THE GOVERNMENT REPLY TO THE REPORT
FROM THE JOINT COMMITTEE ON THE DRAFT
CHARITIES BILL SESSION 2003–04
HL PAPER 167/HC 660

The Draft Charities Bill

**Presented to Parliament by the Secretary of State
for the Home Department
by Command of Her Majesty
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FOREWORD

Charities have a long history in this country of playing a central part in the healthy life of the nation. The sector enjoys a high level of public confidence – research conducted by the think tank NFP Synergy in 2002 showed that over 70% of those surveyed said there were no other kinds of organisations that they would trust more than charities. The sector affects people's lives, not just those who receive benefits from charity but also people who act as a trustee, volunteer, work for a charity or donate.

The Government's aims for the Charities Bill are:

- to provide a legal and regulatory environment that will enable all charities, however they work, to realise their potential as a force for good in society;
- to encourage a vibrant and diverse sector, independent of Government; and
- to sustain high levels of public confidence in charities through effective regulation.

This is part of the Government's wider strategy for the voluntary and community sector, which aims to encourage public support, to help the sector to become more effective and efficient, and to enable the sector to become a more active partner with Government in shaping policy and delivery. We believe that the Bill will vigorously promote all parts of this strategy through the improvement to the regulation of charity fundraising, the clear definition of charity with an emphasis on public benefit and the modernisation of the Charity Commission's functions and powers as a regulator.

The Bill will build on this strong foundation of confidence in reforming charity law and regulation. It is part of the Government's overall vision for the sector, in which strong, active and empowered communities will be increasingly capable of taking charge, and taking action.

Charities depend on the generosity of their volunteers and donors. According to research by the Charity Commission and MORI in 1999, 92% of people claimed to have supported a charity in the preceding two years. We want to encourage philanthropy and we are keen to identify further steps that might be taken either within Government or outside it to encourage charitable giving, particularly by those who are better off. Through the reforms in the Bill to fundraising and the Charity Commission, we hope to encourage and increase this culture of giving of both money and time.

We recognise that the Government and the voluntary sector fulfil complementary roles in the development and delivery of public services. The relationship between Government and the sector is a fluid one. Some organisations choose to work closely with Government, whether in joint ventures or in service delivery, while others have few links to Government and have no wish to change this. Importantly, charities themselves choose whether to engage with Government, and the independence of the sector is something to be maintained and cherished.

Whatever their individual choices regarding direct links with Government, we want to help the whole spectrum of charities thrive and the Bill aims to do just that. It provides a legal framework which we hope will stand the test of time by creating a lasting structure through which charities can fulfil their aims. It starts by providing a clear and updated definition of "charity" to take the sector forward in the long term. We hope that the right framework will contribute towards a giving culture in which people contribute not only their money, but also their time, skills and experience to keep the sector thriving.

The journey towards a new Charities Act started in the mid-1990s with work initiated by the National Council for Voluntary Organisations. The Prime

Minister announced the Strategy Unit's review of the legal and regulatory framework affecting charities in July 2001. This has been a thoughtful, comprehensive and detailed process, involving many charities, others involved in the sector and the general public in developing the Bill we have reached today.

The Bill has received resounding support from many quarters. Of the respondents to the public consultation on the Strategy Unit's proposals, thirty were in favour for every one against. I am grateful to the members of the Joint Committee for carrying out their important role in scrutinising the draft Bill so thoroughly in order to provide a valuable contribution in shaping the Bill itself.

Fiona Mactaggart MP
Parliamentary Under Secretary for Race Equality, Community Policy, and Civil Renewal

THE JOINT COMMITTEE'S RECOMMENDATIONS AND THE GOVERNMENT'S RESPONSE TO THEM

The Joint Committee's recommendations are in the numbered bold paragraphs. The Government's response to each recommendation is below it.

1. We recommend that the Government consult the Scottish Executive on the implications for national charities of any differences between the two draft Bills, with the aim of avoiding anomalies and confusion. (Paragraph 41 of the Joint Committee's report)

The Government accepts this recommendation and will continue its close collaboration with the Scottish Executive. We aim, in particular, to ensure that:

- the definitions of charity in the two Bills are highly compatible; and
- the consequences, for English and Welsh charities which operate in Scotland, of the Scottish Executive's proposal to require such charities to register with the Office of the Scottish Charity Regulator will not include any significant increase in the burden of regulation.

2. In light of evidence we have received, we recommend that the Government re-examine the provisions of the Government of Wales Act 1998 to ensure that charities in Wales will receive comparable financial assistance to charities in England. (Paragraph 44)

The Government accepts this recommendation. It is our intention that the power of the Welsh Assembly Government to give financial assistance to charitable, benevolent and philanthropic organisations in Wales should be equivalent to the power that the Bill gives to the Secretary of State in relation to such organisations in England.

While the Government can ensure that the Assembly Government and the Secretary of State have the same statutory powers, we cannot – because the exercise of the power in Wales is for Welsh Assembly Ministers – make sure that organisations in Wales receive comparable levels of financial assistance to the levels received by organisations in England.

