

CHARITY COMMISSION
DECISION OF THE CHARITY COMMISSIONERS
FOR ENGLAND AND WALES MADE ON THE 24 JANUARY 2003

APPLICATION FOR REGISTRATION OF
ENVIRONMENT FOUNDATION

1. *The issue before the Commissioners*

The Commissioners considered an application by a prospective company to be called Environment Foundation (“EF”) for registration as a charity. If the company were to be established as a charity it should be entered on the Central Register of Charities under section 3(2) of the Charities Act 1993. It was proposed that the EF would be a successor body to the Environment Foundation, a charity established by Declaration of Trust dated 10 July 1983 as subsequently amended and registered under number 287690.

The Commissioners have made this decision in a final review under the Commission’s review procedures.

2. *Decision*

The Commissioners:

- having considered the case which has been put to them by EF; including legal submissions and full supporting evidence, and
- having considered and reviewed the relevant law and the governing document and activities of EF and the social environment in which it operates,

concluded that EF would be established for exclusively charitable purposes and may be registered as a charity with the following objects;

- (i) *To promote sustainable development for the benefit of the public by*

the preservation, conservation and the protection of the environment and the prudent use of natural resources;

the relief of poverty and the improvement of the conditions of life in socially and economically disadvantaged communities;

the promotion of sustainable means of achieving economic growth and regeneration.

- (ii) *To advance the education of the public in subjects related to sustainable development and the protection, enhancement and rehabilitation of the environment and to promote study and research in such subjects provided that the useful results of such study are disseminated to the public at large.*

Sustainable development means “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

3. The objects and activities of EF

3.1 The objects originally proposed by EF in their application were:

1. *To promote for the public benefit by such means as are charitable, sustainable development and the protection, enhancement and rehabilitation of the environment in the United Kingdom and elsewhere;*
2. *To advance the education of the public in subjects related to sustainable development and the protection, enhancement and rehabilitation of the environment and to promote study and research in such subjects provided that the useful results of such study are disseminated to the public at large.*

Sustainable development means development which meets the needs of the present without compromising the ability of future generations to meet their own needs.

In furtherance of these objects, EF proposed to continue with the work of the existing charitable body the Environment Foundation which in due course would be dissolved in favour of the new company structure for which registration was now being sought. Its activities would include consultations to discuss important issues of the day, awarding travelling fellowships to encourage people from overseas to participate in the consultations, education programmes, for example about sustainable tourism and a ‘Bridging the Generations’ programme to address concerns about inter-generational issues. EF would also promote environmental solutions to the business community through award schemes, for example to businesses that have developed products or services that preserve or conserve the environment or combat pollution.

3.2 The objects of the existing charitable body the Environment Foundation are directed at the protection, enhancement and rehabilitation of the environment in the United Kingdom and elsewhere, including fostering new or improved technological methods of abating environmental pollution.

These objects were no longer considered adequate by the charity because of developments and changes in the environmental agenda. Issues were becoming more than just being about environmental protection and were including the wider concerns of economic prosperity and social equity. These concerns were now represented by the key concept of sustainable development.

4. The Commission’s existing approach to the Promotion of Sustainable Development as a Charitable Purpose

Sustainable development is a concept that emerged in the late twentieth century as a response to the recognition of the danger to environmental resources caused by the way the planet was being developed and the risks this caused to future generations. One of the difficulties when considering sustainable development is that the

expression appears capable of different meanings depending on whether the context in which it is being considered is global, national or local. Essentially it involves a link between economic growth, environment costs and social benefit. There have been various attempts to define it, but the most widely accepted definition was put forward by the Brundtland Commission in their 1987 report¹ which defines sustainable development as

“development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

The Commission’s current view is that “the promotion of sustainable development” cannot be accepted as a charitable purpose in its own right, without any further limitation, because it lacks the clarity and certainty required for charitable objects and it appears to go beyond what is exclusively charitable. The use of the Brundtland definition would not be enough on its own to overcome this difficulty.

However, the Commissioners noted that the Commission had recognised that sustainable development was a widely used and accepted concept in environmental circles and that it remained a rapidly developing area which may in due course be developed as a charitable purpose. In the meantime it might be accepted as part of an objects clause which sufficiently limited and defined its scope.

5. Limiting Non Exclusively Charitable purposes by confining them to charitable activities

The Commissioners considered whether the proposed object of ‘promoting sustainable development’ could be rendered exclusively charitable by a qualifying formula such as ‘by such means as are charitable’ to overcome the difficulty in establishing a definition which had sufficient certainty. It was suggested by EF that this qualification, which would serve to limit the object so that sustainable development was only promoted by such means as were charitable, would overcome the difficulties identified by the Commission.

