

Chapter 18

Statutory Corporations

18.1 Functions of statutory corporations

A number of different kinds of activity can be identified which might lead to the setting up of a statutory corporation to oversee them.

- To regulate certain types of activity
 - economic (e.g. banking or money-changing, securities, insurance broking, price control)
 - licensing and supervision of particular activities and persons involved in them (e.g. horse-racing, lotteries, nursing homes, estate agents)
 - supervision of professions (including admission, discipline, etc.)
- To provide centralised management for important industrial, commercial or other activities or services (e.g. mining, agricultural or milk marketing, meat production, charities, water resources)
- To bring a degree of independence to decision-making on matters in which the Government has an interest (law reform, national heritage matters)
- To provide and operate certain public facilities or services out of public funds (e.g. a rapid transport system, a postal system, public broadcasting)
- To provide an advisory or consultative input for Government decision-making (e.g. the arts, road transport, energy sources).

18.2 Terminology traditionally used

A large number of different terms are used, and it is important for legislative counsel to have a clear idea of where these might be appropriate:

Term	Typical Functions
Agency	a body acting on behalf of another or others
Authority	an expert body governing a specialist area
Board	a body of persons (some of whom may be drawn from government) performing a wide variety of functions
Commission	a body charged with a particular limited function, often including making recommendations

Corporation	a general name for a body undertaking a full range of functions with respect to a particular area of operation
Council	a body called together usually for advisory functions
Institute	a body set up to promote certain specific objects (e.g. research or education).

Other terms are also sometimes used: 'Association', 'Bureau', 'Committee' and 'Society'.

18.3 Corporate or non-corporate?

The important question relates to whether or not the body being set up needs to do things that require it to have the status of a legal person. In particular, whether or not the body, **in its own name**, needs to:

- hold property
- borrow or lend money
- enter into contracts
- conduct legal proceedings.

For example, where a body is to be advisory or deliberative in nature only, directly funded by Government and staffed with public officers, and does not need to hold property in its own right, there would be no need for incorporation. Incorporation does give a greater degree of independence from Government, particularly in the ability to make decisions on financial matters, and those charged with a particular function often prefer to be incorporated.

18.4 Features of a body corporate

The following status and powers are regarded as standard features:

- continuing legal personality independent of its members ('perpetual succession')
- power to hold and manage property and money in its own right
- power to enter into legal relations in its own right (and therefore to 'sue and be sued in its corporate name')
- signification of its assent, or intention to be bound, by means of a seal.

A body corporate will have other powers:

- expressly given to it
- necessarily and properly required for carrying out the purposes of the body corporate (which purposes must be set out)

- reasonably necessary or regarded as incidental to or consequential on powers expressly given.

A non-corporate body set up by statute may discharge only such functions as are conferred by that statute. In organisations such as a non-corporate club or society the members will be personally (i.e. individually and collectively) responsible for the actions of the body, and if necessary the collective membership must be sued.

18.5 Establishment of a body corporate

18.5.1 The traditional system

The original principle of incorporation is the conferring of a separate legal personality on a group of persons, or 'members'. In legislation, these are normally identified as being:

- those holding a particular office
- those appointed by a designated authority (usually a Minister), either directly or after nomination, or recommendation, by another person or body.

Whether or not these members are responsible for the day-to-day running of the body corporate, as opposed to constituting a supervisory and policy-making body, will depend on the actual framing of the statute.

18.5.2 The modern system

The more modern system is to bypass this somewhat artificial device and simply create the statutory body by a statement to that effect, vest the body with the requisite powers and provide for its management structure. In that case:

- no formal provision needs to be made for 'members'
- in consequence, there is no need for 'perpetual succession', as the body continues in existence until the Act creating it is repealed
- provision would be made merely for signification of the agreement of the body by means of a seal, or 'official seal', not a 'common seal', which is another consequence required in drawing the distinction between the body and its individual members
- no reference needs to be made to suing, etc., 'in its corporate name', as that would follow automatically.

Reference needs to be made by legislative counsel to implied powers in provisions such as any in an Interpretation Act on appointment and dismissal,

quorums, vacancies and offences, to determine whether these provisions can be relied on as background rules, or whether they need restating, either in the same terms or with variations.

18.6 Drafting provisions to establish a statutory corporation

18.6.1 Establishing the corporation

Typically a section will formally establish the corporation (as has been seen, there are many possible kinds of title, but it is convenient for present purposes to use this word) naming it, stating that it is a body corporate, and setting out the incidents of corporate status, i.e. its official seal and its powers to enter into legal relations and sue and be sued:

- (1) The Utopia Institute of Sport is established [*not "hereby established"*].
- (2) The Institute is [*not "shall be"*] a body corporate which:
 - (a) is to have a seal [*note: not a "common seal", as there are no members*];
 - (b) may sue and be sued;
 - (c) has the functions and powers set out in this Act.

If the corporation is to have formal members, then provision would have to be made for the matters referred to in paragraph 5. Sometimes mention is made in this context of the power to acquire, hold and dispose of property, although more usually this is relevant to the powers granted to it (see below).

18.6.2 Objects/functions

Both are necessary only in the case of larger scale corporations. 'Objects' (sometimes 'aims') state the long-term aims in fairly general terms; 'functions' state what exactly it is that the corporation is set up to achieve (there is often confusion between these two, as there is also between functions and powers – see below). Usually a statement of the functions alone is enough, but if necessary, the section dealing with them can state both:

Objects and functions of Institute

4. (1) The object of the establishment of the Institute is to enable and assist Utopians to develop their sporting skills and to achieve excellence in sport.

- (2) The functions of the Institute are:
 - (a) to devise and implement programmes for the development of persons who have the potential to excel in sport, and in furtherance of that function;
 - (i) to establish, manage, develop and maintain facilities;
 - (ii) to provide medical and science services to persons participating in programmes;
 - (b) to collect and distribute information relevant to the activities of the Institute;
 - (c) ...

18.6.3 Powers

The section dealing with these will contain the principal powers needed by the corporation in order to perform its functions, for example acquiring property, entering into contracts, borrowing or lending money and engaging persons to perform services:

Powers of Institute

5. The Institute may do all things necessary or convenient to be done in connection with the performance of its functions, and in particular may:

- (a) enter into contracts;
- (b) acquire, hold and dispose of real or personal property;
- (c) erect buildings and structures and carry out works;
- (d) appoint agents;
- (e) engage persons to perform services for the Institute;
- (f) ...

18.6.4 Membership/managing body

The membership of the corporation, normally those charged with managing it, must be set out, or alternatively, where formal membership is dispensed with, details of the composition of the managing body (often called 'the Board'):

Board of Management

8. (1) The Institute is to have a Board of Management with authority, in the name of the Institute, to perform the functions conferred or imposed on the Institute under this Act.

- (2) The Board is to consist of the following persons:
 - (a) ...

18.6.5 Management/administration

Provision must also be made for the person to be responsible for the day-to-day running of the corporation. Other sections will typically deal with matters relating to procedure at meetings, finance (including auditing), and annual report. These kinds of provisions tend, unlike those in other types of legislation, to contain standard features and reference will in practice often be made to similar ones in other legislation.

As always, however, care must be taken to ensure that 'standardised' provisions are not simply included without the clearest understanding of what purposes they serve, how far they extend and whether they are relevant, with or without modification, for the purposes of the proposed legislation.

