

Charities (Protection and Social Investment) Bill

[HL]

[AS AMENDED IN PUBLIC BILL COMMITTEE]

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B I L L

[AS AMENDED IN PUBLIC BILL COMMITTEE]

TO

Amend the Charities Act 1992 and the Charities Act 2011.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Official warnings by the Commission

Before section 76 of the Charities Act 2011, after the heading “Powers of Commission to act for protection of charities etc” insert—

“75A Official warnings by the Commission

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|---|----|
| (1) The Commission may issue a warning— | 5 |
| (a) to a charity trustee or trustee for a charity who it considers has committed a breach of trust or duty or other misconduct or mismanagement in that capacity, or | |
| (b) to a charity in connection with which it considers a breach of trust or duty or other misconduct or mismanagement has been committed. | 10 |
| (2) The Commission— | |
| (a) may publish a warning it has issued; | |
| (b) may issue or publish a warning in any way it considers appropriate. | 15 |
| (3) Before issuing a warning under this section, the Commission must give notice of its intention to do so to the charity, and each charity trustee or trustee for the charity, except any who cannot be found or who has no known address in the United Kingdom. | |
| (4) Any such notice— | 20 |
| (a) may be given by post, and | |

- (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (5) The notice must specify –
 - (a) the power under subsection (1) to give the warning, and the grounds for the warning; 5
 - (b) any action that the Commission considers should be taken, or that the Commission is considering taking, to rectify the misconduct or mismanagement referred to in subsection (1);
 - (c) whether and, if so, how the Commission proposes to publish the warning; 10
 - (d) a period within which representations may be made to the Commission about the content of the proposed warning.
- (6) Where the Commission gives notice under subsection (3) of its intention to issue a warning –
 - (a) it must take into account any representations made to it within the period specified in the notice, and 15
 - (b) it may (without further notice) issue the warning either without modifications or with such modifications as it thinks desirable.”

2 Investigations and power to suspend

- (1) Section 76 of the Charities Act 2011 (suspension of trustees etc. and appointment of interim managers) is amended as follows. 20
- (2) In subsection (1)(a), for “any” substitute “a failure to comply with an order or direction of the Commission, a failure to remedy any breach specified in a warning under section 75A, or any other”.
- (3) In subsection (4), at the end insert “, subject to any extension under subsection (7)”. 25
- (4) At the end add –
 - “(7) At any time before the expiry of an order under paragraph (a) of subsection (3) the Commission may extend or further extend the suspension by an order under that paragraph, provided that – 30
 - (a) the order does not extend the suspension for a period of more than 12 months, and
 - (b) the total period of suspension is not more than 2 years.”

3 Range of conduct to be considered when exercising powers

After section 76 of the Charities Act 2011 insert – 35

“76A Exercise of powers where section 76(1)(a) applies

- (1) This section applies to any power under this Part which is exercisable in cases where the Commission is satisfied as mentioned in section 76(1)(a) in relation to a charity (misconduct or mismanagement), with or without any other condition. 40
- (2) If in such a case the Commission is also satisfied –
 - (a) that a particular person has been responsible for the misconduct or mismanagement,

(b) that a particular person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or

(c) that a particular person's conduct contributed to it or facilitated it,

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the Commission may take into account the matters mentioned in subsection (3) in deciding whether or how to exercise the power.

(3) Those matters are –

(a) the conduct of that person in relation to any other charity;

(b) any other conduct of that person that appears to the Commission to be damaging or likely to be damaging to public trust and confidence in charities generally or particular charities or classes of charity.”

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4 Power to remove trustees etc following an inquiry

(1) The Charities Act 2011 is amended as follows.

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(2) For section 79 (Commission's power to remove trustees etc following an inquiry) substitute –

“79 Removal of trustee or officer etc for protective etc purposes

(1) Subsection (2) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied either as mentioned in section 76(1)(a) (misconduct or mismanagement etc) or as mentioned in section 76(1)(b) (need to protect property etc).

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(2) The Commission may of its own motion by order establish a scheme for the administration of the charity.

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(3) Subsection (4) applies where, at any time after it has instituted an inquiry under section 46 with respect to any charity, the Commission is satisfied both as mentioned in section 76(1)(a) (misconduct or mismanagement etc) and as mentioned in section 76(1)(b) (need to protect property etc).

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(4) Whether or not it acts under subsection (2), the Commission may of its own motion by order remove any trustee, charity trustee, officer, agent or employee of the charity –

(a) who has been responsible for the misconduct or mismanagement,

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(b) who knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or

(c) whose conduct contributed to it or facilitated it.

(5) Where the Commission has given notice under section 82 of its intention to make an order under subsection (4) removing a person from an office or employment, the Commission may proceed to make the order even though the person has ceased to hold the office or employment.

