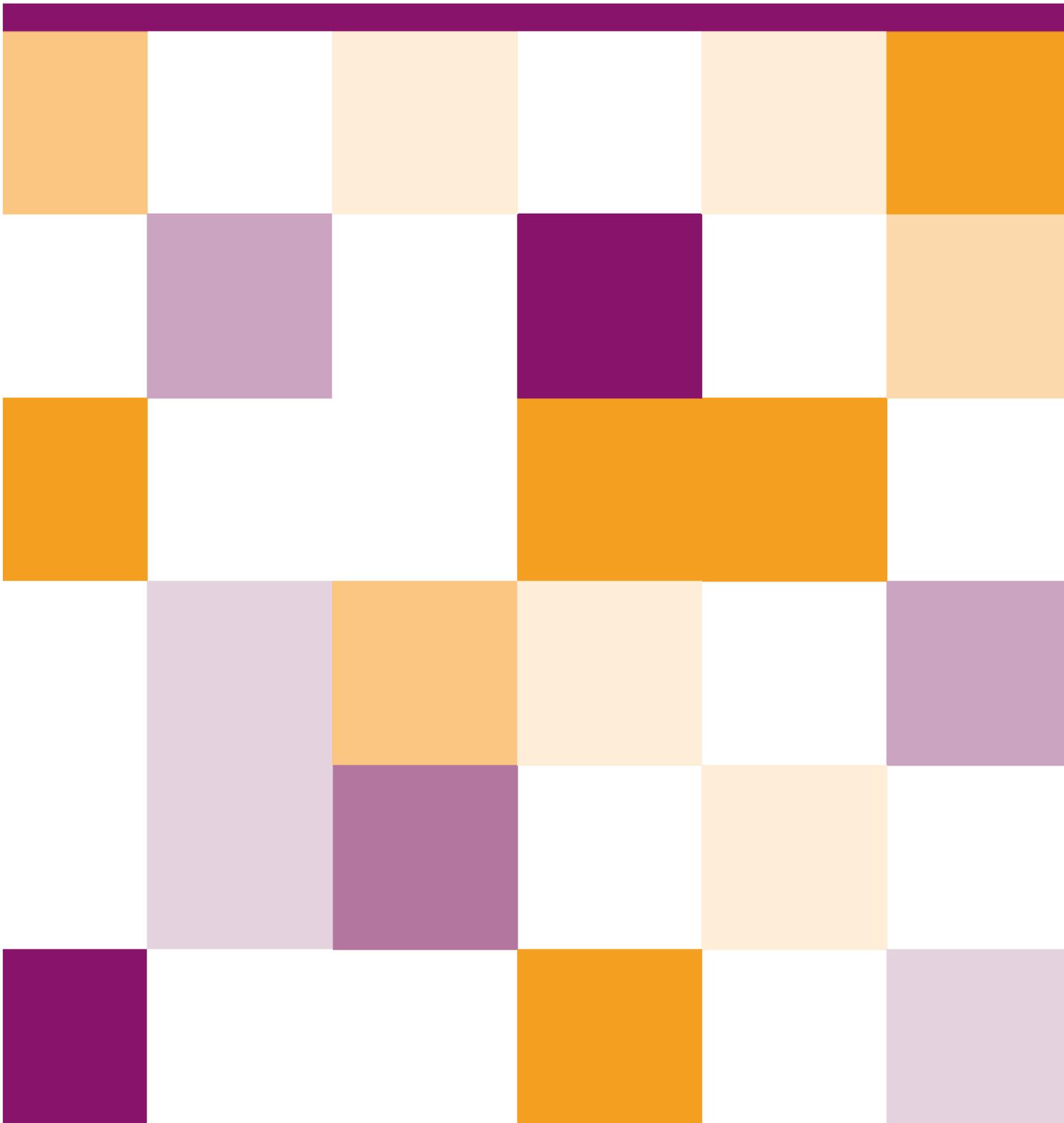




Draft Charities Consolidation Bill

Consultation on the draft Bill and draft pre-consolidation amendments order

Office of the Third Sector, September 2009



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| Topic of this consultation: | This consultation seeks views on a Bill (including a pre-consolidation amendments order) to consolidate existing legislation on charities. |
| Scope of this consultation: | This consultation seeks views on the drafting of the consolidation Bill and pre-consolidation amendments order, and poses several specific questions. |
| Geographical scope: | Most of the consolidation Bill's provisions extend to England and Wales only. Charity law and regulation is a devolved matter in Scotland and Northern Ireland. There are, however, a small number of provisions in the Bill that extend to Scotland and Northern Ireland. |
| Impact assessment: | There is no impact assessment because consolidation Bills do not alter policy, and so there is no increase or reduction in the burdens imposed on charities. |
| To: | We would particularly like to hear from users of the legislation, such as legal advisers or academics, and from charities themselves. But anyone is free to respond and all views will be considered in full. |
| From: | Office of the Third Sector (Third Sector Support Team) in the Cabinet Office with support from the Law Commission and Treasury Solicitor's Department. |
| Duration: | The consultation will start on the 10 th September 2009 and end on the 4 th December 2009 . |

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| <p>Enquiries:</p> | <p>Any enquiries about the content or scope of the consultation, requests for hard copies, information about consultation events, etc should be made through</p> <p>General enquiries number: 020 7276 6400 Email: charities.consolidation@cabinet-office.x.gsi.gov.uk</p> |
| <p>How to respond:</p> | <p>We are happy to receive replies by post or by email (a template for responses is set out in Annex A). Please send responses to:</p> <p>Charities Consolidation Bill Consultation Third Sector Support Team Office of the Third Sector 2nd Floor, Admiralty Arch The Mall London SW1A 2WH Email: charities.consolidation@cabinet-office.x.gsi.gov.uk</p> <p>Please respond by 4th December 2009.</p> |
| <p>Additional ways to become involved:</p> | <p>This publication can be made available in alternative formats and languages on request.</p> |
| <p>After the consultation:</p> | <p>Responses will be analysed and the Office of the Third Sector will then report with substantive proposals.</p> |
| <p>Code of Practice on Consultation:</p> | <p>This consultation complies with the Code of Practice on Consultation.</p> |

1. Background

