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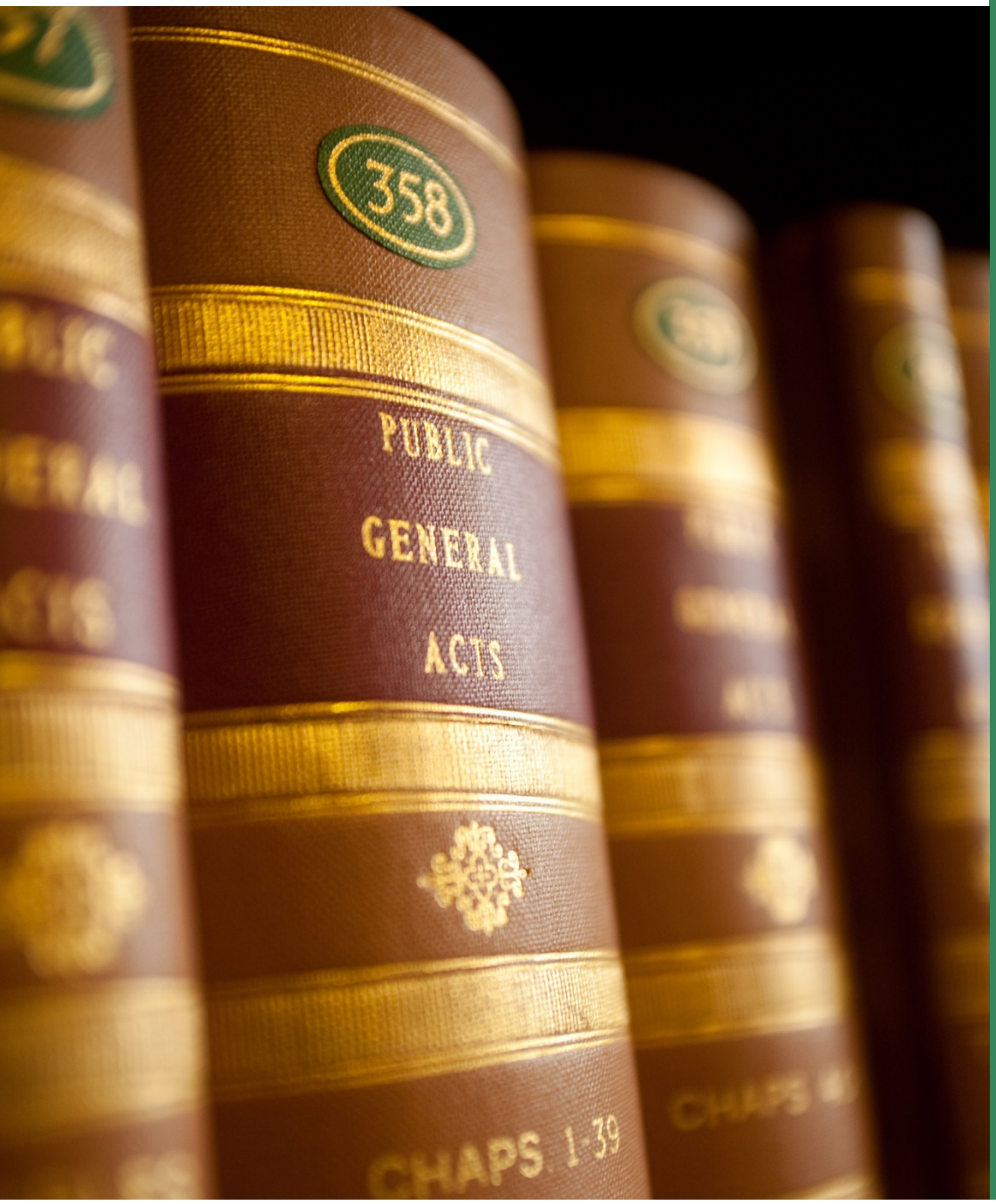
**BRIEFING PAPER**

Number 07475, 20 January 2016

# *Charities (Protection and Social Investment) Bill [HL]*: Committee stage report

By Catherine Fairbairn

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# Summary

The *Charities (Protection and Social Investment) Bill [HL]* (the Bill) includes provisions intended to:

- provide stronger protection for charities in England and Wales from individuals who are unfit to be charity trustees;
- equip the Charity Commission with new or strengthened powers to tackle abuse of charity more effectively and efficiently;
- give charities a new power to make social investments (investments that pursue both a financial and social return); and
- deal with certain problems related to fundraising.

