

HOUSE OF LORDS

Select Committee on the Constitution

2nd Report of Session 2015–16

**Cities and Local Government
Devolution Bill [HL];
Psychoactive Substances Bill
[HL]; Charities (Protection and
Social Investment) Bill [HL]**

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Select Committee on the Constitution

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CONTENTS

	<i>Page</i>
Cities and Local Government Devolution Bill [HL]	6
Psychoactive Substances Bill [HL]	9
Charities (Protection and Social Investment Bill) [HL]	13

Cities and Local Government Devolution Bill [HL]; Psychoactive Substances Bill [HL]; Charities (Protection and Social Investment) Bill [HL]

1. This report draws to the attention of the House a number of matters arising from three bills: the Cities and Local Government Devolution Bill [HL]; the Psychoactive Substances Bill [HL]; and the Charities (Protection and Social Investment) Bill [HL]. Our comments on each bill are dealt with separately below.
2. There is one general matter that we wish to draw to the attention of the House. In all three bills, the first to be introduced in the House in this Parliament, we see the continuation of a trend that was evident during the last Parliament—a tendency towards the introduction of vaguely worded legislation that leaves much to the discretion of ministers. This is apparent in the broad discretion given to the Secretary of State to implement the Cities and Local Government Devolution Bill [HL], and in the vague language in the Psychoactive Substances Bill [HL] and the Charities (Protection and Social Investment) Bill [HL] which raises concerns about legal certainty and the precise scope of powers being afforded to the Secretary of State to make changes through secondary legislation.
3. We recognise that primary legislation cannot anticipate every eventuality, or be able to set in stone every detail. Secondary legislation and judicial interpretation will continue to be required on occasion to implement primary legislation. Nonetheless, the House may wish to be mindful of this trend as further legislation is introduced during this Parliament, and to ensure that bills contain an appropriate level of detail and provide a suitable degree of legal certainty. We will continue to draw the attention of the House to this issue in future.

CITIES AND LOCAL GOVERNMENT DEVOLUTION BILL [HL]

4. The Cities and Local Government Devolution Bill [HL] was introduced in the House of Lords on 28 May 2015 and received its second reading on 8 June. Its Committee stage is scheduled for 22 and 24 June.

Background

5. The Bill takes forward the Government’s plans for more powers for cities and regions, creating the opportunity for a ‘combined authority’ and directly elected mayor to be created for areas which seek these powers. This initiative flows from the commitment made in the Conservative Party manifesto to “devolve powers and budgets to boost local growth in England” and to “devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors”.¹

The Bill

6. The Bill is, in a sense, enabling legislation since it provides the outline of a legislative framework which can then be applied flexibly to different areas by secondary legislation.² It sets out the institutional framework for further changes and the process by which these might be brought about and new bodies created. It does not seek to set out in detail what the substance of these changes might be or the powers that might be conferred. Most of the provisions in the Bill are amendments to the Local Democracy, Economic Development and Construction Act 2009.
7. To summarise the Bill’s key purposes, it allows for secondary legislation to:
- provide for an elected mayor for the combined authority’s area who would exercise specified functions individually and chair the authority;
 - provide for the possibility for the mayor additionally to undertake the functions of Police and Crime Commissioner for the combined authority area (in place of the Police and Crime Commissioner);
 - cancel, where a mayor is to have Police and Crime Commissioner functions, Police and Crime Commissioner elections that would otherwise have taken place and allow the existing Police and Crime Commissioner’s term of office to be extended until the mayor is in place;
 - remove the current statutory limitation on functions that can be conferred on a combined authority (currently economic development, regeneration, and transport); and
 - provide for streamlined local governance as agreed by councils.