1. This consultation seeks views on a draft Bill to consolidate existing legislation on charities. The draft Bill is Annex B to this consultation paper. A table of destinations to accompany the draft Bill is provided at Annex C. The draft Bill is also accompanied by a draft pre-consolidation amendments order (Annex D) and notes explaining the proposed changes to be made by that order (Annex E).
2. This consultation paper sets out:
 - what consolidation means;
 - why we need to consolidate charity legislation and the purpose of this consolidation;
 - the background to the draft pre-consolidation amendments order;
 - the specific questions on which views are invited;
 - who you should contact should you require further information;
 - how to respond to this consultation; and
 - our approach to sharing information.

What a Consolidation means

3. In areas of the law where there have been a significant number of Acts or amendments to legislation over a period of time, the Law Commission may recommend that legislation be consolidated to bring all of the relevant provisions into a single Act or to make the cumulative effect of many layers of amendment to existing legislation more intelligible.
4. Minor changes which do not affect the substance of the law, but which make it more user friendly, can be made as part of the drafting. For example, the language of the legislation may be modernised. There may also be scope to make other amendments where these are designed to facilitate or are otherwise desirable in connection with the consolidation. If the need for such amendments has been anticipated when an amending Act has been passed, the Act may confer a power to make such amendments by statutory instrument which must be approved by both Houses of Parliament. This is a pre-consolidation amendments order.

Why do we need to consolidate charity law in England and Wales?

5. When the draft Bill that became the Charities Act 2006 was being considered by Parliament in 2004, it was recommended that a consolidation Bill be brought forward subsequently to draw together all statute law on charities into a single Act.

6. As reported in the Third Progress Report of the House of Lords Select Committee on the Constitution in March 2006, this recommendation led to discussions with the Law Commission who indicated that they would be willing to undertake a consolidation of charity legislation. The current draft Bill is the result of that work.

The purpose of the draft Bill

7. The draft consolidation Bill brings together legislation relating to charities in England and Wales and the definition of charity, which for, fiscal purposes, is UK-wide, into a single Act. The Bill will, therefore, repeal and replace:
- the Recreational Charities Act 1958;
 - the Charities Act 1993; and
 - most of the provisions of the Charities Act 2006.

The provisions of the Charities Acts 1992 and 2006 which apply to institutions other than charities as well as to charities are not included in the draft Bill, as they form a separate subject in their own right.

