



## Parliamentary Briefing

# Charities (Protection and Social Investment) Bill - Second Reading

### The Charity Commission

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 us five 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. We also believe that this is the best way for us to promote public trust and confidence in charities, and to encourage charitable giving and endeavour.

### 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 and that you would expect of the regulator. Lord Hodgson, in his review of the Charities Act 2011, and the National Audit Office concur. Securing these new powers remains a vitally important addition to the progress the commission has made in recent years to allow us to regulate effectively.

In summer 2013, the commission submitted formal proposals to the Cabinet Office on what additional powers we needed to regulate effectively across all forms of serious abuse. Following consultation, a draft Protection of Charities Bill was announced on 22 October 2014. The draft Bill underwent five months of pre-legislative scrutiny before the General Election in which oral evidence sessions were held and a call for written evidence went out. The [Joint Committee's report](#) recommended the inclusion of all the clauses, including two additional powers. Some changes were suggested by the Committee and the [Government issued a response](#) on the 28 March 2015.

The commission gave evidence but has also listened to that given by others and engaged actively with interested parties. During this process the commission has taken a number of steps to take action on some of the issues that interested parties have raised. The commission has listened to concerns about the lack of clarity in how the proposed disqualification power might be used and published an [initial discussion paper](#) with our initial thoughts on the approach to using this power to help answer questions that may arise during the passage of the Bill. We will consult further on this before the provisions are introduced. The commission has also taken steps to addressing concerns about the clarity of the process of applying for a waiver following automatic disqualification.

## What are the main clauses in the Bill?

The Bill will strengthen the commission's ability to tackle the most serious forms of abuse; making a significant difference in serious cases. However these powers will only directly affect a very small proportion of charities. For the vast majority they 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 five main reasons:

- to plug loopholes in current regime
- as basic powers you'd 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 that have arisen as our work becomes more complex requiring more nuanced and sophisticated powers
- as a deterrent value

## Key proposals

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

1. Disqualification:
  - (i) Extension of criteria for automatic disqualification (Clause 9) - This would extend the criteria for a person to be automatically disqualified from trusteeship. The current criteria are too narrow and do not cover several areas that we believe merit disqualification including convictions for serious terrorism offences, money laundering or bribery.
  - (ii) New power for us to disqualify (Clause 10) - this would enable the commission to disqualify a person from trusteeship if they meet criteria set out in the proposed legislation. The power is a three stage process and provides a number of safeguards, including one month's notice and inviting representations. As above, a [discussion paper](#) was published last week.
2. Official Warning (Clause 1) - this power fills a crucial gap. We lack a simple, proportionate formal power of this type. Many other regulators have similar type of powers.
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. Important to note that clear safeguards will be in place for this - the commission will not be able to use power lightly.
4. Social investment (Clause 13) - A new clause following a Law Commission consultation that removes any doubt as to whether charities or their trustees can make social investments and sets out the duties of trustees in using the power. This will enable charities to more easily undertake social investment.

## Next steps

We urge Peers to support this important Bill, that will provide the commission with the necessary tools to regulate effectively, at Second Reading. We would be happy to come and see you to discuss this further.

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)