



## **The bluffer's guide to charity law reform – the government's response to Lord Hodgson and PASC**

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### **1. Background**

- 1.1 In July 2012, Lord Hodgson published his detailed recommendations on charity law reform.<sup>1</sup> Separately, in May 2013 the House of Commons Public Administration Select Committee ("PASC") published its own report on the role of the Charity Commission, public benefit and the Charities Act 2006.<sup>2</sup>
- 1.2 In December 2012 Government published an interim response to Lord Hodgson's report.<sup>3</sup>
- 1.3 Now, in September 2013, Government has published its full response to recommendations from both Lord Hodgson and PASC.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/237077/Response-charities-legal-framework.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/237077/Response-charities-legal-framework.pdf)

### **2. Implementation of any changes**

- 2.1 The timescale for changes largely depends on how the changes will be implemented:
  - 2.1.1 For changes requiring legislation, we can expect change but not overnight. Government has said it will consult with charities and other interested parties and report back on implementation in one year. And the Law Commission, which is the Government department responsible for drafting legislation, does have time allocated to work on new charity legislation (which would be no earlier than 2016) but its terms of reference are limited to fairly technical areas.
  - 2.1.2 For changes not requiring legislation – for example, changes to how the Charity Commission does things in practice, we may see proposals implemented more quickly.

### **3. The Headlines**

#### *What's not changing?*

- The basic role of the Charity Commission
- Public benefit test
- Registration threshold of £5k (and £100k for excepted charities)
- The rules about paying trustees
- Self regulation of fundraising (but 5 year review)

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79275/Charities-Act-Review-2006-report-Hodgson.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79275/Charities-Act-Review-2006-report-Hodgson.pdf)

<sup>2</sup> <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/76/7602.htm>

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79277/Charities-Act-Review-2006-response-Nick-Hurd.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79277/Charities-Act-Review-2006-response-Nick-Hurd.pdf)

- National Exemption Orders for house to house collections

#### *What may be changing?*

- Some of the Charity Commission's powers may be reduced/delegated to partnership bodies
- Late filing fines may be introduced.
- Increase in audit income threshold from £500k to £1m
- Annual Return to require charities to disclose information on income sources and political and campaigning activities
- For charitable companies, a single Annual Return for both the Charity Commission and Companies House
- Clearer and wider powers for charities re social investment
- Less onerous procedures for disposal of charity land
- Wider remit for the Charity Tribunal to hear appeals against any decision of the Commission

## **4. The Detail**

### *The role of the Charity Commission*

- 4.1 The Commission's powers to identify and tackle abuse are being reviewed and may be strengthened.
- 4.2 Some of the Commission's current functions may be:
- 4.2.1 removed or reduced – specifically ones that “add little value to the regulation of the charity sector but are resource intensive”
- 4.2.2 delegated to other bodies - The Commission says it would be “comfortable with a discretionary conditional power to delegate functions as its partnership work matures”. Our view is this would need to be handled extremely carefully.

And the Law Commission's charity project will “investigate some areas where powers could be transferred from the Charity Commission to charity trustees, along with appropriate safeguards.”

- 4.3 In response to criticisms that the Commission is not adequately funded the official response is “*The Government continues to believe that the Charity Commission has sufficient resources to effectively regulate charities, provided it focuses on its core regulatory functions.*”

### *Charging by the Charity Commission /fines for late filing*

Proposals for the Charity Commission to charge for registration/filing annual returns have been rejected but Government is going to explore introducing a system of late-filing fines – the driving reason being to drive improvements in compliance rather than fee generation. Withdrawal of Gift Aid will not be introduced as a sanction for late accounts.

### *Public benefit test*

- 4.4 Government has rejected suggestions to define public benefit in legislation.
- 4.5 In relation to how the public benefit test applies to religious charities, Government agrees with PASC's suggestion to look at the parliamentary debates leading up to the Charities Act 2006 for guidance on what Ministers intended.

### *Threshold for registration*

- 4.6 This looks set to stay at £5,000 (rather than rising to £25,000 as suggested by Lord Hodgson). Voluntary registration below this threshold may be introduced but Government wants to carry out a cost/benefit analysis. Government has rejected the proposal that charities below the threshold should have to label themselves “unregistered”.

### *Reporting*

- 4.7 Abolition of the Summary Information Return for large charities gets the “thumbs up” – the Commission has already consulted on this.
- 4.8 Government liked Lord Hodgson’s suggestion of a one page information summary for each charity which would appear on the charity’s register entry. The Commission is going to look into this but “it may not be deliverable”.

### *Threshold for audit*

- 4.9 There will be a consultation on changing the current thresholds:
- 4.9.1 increasing the income threshold from £500,000 to £1m
- 4.9.2 increasing the current assets threshold of £3.26m.

### *Reducing duplication*

- 4.10 The Charity Commission has agreed to work with Companies House so that charitable companies can produce one annual return for both. The Commission will report back on this in its next Annual Report.
- 4.11 Separate regimes for England and Wales, Scotland and NI look set to stay but there are promises from the government and Charity Commission to minimise regulatory burdens for charities working across the different jurisdictions.
- 4.12 For new charities, HMRC and the Charity Commission are working together to explore options for a single application process.

