

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Reading Committee

CHARITIES BILL [*LORDS*]

Tuesday 18 January 2022

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The Committee consisted of the following Members:

Chair: SIR GARY STREETER

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| † Afolami, Bim (<i>Hitchin and Harpenden</i>) (Con) | † Mishra, Navendu (<i>Stockport</i>) (Lab) |
| † Bailey, Shaun (<i>West Bromwich West</i>) (Con) | Moore, Damien (<i>Southport</i>) (Con) |
| † Clarkson, Chris (<i>Heywood and Middleton</i>) (Con) | † Russell-Moyle, Lloyd (<i>Brighton, Kemptown</i>) (Lab/
Co-op) |
| Furniss, Gill (<i>Sheffield, Brightside and Hillsborough</i>)
(Lab) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Greenwood, Margaret (<i>Wirral West</i>) (Lab) | † Wheeler, Mrs Heather (<i>South Derbyshire</i>) (Con) |
| † Hart, Sally-Ann (<i>Hastings and Rye</i>) (Con) | † Wild, James (<i>North West Norfolk</i>) (Con) |
| Howell, Paul (<i>Sedgefield</i>) (Con) | † Winter, Beth (<i>Cynon Valley</i>) (Lab) |
| † Huddleston, Nigel (<i>Parliamentary Under-Secretary
of State for Digital, Culture, Media and Sport</i>) | Kevin Maddison, Katya Cassidy, <i>Committee Clerks</i> |
| † Jupp, Simon (<i>East Devon</i>) (Con) | |
| † Maskell, Rachael (<i>York Central</i>) (Lab/Co-op) | † attended the Committee |

Second Reading Committee

Tuesday 18 January 2022

[SIR GARY STREETER *in the Chair*]

Charities Bill [Lords]

2 pm

The Chair: Before we begin, I remind Members that they are expected to wear face coverings and to maintain social distancing as far as possible. This is in line with current Government guidance and that of the House of Commons Commission.

I will start by outlining the procedure for Second Reading Committees, which are uncommon. This Committee is charged with recommending to the House whether the Charities Bill [Lords] ought to be read a Second time, or whether it ought not to be read a Second time. The debate in this Committee replaces a Second Reading debate in the House. After this Committee has made its recommendation, the question on Second Reading in the House will be decided without further debate.

The rules governing a Second Reading debate in the House apply in Second Reading Committees. In particular, Members may speak more than once only by leave of the Committee or through interventions. The Minister, however, has the right of reply at the end of the debate.

2.1 pm

The Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport (Nigel Huddleston): I beg to move,

That the Committee recommends that the Charities Bill [Lords] ought to be read a Second time.

It is a pleasure, as always, to serve under your chairmanship, Sir Gary. This Bill brings in modest but important technical reforms that will allow charities to function more efficiently by implementing the majority of the recommendations from the Law Commission's "Technical Issues in Charity Law" report. The reforms in the Bill are the product of extensive consultation and represent a great example of the Law Commission's work to simplify complex areas of the law, and I am pleased to be discussing the Bill's Second Reading in Committee.

Currently, charities are too often burdened by complicated regulation and administrative costs. This Bill will simplify processes, in turn enabling charities to ensure that their focus and resources are for public good. I thank my noble Friends Baroness Barran and Lord Parkinson for guiding this Bill so ably through the other place, and I put on record my thanks to all peers in the other place, including Lord Hodgson and so many others, who contributed to the thorough scrutiny of this Bill, ensuring it reaches us in good shape.

Both the Law Commission and the Charity Commission have provided their expertise to enable the Bill to reach this stage, and I am grateful for their continued support as it continues its passage through Parliament. I am delighted that the Bill has received cross-party support

and has been warmly welcomed by the charity sector. I hope it continues to receive deserved recognition through the remaining stages.

It is important to remind the Committee, as did the Chair, that this Bill follows the special procedure for non-controversial Law Commission Bills. This means that the Bill is limited to implementing those recommendations from the Law Commission's report. Under this special procedure, the Bill was introduced into the other place, where it was subject to considerable scrutiny, and the Government made some necessary amendments to the Bill. I am grateful to all those involved in making these changes as they will help fulfil the Bill's aims more efficiently.

