

Response to the call for evidence by the Special Public Committee on the Charities Bill.

Prepared and Submitted by the Institute for Legacy Management on 13 September 2021.

For more information about ILM please visit www.legacymanagement.org.uk.

If you have any questions about this submission or would like clarification on any issues, please contact Matthew Lagden, CEO at ceo@legacymanagement.org.uk.

Introduction

The Institute of Legacy Management was founded in 1999 to act as the professional body for staff engaged in the administration of legacies left to charity. We now have slightly under 600 members working for more than 350 charities. These range from the top ten legacy earning charities, who between them earn approximately £824m in legacy income each year, to smaller local causes such as hospices, NHS charities and air ambulances for whom legacy income is vital. In total our members deal with approximately £2.6bn of the £3.2bn+ that is left to charity each year.

Approximately half of our members are former solicitors, with most of the rest either being otherwise legally qualified (paralegal etc) or having an allied professional qualification (such as membership of the ICAEW). Our members are the biggest consumers of Probate services in the UK, dealing with approximately 30,000 of the 42,000 charitable estates admitted to Probate in England and Wales each year. This is approximately 10% of all estates that go to Probate.

The Charities Bill

We contributed to the original Law Commission Consultation that gave rise to this Bill, and informally to the DCMS when the new Act was first proposed earlier this year. On both occasions we consulted with our members and other key stakeholders. This consultation formed the basis of our submissions.

We focussed our consultation on two areas of significant interest to our members:

Section 15: Small Ex-Gratia Payments

Sections 20 and 21: Charity Land

In both cases we are broadly supportive of the changes as we believe that they could reduce the administrative burden on our members, on Personal Representatives, and on the sector as a whole.

Section 15: Small Ex-Gratia Payments

We welcome the proposed changes, and in particular the creation of clear thresholds and amounts for the de-minimis principle. Our members are frequently asked to disclaim gifts in wills, and this is one of the most common causes of ex-gratia payments.

We believe that the thresholds and amounts set out are appropriate but welcome the fact that they can be revised via secondary legislation.

We also welcome the clarification of the grounds on which such a payment can be made:

“that in all the circumstances the charity trustees could reasonably be regarded as being under a moral obligation to take the action”

Which we believe is clearer and more comprehensible for charity trustees than the previous test which was more legalistic and sometimes caused confusion.

We had requested that further grounds be added along the following lines:

“That in all the circumstances it was in the best interests of the charity for such a payment to be made.”

This was not adopted by the Law Commission, but we still believe that this would further reduce the administrative burden and lead to better outcomes for charities and claimants.

Sections 20 and 21: Charity Land

Regarding the requirements for reports under Ss117-121 of the current Charities Act, we welcome the proposed changes. S119 reports are required by our members when properties are appropriated to charities post-mortem to avoid Capital Gains Tax. These reports are a valuable safeguard but typically cost £500, although this cost can be shared if more than one charity is involved.

Allowing those charities that have suitably qualified staff to rely on internal reports will save some charities (especially those that already have significant property portfolios and surveyors on staff) very considerable sums of money.

In addition, it will slightly speed up the process of administering estates and reduce the administrative burden on all parties.