

Charities Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Digital, Culture, Media and Sport, have been ordered to be published as HL Bill 17 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Barran has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Charities Bill [HL] are compatible with the Convention rights.

Charities Bill [HL]

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TO

Amend the Charities Act 2011 and the Universities and College Estates Act 1925; and for connected purposes.

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:—

PART 1

PURPOSES, POWERS AND GOVERNING DOCUMENTS

Charitable companies

1 Alteration of charitable company’s purposes

- (1) Section 198 of the Charities Act 2011 (alteration of objects by companies and Commission’s consent) is amended as follows. 5
- (2) In subsection (2)(a), for the words from “adding” to the end of the paragraph substitute “which alters the charitable purposes of the company,”.
- (3) After subsection (2) insert—
- “(2A) In considering whether to consent to an alteration falling within subsection (2)(a) the Commission must have regard to— 10
- (a) the purposes of the company when it was established, if and so far as they are reasonably ascertainable,
 - (b) the desirability of securing that the purposes of the company are, so far as reasonably practicable, similar to the purposes being altered, and 15
 - (c) the need for the company to have purposes which are suitable and effective in the light of current social and economic circumstances.”

*Charitable incorporated organisations***2 Amendments to constitution of CIOs**

- (1) The Charities Act 2011 is amended as follows.
- (2) In section 226 (amendment of constitution and Commission’s consent) –
- (a) for subsection (1) substitute – 5
- “(1) An amendment to a CIO’s constitution which would make a regulated alteration –
- (a) requires the prior written consent of the Commission, and
- (b) cannot take effect if such consent has not been obtained.”; 10
- (b) after subsection (2) insert –
- “(2A) In considering whether to consent to an alteration falling within subsection (2)(a) the Commission must have regard to –
- (a) the purposes of the CIO when it was established, if and so far as they are reasonably ascertainable, 15
- (b) the desirability of securing that the purposes of the CIO are, so far as reasonably practicable, similar to the purposes being altered, and
- (c) the need for the CIO to have purposes which are suitable and effective in the light of current social and economic circumstances.” 20
- (3) In section 227 (registration and coming into effect of amendments) –
- (a) after subsection (1) insert –
- “(1A) An amendment to a CIO’s constitution that makes a regulated alteration falling within section 226(2)(a) takes effect – 25
- (a) when it is registered by the Commission, or
- (b) if later, on the date specified for that purpose in the resolution containing the amendment.
- (1B) Any other amendment to a CIO’s constitution takes effect (whatever the date on which the amendment is registered by the Commission) – 30
- (a) on the date the resolution containing it is passed, or
- (b) if a later date is specified for that purpose in the resolution containing the amendment, on that later date. 35
- (1C) Subsections (1A) and (1B) are subject to section 226(1).”
- (b) omit subsections (2) to (5).

*Unincorporated charities***3 Powers of unincorporated charities**

- (1) Omit sections 267 to 280 of the Charities Act 2011 (which together deal with powers to transfer the property of, and alter the purposes or powers of, an unincorporated charity). 40

- (2) Before the italic heading preceding section 281 of that Act insert –

“Unincorporated charity’s general power to amend

280A Amendment of the trusts of an unincorporated charity

- (1) This section applies to any charity which is not a company or other body corporate. 5
- (2) The charity trustees of such a charity may, if they are satisfied that it is expedient in the interests of the charity, resolve that the trusts of the charity should be amended in such manner as is specified in the resolution.
- (3) The power under subsection (2) is not exercisable in any way which would result in the institution ceasing to be a charity. 10
- (4) Subsection (5) applies in the case of a charity which has a body of members distinct from the charity trustees, any of whom are entitled under the trusts of the charity to attend and vote at a general meeting of the body. 15
- (5) In the case of a charity to which this subsection applies, a resolution under subsection (2) is effective only if –
- (a) it is passed by a majority of the charity trustees of the charity, and
 - (b) it is approved by a further resolution which is passed – 20
 - (i) at a general meeting, by not less than 75% of the members entitled to attend and vote at the meeting who vote on the resolution,
 - (ii) at a general meeting, by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting, or 25
 - (iii) otherwise than at a general meeting, by the agreement of all the members entitled to attend and vote at a general meeting.
- (6) In the case of a charity other than one to which subsection (5) applies, a resolution under subsection (2) is effective only if it is passed by not less than 75% of the charity trustees of the charity. 30
- (7) An amendment to which subsection (8) applies –
- (a) requires the written consent of the Commission, and
 - (b) is ineffective if such consent has not been obtained. 35
- (8) This subsection applies to an amendment –
- (a) which would alter the purposes of the charity;
 - (b) which would alter a provision directing the application of property of the charity on its dissolution;
 - (c) which would provide authorisation for any benefit to be obtained by charity trustees or members of the charity, or persons connected with them; 40
 - (d) which would alter a restriction making property permanent endowment;
 - (e) which would require the consent of a person other than – 45