¹ Conservative Party Manifesto 2015, p.13: <https://www.conservatives.com/manifesto> [accessed 19 June 2015]

² [Explanatory Notes to the Cities and Local Government Devolution Bill \[HL\]](#) [HL Bill 1(2015–160-EN)], para 1

Delegated powers

8. Since much of the bill enables the Government to devolve powers as necessary through secondary legislation, wide discretionary powers are to be given to the Secretary of State to bring about what could be a very extensive devolution of power in England. This differs significantly from the devolution processes for Scotland, Wales and Northern Ireland in 1997–98, where the statutes clearly identified the recipients of devolved authority, the matters devolved, and the limitations upon those powers. It is not unusual to vest the Secretary of State with wide discretionary powers in the area of local government, but in this case the Secretary of State has wide powers effectively to reorganise the whole system of local government in England.
9. Although broad delegated powers are evident in clause 1 (relating to the process of mayoral elections and the length of office terms to be served), and clause 10 (as regards local authority structures, boundaries, and governance), this discretion is particularly evident in clauses 5 and 6.
10. Clause 5 empowers the Secretary of State, by order, to confer on any combined authority a broad set of functions going beyond economic development, regeneration and transport (which can already be devolved under the Local Democracy, Economic Development and Construction Act 2009). This can be done if the authorities concerned undertake a review and publish a scheme, or if the Secretary of State considers that the order is appropriate and the authorities provide consent.
11. Clause 6 confers a broad power on the Secretary of State by order to transfer functions from a public authority that are exercisable in relation to a combined authority's area to that combined authority. There is also a power to transfer property, rights and liabilities from a public authority to the combined authority and to abolish the public authority if it will no longer have any functions. This clause provides for the transfer of potentially very extensive powers. Notably, however, such a transfer can only take place if a "proposal for the making of the order in relation to the combined authority has been made to the Secretary of State by the appropriate authorities", which means the local authorities in question; or in the case of an existing combined authority, if the combined authority consents. And the ultimate decision is for the Secretary of State who must consider that "the making of the order is likely to improve the exercise of statutory functions in the area or areas to which the order relates".
12. **Clauses 5 and 6 are broadly framed and would allow the Secretary of State to reallocate very extensive powers from central government to local government, transfer powers within local government, and to abolish public authorities, by order. This equates to a significant extension of Ministers' powers—powers which are so broadly framed that they could potentially involve the amendment of primary legislation by order, known as Henry VIII powers.**

Other matters

13. It is not clear to which cities and regions these reforms will apply since the changes will, in general, be brought forward on the basis of proposals from

the cities and regions themselves. It is widely thought that the reforms will apply primarily to England's largest city-regions (the Core Cities Group³), but the Bill is drawn in more general terms and could potentially apply to a single county if all the councils in the area agree.

14. One result is that local government in England is likely to become more complicated, as different combined authorities receive different packages of powers. This is a significant departure from past practice which has operated on the basis of a finite number of different council models. The Bill, by contrast, creates the possibility of bespoke arrangements for each combined authority. It might be argued that the proposed system is a paradigm example of demand-and-supply devolution, responsive to local needs. On the other hand there are real concerns about the complexity of the system that may result, and the degree of asymmetry which these changes may bring about. In particular, there is a potential for a significant divergence between urban and rural local government arrangements.
15. Although these proposals are the development of an on-going process started in the Local Democracy, Economic Development and Construction Act 2009, we note that they are being taken forward very quickly. There has been no green paper, white paper or draft bill for pre-legislative scrutiny.⁴
16. **We bring these other matters to the attention of the House.**

³ Comprising Birmingham, Bristol, Cardiff, Glasgow, Leeds, Liverpool, Manchester, Newcastle, Nottingham and Sheffield.

⁴ The Committee has made recommendations about appropriate levels of pre-legislative scrutiny in its report *The Process of Constitutional Change* (15th Report, Session 2010–12, HL Paper 177).

PSYCHOACTIVE SUBSTANCES BILL [HL]

17. The Psychoactive Substances Bill [HL] was introduced in the House of Lords on 28 May 2015. It received its second reading on 9 June. Its committee stage is scheduled to begin on 23 June.

Background

18. The Bill is intended to address issues relating to substances that cause ‘legal highs’: that is, substances that are similar in chemical composition and/or effect to controlled drugs under the Misuse of Drugs Act 1971, but which have not been so designated. In the light of concern about increasing numbers of deaths associated with the use of such substances, the Home Office established an Expert Panel to consider possible legislative ways forward. It recommended an approach that is broadly in line with that which is now found in the Bill.⁵ That approach is premised on the notion that substance-by-substance specification is impractical (on account of the rapid proliferation of similar but subtly distinct psychoactive substances)⁶ and that general prohibition of certain activities in respect of all such substances is to be preferred, subject to certain qualifications.