3. We recommend that the draft Bill includes a definition of religion in clause 2 making it clear that non-deity and multi-deity groups can satisfy the definition of 'religion' for charitable purposes. Any organisation would still be subject to the requirement of showing public benefit before it could attain charitable status. (Paragraph 54)

The Government considered, in preparing its response to the Strategy Unit's review of charity law and regulation[1] (September 2002), whether or not there should, for the purpose identified by the Joint Committee, be a statutory definition of "religion" in charity law. The clear evidence we found was that non-deity and multi-deity groups can already satisfy the (common law) charity law definition of a "religion" and thus qualify for charitable status. There are, for example, over two hundred charities registered with the purposes of advancing the Buddhist faith, and a similar number with the purposes of advancing the Hindu faith. The Charity Commission began registering some such organisations from the time the register of charities was being created in the 1960s, so their recognition as charitable is well-established. The Government's conclusion in considering the Strategy Unit review was that there was no need for a statutory definition of "religion" in charity law. That remains our view. We therefore do not accept this recommendation.

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[1] *Private Action, Public Benefit,* available at www.number-10.gov.uk/su/voluntary/report/index.htm

4. We recommend that an additional charitable purpose be added to 2(2) for "the provision of religious harmony, racial harmony, and equality and diversity". (Paragraph 56)

The Government recognises that there is support from many quarters for the addition of this important group of charitable purposes to the list in clause 2(2) of the Bill. We accept this recommendation and, subject to finding a form of wording that has the necessary clarity and certainty, agree to amend the Bill accordingly.

5. We recommend that the new charitable purpose on "the advancement of arts, heritage and science", should include the word "culture" to bring it in line with the wording of the draft Charities Bill and Trustee Investment (Scotland) Bill. (Paragraph 57)

The Government accepts this recommendation and agrees to amend the Bill accordingly.

6. We recommend that "the saving of lives" be added to the new charitable purpose of the advancement of health. (Paragraph 58)

We understand that the Joint Committee:

- has in mind "the saving of lives" not through interventions designed to protect or improve people's health but through the provision of lifeboats, mountain rescue, and similar services;
- knows that the preservation and saving of human life is already a charitable purpose and that it is not, by this recommendation, suggesting any change to that existing charitable purpose.

On that understanding the Government accepts this recommendation and agrees to amend clause 2(2) of the Bill, to include words to the effect of "the saving of lives" in the new list of charitable purposes.

7. We recommend that the draft Bill be amended by adding to the general 'any other purposes' category, the words 'or within the spirit or intent of the [11 specific] purposes' listed in clause 2 (2) above. (Paragraph 60)

The Government accepts this recommendation, subject to considering whether the recommended wording is exactly apt, and agrees to amend the Bill accordingly.

8. We recommend that the basic principles for a definition of public benefit should be those set out in the recent concordat between the Home Office and the Charity Commission (as in the box after paragraph 78) and that those principles should be replicated either in non-exclusive criteria included in the Bill or in non-binding statutory guidance issued by the Secretary of State. (Paragraph 102)

The "concordat" that the Joint Committee refers to was a joint letter from Fiona Mactaggart MP, the Minister responsible for the Charities Bill, and Geraldine Peacock, the Chief Charity Commissioner. That letter set out principles that are to be used, in any case where an organisation charges fees for its facilities and services, to judge the impact of the organisation's fee-charging on its ability to satisfy the public benefit test for charitable status. The letter was not meant to be a full exposition of the public benefit principles applying to charities generally – for example, the letter did not mention the principle that determines whether or not an organisation that provides some private benefit as well as public benefit satisfies the public benefit test. So we do not see the principles in the letter as forming a complete basis for an explanation of public benefit, although they do form a good partial basis.

The Government does not believe that the development of the law on charitable status will be best served by including in the Bill a list of "non-exclusive criteria". The intention of putting such a list into the Bill would be to set out some of the factors which are to be taken into account by the Charity Commission and the court when considering an organisation's public benefit. There is a risk that over time the list would come to be seen as representing not some but all of the factors to be taken into account. And we do not believe that enacting a non-exclusive or partial list would fully satisfy the Joint Committee's own conclusion that "there is a need for a more explicit definition of public benefit in connection with the Bill".

We therefore prefer the option of having the public benefit principles stated in guidance which explains the law, and aims to generate greater general awareness of what public benefit means in the context of charity, but is not itself part of the law. The advantages of this are that it provides maximum flexibility for the law to develop in response to changes in society and that it allows for all, rather than just some, of the public benefit principles to be set out and explained.

We note the Joint Committee's comment that giving the Secretary of State the function of preparing guidance risks "leaving the way open to periodic interference by the Government in the definition of what is charitable". The same risk is identified by the National Council for Voluntary Organisations, who strongly believe that there should be no Government control over any aspect of the definition of charity.

To remove that risk we therefore intend in the Bill to place the guidance-making function not with the Secretary of State but with the Charity Commission as the independent regulator which is not under Government direction or control. As the definition of charity is a matter of general public interest the Commission will be required in preparing the guidance to consult appropriate persons and bodies. We would expect the Commission to consult as widely as possible.

We note also the Joint Committee's suggestion[2] (not expressed as a recommendation of its report) that "the Government should consider reviewing the charitable status of independent schools and hospitals with a view to considering whether the best long-term solution might lie in those organisations ceasing to be charities but receiving favourable tax treatment in exchange for clear demonstration of quantified public benefit." The Government does not accept the suggestion that charitable status should be removed from those organisations. The Charity Commission will ensure that such charities provide public benefit as part of the programme of "public character checks" that it will begin once the Bill has been enacted.

