



Charity Commission written submission to the Special Public Bill Committee: Charities Bill [House of Lords, Session 2021-22]

1. The Charity Commission for England and Wales ('CCEW') is pleased to submit written evidence to this House of Lords Special Public Bill Committee scrutinising the Charities Bill. It has been engaged since the 2015 Law Commission consultation on the proposed changes, and has worked closely with charities and their representative bodies, the Department for Digital, Culture, Media & Sport, and the Law Commission to bring them forward.
2. The Charities Bill ('the Bill'), with its focus on simplifying rules for trustees in key areas, strikes a healthy balance between placing trust and empowerment in trustees whilst still retaining critical and appropriate safeguards. The CCEW supports these changes as they make welcome updates to the charity law framework in a way that preserves its integrity and yet removes undue bureaucracy and cost.
3. This written evidence provides CCEW's perspective on the practical benefits the Bill could deliver for charities and the causes they support. In so doing, it first sets out some background about the sector and some of the current challenges facing charities in England and Wales in light of COVID-19. It is hoped this provides useful context.

The charity sector

4. The charity sector is exceptionally diverse, with a long history of making an important and unique contribution to community life and civil society. Charities vary in their size, type, breadth and scope, and they advance a wide range of issues such as the relief of poverty and the promotion of health, heritage and the environment. By law all charities must further exclusively charitable purposes, and must operate for the public benefit.
5. At the end of the 2020-21 Financial Year, there were 169,862 charities on the CCEW's Register, with a combined annual income of just over £84 billion. Of these registered charities, there were 76,508 unincorporated associations, 32,799 charitable companies, 24,578 charitable incorporated organisations, 35,622 trusts, and 355 Act of Parliament charities. As of August 2021, the Register also shows total assets of registered charities to be almost £264 billion.
6. The CCEW does not hold financial data on charities that do not need to register with it, such as charities with a gross income not exceeding £5,000. Nevertheless such charities are still regulated by the CCEW. Both registered and non-registered charities will benefit from changes in the Charities Bill.
7. As of September 2021, the Register shows that there are 944,662 trustee positions in England and Wales, held by approximately 700,000 individuals.
8. Most charities on the Register do not have large incomes. As of September 2021, 61% of charities registered in England and Wales had an annual income of £25,000 or less, and 70% had an annual income of £50,000 or less.
9. Our "Taken on Trust" research [report](#) dated November 2017 found that, in 80% of the smallest charities (those with annual income of £100,000 or less), trustees play both a governance role and an executive role – they have no staff or volunteers from whom they can seek support.



Impact of COVID-19 on the sector

10. Charities, like many other sectors, have been challenged by the pandemic. Charities have been at the forefront of providing life-saving and society wide services throughout this time and on countless occasions have helped to alleviate the strain that the pandemic has placed on individuals and communities.
11. The impact of COVID-19 on charities has not been uniform and its full effect is yet to be seen. The CCEW has seen evidence that some of the sector's financial resilience has weakened. For instance, the number of registered charities with an income over £500,000 that have no or negative free reserves has increased from 9% in April 2020 to 28% in July 2021.
12. Through our casework and engagement with charities, the CCEW has also seen examples of robust planning and clear Board involvement, to manage charities through prolonged uncertainty. There is also evidence of innovation in the sector, of charities coming together to work in partnerships, and of significantly accelerated digital approaches to both fundraising and service delivery.

The CCEW's response to COVID-19

13. Since March 2020 the CCEW has regularly engaged with charity representative groups and individual charities to understand the challenges facing the sector.
14. CCEW has consequently published, and regularly updated, online guidance for charities on how trustees can respond to common COVID-19 related challenges, for example on managing financial difficulties. It also created five-minute trustee guides to improve accessibility and understanding of core trustee duties. Annual reporting requirements have been deferred on request. As of April 2021, 4,855 charities had taken advantage of this, which has alleviated pressure on reporting obligations and enabled trustees to focus resources on immediate priorities.
15. In the last year alone, 8,354 applications to register a charity were received, which demonstrates a continued desire amongst the public to help their communities through charitable endeavour. Applications relating directly to the pandemic were prioritised.
16. The CCEW permissions team has also dealt with a wide range of COVID-19 related, requests often at short notice, such as charities wishing to modernise their governing documents to support their ongoing activities, to work remotely, or to deal with charitable assets more flexibly in uncertain times. From April 2020 to September 2021 the CCEW has opened a total of 9,677 permissions cases.
17. During Financial Year 2020-21, the CCEW's Contact Centre answered over 60,000 calls, supporting over 30,000 charities.

