**CHARITY COMMISSION SCHEMES FOR CHARITIES LINKED TO AREA QUAKER MEETINGS** [January 2016]

***WHAT ARE SCHEMES, WHY ARE THEY NEEDED AND WHAT BENEFITS DO THEY PROVIDE?***

Before the re-organisation and restructuring of the Society of Friends in 2009 most of the Meetings (Preparative, Monthly, Quarterly and General) were separate charities, often with responsibility for one or more linked charities. These linked charities included ”specie property” (property that is held on a trust to be used for a specified charitable purpose) and restricted funds (e.g. for relief of poor Friends).

In consequence of the re-organisation of the Society most charities linked to former categories of Meetings (Monthly, Preparative etc.) experienced a change of trusteeship and a change of purposes. The process of re-organisation did not by itself include all the legal steps necessary to achieve those changes. There was also some misunderstanding as to the effect of re-organisation e.g. that the property of the charities concerned would simply convert to become unrestricted property of the new Area Meeting which was not in fact an outcome of the re-organisation.

To complete the relevant legal steps, and to clarify the basis on which the charities’ funds and assets were to be held in future, the Charity Commission proposed use of the Commission’s statutory power to make schemes. Schemes can both amend purposes and update governance provisions. Given that some Area Meeting trustees were inheriting multiple charities, each of which had its own governing document, schemes provide an opportunity to consolidate the purposes and governance of all the charities linked to an Area Meeting into a single document. If appropriate they also provide an opportunity to modernise any restrictive provisions. The alternative of dealing with each charity individually by a series of statutory resolutions and other legal mechanisms would involve substantial work for trustees and leave in place multiple documents to refer to. The ‘model’ scheme proposed also creates a ‘link’ between the charities and the Area Meeting (the reporting charity) so that they can share the same registration number and accounts statement.

In order to prepare such a scheme the Commission needs to be satisfied that all the properties and funds linked to that Area Meeting and managed by its trustees have been fully identified and their purposes recorded. A scheme is therefore preceded by a process of research and collation of information about the property and funds (sometimes already registered as charities and sometimes not) that have passed into the control of the Area Meeting trustees. That work falls to the trustees and their advisers.

***SPECIE OR DESIGNATED PROPERTY OR PERMANENT ENDOWMENT***

**‘**Specie’ property or ‘designated property’ is property that, under the trusts that govern it, must be used for a specified charitable purpose (e.g. only for use as a meeting house in that location). For Friends this applies to many meeting houses and burial grounds. Those properties should not be assumed to have transferred to the Area Meeting as unrestricted property: they remain separate ‘charities’ and must be managed in conformity with their existing trusts. Many also represent permanent endowment (capital that cannot be spent). When a Scheme is prepared these properties will be identified and listed separately from those with no such restrictions.

***GOVERNING DOCUMENT***

Each such charity had its own trustee arrangements: sometimes “the trustees for the time being of X Meeting” and sometimes a self-appointing body separate from the parent Meeting’s trustee body. Typically the objects of those charities were also linked to particular Meetings or locations. These provisions were set out in one or more documents (e.g. conveyances, wills, schemes of the Commission) which together served as “the governing document”, also often referred to as “the trusts” of the particular charity.

***LEGAL RESPONSIBILITY AND ‘BREACH OF TRUST’***

The re-organisation of the Society resulted in the trusteeships of these charities passing to the trustees of the relevant new Area Meeting. Changing circumstances meant that in some cases they could no longer be applied to their original objects and using them otherwise would result in the trustees acting unlawfully. This can be overcome by including new objects in the Charity Commission Scheme

***UPDATING GOVERNING DOCUMENTS***

Separately transferring the trusteeship of each of the Local Meetings and their linked charities to the Area Meeting would be complicated and onerous and a ‘model’ Scheme has been developed to facilitate the necessary action. This comprises a section defining the role of the trustees followed by a table identifying and categorising all the property and funds for which the trustees are responsible. (see Appendix 1)

***THE BENEFIT OF A SINGLE GOVERNING DOCUMENT***

The benefit of a Scheme is that it should provide the Area Meeting trustees with only two documents to refer to concerning the governance of the charities they administer: namely the Area Meeting’s constitution and the Scheme covering all the other charities. This replaces the position of having multiple and often out of date and hard to read former governing documents. The latter must of course be retained because they also serve as ‘title documents’ which evidence the ownership of property.