9. We recommend that the real Bill include provisions to clarify the effect of the loss of charitable status on the assets of a charity. The Government should consider whether the Bill should contain provisions enabling the Charity Commission to agree that trustees in such circumstances can elect to retain their assets and continue to run the organisation, as a not-for-profit organisation without charitable status, for the original purposes. (Paragraph 105)

The Government does not accept this recommendation. The Charity Commission's publication *Maintenance of an Accurate Register*[3] explains the effect of the loss of charitable status under the current law, which we believe provides an adequate basis for determining what happens to the assets of an organisation that ceases to be a charity. We do not in any case believe that

[2] paragraph 95 of its report

[3] available at www.charitycommission.gov.uk/publications/rr6.asp

changes to the current rules should be contemplated without an extensive public consultation on the matter, since any change could have a significant effect on the rights and expectations of anyone who donates money or other assets to charity.

10. We recommend that the Government commissions an independent review of the burden of regulation that charities face more generally, to ensure that regulation is fair and proportionate, especially to smaller charities. (Paragraph 127)

The Strategy Unit, in its 2002 review of charity law and regulation, heard from charities – particularly smaller charities – that their concerns about the burden of regulation arose not wholly or mainly from charity law requirements but from the "the combination of rules and compliance obligations they face as a result of their legal status, legal form and activities". The Strategy Unit recommended that the impact of regulation on charities should be reviewed and the results published. The concerns heard and recorded by the Joint Committee appear to be very similar.

The Better Regulation Task Force (BRTF), which is independent of Government, has decided to carry out a study of the regulatory environment for the charitable sector or parts of it. BRTF is in discussion with the Government about the scope and timetable for its review, which the Government welcomes.

11. We recommend that the Government amend the public confidence objective in the proposed section 1B(3) 1 of the Charities Act 1993 to be inserted by clause 5 of the draft Bill to read: "The public confidence objective is to increase public trust and confidence in charities and to stimulate philanthropy". (Paragraph 139)

The Government agrees with the Joint Committee's conclusion that "the draft Bill should include provision to ensure that the regulatory burden on grant-making charities does not discourage philanthropy". Rather than giving the Commission the objective of stimulating philanthropy – an objective similar to that of the Giving Campaign and one which we do not think is compatible with the Commission's role as a regulator – we propose to give the Commission a new general statutory duty. The new duty will be to the effect that the Commission, in carrying out any of its functions, must so far as reasonably practicable act in a way that encourages charitable giving and voluntary action. We regard charitable giving, in this context, as encompassing all giving to charity, including – but not limited to – large-scale giving by wealthy individuals.

12. We recommend that the Government commissions an independent review of the burden of regulation that grant-making charities face more generally, to ensure that regulation is fair and proportionate. (Paragraph 140)

The Government accepts this recommendation in principle. The feasibility of such a review is part of BRTF's discussions with the Government (see recommendation 10 above).

13. We recommend that in clause 5 the words "social and economic impact" be left out and the wording of the 1993 Act be retained, namely "promoting the effective use of charitable resources". (Paragraph 150)

The Government notes that the balance of evidence to the Joint Committee was clearly against the Bill's proposal to give the Charity Commission a "social and economic impact" objective. We accept this recommendation and agree to substitute for the "social and economic impact" objective an objective to do with promoting the effective use of charitable resources.

As described above in the Government's response to recommendation 8, we intend to give the Commission the function of issuing guidance on public benefit. To preserve the coherence of the Commission's remit as a whole – its collection of objectives, functions, powers and duties – we intend to give the Commission a fifth regulatory objective, which will be to do with promoting awareness and understanding of the public benefit requirement.

14. We recommend that, when exercising its powers to conduct inquiries under section 8 of the Charities Act 1993, the Commission should be required to tell the charity concerned why it is doing so, subject to any safeguards necessary to protect sources of information or to prevent delay in the inquiry. (Paragraph 160)

The Joint Committee cites evidence from the Charity Law Association (CLA) in which the CLA advocates amending the Charity Commission's statutory power of inquiry so that it stipulates that the Commission:

- may open an inquiry into a charity only where it has reasonable grounds to do so; and
- must tell the charity what those grounds are.

The Joint Committee has not included the first of these points in its recommendation, perhaps in recognition of the fact that the Commission, as a public body, already has a duty in administrative law to act reasonably in carrying out its functions. The Commission can be taken to judicial review if it opens an inquiry, or exercises any of its inquiry-related or other powers, unreasonably.

The Government does not believe that it is either necessary or desirable to introduce a statutory requirement that the Commission must give a charity into which it opens an inquiry a statement of the reasons for the inquiry. We therefore do not accept this recommendation. We would expect the Commission to give a charity its reasons for opening an inquiry where it is appropriate to do so, but we believe that the judgment whether or not that is appropriate in the particular circumstances of each inquiry must be left to the Commission. That is the position for other bodies with similar investigative functions, such as the Department of Trade and Industry in relation to companies and the Housing Corporation in relation to Registered Social Landlords.