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(6) Where an order is made relying on subsection (5) –

- (a) section 81(1) (power to make supplementary provision) and Case D in section 178(1) (disqualification) apply as if the person was removed by the order, but
- (b) the order does not affect the time when the person ceased to hold the office or employment.” 5
- (3) In section 83(3) (power to suspend or remove trustees etc from membership of charity) –
- (a) for “79(2)” substitute “79(4)”;
- (b) for “an officer,” substitute “a trustee, charity trustee, officer,”.
- (4) In section 87(1) (supervision by Commission of certain Scottish charities), for “79(2)(b)” substitute “79(1) and (2)”. 10
- (5) In section 178(1) (automatic disqualification of charity trustees), in Case D for “79(2)(a)” substitute “79(4)”.
- (6) In Schedule 6 (appeals to tribunals), in the entry relating to an order made by the Commission under section 79(2) in relation to a charity – 15
- (a) in column 1, after “79(2)” insert “or (4)”;
- (b) in column 2, for “79(2)(a)” substitute “79(4)”.
- 5 Power to remove disqualified trustee**
- (1) The Charities Act 2011 is amended as follows.
- (2) After section 79 insert – 20
- “79A Removal of disqualified trustee**
- The Commission may remove a charity trustee or trustee for a charity by order made of its own motion if the person is disqualified from being a charity trustee or trustee for a charity (generally or in relation to the charity concerned) – 25
- (a) by virtue of section 178, or
- (b) by an order under section 181A.”
- (3) In section 82(1) (removal of trustees etc: notice), after “79” insert “, 79A”.
- (4) In section 89(1) (orders relating to trustees etc: exceptions to publicity requirement), after paragraph (b) insert, “or 30
- (c) an order under section 79A (removal of disqualified trustee),”.
- (5) In section 89(5) (notice inviting representations on order to remove), after “an order under this Act” insert “, other than an order under section 79A,”.
- 6 Power to direct specified action not to be taken**
- (1) The Charities Act 2011 is amended as follows. 35
- (2) After section 84 insert –
- “84A Power to direct specified action not to be taken**
- (1) This section applies where, at any time after the Commission has instituted an inquiry under section 46 with respect to any charity, the Commission considers that any action, if taken or continued by a 40

- person listed in section 84(2), would constitute misconduct or mismanagement in the administration of the charity.
- (2) The Commission may make an order specifying the action and directing the person not to take it or continue it.
- (3) While an order under this section is in force, the Commission must review it at intervals of not more than 6 months.” 5
- (3) In section 20 (incidental powers), in subsection (3) after “84” insert “, 84A”.
- (4) In section 86(2) (copy of certain orders, and reasons, to be sent to charity) and section 336(2)(a) (enforcement of orders of Commission) insert in the appropriate place – 10
“section 84A (power to direct specified action not to be taken),”.
- (5) In Schedule 6 (appeals and applications to Tribunal), insert in the appropriate place –

“Order made by the Commission under section 84A(2) which directs a person not to take action specified in the order.

The persons are any person who is directed by the order not to take the specified action.

Power to quash the order and (if appropriate) remit the matter to the Commission.” 15

7 Power to direct winding up

- (1) The Charities Act 2011 is amended as follows. 20
- (2) Before section 85 insert –
- “84B Power to direct winding up**
- (1) This section applies where the conditions in section 84(1) are met for that section to apply, but the Commission is satisfied – 25
- (a) that the charity does not operate, or
- (b) that its purposes can be promoted more effectively if it ceases to operate,
- and that exercising the power in subsection (2) is expedient in the public interest.
- (2) The Commission may by order direct – 30
- (a) the charity trustees,
- (b) any trustee for the charity,
- (c) any officer or employee of the charity, or
- (d) (if a body corporate) the charity itself,
- to take any action specified in the order for the purpose of having the charity wound up and dissolved, and any remaining property transferred to a charity with the same purposes. 35
- (3) An order under this section –
- (a) may require action to be taken whether or not it would otherwise be within the powers exercisable by the person or persons concerned, or by the charity, in relation to the winding up and dissolution of the charity or to its property, and 40