***BECOMING A REGISTERED CHARITY***

When it was decided that religious charities should no longer be excepted from charitable registration it was necessary to introduce a phased system to cope with the large number of charities affected. It is expected that in due course all Area Meetings will be required to register but initially only those with an annual income in excess of £100,000 must do so. In order to comply these Meetings needed to provide the Charity Commission with their governing document and full details of their property and trusts. At the outset of this process it became evident that the Area Meetings were unable to readily provide all the information about their linked charities that the Charity Commission required. To enable registration to proceed the Charity Commission agreed to do this on the basis of the governing document for the Area Meeting with the remaining information to follow as soon as possible thereafter. This is a temporary arrangement for the ‘first wave’ of registrations and in future it is expected that in order to register an Area Meeting will have to provide both its governing document and, at the same time, the background material concerning the linked charities.

***PREPARING A DRAFT SCHEME FOR APPROVAL***

Before applying for a Scheme the Area Meeting trustees should compile a property register with full information about the charities and restricted funds that they hold and which are to be included in the Scheme. This will include examining full copies of the existing governing documents and reaching a view on which property is specie and/or permanent endowment, and which is not. These documents may already be held by the Meeting or by Friends Trusts Ltd (in the Friends House Library archives) or by a County Records Office or by the Meeting’s solicitor or by some combination of these. In the case of records in the care of Friends Trusts Ltd help with the necessary research may be arranged through the Recording Clerk’s Office.

The trustees must also consider whether it would be appropriate to rationalise any of these charities and restricted funds e.g. to merge some or to release the permanent endowment of others. For the remainder they must consider how far the objects should be updated to reflect the current position e.g. reference to a former Preparative Meeting should be replaced by the name of its successor Local Meeting. A suggested format for collating and presenting this information is in the Appendix.

Once the necessary information has been assembled and analysed it should be possible to complete the schedule to the Scheme. The text of the first part of the Scheme should then be completed by amending the standard version to make it specific to the Area Meeting. The standard text and pro forma schedule are attached. Further advice and assistance in completing this task may be available from the Quaker Stewardship Committee via the Recording Clerks Office.

***APPROVAL OF*** *A* ***SCHEME***

Once a draft Scheme has been prepared copies, together with any supporting documentation, should be forwarded to the Stewardship Committee [via the Recording Clerk’s Office] and to the Secretary of Friends Trusts Ltd for comment. It should then be submitted to the Charity Commission for checking and approval. The Commission will examine the information supplied and advise the trustees of any further information or explanation required or any changes the Commission considers necessary. If the trustees’ suggested wording needs to be altered the Commission will offer explanation of why that is necessary or desirable. When the trustees and the Commission are jointly satisfied that the Scheme is in its final form it can then be authorised (brought into legal force) by the Commission. It will then be published on the Commission’s website for one month (this is a statutory requirement). The Commission will also update the registered details of the Area Meeting to include details of any linked charities that have income over £5,000. In the case of Meeting House charities this refers to the income of the Meeting House itself (e.g. rent received) rather than to the income of the occupying local meeting. Charities below this income threshold will not appear on the register, and should be treated as ‘special trusts’ of the Area Meeting for accounting purposes.

**Scheme Pro Forma**

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Under the power given in the Charities Act 2011

Orders that from today, the

[this space for Commission’s use only]

this

SCHEME

will govern the charities identified in part 1 of the schedule

and now to be known together as

the # area quaker meeting charities (charity number)

and govern the charities identified in part 2 of the schedule

at

[Town, County]

**A member of staff of the Charity Commission authorised to act on behalf of the Charity Commission:**

1. **Definitions**

In this scheme:

“the Area Meeting” means the charity governed by a constitution adopted ….. (formerly known as # Monthly Meeting of the Society of Friends).

“the charities” means the charities identified in part 1 of the schedule to this scheme.

“the Meetings” means the charities identified in part 2 of the schedule to this scheme.

“FTL” means Friends Trusts Limited (registered charity 237698).

“the trustees” means the trustees of the charities acting under this scheme and “trustee” means one of the trustees.