The Commission operates a presumption in favour of giving reasons. Among the commitments it makes in its publication: *Inquiries into Charities: Your Rights and Obligations* (CC47(a)[4]), addressed to any trustee, employee or agent of a charity who is implicated in an inquiry, is the commitment "to let [the person] know the nature of the complaints or problems identified, even if [the Commission] cannot disclose the identity of the complainant".

15. We recommend that the Bill should include a provision obliging the Charity Commission to use its powers proportionately, fairly and reasonably. (Paragraph 169)

In giving evidence to the Joint Committee, Fiona Mactaggart MP, the Minister responsible for the Bill, explained that the Government does not agree with the view, expressed to the Joint Committee in evidence by the National Council for Voluntary Organisations, that the Charity Commission is under no constraint in the exercise of its powers. We are in no doubt that the Commission, like other public bodies, already has a duty in administrative law to use its powers fairly and reasonably. We do not think there is any need to include a statutory provision

[4] available at http://www.charitycommission.gov.uk/publications/cc47a.asp

in the Bill to give the Commission that duty. We think that if Parliament felt it necessary to give the Commission that duty through the Charities Bill, the implication would be that Parliament did not see the Commission as being under that duty at present – and, further, that no other public body without an express statutory duty to act fairly and reasonably was under an obligation to do so.

That remains the Government's position, so we do not accept this recommendation.

We would be concerned if charities, and the public generally, regarded the Commission as a body which had any significant tendency to act unfairly or unreasonably. In fact we believe that the survey and other evidence (such as customer satisfaction surveys and the latest (2002/3) report of the Independent Complaints Reviewer) points to the opposite conclusion.

16. We recommend that the Charity Commission be given the power to determine, either on the application of the charity or after the opening of a section 8 inquiry into the running of a charity, who the members of a charity are. (Paragraph 171)

The Government agrees that this will be a useful measure and accepts this recommendation. We agree to include provision for it in the Bill. We think it helpful to extend the proposed power slightly beyond the Joint Committee's recommendation so that not only the Commission, but also a person appointed by it for the purpose, has power to decide who a charity's members are.

17. We recommend that clause 4(1) (insertion 1A(3)), containing the phrase "on behalf of the Crown", should be removed and replaced by a clear statement that the Commission shall be a body independent of Government. (Paragraph 180)

The Government does not accept this recommendation. The inclusion in the Bill of the provision: "The functions of the Commission shall be performed on behalf of the Crown" is necessary to preserve the Charity Commission's status as a Government Department. The Commission has long held that status, and the Bill will not change it.

The Commission is, and under the Bill will remain, a Non-Ministerial Department. It is, and will remain, an independent regulator, completely free from any Ministerial direction or control over the exercise of its statutory powers to regulate charities. The Government believes that the Commission's independence in that respect is of paramount importance for the proper regulation of charities and for public confidence in charities.

18. We recommend that the Home Affairs Select Committee have an annual evidence session with the Charity Commission. We recommend that the annual report of the Charity Commission be debated in each House every year. (Paragraph 186)

The first part of this recommendation is for the Home Affairs Select Committee. In respect of the second part, the Government is ready to consider any request in the House of Commons for a debate on the annual report of the Charity Commission, bearing in mind the many competing demands for time on the Floor. In the House of Lords, this is a matter for members of the House, using the opportunities for debate which are open to them, and for the usual channels.

19. We recommend that there should be a greater number of people on the Charity Commission board with experience and knowledge of the charitable sector, in order to reflect its great diversity, particularly at grass roots level. This should be accompanied by adequate safeguards against conflicts of interest. (Paragraph 192)

The Government accepts this recommendation.

The present law provides for a maximum of five Charity Commissioners including the Chief Commissioner, who chairs the Commission's board. Under the Bill (see paragraph 1 of new Schedule 1A to the Charities Act 1993, inserted by Schedule 1 to the Bill) the Commissioners would be renamed "members", and their number – including the chair – would be increased from five to nine. Members of the new Commission will, as the Commissioners are now, be appointed after fair and open competition by the Home Secretary.

In proposing this increase the Government's aim is to secure the result that the Joint Committee advocates: greater, and more diverse, charitable sector representation on the Commission's board. We agree with the arguments advanced in favour of this to the Joint Committee, but we also note the Joint Committee's caution about the need to avoid "regulatory capture" of the Commission by the sector it regulates. Some of the potential benefits of a larger board would be lost if for that reason board members were required on joining the Commission to shed every one of their connections of charity employment or trusteeship. We are preparing guidelines, for future appointments to the board of the Commission, on the acceptable level of board members' continuing involvement with charities and on the avoidance of conflicts of interest.

20. We recommend that the Charity Commission should take steps to differentiate between its advisory and regulatory functions and make clear in all its communications the distinction between advice and instructions. (Paragraph 207)

The Government endorses this recommendation. In response to it the Charity Commission has said:

"The Commission accepts this recommendation. The Commission will take it forward by reviewing its structure and communications to help trustees and their advisers recognise when the Commission's activities are directed specifically at informing charities about compliance with their legal obligations and when the activities are advisory."

