



Charities Bill [HL]

HL Bill 17 of 2021–22

Author: Russell Taylor

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The Charities Bill was announced in the Queen's Speech on 11 May 2021 and introduced in the House of Lords on 26 May 2021. It is scheduled to be considered in second reading committee on 7 July.

It is a Law Commission bill and is expected to be subject to the special procedure for these types of bills. In the Lords, this allows it to be considered by a second reading committee and by a special public bill committee, rather than having the usual House second reading and committee stages.

The bill would make a number of technical changes to charities law. The Law Commission published its report recommending changes to charities law in 2017. It said that uncertainties in the law and unnecessary regulation can disrupt charities' activities, discourage participation and force charities to obtain expensive legal advice. It hoped its recommendations would simplify the regulation of charities, while still maintaining important safeguards for how they are run.

The Government welcomed the Law Commission's report and accepted 36 out of the 43 recommendations. It agreed that, although the changes could seem highly technical, they would make it simpler and easier for charities to respond to opportunities to achieve their purposes. The rejected proposals included a review of the basis to challenge Charity Commission decisions and a proposal to abolish the requirement for charities to advertise proposed disposals of designated land.

The bill includes changes to simplify the law around:

- changes to a charity's governing documents;
- payments to trustees in certain circumstances for goods and services provided;
- using funds for ex gratia payments or using funds obtained in connection to specific fundraising campaigns for other purposes (cy-près powers);
- utilising permanent endowments; and
- disposals of charity land.

Labour has indicated its support for the bill. The Law Commission also said that the Law Commission proposals had received support from the Charity Commission and the charity sector itself. The National Council for Voluntary Organisations has recently welcomed the bill, stating that it is a positive step to simplify the law.

I. Background to the bill

I.1 Purpose of the legislation

In 2020, the Charity Commission stated that there were more than 168,000 registered charities in England and Wales.¹ During the 2019/20 financial year, it regulated £81.2 billion of charity income and £78.7 billion of charity spend. Over 700,000 individuals held trustee positions.

The Government has acknowledged that charities legislation is “commonly perceived as being complicated, uncertain and in places unduly burdensome”.² It says that this can disrupt a charity’s activities, discourage people from volunteering to become trustees and force charities to obtain “expensive legal advice”. It also believes it negatively effects the Charity Commission’s ability to regulate the sector.

The Charities Bill implements a number of recommendations made by the Law Commission regarding the laws regulating charities and their processes. Much of this will be achieved by amendments to the Charities Act 2011 and the Universities and College Estates Act 1925.

The Government hopes the 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.³

I.2 Recommendations from the Law Commission

Law Commission report published in 2017

The Law Commission’s recommendations for changes to charities law were published in its 2017 report, *Technical Issues in Charity Law*.⁴ It focused on social investment by charities and technical issues concerning charity law. The report followed suggestions from the Charity Commission for a review of certain issues affecting charities established by statute and by royal charter. It also factored in the recommendations put forward by Lord Hodgson of Astley Abbotts’ statutory review of the Charities Act 2006 in 2012.⁵

Although accepting the changes may seem technical, the Law Commission highlighted the important balance between regulating charities and ensuring they have the freedom to act to the best of their

¹ Charity Commission for England and Wales, [Annual Report 2019/2020](#), 20 July 2020, p 10.

² [Explanatory Notes](#), p 3.

³ *ibid.*

⁴ Law Commission, [Technical Issues in Charity Law](#), 13 September 2017.

⁵ Lord Hodgson of Astley Abbotts, [Trusted and Independent: Giving Charity Back to Charities—Review of the Charities Act 2006](#), July 2012.

abilities and in the public interest:

Our project concerns various technical legal issues in charity law. Whilst technical, they are important and have very practical consequences for charities. Lord Hodgson has likened regulatory burdens on charities to the barnacles that slow down a ship. Uncertainties in the law and unnecessary regulation can delay or prevent charities' activities, discourage people from volunteering to become trustees, and force charities to obtain expensive legal advice. And whilst some (particularly large) charities have ready access to legal advice, it is beyond the reach of others.