The Bill would amend other legislation and includes powers requested by the Charity Commission.

The Opposition has welcomed and supported the Bill, although it has put forward ways in which it considers the Bill could be improved.

The Public Bill Committee agreed, on division, to remove a clause inserted into the Bill by way of an Opposition amendment in the House of Lords. The clause would have required the Charity Commission to ensure that independent charities could not be compelled to use or dispose of their assets in a way which would be inconsistent with their charitable purposes.

In addition, the Public Bill Committee agreed a new Government clause dealing with reserve powers to control fundraising.

The Committee also considered several Opposition amendments and new clauses, none of which were pressed to a vote.

Further background and information about the Bill is provided in two Library briefing papers prepared for the Bill's Second Reading in the House of Commons:

- *Charities (Protection and Social Investment) Bill [HL]: in detail*;
- *Charities (Protection and Social Investment) Bill [HL]: in brief*.

# 1. Introduction

## 1.1 Progress of the Bill

The *Charities (Protection and Social Investment) Bill [HL]* (the Bill) was introduced in the House of Lords on 28 May 2015 as Bill 3 of 2015-16. The Government also published Explanatory Notes.

The Bill had its second reading in the House of Lords on 10 June 2015. It was then considered by Grand Committee in four sittings between 23 June 2015 and 6 July 2015. Report stage in the Lords was on 20 July 2015 and third reading on 14 September 2015. The Bill was amended both in Grand Committee and on Report.

The Bill had its first reading in the House of Commons on 15 September 2015 as Bill 69 of 2015-16. The Government also published revised Explanatory Notes.[1]

The Bill would extend to England and Wales.

This Bill has been certified by the Speaker as relating exclusively to England and Wales,[2] so the 'English votes for English laws' procedure will apply to it. The procedure is outlined in section 1 of a House of Commons Library briefing paper, *English votes for English laws*.[3]

Background and information about the Bill is provided in two further Library briefing papers prepared for the Bill's Second Reading in the House of Commons:

- *Charities (Protection and Social Investment) Bill [HL]: in detail*;[4]
- *Charities (Protection and Social Investment) Bill [HL]: in brief*.[5]

## 1.2 House of Commons Second Reading debate

The Second Reading debate in the House of Commons took place on 3 December 2015.[6]

Matthew Hancock, Minister for the Cabinet Office and Paymaster General, introduced the Bill and set out what it was intended to do. He said that it was just one part of a wider programme of reform "aimed at turning the Charity Commission into a tough, clear and proactive regulator".[7] He indicated that the Government would introduce amendments at Public Bill Committee stage.

Shadow Civil Society Minister, Anna Turley, welcomed the Bill but said that there was "room for improvement".[8] She said that Labour

1 Bill 69-EN
2 *Speaker's Certificate*, 4 November 2015
3 Number 7339, 2 December 2015
4 Number 07208, 22 October 2015
5 Number 07344, 22 October 2015
6 HC Deb 3 December 2015 cc558-590
7 HC Deb 3 December 2015 cc560
8 HC Deb 3 December 2015 cc564

welcomed the core aims of the Bill and would support it, but that further clarifications were necessary.

Tommy Sheppard, Shadow SNP Spokesperson for the Cabinet Office, noted that this was a certified Bill and said that the SNP would not make any further contribution to it.[9]

## 1.3 Public Bill Committee

The Bill had five sittings in a Public Bill Committee between 15 December 2015 and 7 January 2016. A further session agreed for 7 January 2016 was not used.

The written evidence received by the Committee is available on the Bill page on the Parliament website.

The Members of the Public Bill Committee are set out in an Appendix at the end of this briefing paper.