Charities legislation can be complicated, uncertain and unduly burdensome. That unfortunately forces many charities to obtain expensive legal advice, and distracts them from carrying out their charitable purposes. Not only does overly complex legislation negatively impact charities, but it hinders the Charity Commission in carrying out its important regulatory role. The changes in this Bill are therefore necessary for both the charity sector and its regulator, providing charities with more flexibility, time, and resources to focus on their charitable purposes while reforming unnecessary or overly bureaucratic processes.

At the same time the Bill maintains appropriate regulatory oversight, protections and safeguards, ensuring the protection of charities from abuse. Certainty and clarity in the law is of the utmost importance, and the Bill will provide trustees with increased flexibility to act in their charity's best interests. There is no doubt that we owe both our charity sector and our regulator a clear and simple legal framework. I hope that hon. Members will agree that the Bill strikes a sensible balance between protecting charities' assets and avoiding unnecessary expense and regulation.

This is a highly technical Bill implementing several important changes, and I will shed light on some of its main contents to help Members understand its positive impacts. This Bill will simplify processes for amending governing documents that are currently cumbersome and inconsistent across different charity structures. It will do that by creating a new, clearer statutory power for all unincorporated charities to amend their governing documents by resolution. That will align amendment mechanisms as far as possible across the different legal structures that charities can take. It will also be more straightforward for royal charter charities to make amendments to their governing documents, providing a new power to amend any provision, subject to Privy Council approval.

The Bill will also make it easier to use funds from a failed fundraising appeal for other similar purposes, which has long been a challenge faced by many charities. That will save time and resources for charities where a fundraising appeal has failed, for example, by preventing them from having to search for and contact donors of small donations to ask them if they would like their donation returned because a fundraising appeal did not reach its goal or raised too much money for its specific purpose.

The Bill also makes changes to trustees' powers in relation to permanent endowment—assets held by the charity with a restriction on the use of capital. Trustees will be able to exercise greater flexibility in making

decisions that are in the best interests of their charity, allowing them to better utilise their permanent endowment, whilst protecting the enduring nature of such funds. Alongside greater flexibility, a clearer definition of permanent endowment has been provided. It includes a new power for trustees to borrow from their permanent endowment and streamlines the existing power available to trustees to release those funds.

The Bill also makes changes relating to *ex gratia* payments—payments that charities feel morally obliged to make, but lack a legal power to do so. For example, if someone left money to a charity in their will, but gave their solicitor instructions to grant some of the amount to a family member instead, but then died before the will had been changed, legally the charity must take the money, but it may feel morally obliged to honour the gift to the family member. Currently it would need to decide whether to make the payment at a trustee meeting, and then wait for Charity Commission, Attorney General or court approval before making such a payment. That is time consuming and can involve costs that are disproportionate to the value of the payment itself. The changes in the Bill will allow charities to make relatively small *ex gratia* payments without seeking Charity Commission consent. The changes will also allow trustees, if they so wish, to delegate the decision to make these payments to the charity's staff.

Currently, there are a number of burdensome statutory requirements around disposals of land by charities. The measures in this Bill will tackle those challenges by creating a simpler process and paves the way for secondary legislation to broaden the pool of advisers at a trustees' disposal.

The Charity Commission will also be provided with supplementary powers in respect of misleading, offensive or very similar charity names to remove anomalies and prevent an inappropriate name appearing on the register of charities.

There is no doubt that charities cannot function without the vital role of trustees, almost all of whom are volunteers. The Bill will, subject to appropriate safeguards, allow charities to source goods from trustees, when doing so would be in the charity's best interests, by resolving a gap in the current law. The Charity Commission will also be able to authorise trustees to be paid for specific work they have carried out for the benefit of their charity in limited circumstances.

In relation to saving administrative costs when it comes to incorporations and mergers, this Bill will ensure legacies in wills can be automatically transferred to a merged charity and will automatically confer trust corporation status on corporate charities in their capacity as trustees of charitable trusts.

On reducing burdens on trustees, protection will be provided to them to avoid charities being discouraged from pursuing litigation due to the risk of trustees personally having to pay the costs of charity tribunal proceedings.

Collectively, the measures will ensure that charity law works effectively for those delivering vital charitable services, especially given the huge pressure the sector has faced during the course of the pandemic. The measures will also ensure appropriate regulatory oversight and safeguards are in place to maintain public trust in this important sector.

