EXPLANATORY MEMORANDUM TO

THE CHARITIES (SHAKESPEARE BIRTHPLACE TRUST) ORDER 2017

2017 No. 783

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Digital, Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This order is made under section 73(2) of the Charities Act 2011 ("the 2011 Act") to give effect to a Scheme settled by the Charity Commission ("the Scheme") under section 73(1) of that Act to amend certain provisions of the Shakespeare Birthplace, &c, Trust Act., 1961 which provides for the Shakespeare Birthplace Trust ("the Trust").

2.2 The purpose of the Scheme is to modernise the provisions that govern the appointment, constitution and function of the board of trustees of the Trust. The existing provisions are over 50 years old and do not provide sufficient flexibility in terms of the selection and appointment of trustees or the introduction of particular skills onto the board to help the Trust with its long-term development. The existing provisions also limit the trustees' ability to manage the Trust in an effective manner in accordance with the Charity Commission's guidance and with widely accepted principles and standards of good charity governance.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative context

4.1 The Trust is regulated by the Shakespeare Birthplace, &c., Trust Act 1961 (c. xxxviii) ("the 1961 Act"), a private Act of Parliament. The Scheme amends the administration of the Trust by replacing the Second Schedule to, and amending certain sections of, the 1961 Act. Since the Scheme does not go beyond the powers exercisable apart from section 73 of the Charities Act 2011 in altering any statutory provision contained in, or having effect under, any public general Act of Parliament, the Order is made subject to the negative procedure.

5. Territorial extent and application

5.1 The instrument extends to England and Wales.

5.2 The instrument applies to the Trust, which is a charity registered with the Charity Commission for England and Wales.

6. European Convention on Human Rights

6.1 Tracey Crouch, the Minister for Sport and Civil Society, Department for Digital, Culture, Media and Sport has made the following statement regarding Human Rights:

"In my view the provisions of the Charities (Shakespeare Birthplace Trust) Order 2017 are compatible with the Convention rights."

7. Policy background

7.1 The Trust was established by an Act of Parliament in 1891 ("the 1891 Act"), which incorporated the body of trustees known as the Trustees and Guardians of Shakespeare's Birthplace and transferred certain lands and other property, including the house generally known and reputed to be the house in which William Shakespeare was born, to those trustees. The 1891 Act provided for the appointment of ex-officio trustees and life trustees, and conferred powers on the trustees for the management of the property of the Trust.

7.2 The constitution of the Trust was varied by an Act of Parliament in 1930 ("the 1930 Act"), which limited the number of ex-officio trustees and established a new class of trustee, known as representative trustees, to be appointed by the governing bodies of the Universities of Oxford, Cambridge, London and Birmingham. It also confirmed the purchase of certain properties by the trustees and conferred further powers on them.

7.3 Subsequent to the enactment of the 1930 Act, the trustees acquired further property of Shakespearean interest and expanded the activities of the Trust in various directions. The objects of the Trust and the powers conferred on the trustees by the 1891 Act and the 1930 Act having been deemed insufficient to permit the full development of the purposes for which the Trust was originally formed, the 1961 Act was enacted to redefine and extend the objects of the Trust, vary the constitution of the board of trustees and further extend their powers. The 1961 Act altered the list of bodies entitled to appoint representative trustees, reflecting changes to the local government structure, and also added five additional members to the class, to be appointed by The Arts Council (which has since chosen to be removed from the list), The British Museum, Warwickshire County Council, The National Trust and the Royal Shakespeare Theatre. It also introduced a further class of trustees, known as local trustees. This had the effect of increasing the size of the board to a number in excess of 30 trustees.

7.4 The objects of the Trust, as set out in the 1961 Act, are "(a) to promote in every part of the world the appreciation and study of the plays and other works of William Shakespeare and the general advancement of Shakespearean knowledge; (b) to maintain and preserve the Shakespeare birthplace properties for the benefit of the nation; (c) to provide and maintain for the benefit of the nation a museum and a library of books, manuscripts, records of historic interest, pictures, photographs and objects of antiquity with particular but not exclusive reference to William Shakespeare, his life, works and times."