8. With a view to making the existing legislation more user friendly, the Bill restructures and modernises the existing text. For example, provisions relating to the preparation etc. of group accounts by charities are dealt with in the Part of the Bill which deals with charity accounts rather than being located in a separate Schedule. In addition, longer sections of the existing legislation have been split and subsections split into smaller chunks.
9. For consistency with current practice the Bill has been drafted in a gender neutral way.
10. The Bill has also been drafted on the assumption that a pre-consolidation amendments order will be made (to which see below).
11. The draft Bill is provided in Annex B.

Destination of existing legislation and origins of provisions of the Bill

12. The draft Bill contains origins which indicate where in existing legislation the provisions of the Bill come from. In addition, a separate table of destinations is provided (Annex C) setting out where the provisions of existing legislation appear in the draft Bill.
13. We would highlight the following points concerning the origins and destinations:
- where provisions of existing legislation appear in an unnumbered Schedule to an Act or statutory instrument (e.g. an order or set of regulations), the Schedule will appear as “Sch.0” in the table of destinations. The references appear in this form for technical reasons but which should be resolved for any later published versions of the origins and destinations;

- references in the origins and destinations to “Bill 6” are to the draft of Bill 6 (Corporation Tax) published by the Tax Law Rewrite Project in August 2009 following consultation on the draft Bill and to take account of changes necessitated by the Finance Act 2009.

Background to the draft pre-consolidation amendments order

14. The Charities Act 2006 enables the Minister for the Cabinet Office to make pre-consolidation amendments to existing enactments. It is anticipated that this power will be exercised to facilitate the consolidation process. A draft pre-consolidation amendments order has been prepared containing the amendments which, at this stage, we anticipate will be made.
15. In general terms, the amendments made by the order will correct minor mistakes in the existing legislation, remove unnecessary inconsistencies and repeal provisions which are now considered obsolete. The amendments are not intended to involve significant changes in policy.
16. The current draft of the order and notes to the Schedule to the order are provided at Annexes D and E. It should be borne in mind that the draft order is subject to change following this consultation and that it cannot be made without the approval of both Houses of Parliament.

2. Specific questions on which views are invited

17. We invite views on the revisions that have been made to the structure of the existing legislation and to modernise the drafting of that legislation, as well as on the draft Bill and draft order more generally.
18. There are also four specific questions on which we would welcome views. Three of these questions seek views on whether certain provisions of the Charities Act 1993 could be repealed on the ground that they are no longer needed in practice. It is assumed in the Bill that these provisions will remain. However, pre-consolidation amendments could be added to the order and the Bill amended if responses to the consultation indicate that the provisions do not need to be retained. The fourth is a technical question relating to section 97(3) of the 1993 Act.
19. It would be helpful in all cases if you could give reasons and evidence, where relevant, in support of your responses to these questions.

Q1. Is section 79(2) of the Charities Act 1993 needed?

20. Section 79 of the 1993 Act makes provision for the administration of parochial charities. Section 96(1) of that Act explains what is meant by a parochial charity.
21. Section 79(2) makes provision for the appointment of additional charity trustees of parochial charities by certain councils (see section 79(2) and the adaptations made by section 79(7)(a)). This power is exercisable only in certain circumstances and with the consent of the Charity Commission. The power is exercisable only if: (a) the charity in question is not an ecclesiastical charity or one founded in the preceding 40 years; and (b) the charity's charity trustees do not include persons elected by the local government electors, ratepayers or inhabitants of the parish or appointed by the parish council or meeting.
22. It is our understanding that this power is rarely used and may now be of reduced practical value. We therefore think it could be repealed by way of a pre-consolidation amendment on the basis that it has become obsolete.
23. Respondents considering this question may wish to note that the Bill is currently drafted on the assumption that, if section 79(2) is retained, pre-consolidation amendments will be made to it. These amendments will be made to remove the reference to "ratepayers" and, subject to the agreement of Welsh Ministers, to make the provision operate in relation to communities in Wales that do not have a community council.

Q2. Are subsections (3) to (5) of section 79 of the Charities Act 1993 still needed?

24. Subsections 79(3) to (5) of the 1993 Act make provision for the exercise of certain powers in respect of parochial charities which are not ecclesiastical charities. These powers are generally exercisable in respect of charities whose charity trustees satisfied certain criteria in the period immediately prior to the passing of the Local Government Act 1894 or in the period immediately prior to 1st April 1927. These criteria relate to the appointment of church wardens or overseers as charity trustees of the relevant charities or powers of appointment of inhabitants of a rural parish or select vestry.
25. Our understanding is that these provisions are rarely invoked. If this is correct, our view is that they could be repealed on the ground that they are no longer of practical utility.

