falling within subsection (2) shall for the purposes of this section be treated (without any advertisement or

inquiry) as having been given by donors who cannot be identified, where it appears to the court either

- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or
- (b) that it would be unreasonable, having regard to the nature, circumstances and amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.

(4) Where property is applied *cy-pres* by virtue of this section, the donor shall be deemed to have parted with all interest at the time when the gift was made; but where property is so applied as belonging to donors who cannot be identified or cannot be found, and is not so applied by virtue of subsection (2) or (3)

- (a) the scheme shall specify the total amount of that property; and
- (b) the donor of any part of that amount shall be entitled, if he makes a claim not later than 12 months after the date on which the scheme is made, to recover from the charity from which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after that date in connection with claims relating to his gift; and
- (c) the scheme may include directions as to the provision to be made for meeting any such claim.

(5) For the purposes of this section, charitable purposes shall be deemed to “fail” where any difficulty in applying property to those purposes makes that property or the part not applicable *cy-pres* available to be returned.

(6) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.

(7) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before 1st January, 1980.

Extension of powers or varying mode of administering trust

26.(1) Where any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and the administration of the property or income or the carrying out of the trust, could be facilitated by extending or varying the powers of the trustees, or by prescribing or varying the mode of administering the trust, the powers of the trustees may be extended or varied, and the mode of administering the trust may be prescribed or varied, in the manner directed, and subject to the provisions contained in this Part.

(2) Nothing in this section restricts the powers that are conferred on the court or the trustees under any other enactment.

Trustees may prepare scheme

27. Where the trustees of any property or income, to which the provisions of this Part applies, wish it to be dealt with subject to this Part, they may prepare or cause to be prepared, in accordance therewith, a scheme for the disposition of the property or income, and for extending or varying the mode of administering the trust.

Scheme to be laid before Attorney-General

28.(1) Trustees shall submit to the Attorney-General every scheme prepared under this Part, together with full information as to all the facts upon which it is proposed to make the disposition set out in the scheme, and with copies of any instruments necessary to explain the scheme so prepared; and in respect of every such scheme, the Attorney-General

- (a) may remit the proposed scheme to the trustees for consideration of any amendments he may suggest; and

- (b) shall report on the scheme as finally submitted by the trustees after they have considered such amendments (if any) as are suggested by the Attorney-General, and shall deliver the report to the trustees.
- (2) At any time after delivery to them of the report of the Attorney-General, the trustees may apply to the court for approval of the scheme, and on making that application shall file therewith the scheme and the report of the Attorney-General thereon.
- (3) The application, scheme, and report mentioned in subsection (2) shall be open for public inspection.

Scheme to be advertised

29.(1) Before any application mentioned in section 30 is considered by the court, notice of that application shall be given once in the *Official Gazette*, and once in each of the local newspapers, and those notices shall be given not more than 3 months, and not less than 1 month, before the date proposed for the consideration of the scheme by the court.

- (2) Every notice given under subsection (1) shall
- (a) give a brief summary of the scheme;
 - (b) state the date proposed for the hearing of the application by the court; and
 - (c) require any person desiring to oppose the scheme to give written notice of his intention to do so to the Registrar, the trustees, and the Attorney-General not less than 7 clear days before the date proposed for the hearing.

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Opposition to scheme

30. Any person wishing to oppose a scheme prepared under this Part shall, not less than 7 clear days before the date proposed for the hearing of the

application by the court, give written notice of his intention to oppose the scheme to the Registrar, the trustees and the Attorney-General.

Administration of scheme

31. Without limiting the power to make any other provision for carrying out the purposes of a scheme prepared under this Part or for administering any property, income or money to which any such scheme relates, a scheme approved in accordance with this Part may provide that the purposes of the scheme may, in whole or in part, be carried out, and that any property, income or money to which the scheme relates may be administered, by

- (a) the trustees of any existing trust for any charitable purpose; or
- (b) the Public Trustee.

Expenses of scheme

32. Any scheme prepared and approved under this Part may provide that all reasonable expenses of or incidental to preparing, perusing, and advertising the scheme, and of and incidental to applying to the court for approval of the scheme, shall be paid out of, and be a charge upon, the property or income or money affected.

