

**TECHNICAL ISSUES IN CHARITY  
LAW  
SUPPLEMENTARY CONSULTATION**

**RESPONSE FORM**

This optional response form is provided for consultees' convenience in responding to our supplementary consultation on Technical Issues in Charity Law.

You can download the supplementary consultation paper free of charge from our website at <http://www.lawcom.gov.uk> (under "Find a Project", search "charity law").

The response form includes the text of the questions and provisional proposals in the supplementary consultation, with space for answers. You do not have to respond to every question or proposal. Answers are not limited in length (the box will expand, if necessary, as you type).

Each question and provisional proposal is followed by a reference to the Chapter of the supplementary consultation in which that question or proposal is discussed, and the paragraph at which it can be found. Please consider the discussion before responding.

We invite responses from 1 September 2016 to **31 October 2016**.

Please send your completed form:

by email to [propertyandtrust@lawcommission.gsi.gov.uk](mailto:propertyandtrust@lawcommission.gsi.gov.uk)

or

by post to Daniel Robinson, Law Commission, 1st Floor, Tower, Post Point  
1.53, 52 Queen Anne's Gate, London SW1H 9AG

If you send your comments by post, it would be helpful if, wherever possible, you could also send them electronically (for example, by email to the above address, in any commonly-used format).

Freedom of information statement

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (such as the Freedom of Information Act 2000 and the Data Protection Act 1998 (DPA)).

If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Law Commission.

The Law Commission will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

### **YOUR DETAILS**

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### **CONFIDENTIALITY**

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## CHANGING A CHARITY'S PURPOSES

We provisionally propose that, if powers of amendment are aligned:

1. trustees of an unincorporated charity should have a power – with the consent of the Charity Commission – to change the charity's purposes without having to establish a section 62 cy-près occasion; and
2. the section 67 similarity considerations should apply when the Charity Commission decides whether or not to give its consent.

Do consultees agree?

Chapter 2, paragraph 2.31

We agree. We do not consider that the difference in legal structure should hamper the flexibility to change purposes when that is in the best interests of the charity. We remain of the view that charities and donors do not necessarily chose a legal form on the basis of the powers of amendment it provides (despite the views of some consultees to the contrary). We are also committed to the idea that alignment is necessary, and that option (1) (para 2.25) therefore is untenable. Likewise, option (2) seems to us an unhelpful step, as we agree that the s.67 similarity conditions should form part of the approval process. We think the considerations in s.67 are fundamental and core to any decision making around changing objects, and provide a welcome clarity to the Charity Commission's decision making.

We invite the views of consultees as to whether the section 67 similarity considerations are appropriate in their application to a new amendment power for unincorporated charities.

Chapter 2, paragraph 2.35

We agree (see comment above).

We invite the views of consultees as to whether the Charity Commission should be required to have regard to the section 67 similarity considerations when it decides whether to consent to a company or CIO changing its purposes (as well as when it decides whether to consent to an unincorporated charity changing its purposes under a new aligned amendment power).

Chapter 2, paragraph 2.41

We agree. We think this would bring a welcome clarity to the law, and make it easier to understand the basis on which decisions are reached. We do not share the argument that the perceived over-reach of the regulator should hamper an otherwise welcome reform. On the contrary, we think this would provide welcome transparency

and clarity around a decision the Charity Commission is already tasked to make for companies and CIOs. We do, however, note that there will need to have an effective communication plan put in place to mitigate any potential negative reaction; this would for the Charity Commission to address. This should emphasise the benefits and clarity that this revised approach would bring.

We provisionally propose that the section 62 cy-près occasions should be retained as pre-conditions to the Charity Commission making a cy-près scheme.

Do consultees agree?

Chapter 2, paragraph 2.49

We agree, for the reasons set out in paras 2.46 – 2.48. We think it right that trustees, who directly govern charities, should have as much flexibility as possible to change their purposes, when that is in the best interests of the charity.

## **TRUST CORPORATION STATUS**

We provisionally propose that:

1. any charitable company and CIO should have a power, by resolution of its directors or charity trustees, to acquire trust corporation status in relation to any charitable trust of which the corporate charity is trustee; and
2. the conferral of trust corporation status on CIOs by regulation 61 should be repealed.

Do consultees agree?

Chapter 3, paragraph 3.46

We have no practical experience of dealing with these matters, but, on the basis of reading the consultation paper (and influenced by the stated view of the Charity Law Association response in para 3.26) we agree. Removing the convoluted, time consuming and costly routes to gaining trust corporation status must be a good thing. Moreover, it is in keeping with the general tenor of the proposed reforms that the flexibility for decision making in the best interests of the governance and effective administration of charities lies with the trustees, with appropriate guidance and support. It also provides a welcome further step in the simplification of the process of merger for charities, begun in the Charities Act 2006.

We invite the views of consultees as to whether trust corporation status:

1. should be made available to non-charitable corporations;
2. should be conferred automatically, rather than being available by resolution.

Chapter 3, paragraph 3.47

We would sound a note of caution on extending any reform more widely. There could be unforeseen consequences, and we feel it would be appropriate, therefore, to consult on this point with those who have experience of non-charitable corporations (who may not be aware of this consultation).

We are strongly in favour of the concept that trust corporation status should be something that is positively acquired, and a resolution of the trustees is an appropriate mechanism to do so.