- (b) in particular, may require the person or persons concerned to do anything for the purpose of having the charity wound up and dissolved and its property transferred that could otherwise only be done by the members of the charity or any of them, but may not require any action to be taken which is prohibited by any Act. 5
- (4) Before making an order under this section the Commission must give public notice of its intention to make the order, inviting representations to be made to it within a period specified in the notice.
- (5) The Commission – 10
- (a) must take into account any representations made to it within the period specified in the notice, and
- (b) may make the order (without further notice) either without modifications or with such modifications as it thinks desirable.
- (6) An order under this section may not be made less than 60 days after the first day on which public notice under subsection (4) is given, unless the Commission is satisfied after complying with subsections (4) and (5) that it is necessary to make the order to prevent or reduce misconduct or mismanagement in the administration of the charity or to protect the property of the charity or property that may come to the charity. 15 20
- (7) Anything done by a person or body under the authority of an order under this section is to be treated as properly done in the exercise of the powers mentioned in subsection (3)(a).
- (8) Subsection (7) does not affect any contractual or other rights arising in connection with anything which has been done under the authority of such an order.” 25
- (3) In section 20 (incidental powers), in subsection (3) before “or 85” insert “, 84B”.
- (4) In section 86(2) (copy of certain orders, and reasons, to be sent to charity) and section 336(2)(a) (enforcement of orders of Commission) insert in the appropriate place – 30
- “section 84B (power to direct winding up),”.
- (5) In Schedule 6 (appeals and applications to Tribunal), insert in the appropriate place –
- | | | | |
|---|---|--|----|
| “Order made by the Commission under section 84B(2) which directs a person to take action specified in the order. | The persons are any person who is directed by the order to take the specified action. | Power to quash the order and (if appropriate) remit the matter to the Commission. | 35 |
| Order made by the Commission under section 84B(2) which directs a person to do anything that could otherwise only be done by the members of the charity or any of them. | The persons are the member or members concerned. | Power to quash the order and (if appropriate) remit the matter to the Commission.” | 40 |
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8 Power to direct property to be applied to another charity

- (1) Section 85 of the Charities Act 2011 (power to direct application of charity property where person is unwilling) is amended as follows.
- (2) In subsection (1)(a), after “unwilling” insert “or unable”.
- (3) After subsection (5) insert – 5
 - “(6) Subsection (5) does not apply to rights of the charity or of a charity trustee or trustee for the charity in that capacity.”

9 Automatic disqualification from being a trustee

- (1) The Charities Act 2011 is amended as follows.
- (2) Section 178 (persons disqualified from being charity trustees or trustees for a charity) is amended as follows. 10
- (3) In subsection (1), in Case A, for “of any offence involving dishonesty or deception” substitute “of –
 - (a) an offence specified in section 178A;
 - (b) an offence, not specified in section 178A, that involves dishonesty or deception.” 15
- (4) In Case D –
 - (a) for “from the office of charity trustee or trustee for a charity” substitute “as a trustee, charity trustee, officer, agent or employee of a charity”;
 - (b) for “to which P was privy,” substitute “which P knew of and failed to take any reasonable step to oppose,” 20
- (5) At the end of subsection (1) insert –

“Case H

P has been found to be in contempt of court under Civil Procedure Rules for – 25

 - (a) making a false disclosure statement, or causing one to be made, or
 - (b) making a false statement in a document verified by a statement of truth, or causing one to be made.

Case I 30

P has been found guilty of disobedience to an order or direction of the Commission on an application to the High Court under section 336(1).

Case J

P is a designated person for the purposes of – 35

 - (a) Part 1 of the Terrorist Asset-Freezing etc Act 2010, or
 - (b) the Al-Qaida (Asset-Freezing) Regulations 2011.

Case K

P is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.”

- (6) After subsection (2) insert –
- “(3) While a person is disqualified under this section in relation to a charity, the person is also disqualified from holding an office or employment in the charity with senior management functions.
- (4) A function of an office or employment held by a person “(A)” is a senior management function if –
- (a) A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity), or
 - (b) it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.”
- (7) After section 178 insert –
- “178A Case A: specified offences**
- (1) The following offences are specified for the purposes of Case A –
- 1 An offence to which Part 4 of the Counter-Terrorism Act 2008 applies (see sections 41 to 43 of that Act).
 - 2 An offence under section 13 or 19 of the Terrorism Act 2000 (wearing of uniform etc, and failure to disclose information).
 - 3 A money laundering offence within the meaning of section 415 of the Proceeds of Crime Act 2002.
 - 4 An offence under any of the following provisions of the Bribery Act 2010 –
 - (a) section 1 (bribing another person),
 - (b) section 2 (offences relating to being bribed),
 - (c) section 6 (bribery of foreign public officials),
 - (d) section 7 (failure of commercial organisations to prevent bribery).
 - 5 An offence under section 77 of this Act.
 - 6 An offence of –
 - (a) misconduct in public office,
 - (b) perjury,
 - (c) perverting the course of justice.
- (2) An offence which has been superseded (directly or indirectly) by an offence specified in subsection (1) is also specified for the purposes of Case A.
- (3) In relation to an offence specified in subsection (1) or (2), the following offences are also specified for the purposes of Case A –
- (a) an offence of attempt, conspiracy or incitement to commit the offence;
 - (b) an offence of aiding, abetting, counselling or procuring the commission of the offence;

