



## **Charities Bill [HL]**

Standard Note: SN/HA/6159  
Last updated: 9 December 2011  
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Section: Home Affairs Section

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The [Charities Bill \[HL\]](#) is a consolidation bill, intended to bring together the provisions of a number of existing Acts of Parliament covering charity law into a single act. It is not intended to make any substantive changes to the law. The Bill has completed its passage through the House of Lords. Proceedings on the Bill in the House of Commons are due to take place on 13 December 2011.

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# 1 Introduction and background

## 1.1 The Bill

The [Charities Bill \[HL\]](#) (the Bill) is a consolidation bill, intended to bring together the provisions of a number of existing Acts of Parliament covering charity law into a single act.<sup>1</sup> It aims to make it easier to follow charities legislation.<sup>2</sup> The Bill was prepared by the Law Commission working with the Office for Civil Society and the Charity Commission. A [table showing the origins](#) of the provisions of the Bill was published with the Bill. The Bill would generally extend to England and Wales only (with some exceptions). Information about the Bill is available on the [Parliamentary website](#).

The Bill would repeal and replace the *Recreational Charities Act 1958*, the *Charities Act 1993* (which was itself a consolidating statute) and many of provisions of the *Charities Act 2006*. The Bill is not intended to make substantive changes to the law. The provisions of the *Charities Acts 1992* and *2006* which apply to institutions other than charities as well as to charities, including fundraising provisions, are not included in the Bill.

Calls for a consolidation act were made during consideration of the draft bill and then the bill which became the *Charities Act 2006*. For example, the Joint Committee which scrutinised the draft bill pointed to the difficulty in understanding the draft bill on its own because many of the clauses were intended to amend the existing *Charities Acts of 1992 and 1993*.<sup>3</sup> On 21 March 2005, the previous Government agreed that a consolidation bill was desirable and indicated that the Law Commission, which deals with the consolidation of statutes, would begin work on a consolidation Bill very soon after Royal Assent.

## 1.2 Parliamentary procedure for consolidation bills

Information about consolidation bills is set out on the [Cabinet Office](#) website. This includes information about the procedural differences and special procedures which apply to consolidation bills including the following:

The following special procedures apply to Consolidation Bills:

- They are referred to and examined by a Joint Committee of both Houses, the members being nominated for the life of each Parliament. Timetabling will need to take into account the Committee's workload and timetable of meetings;
- Stages on the floor of the House of Lords are formal, though minimum intervals must be respected;
- In the Commons, Second Reading is taken forthwith; the Committee stage may be dispensed with altogether on a Government motion; and Third Reading is taken forthwith.

## 1.3 Review of the *Charities Act 2006*

Section 73 of the *Charities Act 2006* requires the Minister for the Cabinet Office to institute a review of the operation of the Act within five years after Royal Assent. On 8 November 2011, Nick Hurd, Minister for Civil Society, announced that Lord Hodgson of Astley Abbots will

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<sup>1</sup> HC Bill 257 of 2010-12

<sup>2</sup> Cabinet Office, [Consolidation of charity law](#), 4 March 2011 (at 9 December 2011)

<sup>3</sup> Joint Committee on the Draft Charities Bill, [The Draft Charities Bill](#), 30 September 2004, HL 167, HC 660, 2003-04, Paragraphs 383 and 384

lead a full review of the law relating to charities in England and Wales, and will report to Parliament by summer 2012.<sup>4</sup>

## **2 The Charities (*Pre-consolidation Amendments*) Order 2011**

Section 76 of the *Charities Act 2006* provides the Secretary of State with an order making power to facilitate the consolidation of charities legislation in whole or in part.

### **2.1 Government consultation on draft Bill and Order**

In September 2009, the Cabinet Office published a consultation paper, *Draft Charities Consolidation Bill Consultation on the draft Bill and draft pre-consolidation amendments order*. This sought views on the drafting of the consolidation bill and pre-consolidation amendments order, and also posed several specific questions. The consultation started on 10 September 2009 and ended on the 4 December 2009.

The [summary of consultation responses](#) confirmed that respondents had generally welcomed the Bill but some had queried why fundraising legislation was not included:

Respondents generally welcomed the Consolidation Bill and there were no substantive concerns raised about the Bill itself or the draft Order. One respondent commented that the simplification of charity law is particularly important so that charities can better understand and comply with the law without needing to pay for legal advice simply to understand basic principles.