The Bill

19. The central premise of the Bill is that, subject to two types of qualification, certain activities in respect of psychoactive substances should constitute criminal offences, the qualifications being:
- that certain substances that would otherwise count as psychoactive substances should not so count by virtue of their being exempted substances;⁷
 - that certain acts in respect of psychoactive substances should not constitute criminal offences on account of their being excepted acts.⁸
20. A “psychoactive substance” is defined in clause 2 as “any substance” that is “capable of producing a psychoactive effect in a person who consumes it” and is not an “exempted substance”. A substance produces a psychoactive effect “if, by stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state”.
21. The Bill inevitably exists in tension (at least to some extent) with the principle of legal certainty since its *raison d’être* is the regulation of activities in respect of substances that may not currently exist and whose nature and composition cannot readily be prescribed in advance with any accuracy.

⁵ Home Office, *New Psychoactive Substances Review. Report of the Expert Panel* (September 2014): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368583/NPSexpertReviewPanelReport.pdf [accessed 19 June 2015]

⁶ Approximately 500 psychoactive substances have been designated under the [Misuse of Drugs Act 1971](#): *New Psychoactive Substances Review.*, p 17. The 1971 Act was amended by the [Police Reform and Social Responsibility Act 2011](#) so as to introduce a supplementary regime for the temporary (one-year) designation of substances, so as to enable proscription pending the relatively lengthy process of permanent designation under the 1971 Act.

⁷ Clause 2(1)(b).

⁸ Clauses 4(2), 5(4), 7(2) and 8(5).

However, it does not follow that a Bill designed in this way need make unacceptably broad inroads into the principle of legal certainty, since much turns upon the clarity with which its *prima facie* sweeping proscriptive reach is qualified. It is against that background that the exempted-substances and excepted-acts regimes fall to be considered.

Exempted substances

22. An otherwise-psychoactive substance will not count as such for the purpose of the Bill if—and only if—it is an exempted substance listed in schedule 1.⁹ Exempted substances include: controlled drugs;¹⁰ certain medicinal products; alcohol; nicotine; tobacco products; caffeine; food and drink.
23. Most of the definitions in schedule 1 are relatively clear. However, some are not. For example, to count as “food” or “drink”, the substance must be ordinarily consumed as food or drink and must not contain a prohibited ingredient. However, the boundary delineating things that are and are not “ordinarily consumed” is not without difficulty. Meanwhile the circumstances in which food will be free from “prohibited ingredients” is not wholly clear, a prohibited ingredient being defined as “any psychoactive substance which is (a) not naturally occurring in the substance, and (b) the use of which in or on food is not authorised by an EU instrument”. It is also worth noting that the relationship between some exemptions is not clear. For instance, “caffeine products” are an exempted substance to which no qualification relating to “prohibited ingredients” applies, yet many such products will also be “drinks” to which that qualification does apply.
24. **Given that schedule 1 is central to the ambit of the new criminal offences created by the Bill, the House may wish to consider whether the drafting of this part of schedule 1 is sufficiently clear, and whether it offers sufficient legal certainty.**

Ministerial authority in respect of exempted substances

25. Clause 3 confers upon the Secretary of State certain powers in respect of what counts as an exempted substance. Some features of this scheme diminish any scope for concern from a constitutional perspective: the affirmative procedure applies; there is a duty to consult prior to exercising the power; and, while the Secretary of State can both add and remove substances from the list of exempted substances, the removal power applies only to substances that were, in the first place, added by the Secretary of State. It is not, therefore, open to the Secretary of State by regulations to remove substances mentioned in the original version of schedule 1 (“originally scheduled substances”). There are, however, two further aspects of the scheme that should be noted.
26. First, although the Secretary of State may not remove from schedule 1 originally scheduled substances, the Secretary of State is authorised to “vary” the description of “any” substance, including originally scheduled substances. This presumably means that the Secretary of State could narrow

⁹ Clause 3(1).

¹⁰ If a substance is a controlled drug under the Misuse of Drugs Act 1971, it cannot be a psychoactive substance. The two regimes are thus wholly distinct; substances cannot fall within the purview of both.

the definition of such substances, thereby expanding the range of psychoactive substances upon which the Bill bites.