- (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to the offence.
- (4) The Minister may amend this section by regulations to add or remove an offence.”
- (8) Section 179 (disqualification: pre-commencement events etc) is amended as follows. 5
- (9) In subsection (1), after “178(1)” insert “or section 178A or any amendment of that section”.
- (10) At the end add—
- “(7) Case H does not apply in relation to a finding of contempt which, if it had been a conviction for which P was dealt with in the same way, would be a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974.” 10
- (11) Section 181 (waiver of disqualification) is amended as follows.
- (12) After subsection (2) insert— 15
- “(2A) A waiver under subsection (2)—
- (a) may relate to the whole of P’s disqualification or only to disqualification under section 178(3);
- (b) in relation to disqualification under section 178(3) may relate to a particular office or employment or to any office or employment of a particular description.” 20
- (13) In subsection (3) (presumption for waiver after 5 years) for “or E” substitute “, E or I”.
- (14) In section 183 (criminal consequences of acting while disqualified), in subsection (1)— 25
- (a) after “for a charity” insert “or to hold an office or employment”;
- (b) after “such a trustee” insert “or from holding that office or employment”.
- (15) Section 184 (civil consequences of acting while disqualified) is amended as follows. 30
- (16) In subsections (1) and (2)(a)—
- (a) after “for a charity” insert “or as officer or employee of a charity”, and
- (b) after “such a trustee” insert “or from holding that office or employment”.
- (17) In subsection (2)(b) after “for the charity” insert “or holding the office or employment”. 35
- (18) Section 348 (regulations subject to affirmative procedure etc) is amended as follows.
- (19) In subsection (1), after paragraph (b) insert—
- “(ba) regulations under section 178A(4) (offences specified for automatic disqualification of charity trustees);” 40
- (20) In subsection (2) after “(1)(a)” insert “, (ba)”.

- (21) In subsection (4) after “regulations under –” insert –
 “(za) section 178A(4), if the regulations add an offence,”.

10 Power to disqualify from being a trustee

- (1) The Charities Act 2011 is amended as follows.
- (2) After section 181 insert – 5
- “181A Disqualification orders**
- (1) The Commission may by order disqualify a person from being a charity trustee or trustee for a charity.
- (2) The order may disqualify a person – 10
- (a) in relation to all charities, or
- (b) in relation to such charities or classes of charity as may be specified or described in the order.
- (3) While a person is disqualified by virtue of an order under this section in relation to a charity, the person is also disqualified, subject to subsection (5), from holding an office or employment in the charity with senior management functions. 15
- (4) A function of an office or employment held by a person “(A)” is a senior management function if – 20
- (a) A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity), or
- (b) it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.
- (5) An order under this section may provide for subsection (3) not to apply – 25
- (a) generally, or
- (b) in relation to a particular office or employment or to any office or employment of a particular description.
- (6) The Commission may make an order disqualifying a person under this section only if it is satisfied that – 30
- (a) one or more of the conditions listed in subsection (7) are met in relation to the person,
- (b) the person is unfit to be a charity trustee or trustee for a charity (either generally or in relation to the charities or classes of charity specified or described in the order), and 35
- (c) making the order is desirable in the public interest in order to protect public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order. 40
- (7) These are the conditions –
- A that the person has been cautioned for a disqualifying offence against a charity or involving the administration of a charity.

- B that—
- (a) under the law of a country or territory outside the United Kingdom the person has been convicted in respect of an offence against a charity or involving the administration of a charity, and 5
 - (b) the act which constituted the offence would have constituted a disqualifying offence if it had been done in any part of the United Kingdom.
- C that the person has been found by Her Majesty’s Revenue and Customs not to be a fit and proper person to be a manager of a body or trust, for the purposes of paragraph 4 of Schedule 6 to the Finance Act 2010 (definition of charity for tax purposes), and the finding has not been overturned. 10
- D that the person was a trustee, charity trustee, officer, agent or employee of a charity at a time when there was misconduct or mismanagement in the administration of the charity, and— 15
- (a) the person was responsible for the misconduct or mismanagement,
 - (b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or 20
 - (c) the person’s conduct contributed to or facilitated the misconduct or mismanagement.
- E that the person was an officer or employee of a body corporate at a time when the body was a trustee or charity trustee for a charity and when there was misconduct or mismanagement by it in the administration of the charity, and— 25
- (a) the person was responsible for the misconduct or mismanagement,
 - (b) the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or 30
 - (c) the person’s conduct contributed to or facilitated the misconduct or mismanagement.
- F that any other past or continuing conduct by the person, whether or not in relation to a charity, is damaging or likely to be damaging to public trust and confidence in charities generally or in the charities or classes of charity specified or described in the order. 35
- (8) The Minister may amend this section by regulations to add or remove a condition.
- (9) In this section “disqualifying offence” means an offence within Case A in section 178(1). 40
- (10) Conditions A and B apply whether the caution or conviction occurred before or after the commencement of this section.
- (11) Condition B does not apply in relation to a conviction which is spent under the law of the country or territory concerned. 45
- (12) For the purposes of condition B—