Some respondents asked to include other legislation relating to fundraising and public charitable collections within the consolidation. A decision was taken at the outset of preparing the Consolidation Bill to limit its scope to legislation relating to charities. The provisions relating to fundraising and public charitable collections apply to a range of organisations, not just charities. Therefore the fundraising and collections legislation have not been included. Some more minor comments were raised, as well as suggestions for additional pre-consolidation amendments. Additional pre-consolidation amendments have been included where these were in scope of the power in section 76 of the Charities Act 2006. A number of minor drafting changes have also been made in light of the responses.<sup>5</sup>

The Office for Civil Society stated that fundraising provisions would be considered separately:

There is also uncertainty over the commencement of provisions of the 2006 Act that relate to public charitable collections. The future licensing and regulation of public charitable collections will be considered as part of the review of the Charities Act due to commence later in 2011.<sup>6</sup>

### **2.2 The Order**

The *Charities (Pre-consolidation Amendments) Order 2011* (the Order) was made on 2 June 2011.<sup>7</sup> In accordance with section 76 of the *Charities Act 2006*, the Order will not come into force unless the Bill is passed (and if it is passed, the Order will come into force immediately before the Bill comes into force). The Order generally extends to England and Wales.

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<sup>4</sup> Cabinet Office news release, [Review of charity law](#), 8 November 2011

<sup>5</sup> [Charities Consolidation Bill Summary of Consultation Responses on the draft Bill and draft Pre-Consolidation Amendments Order](#), p4

<sup>6</sup> *Ibid* pp6-7

<sup>7</sup> [SI 2011/1396](#)

An [Explanatory Memorandum](#) was also published. This sets out the purpose of the Order:

7.2 This Order makes minor amendments to the 1993 Act and other legislation applying to charities prior to the consolidation of that legislation. Generally the amendments can be categorised as:

correcting minor mistakes in existing legislation or remedying missed consequential amendments;

removing inconsistencies in existing legislation;

modernising the language of existing legislation;

repealing provisions in the existing legislation which are now considered obsolete;

clarifying the effect of existing legislation; and

consequential provisions relating to other provisions of this Order.

Whereas the Bill is intended to consolidate the law without changing it, the Order is intended to make changes to the law prior to the law being consolidated. The Explanatory Memorandum states that the amendments made by the Order are not considered to make substantive changes to the law or to introduce new policy.<sup>8</sup>

The Order was approved by both Houses of Parliament.

### **3 Progress of the Bill**

The Bill had its first reading in the House of Lords on 3 March 2011,<sup>9</sup> and second reading on 5 May 2011.<sup>10</sup> It was then considered by the Consolidation Bills Joint Committee whose report was published on 1 July 2011.<sup>11</sup> House of Lords Committee (on Recommitment) stage was on 12 September 2011.<sup>12</sup> Report stage in the House of Lords was on 23 November 2011,<sup>13</sup> and third reading, without any debate, was on 30 November 2011.<sup>14</sup>

Proceedings on the Bill in the House of Commons are due to take place on 13 December 2011.

#### **3.1 Second reading in the House of Lords**

At second reading, Baroness Verma, Government Spokesperson for the Cabinet Office, set out why the provisions in the *Charities Act 2006* relating to fundraising had not been included in the Bill:

This was carefully considered but rejected for two good reasons. First, the Bill consolidates the law relating to charities. The fundraising provisions go much wider, covering fundraising for charitable, philanthropic and benevolent purposes, and professional fundraisers and commercial companies undertaking charity promotions.

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<sup>8</sup> Paragraph 7.4

<sup>9</sup> [HL Deb 3 March 2011 cc1178](#)

<sup>10</sup> [HL Deb 5 May 2011 cc 637-652](#)

<sup>11</sup> Joint Committee on Consolidation Bills, 1st Report of 2010-12, [Charities Bill \[HL\]](#), HL168/HC1335, 1 July 2011

<sup>12</sup> [HL Deb 12 September 2011 cc581-7](#)

<sup>13</sup> [HL Deb 23 November 2011 cc1109-12](#)

<sup>14</sup> [HL Deb 30 November 2011 c243](#)

They are therefore beyond the scope of a Bill to consolidate the law relating to charities.

Secondly, there is some doubt about when the public charitable collections provisions of the Charities Act 2006 will be implemented. The provisions create a new regime for licensing and regulating charitable collections conducted in the street or house-to-house, replacing existing legislation that dates back almost 100 years. It has not been possible to implement the new regime for several reasons. Questions have been raised about whether the regime, instead of being deregulatory as intended, will add to the regulatory burden of charities—something that we are very keen to avoid. There is also the issue of cost-effectiveness. The new regime would give the Charity Commission a major new role, but with no new funding to deliver it, at a time when pressure on resources means that the commission has to focus on its core regulatory functions. Finally, the new regime would remove decision-making powers from local authorities, running counter to our plans to devolve more power to local communities. We now believe that the most sensible course of action will be to consider the regulation of public charitable collections as part of the wider review of the Charities Act 2006, which is due to begin later this year.<sup>15</sup>

Baroness Verma also confirmed that the review of the *Charities Act 2006*, which is required under Section 73 of that Act, would provide the opportunity to look at the effectiveness of the 2006 Act and the underlying policies, and to consider whether other changes to the legal and regulatory framework for charities could usefully be made. Any suggested policy changes or substantive amendments to existing charity law would be considered as part of the review.