- (i) a charity trustee of, or trustee for, the charity, or
(ii) a member of the charity,
if made otherwise than by virtue of this section;
- (f) which would affect any right directly conferred by the trusts of the charity on a person who— 5
- (i) is named in the trusts of the charity, or
(ii) holds an office or other position specified in the trusts of the charity (other than that of charity trustee or member of, or trustee for, the charity); or
- (g) which would confer power on any person or persons to make an amendment falling within any of paragraphs (a) to (f). 10
- (9) But paragraphs (e) and (f) of subsection (8) do not apply where the person concerned consents to the amendment or is no longer in existence.
- (10) In considering whether to consent to an alteration falling within subsection (8)(a), or to the conferral of a power which would enable a person or persons to make such an alteration, the Commission must have regard to— 15
- (a) the purposes of the charity when it was established, if and so far as they are reasonably ascertainable, 20
- (b) the desirability of securing that the purposes of the charity are, so far as reasonably practicable, similar to the purposes being altered, and
- (c) the need for the charity to have purposes which are suitable and effective in the light of current social and economic circumstances. 25
- 280B S. 280A: supplementary provision**
- (1) A resolution under section 280A(2) takes effect on the latest of—
- (a) the date the resolution is passed,
(b) the date specified in the resolution for it to take effect, 30
(c) if relevant, the date on which the resolution required by virtue of section 280A(5)(b) is passed, and
(d) if relevant, the date on which the Commission gives any consent required by virtue of section 280A(7).
- (2) For the purposes of section 280A(8)(c) “benefit” means a direct or indirect benefit of any nature, except that it does not include— 35
- (a) any remuneration whose receipt may be authorised under section 185, or
(b) the purchase of any insurance which may be authorised under section 189. 40
- (3) For the purposes of section 280A(8)(c) the following persons are connected with a charity trustee or a member of a charity—
- (a) a child, parent, grandchild, grandparent, brother or sister of the trustee or member;
(b) the spouse or civil partner of the trustee or member or of any person falling within paragraph (a); 45
(c) a person carrying on business in partnership with the trustee or member or with any person falling within paragraph (a) or (b);

- (d) an institution which is controlled –
 - (i) by the trustee or member or by any person falling within paragraph (a), (b) or (c), or
 - (ii) by two or more persons falling within sub-paragraph (i), when taken together; 5
 - (e) a body corporate in which –
 - (i) the trustee or member or any connected person falling within any of paragraphs (a) to (c) has a substantial interest, or
 - (ii) two or more persons falling within sub-paragraph (i), when taken together, have a substantial interest. 10
- (4) Sections 350 to 352 (meaning of child, spouse, civil partner, controlled institution and substantial interest) apply for the purposes of subsection (3).”
- (3) The amendments made by this section do not have effect in respect of a resolution passed under section 268(1), 275(2) or 280(2) of the Charities Act 2011 before the commencement of this section. 15

Charities established etc by Royal charter or Act

4 Power to amend Royal charter

After section 280B of the Charities Act 2011 (as inserted by section 3) insert – 20

“Charity established etc by Royal charter: general power to amend

280C Power to amend Royal charter

- (1) This section applies to any charity which is established or regulated by Royal charter.
- (2) The charity trustees of such a charity may resolve that the Royal charter should be amended in such manner as is specified in the resolution if –
 - (a) they are satisfied that it is expedient in the interests of the charity to do so, and
 - (b) there is no power under the Royal charter to make the proposed amendment. 25 30
- (3) Subsection (4) applies in the case of a charity which has a body of members distinct from the charity trustees, any of whom are entitled under the Royal charter to attend and vote at a general meeting of the body.
- (4) In the case of a charity to which this subsection applies, a resolution under subsection (2) may not be approved under subsection (6) unless –
 - (a) it is passed by a majority of the charity trustees of the charity, and
 - (b) it is approved by a further resolution which is passed –
 - (i) at a general meeting, by not less than 75% of the members entitled to attend and vote at the meeting who vote on the resolution, 35 40

- (ii) at a general meeting, by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting, or
 - (iii) otherwise than at a general meeting, by the agreement of all the members entitled to attend and vote at a general meeting. 5
- (5) In the case of any other charity to which this section applies, a resolution under subsection (2) may not be approved under subsection (6) unless it is passed by not less than 75% of the charity trustees of the charity. 10
- (6) A resolution under this section takes effect when it is approved by Her Majesty by Order in Council.”