27. **The House may wish to consider whether the safeguards mentioned in paragraph 25 are sufficient to offset the concerns that arise in relation to authorising the Secretary of State to expand the range of substances which fall subject to the Bill by “varying” the definitions of originally scheduled substances. Alternatively, if the power to “vary” is not regarded as objectionable *per se*, a clearer definition of what “varying” means in this context may be appropriate.**
28. Second, the powers of the Secretary of State to add substances to, remove substances from and vary the description of substances in schedule 1 are unconstrained by any explicit statement of the purpose or purposes for which that power may be exercised. Any constraints upon the purposes for which the powers could be used would therefore have to be inferred from the scheme of the Bill. However, the scope for inferring purpose-based limits upon the Secretary of State’s power is likely to be limited, since the Bill adopts an ostensibly neutral conception of what should constitute a (non-exempted) psychoactive substance: for instance, no notion of “harm” is (explicitly) invoked anywhere in the Bill so as to delineate the range of substances upon which its provisions have effect.
29. **The House may wish to consider whether it is appropriate to confer upon the Secretary of State a power to amend schedule 1 that is unconstrained by any textual indication as to the purpose or purposes for which the power may be used.**

Excepted acts

30. Even if a psychoactive substance is not exempted, criminal liability will be avoided if the commission of an act that would otherwise constitute an offence under the Bill is an excepted act.¹¹ However, the Bill makes no provision as to what an excepted act might be. Instead, clause 10 authorises the Secretary of State to specify excepted acts by making regulations. Such regulations may only be made if a duty to consult is first discharged, must be made by statutory instrument, and are subject to the affirmative procedure. However, those safeguards notwithstanding, there are two potential grounds for concern.
31. First, as with the exempted-substances regime, the provision authorising the Secretary of State to specify excepted acts is expressed in very broad terms. In particular, no textual indication is given as to the purpose or purposes for which the power to specify excepted acts may be exercised. **The House may wish to consider whether it is appropriate to confer such a broad power on the Secretary of State, and in particular whether it should be unconstrained by any textual indication as to the purpose or purposes for which it may be exercised.**

¹¹ Clauses 4(2), 5(4), 7(2) and 8(5). Examples of uses to which the excepted-acts regime might be put include allowing “those who are conducting or supporting legitimate research into psychoactive substances to do so by excluding specified research activity from the ambit of the offences” and enabling “healthcare professionals (and those in the distribution chain) when acting in their professional capacity [to supply] to a patient a psychoactive substance which falls outside the exemption list”: [Explanatory Notes to the Psychoactive Substances Bill \[HL\]](#) [HL Bill 2 (2015–16)-EN], para 78.

32. Second, there is a fundamental difference between the exempted-substances and excepted-acts regimes. The (initial) details of the former are written into the Bill, by virtue of schedule 1 itself and the conferral upon the Secretary of State of only limited powers to alter that schedule.¹² In contrast, the details of the excepted-acts regime are wholly absent from the Bill. Whether any such regime is in fact established and, if so, on what terms are instead matters that are wholly for the Secretary of State to determine. This point is compounded by the facts that (as noted above) the breadth of that discretion is substantial and the manner in which the discretion is exercised may significantly affect the range of conduct that is criminalised by the Bill. **The House may wish to consider whether it is appropriate to leave the details of the excepted-acts regime to be determined wholly through secondary legislation.**

¹² The Secretary of State has powers to vary and add to schedule 1, but not to remove substances from it.

CHARITIES (PROTECTION AND SOCIAL INVESTMENT BILL)

[HL]

33. The Charities (Protection and Social Investment) Bill [HL] was introduced in the House of Lords on 28 May 2015 and had its second reading on 10 June. The Committee stage is scheduled to commence on 23 June.