## 1.4 Bill versions

The Clause numbers used in this briefing paper are as in the Bill brought from the Lords (Bill 69 of 2015-16).

The Bill as amended in Public Bill Committee has been published as Bill 116 of 2015-16. A tracked changes version of the bill showing amendments made in Committee has also been published.

9 HC Deb 3 December 2015 cc571

# 2. Amendments agreed

## 2.1 Clause 9 removed: Disposal of assets

Clause 9 was inserted into the Bill by way of an Opposition amendment agreed on division at Report stage in the House of Lords. It would have required the Charity Commission to ensure that independent charities could not be compelled to use or dispose of their assets in a way which would be inconsistent with their charitable purposes.

In Public Bill Committee, Rob Wilson, Minister for Civil Society, described the Clause as "an undisguised attempt to undermine or even block the Government's manifesto commitment to extend the right to buy to tenants of housing associations".[10]

The Minister spoke of a voluntary agreement with housing associations which had been reached since the Clause was introduced, which, he said, rendered it unnecessary.[11] He indicated that, so far, 93% of the total housing association stock was covered by associations that had agreed to the deal.[12] He added later that he thought that "somewhere in the region of 75% of housing associations" had agreed to the deal.[13]

Rob Wilson said that, under the voluntary agreement, charities could not be compelled to dispose of their assets in a way that was incompatible with their charitable purposes. This, he went on, preserved the independence of charities which would continue to be free to dispose of their assets as they saw fit.

The Minister also considered that the Clause could have damaging unintended consequences for charities. He disagreed that it just stated the existing legal position, arguing that attempting to create a simple statutory provision for a large area of case law was "fraught with danger". He said that the Clause would cast doubt on the power of the courts to direct charities to dispose of property and could cause problems for the Charity Commission in the exercise of its powers.

Rob Wilson pointed out that the Clause would cover all charity assets, not just land and could hamper trustees' discretion to make investments. He referred to the new responsibility the Clause would give to the Charity Commission, for which they had not asked (unlike other provisions in the Bill).

The Minister further considered that the Clause could undermine pre-existing preserved rights to buy.[14]

Anna Turley said that the Opposition were not against the right to buy but disagreed with points made by Rob Wilson. She argued that the Clause should remain in the Bill:

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10 PBC Deb 5 January 2016 c57
11 A Library briefing paper provides further information, *Extending the Right to Buy (England)*, Number 07224, 30 December 2015
12 PBC Deb 5 January 2016 c58
13 PBC Deb 5 January 2016 c65
14 PBC Deb 5 January 2016 cc58-60

> It simply and effectively states the existing legal position and supports trustees in their existing duties by ensuring that they are able to adhere to their charitable aims and objectives, and it protects them from being compelled to undertake an action that is at odds with their charitable purposes.

Anna Turley pointed out that the voluntary agreement was not unanimous and that many housing associations did not sign up to the principle. She detailed the concerns about the extension of the right to buy to housing associations and spoke of the unintended consequences of removing the Clause.

The Shadow Minister did not consider that the new responsibility for the Charity Commission was "particularly burdensome" and said that it was in keeping with the Commission's role in defending the independence of the charitable sector. She spoke of concerns that the Government wanted to interfere with the duties of charity trustees to "put their beneficiaries first and comply with the trust deed".[15]

Anna Turley argued that although housing was the focus, the principle was broader. Wes Streeting (Labour) also considered the wider implications of the Clause, and spoke in favour of it being retained:

> At the heart of clause 9 there is an important principle that dates back to Elizabethan times: many people who give to charities make those gifts or bequests for specific charitable purposes. It should not be possible for the Government—not only this Government, but any Government—to direct charities to use those assets for different purposes, however well intended, desirable or, indeed, undesirable the Government's objectives may be.
>
> The clause is important because it provides protection not just in relation to housing associations—the Minister makes the case that that may be unnecessary given the change of approach—but more generally, so that if a Government, whatever their political leaning, want to use charitable assets for purposes for which they were not gifted or bequeathed, they will have to accept that those assets are protected. If not, they will have to amend legislation or provide a specific exemption, which would generate a very worthy debate in this House or in the Lords.[16]

The Committee divided on the question of whether the Clause should stand part of the Bill. Clause 9 was removed by ten votes to six.