Charities have an important role and the law should both protect and properly regulate them. Our project is intended to further these objectives by removing unnecessary or inefficient regulation while safeguarding the public interest in ensuring that charities are properly run.⁶

The report contained 43 recommendations. Summarising these, the Law Commission stated they included:

For charities:

- Giving charities more flexibility to obtain tailored advice when they sell land, and removing unnecessary administrative burdens.
- Changes to the law to help charities amend their governing documents more easily with Charity Commission oversight where appropriate.
- Increased flexibility to use their permanent endowment, with checks in place to ensure its protection in the long term.
- Removing legal barriers to charities merging, when a merger is in their best interests.
- Giving trustees advance assurance that litigation costs in the charity tribunal can be paid from the charity's funds.

For the Charity Commission:

- Bringing in a single set of criteria to decide changes to a charity's purposes.
- Increased powers to prevent charities using misleading names.
- The ability to confirm that trustees were properly appointed.⁷

Government response to Law Commission report

The Government responded positively to the Law Commission's report, accepting 36 out of the 43 recommendations (one in part). It said that, although they could seem highly technical, they would "make it simpler and easier for charities to respond to opportunities to achieve their charitable purposes in an effective, sustainable and impactful way".⁸ It also believed they maintained adequate

⁶ Lord Hodgson of Astley Abbots, [Trusted and Independent: Giving Charity Back to Charities—Review of the Charities Act 2006](#), July 2012, p 8.

⁷ Law Commission, '[Charity Law: Technical Issues in Charity Law](#)', accessed 27 May 2021.

⁸ Department for Digital, Culture, Media and Sport and Office for Civil Society, '[Government response to the Law Commission report 'Technical Issues in Charity Law'](#)', 22 March 2021.

safeguards to ensure the best use of charities' resources.

Recommendations not accepted included recommendations to review the basis for how Charity Commission decisions can be reviewed in the charity tribunal and a recommendation to abolish the requirement for charities to advertise proposed disposals of designated land and to consider any responses received. On the latter, the Government said that some land disposals relate to “long-standing community assets” (such as recreation grounds or church or village hall properties), which often prove controversial and can attract “significant response” from the public.

A [full explanation of the Government's reasons](#) for accepting and rejecting each recommendation is available in the formal Government response.⁹

The Government also noted the support the Law Commission's recommendations had received within the charity sector and from the Charity Commission. It said it would introduce legislation when parliamentary time allowed.

1.3 Reaction to the announcement of the bill in the 2021 Queen's Speech

The Government announced as part of the Queen's Speech on 11 May 2021 that the Charities Bill would be introduced in the 2021–22 session.¹⁰

Speaking about the upcoming legislation in a debate on 18 May 2021, the Parliamentary Under Secretary of State at the Ministry of Justice, Lord Wolfson of Tredegar, stressed the importance of both protecting and regulating charities:

Charities occupy a special place in our society, and the law should both protect and regulate them. The reforms that we introduce will remove or replace inappropriate and unnecessary burdens while safeguarding the public interest in ensuring that charities are properly run, so that charities will have more time and more resources to spend on their charitable objectives.¹¹

Speaking for the Opposition, the Shadow Spokesperson for Justice, Lord Ponsonby of Shulbrede, highlighted Labour's support for the legislation. He said the party would just be “focusing on the issues of governance and transparency and on ensuring that they are not watered down through the bill”.¹²

The National Council for Voluntary Organisations welcomed the bill, stating that it is a “positive step” to simplify the law.¹³

⁹ Department for Digital, Culture, Media and Sport and Office for Civil Society, [‘Government response to the Law Commission report ‘Technical Issues in Charity Law’](#), 22 March 2021.

¹⁰ Prime Minister's Office, [Queen's Speech 2021: Background Briefing Notes](#), 11 May 2021, pp 121–2.

¹¹ [HL Hansard, 18 May 2021, col 471](#).