**ADMINISTRATION**

1. **Administration**
2. The charities listed in part 1 of the schedule are to be administered in accordance with this scheme. This scheme replaces the former trusts of the charities.
3. The unrestricted property (including land and buildings identified in part 3 of the schedule) of the charities is to be administered as part of the property of the Area Meeting.
4. [The charities numbered # in part 1 of the schedule are to be administered as one charity].

Note (**to delete**) this sub-clause may be omitted if not required or repeated if more than one amalgamation of charities is to take place]

**3. Uniting direction**

Subject to any further direction, the Commission directs that the charities listed in the part 1 of the schedule as at the date of this Scheme shall be treated as forming a part of the Area Meeting for the purposes of Part 4 (Registration and names of Charities) and Part 8 (Charity Accounts, Reports and Returns) of the Charities Act 2011.

1. **Names of the charities**

The new names of the charities are set out in the third column *(New name)* of the table at part 1 of the schedule\*.

**OBJECTS**

1. **Objects of the charities**
	1. The new objects of the charities are set out in the fifth column *(New objects)* of the table at part 1 of the schedule\*.
	2. Subject to the provisions of clause 6(1) and (2) (Power to dispose of and replace purpose property), the land identified in part 4 of the schedule to this scheme must be retained by the trustees for use for the object of the charity.
2. **Powers of the trustees *(Powers - introductory clause)***

In addition to any other powers which they have, the trustees may exercise the following powers in furtherance of the objects of the charities:

* 1. Provided they intend to replace the land disposed of with equivalent land to be used for the objects of the relevant charity, the trustees may sell, lease or otherwise dispose of all or any part of the land identified in part 4 of the schedule to this scheme. They must comply with the restrictions on disposal imposed by section 117 of the Charities Act 2011, unless the sale, lease or disposal is excepted from these restrictions by section 117(3)(c) or (d) or section 117(4) of that Act.
	2. If they do not intend to replace the land disposed of with equivalent land to be used for the objects of the relevant charity, the trustees may sell, lease or otherwise dispose of all or any part of the land identified in part 4 of the schedule to this scheme provided:
		1. the Area Meeting in session has considered and agreed to the decision according to Quaker business practice; and
		2. where there is a relevant continuing Local Meeting, the Area Meeting during its session in (a) considered the view of that Local Meeting; and
		3. [*any binding condition built into the original trusts, which still capable of being applied – NB this may apply to one or more of the properties, and each will need a sub-clause to state its additional conditions*]
		4. the trustees comply with the restrictions on disposal imposed by section 117 of the Charities Act 2011, unless the sale, lease or disposal is excepted from these restrictions by section 117(3)(c) or (d) or section 117(4) of that Act.
	3. [Subject to clause 6(2)(c) t] The proceeds of sale of any property sold, leased or otherwise disposed of under 6(2) must be invested by the trustees, and the income or other return arising must be applied in furtherance of the objects of the Area Meeting.

**TRUSTEES**

Note 1. There is a distinction between a Custodian Trustee and Holding Trustees which is relevant to this section. If necessary consult Friends Trusts Ltd for advice.

Note 2. The Charity Commission uses the word ‘Property’ to mean land, buildings and investment. The ownership of land on which a building sits is the key factor in ownership of a building.

Note 3. **(to delete).** Delete **either** clauses 7 and 8 (if FTL is to be discharged as custodian trustee **or** clauses 9 to 13 (if you intend to retain FTL as the full custodian). The clauses will renumber automatically. Please note that with this version (because it makes some provision for the management of the Area Meeting’s property – see 2(1) and 9(5) below) the front sheet will need the additional wording:

and alter or affect the

**…………………..AREA QUAKER MEETING**

1. **Custodian trustee**

FTL \*!will be the custodian trustee of the charities and of the Area Meeting.

1. **Transfer of property**

The title to the land described in parts 3 and 4 of the schedule to this scheme is transferred by this scheme to the custodian trustee in trust for the charity.]