Background

34. The Bill was introduced in the light of concerns about the Charity Commission’s capacity to operate as an effective regulator, with particular respect to its ability to investigate and deal with allegations of serious financial irregularities and fraud. Such concerns were highlighted by Lord Hodgson of Astley Abbots in his review of the operation of the Charities Act 2006.¹³ Further post-legislative scrutiny of the 2006 Act was conducted by the House of Commons Public Administration Select Committee, which concluded that if the Commission were to become a “proactive regulator”, legislation would be needed in order to “clarify” its powers.¹⁴ In 2013 the Public Accounts Committee concluded that the Commission was an ineffective, reactive regulator.¹⁵ The National Audit Office issued reports that were similarly critical.¹⁶
35. In 2013, the Government consulted on proposed changes to the Charity Commission’s regulatory powers,¹⁷ following which a draft Protection of Charities Bill was published.¹⁸ The draft Bill was scrutinised by a Joint Committee of the Houses of Parliament; its report was largely supportive of the draft Bill.¹⁹

The Bill

36. The Bill extends to England and Wales only. It amends and inserts new provisions into the Charities Act 2011, which is now the principal piece of legislation in this area. The Bill gives the Charity Commission powers to issue “official warnings”; alters its powers to remove trustees, including by allowing it to persist with a trustee-removal process (thereby securing the trustee’s disqualification) even if the trustee resigns; authorises the

¹³ Such a review was required by section 73 of the Charities Act 2006. Cabinet Office, *Trusted and Independent: Giving Charity back to Charities. Review of the Charities Act 2006* (July 2012): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79275/Charities-Act-Review-2006-report-Hodgson.pdf [accessed 19 June 2015]

¹⁴ Public Administration Select Committee, *The role of the Charity Commission and “public benefit”: Post-legislative scrutiny of the Charities Act 2006* (Third Report, Session 2012–13, HC 76), para 25

¹⁵ Public Accounts Committee, *The Charity Commission* (Forty Second Report, Session 2013–14, HC 792), summary.

¹⁶ National Audit Office, *The Cup Trust*, HC 814, (December 2013): <http://www.nao.org.uk/wp-content/uploads/2013/11/10299-001-Cup-Trust-Book1.pdf> [accessed 19 June 2015]; and *The regulatory effectiveness of the Charity Commission*, HC 813, (December 2013): <http://www.nao.org.uk/wp-content/uploads/2013/11/10297-001-Charity-Commission-Book.pdf> [accessed 19 June 2015]

¹⁷ Cabinet Office, *Consultation on extending the Charity Commission’s powers to tackle abuse in charities*, (4 December 2013): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263248/Consultation-on-Extending-the-Charity-Commissions-powers_4-December.pdf [accessed 19 June 2015]

¹⁸ *Draft Protection of Charities Bill*, Cm 8954, October 2014

¹⁹ Joint Committee on the Draft Protection of Charities Bill, *Draft Protection of Charities Bill* (Report, Session 2014–15, HL 108, HC 813)

Commission to direct the winding up of a charity; extends the circumstances in which a person is automatically disqualified from being a trustee; treats disqualified trustees as also being disqualified from performing senior management roles in the charity; and authorises the Commission to issue disqualification orders in respect of trustees who are not automatically disqualified. The Bill also clarifies that charities can make “social investments”.²⁰

Henry VIII powers

37. Two clauses in the Bill contain Henry VIII powers. Clause 9 inserts a new provision, section 178A, into the Charities Act 2011, setting out those offences conviction for which triggers automatic disqualification. Clause 9 also allows the Minister, by regulations, to amend section 178A by adding or removing offences. Clause 10, meanwhile, provides that disqualification orders may be issued only if (among other things) one of six specified conditions is met, and permits the Minister by regulations to add or remove specified conditions. Regulations made under both clauses 9 and 10 would be subject to the affirmative procedure.²¹
38. **While the conferral of Henry VIII powers for the purpose of amending the lists of specific criminal offences (in clause 9) and conditions (in clause 10) is justifiable, the House may wish to consider whether these powers are framed inappropriately broadly.** Clause 9 simply provides that the Minister is permitted “to add or remove an offence” from the list set out in new section 178A. There are, however, no criteria stipulated in the Bill that would constrain the scope of that discretion by (for instance) specifying that only certain *types* of offences, or only offences of certain levels of *seriousness*, may be added. It does not follow that the discretion is limitless. It is, for instance, bounded by the administrative-law principle that statutory powers must be used consistently with the purpose of the Act. However, such implicit constraints are a poor substitute for explicit ones.
39. A similar point arises in relation to the regulation-making power in clause 10, which baldly states that the Minister may “add or remove” a condition from the list of conditions that must be satisfied before the Commission’s power to issue disqualification orders is triggered. In its memorandum to the Joint Committee on the Draft Protection of Charities Bill, the House of Lords Delegated Powers and Regulatory Reform Committee expressed concern about this matter.²² It noted that the power “seems very wide” in the absence of any requirement that new conditions should be limited to conduct which could have a bearing upon a person’s fitness to be a trustee.

