

The Constitution of the National Trust

When I took up the post of Solicitor to the National Trust in 1989, one of the first requests for advice which I received was to determine the year in which the Trust should celebrate its centenary – not difficult you would think but I was offered 1893 (when the first meeting to consider the establishment of the National Trust was held), 1894 (when a meeting was held to approve the draft constitution) and 1895 (when the National Trust for Places of Historic Interest or Natural Beauty, to give it its full title, was registered under the Companies Act as a company limited by guarantee).

I plumped for 1895, but that is history because the National Trust that we know today owes its existence to the National Trust Act of 1907. That Act created the National Trust as “a body corporate with perpetual succession and a common seal and with power to purchase, hold, deal with and dispose of lands and other property”. It was established “for the purposes of *promoting* the permanent preservation for the benefit of the nation of lands and tenements (including buildings) of beauty or historic interest and as regards lands for the preservation (so far as practicable) of their natural aspect features and animal and plant life”. Those purposes were extended by the National Trust Act of 1937 to include the *promotion* of

1. the preservation of buildings of national interest or architectural historic or artistic interest and places of natural interest or beauty and the protection and augmentation of the amenities of such buildings and places and their surroundings;
2. the preservation of furniture and pictures and chattels of any description having national or historic or artistic interest;
3. the access to and enjoyment of such buildings, places and chattels by the public.

I emphasised the words “promoting” and “promotion” which clearly permit the Trust to pursue its objectives in various ways, but it has always concentrated on the acquisition and management of land, buildings and their contents and is not a campaigning organisation, except to defend its own property. It can exercise those powers in England, Wales, Scotland and Northern and Southern Ireland, but as far as I know it has never owned any property in Scotland (where there is a separate National Trust) and only one in Southern Ireland which is currently being sold to the National Trust there. It can also accept or acquire covenants over land, and (unusually in English law) can enforce them against the owner or his successor even if it has no legal interest in the adjacent land.

There is enough material in the booklet containing the National Trust Acts for several 15 minute presentations, and I

can therefore only touch on some of the more unusual points. For example, the National Trust is not a trust in the sense described this morning by Dr. Kearns so that there is no trust deed, it has no memorandum and articles like a company (although it did of course between 1895 and 1907) and the various National Trust Acts are its constitution. Nor indeed is it a bank as some people apparently believe.

It is also a registered charity, since although it does not satisfy the test of being for the relief of poverty, the advancement of education or the advancement of religion it meets the fourth test of being established “for other purposes beneficial to the community”. Two particular things flow from all of this:

1. Although the Trust is a body corporate, as a matter of charity law the members of the ruling Council are charity trustees because they are responsible under the charity’s governing instrument (namely the Acts of Parliament) for the general control and management of the administration of the charity and therefore have a degree of personal liability (against which until recently they could not insure) like the trustees of the form of trust described by Dr. Kearns.

2. Although created by Parliament its external responsibility is not to Parliament, and its Annual Report has to be submitted not to Parliament or a Government Minister but to the Charity Commission and the AGM of its members.

At a slightly more detailed level the following aspects of the National Trust’s constitution are worthy of mention in this debate:

- Section 11 of the National Trust Act 1971 provides that “the entire business of the National Trust shall be arranged and managed by the Council who may exercise all such powers of the National Trust as are not exercisable only by the National Trust in general meeting”. This makes it clear that the members of the Trust are not in the same position as the shareholders of a limited company.
- You would expect the Council to have power to delegate its functions, but in fact the 1971 Act provides that the Executive Committee is to “exercise and enjoy” all the powers conferred on the Council with certain specified exceptions. The Executive Committee can then confer powers on sub-committees, Regional Committees etc.
- Half of the Council of 52 are appointed by organisations such as the Trustees of the British Museum, the Royal Agricultural Society and the Ramblers Association, and the other half are nominated by members of the Trust and elected by them at the AGM.
- The members of the Trust (now numbering 2.4 million) have certain limited rights under the constitution – the power to nominate candidates for election to the Council,

to elect the auditors, to approve the Annual Report and Accounts and also to submit resolutions to the AGM. Although those resolutions can be and are voted on, they have no binding effect, and only a very small proportion of the members vote, mostly by proxy or postal vote.