- (a) an act punishable under the law of a country or territory outside the United Kingdom constitutes an offence under that law, however it is described in that law, and
- (b) “charity” means an institution that is a charity under the law of any part of the United Kingdom or that is established under the law of another country or territory principally for charitable, benevolent or philanthropic purposes. 5
- 181B Duration of disqualification, and suspension pending disqualification**
- (1) An order under section 181A must specify the period for which the person is disqualified. 10
- (2) The period –
- (a) must be not more than 15 years beginning with the day on which the order takes effect, and
- (b) must be proportionate, having regard in particular to the time when a conviction becomes spent, and to circumstances in which the Commission may or must grant a waiver under section 181 where a person is disqualified under section 178. 15
- (3) An order takes effect –
- (a) at the end of the time specified by Tribunal Procedure Rules for starting proceedings for an appeal against the order, if no proceedings are started within that time, or
- (b) (subject to the decision on the appeal) when any proceedings started within that time are withdrawn or finally determined. 20
- (4) The Commission may by order suspend a person from being a charity trustee or trustee for a charity if it has given notice under section 181C(1)(a) of its proposal to make an order under section 181A in respect of the person. 25
- (5) The Commission may not make an order under subsection (4) so as to suspend a person for a period of more than 12 months, but at any time before the expiry of an order the Commission may extend or further extend the suspension by a further order under that subsection, provided that –
- (a) the order does not extend the suspension for a period of more than 12 months, and
- (b) the total period of suspension is not more than 2 years. 35
- (6) An order under subsection (4) ceases to have effect –
- (a) if the Commission notifies the person that it will not proceed with its proposal, on the notification being given;
- (b) if the Commission makes the order under section 181A, on the order taking effect; 40
- or, if earlier, at the end of the period specified in accordance with subsection (5).
- (7) The Commission must review any order under subsection (4), at such intervals as it thinks fit. 45
- (8) If on a review it appears to the Commission that it would be appropriate to discharge an order under subsection (4) in whole or in

part, the Commission must do so (whether subject to any savings or other transitional provisions or not).

- (9) An order under subsection (4) made in the case of any person (“P”) may make provision, as respects the period of P’s suspension, for matters arising out of it, and in particular – 5
- (a) for enabling any person to execute any instrument in P’s name or otherwise act for P, and
 - (b) in the case of a charity trustee, for adjusting any rules governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting. 10
- This does not affect the generality of section 337(1) and (2).
- (10) While an order under subsection (4) is in force suspending a person from being a charity trustee or trustee for a charity, the person must not take up any appointment as a charity trustee or trustee for any other charity without the written approval of the Commission. 15

181C Disqualification orders: procedure

- (1) Before making an order in respect of a person under section 181A without the person’s consent the Commission must –
- (a) give the person not less than one month’s notice of its proposals, and 20
 - (b) invite representations to be made to it within a period specified in the notice.
- (2) Before making an order under section 181A in respect of a person who the Commission knows or believes to be a charity trustee or trustee for a charity, the Commission must also – 25
- (a) give notice of its proposals to each of the charity trustees of the charity in question;
 - (b) comply with the publicity requirement, unless the Commission is satisfied that for any reason compliance with the requirement is unnecessary. 30
- (3) The publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.
- (4) The time when any such notice is given is to be decided by the Commission. 35
- (5) Any notice of any proposals which is to be given under this section is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate.
- (6) Where the Commission gives notice of any proposals under this section – 40
- (a) it must take into account any representations made to it within the period specified in the notice, and
 - (b) it may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable; 45

but a notice under subsection (2)(a) need not specify a period for the purposes of paragraph (a) if the charity came to the Commission's knowledge or belief after the expiry of the period specified for the purposes of subsection (1)(b).