21. The evidence we have heard has given us reason to question whether the Charity Commission is properly organised and properly resourced to make it effective in its new tasks. We recommend that professional advice be sought to review the ability of the Charity Commission to meet its new responsibilities under the draft Bill and in particular the quality of the processes, methods and organisation; the calibre of its staff; its resources; and whether the Commission should, like other regulators, be able to determine the number and conditions of its own staff. (Paragraph 215)

The Government believes that the evidence of the Charity Commission's performance in recent years – including the evidence of reviews by the Strategy Unit and the National Audit Office – shows that it is an effective and a properly resourced organisation. The changes that the Bill will make, and other changes such as the move to providing services on-line, will require the Commission in some areas of its work to adopt new approaches to, and methods of, regulation. In recognition of this, the Commission's new chair and its new chief executive have begun a strategic review of the Commission, to be completed by July 2005 and to report to the Chief Secretary to the Treasury. The Government believes that the Commission's strategic review, which could be professionally-advised, should be expanded to cover the matters (except one) identified by the Joint Committee.

The exception is the question of the Commission's staff numbers and conditions. For regulators that are not Government Departments – such as the Financial Services Authority – no Ministerial approval is needed to staff numbers and

conditions. For regulators that are Government Departments and are staffed by civil servants – such as the Food Standards Agency and the Commission itself – Ministerial approval is required. The Government does not propose to remove this requirement in the Commission's case.

22. We recommend that the Home Office should review other areas of excluded decision-making with the aim of adding them to the Tribunal's remit wherever a strong objection is not found. (Paragraph 230)

23. We recommend that the Tribunal be able to hear appeals against any decision of the Charity Commission (including 'non-decisions', such as a decision not to make a scheme or order), on any point of law, on any basis. (Paragraph 231)

The Government accepts that there should be a presumption in favour of including within the Tribunal's remit any decision of the Commission which there is no strong reason to exclude from the Tribunal's remit. A "decision of the Commission" in this context means a decision to exercise, or not to exercise, a statutory power in relation to a charity (or, in some cases, in relation to a trustee, officer, employee or agent of a charity). We agree with the Joint Committee that the Tribunal's remit should not be extended to cover the Commission's conduct and service.

We therefore agree to include in the Bill those decisions which there is not a strong reason to exclude.

24. We recommend that the Tribunal should have the power to award compensation and/or costs against the Charity Commission. (Paragraph 232)

The Joint Committee cites the Association for Charities' call for the Tribunal to be given power "to award compensation to charities, trustees and other parties harmed by Charity Commission misbehaviour." It acknowledges that the Commission makes compensation payments in cases where the Commission's Independent Complaints Reviewer recommends compensation. In the Government's view compensation should be payable where the Commission's standards of conduct or service fall below acceptable levels and cause a loss to a person or organisation. Those matters will not be within the remit of the Tribunal, remaining instead within the remit of the Independent Complaints Reviewer and the Parliamentary Ombudsman. For that reason the Government does not believe it appropriate to give the Tribunal power to award compensation. However, we believe that it would be appropriate for the Tribunal to be able to award costs – not exclusively against the Charity Commission but against any of the parties – and agree to include provision in the Bill to allow for that.

25. We recommend that the Commission formally state that they will not seek to recover costs from an unsuccessful appellant (except where the Tribunal decides that the appeal amounted to an abuse of process). (Paragraph 239)

This recommendation is for the Charity Commission, who have said that:

"The Charity Commission will not routinely ask for costs but the position would be very much governed by the facts of an individual case and the circumstances of the individual."

26. We recommend that consideration be given to including in the Bill a residuary power for Ministers to make regulations enabling financial assistance to be given to parties to the Tribunal if it becomes apparent in the light of experience that access to the Tribunal is being limited by cost. (Paragraph 240)

Unlike courts, most tribunals question the user to find out relevant information rather than relying on the user to present an argument. This means that tribunals' users should be able to present evidence by themselves, and for this reason the Government does not believe it necessary to extend Community Legal Service funding to them for representation.

In some cases users might not be able to represent themselves – for example because of difficulties of language. In other cases the result might have very serious consequences for the appellant, meaning that, in the interests of justice, he or she needs to be supported by legal representation. In these types of cases public funding can be granted exceptionally for representation, if the case merits it, under the Access to Justice Act 1999.

Where the issue is legally complex but the appellant cannot afford legal representation the Attorney General will, at his discretion, be able to decide to become a party to the proceedings (see recommendation 27).

27. We recommend that the rules to be made by the Lord Chancellor on appeal to the Tribunal should include provision for either the Charity Commission or the Attorney General to refer matters to the Tribunal for interpretation without individual charities having to incur the costs of pursuing a specific case. (Paragraph 241)

The Government agrees that the Attorney General should be able to refer matters to the Tribunal. There might be a small number of cases in which the legal issues are of clear public interest but are complex enough that only a lawyer could be expected to be able to present them effectively to the Tribunal; and the appellant might not have the resources to engage legal representation. In those circumstances the Attorney General could be a party to the case to argue it before the Tribunal. This would relieve the appellant of much of the cost of engaging legal representation.

28. We recommend that clause 26 and Schedule 6 are redrafted to reflect the intended elements of the Charitable Incorporated Organisation and in a far more understandable form. (Paragraph 251)

The Bill's provisions for the creation of the Charitable Incorporated Organisation (CIO), which the Joint Committee welcomes, are inevitably complex. The Government's priority for these provisions is to ensure that the statutory framework for the CIO is comprehensive and legally certain. It will be for the Charity Commission, after enactment, to publish guidance to explain the features of the CIO to the lay person. We accept, however, that the Explanatory Notes on the CIO to accompany the Bill should be improved and we will make those improvements before the final Bill, accompanied by the Explanatory Notes, is published.