7.5 The Scheme will dispense with the various classes of trusteeship and provide instead for a smaller board of between eight and 12 trustees, to be appointed primarily on the

basis of their skills, knowledge and expertise, in line with Charity Commission guidance and widely accepted principles of good governance. Appointment of new or additional trustees will become the responsibility of the board, rather than the external bodies that have previously been in a position to appoint individuals and there will no longer be any ex-officio trustees. The external bodies affected have all been consulted and they have each signified their agreement to the proposed changes.

7.6 The Scheme will also establish a new consultative council to the board ("the Council"), which will contribute to the long-term vision of the Trust. The former life trustees of the Trust will become life members of the Council, as will the Trust's honorary fellows and membership will be extended to all trustees serving prior to the grant of the Scheme. In the longer term, the Trustees will make appointments to the Council based on who, in their opinion, is best able to contribute to the furtherance of the objects of the Trust. The Trustees will also consider the skills, knowledge and experience that are available within the county, and within organisations with which the Trust has a working relationship or other close connection.

7.7 The provisions governing the proceedings and decisions of the trustees are to be modernised to reflect current practice, for example regarding voting procedures and participation in meetings by electronic means. The Scheme will also introduce an express power for the trustees to delegate certain functions to sub-committees with clear terms of reference, including a Nominations Committee, which may identify and select candidates for appointment as trustees or members of the Council.

7.8 The Trust's investment powers are to be updated to ensure authorisation under all of the provisions of the Trustee Act 2000.

7.9 Statutory references to the Charities Act have been updated and redundant references to the Borrowing (Control and Guarantees) Act 1946 have been removed.

7.10 The Scheme will not change the objects of the Trust or otherwise alter its remit.

8. Consultation outcome

8.1 Shakespeare Birthplace Trust has carried out an extensive programme of engagement on its proposals, which commenced with the establishment of a Governance Subcommittee of the Executive Committee to design and oversee the governance review in March 2014. The charity has sought to consult widely to develop its proposals and formally gave notice of the draft Scheme in November 2016. The proposals have been well received, in particular by current trustees who will be most affected.

8.2 The charity has consulted extensively internally with its current trustees (including Ex-officio trustees) and representative bodies who currently appoint trustees. A letter was sent to all Ex-officio Trustees and nominating bodies, requesting acknowledgement that, once the Scheme is granted, Ex-officio and Representative Trustee positions would cease to exist. Signed acknowledgements were received from all 11 nominating bodies and all five Ex-officio Trustees stating that they were content for the proposals to proceed.

8.3 The charity has included its plans in its newsletter Trust Weekly, which is circulated to over 700 recipients, including staff and volunteers (active and former), trustees, honorary fellows, working partners and other stakeholders. As part of the review process, the charity advertised for a shadow board and these advertisements were included in national sector press (Charity Today) and the charity issued a press release

on its website. The plans have also been set out at a meeting of the local town council and the minutes published (24 November 2015).

8.4 The charity has also given formal notice of the Scheme on the Charity Commission's website. The draft Scheme was published on the Charity's Commission website from 28 November until 26 December 2016. Notice of publication was given on Shakespeare Birthplace Trust's website, through the Trust Weekly newsletter and also sent to the representative bodies that currently appoint trustees. A press release was also issued on 28 November; setting out the purpose of the Scheme and introducing readers to the trustees who will be joining the board once the Scheme takes effect. There were no representations made in response to the formal publication of the draft Scheme.

9. Guidance

9.1 Guidance is not required as this is an Order to give effect to the provisions of a Scheme settled by the Charity Commission for the administration of a charity governed by an Act of Parliament, which will amend its existing administrative provisions.

10. Impact

10.1 There is no impact on the public sector.

10.2 There is no impact on business, charities or voluntary bodies.

10.3 A Regulatory Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 Monitoring and review are not required as this Order simply gives effect to a scheme settled by the Charity Commission at the request of the Trust for the administration of a charity governed by an Act of Parliament.

13. Contact

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