

The Baroness Barran MBE
Department for Digital, Culture, Media and Sport

Thursday, 17 June 2021

Dear Baroness Barran,

Charities Bill: charitable community benefit societies

I am writing to ask that government uses the opportunity presented by the Charities Bill to address a small number of legislative dysfunctions that create unnecessary and costly bureaucracy for 'charitable community benefit societies'.

These are a subset of community benefit societies, registered under the Co-operative and Community Benefit Societies Act, which have charitable purposes that have been recognised as such by HMRC. In England and Wales they are a form of 'exempt charity', as they do not register with the Charities Commission. In Scotland they register with the Scottish Charity Regulator.

Charitable community benefit societies are a critical tool for community ownership in the UK. The model is unique in allowing for a powerful combination of charitable status, democratic and participative community ownership, a degree of enterprise and the community shares financing model. Government's Community Ownership Fund is about to drive lots of new activity in this area. We believe government should take action where it can to ensure the legal toolkit for communities is as enabling as possible.

We believe the Charities Bill is an all too rare opportunity to make three relatively minor amendments to legislation that would:

- **allow asset-locked community benefit societies to become charitable community benefit societies**
- **allow charitable incorporated organisations to convert into charitable community benefit societies**
- **allow community interest companies to convert into charitable community benefit societies**

HM Treasury lawyers have previously confirmed that primary legislation is required to make these changes.

In addition, we believe the Charities Bill should prompt government to make a decision as to whether charitable community benefit societies can continue to be exempt, given that no 'principal regulator' has been found. This issue has been ongoing since 2006, with charitable community benefit societies operating in a somewhat unclear legal, regulatory and administrative context, which can create burdens.

We would like government to consult on ending the exempt status of charitable community benefit societies and bringing them under the registration of the Charities Commission. This would mirror the situation in Scotland, where charitable community benefit societies are registered by the Scottish Charity Regulator, with no adverse impacts.

Charitable community benefit societies did not fall within the scope of the Law Commission's *'Technical Issues in Charity Law'* report. But addressing legislative dysfunctions that create unnecessary bureaucracy and cost for charitable community benefit societies, does appear to be very much in the scope of the Charities Bill. Indeed, we believe that the announcement of the Charities Bill is our first opportunity to engage with government on this issue.

Some of the issues that need addressing fall under the Co-operative and Community Benefit Societies Act, which HM Treasury has general responsibility for. However, while in the past officials there have accepted the need for legislative remedy, they also told us HM Treasury is very unlikely to bring forward the primary legislation that is required. So this Charities Bill is an all too rare opportunity to get issues addressed.

The required amendments are detailed in an addendum to this letter. We have received advice from legal experts, who have already drafted possible amendments. Experts in Co-operatives UK would be eager to speak to the Bill team at the earliest possible opportunity.

I hope that you agree that legislative action is required and that this Charities Bill does indeed present an all too rare opportunity to act.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rose Marley', with a horizontal line underneath it.

Rose Marley, Chief Executive

Co-operatives UK

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Addendum: Three amendments to reduce unnecessary and costly bureaucracy for charitable community benefit societies

Amendment One: Making it easier for an asset-locked community benefit society to adopt a charitable asset lock

The problem

Poorly drafted legislation currently prevents asset-locked community benefit societies from becoming charitable community benefit societies.

Community benefit societies can adopt a 'statutory asset lock' under Community Benefit Societies (Restriction on Use of Assets) Regulations 2006. This asset lock is not stringent enough to meet the requirements of charity law, because it does not restrict the use of residual assets exclusively to charitable purposes only. Thus HMRC cannot grant charitable status to a community benefit society with this asset lock.

To gain charitable status, a community benefit society needs to adopt a more stringent 'charitable asset lock'.

Unfortunately, an unintended consequence the wording of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006, is that it is not permissible for an asset-locked community benefit society to strengthen its asset lock provisions to make them charitable. Under the asset lock regulations once provisions are adopted they cannot be altered, even if to make them more stringent.

This is not an intended operation of the regulations and represents a legislative dysfunction which needs to be dealt with.

The impact

The only legal options open to an asset-locked community benefit society that wants to become a charity are:

- To set up a separate charitable community benefit society and undertake a costly and complex transfer assets by conveyance, assignment, or other legal transfer methods applicable to particular assets, without the ability to use the streamlined (but still burdensome) 'transfer of engagements' process
- To set up a separate charitable company and undertake a costly and complex transfer of assets etc. to that entity

In practice this deters many organisations with charitable ambitions from fully becoming charitable community benefit societies and benefiting from charitable tax treatment. In other cases, it results community benefit societies being forced to undertake very expensive legal and bureaucratic exercises, in order to achieve their charitable ambitions.

Solution

The Charities Bill could amend the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006, to allow for the adoption of a stronger charitable asset lock where appropriate. A legal expert has drafted the amendments that would be required.

HM Treasury lawyers have previously confirmed that primary legislation is required to make this change.

Amendment Two: Allowing charitable incorporated organisations to convert into charitable community benefit societies

The problem

The law for charitable incorporated organisations (CIOs) does not provide a means for a CIO to convert into a charitable community benefit society.

It is increasingly common for charitable companies to convert into charitable community benefit societies, in order to develop a community ownership model and to raise capital through community shares. But CIOs cannot do the same, which in some cases leaves them with stymied ambitions.

The impact

Communities lose out on the great impact that a converted CIO could have through community ownership and community shares. The potential of some CIOs is wasted.

The solution

The Charities Bill could insert a provision Part 11 Chapter 4 of the Charities Act 2011 that allows CIOs to convert into charitable community benefit societies.

We believe primary legislation is required to make this change.

Amendment Three: Allowing community interest companies to convert into charitable community benefit societies

The problem

The Community Interest Company Regulations do not allow a community interest company to become a charitable community benefit society. The regulations allow a community interest company (CIC) to convert into a society, but only in the form of a community benefit society that has a restriction on the use of its assets in accordance with the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006. This rules out conversion into a charitable community benefit society.

The impact

Where CICs decide their purpose would be better-served as a charitable community benefit society, (to make use of community ownership and community shares for example) their only option is to:

- apply to the relevant charity regulator to convert the CIC into a charitable company;
- and then apply to the FCA to convert to a charitable community benefit society, again with the consent of the relevant charity regulator

This is a costly and complex process.

Solution

The Charities Bill could insert a provision in Community Interest Company Regulations to enable CICs to convert into charitable community benefit societies.

We believe primary legislation is required to make this change.