- Although not technically part of the constitution we have arrangements (which are not legally binding and which we call Memoranda of Wishes) whereby the descendants of families who have given their houses or land to the Trust are permitted certain favours, principally of continued occupation. The behaviour of the Stricklands of Sizergh and the Bristols of Ickworth are better left for discussion over a coffee or lunch break, but I will return in a moment to the wish by the donor in 1944 of thousands of acres on Exmoor in Somerset that hunting should be allowed to continue. Suffice it to say here that the Council has always respected these wishes, although detailed changes have been negotiated or made from time to time.
- The Trust describes itself as a charity in need. Not a very good slogan, but it is a reminder that the Trust receives no direct financial support from the Government. The Accounts for 1995/96 reveal that of the total income of £116 million, £46 million came from members' subscriptions, £26 million from rent and admission fees, £4 million from revenue grants and £40 million from investment income, the contribution from our trading company and appeals. In addition there were capital grants of £12 million, legacies of over £20 million and capital receipts from sales of £2 million. In the same year capital works and projects at properties amounted to £45 million, and we spent over £10 million on acquisitions. We are a big business!

I do not have time to talk about the advantages and disadvantages of being a registered charity, but I will say a few words as to the advantages and disadvantages of the National Trust's form of constitution, namely the various Acts of Parliament. In the case of the Trust the first and most important advantage is the unique power conferred by Parliament in 1907 to declare property inalienable, so that it cannot voluntarily be sold and, if the Trust objects, can only be compulsorily acquired by what is called Special Parliamentary Procedure. Not a complete safeguard but a pretty effective shield so that we cannot sell off the family silver, or more accurately the bricks and mortar, but it does mean they are a permanent liability since the decision is irreversible, and many properties whilst well endowed in architectural terms are not well endowed financially.

The second advantage, which is important in the case of an organisation such as the Trust which is concerned with the permanent preservation of property, is that it is not vulnera-

ble to changes in its powers or methods of operation from some vote of members at the AGM or a sudden change in the composition of the Council, because with very limited exceptions relating to the conduct of the AGM, the Acts can only be changed by another Act of Parliament.

The other side of the coin is that a constitution contained in an Act of Parliament is very inflexible. Powers cannot be extended, basic structures cannot be changed, voting systems cannot be altered, poor drafting cannot be corrected, and members' powers cannot be varied without a further Act. The last is a particular issue. The 1971 Act introduced the procedure for members' resolutions, and it could be argued that the larger the Trust and the larger its membership the more need there is for the members to be able to challenge the policies and decisions of the Council. For 10 years after 1971 there were no resolutions; thereafter there has always been at least one, with as many as nine in 1983 and 1990. In my personal view it is rather absurd that 10 out of 2.4 million members can demand a debate and vote on an issue which may have little relevance to the affairs of the Trust. It is often an opportunity for single interest groups to gain a platform and publicity on subjects such as the reduction in road traffic or transporting animals abroad for slaughter which are at best peripheral to the Trust's statutory purposes, but perhaps it is democracy of which its critics say there is all too little in the management of the Trust.

Can I end with a topical example which brings together some of the unusual aspects of the Trust's constitution which I have mentioned. Hunting with hounds, and particularly deer hunting, has been a matter of controversy at Annual General Meetings for many years and resolutions have been put forward proposing that it should be banned. The Council took the view that the ethical and moral arguments were outside its statutory purposes, but in 1995 it commissioned a scientific study as to whether hunting with hounds caused the deer suffering. The study was published last week and the scientific evidence was devastating. What should the Council do? Should it consult the membership? Should it consult the hunts and hunt supporters? Should it consult the Charity Commission? Should it postpone any ban until the implications could be addressed? And what about the Memorandum of Wishes, since the donor died a few years ago? In fact the Council decided in view of the evidence that deer hunting with hounds over Trust land should not be permitted after the end of the present season. An unpopular decision in Somerset, but many would say a decision long overdue. As the Trust's Solicitor I am hoping that, unlike the Local Authority who sought unsuccessfully to impose a ban a few years ago, there will be no legal challenge to the decision.