## 2.2 Technical amendment

A technical and procedural amendment, agreed without division, removed the privilege amendment that was inserted in the House of Lords. Rob Wilson said that, in practice, the new powers that the Bill would confer on the Charity Commission were expected not to result in additional costs for the Commission.[17]

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15 PBC Deb 5 January 2016 cc60-63
16 PBC Deb 5 January 2016 c64
17 PBC Deb 5 January 2016 c102

# 3. Debates on new clauses

## 3.1 New clause agreed: Reserve powers to control fundraising

The Public Bill Committee agreed a new Government clause dealing with reserve powers to control fundraising (now Clause 14 of Bill 116 of 2015-16).[18] Rob Wilson said that he fully supported Sir Stuart Etherington's recommendation to give charities a final chance to make the self-regulation of fundraising work.

The new clause would extend the existing reserve power in section 64A of the *Charities Act 1992.* If exercised, the power could compel charities to register and comply with the requirements and guidance of a specified fundraising regulator. Rob Wilson provided further information:

> Under this provision, Ministers will have the discretion to mandate with the regulation of charity fundraising any body whose principal function appears to be in line with that purpose. The provision makes it clear that that may not be a body maintained out of money provided by Parliament. That will be the case with the new fundraising regulator currently being established by Lord Grade of Yarmouth, the interim chair, and Stephen Dunmore, the interim chief executive, which will be funded by the sector itself.

The new clause would also enable the Government to confer the function of regulating charitable fundraising on the Charity Commission.

The new clause was intended to be a safeguard in case self-regulation failed.

The Minister indicated that most of the largest charities had already committed to registering with the new regulatory body when it was established. However, the new power could be used to compel them to do so.

Rob Wilson said that he hoped that the Government would not have to invoke the reserved powers which would change the nature of fundraising regulation:

> It would no longer be governed by a self-regulatory system; instead, the Government would be able to invoke statutory regulation by mandating the Charity Commission with that task. Were that function to be passed to the commission, clearly it would require additional funding or would charge fees under section 19 of the Charities Act 2011.
>
> I hope that I will never feel compelled to use this power, as it would mean that the self-regulatory system had failed. More importantly, it would mean that large charities had failed to put their house in order. However, the seriousness of the abuse in the past year or so and the impact it has had on public trust in charities has made it clear that a robust backstop is needed to

[18] PBC Deb 7 January 2015 cc107-112

> ensure that the public feel that they can give with confidence and to prevent the same sorts of scandals being repeated.

The Minister said that the new clause would provide "a robust back-up" to the system of self-regulation currently being implemented and that it would also act as a deterrent "to those who are still in denial about the seriousness of the issues that the sector faces". He also said that he would not hesitate to invoke the power if it became necessary.

Anna Turley confirmed the Opposition's support for the Government's new clause. She said that the Institute of Fundraising, the professional membership body for UK fundraising, and the Public Fundraising Association, the membership body for charities and agencies that carry out face-to-face direct debit fundraising, were in the process of merging to form a single professional body across the sector, in the light of the Etherington review. Both, she continued, understood the reasons for the introduction of the reserve powers and did not object to them in principle:

> They hope, as do we, that ultimately the reserve powers will not be needed, and that the new self-regulatory structures will be effective. They commit to working to support the new system of stronger self-regulation to help ensure its success without the need for the reserve powers to be used. I welcome their positive commitment to that.

Anna Turley said that state regulation should be a last resort when self-regulation had failed, "but these powers give self-regulation the opportunity to succeed, while ensuring that there is proper back-up should the new arrangements fail to deliver satisfactorily".[19]

## 3.2 Proposed new clauses not agreed

### Power to make representations

Anna Turley moved a new clause intended to enshrine in legislation the right of charities to undertake political campaigning activity. She clarified the intent of the proposed new clause:

> We are clear that this is a direct attempt to challenge the unfair and poorly applied Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014—the gagging Act, as it is commonly known.