Baroness Verma said that the Bill would help to make charity law simpler to navigate and would support the Government's aim of making it easier to set up and run a charity “as it will make charity law more accessible to the lay charity trustee”.

Lord Phillips of Sudbury (Liberal Democrat) spoke in favour of consolidation but raised a number of drafting points. He did not consider that the key definitions in the Bill were as clear “as they could and should be”.<sup>16</sup>

Lord Hodgson of Astley Abbots (Conservative) supported the Bill and agreed with Lord Phillips that it was particularly important that charity law should be “as user-friendly as possible for the simple reason that most charities are run on voluntary effort”.<sup>17</sup> However, he queried why the Bill was being considered before the quinquennial review under Section 73 of the 2006 Act, and also before the anticipated decision of the charity tribunal on the issue of public benefit. Lord Sheikh (Conservative) also welcomed the Bill.

Baroness Smith of Basildon (Labour/Co-operative) welcomed the consolidation and said that, as Minister for the Third Sector with responsibility for this legislation at the time the consultation on the consolidation was launched, she had been keen to see progress before the last election, but there had not been time in the legislative timetable.<sup>18</sup> She said that that “was certainly of regret to me. Another year has passed before we have found time for debate but I certainly welcome the legislation being brought forward”. She spoke of the obligation of legislators to make it as easy as possible for trustees to take on their responsibilities: “Consolidating the law in a way that seeks to reduce complexity and bring

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<sup>15</sup> [HL Deb 5 May 2011 c638](#)

<sup>16</sup> [HL Deb 5 May 2011 c640](#)

<sup>17</sup> [HL Deb 5 May 2011 c641](#)

<sup>18</sup> [HC Deb 5 May 2011 c647](#)

the laws together in one place can be extremely helpful". She also spoke of the complexity of the legislation:

One general point that other noble Lords have made is that we should not be overly confident that this is going to make life much easier for charities. Looking through the Bill and its schedules, it is long and detailed, with huge implications and responsibilities. It will not be that much more easily understood by the lay person, however much we in your Lordships' House try to make it so. Those noble Lords in the House for Questions yesterday may have heard the Question asked by my noble friend Lord Boateng: whether those who wish to set up charities should be able to do so without needing a lawyer. I noticed at the time that the noble Lord, Lord Phillips of Sudbury, gave a wry grin at that comment. That wry grin was explained when he spoke on some of the clauses of the Bill: it is almost impossible for the lay person to understand charity law in detail or to navigate their way through without a lawyer.

Charity law has, of necessity, to be detailed. It seeks to protect the donor and the public, and also seeks to regulate the charity's activities, protect its integrity and that of its trustees. Looking at the Table of Origins and the involvement of different Government departments, the legislation is a response to issues that have arisen. This is a hugely complicated area but the legislation exists to bring order and, I hope, logic to that complexity. As welcome as this is-I warmly welcome the legislation coming forward at this point-there still remain some uncertainties for charities which I hope the Minister will be able to comment on.<sup>19</sup>

Baroness Smith also commented on the timing of the Bill and of the review of the 2006 Act:

I fully understand, as the noble Lord, Lord Phillips of Sudbury, said, that there would be a reluctance to delay consolidation legislation, because that would mean that much-needed legislation would come through the statute books. But there may be changes and suggestions for changes following the review that will make this legislation out of date very quickly. That is the concern. After we have gone to the effort, in which all the organisations have been involved, of ensuring that we have comprehensive legislation, if the review takes place this year it will be out of date within the year. Given that the commitment has been made to have the review on the legislation go through now, can the Minister assure me that following the review, should changes be sought that benefit charities and civic society, the necessary parliamentary time will be made available as quickly as possible to ensure that we do not have legislation on the statute books advising charities that will be out of date so quickly?

In response to the debate, Baroness Verma said that the review of the 2006 Act would be able to take tribunal decisions into account. She commented on points raised about the complexity of the drafting:

I have some sympathy with my noble friend's frustrations that in places the drafting of the Bill inherits some of the complexity of the existing legislation. However, one must bear in mind the main constraint of the consolidation process itself, which is that it must not involve any change in the law other than those that can be achieved by way of the power to make pre-consolidation amendments. What to the untrained eye might appear to be a straightforward improvement in drafting could in fact change the meaning, which we must be careful to preserve.