5 Orders under section 73 of the Charities Act 2011: parliamentary procedure

In section 73 of the Charities Act 2011 (powers to make schemes altering provision made by Acts, etc) – 15

- (a) omit subsections (3) and (4);
- (b) in subsection (5), omit “Subject to subsection (6),”;
- (c) omit subsection (6).

Cy-près and schemes

6 Cy-près powers 20

- (1) For sections 63 to 65 of the Charities Act 2011 (which deal with the application of property cy-près) substitute –

“63A Failure of specific charitable purposes: application cy-près

- (1) Property given for specific charitable purposes which fail is applicable cy-près as if given for charitable purposes generally, if – 25
- (a) the court or the Commission by order so direct, or
 - (b) the condition specified in subsection (3), (4) or (6) is met.
- (2) An order may be made under subsection (1)(a) if it appears to the court or the Commission –
- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property, or 30
 - (b) that it would be unreasonable, having regard to the nature, circumstances and amounts of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned. 35
- (3) The condition in this subsection is met if –
- (a) the property is a single gift of £120 or less, and
 - (b) the charity trustees reasonably believe that during the financial year of the charity in which it is given the total amount given by the donor to the charity for the specific charitable purposes is £120 or less, 40

- unless at the time of giving the gift the donor states in writing that the gift must be returned if the specific charitable purposes fail.
- (4) The condition in this subsection is met if the property is given by a donor who, after the agreed actions are taken, is not identified or is not found. 5
- (5) The “agreed actions” are those agreed in writing between the charity trustees and the Commission as being reasonable in all the circumstances of the case to identify and find donors.
- (6) The condition in this subsection is met if the property consists of— 10
- (a) the proceeds of cash collections made—
 - (i) by means of collecting boxes, or
 - (ii) by other means not adapted for distinguishing one gift from another, or
 - (b) the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken. 15
- (7) The Secretary of State may by regulations amend subsection (3)(a) or (b) by substituting a different sum for the time being specified there.”
- (2) The Charities (Failed Appeals) Regulations 2008 are revoked. 20
- (3) The amendments made by this section apply to property given for charitable purposes whenever given.

7 Proceeds of fund-raising: power of charity trustees to apply cy-près

After section 67 of the Charities Act 2011 insert—

“67A Proceeds of fund-raising: power of charity trustees to apply cy-près 25

- (1) Subsection (2) applies if—
- (a) money or other property is solicited to enable a charity to further specific charitable purposes,
 - (b) money or other property is given as a result of that solicitation, and 30
 - (c) some or all of that money or other property (or the property for the time being representing it or derived from it) is applicable cy-près by virtue of section 62(1)(a) or (b) or 63A.
- (2) The charity trustees of the charity may resolve that all the money or other property which is applicable cy-près by virtue of section 62(1)(a) or (b) or 63A be applied for such charitable purposes specified in the resolution as they consider appropriate, having regard to— 35
- (a) the desirability of securing that the purposes are, so far as reasonably practicable, similar to the specific charitable purposes for which the money or other property was given; 40
 - (b) the need for the purposes to be suitable and effective in the light of current social and economic circumstances.
- (3) A resolution under this section must be passed by a majority of the charity trustees.

- (4) If a resolution passed under this section concerns money or other property with a value exceeding £1,000—
- (a) the charity trustees must send a copy of the resolution to the Commission, together with a statement of their reasons for passing it, and 5
 - (b) the resolution does not have effect until the date on which the Commission consents to it in writing.
- (5) The Secretary of State may, by regulations, amend subsection (4) by substituting a different sum for the sum for the time being specified there.” 10

8 Power of the court and the Commission to make schemes

Before the italic heading preceding section 75A of the Charities Act 2011 insert—

“Power of the court and the Commission to make schemes

75ZA Power of the court and the Commission to make schemes 15

- (1) Any power of the court or the Commission to make a scheme in relation to a charity that is a charitable trust is also exercisable in relation to any other institution which is a charity.
- (2) Subsection (1)—
- (a) is subject to the provisions of this Act; 20
 - (b) is to be treated as always having had effect.”