She said that the sector had made clear that "it feels stifled, particularly in the lead up to general elections, when there are serious debates about the future of Government policy". This, she continued, was what the new clause sought to prevent.

Anna Turley set out concerns which had been raised:

> Charities themselves set out some concerns, including the fact that the scope of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 was very broad. They were concerned that legitimate, day-to-day activities of charities and voluntary organisations engaging with public policy would be caught by the rules. That means that a number of

[19] PBC Deb 7 January 2016 cc107-112

> regulated charities, voluntary organisations and other groups will be substantially affected.
>
> They felt that the Act as a whole is incredibly complex and unclear and that it might be difficult for charities and other voluntary groups to understand whether any of their activities would be caught, giving rise to a risk of discouraging campaigning activity. They also felt that it gave substantial discretion to the Electoral Commission, creating an unnecessarily burdensome regulatory regime, and that it might leave some charities, voluntary organisations and the Electoral Commission open to legal challenge.

Rob Wilson resisted the proposed new clause. He said that he supported the right of charities to speak up for their beneficiaries. He set out the effect of current charity law which, he said, permits charities to undertake non-party political campaigning that furthers the charity's purposes and that the trustees consider to be an effective use of its resources. This, he continued, could involve campaigning to change the law or a policy, and non-party political campaigning to support such a change.

The Minister then spoke of the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014,* indicating that a review was under way:

> The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 applies to all third-party organisations campaigning for a particular electoral outcome. It does not specifically target charities or prevent them from campaigning to further their charitable purposes. The Charity Commission's guidance CC9 makes that absolutely clear.
>
> The Hodgson review, which is under way and will report in the next couple of months, will look at all those issues and consider in detail all the representations that are made to it. I think the Opposition should have waited for the review to see the detail of the representations made and whether there is evidence that things are going wrong and that the so-called chilling effect is taking place.

Rob Wilson considered the new clause to be unnecessary, unless the argument was that charities should be able to engage in party politics, in which case, he said, he very strongly objected. He spoke of the importance of charities maintaining their independence:

> Where the dividing line between charitable and political becomes blurred and charities come to be seen as politically biased or aligned with a particular party, there is a real risk of public trust and confidence in charities being degraded.
>
> One of the charities' strengths is their independence and their ability to stand outside politics, and I would really hate to see that undermined by the new clause.

Rob Wilson also spoke of the difficulty of trying to encapsulate a body of case law in a single statutory provision and said that there could be potentially significant unintended consequences:

> Even in the unlikely event that the boundaries of law were not shifted by an attempt at statutory definition, one would still expect legal challenges to test whether the law had in fact

> changed, by design or otherwise. There is further risk in putting this in the Bill since it would risk politicising charities' right to campaign. Ministers, rather than the independent regulator and the courts, would be responsible for the provision, which could leave it open to political interference over time.

Anna Turley said that she was not convinced and that she fundamentally disagreed with the Minister's claim that he was trying to protect the sector's independence. She said that she would not press for a vote on the new clause because she wanted to return to it on Report.[20]

## Independent schools' facilities: public benefit

Anna Turley moved a new clause intended to require charitable independent schools to engage with local communities and state schools with a view to sharing resources and facilities. The new clause would have also required the Charity Commission to publish guidance setting out the minimum that charitable independent schools would have to do to comply with this duty. Anna Turley also spoke to other new clauses (not moved) which were in similar terms but referred respectively to sports facilities and coaching expertise; facilities for music, drama and arts; and careers advice, work experience and further education admissions advice.

The Shadow Minister agreed that many independent schools were doing good work but did not consider that enough was being done. She said that "charitable status is now an outdated and inappropriate financial privilege that is impossible to justify without substantial action from independent schools, which is what the new clauses seek to achieve".

Anna Turley questioned whether it was right that trustees should determine how the school did not benefit only those who paid fees. She did not consider that the non-legislative measures mentioned in the House of Lords were sufficient to address the issue and spoke of a need to clarify the law:

> If they want to keep facilities solely for their own pupils, schools must give up their charitable status. If they want to retain that status and the financial benefit that the parents of non-pupils pay for, they must allow non-pupils greater access. It is time to clarify the law. In the wise words of the Upper Tribunal, adjudicating between the Independent Schools Council and the Charity Commission,
>
> "these are issues which require political resolution".
>
> That is the purpose of the new clauses.