¹² *ibid*, col 473.

¹³ National Council for Voluntary Organisations, [‘Governance Round Up: May 2021’](#), 28 May 2021.

2. Charities Bill

The Charities Bill was introduced in the House of Lords on 26 May 2021.

2.1 Special procedure for Law Commission bills

The bill's parliamentary stages are expected to be subject to the special procedure for Law Commission bills. The differences for this process are set out in the *Companion to the Standing Orders*, and can include motions committing the bill to a second reading committee and to a special public bill committee.¹⁴ These are summarised below.

Second reading committee

A second reading committee, with unlimited membership, would debate the bill and report to the House that it has considered the bill.¹⁵ The second reading motion is then normally taken without debate in the House (although amendments could be tabled to the motion or it could be voted on in the event of opposition to it).

Special public bill committee

Special public bill committees can take written and oral evidence on bills before considering them clause by clause in the usual way.¹⁶

The committee membership is chosen by the Committee of Selection. However, any member of the House who is not a member of the committee may attend public meetings of the committee and may speak and move amendments, but cannot vote.

Notice of the proceedings is given on the order paper and amendments are published and circulated as for a committee of the whole House. The committee would meet to consider the amendments and can vote on them and consider them in a similar manner to a chamber committee stage.

The committee does not publish a report; instead, it publishes verbatim reports of committee proceedings and the written and oral evidence it has received.

If the bill is amended, it is then published in the usual way for report stage.

2.2 Bill provisions

The bill contains 41 clauses, spread across seven parts. It also has two schedules.

¹⁴ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2017.

¹⁵ *ibid*, p 110.

¹⁶ *ibid*, pp 125–6.

Part 1: purposes, governing documents and use of funds and capital

Clause 1 would amend the Charities Act 2011 regarding the alteration of a charitable company's articles, and what would constitute a "regulated alteration" of its objects. The explanatory notes explain:

The amendment means that an alteration to the statement of the company's objects which does not alter the substance of the charitable purposes of the company will not constitute a "regulated alteration". However, it also means that an amendment other than to the statement of the company's objects, which nonetheless alters the substance of the company's charitable purposes, will constitute a regulated alteration.¹⁷

If it is a "regulated alteration" then the Charity Commission must give consent to the change. Clause 1(3) of the bill would amend the Charities Act setting out what the Charity Commission must consider as part of this; it would include the current social and economic circumstances and the desirability of securing that the purposes are similar to those previously.

Clause 2 would align the process for the amendment of a charitable incorporated organisation's (CIO) constitution with the process for a charitable company.¹⁸ Clause 3 would create similar powers for unincorporated charities.¹⁹ This clause would also repeal the current specific powers allowing some unincorporated charities to transfer all their property to another charity or to alter their purposes or the administrative provisions in their governing documents. These would be replaced with more general powers to amend governing documents.

Clause 4 would give charities established by or regulated by royal charter the power to amend any provision in their royal charter. The explanatory notes explain that the power will help royal charter charities that do not currently have an express power to make the amendment and who must therefore petition, and pay, for a supplemental charter if they wish to amend it (some royal charter charities already have provisions in their charter to make certain amendments).²⁰ The power must be exercised by a resolution and approved by an order in council. The exact process is set out in the legislation; however, the explanatory notes state that the charity should also contact the privy council about the proposed change as soon as possible:

To avoid potentially wasted costs of putting a proposed amendment to a vote of the charity's membership, only for the amendment to be refused, charities should speak to the Privy Council Office at an early stage of the process. That will enable potential problems to be resolved, and the Privy Council Office to indicate approval in principle to the proposed amendment, before the resolution is put to a vote of the charity's membership.²¹

¹⁷ [Explanatory Notes](#), p 6.

¹⁸ The Law Commission explained that a charitable incorporated organisation is a form of corporate charity that was introduced by the Charities Act 2006 as an alternative to the limited company (see: Law Commission, [Technical Issues in Charity Law](#), 13 September 2017, p 1).