Permanent endowment

9 Definition of “permanent endowment”

In section 353 of the Charities Act 2011 (minor definitions), for subsection (3) substitute— 25

- “(3) For the purposes of this Act, property is “permanent endowment” if it is subject to a restriction on being expended which distinguishes between income and capital.”

10 Amendment of powers to release restrictions on spending capital

- (1) The Charities Act 2011 is amended as follows. 30
- (2) In section 281 (power of unincorporated charities to spend capital: general)—
- (a) in subsection (1), omit “which is not a company or other body corporate”;
 - (b) after subsection (6) insert—
- “(6A) If— 35
- (a) an amount falls to be repaid to or paid into the fund by the charity trustees because the charity trustees have borrowed an amount from the fund,
 - (b) the amount when repaid or paid would fall to be added to the fund and to be subject to the same restrictions as 40

- to expenditure as apply to the other capital in the fund,
and
- (c) the condition in subsection (6B) is met in relation to the charity,
- the charity trustees may resolve for the purposes of this section that the obligation to repay or pay the amount ought to cease to have effect either wholly or in part. 5
- (6B) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the obligation ceased to have effect to that extent. 10
- (6C) Once the charity trustees have passed a resolution under subsection (6A), the obligation ceases to have effect to that extent.
- (6D) Where a resolution passed under subsection (6A) relates to all outstanding obligations to repay amounts to or pay amounts into the fund in respect of the amount borrowed from the fund, any other obligation which falls to be carried out by the charity trustees because the charity trustees have borrowed that amount from the fund also ceases to have effect once the resolution has been passed.” 15
- (3) In section 282 (resolution to spend larger fund given for particular purpose) –
- (a) in the heading, omit “given for particular purpose”;
- (b) in subsection (1), for the words from “which is not” to the end of the subsection substitute “if – 25
- (a) in a case where subsection (1A) applies, the adjusted market value of the fund exceeds £25,000, or
- (b) in any other case, the market value of the fund exceeds that sum.”;
- (c) after subsection (1) insert – 30
- “(1A) This subsection applies where the charity trustees of the charity have borrowed from the fund and all or part of that borrowing is outstanding.”;
- (d) after subsection (3) insert –
- “(3A) If – 35
- (a) an amount falls to be repaid to or paid into the fund by the charity trustees because the charity trustees have borrowed an amount from the fund,
- (b) the amount when repaid or paid would fall to be added to the fund and to be subject to the same restrictions as to expenditure as apply to the other capital in the fund, and 40
- (c) the condition in subsection (3B) is met in relation to the charity,
- the charity trustees may resolve for the purposes of this section that the obligation to repay or pay the amount ought to cease to have effect either wholly or in part. 45

- (3B) The condition is that the charity trustees are satisfied that the purposes set out in the trusts to which the fund is subject could be carried out more effectively if the obligation ceased to have effect to that extent.”;
- (e) in subsection (4)(a), after “(2)” insert “or (3A)”;
- (f) in subsection (5), at the appropriate place insert –
- “adjusted market value”, in relation to an endowment fund, means the current market value of the fund as determined on a valuation carried out for the purpose –
- (a) reduced by the value, if any, of the benefit of the debt owed by the charity trustees representing outstanding borrowing from the fund on the date of that valuation, and
- (b) increased by the amount of the charity trustees’ outstanding borrowing from the fund on that date;”;
- “outstanding borrowing” means outstanding borrowing by virtue of section 284A or otherwise.”;
- (g) omit subsection (6).
- (4) In section 284 (when and how a section 282 resolution takes effect) –
- (a) in subsection (5), after “282(2)” insert “or (as the case may be) the obligation to repay or pay the amount to the fund ceases to have effect, by virtue of this section, to the extent resolved by the trustees under section 282(3A)”;
- (b) after subsection (5) insert –
- “(6) Where the resolution passed under section 282(3A) relates to all outstanding obligations to repay amounts to or pay amounts into the fund in respect of the amount borrowed from the fund, any other obligation which falls to be carried out by the charity trustees because the charity trustees have borrowed that amount from the fund ceases to have effect when the obligations to repay or pay amounts cease to have effect.”

11 Taking effect of resolution under section 282 of the Charities Act 2011

- (1) Section 284 of the Charities Act 2011 (when and how a resolution under section 282 takes effect) is amended as follows.
- (2) In subsection (3), for “period of 3 months beginning with the relevant date” substitute “relevant period”.
- (3) For subsection (4) substitute –
- “(4) The “relevant period” means –
- (a) the period of 60 days beginning with the date on which the Commission receives the copy of the resolution in accordance with section 282(4), or
- (b) that period as modified by subsection (4A) or (4B).
- (4A) If under section 283(1) the Commission directs the charity trustees to give public notice of a resolution, the running of the relevant period is suspended from the date on which the direction is given to the charity

trustees until the end of the period of 42 days beginning with the date on which public notice of the resolution is given by the charity trustees.

