

Response ID ANON-Z2S2-SWYK-Y

Submitted to Call for evidence and views on the Charities Bill
Submitted on 2021-09-02 11:14:19

Introduction

1 How would you like your response to be published?

I would like my response to be published.

2 What is your name?

Name:
Jenny Ebbage and Sarah Burrows

3 What is your email address?

Email:
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4 What is your organisation?

Organisation:
Edwards & Co. Solicitors

Policy Objectives of the Bill

5 Do you think that the Bill will meet the policy objectives? If not, why not?

Yes

Please provide further comments:

6 Do you foresee any unintended consequences of any of the policy objectives of the Bill?

No

Please provide further comments:

Clause 1: Actions of Commission staff treated as Commission actions

7 Do you feel the retrospective effect to make the majority of decisions taken by Commission staff lawful is dealt with sufficiently in the Clause?

Yes

Please provide further comments:

8 Do you believe that individuals' rights under the ECHR are protected by the fact that decisions still subject to ongoing legal proceedings will not be subject to the Clause?

Unsure

Please provide further comments:

We agree that those individuals with ongoing legal proceedings should have those matters concluded through the court or tribunal as appropriate.

We agree that the certain matters set out in clause 1 (5) are not subject to clause 1 (2), rendering those decisions and orders unlawful. However, we do not know what the consequences of that will be for the Charity Commission if those matters are not the subject of court or tribunal proceedings.

9 Do you feel that the Refreshed Appeal Rights in Clause 1 are sufficient?

Unsure

If not, what would you propose?:

Affording a further period of 42 days for an appeal notice to be filed from the date on which the Act receives Royal Assent is welcome. However, this is a short timeframe for a charity board to meet and take a decision and obtain legal advice on such a matter of importance and a longer period would be welcomed such as three to six months.

Currently a charity can raise a decision review within 42 days of a decision and/or submit an appeal to the Charity Tribunal. Those time periods run concurrently which means a charity often has to submit two concurrent applications and is likely to seek legal advice on whether to also make an appeal to the Charity Tribunal to keep that option open should the decision review by the Commission not meet with their approval. An amendment to the Bill to allow for time periods to be extended to allow for an appeal to the Charity Tribunal after the result of the decision review would be more practical for charities and avoid proceedings in the Charity Tribunal having to be withdrawn.

The matter of the concurrent time periods has been raised in the ongoing Independent Panel's Review of Charity Regulation.

Do you have any other comments in relation to Clause 1?

This Bill will provide clarity and certainty for charities that their registration is valid and that many orders, consents and decisions of the Commission are valid relating to operational matters such as changes to objects clauses, schemes, authorisations upon which they have relied. It provides protection to charity trustees in relation to decisions taken by them in reliance upon a Commission order consent or decision.

However there may be those aggrieved at the exclusion of the matters in clause 1(5) on important issues such as inquiry reports and for example, orders for the protection of charities or removal of trustees, where the decision taken by Commission staff may have been correct in substance yet was rendered unlawful because the staff did not have the lawful delegated authority to make those decisions on behalf of the Commission.

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10 Please provide further comments in relation to Clause 1.

Do you have any other comments in relation to Clause 1?:

This Bill will provide clarity and certainty for charities that their registration is valid and that many orders, consents and decisions of the Commission are valid relating to operational matters such as changes to objects clauses, schemes, authorisations upon which they have relied. It provides protection to charity trustees in relation to decisions taken by them in reliance on a Commission order consent or decision.

However, there may be those aggrieved at the exclusion of the matters in clause 1(5) on important issues such as inquiry reports and for example, orders for the protection of charities or removal of trustees, where the decision taken by Commission staff may have been correct in substance yet was rendered unlawful because the staff did not have the lawful delegated authority to make those decisions on behalf of the Commission.

Clause 2: Power of Commission to delegate to staff

11 Do you feel the power of the Commission to delegate to staff certain functions that are listed in a Scheme of Delegation is sufficient?

Yes

12 Please provide further comments on the power to delegate, or the Scheme of Delegation, including: Will it allow Commission staff to operate effectively and efficiently?

Additional Comments on on Scheme of Delegation:

We agree that the matters identified in clause 2 not to be delegated to staff are correct given their significance.

We agree with the power of delegation to staff subject to the Scheme of Delegation. That should enable Commission staff to operate and reach timely decisions. This will facilitate decision making in charities particularly on transactions where often months or even years elapse and which have operational impact on the charity. The Commission will need to be properly resourced to have appropriate staff numbers for the workload.

13 Please provide further comments on the fact that it is the Department for Communities who will make and publish the Scheme of Delegation (after consultation with the Commission)?

Any comments on DfC making and publishing the Scheme of Delegation?:

We do not know the internal workings of the Commission. The content of the Scheme of Delegation would need to be practical and workable. We agree that the Department has to consult the Commission before making the Scheme. It is the Department that is responsible for the charity legislation and it is the sponsoring Department of the Commission.

14 Please provide any further comments in relation to Clause 2.

Do you have any other comments in relation to Clause 2?:

A review of the resourcing of the Commission would be timely (if not already underway) to assess the impact of the Bill and whether any additional staff support or systems are needed.

Clause 3: Power to introduce a registration threshold via regulations

15 Do you feel it is appropriate to have this power in the Bill?

Unsure

Please provide further comments:

We can see "pros and cons" in adopting this power. For very small local organisations such as parent teacher bodies or small local societies formed for a local interest such as history society formal registration seems too burdensome. Some organisations have no need of charity status but have it bestowed upon them because of the objects clause in their constitution. On the other hand requiring all institutions that meet the statutory definition to register ensures a full oversight of all charities (once the register is current) for the benefit of the public and charity status gives confidence to funders and donors. Perhaps a simpler system for bodies that are very small in size and income would be a suitable compromise with an option to apply to register if the institution wished to have charity status. However, even if exempt from registration it needs to be made clear that such institutions remain charities at law and their trustees remain subject to the legal duties and responsibilities and liabilities of trustees. It may be more confusing for institutions if they do not have to register. It should be made clearer that the Commission would still have a remit as regulator over a charity that was exempt from registration as it is still a charity at law.

16 Please provide any further comments on the list of matters that the regulations will cover? Are there any matters missing from the list?

Any missing matters or other comments:

It would have been good to have taken this opportunity to bring into force that part of the legislation which provides for Charitable Incorporated Organisations (CIO's). We do understand that this forms part of the remit of the Independent Panel.

17 Please provide any further comments on Clause 3.

Further comments:

18 Please provide any further comments you wish to make on the Charities Bill.

Further comments on the Charities Bill:

We are pleased that this legislation is being proposed as it will provide certainty for our clients and the advice that we give to them following the outcome of the Court of Appeal decision.