Court's jurisdiction in respect of scheme

33. Where application for approval of a scheme is made to the court under this Part, the court

- (a) may decide what persons shall be heard before it in support of, or in opposition to, the scheme;
- (b) has jurisdiction and authority to hear and determine all matters relating to the scheme;
- (c) may make an order approving the scheme with or without modification, as it thinks fit; and

- (d) may, on the application of the trustees, from time to time, vary or modify the scheme.

Court's decision in respect of scheme to be Gazetted

34. Notice of the approval of a scheme under this Part, or the refusal of the court to approve any such scheme, shall be published by the Registrar in the *Official Gazette* as soon as practicable after the date of that approval or refusal.

Court may make order in respect of scheme

35. The court may, if it thinks fit, make an order under this Part notwithstanding any non-compliance with the procedural requirements thereof in relation to the scheme.

Restrictions on approval of scheme

36.(1) A scheme shall not be approved by the court under this Part, unless the court is satisfied that

- (a) the scheme is a proper one, that should carry out the desired purpose or proposal, and that is not contrary to law or public policy or good morals;
- (b) the scheme can be approved under this Part;
- (c) every proposed purpose is charitable and can be carried out; and
- (d) subject to section 37, the requirements of this Part have been complied with in respect of the scheme.

(2) Notwithstanding the refusal of the court to approve a scheme under this Part, the trustees may seek approval of any other scheme in respect of the same property, income or money.

Holder of property to transfer in accordance with scheme

37. Where any scheme approved by the court under this Part designates any institution, body or person to hold or receive any property, money or income

under the scheme, the trustees in whom that property, money or income is vested shall convey, transfer or pay that property, money or income, with all profits or interest which may have accrued thereon to that institution, body or person; and, upon so doing, the trustees shall no longer be liable in respect of any express or implied trust upon which they held the property, money or income, except for wilful default or misappropriation thereof.

PART V

SUPERVISION OF CHARITABLE TRUSTS AND MISCELLANEOUS MATTERS

Inquiries into condition and management of charities

38.(1) The Attorney-General may examine and inquire into any trusts for charitable purposes in Barbados, and may examine and inquire into the nature and objects, administration, management and results thereof, and the value, condition, management and application of the property and income belonging thereto.

(1A) Any examination and inquiry referred to in subsection (1) shall also be carried out for the purpose of investigating any charity that is suspected of having committed an offence under section 3 or 4 of the *Anti-Terrorism Act*.

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(2) The Attorney-General may appoint a public officer or any person to make the examination or inquiry in any specified case for the purposes of subsection (1).

[1979-44]

(3) Every trustee and every person acting or having any concern in the management and administration of a trust for a charitable purpose, or of the property or income thereof, into which an examination or inquiry is being made under this section, shall, on request, produce to the Attorney-General or to the officer or person making the examination or inquiry all books, papers, writings and documents in relation to the trust or the property or income thereof, or to the

administration, management, value, condition and application of that property and income, and shall answer all questions and give all assistance in connection with the examination or inquiry that he is reasonably able to answer or give.

(4) Any person who fails to comply, in any respect, with subsection (3) is guilty of an offence and liable on summary conviction to a fine of \$500 or imprisonment for 3 months and an additional fine of \$50 for every day on which the offence continues after a conviction is first obtained.

Attorney-General may call for documents and search records

39.(1) The Attorney-General may require any person who possesses or controls any books, records, deeds or papers relating to a charity to furnish him with copies of, or extracts from, any of those documents, or, unless the document forms part of the records or other documents of a court or of a public authority, require that person to transmit the document itself to him for inspection.

(2) The Attorney-General shall be entitled, without payment, to inspect and take copies of or extracts from the records or other documents of any court, public registry, public authority or office of records for any purpose connected with the discharge of the functions of the Attorney-General with respect to charities.

(3) No person claiming to hold any property adversely to a charity, or freed or discharged from any charitable trust or charge shall be required under subsection (1) to transmit to the Attorney-General any document relating to that property or any trust or charge alleged to affect it, or to furnish any copy of or extract from any such document.