The Charities Bill

18. The CCEW welcomes the provisions of the Charities Bill. It will make important practical and technical updates to charity law. It will also remove certain undue complexities and inconsistencies.
19. Collectively, the changes should help ensure that trustees, who are largely unpaid volunteers, can save time to further their charity's causes and focus on greater impact



whilst still complying with their responsibilities. Trustees will also be able to manage aspects of charity assets in a more versatile way to keep pace with changing circumstances, whilst continuing to balance difficult short and long-term considerations.

20. The Bill also aligns with the CCEW's statutory objectives and general functions (see Appendix), as well its [five year strategy](#). For example, the Bill directly supports the CCEW's statutory objective of promoting the effective use of charitable resources as the changes provide greater autonomy to trustees in running their charities. Similarly, as the changes will ease certain administrative requirements, the Bill supports the CCEW's general statutory function to encourage and facilitate the better administration of charities. Lastly, the changes align with two current strategic objectives of the CCEW: to give trustees the tools they need to succeed, and to keep charity relevant for today's world.
21. While the central tenet of the changes is deregulatory, the CCEW will continue to be able to use its regulatory powers in cases where there is a need to address harm or wrongdoing to ensure a sector that can command public trust. Nevertheless, trustees are already afforded a wide level of autonomy and discretion in carrying out existing duties, for example in relation to how to spend charitable assets generally to further their charity's purpose. The Bill builds on these established principles.
22. In summary, the proposed changes should ensure the legal framework continues to be fair, modern, simple and cost effective, reflecting the needs of charities today. Below are some examples of how the provisions will impact the work of the CCEW for the benefit of the sector.

Key changes for the Charity Commission

Amending governing documents

23. The proposal to introduce a new clearer statutory power for all unincorporated charities to amend their governing documents by resolution should save trustees time and cost. The change is particularly helpful since 45% of registered charities are unincorporated associations.
24. Importantly CCEW consent will still be needed for certain governing document changes, to ensure appropriate oversight (such as changes to charitable objects or to trustee benefits). However, the rules will be more streamlined. For example, at present if a large unincorporated charity wishes to make amendments to its charitable objects and has no power of amendment, it will likely need to apply to the CCEW for a Scheme. This can be a time-consuming and complex process, and so can be disproportionate to benefits, especially where the changes are small: for example, to slightly extend the geographical area the charity benefits.
25. The current regime for unincorporated charities to change their charitable objects may also be considered inflexible, requiring the trustees to identify a cy-près occasion before the charitable objects can be changed as set out in section 62 of the Charities Act 2011. If the trustees fail to identify a suitable cy-près occasion, then the objects cannot be changed. This is unduly limited and inconsistent with regimes for other charitable legal structures.
26. By contrast the Charities Bill would allow trustees of unincorporated charities to make changes to charitable objects by resolution, subject to consent from the CCEW,



without the need to first establish a cy-près occasion. This not only rationalises the criteria to modern standards but also streamlines and expedites the overall process. Trustees can therefore respond more quickly to new circumstances when needed, with appropriate protections still in place. The [2021 Impact Assessment](#) of the Charities Bill estimated savings to charities and the CCEW of this new statutory power to be £1.6 million over 10 years.

27. The criteria for CCEW consent for changing charitable objects will also be more consistent across different types of charities. This should reduce potential confusion in the sector, thereby benefitting trustees who may not have access to professional advisers and encouraging better administration of charities.