- (7) A notice under subsection (1) or (2)(a) – 5
 (a) may be given by post, and
 (b) if given by post, may be addressed to the recipient's last known address in the United Kingdom.
- (8) A notice under subsection (2)(b) is to be given in such manner as the Commission thinks sufficient and appropriate. 10
- (9) Where the Commission makes an order under section 181A in respect of a person it knows or believes to be a charity trustee or trustee for a charity it must (as well as serving it on that person) send a copy of the order and a statement of the Commission's reasons for making it – 15
 (a) to the charity in question (if a body corporate), or
 (b) (if not) to each of the charity trustees of the charity in question.
- (10) Nothing in this section requires the Commission to give notice, or send a document, to a person who cannot be found or has no known address in the United Kingdom.
- (11) Any documents required to be sent to a person under this section may be sent to, or otherwise served on, the person in the same way as an order made by the Commission under this Act could be served on the person in accordance with section 339. 20

181D Disqualification orders: variation and revocation

A person in respect of whom an order under section 181A is in force may at any time apply to the Commission for an order varying or discharging that order." 25

- (3) In section 183 (criminal consequences of acting while disqualified) –
 (a) in subsection (1), after "section 178" insert "or an order under section 181A"; 30
 (b) in subsection (2)(b), after "G" insert "in section 178".
- (4) In section 184 (civil consequences of acting while disqualified) –
 (a) in subsection (1), after "section 178" insert "or an order under section 181A";
 (b) in subsection (2)(a), after "section 178" insert "or an order under section 181A." 35
- (5) Section 348 (regulations subject to affirmative procedure etc) is amended as follows.
- (6) In subsection (1), before paragraph (c) insert –
 "(ba) regulations under section 181A(8) (conditions for disqualification by order);" 40
- (7) In subsection (2) before "or (c)" insert ", (bb)".
- (8) In subsection (4) before paragraph (a) insert –
 "(zb) section 181A(8), if the regulations add a condition,".

- (9) In Schedule 6 (appeals and applications to tribunal), after the entry relating to a decision of the Commission under section 181(2) to waive, or not waive, a person’s disqualification insert –

“Order made by the Commission under section 181A.	The persons are the person who is the subject of the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission; (b) substitute for all or part of the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission.	5 10
Order made by the Commission under section 181B(4).	The persons are the person who is the subject of the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission; (b) substitute for all or part of the order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission.	15 20
Decision of the Commission— (a) to discharge an order following a review under section 181B(7), or (b) not to discharge an order following such a review.	The persons are— (a) the person who is the subject of the order, (b) the charity trustees of the charity to which the order relates, (c) (if a body corporate) the charity itself, and (d) any other person who is or may be affected by the order.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission; (b) make the discharge of the order subject to savings or other transitional provisions; (c) remove any savings or other transitional provisions to which the discharge of the order was subject; (d) discharge the order in whole or in part (whether subject to any savings or other transitional provisions or not).	25 30
Decision of the Commission under section 181D not to revoke or vary an order under section 181A.	The persons are the person who is the subject of the order.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission; (b) substitute for the decision any other decision of a kind which could have been made by the Commission.”	35

11 Records of disqualification and removal

- (1) Section 182 of the Charities Act 2011 (records of persons removed from office) is amended as follows.
- (2) In subsection (1) –
(a) for “181” substitute “181A”;
(b) after “a register of” insert, “the following.” 40
- (3) The words in subsection (1) from “all persons” to the end become subsection (1A).
- (4) At the beginning of that subsection insert –
“(1A) The register must include”. 45

(5) After subsection (1A) insert –

“(1B) The register must include all persons who have been disqualified by an order of the Commission under section 181A.

(1C) The register must include all persons who have been removed from office by an order of the Commission under section 79A (removal of disqualified trustee).”

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12 Participation in corporate decisions while disqualified

In the Charities Act 2011, after section 184 insert –

“184A Sections 183 and 184: participation in corporate decisions

(1) For the purposes of sections 183 and 184, a person who is not a charity trustee or trustee for a charity is treated as acting as one if that person –

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(a) is an officer of a body corporate which is a charity trustee or trustee for a charity, and

(b) takes part in that capacity in any decision relating to the administration of the charity.

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(2) In subsection (1) “officer” includes any of the persons having general control and management of the administration of the body.”

13 Fund-raising

(1) Section 59 of the Charities Act 1992 (prohibition on certain fund-raising without agreement in prescribed form), is amended as follows.

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(2) In subsection (6) for “such requirements” substitute “the requirement in subsection (7) and such other requirements (including any requirements supplementing subsections (7) and (8))”.

(3) After that subsection insert –

“(7) The requirement in this subsection is that the agreement must specify all of the following –

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(a) any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, that the professional fundraiser or commercial participator undertakes to be bound by for the purposes of the agreement;

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(b) how the professional fundraiser or commercial participator is to protect vulnerable people and other members of the public from behaviour within subsection (8) in the course of, or in connection with, the activities to which the agreement relates;

(c) arrangements enabling the charitable institution to monitor compliance with subsection (1) or (2) by reference to the agreement.

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(8) The behaviour mentioned in subsection (7)(b) is –

(a) unreasonable intrusion on a person’s privacy;

(b) unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property;

40

(c) placing undue pressure on a person to give money or other property.”