- (4B) If under section 283(2) the Commission directs the charity trustees to provide any information or explanations, the running of the relevant period is suspended from the date on which the direction is given to the charity trustees until the date on which the information or explanations is or are provided to the Commission.” 5

12 Power to borrow from permanent endowment

- (1) The Charities Act 2011 is amended as follows.
(2) After section 284 insert— 10

“Power to borrow from permanent endowment

284A Power to borrow from permanent endowment: general

- (1) This section applies to any available endowment fund of a charity.
(2) The charity trustees may resolve to borrow an amount, not exceeding the permitted amount, from the available endowment fund if they are satisfied— 15
(a) that it is expedient for the amount to be borrowed, in the light of the purposes set out in the trusts to which the fund is subject and the purposes of the charity, and
(b) that arrangements are in place for the amount to be repaid within 20 years of being borrowed. 20
(3) Any amount borrowed in accordance with subsection (2) no longer forms part of the available endowment fund and, as a result, is freed from the restrictions with respect to the expenditure of capital that applied to it when it was comprised in that fund. 25
(4) An amount borrowed in accordance with subsection (2) may not be used to repay (in whole or in part) any amount previously borrowed from permanent endowment (whether the previous borrowing was by virtue of this section or otherwise).
(5) When repaying an amount borrowed (whether in whole or in part), the charity trustees may resolve to pay an additional amount not exceeding the maximum estimated capital appreciation. 30
(6) Any—
(a) repayment of an amount borrowed, and
(b) payment of an additional amount by virtue of a resolution under subsection (5), 35
is to be added to the available endowment fund and is to be subject to the same restrictions as to expenditure as apply to the other capital in the fund.
(7) The powers conferred by this section— 40
(a) may be restricted or excluded by the trusts of the charity;
(b) are (subject to paragraph (a)) in addition to any other power to borrow that the charity or charity trustees may have.

- (8) If, and in so far as, the power conferred by subsection (5) confers power to accumulate income, it is not subject to section 14(3) of the Perpetuities and Accumulations Act 2009 (which provides for certain powers to accumulate income to cease after 21 years).
- (9) In this section “available endowment fund”, in relation to a charity, means— 5
- (a) the whole of the charity’s permanent endowment if it is all subject to the same trusts, or
- (b) any part of its permanent endowment which is subject to any particular trusts that are different from those to which any other part is subject. 10
- (10) If a resolution under section 104A(2) has effect in respect of an available endowment fund (or portion of such a fund), references in this section to an “available endowment fund” include that fund (or portion) but do not include any returns from the investment of the fund (or portion) which have not been accumulated. 15
- (11) For the meaning of “permitted amount” and “maximum estimated capital appreciation” see sections 284B and 284C respectively.
- 284B Calculation of the “permitted amount”**
- (1) The “permitted amount” for the purposes of section 284A(2) is given by the formula— 20
- $$(0.25 \times (V + B)) - B$$
- where—
- V is the value of the available endowment fund on the relevant date (ignoring the value, if any, of the benefit of the debt owed by the charity trustees representing outstanding borrowing from the fund), and 25
- B is the amount of the charity trustees’ outstanding borrowing from the available endowment fund on that date.
- (2) In subsection (1)— 30
- “outstanding borrowing” means outstanding borrowing by virtue of section 284A or otherwise;
- the “relevant date” is the date on which the trustees resolve to borrow from the available endowment fund (see section 284A(2)). 35
- (3) If a resolution under section 104A(2) has effect in respect of the available endowment fund (or any part of it), for the purposes of subsection (1) the value of the available endowment fund does not include any returns from the investment of the fund (or part) which have not been accumulated. 40
- 284C Calculation of the “maximum estimated capital appreciation”**
- (1) The “maximum estimated capital appreciation” for the purposes of section 284A(5) is given by the formula—
- $$R \times I$$
- where— 45
- R is the amount of borrowing being repaid, and

I is the percentage increase in the relevant index between the month in which the amount was borrowed and the month preceding the month in which the repayment is made (or if there is no increase is nil).