Permanent endowment

28. Charities will have more flexibility to make use of permanent endowment without CCEW approval. For example, one change will allow trustees to release an increased value of funds up to £25,000, and another will provide a new power to borrow a sum of up to 25% of the value of their permanent endowment funds (with a requirement to repay within 20 years) of their own volition.
29. The permanent endowment changes should reduce costs for charities and the CCEW whilst allowing a more effective and adaptable use of permanent endowment. For example, trustees could opt to use the power to borrow where they do not think it would be appropriate, or in the best interests of the charity, to release the restrictions on spending permanent endowment completely. In the context of the sector's uncertain financial situation as outlined above, the changes should help trustees to balance short and long-term considerations more flexibly and take steps to provide solutions for both.
30. The trustee duty to manage charitable resources responsibly also remains in place, and consent of the CCEW will still be required for sums above the thresholds in the Bill. As for other areas, the CCEW will publish guidance on the revised powers to ensure trustees are clear of their obligations in this area.

Payments for goods to trustees

31. Trustees will be able to be paid for goods provided to a charity in certain circumstances, even if not expressly stated in the charity's governing document. From pens to portacabins, this should help charities on a practical level. It will allow charities the option to access goods from trustees when they can demonstrate this is in the best interests of the charity, and charities might even be able to access cheaper goods directly from trustees, providing better value for money.
32. This change should lead to time and cost savings for the CCEW and charities because authorisation from the CCEW will no longer be required. Furthermore, it will also mean trustees will no longer need to seek approval from the CCEW to amend governing documents authorising such payments. It also removes inconsistency by bringing payments for goods in line with the existing statutory power for charities to pay trustees for certain services above their normal trustee duties (i.e. where this provides a clear advantage over other options and is in the best interests of the charity). It should, in turn, enable better and more competitive options for trustees.

Ex gratia payments



33. The Bill makes a number of changes to the rules on ex-gratia payments. These are payments (or waivers of payments) that a charity has no legal obligation to make, and which cannot be justified as being in the interests of the charity, but which the trustees feel under a moral obligation to make. These occur most frequently in the context of legacies. For example, where an individual leaves a significant sum of money to a charity but prior to their death they change their mind to leave part of the legacy elsewhere, but they are unable to formally change their will before their death.
34. CCEW authorisation is currently required before any ex-gratia payment can be made. This involves a charity making an application, often with the provision of a significant body of evidence, and may involve costs disproportionate to the value of the payment. The Bill will instead enable charities to make small payments of this kind without CCEW authorisation, if trustees can reasonably be regarded as being under a moral obligation to take the action. The Bill will also enable delegation of ex-gratia payment decisions.
35. These changes will remove considerable administrative burdens for charities dealing with small ex-gratia payments. They should therefore save trustee and CCEW costs and time, whilst still retaining proportionate safeguards for larger payments. Charities will also still be obliged to report all ex-gratia payments in their annual accounts.

The proceeds of failed appeals

36. Charities will be able to take advantage of simpler and more proportionate rules on failed appeals and cases of surplus donations. For example, if a charity appeal raises too little money for a certain piece of medical equipment, the charity can decide to spend individual donations below £120 on similar charitable purposes without needing to contact every individual donor for permission. If the total proceeds exceed £1,000 then CCEW consent will also be required.
37. The CCEW recognises that the current law in this area can be cumbersome, particularly given the increasing number of appeals issued by charities for specific causes, and often with shorter timeframes. These changes will modernise how appeals are dealt with and prevent trustee time and effort being spent on compliance with rules which are disproportionate to their benefits. This is important given that the way donations are currently solicited through various methods such as online platforms and cash collections can make identifying donors difficult. These changes support the CCEW's statutory objective to promote the effective use of charitable resources.

Improving land transactions

38. The CCEW agrees with the Law Commission that regulation in the area of charity land disposal is extremely important. However, there is a clear need for a refreshed practice to enable certain types of land transactions to proceed more efficiently. At present the rigid nature of the current regime can mean that costs and requirements are disproportionate to the value or complexity of the transaction, or indeed that some simply do not proceed when this may be in the best interests of the charity. The proposed changes should benefit the sector overall by easing and clarifying certain requirements whilst still ensuring appropriate oversight is maintained.