(4) In the Charities Act 2011, after section 162 insert –

“162A Annual reports: fund-raising standards information

- (1) If section 144(2) applies to a financial year of a charity, the annual report in respect of that year must include a statement of each of the following for that year – 5
- (a) the approach taken by the charity to activities by the charity or by any person on behalf of the charity for the purpose of fund-raising, and in particular whether a professional fund-raiser or commercial participator carried on any of those activities;
 - (b) whether the charity or any person acting on behalf of the charity was subject to an undertaking to be bound by any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, in respect of activities on behalf of the charity, and, if so, what scheme or standard; 10
 - (c) any failure to comply with a scheme or standard mentioned under paragraph (b); 15
 - (d) whether the charity monitored activities carried on by any person on behalf of the charity for the purpose of fund-raising, and, if so, how it did so;
 - (e) the number of complaints received by the charity or a person acting on its behalf about activities by the charity or by a person on behalf of the charity for the purpose of fund-raising; 20
 - (f) what the charity has done to protect vulnerable people and other members of the public from behaviour within subsection (2) in the course of, or in connection with, such activities. 25
- (2) The behaviour within this subsection is –
- (a) unreasonable intrusion on a person’s privacy;
 - (b) unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property on behalf of the charity; 30
 - (c) placing undue pressure on a person to give money or other property.
- (3) In this section –
- (a) “commercial participator” and “professional fund-raiser” have the meaning given by section 58 of the Charities Act 1992 (control of fund-raising: interpretation)); 35
 - (b) “fund-raising” means soliciting or otherwise procuring money or other property for charitable purposes.
- (4) Section 58(6) and (7) of the Charities Act 1992 (references to soliciting money etc) apply for the purposes of this section as they apply for the purposes of Part 2 of that Act.” 40

14 Reserve powers to control fund-raising

- (1) The Charities Act 1992 is amended as follows.
- (2) In Part 2, after section 64A (reserve power to control fund-raising by charitable

institutions) insert –

“64B Reserve power in relation to fund-raising regulators

- (1) Regulations under section 64A may, in particular, impose on charitable institutions requirements to do any of the following –
- (a) to comply with requirements imposed by a regulator; 5
 - (b) to have regard to guidance issued by a regulator;
 - (c) to be registered with a regulator for the purpose of its regulation of charity fund-raising.
- (2) “Regulator” means a body specified in the regulations as a regulator for the purposes of this section. 10
- (3) A body may be specified as a regulator for the purposes of this section only if the regulation of charity fund-raising appears to the Minister to be a principal function of the body.
- (4) A body maintained out of money provided by Parliament may not be specified as a regulator (and this section does not confer power by regulations to establish a body to act as regulator).” 15
- (3) In Part 2, after section 64B insert –

“64C Reserve power to confer additional powers on Charity Commission

- (1) In the case of charity fund-raising which –
- (a) is carried on by a charity, a person managing a charity or a person or company connected with a charity, or 20
 - (b) involves soliciting or otherwise procuring funds for the benefit of a charity or a company connected with a charity, or for charitable purposes,
- regulations under section 64A may, in particular, make provision 25
conferring functions on the Charity Commission, including provision applying or reproducing, with or without modification, any provision of the Charities Act 2011.
- (2) The regulations may provide for a power that is exercisable by the Commission by virtue of the regulations to be exercisable by a person appointed by the Commission for the purpose.” 30
- (4) In section 64A(2) after “this section” insert “and sections 64B and 64C”.
- (5) In section 77(4) (regulations and orders) at the end insert “and, in the case of regulations made by virtue of section 64B or 64C, shall in particular consult the Charity Commission.” 35

15 Power to make social investments

- (1) In the Charities Act 2011, after section 292 insert –

“PART 14A

SOCIAL INVESTMENTS

292A Meaning of “social investment” 40

- (1) This section applies for the purposes of this Part.

- (2) A social investment is made when a relevant act of a charity is carried out with a view to both—
- (a) directly furthering the charity’s purposes; and
 - (b) achieving a financial return for the charity.
- (3) References to an act of a charity are, in the case of an unincorporated charity, to an act of the charity trustees. 5
- (4) A relevant act of a charity is—
- (a) an application or use of funds or other property; or
 - (b) taking on a commitment in relation to a liability of another person (such as a guarantee) that puts the charity’s funds or other property at risk of being applied or used. 10
- (5) An act mentioned in subsection (4)(a) is to be regarded as achieving 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.
- (6) A commitment mentioned in subsection (4)(b) is to be regarded as achieving a financial return if— 15
- (a) it is not called upon; or
 - (b) it is called upon without resulting in the expenditure of the whole of the funds or other property put at risk.
- (7) The fact that a relevant act may also have results other than those mentioned in subsection (2)(a) and (b) does not prevent the carrying out of that act being regarded as the making of a social investment. 20
- (8) The fact that carrying out a relevant act of a charity is regarded as the making of a social investment for the purposes of this Part does not of itself make the act an investment for any other purpose. 25