Baroness Verma said that the Joint Committee on Consolidation Bills would consider the detailed points about the Bill itself. The Charity Commission's strategic review would feed

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<sup>19</sup> [HC Deb 5 May 2011 c648](#)

into the statutory review of the *Charities Act 2006*, which would consider potential changes to the legislative framework for charities and the Commission.

### 3.2 Consolidation Bills Joint Committee

Under Standing Orders, consolidation bills are automatically committed to the Joint Committee on Consolidation Bills for scrutiny. The Joint Committee's role is to satisfy itself that such bills consolidate, rather than add to or alter, existing legislation.<sup>20</sup> The Committee's report on the Bill was published on 1 July 2011.<sup>21</sup>

The Committee heard evidence on the Bill and made amendments to it, which are set out in the Annex to the report, "to improve its form". The Committee expressed its opinion "that the Bill is pure consolidation and represents the existing law as it will be once the *Charities (Pre-consolidation Amendments) Order 2011*, the *Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011* and the *Charities Act 2006 (Changes in Exempt Charities) Order 2011* are in force". It considered that "There is no point to which the special attention of Parliament should be drawn".<sup>22</sup>

### 3.3 House of Lords Committee (on Recommitment)

In committee, Lord Phillips of Sudbury moved a drafting amendment "to attempt to make the crucial definition clauses of the Bill fractionally more understandable to the lay reader".<sup>23</sup>

Baroness Verma resisted the amendment and said that Lord Phillip's concerns would need to be addressed outside of the consolidation process:

The amendments tabled by my noble friend concern the relationship between Clauses 2 and 11. I know that my noble friend's object here is to make further drafting improvements. However, the discussions we have engaged in with him have indicated that his concerns go deeper than that. As a result, we have already undertaken to address the underlying problem that he has raised. This can be done only outside the consolidation process.

Lord Phillips withdrew his amendment and did not move his further amendments. The Bill was reported without amendment.

### 3.4 House of Lords report stage

On report, a Government amendment was agreed to clause 2, (Meaning of "charitable purpose"). The amendment would alert readers of the Bill to the existence of two "subtly different" definitions of charitable purpose that are used in different contexts

Baroness Verma said that the amendment was intended to address a point raised in Committee by Lord Phillips of Sudbury. She acknowledged that a more fundamental point ought to be considered; namely, whether it would be possible to have one definition of charitable purpose rather than the two that exist in the current law, and said that, although this change could not be considered in the context of a consolidation bill, she would

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<sup>20</sup> <http://www.parliament.uk/business/committees/committees-a-z/joint-select/consolidation-committee/joint-committee-on-consolidation-bills---news/charities-bill-receives-second-reading/>

<sup>21</sup> Joint Committee on Consolidation Bills, 1st Report of 2010-12, [Charities Bill \[HL\]](#), HL168/HC1335, 1 July 2011

<sup>22</sup> p5

<sup>23</sup> [HL Deb 12 September 2011 cc581](#)

“undertake for it to be included in the review of the *Charities Act 2006*”.<sup>24</sup> Baroness Verma gave further information about the review:

My noble friend Lord Hodgson of Astley Abbotts has been appointed to undertake the review of the Charities Act 2006. He has recently chaired the red tape task force, the sensible and practical recommendations of which have been widely welcomed by the charity sector. Also, as an opposition Front-Bench spokesperson during the previous Administration, he led on the Companies Act 2006 and the Charities Act 2006. His significant experience makes him ideally suited to lead this review and I am sure that your Lordships will join me in welcoming his appointment.

The aims of the review will be twofold: to report on the operation and effectiveness of the provisions of the Charities Act 2006; and to consider whether further changes could be made to improve the legal and regulatory framework for charities. The terms of reference are broadly drawn to reflect these aims. I have placed a copy of the terms of reference in the House Library and they are available on the Cabinet Office website. The review is expected to report before Summer Recess in 2012 and a copy of the report will be laid in Parliament.

My noble friend Lord Hodgson has confirmed that he will consider the concern of my noble friend Lord Phillips about the two definitions of charitable purpose as part of his review. In the mean time, although this amendment will not resolve the underlying problem, it will ensure that readers of the legislation are aware that there are two definitions of charitable purpose.<sup>25</sup>

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<sup>24</sup> [HL Deb 23 November 2011 c1110](#)

<sup>25</sup> [HL Deb 23 November 2011 c1110](#)