New Charity Commission powers

39. The CCEW will gain new or updated powers in three areas: (a) a new power to authorise trustees to be paid for certain work, (b) a new power to ratify defects in trustee appointments, and (c) updated powers on regulating the use of charity names. These powers will address in a targeted manner specific deficiencies in the CCEW's current regulatory framework.
40. It is anticipated that these new powers will be used sparingly and in limited circumstances, in line with the development of the proposals. For example, the CCEW already has the power to direct a charity to change its name when it is too similar to another name, but this has only been used a handful of times over the last ten years.
41. Similarly, the CCEW already has some powers to address uncertainties in relation to trustee appointments. In the first instance the CCEW expects trustees to resolve problems themselves where they can, and will only intervene where there is a risk to the ongoing management and administration of the charity.
42. As with all its powers the CCEW will continue to have regard to the principles of best regulatory practice and ensure a clear policy is in place to clarify when and how the powers might be used in practice.

Charity Commission Implementation

43. Subject to approval of the Charities Bill by Parliament, the CCEW will be ready to implement these changes on a staggered basis after the Bill gains Royal Assent. This will allow time for trustees and the public to understand the changes and will allow sufficient time for the CCEW to operationalise the changes in an effective manner.
44. Implementation of the Charities Bill requires substantial CCEW resource across the organisation, from case working to digital teams in addition to legal and policy support. The CCEW has also agreed to take forward six non-legislative recommendations of the Law Commission as set out in the Government's response to the Law Commission Report (recommendations 7, 19, 34, 36, 40 and 42). Work to take this forward is underway in parallel with the Bill changes.
45. To implement the changes, the CCEW will produce at least 12 pieces of new or updated trustee guidance, in addition to over 20 pieces of new or updated internal guidance. This will complement updates to internal casework processes, internal operational training, external messaging and communications, and online services. For example, complex digital system updates will be required to amend the online user journey for trustees wishing to amend their governing document, and will take some time.
46. The CCEW expects the changes to have an estimated initial cost of between £700,000 and £800,000. However, after a period of implementation, the changes should eventually free up some CCEW time and resource, particularly in relation to amendments to governing documents, and the use of permanent endowment, as set out in the above sections.
47. In summary, the CCEW is very supportive of the Bill, and I should be happy to assist with any further questions the Committee may have.

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**CHARITY COMMISSION
FOR ENGLAND AND WALES**

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13 September 2021**

**Appendix - The Charity Commission's role**

1. The CCEW is the registrar and regulator of charities in England and Wales. It is an independent, non-ministerial government department, accountable to Parliament. It is also accountable for the exercise of its powers to the First-Tier Tribunal and the High Court.
2. Its statutory objectives, as set out in section 14 of the Charities Act 2011, are to:
 - a) increase public trust and confidence in charities
 - b) promote awareness of the need for charities to operate for the public benefit
 - c) promote trustees' compliance with their legal obligations
 - d) promote the effective use of charitable resources
 - e) enhance the accountability of charities to donors, beneficiaries, and the general public.
3. The CCEW's general functions and duties are set out in sections 15 and 16 of the Charities Act 2011. These include that:
 - a) as registrar, the CCEW is responsible for maintaining an accurate and up-to-date register of charities. This includes determining whether organisations are charitable and therefore should be registered, as well as removing those that are no longer considered to be charities, or have ceased to exist or no longer operate;
 - b) as regulator, the CCEW is responsible for providing certain permissions to transactions or governance changes by charities, and producing guidance and information to explain trustee duties and matters related to its functions. The CCEW also investigates apparent wrongdoing and can use its regulatory powers in line with its duties and published policies and procedures.
4. The CCEW regulates charities that are not required to be registered, for example charities whose gross income does not exceed £5,000, as well as registered charities.
5. As of 31 March 2021, the CCEW employed 443 staff (including board members). While most of its staff have spent large periods of 2020-21 working remotely, due to the COVID-19 pandemic, it operates across four sites in Liverpool, London, Newport and Taunton. The Newport office operates bilingually in Welsh and English.
6. In Financial Year 2020-21 its revenue budget was £29.2 million.