- (2) The “relevant index” is whichever of the following is selected by the charity trustees from time to time—
- (a) the retail prices index;
 - (b) the consumer prices index;
 - (c) any similar general index of prices published by the Statistics Board.
- (3) In this section—
- “consumer prices index” means the general index for consumer prices published by the Statistics Board;
 - “retail prices index” means the general index of retail prices (for all items) published by the Statistics Board.

284D Inability to repay

- (1) If (at any time) it appears to the charity trustees that—
- (a) they will not be able to fulfil the arrangements put in place to repay an amount borrowed under section 284A, or
 - (b) those arrangements are not sufficient to ensure that the amount is repaid,
- the trustees must apply to the Commission for an order under this section directing them how to proceed.
- (2) An order under this section may give such directions as the Commission thinks fit, including—
- (a) that the relevant amount may be repaid over a longer period,
 - (b) that the charity trustees put in place arrangements specified in the order, or
 - (c) that the charity trustees need not repay an amount borrowed.”
- (3) In section 285 (power to alter sums specified in Part 13), after subsection (2) insert—
- “(3) The Secretary of State may by regulations amend—
- (a) the period of time specified in section 284A(2)(b), or
 - (b) the multiplier in the formula set out in section 284B(1),
- so as to substitute a different time period or multiplier (as the case may be) for the period or multiplier for the time being specified in that provision.”

13 Total return investment

- (1) The Charities Act 2011 is amended as follows.
- (2) After section 104A insert—
- “104AA Total return investment: social investments**
- (1) This section applies to a fund, or a portion of a fund, in respect of which a resolution under section 104A(2) has effect.

- (2) The charity trustees may resolve that –
- (a) the fund or portion, and
 - (b) any returns from the investment of the fund or portion,
- may be used to make social investments (within the meaning of section 292A) which they could not otherwise make. 5
- (3) While a resolution under subsection (2) has effect, regulations under section 104B(1)(b) and (ba) apply to –
- (a) the fund or portion, and
 - (b) any returns from the investment of the fund or portion.”
- (3) In section 104B (total return investment: regulations) – 10
- (a) in subsection (1)(a), for “section 104A(2)” substitute “sections 104A(2) and 104AA(2)”;
 - (b) omit the “and” following subsection (1)(b);
 - (c) after subsection (1)(b) insert –
- “(ba) the use of a relevant social investment fund to make social investments (within the meaning of section 292A),”;
- 15
- (d) after subsection (1)(c) insert “, and
 - (d) any steps that must be taken by charity trustees in respect of a relevant social investment fund in the event of a resolution under section 104AA(2) ceasing to have effect.”;
- 20
- (e) in subsection (2)(a), after “104A(2)” insert “or 104AA(2)”;
 - (f) in subsection (6), for “section “relevant” substitute “section – “relevant”;
- 25
- (g) in subsection (6), at the end insert –
- ““relevant social investment fund” means a fund, or a portion of a fund, and any returns from the investment of the fund, or portion, in respect of which a resolution under section 104AA(2) has effect.”
- 30

Special trusts

14 Special trusts

- (1) Omit Part 14 of the Charities Act 2011 (special trusts).
- (2) In section 353 of that Act (minor definitions), after subsection (3) insert –
- “(4) In this Act, “special trust” means property which – 35
- (a) is held and administered by or on behalf of a charity for any special purposes of the charity, and
 - (b) is so held and administered on separate trusts relating only to that property.
- But a special trust does not, by itself, constitute a charity for the purposes of Part 8 (charity accounts, reports and returns).” 40

Ex gratia payments etc

15 Small ex gratia payments

In Part 18 of the Charities Act 2011 (miscellaneous and supplementary), before the italic heading preceding section 332 insert –