29. We conclude that cases should only be pursued where a trustee acts dishonestly or recklessly and recommend that a requirement of dishonesty or recklessness is added to the definition of the offence in 73 (c) 4. (Paragraph 265)

30. We consider that the imposition of a criminal penalty would be counterproductive and recommend that the Bill should impose a civil penalty without leaving someone with the stigma of a criminal conviction. (Paragraph 266)

The Government accepts recommendation 30, which in our view then makes recommendation 29 redundant. We agree to remove the criminal offence and to substitute a provision to the effect that a person who acts while disqualified loses his or her right to remuneration and must repay to the charity any remuneration already received from it.

31. We recommend that the Home Office review the proposed legislation to ensure these additional points on trustees are covered in the real Bill. (Paragraph 269)

As a public authority the Charity Commission has to ensure that its procedures, including the preparation of reports of inquiries into charities, accord with the rules of natural justice and are Human Rights Act compliant. It ensures that reports of its inquiries are fair, accurate and not defamatory. The Commission gives the trustees of the charity subject to the inquiry the opportunity to comment on the draft of the inquiry report before it is published, and takes trustees' comments into account in preparing the published version. For these reasons the Government does not think it necessary to give trustees an extra right to include their comments within the Commission's report.

The Government agrees that, where the Charity Commission has removed a trustee, officer, agent or employee from office after an inquiry, it might not be in the charity's interests to allow that person to continue as a member of the charity. We agree to include provision in the Bill to give the Commission discretion also to remove that person from membership.

Section 72 of the Charities Act 1993 disqualifies persons from charity trusteeship in certain circumstances. The disqualification can be waived by the Charity Commission but, if it is not, it continues – for life in some cases. The Government agrees that an automatic lifetime disqualification from trusteeship is sometimes disproportionate and agrees to amend section 72 of the 1993 Act accordingly.

32. We recommend that the explanatory notes published with the Bill set out more fully the criteria by which the Secretary of State will determine whether self-regulation is working effectively. (Paragraph 277)

The Government accepts this recommendation. We have made a commitment to publish an indication of these criteria by the time the Bill is debated in Parliament, and will then consult widely among fundraising charities and others before finalising the criteria.

33. We recommend that the Home Office revisit its financial estimates in discussion with the charitable sector and Local Government Association with a view to ensuring the real Bill is accompanied by a more through assessment of the costs and benefits of the scheme for public collections. (Paragraph 292)

The Government's financial estimates, set out in the Regulatory Impact Assessment (RIA) published with the draft Bill, were necessarily based on information supplied by local authorities and their representative bodies. Our estimates were the fullest and most accurate that could be compiled on the basis of the information we had received by the publication date of the draft Bill. To help us refine the estimates in the RIA we have asked the Local Government Association and the Institute of Licensing for specific further information and evidence. The extent of any improvement we are able to make to the RIA will reflect the quality of the further information and evidence we are given.

The costs to local authorities of carrying out their functions under the new arrangements for licensing public collections will be significantly reduced as a result of the Government's accepting the Joint Committee's recommendation 37 below. The effect of that will be to give the Charity Commission, rather than local authorities, the function of issuing certificates of fitness, and the RIA published with the Bill indicates the resource consequences of this.

34. We recommend that the Home Office consider both the regulatory burdens and the resource issues carefully in bringing forward proposals in the new legislation. (Paragraph 293)

The Government accepts this recommendation. Statutory controls on public collections should at the same time:

- minimise the bureaucratic requirements for legitimate fundraising activity by charities, and give the public the opportunity to give money to charities; and
- protect the public from nuisance and make it difficult for bogus fundraisers to operate and to profit from their operations.

The Government believes that the scheme set out in the Bill achieves a good balance in that respect. We will nevertheless continue to review the detail of the scheme in search of improvement. We agree that it is important to ensure that the authorities with licensing and other regulatory functions within the scheme are properly resourced.

35. We recommend that the Home Office urgently review its proposals on the regulation of fund-raising to ensure that the crimes described to us by Leeds City Council and Swindon Borough Council are adequately tackled by the real Bill. (Paragraph 303)

As the experience in Leeds and Swindon shows, the activities of a large proportion of bogus fundraisers can be dealt with under the existing general criminal law. Action can be taken by the authorities responsible for enforcing the law (see recommendation 41). We have also considered what further measures might be included in the Bill and, in view of the fact that clothing collections present a particular problem, agree to amend the Bill to require a certificate of fitness to be obtained for door to door collections of goods.

36. We recommend that the Home Office should review the notification arrangements before bringing forward the real Bill. We recommend that the Bill should include an order-making power to vary the time limits for notifications contained in clauses 39 and 41 of the draft Bill to enable these to be adjusted in the light of experience. (Paragraph 309)

The Government accepts this recommendation and agrees to amend the Bill accordingly.

37. We recommend that, while local authorities should retain powers of enforcement, the Charity Commission, rather than local authorities, should be the lead authority for granting certificates of fitness to carry out public collections. (Paragraph 316)

The Government accepts this recommendation and agrees to amend the Bill to place the function of issuing certificates of fitness with the Charity Commission rather than with a "lead local authority". Local authorities will continue to have the function of issuing permits to conduct collections in a public place.