Legal certainty

40. In correspondence with the Joint Committee on the Draft Protection of Charities Bill, the Joint Committee on Human Rights (JCHR) expressed concern about certain aspects of the drafting of the draft Bill. The JCHR noted that, as a result, “broad and coercive powers” were conferred upon the

²⁰ That is, investments that are made with a view to both directly furthering the charity’s purposes and achieving a financial return for the charity.

²¹ This would be effected by means of amending [section 348 of the Charities Act 2011](#).

²² Joint Committee, *Draft Protection of Charities Bill*, appendix 3

Charity Commission.²³ In particular, attention was drawn to the following matters.

41. A new section 76A would be inserted into the Charities Act 2011 by clause 3 of the Bill. At present, the 2011 Act authorises the Commission to take significant regulatory action²⁴ provided that a relevant trigger condition is satisfied. One such condition is that the Commission is “satisfied” that “there is or has been any misconduct or mismanagement in the administration of the charity”. The effect of new section 76A is that, in cases in which the Commission is also satisfied that such mismanagement is attributable (in whole or part) to a particular person, the Commission may, when deciding whether or how to exercise its powers, take account of “any other conduct 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”. This formulation captures a very wide and ill-defined range of conduct, given that: (a) damage need only be “likely”; (b) the requirement of (likely) damage is adjectivally unqualified by any requirement as to seriousness; (c) the notion of “public trust and confidence” is undefined and relatively open-ended; (d) the conduct in question need not be in relation to any charity.
42. Clause 10 of the Bill would insert into the Charities Act 2011 a new section 181A authorising the Commission by order to disqualify a trustee. Such action would be likely to have substantial personal, financial and/or reputation repercussions for the individual concerned; as such, it represents a significant coercive power. The power is exercisable provided that the Commission is satisfied that (a) the trustee is unfit for such a role, (b) disqualification is in the public interest in order to protect public trust and confidence, and (c) one of seven further conditions is met. One of those further conditions is that “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”. This formulation raises concerns similar to those referred to in paragraph 41.
43. In a number of contexts, the Bill relies upon the notion of someone being “privity to” misconduct or mismanagement in determining whether, and if so how, the Charity Commission’s coercive powers may be exercised.²⁵ Being “privity to” mismanagement or misconduct is an alternative to being “responsible for” or having “contributed to” or “facilitated” mismanagement or misconduct. As such, the notion of being “privity to”, unless redundant, must mean something other (and broader) than facilitation, contribution or responsibility. The Joint Committee on the Draft Protection of Charities Bill recommended that the phrase “privity to” should be excised from the Bill (and

²³ *Ibid*, appendix 4

²⁴ Including suspending trustees, offices and employees, appointing additional trustees, vesting a charity’s property in the official custodian, restricting transactions in respect of a charity’s property, and appointing an interim manager.

²⁵ Charities Act 2011, new section 76A(2)(a) (to be inserted by clause 3); new section 79(4)(a) (to be inserted by clause 4); new section 181A(7)D and E (to be inserted by clause 10).

from the Charities Act 2011 in which it also appears)²⁶ on the ground of its vagueness.²⁷

44. As noted above, the JCHR, in correspondence submitted to the Joint Committee on the Draft Protection of Charities Bill, expressed concern about the breadth of the powers conferred upon the Commission as a result of the provisions referred to in paragraphs 41–43 above. The JCHR said:

“In the absence of further definition in the Bill itself, or other guidance, such broad and vague language significantly increases the power of the Commission and provides insufficient certainty to both individual trustees and charities about the possible consequences of their conduct in relation to matters which may have nothing to do with the management or administration of a charity.”²⁸

45. **The concerns identified by the JCHR from a human-rights perspective are mirrored by corresponding constitutional concerns on the grounds of legal certainty. We draw these concerns to the attention of the House.**

²⁶ Charities Act 2011, sections [79\(2\)\(a\)\(i\)](#) and [178\(1\)](#)

²⁷ Joint Committee, *Draft Protection of Charities Bill*, paras 122–125

²⁸ *Ibid*, para 123