¹⁹ The Law Commission explained that an unincorporated charity will either be a trust or an unincorporated association (for more details, see: Law Commission, [Technical Issues in Charity Law](#), 13 September 2017, pp 15–16).

²⁰ [Explanatory Notes](#), pp 10–11.

²¹ *ibid*, p 11.

Section 73 of the Charities Act 2011 allows a statute establishing or regulating a charity to be amended by secondary legislation where the Charity Commission deems it necessary to establish a scheme for the administration of a charity. Clause 5 amends section 73 so that any amendments will be subject to the negative procedure, regardless of whether they are amending a private or public act. Previously, changes to public acts would have required the affirmative procedure.

Clauses 6 and 7 would extend cy-près powers. This relates to funds that have been donated for a particular purpose (eg a fundraising appeal to build a new church hall), where the appeal either fails or the money donated exceeds the amount needed. In certain circumstances, this money can then be applied for other charitable uses, as explained in the explanatory notes:

Section 61 of the Charities Act 2011 imposes a duty on trustees, where the case permits and requires that property or some part of it be applied cy-près, to secure the effective use of the property for charity by taking steps to enable it to be so applied. Section 62 sets out the occasions on which the original purposes of a charitable gift can be altered to allow it to be applied cy-près.²²

Otherwise, money given for a particular purpose may have to be returned to the donor.

The clauses would extend cy-près powers to include certain scenarios where:

- the Charity Commission or courts deem it unreasonably expensive or difficult to return the money to the donors;
- the donor has donated £120 or less in the calendar year;
- the Charity Commission agrees reasonable steps have been taken to find the donor and they cannot be found;
- the donor is unidentifiable; and
- a trustee resolution is agreed to use the funds for a different charitable purpose. The trustees must have regard to the funds going towards a similar purpose and the current economic and social circumstances. If the funds are over £1,000 (a threshold that can be amended by secondary legislation), the Charity Commission must also approve the resolution.

The court and the Charity Commission can make “schemes” in respect of charities, which may change or supplement the provisions that would otherwise apply in respect of a charity or a gift to charity. Clause 8 would clarify some current uncertainty, by specifically stating that any power to make schemes in respect of a charitable trust also “extends to charitable companies, CIOs or any other charity”.²³

Clauses 9 to 14 relate to the definition and use of “permanent endowments”. This is capital or property that has been donated to a charity that cannot be spent (eg they can use it, or its income, but it cannot itself be disposed of), subject to certain conditions or approval by the Charity Commission.

²² [Explanatory Notes](#), p 11.

²³ *ibid*, p 14.

Firstly, clause 9 simplifies the definition of permanent endowments, to address legal problems interpreting it and clause 14 repeals the parallel regime for “special trusts”. Clause 10 then relaxes the rules on when permanent endowments can be used without Charity Commission oversight; for example, funds under £25,000 would not require the commission’s consent. Clause 11 would make changes to the time limit rules governing the Charity Commission’s response to a charity’s resolution to use an endowment. Clause 12 would allow charities to borrow from their permanent endowment funds, so long as it is paid back within 20 years and subject to certain conditions about the amounts that can be borrowed (for example, as a general rule, they could only borrow 25% of it). Finally, clause 13 would enable permanent endowments to be used in limited circumstances for “social investments”²⁴ that may have a negative or uncertain financial return. Currently, investments that may result in a loss would not usually be allowed.

Clauses 15 and 16 relate to “ex gratia” payments. The Government has explained when ex gratia payments may apply and the restrictions on making them:

Ex gratia payments are payments out of charity funds that trustees feel morally obliged to make, but which they have no legal power to make. These cases typically arise when administering wills: for example, if a testator leaves an estate to charity, and lawyers are later instructed to change the will to include a legacy to a family member, but the testator dies before the will can be changed. In those cases, charity trustees may feel morally obliged to make an ex gratia payment to the family member in question.

