



# **Bates Wells response to: Corporate Transparency and Register Reform: Powers of the Registrar**

Department for Business, Energy & Industrial Strategy, 9 December 2020

**3 February 2021**



## **Introduction and summary of concerns**

### *About Bates Wells*

Bates Wells is a leading charity and social enterprise law firm, ranked in first place in the CaritasData Top 3000 Charities list as acting for more charities than any other UK firm. We act predominantly for charity and social enterprise clients, and impact-driven businesses. A significant proportion of our clients are structured as companies, including charitable and not-for-profit companies limited by guarantee, and community interest companies.

### *Companies in the charity and community sector*

The proposals set out in the consultation relate to all companies. We have some significant concerns that the specific circumstances of charitable and other not-for-profit or purpose-driven companies have not been taken into account. There are several thousand charitable companies limited by guarantee<sup>1</sup> and more than 15,000 registered community interest companies (CICs), including both share and guarantee companies.

A number of charitable companies and CICs are very large and have significant resources, including access to professional support. However, a significant majority are medium or small organisations with limited resources. Charities are almost always run by voluntary boards of trustees and many have few, if any, paid staff. They are obliged to direct their resources towards charitable or community use: any additional burdens on their resources will affect their public impact.

Any new requirements must therefore avoid imposing significant additional demands in terms of people or resources; they must avoid increasing costs, or making it necessary to engage additional external advice or services, or to acquire complex or expensive software.

### *Summary of our concerns*

We have responded to the questions in the consultation which we believe pose particular issues for our charity and community sector clients.

Overall, we are concerned that the proposals should not pose an undue burden on existing companies within the charity and community sector. We are also concerned that an unnecessary level of bureaucracy could deter new organisations from choosing the company limited by guarantee as their legal vehicle in future. While charities wishing to secure the benefits of limited liability may choose to establish as a charitable incorporated organisation (CIO), there are some very good reasons why this may not be an appropriate route for all charities: it is vital that the charitable company limited by guarantee remains an affordable and appropriate option.

We urge Government to work with the Charity Commission and the Office of the Regulator of Community Interest Companies to ensure that any changes do not impose a disproportionate burden on the charity and community sector.

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<sup>1</sup> The [Impact Assessment](#) accompanying The Charitable Incorporated Organisations (Conversion) Regulations 2017 cites a figure of around 36,000 incorporated charities, including around 30,000 charitable companies limited by guarantee.

## Powers of the registrar

### 1. Company names

#### 1.1 **Q3: In what circumstances do you think the [Companies House query] power should be used in the context of company names? Please provide reasons for your answer.**

For charities, their name and brand are particularly valuable assets. They are vital in allowing charities to effectively build their reputation, raise funds and carry out their work; any compulsion to change a charity's name could have a very serious impact.

The impact of a charitable company being forced to change a legal name under which it is already established (as set out at e.g. paragraph 36 of the consultation) could be very significant.

We are concerned that company names may potentially be queried or rejected in circumstances where this is not appropriate in light of all the facts. Whether a registration is abusive may in many instances be obvious, but in other situations the picture may be more nuanced.

Therefore we would propose that the power should only be exercised in circumstances where:

- 1.1.1 sufficiently clear criteria have been set out as to when the power may properly be used;
- 1.1.2 the bar for directing a company to change its name is a high one, and there is a process for contesting any such direction before it is enforced; and
- 1.1.3 Companies House has the necessary capacity to investigate complex factual situations if and when required, where the situation is not straightforward.

We note the mention of Companies House compelling a change of name based on "evidence supplied via direct customer contact" (paragraph 35); our view is that this would need to be carefully regulated. In particular we would hope to see safeguards against any scope for malicious complaints or inappropriate pressure, including from other parts of government.

As a more general point, there will need to be co-ordination with the Charity Commission where the company concerned is also a registered charity.

#### 1.2 **Q4: Do you agree that this is an appropriate use of the querying power? Please provide reasons for your answer.**

We are not convinced that the proposed use of the power in regard to company names is either necessary or proportionate. In our experience the kind of abusive activity it is designed to address is not a major problem, and the existing frameworks (including the law around trade marks and passing off, and the Company Names Tribunal) are adequate to deal with the issue where it arises.

- 1.3 ***Q5: Is it appropriate to place the onus on the company and/or the applicant to demonstrate that a name is being registered or was registered in good faith?***

We have concerns about the practical application of this principle. For example, would this evidence be required for every application and if so what would that look like? If the process is to be meaningful, how is it proposed that Companies House will have the resources to examine each application? Will the company/applicant have to make a judgment about whether evidence is likely to be required in each case, and therefore whether to include it with their application?

- 1.4 ***Q6: Do you agree that the “sensitive words and expressions” regulations should be amended to capture circumstances such as that described above?***

In our view the changes around sensitive words are broadly sensible, if perhaps designed to address what is in practice a very minor issue. Our queries are: will these changes have retrospective effect and, if so, how many companies will be affected?

- 1.5 ***Q8: What sanctions do you consider are most appropriate to incentivise compliance with the new requirement to respond to a query raised by the Registrar?***

Any sanctions introduced to support compliance should take into account the fact that charitable companies rely heavily on volunteers, and are legally obliged to use their resources to promote their objects for the public benefit. In particular, charities' directors (trustees) are almost always performing the role on a voluntary basis, and we have concerns about any proposals that they should face any personal liability and, in particular, criminal prosecution.

## 2. **Power to require delivery by electronic means**

- 2.1 ***Q22: Do you agree that the power to require (or mandate) delivery by electronic means should be conferred from the Secretary of State to the Registrar?***

If and when the registrar decides to exercise this power, we would note that the method of delivery should not incur the need for complex or expensive software, as for charities and CICs this could affect the level of funds available to be used in the public or community interest. Every item required to be electronically filed should be capable of straightforward WebFiling.

It is worth pointing out that charitable companies are still required to file some information with Companies House in paper form. This remains the case despite some temporary online upload options having been introduced during the coronavirus pandemic.

We would also propose that there should be scope for exceptions from the requirement, to reflect limited access to the internet in some cases: this can be an issue for some charities, particularly in rural areas.

## 3. **Rules governing company register**

- 3.1 ***Q24: What impact would changes to the requirement to keep any of the registers in [the following list] have?***

***[Register of Secretaries;***

***Register of Directors' Usual Addresses;***

***Register of Members;***

***Register of People with Significant Control (PSC); and,***

***Register of Charges]***

In our experience, few if any charitable companies and CICs have taken advantage of the ability to keep content usually held in their statutory books on the public register.

We cannot see any real advantage for guarantee companies to move away from holding their register of members with the statutory books, since guarantee companies do not file details of their members with Companies House.

3.2 ***Q25: We may also consider further changes to the election regime for private limited companies which was introduced in 2016. How useful is the election regime for private limited companies?***

As mentioned above, we have limited experience of charitable companies and CICs making use of the current election regime.



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