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The Charities Bill 2021/22: an overview

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The Charities Bill 2021/22

Legal Background



- ▶ 2006 Charities Act 2006
 - ▶ 2011 Charities Act 2011
 - ▶ 2012 Hodgson Review
 - ▶ 2015 Law Commission Consultation
 - ▶ 2016 Law Commission Supplementary Consultation
 - ▶ 2016 The Charities (Protection and Social Investment) Act 2016
 - ▶ 2017 Law Commission publish Technical Issues in Charity Law report
 - ▶ 2021 Government publish its response
 - ▶ 2021 Charities Bill 2021 introduced
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What will the Bill achieve?



Explanatory Notes to the Bill:

- ▶ “Charities legislation is commonly perceived as being complicated, uncertain and in place unduly burdensome. This can delay or prevent a charity’s activities, discourage people from volunteering to become trustees and force charities to obtain expensive legal advice. It also hinders the Charity Commission in its regulation of the sector”.
 - ▶ If the Bill is enacted the “impact of these changes will significantly improve the efficiency of the sector, release more funds for use on charitable purposes rather than administration, and reduce unnecessary and overly bureaucratic regulation that not only increases the sector’s costs but also is a factor in discouraging people from volunteering to become trustees”.
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Part 1

Purposes, Powers and Governing Documents

1: alteration of charitable company's purposes



- ▶ Current position: amendment of “objects” requires consent (e.g. changing “trustee” to “Trustee”)
 - ▶ Proposed change: amendment of “purposes” requires consent (e.g. changing “in St Albans” to “in St Albans and surrounding area”)
 - ▶ Commission must have regard to:
 - ▶ the purposes of the company when it was established, if and so far as they are reasonably ascertainable
 - ▶ the desirability of securing that the purposes of the company are, so far as reasonably practicable, similar to the purposes being altered
 - ▶ the need for the company to have purposes which are suitable and effective in the light of current social and economic circumstances.
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2: Amendments to constitution of CIOs



- ▶ Current position: all amendments take effect when the amended Constitution is registered with the Charity Commission.
 - ▶ Proposed change: all non-regulated amendments take effect when the resolution is passed to make the amendment.
 - ▶ Commission must have regard to the same factors as proposed in relation to charitable companies when considering regulated amendments.
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3: Unincorporated charities

- ▶ Current position: all charities can made administrative amendments, only certain charities can amend purposes without a Scheme.
 - ▶ Proposed position: all charities will have wide powers to make amendments if expedient, subject to Charity Commission consent being required for regulated alterations which are similar to those for companies / CIOs (i.e. purposes, dissolution provision, trustee benefits AND permanent endowment AND third party rights).
 - ▶ Commission must have regard to the same factors as proposed in relation to charitable companies when considering the regulated amendments.
 - ▶ Amendments take effect when passed unless Commission consent is required for a regulated alteration.
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6 & 7: Cy-près and Schemes

- ▶ Current position: if fundraising for a particular purpose fails (either an initial failure or a subsequent failure) monies must be returned to donors in a prescribed manner or applied cy-près by scheme.
 - ▶ Proposed position:
 - ▶ Monies do not have to be returned if:
 - ▶ The Commission agrees it would be unreasonable;
 - ▶ The donation, or total of donations over a year, is < £120;
 - ▶ The donor cannot be identified or found.
 - ▶ The donor is unidentifiable.
 - ▶ Trustees can pass resolution to apply funds cy-près. If the monies involved are > £1,000 this requires Charity Commission consent.
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9 - 12: Permanent Endowment

Removing the restriction:

- ▶ Current position: Trustees can remove restriction (a) in relation to a fund that is less than £10,000 or where income is less than £1,000 and (b) in all other cases with Commission concurring within 3 months.
 - ▶ Proposed position: Trustees can remove restriction (a) in relation to a fund that is less than £25,000 and (b) in all other cases with Commission concurring within 60 days (which may be extended).
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9 - 14: Permanent Endowment



Borrowing from permanent endowment:

- ▶ Current position: not permitted without an Order from the Charity Commission.
 - ▶ Proposed position:
 - ▶ Trustees can borrow up to 25% without an Order, subject to repayment over a 20 year period.
 - ▶ Does not apply to functional permanent endowment.
 - ▶ Repayments can include additional sum to reflect lost capital appreciation.
 - ▶ Commission can make an Order extending the term for repayment or agreeing no repayment is required.
 - ▶ Different rules will apply if investing on a total return basis.
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15 - 16: Ex-gratia payments

- ▶ Current position: A section 106 Order is required to make an ex-gratia payment.
 - ▶ Proposed position:
 - ▶ Trustees can make ex-gratia payments within certain thresholds, based upon income levels (e.g. up to £1,000 if income is below £25,000; up to £2,500 if income is between £25,000 - £250,000; up to £10,000 if income is between £250,000 to £1m; up to £20,000 if income above £1m).
 - ▶ Still need to show a moral obligation, but test is objective not subjective, so can be delegated to members of staff.
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Part 2

Charity Land

17 - 24: Charity Land



Changes:

- ▶ Part 7 Charities Act 2011 restrictions will only apply to disposals where the land is solely owned by the Charity
 - ▶ Part 7 restrictions will not apply to liquidators / receivers / mortgagees / administrators
 - ▶ Clarifies that charity to charity disposals will not be exempt where price is a motivating factor
 - ▶ Removes the statutory requirement to advertise the disposition
 - ▶ Provides that advice can be obtained from designated advisors, not just surveyors and Charity Trustees, officers and employees
 - ▶ Short term tenancies to employees will not require Commission approval
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Part 3

Charity Trustees

29 - 32: Charity Trustees



Changes:

- ▶ Commission will have the power to resolve uncertainties or defects in the appointment / election of Trustees and ratify the appointment / election
 - ▶ Rules extended to permit charities to obtain goods as well as services from Trustees (in appropriate circumstances)
 - ▶ Commission will have the power to retrospectively ratify payments to Trustees
 - ▶ A body corporate that is a charity will automatically have trust corporation status if acting as a trustee of a charitable trust
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Part 4

Charity Mergers

33 – 35: Mergers



Changes:

- ▶ Corrects the issue with the Register of Mergers that has led to many charities retaining “shell” charities
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