Proceedings to enforce or vary charitable trusts or to require new scheme

40.(1) Subject to subsection (2), the Attorney-General, a public officer, or any other person, may apply to the court in respect of any property, money or income subject to a trust for a charitable purpose, whether or not a scheme in

respect of that property, money or income has been approved by the court under Part IV or otherwise, for an order

- (a) requiring the trustees to carry out the trusts on which the property, money or income is held, and to comply with the provisions of the scheme (if any);
- (b) requiring any trustee to meet his liability for any breach of trust affecting the property, money or income, as the court may direct;
- (c) removing any trustee who has been responsible for, or privy to, any misconduct or mismanagement in the administration of a charity, or has by his conduct contributed to it or facilitated it;
- (d) excluding any purpose from the purposes for which the property, money or income may be used, applied or disposed of;
- (e) giving directions in respect of the administration of the trust, or in respect of any examination or inquiry under section 38, or in respect of any question to be answered or assistance to be given by any person in connection with that examination or inquiry; or
- (f) directing that on and after the date of the order or any subsequent date specified in the order, the property, money or income subject to the trust shall not be used or applied or disposed of otherwise than in accordance with a scheme that, after the date of the order, is approved by the court under Part IV,

and the court may make such order in respect of that application as it thinks fit.

(2) Where any person other than the Attorney-General or a public officer makes an application under this section, he shall give 1 month's notice thereof to the Attorney-General.

(3) Where any person other than the Attorney-General makes an application under this section, copies of the application shall be served on the trustees of the property, money or income to which the application relates, and on the Attorney-General where such service is appropriate.

(4) On an application under this section, the court may decide what persons in addition to the Attorney-General shall be heard before it in support of, or in opposition to, the application.

Charity trustees to keep accounts

41.(1) Charity trustees shall keep proper books of account with respect to the affairs of the charity, and charity trustees not required by or under the authority of any other Act to prepare periodical statements of account shall prepare consecutive statements of account consisting on each occasion of an income and expenditure account relating to a period of not more than 15 months, and a balance sheet relating to the end of that period.

(2) The books of account and statements of account relating to any charity shall be preserved for a period of 7 years at least, unless the charity ceases to exist and the Registrar permits them to be destroyed or otherwise disposed of.

Furnishing and audit of accounts

42.(1) Statements of account giving the information with respect to the affairs of a charity required under section 41, shall be transmitted to the Registrar by the charity trustees within 1 month after the period specified in section 41 for the preparation of statements of account.

(2) Any statement of account transmitted to the Registrar under subsection (1) shall be open to public inspection at all reasonable times.

(3) The Registrar may by order require that the condition and accounts of a charity for such period as he thinks fit shall be investigated and audited by an auditor appointed by him, being a member of the Institute of Chartered Accountants of Barbados.

(4) An auditor appointed in accordance with subsection (3)

(a) shall have a right of access to all books, accounts and documents relating to the charity which are in the possession or control of the charity trustees or to which the charity trustees have access;

- (b) shall be entitled to require from any charity trustee, past or present officer or servant of the charity such information and explanation as he thinks necessary for the performance of his duties;
 - (c) shall at the conclusion or during the progress of the audit make such reports to the Registrar about the audit or about the accounts or affairs of the charity as he thinks the case requires, and shall send a copy of any such report to the charity trustees.
- (5) The expenses of any audit under subsection (3), including the remuneration of the auditor, shall be paid by the charity.
- (6) Any person who
 - (a) fails to transmit to the Registrar any statement of account required by subsection (1); or
 - (b) fails to afford an auditor any facility to which he is entitled under subsection (4),is guilty of an offence and liable on summary conviction to a fine of \$1 000 or imprisonment for 6 months, and an additional fine of \$100 for every day during which the offence continues after a conviction is first obtained.
- (7) This section shall not apply to an exempt charity.

Manner of executing instruments

43.(1) Charity trustees may, subject to the trusts of the charity, confer on any of their body (not being less than two in number) a general authority, or an authority limited in such number as the trustees think fit, to execute in the names and on behalf of the trustees assurances or other deeds or instruments for giving effect to transactions to which the trustees are a party; and any deed or instrument executed in accordance with an authority so given shall be of the same effect as if executed by the whole body.