292B General power to make social investments

- (1) An incorporated charity has, and the charity trustees of an unincorporated charity have, power to make social investments.
- (2) The power conferred by this section may not be used to make a social investment involving— 30
- (a) the application or use of permanent endowment, or
 - (b) taking on a commitment mentioned in section 292A(4)(b) that puts permanent endowment at risk of being applied or used,
- unless the charity trustees expect that making the social investment will not contravene any restriction with respect to expenditure that applies to the permanent endowment in question. 35
- (3) The power conferred by this section—
- (a) may be restricted or excluded by the trusts of the charity;
 - (b) is (subject to paragraph (a)) in addition to any other power to make social investments that the charity or charity trustees may have. 40
- (4) This section and section 292C do not apply in relation to—
- (a) charities established by, or whose purposes and functions are set out in, legislation;
 - (b) charities established by Royal Charter; 45

but they apply in relation to all other charities, whether established before or after this section comes into force.

- (5) In subsection (4) “legislation” means—
- (a) an Act of Parliament or an Act or Measure of the National Assembly for Wales; or 5
 - (b) subordinate legislation (within the meaning of the Interpretation Act 1978) made under such an Act or Measure.

292C Charity trustees’ duties in relation to social investments

- (1) This section applies in relation to social investments that are made after section 292B comes into force, whether or not made by the exercise of the power conferred by section 292B. 10
- (2) The charity trustees of a charity must, before exercising a power to make a social investment—
- (a) consider whether in all the circumstances any advice about the proposed social investment ought to be obtained; 15
 - (b) obtain and consider any advice they conclude ought to be obtained; and
 - (c) satisfy themselves that it is in the interests of the charity to make the social investment, having regard to the benefit they expect it to achieve for the charity (by directly furthering the charity’s purposes and achieving a financial return). 20
- (3) The charity trustees of a charity must from time to time review the charity’s social investments.
- (4) When carrying out a review the charity trustees must—
- (a) consider whether any advice about the social investments (or any particular social investment) ought to be obtained; and 25
 - (b) obtain and consider any advice they conclude ought to be obtained.
- (5) The duties under this section may not be restricted or excluded by the charity’s trusts. 30
- (6) In the case of an unincorporated charity, the duties under this section apply in relation to relevant social investments in place of any duties under sections 4 and 5 of the Trustee Act 2000 that would otherwise apply.
- (7) In subsection (6) “relevant social investments” means social investments that are investments for the purposes of Part 2 of the Trustee Act 2000. 35
- (2) The Trustee Act 2000 is amended as follows.
- (3) In section 4 (standard investment criteria), after subsection (3) insert—
- “(4) This section has effect subject to section 292C(6) of the Charities Act 2011 (which disapplies the duties under this section in cases where they would otherwise apply in relation to a social investment within the meaning of Part 14A of that Act).” 40

- (4) In section 5 (advice), after subsection (4) insert –
- “(5) This section has effect subject to section 292C(6) of the Charities Act 2011 (which disapplies the duties under this section in cases where they would otherwise apply in relation to a social investment within the meaning of Part 14A of that Act).”

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16 Reviews of the operation of this Act

- (1) The Minister for the Cabinet Office must carry out reviews of the operation of this Act including, on each review, how the Act affects –
- (a) public confidence in charities,
 - (b) the level of charitable donations, and
 - (c) people’s willingness to volunteer.
- (2) After each review the Minister must publish a report of the review and lay a copy before Parliament.
- (3) The reports must be published not more than 5 years apart.
- (4) The first review must begin within 3 years after this Act is passed, and the report of that review must be published within 4 years after this Act is passed.

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17 Short title, extent and commencement

- (1) This Act may be cited as the Charities (Protection and Social Investment) Act 2016.
- (2) This Act extends to England and Wales only.
- (3) This section and section 16 come into force on the day on which this Act is passed.
- (4) The other provisions of this Act come into force on whatever day the Minister for the Cabinet Office appoints by regulations made by statutory instrument.
- (5) The regulations –
- (a) may appoint different days for different purposes;
 - (b) may make transitional, transitory or saving provision.

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Charities (Protection and Social Investment) Bill

[HL]

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B I L L

[AS AMENDED IN PUBLIC BILL COMMITTEE]

To amend the Charities Act 1992 and the Charities Act 2011.

Brought from the Lords, 15 September 2015.

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be Printed, 7 January 2016.*

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