The many notable benefits of the provisions I have outlined will have positive impacts on the sector. Small charities will especially benefit from the simplified legislation and reduced administrative burdens as they may not have access to legal advice. The changes will also make life easier for trustees by reducing administrative burdens and easing some of the regulatory pressures they face. Trustees will be able to act with confidence in their charity's interests. In turn, we anticipate public trust to flow from charities working unhindered and able to focus fully on their charitable mission.

I reiterate that this Bill brings in welcome reform to charity law. It has widespread support and, as I have outlined, it is the product of extensive consultation and has been subject to rigorous scrutiny. I am honoured to have the pleasure of bringing this Bill before this Committee and the House. I hope the Committee will give this Bill its full support, so we can proceed swiftly with its remaining passages and begin working with the Charity Commission on its implementation. I commend the Bill to the Committee.

2.10 pm

Jeff Smith (Manchester, Withington) (Lab): It is a pleasure to serve with you in the Chair, Sir Gary, and I am pleased to speak on the Opposition's behalf. I thank the Minister for his introductory remarks and echo his thanks to everyone involved in the passage of the Bill through the Lords and in cleaning it up into the good state that we see it today.

Like probably all of us in this Committee, I am a member or supporter of several charities. For the record, I refer the Committee to my entry in the Register of Members' Financial Interests and note that I am a trustee of Drug Science.

The charity sector's contribution to society could not have been shown more clearly than during the coronavirus pandemic, with countless organisations and volunteers doing fantastic work to support vulnerable people. Charitable groups and organisations have ensured that rough sleepers have had access to food and shelter, delivered food to those in need and supported the vulnerable and those who had to shield during the darkest days of the pandemic. I pay tribute to all volunteers and staff in the charity sector, which forms such an important part of our civil society. Charities play a vital role in our communities and will continue to be vital to Britain's covid recovery in the months ahead.

During the Bill's passage through the Lords, there was agreement on all sides that the new measures represent important progress towards allowing charities to amend how they operate and making it easier for them to achieve their core purpose. The Bill seeks to make a series of changes that will make it easier for charities to navigate the law and to carry out their functions effectively, while retaining important safeguards.

I will not repeat the detail that the Minister outlined, but the Opposition support the Bill, which takes on board the majority of the Law Commission's recommendations and makes several significant changes for charities, reducing red tape and making it easier for them to amend their governing documents, such as small changes to charitable purposes, to dispose of land efficiently, to use their resources more effectively and to avoid disputes over whether a trustee has been correctly appointed or elected.

[Jeff Smith]

The Law Commission's "Technical Issues in Charity Law" report, which informs the changes in the Bill, was published in September 2017. Labour backs our charity sector and backed the report. We wonder whether these changes could have been brought to the House more swiftly, but we are pleased that the Government have finally brought the Bill forward.

Approximately 169,000 charities are registered with the Charity Commission in England and Wales, with a combined annual income of over £83 billion. The sector employs 3% of the total UK workforce, and more than 944,000 trustees are supported by over 6.2 million volunteers. All those charities and the millions of people who support their work might have benefited if the recommendations has been brought into law more quickly, but the Labour party supported the Bill's passage in the Lords and will of course be doing the same in the Commons. We do so because the recommendations will fundamentally make running a charity easier and more efficient.

Among other things, the Bill clarifies certain powers of the charity tribunal, expands the Charity Commission's role to deal with misleading, offensive or duplicate charity names, allows charities to amend their governing documents or royal charters more easily, permits more flexibility in the use of permanent endowments and makes it simpler for charities to combine their operations.

The implementation of the Law Commission's recommendations is estimated to deliver cost savings for charities of at least £28 million over a 10-year period. The uncertainties in the law and the unnecessary regulation that discourage participation, delay charities' activities and compel them to spend money on expensive legal advice will be removed, which will make life easier for charities to fulfil their charitable purposes.

However, in supporting the Bill, I ask the Minister to clarify why the Government did not accept all the Law Commission's recommendations. In particular, recommendation 40, which states that

"it should be possible to obtain authorisation to pursue 'charity proceedings' under section 115 of the Charities Act 2011 from either the court or the Charity Commission in circumstances where the Charity Commission would face an actual or apparent conflict of interests".

