



## Parliamentary Briefing

# Charities (Protection and Social Investment) Bill

## Second Reading briefing, 3 December 2015, House of Commons

The Charity Commission is the independent registrar and regulator of charities in England and Wales. Our role is to protect the public's interest in charities and ensure that charities further their charitable purposes for the public benefit and remain independent from private, government or political interests. Parliament has given the commission 5 statutory objectives, and a wide discretion as to how to fulfil them. We consider that we can best fulfil these objectives, with the resources at our disposal, by concentrating on promoting compliance by charity trustees with their legal obligations, by enhancing the rigour with which we hold charities accountable, and by ensuring that we uphold the definition of charity under charity law.

### Background to the Bill

The commission already has a wide range of compliance and enabling powers but there are basic, underlying weaknesses in our enforcement powers that limit our ability to act to prevent and/or tackle abuse in charities. Many of these are powers that a modern regulator would be expected to have. Lord Hodgson, in his review of the Charities Act 2006, and the National Audit Office have also both made this point. Securing these new powers, alongside the improvements to the commission's approach, remain vital in allowing us to regulate more effectively.

In 2013, the commission submitted formal proposals to the Cabinet Office and a consultation was published. Following this consultation, a draft Protection of Charities Bill underwent 5 months of pre-legislative scrutiny before the 2015 General Election. [The Joint Committee's report](#) recommended the inclusion of all the clauses, including 2 additional powers. Since then, the Charities (Protection and Social Investment) Bill has been scrutinised at length in the House of Lords and received strong support.

The commission has engaged with interested parties throughout the process and taken a number of steps to address some of the issues raised. The Bill has also been sharpened and tightened through the thorough scrutiny it has already received.

### What are the main clauses in the Bill?

The Bill will strengthen the commission's ability to tackle the most serious forms of abuse. These powers will only directly affect a very small proportion of charities but it is hoped they will make a significant difference in those cases. For a lot of charities the powers will have no direct impact but all will benefit from increase in public trust and confidence that would flow from charities being better regulated.

The powers in the Bill are needed for 5 main reasons:

- to plug loopholes in current regime
- as basic powers you would expect a modern regulator to have

- to enable the commission to use effective, targeted and proportionate sanctions
- to deal with the complicated and technical issues as our work becomes more complex
- as a deterrent

## Key proposals

The main provisions in the Bill will help us to tackle, prevent or correct abuse and non-compliance in charities but we would like to highlight some key measures ahead of Second Reading.

### 1. Disqualification:

- Extension of criteria for automatic disqualification** (Clause 10) - this would extend the criteria for automatic disqualification taking into account modern legislative changes that impact directly on the sector. The current criteria are too narrow and do not cover several areas that merit disqualification such as convictions for serious terrorism offences, money laundering or bribery.
- Power for the commission to disqualify** (Clause 11) - this would enable the commission to, under certain circumstances, disqualify individuals from trusteeship where it is clear that they are unfit to hold such a position and present a risk to charity. The power is a 3 stage process and provides a number of specific statutory safeguards and, as with all our powers, must be exercised in accordance with the commission's statutory functions, duties and objectives. The commission must also act proportionately, consistently and target only cases in which action is necessary, as set out in the Charities Act 2011. The commission has published an [initial discussion paper](#) on this power to set out clearly how and under what circumstances it intends to use this power and to help answer questions that may arise during the passage of the Bill.
- Extension to non-trustee positions** (Clauses 10 and 11) - this extends disqualification to the most senior officer responsible for the operation of the charity or the most senior officer responsible for the finance of the charity. Disqualification does not currently prevent individuals being appointed to other positions of authority within charities, which can often pose an equal level of risk. The extension of this disqualification is a common sense provision and would mean disqualified individuals are no longer eligible to hold specific senior positions that they could exploit, and so reduce the possibility of abuse.

- Official warning** (Clause 1) - this power fills a crucial gap and is a simple, expedient, reasonable and proportionate way of dealing with lower levels of breaches where the risks and impact on charitable assets and services are not as serious so as to warrant more severe regulatory action. It is a power that many other regulators have and would be used by the commission for example, on occasions where a charity is consistently a little late in submitting its accounts (where otherwise the statutory sanction is criminal prosecution) to remind the trustees of the seriousness of their non-compliance. It may also be used where a charity makes low level unauthorised payments to a connected company or that benefits a trustee (eg where it is not proportionate to suspend or remove the trustee or take legal action to recover the funds paid) and the breach can be easily identified and prevented in the future. An official warning in these contexts would present a more targeted way of responding to differing levels of abuse within the sector, and would also ensure that actions taken by the regulator are proportionate to the risks presented.

- 3. Power to direct winding up** (Clause 7) - power to direct that a charity be wound up where we can show that the continued existence of a charity would be harmful. This would be used in very rare circumstances, such as where shell charities exist and there is a risk of future abuse, and has clear safeguards in place. The commission will not be able to use this power lightly. However, on rare occasions, it is required and would be an important tool in order to be able to address the risk to charity or charity property/assets more quickly and to minimise the ongoing risk to the sector.
- 4. Fundraising** (Clause 14) - during the passage of the Bill, 2 new provisions have been included with regards to fundraising by charities. These will ensure that charities and professional fundraising organisations set out how they will protect vulnerable beneficiaries and the public in their agreements and also provide an obligation for larger charities to report annually on their fundraising activity and conduct. The commission welcomes these additions.

## Next steps

At Second Reading, we urge MPs to support this important Bill that will provide the commission with the necessary tools to regulate effectively.

If you have any questions, would like any information or would like to meet to discuss the Charities (Protection and Social Investment) Bill then please contact the commission's Public Affairs Manager, Jack Rowley - 0300 065 2066/[jack.rowley@charitycommission.gsi.gov.uk](mailto:jack.rowley@charitycommission.gsi.gov.uk)