38. We recommend that the Home Office review these other points on fund-raising to ensure they are covered in the proposed legislation. (Paragraph 319)

The first two of these six points lose their force if the function of issuing certificates of fitness is (as the Government accepts at recommendation 37 above) carried out by the Charity Commission rather than by a lead local authority. The third and sixth points are the same as each other. The Government does not accept the proposal made in those points since we believe it is right to expect a charity, rather than the Commission, to take action (and to bear the cost of that action) against a person who is raising funds in the charity's name without its authority. We accept the proposals made in the fourth and fifth points.

39. We recommend that clause 35 of the draft Bill should be amended to require all those fund-raising on behalf of charities who are paid for their services (whether under a contract of employment or otherwise) to take all reasonable steps to make this status clear when they are making an appeal. The written material, provided at the time to those making donations by direct debit or standing order, should explain the nature of their remuneration (i.e. whether they are paid a salary, a fixed fee or whether they are paid on a commission basis). In addition, fund-raisers should be required to carry with them a collectors identity card from the charity for whom they are acting stating the remuneration fund-raisers are receiving and this should be available on application when a member of the public requests it. The Home Office should issue guidelines on the information required to be available, including information on remuneration and other information taking into account what is practical, workable and not unduly burdensome. This could be supplemented by requiring that the basis of remuneration of fund-raisers and the ratio of costs to funds raised should be reported in the annual report of the charity. (Paragraph 330)

The Government accepts the principle that any person who is a paid fundraiser for a charity – whether the person is an employee within the charity or is an outside agent engaged as a professional fundraiser – should be required to disclose that he or she is paid as a fundraiser for the charity.

We also accept that fundraisers seeking donations made by direct debit or standing order should explain the nature and amount of their remuneration. This is already secured by the Bill in the case of professional fundraisers. We do not, however, believe that the explanation should be required to be in writing.

We accept in principle the idea of a collector's identity card, though we believe that it would be more appropriately introduced as a matter of good practice through self-regulation than as a statutory requirement.

We accept that the Home Office should issue guidelines on the information required to be given by paid fundraisers to potential donors.

Requiring the remuneration of fundraisers to be reported in charities' annual reports might, for a larger charity with numerous fundraisers working under a variety of different remuneration arrangements, be unduly bureaucratic. The Government will need to consult fundraising charities before adopting the proposal. If adopted, the proposal would be implemented not through the Bill but through changes to the *Statement of Recommended Practice on Accounting and Reporting by Charities* and to regulations made by the Home Secretary under section 45 of the Charities Act 1993.

40. We recommend that the Bill should be amended to say that commercial participators will be required to make as accurate a representation of the return from the venture as is possible in the circumstances. It should specify that new Home Office guidance will be produced covering the different forms of statement appropriate to different types of joint ventures between charitable institutions and companies and that this guidance should be based on extensive consultation with fund-raising organisations and commercial participators. (Paragraph 331)

The Government believes the amendments the Bill proposes to make to the commercial participator statement already achieves what the Joint Committee seeks. We accept that, because of the variety and complexity of some agreements between charities and commercial participators, guidance will be needed on forms of statement that will satisfy the new requirement. The Home Office will issue such guidance after extensive consultation. The guidance will be ready for the commencement of the new provisions.

41. In order for these proposals to have any impact there needs to be enforcement. We therefore recommend that the Home Office takes up the recommendation made by the Charity Law Association and considers giving either the Charity Commission or Trading Standards the power to prosecute when these measures are breached. (Paragraph 332)

Local authorities, many – but not all – of which employ Trading Standards Officers, have powers of prosecution under section 222 of the Local Government Act 1972. The Charity Commission has never had powers of prosecution and has no significant expertise or experience in that area. We do not believe that it would be cost-effective to require the Commission to develop from scratch a prosecution function for this limited range of offences. Combined with the legal powers to prosecute there needs to be a common determination among the enforcement and prosecuting authorities to pursue people responsible for crimes in fundraising. The Government will explore with those authorities the potential for their giving greater priority to fundraising crime.

42. The Committee recommends that the draft Bill should be amended to allow charities to trade within the charity and enjoy tax exemption on trading income up to the point where income from trading equals 25% (or £5,000 if the greater) of the charity's total turnover, but this should be subject to an overall limit higher than the current £50,000 and the Government should consult on the level at which that overall limit should be set. (Paragraph 354)

The level of the statutory exemption for small trading is a matter for Finance Bill legislation rather than for the Charities Bill and any changes would be considered as part of the normal Budget process. But any increase in the overall limit would give charities a greater advantage over private sector businesses, especially small and medium sized enterprises. The Government regards the current exemption, together with the extra statutory concession on fundraising events, as sufficient to allow charities to engage in small amounts of trading without the extra administration costs of setting up a subsidiary, but does not give charities a significant advantage over other commercial businesses. An increased limit would mean that considerably more trading could be carried out by charities tax free, giving them a greater competitive advantage over small businesses which are taxed on their profits. Trading companies have the option to donate their profits to charity, and so start from a similar position whether they are subsidiaries of charities or not. It would be unfair to give charities greater exemptions from the requirements normal commercial businesses have to meet. Charities already enjoy advantages over commercial businesses, with relief from tax on profits of primary purpose and ancillary trades as well as the exemption for small trading, and we need to consider the overall impact for businesses.