The current law requires charity trustees to seek Charity Commission permission for all ex gratia payments, which can be disproportionately time-consuming and cause delay.²⁵

Clause 15 would allow charity trustees to authorise ex gratia payments without Charity Commission consent up to certain levels. The levels are set out in the legislation, and set different amounts depending on the charity’s gross income in the previous financial year; for example, a charity that earned £25,000 could make ex gratia payments up to £1,000 without commission consent. The limit only applies to each individual payment; therefore, the charity could make multiple ex gratia payments across the year, as long as each was below the threshold level.²⁶

Clause 16 amends the Charities Act 2011 to put the test for making ex gratia payments on a statutory basis. It would be an objective test, and would require that the “charity trustees ‘could reasonably be regarded’ as being under a moral obligation”.²⁷ However, the trustees would not need to personally decide each payment, it could instead be a delegated decision by someone else acting within the charity’s structure. Both clauses also specifically state that the rules on ex gratia payments would apply to statutory charities too, even if the governing act of the charity generally prohibits a charity’s assets being used other than for the charity’s purposes.

²⁴ Social investments are defined in section 292A of the Charities Act 2011.

²⁵ Department for Digital, Culture, Media and Sport and Office for Civil Society, [‘Government response to the Law Commission report ‘Technical Issues in Charity Law’](#), 22 March 2021.

²⁶ [Explanatory Notes](#), p 22.

²⁷ *ibid.* The explanatory notes refer the test to the case *Re Snowden [1970] Ch 700*.

Part 2: charity land

The law governing how charities dispose of land requires them to follow certain rules, and often to receive advice, when they sell, let or mortgage their land. The restrictions and rules are set out in part 7 of the Charities Act 2011.

Clauses 17 to 24 aim to simplify the rules on charities disposing of land and to minimise expense.

Clause 17 would clarify the rules on when dispositions of land are restricted, so that it would “only apply to land where the whole of the land which is being disposed of is held beneficially by a charity solely for its own benefit (if it is a corporate charity) or in trust solely for that charity (if it is an unincorporated charity)”.²⁸

The other clauses in this part of the bill include the following proposed changes:

- The disposition or mortgage of charity land by a liquidator, receiver, mortgagee or administrator would not be subject to the restrictions (clause 18).
- It would introduce further clarification about when a disposition to another charity will be excluded from the restrictions (clause 18).
- Charities would no longer be under a legal duty to follow the advice of a surveyor (or other designated adviser) to advertise a disposition of land (clause 19). However, they must still consider that advice.
- It would allow for a wider range of bodies that charities are permitted to receive advice from on dispositions of land, where this advice is required under the Charities Act 2011 (clause 20). Trustees and individuals working for the charity are not excluded from providing the advice, if qualified to do so (clause 21).
- It would be allowed, and would not require Charity Commission consent, for the “grant of a short fixed-term or periodic tenancy to an employee of a charity to use as their home” (clause 22).
- When selling land, charities would need to include in the contract for disposition a statement that the requirements of part 7 of the Charities Act 2011 have been complied with (clause 23). This would offer purchasers more protection and means they would not have to investigate themselves whether the statutory requirements had been complied with.

Clauses 17 to 24 (particularly clause 24) would also simplify the “highly technical law around how certain universities and colleges dispose of land, aligning it with broader charity and trust law”.²⁹ For example, clause 24 would remove the requirement to obtain ministerial consent prior to entering into certain types of transaction and would remove restrictions and powers for dealing with capital money.

²⁸ [Explanatory Notes](#), p 23. The page also sets out specific examples of when it would apply and when it would not.

²⁹ Department for Digital, Culture, Media and Sport and Office for Civil Society, ‘[Government response to the Law Commission report ‘Technical Issues in Charity Law’](#)’, 22 March 2021.