Jo Churchill (Conservative) considered that the proposals would "apply red tape to something that is already working".

Rob Wilson agreed that more should be done to promote stronger partnerships between independent and state schools but differed from the Opposition Members on how this should be achieved. He

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20 PBC Deb 7 January 2016 cc112-131

considered that there were both principled and practical reasons against legislating to force charitable independent schools to do more.

The Minister spoke of the public benefit requirement and of the Upper Tribunal ruling in 2011 which set the parameters for charitable independent schools:

> Public benefit must be real and not tokenistic, but beyond that it is not for the Charity Commission to dictate to schools the type or amount of public benefit they provide. That should be a matter for the trustees of the charity, who must take into account the charity's circumstances.

He said that there was a wide range of ways in which charitable independent schools could provide benefits and that it was for the trustees to determine the way in which their charity provided a public benefit.

The Minister also spoke of the danger of legislating for only one type of charity:

> It would be wrong to single out one type of charity in legislation and stipulate one particular type and the extent of public benefit that it must provide. No other type of charity is treated in that way, and it would set a very dangerous precedent. What would be next? Religious charities, overseas aid charities or campaigning charities? Once the precedent has been set, the risk is that the temptation to interfere would be too great for some to resist, and specific legislative requirements could creep in over the years for different types of charities. If unchecked, there is a real danger that over time charities would be opened up to significantly increased state interference—whether or not politically motivated—which could seriously undermine the charity sector's independence. In this Committee, all parties have sought to protect the independence of charities and trustees.

Anna Turley challenged this point saying that the situation in education was unique:

> On the point about setting a precedent, the difference is that independent schools provide a service over and above state provision. There is statutory universal provision, but people choose to go in over and above that and send their children to independent schools. We should question the right of those schools to receive taxpayers' money. It is a unique situation in education, so we cannot simply say that it would set a precedent.

Rob Wilson also thought, on a practical level, that forcing schools into particular types of partnership might undermine existing good work. He spoke of the different levels of resources of independent schools and gave examples of successful partnerships. He also detailed non-legislative activity in this area.

Anna Turley said that was not convinced that there had been sufficient progress or that anything other than a statutory power would "do anything to compel independent schools to justify the money they get back from the British taxpayer". She indicated that she would not press for a vote but might reconsider the matter at a later stage.[21]

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21 PBC Deb 7 January 2016 cc131-146

# 4. Other significant areas of debate

## 4.1 Clause 1: Official warnings by the Commission

### Notice of warning

Anna Turley welcomed in principle the proposal to introduce a new power for the Charity Commission to issue an official warning. However, she moved an amendment to require a minimum period of 14 days' notice of a warning. The Shadow Minister spoke of the impact a warning might have on a charity, which could risk damage to the charity's reputation, and affect its funding and support. She noted that the Charity Commission had said that it would ensure that a reasonable time for representation was given, but felt this lacked clarity and that there should be a timeframe in the Bill. Anna Turley said that the Joint Committee which scrutinised the draft Bill had also recommended that there should be a reasonable minimum notice period to make representations about a draft warning.[22]

Rob Wilson resisted the amendment. He said that the Charity Commission had indicated that it would consult on and publish guidance on how it would use the official warning power before the power commenced. The Commission, he continued, had confirmed that it would ensure that a reasonable time for representations was given but that the time period between giving the notice and exercising the power might vary, according to the circumstances. He indicated that, as a starting point, he would expect there to be a notice period of 14 days but that there might be cases where a shorter period might be needed (and went on to give examples).

Responding to the point raised in debate that the publication of a warning might have adverse consequences, Rob Wilson said that it was important that charities should be accountable and that there should be transparency.[23]

Anna Turley withdrew the amendment.