1. **Discharge of custodian trustee:**
	1. FTL is discharged from its custodian trusteeship of the charities [and of the Area Meeting].
	2. When requested to do so by the trustees, FTL must transfer the investments held (and any accrued dividends) for the charities [and the Area Meeting] to the trustees or their nominee.
	3. The trustees may allow the investments of the charities and the Area Meeting to be held in the name of a corporate body as the trustees’ nominee and to pay reasonable remuneration for the service provided (The corporate body must be incorporated in, or have established a branch or place of business in, the United Kingdom).
	4. The land belonging to the charities and the Meetings which has been, and is currently, held by FTL as custodian trustee and identified in the tables at parts 3 and 4 of the schedule to this scheme is vested in FTL as holding trustee for the relevant charity. In relation to this land, FTL, if acting in good faith, shall be relieved of liability to the same extent as it would be under the provisions of section 4(2) of the Public Trustee Act 1906 if it were acting as custodian trustee.
	5. The land belonging to the Meetings which has been, and is currently, held by FTL as holding trustee and specified in the table at part 3 of the schedule to this scheme is vested in FTL as holding trustee for the Area Meeting. The trustees may vest in FTL as holding trustee any additional land acquired by the charities provided FTL agrees to be appointed as holding trustee.
2. **Holding trustee**
	1. FTL will be the holding trustee of the charities.
	2. The holding trustee must hold the property belonging to the charities.
	3. The trustees may discharge the holding trustee, and must give directions for the transfer of property on discharge.
3. **Recording of appointments**

The trustees must record in writing (which must take the form of a memorandum) the appointment or discharge of a holding trustee. The memorandum must be executed as a deed (under the provisions of section 334 of the Charities Act 2011).

1. **Management of property**
	1. The holding trustee, if one is appointed, must administer the property under the direction of the trustees.
	2. The holding trustee, if one is appointed, must concur with the trustees in all lawful acts necessary for the management of the charities unless the act in question involves:
		1. a breach of trust; or
		2. personal liability upon them.
	3. Unless the holding trustee concurs with any act involving a breach of trust or personal liability upon them, it will not be liable for any act or default on the part of the trustees, or any of them.
2. **Security of documents**
	1. The holding trustee, if one is appointed, must holdall title documents relating to the property belonging to the charity.

(2) The trustees must be allowed free access to view and copy these documents.

1. **Trustees *(Trustees of existing charity appointed as trustee()s)***

The trustees of the charities will be the persons who are the trustees from time to time of the Area Meeting.

**MEETINGS OF TRUSTEES**

1. **Meetings of trustees**
	1. The trustees shall administer the charities and conduct business related to those charities in accordance with the procedures and practices by which they administer the Area Meeting.

**CHARITY PROPERTY**

1. **Use of income and capital**
	1. For each of the charities the trustees must firstly apply:
		1. the charity’s income; and
		2. if the trustees think fit, expendable endowment; and
		3. when the expenditure can properly be charged to it, its permanent endowment

in meeting the proper costs of administering the charity and of managing its assets [(including the repair and insurance of its buildings)].

* 1. After payment of these costs, the trustees must, for each of the charities, apply the remaining income in furthering its objects.
	2. The trustees may also for each of the charities apply for its objects:
		1. expendable endowment; and
		2. permanent endowment, but only:
			1. where it is permitted in accordance with, and subject to the conditions in, section 281, sections 282-284 or sections 288-291 of the Charities Act 2011 (*power of unincorporated charities to spend capital*); or
			2. on such terms, including for the replacement of the amount spent, as the Commission may approve by order in advance.

**GENERAL PROVISIONS**

1. **Questions relating to the Scheme**
	1. The Commission may decide any question put to it concerning:
	2. the interpretation of this scheme; or
	3. the propriety or validity of anything done or intended to be done under it.

**SCHEDULE**

Note (**to delete**): rows may be inserted or deleted as required in each part of the schedule.

|  |
| --- |
| **PART 1** |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Former name** | **New name** | **Former objects** | **New objects or restricted purposes within the Area Meeting funds** | **Former governing documents (replaced by this scheme)** | **Permanent endowment before scheme date****(yes/no)** |
| 1 |  |  |  |  |  |  |
| 2 |  |  |  |  |  |  |
| 3 |  |  |  |  |  |  |
| 4 |  |  |  |  |  |  |
| 5 |  |  |  |  |  |  |
| 6 |  |  |  |  |  |  |
| 7 |  |  |  |  |  |  |

|  |
| --- |
| **PART 2** |

|  |  |
| --- | --- |
| **Meetings Amalgamated with the Area Meeting** | **Successor branches of the Area Meeting** |
| A Preparative Meeting | A local meeting |
| B Preparative Meeting | B local meeting |
| C Preparative Meeting | C local meeting |
|  |  |
|  |  |

|  |
| --- |
| **PART 3**  |

Note (**to delete**): list land that belonged to the charities in part 1 or the Meetings in column 1 of part 2 but is neither held on trust for a specific charitable use (“specie land”) nor permanently endowed.