“Limited power to make ex gratia payments 5

331A Limited power for charity trustees to make ex gratia payments etc

- (1) The charity trustees of a charity may take any action falling within subsection (2)(a) or (b) if the conditions in subsection (3) are met.
- (2) The actions are –
 - (a) making any application of property of the charity, or 10
 - (b) waiving to any extent, on behalf of the charity, its entitlement to receive any property.
- (3) The conditions are –
 - (a) that the value of the property does not exceed the relevant threshold, 15
 - (b) that the charity trustees have no power to take the action apart from this section or by virtue of section 106, and
 - (c) that in all the circumstances the charity trustees could reasonably be regarded as being under a moral obligation to take the action. 20
- (4) The power conferred by this section may be restricted or excluded by the trusts of the charity.
- (5) In relation to a charity established by (or whose purposes or functions are set out in) legislation, the power conferred by this section is not disapplied only because the legislation concerned prohibits application of property of the charity otherwise than as set out in the legislation. 25
- (6) For the purposes of subsection (3)(a) –
 - (a) if the charity’s gross income in its last financial year did not exceed £25,000, the relevant threshold is £1,000;
 - (b) if the charity’s gross income in its last financial year exceeded £25,000 but not £250,000, the relevant threshold is £2,500; 30
 - (c) if the charity’s gross income in its last financial year exceeded £250,000 but not £1 million, the relevant threshold is £10,000;
 - (d) if the charity’s gross income in its last financial year exceeded £1 million, the relevant threshold is £20,000. 35
- (7) In subsection (5) “legislation” means –
 - (a) an Act of Parliament;
 - (b) an Act or Measure of Senedd Cymru;
 - (c) subordinate legislation (within the meaning of the Interpretation Act 1978) made under an Act of Parliament; 40
 - (d) an instrument made under an Act or Measure of Senedd Cymru; or
 - (e) a Measure of the Church Assembly or of the General Synod of the Church of England.”

331B Power to alter sums specified in s.331A

The Secretary of State may by regulations amend section 331A(6) (relevant income thresholds) by substituting a different sum for any sum for the time being specified in that provision.”

16 Power of Commission etc to authorise ex gratia payments etc 5

In section 106 of the Charities Act 2011 (power of Commission to authorise ex gratia payments etc) –

(a) for subsection (1) substitute –

“(1) The Commission, the Attorney General or the court may authorise the charity trustees of a charity to take any action falling within subsection (2)(a) or (b) in a case where the charity trustees – 10

(a) (apart from by virtue of this section or section 331A) have no power to take the action, but

(b) in all the circumstances could reasonably be regarded as being under a moral obligation to take it. 15

(1A) In relation to a charity established by (or whose purposes or functions are set out in) legislation, subsection (1) is not disapplied only because the legislation concerned prohibits application of property of the charity otherwise than as set out in the legislation. 20

(1B) In subsection (1A) “legislation” means –

(a) an Act of Parliament;

(b) an Act or Measure of Senedd Cymru;

(c) subordinate legislation (within the meaning of the Interpretation Act 1978) made under an Act of Parliament; 25

(d) an instrument made under an Act or Measure of Senedd Cymru; or

(e) a Measure of the Church Assembly or of the General Synod of the Church of England.”; 30

(b) in subsection (3), after second “Commission” insert “by order and”.

PART 2

CHARITY LAND

Dispositions and mortgages 35

17 Scope of Part 7 of the Charities Act 2011

In section 117 of the Charities Act 2011 (restrictions on dispositions of land: general), after subsection (1) insert –

“(1A) For the purposes of this Part, land is held by or in trust for a charity only if the whole of the land which forms the subject matter of the disposition is held – 40

- (a) by the charity solely for its own benefit (and, accordingly, is not being held as nominee or in trust for another person), or
- (b) in trust solely for the charity.”

18 Exceptions to restrictions on dispositions or mortgages of charity land

- (1) The Charities Act 2011 is amended as follows. 5
- (2) In section 117(3) (exceptions to restrictions on dispositions of charity land) –
 - (a) after paragraph (a) insert –
 - “(aa) any disposition by a liquidator, provisional liquidator, receiver, mortgagee or an administrator.”;
 - (b) omit paragraph (b); 10
 - (c) for paragraph (c) (but not the “or” following it) substitute –
 - “(c) any disposition of land held by or in trust for a charity which is made to another charity otherwise than as –
 - (i) a disposition made with a view to achieving the best price that can reasonably be obtained, or 15
 - (ii) a disposition that is a social investment for the purposes of Part 14A (social investments).”.
- (3) In section 124(9) (restrictions on mortgages) –
 - (a) after paragraph (a) (and the “or” following it) insert –
 - “(aa) granted by a liquidator, provisional liquidator, receiver, mortgagee or an administrator.”; 20
 - (b) omit paragraph (b).

19 Advertising and report requirements for disposition of charity land

- In section 119 of the Charities Act 2011 (requirements for dispositions other than certain leases) – 25
- (a) omit subsection (1)(b) (but not the “and” following it);
 - (b) in subsection (4), omit –
 - (i) “contain such information, and”;
 - (ii) the “,” after “matters”.