Rachael Maskell (York Central) (Lab/Co-op): My hon. Friend is making an excellent speech. I too wanted to pick up on recommendation 40, because the Government's response refers to non-legal remedies without setting out what they are. As a result, how to seek proper restitution must be made clear to trustees and charities.

Jeff Smith: I am grateful to my hon. Friend for making that point, and I hope that the Minister will respond in his summing up. The sector was widely supportive of the suggestion, which would provide reassurance for those seeking authorisation and ensure that the Charity Commission is not compromised when making judgments in such cases.

Will the Minister also expand on the Government's decision not to adopt recommendation 43, which sought to remove the requirement that the Charity Commission obtain the consent of the Attorney General before making a reference to the charity tribunal on a question

concerning charity law or its application to a particular case. Organisations from across the charity sector share the view that the Charity Commission is well placed to highlight potentially challenging issues within charity law and that the current requirement for consent presents an unnecessary barrier to ensuring that issues of charity law can be considered and addressed by the tribunal.

On the topic of the Charity Commission, Members will have seen the Digital, Culture, Media and Sport Committee's hearing last Tuesday regarding the rather shambolic appointment—and now resignation—of Martin Thomas as chair of the Charity Commission. It is remarkable that the appointments system did not pick up the allegations of inappropriate behaviour, despite the charity in question formally reporting the incident to the very regulator that Martin Thomas was appointed to head up, so perhaps the Minister will set out how the Government plan to tighten the system to avoid a similar situation.

As I said earlier, the changes set out in the Bill mean that charities can spend less time jumping through excessively bureaucratic hoops and more time focusing on their core mission. They will also help to protect the public by, for example, stopping them being misled by a charity that deliberately adopts a name similar to that of another charity. We accept that phased implementation will allow charities to put processes in place to manage the new regime.

Like the Law Commission and the Charity Commission, Labour supports the sensible measures in and principles of the Bill and recommend that it be read a Second time.

2.18 pm

Nigel Huddleston: I thank my opposite number, the hon. Member for Manchester, Withington, and the hon. Member for York Central, who has extensive and significant knowledge in the charitable sector and civil society overall—I applaud her work over many years.

I am pleased that the Bill has such obvious support across the House and in the other place, and I look forward to taking it through the Commons. We share the ambition that charities should not be weighed down by disproportionate or unnecessary burdens, so that they can focus on their charitable objectives and on what they do best. Charities are a force for good in society and, as the hon. Member for Manchester, Withington said, England and Wales alone have 167,000 registered charities, all of which carry out excellent and indispensable work to help those in need. By working closely with the Law Commission and the Charity Commission to provide consistency and clarity in law through this Bill, charities can feel confident that we have understood their concerns and that we are on the right path to help them fulfil their purposes.

To address some of the points raised by the hon. Gentleman, he was right to express a sense of urgency here, because we are trying to address quite a number of issues. We would all like to move at speed, but this is an incredibly complex area of law. We have had the challenges of dealing with covid, but there has been extensive stakeholder engagement. I understand the sense of urgency, but this is a complex area, and we wanted to ensure that we did things correctly.

On recommendation 40 of the Law Commission's "Technical Issues in Charity Law" report, the Government stand by their decision to reject it and set out its

reasoning in their response. The removal of the safeguards in section 115 of the 2011 Act would be a disproportionate response to the unlikely possibility of an application being brought to the Charity Commission that created a conflict of interest. Such a scenario, if it ever arose, could in any event be addressed in other ways. However, I am happy to discuss the matter with hon. Members or to write to them if they have outstanding concerns.

On recommendation 43, the Law Commission recommended that the Charity Commission should be able to make a reference to the charity tribunal without first having to get consent from the Attorney General. The Government rejected that recommendation on the basis that the Attorney General has a duty on the Crown's behalf to protect charitable interests in England and Wales, and the mechanism assists the Attorney General in fulfilling that duty. The Government concluded:

“The Attorney General's consent for references to the Charity Tribunal is an important element in the system which should not be removed.”

The matter was thoroughly debated during the Bill's passage through the other place, and the amendment to insert recommendation 43 was not accepted.

Charities have played an unprecedented role throughout the course of the pandemic, and the measures in this Bill will enable them to carry on doing their vital work in communities throughout the country without unnecessary controls. I thank hon. Members for their contributions today, and I hope this Second Reading Committee will support the Bill.

Question put and agreed to.

2.22 pm

Committee rose.