The rule of certainty of objects applies equally to charitable objects as it does to the objects of a private trust. Ultimately the objects must be sufficiently certain for the Commission or the Court as a last resort to be able to provide for the proper administration of a charity and to enable its property to be applied pursuant to its charitable objects.² The general principle is that a trust for purposes which are not limited to (but are broad enough to include) charity fails altogether.³

Further, the Commissioners noted that the lack of clarity and certainty in charitable objects prevents the real purpose of the organisation from being readily recognised by the public and increases the difficulty in construing or acting on the governing

¹ The United Nations set up The World Commission on Environment and Development, headed by Brundtland, Prime Minister of Norway as an independent body in 1983.

² Re Keoppler’s Will Trusts. Barclays Bank Trust Plc v Slack and others. (1984) Ch 243 at 257 – 8 and (1985) 2 All ER 869 CA at 874 approved

³ Morice v Bishop of Durham 1804 9 VES 399

document.⁴ It is unlikely that many trustees, given objects which could be either charitable or non-charitable, would be able to distinguish which are which.

The Commissioners therefore concluded that the formulation proposed would not be an adequate way of limiting the expressed purposes of EF to a purpose which was exclusively charitable.

The Commissioners considered that this approach could be contrasted with cases where the charitable objects are clear and certain and where it is only the charity's *activities* which are limited to "such means as are charitable." Once the objects have been established with certainty, it may then be appropriate to state that the activities that may be carried out to further the objects should be restricted in this way.⁵

6. The Promotion of Sustainable Development - Recognising a New Charitable Purpose

The Commissioners accepted that the concept of sustainable development was difficult to define with any degree of certainty, although they recognised that the concept was widely recognised internationally, politically and by bodies working in the environmental field.⁶

The Commissioners were of the view that the promotion of sustainable development for the benefit of the public should now be accepted as charitable provided that it could be confined to purposes and activities which are recognisable as charitable in law and could be demonstrated as falling within the Commission's policy on accepting new charitable purposes for the benefit of the public.⁷

The Commissioners looked at ways in which the concept of sustainable development could be confined to charitable purposes. They reviewed material relating to the meaning and activities which went to support sustainable development and in particular the consultation paper issued by the DETR in 1998.⁸ This had indicated that sustainable development was about ensuring a better quality of life for everyone, now and for generations to come and that a vision of sustainable development is based on four objectives;

- Social progress which recognised the needs of everyone;
- Effective protection of the environment;
- Prudent use of natural resources;
- Maintenance of high and stable levels of economic growth and employment.

⁴ *McGovern and Others v Attorney-General and Another* (1982) Ch 321, discussion at 343 - 4

⁵ *Ibid*, discussion at 341

⁶ The World Commission on Environment and Development Tokyo Declaration 1987. The United Nations Conference on the Environment and Development, known as the Earth Summit. Rio, Brazil.1992. The World Summit on Sustainable Development. Johannesburg. South Africa 2002

⁷ RR1A Recognising New Charitable Purposes

⁸ *Opportunities for Change* (1998). A consultation paper on a revised UK strategy for sustainable development

The Commissioners also considered the Brundtland definition of sustainable development and the outcome of the international conferences which had taken place on sustainable development.⁹

Finally they considered the proposed activities of EF.

Taking this into account the Commissioners considered that the charitable aspects of sustainable development could be expressed in the following purpose;

Promoting sustainable development for the benefit of the public by

the preservation, conservation and the protection of the environment and the prudent use of natural resources;

the relief of poverty and the improvement of the conditions of life in socially and economically disadvantaged communities;

the promotion of sustainable means of achieving economic growth and regeneration.

Sustainable development means “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

The Commissioners then considered whether this purpose was charitable by way of analogy with accepted purposes and for the benefit of the public following their own policy statement on the acceptance of new charitable purposes.¹⁰

The Commissioners considered the separate elements of this purpose as charitable by way of analogy with existing purposes as follows;

That the preservation, conservation and protection of the environment and the prudent use of natural resources were analogous to the charitable purpose of preservation and conservation

That the relief of poverty and the improvement of conditions of life in socially and economically disadvantaged communities was analogous to the charitable purpose of relief of poverty

That the promotion of sustainable means of achieving economic growth and regeneration was analogous to the charitable purposes (a) of promotion of urban and rural regeneration for the public benefit in areas of social and economic deprivation and (b) of preservation and conservation.

The Commissioners concluded that it was clear that such purposes enured for the benefit of the public without the need to consider further evidence on this aspect.

⁹ The World Commission on Environment and Development Tokyo Declaration 1987. The United Nations Conference on the Environment and Development, known as the Earth Summit. Rio, Brazil.1992. The World Summit on Sustainable Development. Johannesburg. South Africa 2002

¹⁰ RR1A Recognising New Charitable Purposes

7. The advancement of education

The Commissioners noted that EF was also to be established for the advancement of the education of the public in subjects relating to sustainable development and the protection of the environment. This was accepted as a charitable purpose on the understanding that activities carried out in furtherance of this object would comply with the Commission's guidelines on political activities.

8. Conclusion

The Commissioners therefore concluded that subject to the changes to the objects which had been identified, once EF was registered as a company it would be established for exclusively charitable purposes and should be entered on the Register of Charities pursuant to Section 3 of the Charities Act 1993.