### *Exempt and excepted charities*

- 4.13 For excepted charities, the Government is not inclined to reduce the current threshold of £100,000 now but will set out specific proposals after consulting with representative bodies of excepted charities later this year.
- 4.14 Government agrees with Lord Hodgson’s suggestion that the Homes and Communities Agency could take on the role of principal regulator for charitable social housing providers in England. Discussions with the HCA are underway.
- 4.15 For charitable industrial and provident societies, Government will consider either appointing a principle regulator or requiring larger IPS to register with the Charity Commission.

### *CIOs*

- 4.16 Government has agreed to review CIOs in 2016.
- 4.17 It has also agreed in principle to allow CIOs to convert to charitable companies but this would need primary legislation.

### *Trustees*

- 4.18 As indicated in its interim response, Government does not agree with Lord Hodgson's proposal that charities with an income of over £1 million should have an automatic power to pay their trustees. But it does promise to monitor the number of applications the Commission receives to authorise payment of trustees, and to monitor how many are granted/refused.
- 4.19 Government has accepted several of Lord Hodgson's other recommendations:
- 4.19.1 that it should encourage employers to support employees who are, or are considering being, trustees. This it says it will do by working with Business in the Community and others to publicise to employers the benefits of supporting employees in charity trusteeship.
- 4.19.2 that there should be more transparency about the length of time trustees have served. It may consult on whether this should be a disclosure requirement.
- 4.19.3 That charity trustees should have a right to access charity information – Government will consult on "whether an explicit right is necessary". (There are some views that the right already exists.)
- 4.19.4 That the current rules on suspension and removal of trustees need reviewing (including the need to support rehabilitation of former offenders). This will be done by the Law Commission but interestingly may be fast tracked "*if an early legislative opportunity arises*".

### *Campaigning*

- 4.20 There are no plans to change the charity law rules on political campaigning by charities but Government does support PASC's recommendation to amend the Annual Return to require charities to disclose information on income sources and political and campaigning activities. Any change would be subject to a public consultation.
- 4.21 The Government agrees there is a place for properly run thinktanks in the charity sector. The Commission is or will be reviewing its internal guidance on thinktanks to ensure a consistent and proportionate approach and to help trustees of charitable thinktanks understand their duties more clearly.

### *Self regulation of charity fundraising*

- 4.22 Government has agreed self-regulation should be given further time to "prove itself". Progress will be reviewed in 2017 and there will be a report to Parliament.
- 4.23 A Government funded project is underway to rationalise the roles of the IOF, FRSB and PFRA.

### *Solicitation statements*

- 4.24 Government is going to produce simpler guidance.

### *Public collections*

- 4.25 Big sigh of relief for charities holding National Exemption Orders for house to house collections – Government does not plan to abolish these. But it does acknowledge the current system needs strengthening to "*ensure the interests of small charities and local licensing authorities are not ignored*" and options for change will be explored.

- 4.26 Re face to face, Government regards stronger self-regulation as the “first resort” before statutory regulation is considered.

*Mergers and incorporations*

- 4.27 The Law Commission will look again at the provisions intended to preserve legacies on a merger or incorporation.

- 4.28 To reduce admin when an unincorporated charity incorporates:

- 4.28.1 the Commission and HMRC will consider whether the same charity number can be retained;

- 4.28.2 a recommendation has been made to the British Banking Association that banks should allow existing bank accounts to be put in the name of the new body (as opposed to new accounts having to be set up)

*Disposals of land/mortgages*

- 4.29 The Law Commission will consider options for de-regulation of land transactions i.e. removing current requirements for surveyors’ reports and Charity Commission. The only exception is for disposals of land to trustees (and persons connected to trustees) where Commission consent will still be needed..

*Social investment*

- 4.30 Government has asked the Law Commission to take on looking at charity trustees’ powers to carry out social (or “mixed purpose”) investment. An announcement is expected shortly.

- 4.31 Other social investment developments include a module in the new draft SORP addressing accounting and reporting of social investments, and a project within government to scope the potential benefits and structure of a social investor exemption from the Financial Promotions rules.

*Challenging Charity Commission decisions and the Charity Tribunal*

- 4.32 The Commission has been encouraged, when notifying decisions, to be clearer in setting out reasons for its decisions and to set out “*where any changes would be needed in order for it to reach a different outcome*”.

- 4.33 Some changes to the Charity Tribunal will be looked at by the Law Commission, including widening the range of Commission decisions that can be appealed to the Tribunal. This will involve a full public consultation and primary legislation which will be subject to parliamentary time being available.

**5. Next steps**

- 5.1 Government to begin various consultations and to report back in one year.

- 5.2 2014 Law Commission consultation leading to draft Bill in 2016.

- 5.3 2016 Government review of CIOs.

- 5.4 2017 Government review of self-regulation of fundraising.

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The information contained in this handout is necessarily of a general nature. Specific advice should be sought for specific situations.