Q3. Is section 93(2) of the Charities Act 1993 still needed?

26. Section 93(2) of the 1993 Act enables certain documents to be admissible as evidence of those documents and the facts stated in them. It is understood that these documents largely consist or reports into charities produced by Commissioners appointed under various Acts of Parliament between 1818 and 1837 (commonly known as Lord Brougham's Commission) and in response to orders of the House of Commons from 1890 to 1909. Section 93(2) dates back, in one form or another, to the 19th century.
27. It is not clear to us, particularly with changes to the rules relating to the admissibility of evidence in civil proceedings since 1960, that these provisions are still of practical utility today. We would welcome views on whether this provision is still required.

Q4. Should section 97(3) of the Charities Act 1993 apply in relation to the vesting or transfer of property under section 83(2) of that Act?

28. Section 97(3) of the 1993 Act currently applies in relation to section 83 of that Act because section 83 appears in Part 9 of that Act. The Bill as currently drafted reflects the application of section 97(3) to section 83.
29. However, it is possible that section 97(3) should not apply in relation to section 83. It is arguable that the 1993 Act inadvertently extended the application of section 97. The corresponding provision of the 1960 Act (which was consolidated in the 1993 Act) did not appear to extend the provision of the 1960 Act corresponding to section 83 of the 1993 Act. Section 97(3) was amended by the Charities Act 2006. However, the amendments made by the 2006 Act did not alter the application of section 97(3) in relation to section 83.
30. We invite views on whether section 97(3) of the 1993 Act should apply to section 83 of that Act and in particular, whether a pre-consolidation amendment should be made to bring about the result that section 97(3) does not apply to section 83.

3. Responding to this consultation

31. Please respond to this consultation by **4th December 2009**.
32. We are happy to receive responses by post or e-mail. You may, if you wish, use the response form provided at Annex A.

33. Responses should be sent to:

Charities Consolidation Bill Consultation
Third Sector Support Team
Office of the Third Sector
2nd Floor, Admiralty Arch
The Mall
London SW1A 2WH
Email: charities.consolidation@cabinet-office.x.gsi.gov.uk

34. Where appropriate we would encourage you to provide evidence in support of your response to this consultation. If you are a representative group it would be helpful if you could include a summary of the people and organisations that you represent.

4. Further information on this consultation

35. If you would like to discuss any aspect of the consultation please contact: Khaled Moyeed, Office of the Third Sector, Tel. 020 7276 6028, Khaled.moyeed@cabinet-office.x.gsi.gov.uk.

36. Hard copies of the consultation paper and Annexes are available on request. Requests should be made to the same address as in paragraph 33 above. You may also call the OTS general enquiries number 020 7276 6400 to request a copy.

5. Information sharing

37. Please note we will share responses to this consultation with the Law Commission.

38. All information contained within the responses (including personal information) may be published or disclosed in accordance with the access to information regimes, primarily set out in the Freedom of Information Act 2000, Data Protection Act 1998 and the Environmental Information Regulations 2004.

39. If you want information given in response to the consultation to be kept confidential it will only be possible to do so if it is consistent with our legal obligations. There is a Statutory Code of Practice under the Freedom of Information Act 2000 which public authorities must comply with. This sets out how confidential information must be dealt

with. We cannot give assurances that all information will be kept confidential but we will take into account any representations made by you.

40. If you object to any of the information (including your personal details) which you are giving in response to the consultation being published, please say so. It would be helpful for any such objections to be supported with an explanation of why you regard the information to be confidential so that a decision can be made as to whether there are grounds for not publishing such information.

The Code of Practice on Consultation

The seven criteria of the Government's Code of Practice on Consultation are:

- **When to consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

- **Duration of consultation exercises**

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

- **Clarity of scope and impact**

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

- **Accessibility of consultation exercises**

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

- **The burden of consultation**

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

- **Responsiveness of consultation exercises**

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

- **Capacity to consult**

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The Department's Consultation Co-ordinator is David Kavanagh and is contactable through the Cabinet Office switchboard (020 7276 1234).