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- (2) An authority under subsection (1)
- (a) shall suffice for any deed or instrument if it is given in writing or by resolution of a meeting of the trustees, notwithstanding the want of any formality that would be required in giving authority apart from that subsection;
 - (b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;
 - (c) shall, subject to any restriction, and until it is revoked, and, notwithstanding any change in the charity trustees, have effect as a continuing authority given by and to the persons who from time to time are of their body.
- (3) Where a deed or instrument purports to be executed in accordance with this section, then, in favour of a person who in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the charity trustees, it shall be conclusively presumed to have been duly executed by virtue of this section.
- (4) The powers conferred by this section shall be in addition to and not in derogation of any other powers.

Transfer and evidence of title to property vested in trustees

- 44.(1)** Where, under the trusts of a charity, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustee members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact, if the memorandum is signed either at the meeting by the person presiding or in some manner directed by the meeting, and is attested by two persons present at the meeting.
- (2) A memorandum evidencing the appointment or discharge of a trustee under subsection (1) if executed as a deed, shall have the like operation under section 42

of the *Trustee Act*, Cap. 250 (which relates to a vesting declaration as respects trust property in deeds appointing or discharging trustees), as if the appointment or discharge were effected by the deed.

(3) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1), then proof (whether by evidence or as a matter of presumption) of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.

(4) This section applies to a memorandum made at any time, except that subsection (2) applies only to those made after 1st January, 1980.

Enforcement of orders of the Attorney-General or Registrar

45. A person guilty of disobedience

- (a) to an order of the Attorney-General under section 39 or 40 of this Act;
or
- (b) to an order of the Registrar requiring that a default under this Act be made good,

may on the application of the Attorney-General or the Registrar to the court be dealt with as for disobedience to an order of the court.

Right of appeal to the court

46.(1) Any person dissatisfied with a decision of the Registrar under Part II may appeal to the court against that decision.

(2) Where an appeal is made in accordance with subsection (1), section 7 applies.

(3) Where an appeal is made, the Attorney-General and such other persons as the court may direct shall be entitled to appear and be heard.

Expenses

- 47.(1)** There shall be defrayed out of moneys provided by Parliament
- (a) the remuneration and allowances payable under this Act to the Registrar and other public officers; and
 - (b) any administrative expenses incurred for the purposes of this Act by the Attorney-General and the Registrar.
- (2) Any fees received by the Registrar under this Act shall be paid into the Consolidated Fund.

Regulations

- 48.(1)** The Attorney-General may make regulations generally in respect of all matters which are required or authorised to be prescribed, or which are necessary or convenient for carrying out and giving effect to the purposes of this Act.
- (2) Regulations made under this Act shall be subject to negative resolution.

U.K. statutes

- 49.** The enactments of the United Kingdom Parliament specified in the Third Schedule, to the extent of their application in Barbados are repealed.

FIRST SCHEDULE*(Section 2)*

The following institutions, in so far as they are charitable, are exempt charities within the meaning of this Act, that is to say

- (a) the Barbados Community College;
- (b) the National Sports Council;
- (c) the National Assistance Board;
- (d) the Queen Elizabeth Hospital Board;
- (e) the Child Care Board;
- (f) the Sanitation Service Authority;
- (g) schools administered under the *Education Act, Cap. 41*;
- (h) public and private hospitals; and
- (i) churches within the meaning of that expression in section 2 of the *Anglican Church Act, Cap. 375* and any church whose Superintendent or Minister receives any sum by way of grant-in-aid under the *Grant-in-Aid (Churches) Act, Cap. 376*.

SECOND SCHEDULE*(Section 9)***FORMS OF APPLICATION FOR INCORPORATION AS A BOARD****Form I***Application for Incorporation of Trustees as a Board*

1. We, being trustees for _____, hereby apply to be incorporated as a Board under the provisions of the *Charities Act*, Cap. 243.
2. We desire the name of the Board to be _____
3. The registered office of the Board is to be at *(State an address with sufficient particularity for service by hand and service by post of documents thereat)*.
4. This application is made with the authority of *(State name of society for which the trustees act and mode of authorisation by the society. If there is no such society this should be stated)*.
5. The said society is registered as a charity but not itself incorporated.
6. The particulars of registration are
Dated this _____ day of _____ 19 ____ .

THIRD SCHEDULE*(Section 49)*

The Statutes of Mortmain of 1279, 1290, 1391 and 1531.

The Charitable Uses Act, 1601.