

The Charities (Protection and Social Investment) Bill

Francesca Quint, Radcliffe Chambers

This Bill, which had its Second Reading in the House of Commons on 3 December, has attracted considerable comment on behalf of both the Charity Commission and the representatives of charities. It is divided in two contrasting parts – the strengthening of powers exercisable by the Charity Commission to protect charities and their assets where it is considered that the trustees are responsible for ‘a breach of trust or duty, or other misconduct or mismanagement’ and conferring new powers on charities to enable them to make ‘social investments, i.e. investments designed to produce a charitable as well as a financial return.

The Commission’s new powers include a power to issue, and if thought fit to publish, an official warning giving details of action the Commission considers necessary to put matters right. The Bill also:

- extends the time for which the Commission may suspend a trustee or officer of a charity,
- permits the Commission to take account of conduct in relation to another charity or in relation to charities generally when making interim orders following the establishment of an inquiry,
- extends the circumstances enabling the Commission to remove a trustee or officer in the context of an inquiry, and to remove a trustee who is disqualified,
- extends the power to give directions in the context of an inquiry to include a direction not to take or continue with a specified action,
- enables the Commission to direct that a charity be wound up or to transfer its property to another charity,
- extends the circumstances in which a person is disqualified from being a trustee of a charity to include (inter alia) conviction for offences involving terrorism, bribery or perjury, or the making of a specific disqualification order by the Commission itself (eg

where the person concerned has committed an offence against a charity in another country) and

- makes amendments to the provisions relating to fund-raising agreements and to the treatment of fund-raising in charities' annual reports.

The second part of the Bill is based on a recent report by the Law Commission. It adds a new Part 14A to the Charities Act 2011 defining 'social investment', enacting a general power for charities to make such investments, disapplying the investment duties imposed by the Trustee Act 2000 in the case of social investments and setting out the duties of charity trustees when deciding to make social investments. To summarise, trustees must consider whether specific advice is needed, and if so obtain and consider it, and satisfy themselves that the social investment will be in the charity's interests, and a duty to review social investments. This is a very wide concept. It is worth noting however that the trusts of the charity, if inconsistent, will take precedence over the statutory provisions. This part of the Bill is not controversial but it is likely that any problems inherent in the new provisions will come to light only after the new provision are in force and disagreements within charities or between charities and their supporters have emerged.

There has been more commentary on the 'Protection' aspect of the Bill. Suggestions have been made that in addition to the requirement to give notice, to take account of representation and the overriding prohibition on the Commission's requiring a charity's funds to be applied for purposes outside its objects, there should be further safeguards for example the possibility of an appeal to the First-tier Tribunal against the issue of a warning. It is true that the Bill does, and is intended to, give the Commission more powers to make a real and effective difference in dealing with abuse of charities. It might be regarded as counter-productive to add an appeal structure which would inevitably build in an opportunity for delay and additional expense. On the other hand it can be seen as unhealthy for a non-elected body such as the Commission to have wide powers which can only be challenged by means of an application for Judicial Review.

Comments on the Bill from anyone interested have been invited by early January.