

## **1. Who we are**

1.1 The Charity Law and Policy Unit, based in the School of Law and Social Justice at the University of Liverpool, is the UK's leading authority on legal and policy change relating to charities; it is the only academic Unit of its kind in the common law world with over 25 years of leading research projects and output. It carries out research into the legal issues facing charities and third sector organisations, often with a strong empirical element and leading to proposals for legal and regulatory reform, which have made important contributions to policy change in this field, including an Impact Case Study for REF 2014 and REF 2021. One way that the Unit ensures reach and impact is through an Independent Steering Committee, composed of senior charity practitioners and chaired by Sir Alastair Norris, Judge of the High Court of Justice. The Unit currently comprises of 6 full time academic members.

1.2 We are submitting this evidence, based on our research. We have been involved in the Law Commission Charity Law project since its inception. We set up a series of networking events to allow key stakeholders to feed their ideas into the process, including a one-day Symposium, held in conjunction with the Law Commission and the Charity Law Association. This enabled participants to form coherent views on the utility of the proposed changes, informed by our expert commentary based on our research findings. We also submitted a full, written analysis to the Commission consultation, in response to numerous questions, drawing on our research (e.g. recognising that charities come in all shapes and sizes and the legal solutions to any technical problems need to be tailored accordingly).

## **2. General support for the proposed reforms**

2.1 In general terms, we are in agreement with the reforms proposed in the Bill.

2.2 Many of the provisions of the Bill will increase uniformity in the treatment of charities with different legal structures (e.g. charitable trust, company or Charitable Incorporated Organisation) and this is very helpful and will provide a more user-friendly environment for all charities, whatever their legal structure. Others will resolve technical problems that have previously been identified or will update regulatory regimes to assist charities to run more efficiently. Those concerns are all the more pressing now than when the Bill was first published, and the Bill's enactment will be one way of supporting the charitable sector as it seeks to recover in the post-pandemic years to come.

## **3. Rejection or partial acceptance only by Government of specific clauses**

3.1 *Recommendations 6, 7 & 8* concerning policy, process and practice of the Privy Council.

3.1.2 These are largely procedural and whilst we are of the view that the original recommendations had force, we appreciate the Government's position here.

3.2 *Recommendation 16* related to the connected persons regime.

3.2.1 We agree with the Government response that wholly-owned subsidiary companies should remain within the definition of connected persons.

3.2.2 Land as an asset class is complex; without sufficient safeguards, the impulse of charity trustees may be to sell land as a wasting asset to make a short-term gain, rather than retain and improve land to increase the long-term return on the asset. In relation to the proposal re: charity's wholly-owned subsidiary companies, we were concerned there may have been unintended consequences (e.g. reputational) in removing sales to them from the regime.

3.3 *Recommendation 18* concerning advertising proposed land disposals

3.3.1 We do not agree with the Government position that the need to advertise proposed disposals of designated land should be retained.

3.3.2 The current regime on dispositions of charity land generally may be unpopular in the sector, but it provides a necessary check and balance on dealings with land. We do not see that these advertising requirements add anything but time and expense to effective dealing with designated land. The current regime provides sufficient safeguards for designated land and the enhancements to the regime in the Bill (e.g. to the advice requirements before sale) should address any particular issues with designated land (e.g. trustees being unaware that they are dealing with designated land).

3.4 *Recommendation 27* concerning review of the basis on which decisions of Charity Commission can be challenged.

3.4.1 We do not agree that this recommendation should be dropped. The Charity Tribunal was set up to allow for easier access to justice, but the current regime for challenging Charity Commission decisions is difficult to navigate, especially for the lay person. The Table set out in Schedule 6 to the Charities Act 2011, containing specific decisions, actions etc of the Commission which are appealable and by whom, is complex. A broader and simpler right of appeal, with less restrictions on who may bring it, would save much time and money for complainants, the Charity Commission and, ultimately, the Tribunal. A lot of the cases that have come before the Tribunal have failed to be determined simply because they fall outside of its jurisdiction.

3.5 *Recommendation 40* concerning authority to pursue 'charity proceedings'.

3.5.1 We do not agree that this recommendation should be dropped. We are of the view that permitting the court to authorise charity proceedings will facilitate more effective access to justice. Despite the Charity Commission's concern, there is a transparency issue here. We do not consider that the Charity Commission should be able exclusively to authorise (or not) proceedings against it – justice should be seen to be done.

3.6 *Recommendation 43* concerning Attorney General's consent to references being made to the Charity Tribunal.

3.6.1 We agree with the Government response. Oversight by the Attorney General provides an effective mechanism, and we see no compelling reason to remove this. We note that a proposed requirement to notify the Attorney General, and for the office to be joined to an action, does not add any effective oversight in situations where the questions to be determined are at issue between the Charity Commission and the Attorney General. This notice process may, in fact, be a more wasteful process.

3.6.2 That said, the Attorney General's decision on whether or not to give consent should be provided in a timely manner. This would avoid such long-running disputes, as with the Royal Albert Hall, where a definitive decision was outstanding for four years.

#### **4. Other technical provisions which would assist charities**

4.1 Given the limits of this current procedure, which is tied to the Law Commission's recommendations, we suggest that Part 4 of the Bill, concerning Charity Trustees could be amended to include a provision that requires trustees to undertake appropriate training.

4.2 It is important that trustees understand their legal obligations and are competent to carry them out. They must be helped to appreciate that trusteeship is a substantive position, even if it is not remunerated, and is not simply an honorary role whereby their name is seen as supporting the cause. If this is what a potential trustee envisages, they would be more suitable as a charity patron. However, there is a fine balance to be struck between the need to appoint people who understand their legal obligations and the need not to deter suitable people from taking up the role. The key is appropriate induction and ongoing training and the dissemination of good practice examples.

4.3 A lesson can be drawn from the practices used to appoint school governors. Here, training is the norm, and public funding is available to support it. It is clear that charity trustees need more support in order to carry out their (largely unremunerated) role – many are crying out for such support. A programme of Continuing Professional Development (CPD) for trustees, linked to the size of the charity and the funds that the trustees are responsible for, may be worth exploring.

4.4 A statutory framework may be what is needed to mandate training for trustees. This may well improve charity governance across the sector and avoid further high-profile failures. These undermine trust and confidence in the charitable sector as a whole.

#### **5. Further improvements to the Bill**

5.1 We suggest no additional amendments. On our reading, the clauses generally make sense and should achieve what they are meant to achieve.