

NB The following is a summary of general principles and is not advice in any particular case. (extracted from advice given on 25/04/16)

legal issues

- 1 The Charities Act 2011 provides three ways of making transfers:
 - (a) transfer;
 - (b) merger; and
 - (c) Charity Commission order.A CC order might be necessary if neither (a) not (b) is available.
- 2 Amongst the key terms in the Charities Act 2011 the following will affect how the objective can be achieved.
 - (a) A charity is to be treated for the purposes of this Act as having a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income. Permanent endowment can also mean, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.
 - (b) Property which is not permanent endowment in the first of the above meanings is unrestricted.
 - (c) Designated land is property that must be used only for the purposes of the charity
- 3 Trust law requires trust money to be applied for the purpose for which it is held and not for any other purpose. This is inflexible, but the charity law doctrine of cy-près enables the courts and the CC to modify charitable purposes, taking into account not only the original purpose but also the spirit of the original gift and effective use of the property in question. In paragraph 5 below I summarise an alternative procedure available to small charities.
- 4 Although there are different regimes for “mergers” and “transfers” in the Charities Act 2011, the legal mechanism is broadly similar for each, so a merger is a transfer by one or more charities to another or to a new charity and a transfer is in practice the same. The main characteristics of, and differences between, the statutory regimes are as follows.
 - (a) “mergers”
 - (i) There is no statutory procedure for the CC’s consent or objection.
 - (ii) The transferee must notify the CC after the transfer, specifying
 - (A) the transfers of property and dates, and
 - (B) a statement that appropriate arrangements have been made for the discharge of the transferor charity or charities.
 - (iii) A vesting declaration will transfer all property automatically except any that needs a particular form.

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- (iv) The merger may take place with only the unrestricted property and not with the permanent endowment.
 - (v) If there is permanent endowment the transferor charity will not cease to exist.
- (b) "transfers"
- (i) The transfer must be of all the charity's property.
 - (ii) The transferor's gross income in its last year must not exceed £10,000.
 - (iii) The transferor must not hold designated land.
 - (iv) The transferor's charity trustees must resolve by a two thirds majority that they are satisfied that:
 - (A) it is expedient to further its purposes to transfer its property; and
 - (B) some of the purposes of the receiving charity are substantially similar to the or any of the transferor's purposes.
 - (v) If the transferor has permanent endowment:
 - (A) the resolution must relate to both permanent endowment and restricted property; and
 - (B) the receiving charity's purposes must be substantially similar to all the transferor's purposes.
 - (vi) The resolution
 - (A) must be notified to the CC,
 - (B) might be required by the CC to be notified publically; and
 - (C) must not take effect if,
 - the CC notifies the transferor that it objects to the transfer,
 - which it must do within 60 days from the notification or longer if the CC so decides.

5 A small charity may change its purposes.

- (a) The conditions for a change are that:
 - (i) its gross income in its last year must not exceed £10,000;
 - (ii) it does not hold designated land;
 - (iii) its charity trustees must resolve by a two thirds majority that they are satisfied that
 - (A) it is expedient to further its purposes for its purposes to be replaced, and
 - (B) so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced.
- (b) The resolution (amongst other formalities) is subject to notification and objection procedures similar to those summarised in 4(b)(vi) above.

END