

## The Charities (Protection and Social Investment) Bill 2015 - what is the impact on universities? | [back to top](#)



The Charities (Protection and Social Investment) Bill 2015 has just passed its second reading in the Commons and is now heading for the Committee stage. If it does become new law it will have an impact on universities as charitable bodies. Its stated purpose, in amending the Charities Act 2011, is to beef up the Charity Commission's regulatory powers to tackle serious abuse, and to allow charities to make social investments.

### Social investments

The current law makes it difficult for most charities to engage in social investments, defined in the Explanatory Notes to the Bill as an investment made with a view to "directly further a charity's purpose" and simultaneously "achieve a financial return" for the charity. It is worth noting here that 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 that 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.

The Bill qualifies to what extent an act must be in direct furtherance of a charity's purposes; there must be a "sufficiently close causal connection between the act done and the charitable good achieved that fits within the express purposes." However, the word directly should not be read as excluding the possibility of a third party carrying out the purposes of the charity. The Explanatory Notes give the example of a charity for the advancement of medicine buying shares in a medical research company; the company directly furthers the charity's purposes through the work of the company.

Other examples of acts that might constitute a social investment include a charity for homeless people letting out property at low rent or a diabetes charity investing in a company that develops foods intended to replace the impact of diabetes on sufferers and which will be available to the general public.

The social investment may also give rise to other outcomes which are not part of the charity's mission, but these outcomes cannot be part of the trustees' motivation for making the investment. The considerations for the trustees before investing should solely be the expected direct furtherance of the charity's purposes and the financial return. In the diabetic charity example above, the company's activities do not exclusively further the charity's purpose because the food is available to the general public. However, it may still be an appropriate social investment based on the trustees' assessment of the expected furtherance of the charity's purposes and expected financial return.

The Bill, if it becomes law, represents a significant widening of the way charities can invest whilst still acting within their charitable purposes.

### Regulatory powers of the Charity Commission

The Bill also makes changes to the powers of the Charity Commission that will affect all charities, including universities which retain the Commission as an overarching regulator.

It sets out some amendments and clarifications to the Commission's protective powers, particularly in relation to misconduct and mismanagement, the powers to remove trustees, powers to direct or stop action to be taken by a charity in the context of a statutory inquiry, and the winding up of failing charities. The Commission will also have the power to issue official warnings, used when further action may be disproportionate. Unlike non-statutory warnings currently issued by the Commission, there will be no right of appeal to the Charity Tribunal and the warning may be published.

It could be argued that, given the damage to a university's reputation a published statutory warning could do, the proposed system is a disproportionate response to what the Commission themselves acknowledge would be a minor breach.

Other matters covered in the Bill include the strengthening of the criteria, such as criminal convictions, which automatically disqualify a person from being a charity trustee, and the extension of automatic disqualification to senior management positions in charities.

The Bill also proposes an amendment for the protection of vulnerable people from aggressive forms of fundraising. Charities should have an agreement setting out how they will do this and should monitor compliance. Annual reports for many charities must now contain information on fundraising standards, whether a professional fundraiser or commercial participator is involved in fundraising, whether the fundraisers are subject to any kind of regulatory scheme and any failure to comply, whether the charity monitors compliance, and whether complaints are received by the charity about fundraising.

The Bill goes to the Commons Committee stage in January. Watch this space for further updates.

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