43. We recommend that the Home Office should consider designating a principal regulator for foundation and voluntary schools so that they can retain exempt charitable status. (Paragraph 367)

The Government's aim for the regulation of each group of charities which are currently exempt is to identify a "principal regulator" that would be willing, and have the capacity, to ensure that those charities complied with the basic principles of charity law. Only if no such principal regulator could be identified would those charities be required to register with the Charity Commission. For foundation and voluntary schools it has not been possible to identify a principal regulator. The Government therefore does not accept this recommendation.

44. The Committee also recommends that the Charity Commission should be given a duty in the Bill to consult with principal regulators before using any of its enforcement powers in respect of exempt charities. (Paragraph 368)

The Government accepts this recommendation and agrees to amend the Bill accordingly. The duty will be a literal duty of consultation, and will not give a principal regulator the right to veto any action that the Commission proposes to take. We see the consultation requirement as a requirement on the Commission to explain to the principal regulator what action it intended to take, and why; and to take account of the principal regulator's views.

45. We recommend that, before the real Bill is brought forward, the Home Office and the Ministry of Defence explore ways of ensuring that these funds remain properly accounted for without bringing such a large number of small Armed Forces accounts within the remit of the Charity Commission. (Paragraph 379)

The Government believes that the Joint Committee's recommendation is based on a false premise and does not accept it. Armed forces charities which are excepted charities are – like all other excepted charities – already within the Commission's regulatory jurisdiction. The Commission can under the current law exercise the same powers in relation to excepted armed forces charities as it can in relation to registered charities. The Bill's proposal to require larger (ie those with annual income over £100,000) excepted armed forces charities to register would not extend the Commission's jurisdiction over them. Armed forces charities benefit from the tax reliefs available to charities generally and, in particular, from the Gift Aid scheme which allows them to receive donations in a way which is tax efficient both for them and for their donors. So there a clear public interest in these charities.

46. We recommend that before any plans are drawn up to lower the threshold for the registration of excepted charities below the initial £100,000 income figure, the Home Office and the Charity Commission monitor and report on the actual costs and benefits of the registration of those charities with an income above that level. (Paragraph 380)

The Government accepts this recommendation. The initial impact of the removal of excepted status will be considered as part of the five year review which the Government will conduct in response to the Joint Committee's recommendation 51 below.

47. We recommend that the Bill to be brought forward by the Home Office in the next parliamentary session should combine the provisions of the draft Bill with the surviving sections of the 1992 and 1993 Charity Acts to enact a single Charity Act 2005. (Paragraph 383)

48. If the Government do not accept the recommendation above, we recommend that a further consolidation Bill be brought forward subsequently to draw together all statute law on charities into a single Act. (Paragraph 384)

The Law Commission is responsible for the consolidation of statute law. The Government will explore with the Law Commission the feasibility of consolidating the charity statutes.

49. We recommend that the Home Office publishes a plain English guide to the new Act aimed at small volunteer-run charities. (Paragraph 386)

The Government accepts this recommendation. The Home Office will publish one or more guides, aimed at voluntary and lay people running charities, after the Bill has received Royal Assent but before it has come substantially into force.

50. We recommend that the annual reports of the Charity Commission should set out the measurable consequences of the provisions in the new legislation and explain any variations (Paragraph 391)

This recommendation is for the Charity Commission. The Commission has said that it accepts the recommendation.

51. We recommend that the Bill should contain a requirement for the Secretary of State to review and report to Parliament on the impact of the Act no later than five years after Royal Assent and that report should include an assessment of the effect of the legislation on public confidence in charities, the level of charitable donations and the willingness of individuals to volunteer. (Paragraph 393)

The Government undertakes to report to Parliament within five years on the impact of the legislation, covering the factors mentioned by the Joint Committee.

52. We recommend that when a draft Bill has been announced and scrutiny is to be conducted by a Joint Committee, the appointment of the Committee should take place well in advance and should not be delayed by any slippage in the timing of the draft Bill. We recommend that neither House should agree to deadlines in motions to appoint Joint Committees where the time for consideration of the draft Bill is less than 12 sitting weeks from the date of publication of the draft Bill (Paragraph 398)

The Government agrees that it can be helpful to appoint a Joint Committee on a draft Bill in advance of publication of the draft Bill, and recognises that Joint Committees need sufficient time to operate effectively. We will avoid proposing timetables of less than 12 sitting weeks, wherever possible. The appropriate length may vary according to a range of factors, including the complexity of the Bill and the intended date of introduction.

53. We recommend that the reserve power for the regulation of fund-raising by charities in clause 36 of the draft Bill should be subject to the affirmative procedure (Paragraph 403)

The Government accepts this recommendation and agrees to amend the Bill accordingly.

54. We recommend that when departments produce draft Bills for pre-legislative scrutiny they should make available an electronic version of how current legislation would be amended if the draft Bill is enacted, either to the relevant parliamentary committee or on the departmental website. (Paragraph 407)

The Government takes note of this recommendation. It also notes the related recommendation, on Keeling Schedules, in the House of Lords Constitution Committee's recent report on Parliament and the Legislative Process, and wishes to explore further the practical implications of these two recommendations.

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