

THE LAW COMMISSION

TECHNICAL ISSUES IN CHARITY LAW: SUPPLEMENTARY CONSULTATION

SUMMARY

INTRODUCTION

1. Our consultation on Technical Issues in Charity Law ran from March to July 2015.¹ Since the close of our consultation, we have analysed responses, developed policy in respect of most issues in the project, and started preparing a draft Bill.
2. Two issues arose from our consultation on which we did not expressly invite consultees' views, but on which we would like to hear from consultees before deciding on our final recommendations. The first relates to changing a charity's purposes, the second to trust corporation status.

CHANGING A CHARITY'S PURPOSES

3. In our 2015 consultation paper we examined the ways in which charities can change their purposes and amend their governing documents. In response, the majority of consultees suggested that the powers of amendment should be aligned as between (a) corporate charities² and (b) unincorporated charities.³ In this supplementary consultation, we ask how closely the amendment powers should be aligned when the change is to a charity's purposes.
4. Charities might want to change their purposes for a variety of reasons; with the passage of time, new needs will arise and unforeseen eventualities will occur, which might require a change to ensure a charity's continuing effectiveness.⁴ The law gives corporate charities the power to change their purposes by a resolution of their members at a general meeting,⁵ provided the Charity Commission consents to the change. There is no equivalent power for unincorporated charities. Unincorporated charities can change their purposes using any express amendment powers in their governing documents or, if they qualify as small charities, using the power in section 275 of the Charities Act 2011.⁶ If, however, those powers are not available, the trustees must seek a "cy-près scheme" from the Charity Commission.⁷ Cy-près

¹ See <http://www.lawcom.gov.uk/project/charity-law-technical-issues-in-charity-law/>.

² Charitable companies and charitable incorporated organisations ("CIOs"), which have a legal personality separate from their trustees or members.

³ Charities with no separate legal personality, namely trusts and unincorporated associations.

⁴ For example, the purposes of a charity established to care for people with disabilities may require the charity to provide institutions in which beneficiaries can be housed. The trustees may consider that its purposes should be amended so the charity can provide support for beneficiaries living in their own homes.

⁵ Certain provisions that are entrenched may only be amended by following the conditions specified or alternatively by the unanimous agreement of the members.

⁶ The power is available if the charity has an annual income of £10,000 or less and does not hold "designated land", which is land held on trusts stipulating that it must be used for the purposes of the charity.

⁷ "Cy-près" means "as near as possible". A cy-près scheme allows funds to be applied for charitable purposes which are similar to the original purposes.

schemes can only be made in limited circumstances prescribed by section 62 of the Charities Act 2011 (“the cy-près occasions”).⁸

5. In this supplementary consultation, we propose that unincorporated charities, like corporate charities, should have a power to change their purposes – with the consent of the Charity Commission – without having to establish one of the cy-près occasions. We go on to propose the retention of the existing factors that the Charity Commission must consider when it decides whether or not to give its consent, and invite views on their integration into the new regime. We also ask whether those considerations should apply when the Commission decides whether to consent to a change of purposes by corporate charities.

TRUST CORPORATION STATUS

6. In our 2015 consultation paper, we made proposals which aimed to overcome certain legal barriers to charities wishing to incorporate (that is, change from an unincorporated to a corporate legal structure) and to merge with other charities. In response, some consultees explained that particular difficulties arise when charities need to be given the legal status of a “trust corporation” following incorporation or merger. Corporate charities which hold land on charitable trust must be made trust corporations if they are to be able to sell the land.⁹
7. Charities will generally seek trust corporation status in one of three ways: (1) by making an application to the Lord Chancellor; (2) by requesting an administrative scheme from the Charity Commission; or (3) by a complex route which involves the making of a vesting declaration under section 310 of the Charities Act 2011.¹⁰ These procedures are complicated, lengthy and costly and present a barrier to charities wishing to incorporate or merge without any obvious benefits. In this supplementary consultation, we propose that trust corporation status should be more widely available to corporate charities.

RESPONDING TO THE CONSULTATION

8. The supplementary consultation paper, this summary and an optional response form are available on our website at www.lawcom.gov.uk (under “Find a Project”, search “charity law”). We invite consultation responses by 31 October 2016.
9. Responses to all or any of our proposals and questions can be sent:
 - (1) by email to propertyandtrust@lawcommission.gsi.gov.uk; or
 - (2) by post to Daniel Robinson, Law Commission, 1st Floor, Tower, Post Point 1.53, 52 Queen Anne’s Gate, London SW1H 9AG.
10. For further information about how the Law Commission conducts its consultations, and our policy on the confidentiality of consultees’ responses, please see page ii of the supplementary consultation paper.

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⁸ For example, if the original purposes of the charity, in whole or in part, have been fulfilled.

⁹ If a sole trustee is not a trust corporation, at least two trustees are required to give a valid receipt for the proceeds of sale from land held on trust.

¹⁰ When permanent endowment is transferred to a CIO, and the transfer is made using a section 310 vesting declaration, the CIO will automatically be treated as a trust corporation.