### Right of appeal to Tribunal

Anna Turley moved a further amendment which would have inserted a right for a charity to appeal against the Charity Commission's decision to issue a warning, if it felt that the warning had been issued inappropriately or unfairly. She pointed out that without this provision, the only way to appeal would be by way of judicial review, which she considered to be costly and protracted and could have a disproportionate effect on small charities. Anna Turley considered that it was illogical that it should be more difficult to challenge the issue of a

22 PBC Deb 15 December 2015 cc4-6
23 PBC Deb 15 December 2015 cc17-25

warning than the exercise of the Commission's more extensive regulatory powers.[24]

Rob Wilson said that the Commission had told him that the resources required to defend Tribunal proceedings would be disproportionate to the issues at stake in official warning cases, rendering the official warning power unusable from the Commission's perspective. He indicated that the review of the Bill, which would begin within three years of enactment, could consider the use of the power and any judicial reviews of its exercise. He confirmed that an official warning was not the same as a direction power.[25]

Anna Turley said that she would not press the amendment to a vote but still had significant concerns.

## 4.2 Clause 6: Power to direct specified action not to be taken

Anna Turley moved an amendment which would have provided that an order of the Charity Commission directing specified action not to be taken would be discharged automatically when the inquiry to which it related closed. The Member's explanatory statement to the amendment was:

> To restrict the power to ensure that if a tribunal appeal is successful, a direction by the Commission as a result of the warning is no longer relevant.

Anna Turley said that it was not clear whether an order under Clause 6 could extend beyond the period of the inquiry.[26]

In reply Rob Wilson spoke of the six specific protections associated with the power. He said that if the direction were appealed it would be for the Tribunal to decide what would happen. The Minister considered that the amendment would lead to some statutory inquiries remaining open for longer while an order under Clause 6 remained in force which, he said, "would not be right or necessary, given the existing safeguards that apply to the exercise of the power".[27]

Anna Turley said that she was reassured by the Minister's response and withdrew the amendment.[28]

## 4.3 Clause 10: Automatic disqualification from being a trustee

In the Clause stand part debate, among other things, Members considered the waiver provisions. The Minister confirmed that waiver applications would be considered on a case by case basis. He said that the Charity Commission would consider the type, nature and seriousness of the conduct that resulted in the conviction and

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24 PBC Deb 15 December 2015 cc25-27
25 PBC Deb 15 December 2015 cc28-30
26 PBC Deb 15 December 2015 cc41-2
27 PBC Deb 15 December 2015 cc42-5
28 PBC Deb 15 December 2015 c46

consequent disqualification, and also the type of charity concerned. Rob Wilson set out information about work in this area that the Commission was already undertaking.[29]

## 4.4 Clause 11: Power to disqualify from being a trustee

Anna Turley said that the Opposition supported Clause 11 but sought to make some amendments to it.

### Collective failure of trustees

The Shadow Minister moved an amendment which aimed to ensure that, where there had been a collective failure to act, a whole trustee board should be held accountable.

Rob Wilson set out how the Charity Commission would exercise the new power. He said that the Commission already had power to act in cases of collective failure by trustees and systemic governance issues, and would also be able to do so under the power in Clause 11. However, the Commission would be under a duty to act proportionately and each case would be considered on its merits and on the available evidence. In a recent (unnamed) case, the Commission had removed all ten trustees for serious collective governance failings.

Anna Turley withdrew her amendment.[30]

### Person unfit to be a charity trustee

Another amendment to Clause 11 moved by Anna Turley was intended to ensure that the Charity Commission publicised its definition of "person unfit to be a charity trustee" following a consultation. She considered that, "if the Charity Commission is to be provided with discretionary powers to disqualify someone who is unsuitable, any test of unfitness should be robustly and clearly defined. Safeguards should be provided to prevent such a test from being used inappropriately".

The Shadow Minister also drew attention to the "broad and subjective" wording of Condition F, adding that it seemed unlikely that any conduct that would meet the alternative conditions A to E would not also meet condition F.[31] She said that she did not agree with calls from some in the charity sector to have condition F removed, but considered, rather, that it should be subject to more rigorous definition.