Part 3: charity names

The Charity Commission has certain powers to require a charity to change its name. It does this by issuing a section 42 order under the Charities Act 2011. The Government has explained the reasons and current powers as follows:

When a charity uses a name which is similar to another charity's name or is offensive, it can lead to the public being misled, donations mistakenly being made to the wrong institution, and reputational damage to individual charities and to charities generally. It is therefore important for the Charity Commission to have clear and effective powers in those rare cases where a charity adopts an inappropriate name.³⁰

Clauses 25 to 28 aim to extend these powers, including by allowing the Charity Commission to:

- Require a charity to change its “working name”, as well as its “formal name” (clause 25).
- Issue section 42 orders in respect of unregistered and exempt charities, as well as registered ones (clauses 25 and 28).
- Delay the registration of a charity or the registration of a charity's proposed change of name if it has issued a section 42 order (clauses 26 and 27).

Part 4: charity trustees

Clause 29 would amend the Charities Act 2011 to allow the Charity Commission to “resolve uncertainties or defects in the appointment or election of charity trustees”.³¹ For example, if there was uncertainty or a defect in the appointment to a qualifying position, the commission could ratify the appointment prospectively, with that person's consent.

Clause 30 would make it easier to pay charity trustees for goods or services. As it stands, charity trustees are not permitted to make any gain from their position. Therefore, the general position is that they cannot be paid for goods or services. However, section 185 of the Charities Act 2011 does provide charities with a default power to pay charity trustees, or people connected to them, for the provision of services to the charity if no other power is available to them. Clause 30 amends that provision to include payment for goods and attempts to simplify the general process.

Clause 31 would grant the Charity Commission a power to order a charity to remunerate a trustee (or to authorise a trustee to retain a benefit already received) where the trustee has done work for the charity and it would be “inequitable” for the trustee not to be remunerated for that work. Currently, it would require an application to court to authorise this type of payment.

Clause 32 relates to the need for sole trustees to hold “trust corporation status” when holding property on charitable trust.

³⁰ Department for Digital, Culture, Media and Sport and Office for Civil Society, [‘Government response to the Law Commission report ‘Technical Issues in Charity Law’](#), 22 March 2021.

³¹ [Explanatory Notes](#), p 29.

The explanatory notes explain:

If land (or indeed any other property) is to be held on charitable trust by a sole trustee, that sole trustee must have “trust corporation status” in order for (a) the outgoing trustees to be discharged from their responsibilities as trustees, and (b) the sole trustee to be able to deal with the land by giving a valid receipt to a purchaser.³²

Clause 32 would add a new section into the Charities Act 2011 to make it easier for trustees to gain trust corporation status if certain conditions are met.

Parts 5 and 6: charity mergers and legal costs

Clause 33 would amend the Charities Act 2011 so that gifts to a charity which has since merged (as part of a “relevant charity merger”) will take effect as a gift to the new charity, even where the gift specifies that it will only take effect if the charity continues to exist on the date the gift takes effect.³³

Clause 34 amends the types of property listed at section 310(3) of the Charities Act 2011 as being excluded from a pre-merger vesting declaration and clause 35 changes the references to permanent endowments in section 306 of the act (which relates to the definition of a “relevant charity merger”). These changes are to update and simplify these sections.

Clause 36 would grant the charity tribunal a power to make an “authorised costs order”. This would provide charity trustees with advance assurance that any legal costs they incur in tribunal proceedings would count as a “proper use of the charity’s funds” and would therefore be payable from the charity’s funds.³⁴

Part 7: general provisions

The Charity Commission has a discretionary power to give public notice of proposed orders it makes under the Charities Act 2011, or to require the charity to give such notice. Clause 37 would extend that power to also apply to occasions when it gives consent to certain things under the legislation (eg consent to regulated alterations).

Clauses 38 and 39 relate to definitions of “connected persons” in the Charities Act 2011. Clause 38 would remove reference to “illegitimate children” and clause 39 would grant the secretary of state the power to make regulations amending the definition of “connected persons” in the legislation.

Clauses 40 and 41 contain general and consequential provisions, including territorial extent and details of commencement dates. The bill applies to England and Wales only, and its provisions will be brought into force by regulations.

³² [Explanatory Notes](#), p 31.

³³ *ibid*, p 31.

³⁴ *ibid*, p 33.

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