Bates Wells response to: Corporate Transparency and Register Reform: Improving the quality and value of financial information on the UK companies register

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

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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[1] 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. We have highlighted the impact which the proposals might have on the sector, and where it may be appropriate to exclude charitable companies from any new requirements.

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.

[1] 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.

Improving the quality and value of financial information on the UK companies register

1. **Section 1: Towards file once with government**

1.1 ***Q3: What benefits do you envisage for filing once across government?***

For charities, being able to file once with Companies House, the Charity Commission and where relevant HMRC, would be a welcome efficiency.

1.2 ***Q4: What challenges do you envisage for filing once across government?***

Any such harmonising approach would need to take account of filing deadlines: currently the Companies House and Charity Commission accounts filing deadlines differ. We do not see this as a major challenge for charitable companies, provided the filing deadline is not reduced, as to which see more below.

As explained in more detail in our response to Q5 and Q8, we are wary of any filing solution which would require charitable companies to use expensive software.

2. **Section 2: Requiring financial information to be delivered in a digital format**

2.1 ***Q5: In your view, why do some companies continue to file on paper?***

Charities are legally obliged to produce accounts that are compliant with the charities statement of recommended practice (SORP). Charitable companies cannot currently file full audited accounts on the Companies House WebFiling service. This means charitable companies must either file their accounts on paper, or use third party software.

It is very important to note that:

2.1.1 not all accounting third party software packages are capable of producing SORP-compliant charity accounts; and

2.1.2 some accounting software packages are unaffordable for some charities.

There is a risk that an obligation to purchase expensive software would impose a large burden on existing charitable companies. To the extent that it increases costs, new charities could be deterred from using the company limited by guarantee as a vehicle for carrying out charitable activity. This would be a retrograde step in our view: many features of the vehicle make it an ideal choice for charities.

2.2 ***Q6: What challenges will mandatory digital filing present?***

2.2.1 Please see our response to Q5 above. If mandatory digital filing is introduced, we would suggest that charitable companies should have the option of filing using the WebFiling service, without the need for expensive bespoke software.

3. **Section 3: Full i-XBRL tagging of financial information**

3.1 ***Q8: What challenges do you foresee with filing fully tagged accounts with Companies House?***

We are concerned that most i-XBRL compliant software is too complex and expensive for most charities, and that few of the packages available are suitable for charity SORP-compliant accounts.

Charities with a combined income which does not exceed £6.5 million are currently not required to file their accounts with HMRC using i-XBRL software. For the reasons mentioned above, use of such software is often not financially viable for charities.

In addition any mandatory tagging systems would need to accommodate the specific format and content of accounts and reports which charities are obliged to produce.

In our view such a requirement would have a disproportionate impact on small and medium-sized charitable companies: bespoke software might need to be developed, and software would need to be paid for, reducing funds available for charitable activity. As the consultation document points out, for charitable companies registered with the Charity Commission, visual information with key details about the charity is currently available on the Charity Commission's website. We cannot see any reason for slightly different information to be reproduced by Companies House.

If this requirement is introduced, we would suggest an exemption for small and medium-sized charitable companies.

4. **Section 4: Reducing the timescales for delivering financial information**

4.1 ***Q10: With continual advancements in digital technology, what are your views on shortening the time allowed to submit accounts to Companies House?***

We are strongly opposed to the proposed reduction in the time allowed to file accounts with Companies House. The majority of charities and a high proportion of CICs are small organisations largely or completely volunteer led and managed. They would face significant challenges compiling annual accounts and putting them through the required external scrutiny if the time allowed was significantly shortened.

Such a move would also impose additional burdens on auditors, particularly where there are 31 December and 31 March year ends, which could in turn put up audit costs.

4.2 ***Q11: What would be the impact if filing deadlines were shortened to three months for public and six months for private companies from the end of the reporting year?***

Please see our response to Q10 above. We are strongly opposed to this reduction, in the light of the extra pressure and expense it would impose on the vast majority of charitable companies, and on CICs.

5. **Section 5: Maximising the value and integrity of accounts information**

5.1 ***Q13: What will be the challenges for companies submitting a declaration of filing eligibility with accounts?***

Our main concern with this proposal is the suggestion that it would be a criminal offence to make a false declaration: we think that this would be wholly disproportionate in the case of a charitable company or CIC.

6. **Section 6: Review of small company accounts filing options**

6.1 ***Q20: What would be the impact on small companies if the Companies House filing requirement was aligned with HMRC's to require a profit and loss account?***

This requirement may not be suitable for charitable companies, given the particular requirements of the Charities SORP.

7. **Section 8: Greater checks on financial information**

7.1 ***Q24: What are your views about the general premise that checks should be conducted on all accounts prior to them being accepted as fit for filing on the public register?***

The checks appropriate to a commercial company may not be appropriate to charities; given that charitable companies are regulated by the Charity Commission, and that their accounts may be scrutinised by the Charity Commission and/or another regulator, we would argue that charitable companies should be exempt from this requirement.

8. **Section 9: Displaying key information on the register**

8.1 ***Q27: Which elements of financial information would be most useful to see on the company overview page?***

The elements that might be appropriate for a commercial company would not be appropriate for a charity (e.g. profit), and this would need to be taken into account when deciding which elements to display, so as to avoid presenting a misleading, inaccurate or simply unhelpful public picture of charities' financial health. As mentioned in the consultation, the Charity Commission already displays certain elements of financial information on a charity's register entry; we would hope that for charities the same information would be highlighted at Companies House.

8.2 ***Q29: Do you have any additional comments about this proposal?***

We would be opposed to any elements of this proposal which might impose any additional burden on charities.

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