Anna Turley acknowledged the Charity Commission's policy paper on how it would use the proposed disqualification power, but considered

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29 PBC Deb 5 January 2016 cc67-75

30 PBC Deb 5 January 2016 cc75-9

31 There would be a three part test for the exercise of the power to disqualify: the Charity Commission would have to be satisfied that one of the specified conditions (A to F) was met in relation to the person; that the person was unfit to be a charity trustee, either generally or in relation to the charities or classes of charities specified or described in the order; and that making the order was desirable in the public interest in order to protect public trust and confidence in charities. Condition F is "that any other past or continuing conduct by the person, whether or not in relation to a charity, is damaging or likely to be damaging to public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order."

that it should be made into a formal document, published after consultation with the sector and revised every five years.

Rob Wilson resisted the amendment, saying he did not consider it to be necessary. He set out information about the Commission's initial thinking about how it would exercise the proposed power to disqualify– as set out in the policy paper. He also referred to the Commission's commitment to consult publicly on guidance before the provision is commenced; to the Commission's regular review and updating of all of its guidance; and to the intended reviews of the whole Bill.[32]

Jo Stevens (Labour) also raised concerns about the broad wording of Clause 11:

> As with any legislation that provides powers that are insufficiently defined, there is a risk of creep to lower the circumstances held to satisfy unfitness and there is an inherent risk of inconsistent or erroneous decision making. ...
>
> With no definition in the Bill and the commission seeking to define unfitness in the widest possible terms in its policy paper, as we have heard, the test of unfitness lacks any objective criteria by which to measure the reasonableness of the commission's decision.[33]

In response, Rob Wilson set out information about the three part test for the exercise of the disqualification power and the various safeguards included in the Bill.[34]

Anna Turley withdrew the amendment.

### "Conduct"

Anna Turley moved a further amendment intended to address concerns about the breadth of condition F by specifying that the conduct which the Charity Commission might take into account must be "both relevant and serious".

Rob Wilson said that he had sympathy with the intention behind the amendment but believed that it was unnecessary. He considered that the Commission, which had a duty to act proportionately, would only consider conduct that was relevant and serious, and any attempt to do otherwise would be rejected by the Tribunal. Including the words in the amendment might, he said, cast doubt on other powers of the Commission which did not include those words.

Anna Turley withdrew the amendment.[35]

## 4.5 Clause 14: Fundraising

In the Clause stand part debate, Rob Wilson detailed the measures which had been added to the Bill by way of Government amendment at Report stage in the House of Lords. He also outlined what had

32 PBC Deb 5 January 2016 cc80-82
33 PBC Deb 5 January 2016 cc82-3
34 PBC Deb 5 January 2016 cc83-4
35 PBC Deb 5 January 2016 cc85-8

happened since the publication of the report of Sir Stuart Etherington's review of fundraising self-regulation.

Anna Turley said that the Opposition welcomed the Clause and believed that state regulation should be a last resort, where self-regulation has failed.[36]

[36] PBC Deb 5 January 2016 cc93-8

# 5. Appendix- Members of Public Bill Committee

The Committee consisted of the following Members:

**Chairs**: Fabian Hamilton, Mrs Anne Main

**Members:**

Jo Churchill, (Bury St Edmunds) (Con);

Louise Haigh, (Sheffield, Heeley) (Lab);

Robert Jenrick, (Newark) (Con);

Gareth Johnson, (Dartford) (Con);

Peter Kyle, (Hove) (Lab);

Jeremy Lefroy, (Stafford) (Con);

Conor McGinn, (St Helens North) (Lab);

Mr Alan Mak, (Havant) (Con);

Wendy Morton, (Aldridge-Brownhills) (Con);

Sarah Newton, (Truro and Falmouth) (Con);

Jo Stevens, (Cardiff Central) (Lab);

Wes Streeting, (Ilford North) (Lab);

Maggie Throup, (Erewash) (Con);

Tom Tugendhat, (Tonbridge and Malling) (Con);

Anna Turley, (Redcar) (Lab/Co-op);

Mr Rob Wilson, (Minister for Civil Society)

**Committee Clerks**: Marek Kubala, Ben Williams,

**BRIEFING PAPER**
Number 07475, 20 January 2016