|  |  |  |
| --- | --- | --- |
| **Land** | **Land Registry title number** | **Vested in FTL (y/n)** |
|  |  |  |
|  |  |  |

|  |
| --- |
| **PART 4**  |

Note (**to delete**): list all land that belonged to the charities in part 1 or the Meetings in column 1 of part 2 and is either held on trust for a specific charitable use (“specie land”) or permanently endowed.

|  |  |  |
| --- | --- | --- |
| **Land** | **Land Registry title number** | **Vested in FTL (y/n)** |
| *Description*This property is part of the charity number # in part 1 of the schedule. |  |  |
| *Description*This property is part of the charity number # in part 1 of the schedule. |  |  |

**Appendix : ABOUT THE AREA MEETING**

**This is for gathering all the necessary information before starting to complete the Scheme Pro Forma. Friends Trusts Ltd may have documents that will assist with this process.**

|  |  |
| --- | --- |
| The name of the AQM |  |
| The charity registration number of the AQM |  |
| The name(s) of the Monthly Meeting(s) replaced by the AQM |  |
| The area of operation of the AQM (geographical, described by counties) |  |
| What are the names of the constituent local meetings and which preparative meetings did they replace? | **Preparative:** | **Successor local:** |
|  |  |

**ABOUT THE LINKED CHARITIES ‘INHERITED’ BY THE AQM TRUSTEES:**

**General**

|  |  |
| --- | --- |
| Do they have an existing group registration number or numbers? (*If ‘yes’, please supply*) |  |
| Are they presently governed by a past scheme or schemes of the Charity Commission(ers)? (*If ‘yes’ please supply copies. Although our records are extensive they are not complete, and do not hold full records for formerly excepted charitie*s) |  |
| Is Friends Trusts Limited (FTL) the custodian trustee for these charities? \* |  |
| Is it the trustees’ wish to appoint FTL as custodian or, if it is presently custodian, to discharge it from that role (and to appoint it as holding trustee of property)? \* |  |

\* Queries on these issues should be directed to Friends Trusts Limited

**Charity by charity:** for each charity. Please copy as many times as required according to number of charities and state “ sheet ….. of ……..”

|  |  |
| --- | --- |
| Current name of charity |  |
| Current object(s) of charity |  |
| What is/ are the document(s) that presently govern(s) the charity? (which together form its “trusts”) see note 1 |  |
| Do you hold copies of the present trusts (this may be reported extracts or transcripts of the documents are ancient)? see note 2 |  |
| Have the trusts been examined to identify if the charity’s property is “restricted” or “unrestricted”? see note 2 |  |
| Charity type (select one):* Meeting House (still in use)
* Burial Ground (still in use)
* Former burial ground – still owned, and still maintained)
* Fund for buildings/ maintenance of buildings and/or of burial grounds
* Fund for relief of poor Friends
* Fund for education
* Other (specify)
 |  |
| Do you think this charity should be wound up or merged with another charity? see note 3 |  |
| If the charity is to continue how would the trustees want its objects be to be altered?  |  |
| Does this charity hold any interest in land, and if so do you have a Land Registry number? (*Please state the postal address and Land Registry number*). |  |

1. If you are uncertain you will need to seek advice by first contacting the Quaker Life, supportmeetings@quaker.org.uk. Please see the Commission’s guidance notes on specie property. FTL may hold some of the documents and may be able to assist you with the assessment of the status of the property. We do not automatically require a copy of each document, but we may ask you to supply one if there is doubt concerning the status of the property
2. Please indicate the latest known figures for the capital (if any) of this charity, and its income. If you have identified a charity with which to merge this charity please provide details. Please note that for Meeting Houses still in use and Burial Grounds still in use we would generally be unable to authorise a merger.
3. The default change will be to replace any references to former meetings with references to the AQM. Any other requested changes will need to be explained in terms of what has changed to necessitate a change to the objects e.g. a maintenance fund for a Meeting House that has been disposed of.