

Our December bulletin contained a brief introduction to the Charities (Protection and Social Investment) Bill (CPSI Bill). The CPSI Bill was considered by the Public Bill Committee, which reported on 07/01/16, and now moves to the report stage in the Commons.

The Bill has two parts to it. The first deals with protecting charities from abuse and restoring public confidence through new rules on warning powers, the appointment and disqualification of trustees and on fundraising. The second part proposes a new power to make social investments.

Social investment

Social investments are defined in the Bill as an investment made with a view to both *directly further a charity's purpose* and simultaneously *achieve a financial return for the charity*. The Bill defines an act as having a financial return if its "outcome is better for the charity in financial terms than expending the whole of the funds or other property in question". This means a relevant act may qualify as a social investment even where there is *no view to generating a financial profit*. Whilst an application of funds or property expected to result in a total loss is *not* a social investment, an act expected to be neutral (e.g. a rent-free lease or interest-free loan) or loss-making (e.g. only part of an initial outlay is recovered) can be a social investment.

Despite criticism by various interested groups, and an amendment being proposed, the current version of the Bill retains the clause which states that the social investment powers do not apply in relation to charities established by, or whose purposes and functions are set out in, legislation, or charities established by Royal Charter. This rules out the use of the proposed social investment powers for most universities. Whilst many universities have subsidiary companies established for much of their investment and trading needs, the power to make social investments would potentially be helpful, widening universities' potential to invest etc. without setting up such subsidiaries.

The proposed clause 16, which currently sets out post-implementation areas of review, does not include a review of the social investment powers. It has been suggested that a review by the Minister for the Cabinet Office of the operation of social investment powers should take place, particularly as to whether, following implementation, any correlation exists between social investment and a decrease in grant awarding by charities.

If the social investment powers do become applicable to universities we will let you know.

Appointment and disqualification of trustees

Of more concern perhaps to universities are the parts of the Bill which relate to the appointment and disqualification of trustees. Whilst it is generally accepted some people should not be allowed to act as trustees due to past criminal behaviour, and that the Charity Commission's powers to disqualify trustees could do with beefing up, some disquiet remains about the Bill as it currently stands.

Various charities, predominantly with an interest in working with those with criminal records, submitted written evidence raising concerns that the extension of the "disqualification framework to a broader range of offences and roles within charities will undermine the ability of people with criminal records to participate actively in society through legitimate voluntary and paid work...the automatic barring of people on the sex offenders register becoming charity trustees is a crude and ineffective means of safeguarding children and vulnerable adults" (written evidence submitted to Public Bill Committee on CPSI Bill by Unlock, Clink and Prison Reform Trust 2015). The submission criticises the "woefully inadequate" waiver process for allowing ex offenders to become trustees and the automatic extension of disqualification criteria to cover not just trustees but also senior management positions within charities. The submission points out that under the current Bill anyone with an unspent conviction for offences relating to dishonesty or deception is automatically disqualified from being a trustee. Given that anyone handed a custodial sentence of four years or more for such an offence will never have a spent conviction, it raises the possibility that current and potential trustees who committed offences, perhaps 20 years ago, could not take or continue trustee roles. Given that a third of adult men and a tenth of adult women have at least one criminal conviction (Ministry of Justice [2010] "Conviction Histories Of Offenders Between The Ages of 10 And 52", cited in written submissions by Unlock, Clink and Prison Reform Trust to Public Bill Committee, 2015), the potential impact of the Bill could be huge.

The essentially retrospective nature also means that those already serving in trustee or senior management position may have to discontinue their role. As anyone who has worked in the charity sector knows, it is often difficult to find trustees. The spectre of those already in trustee or senior management positions, who under the old rules did not have to declare a conviction, potentially now having to choose between declaring their conviction (and accepting the fallout from such a disclosure) or stepping down from their position without explanation is not a welcome one. Whilst accepting

the need for changes to the current rules, it is hoped the final form of the Bill will not have an unintended impact, particularly for charities working with and for those with criminal records.

The House has in part accepted and responded to these concerns: the 14 January notice of amendments states that before the section on the disqualification of trustees comes into force the Secretary of State should lay before parliament a report on the impact of the proposed disqualification framework on people with criminal records who are trustees or, or employed by, charities and charities which work with or employ ex offenders.

Charity Commission official warning powers

In relation to the proposed Charity Commission power to make and publish official warnings, the Bill has not yet been altered to include proposed amendments to address concerns that such published warnings could result in huge reputational damage to a charity for what was a minor breach of charity law. The lack of an appeal mechanism for charities handed a warning also remains a concern.

Look out for further updates on the progress of the Bill and what it will mean for the HE sector in future bulletins.

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