20 Advice relating to the disposition of charity land 30

- In section 119 of the Charities Act 2011 (requirements for dispositions other than certain leases) –
- (a) in subsection (1)(a), for “qualified surveyor” substitute “designated adviser”;
 - (b) in subsection (1)(c), for “surveyor’s” substitute “adviser’s”; 35
 - (c) in subsection (3), for “qualified surveyor” substitute “designated adviser”.

21 Advice etc from charity trustees, officers and employees

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

- (2) After section 128 insert—

“Advice etc from charity trustees, officers and employees

128A Advice etc from charity trustees, officers and employees

- (1) Subsection (2) applies to—
- (a) a report by a designated adviser for the purposes of section 119(1)(a), 5
 - (b) advice on a proposed disposition for the purposes of section 120(2)(a),
 - (c) proper advice in connection with a mortgage of land for the purposes of section 124(2), and 10
 - (d) proper advice in connection with a mortgage of land for the purposes of section 124(7).
- (2) For the purposes of the provisions mentioned in subsection (1), it does not matter if the report or the advice (as the case may be) is provided—
- (a) by a charity trustee or an officer or employee of the charity or of the charity trustees, or 15
 - (b) in the course of a person’s employment as an officer or an employee of the charity or of the charity trustees.”
- (3) In section 124 (restrictions on mortgages), in subsection (8), omit from “and such advice” to the end. 20

22 Residential tenancies granted to employees

In section 118 of the Charities Act 2011 (meaning of “connected person” in section 117(2)), after subsection (2) insert—

- “(2A) A person who is an employee of the charity does not fall within subsection (2)(d) if the disposition in question is the grant of a tenancy— 25
- (a) for a fixed term of one year or less or which is a periodic tenancy and the period is one year or less, and
 - (b) which confers the right to occupy a dwelling as a home.”

23 Information to be included in certain instruments 30

- (1) The Charities Act 2011 is amended as follows.
- (2) In section 122 (instruments concerning dispositions of land: required statements, etc)—
- (a) for subsection (2) substitute—
- “(2) An instrument to which this subsection applies must— 35
- (a) state that the land is held by or in trust for a charity,
 - (b) state whether the charity is an exempt charity,
 - (c) if the charity is not an exempt charity, state whether the disposition is one falling within section 117(3)(a), (aa), (c) or (d), and 40

- (d) if the charity is not an exempt charity and the disposition is not one falling within section 117(3)(a), (aa), (c) or (d), include the statement required by subsection (2A).
- (2A) The statement is – 5
- (a) in a case where section 117(1) applies to the disposition to which the instrument relates, a statement that the disposition has been sanctioned by an order of the court or of the Charity Commission, or
- (b) in a case where section 117(2) applies to the disposition to which the instrument relates, a statement that there is power under the trusts of the charity to effect the disposition and that sections 117 to 121 have been complied with.”; 10
- (b) omit subsection (3); 15
- (c) for subsection (4) substitute –
- “(4) Where subsection (2)(d) has been complied with in relation to a contract for the disposition of land it is conclusively presumed, for the purposes of enforcing the contract, that the statement is true. 20
- (4A) Where subsection (2)(d) has been complied with in relation to an instrument effecting the disposition of land it is conclusively presumed, in favour of a person who (whether under the disposition or afterwards) acquires an interest in the land for money or money’s worth, that the statement is true.”; 25
- (d) for subsections (5) and (6) substitute –
- “(5) Where subsection (2)(d) applies in relation to a contract for the disposition of land but the statement required by subsection (2A) has not been included in it, then in favour of a person who has entered into the contract in good faith the contract is enforceable as if – 30
- (a) the disposition to which the contract relates had been sanctioned by an order of the court or of the Charity Commission, or
- (b) there is power under the trusts of the charity to effect such a disposition and sections 117 to 121 have been complied with. 35
- (5A) Where subsection (2)(d) applies in relation to an instrument effecting the disposition of land but the statement required by subsection (2A) has not been included in it, then in favour of a person who (whether under the disposition or afterwards) in good faith acquires an interest in the land for money or money’s worth, the disposition is valid even if – 40
- (a) the disposition has not been sanctioned by an order of the court or of the Charity Commission, or 45
- (b) there is no power under the trusts of the charity to effect the disposition or sections 117 to 121 have not been complied with in relation to it (or both).”
- (3) In section 125 (mortgages: required statements, etc) –

- (a) for subsection (1) substitute –
- “(1) Any mortgage of land held by or in trust for a charity must –
- (a) state that the land is held by or in trust for a charity,
- (b) state whether the charity is an exempt charity and whether the mortgage is one falling within section 124(9), and 5
- (c) if the charity is not an exempt charity and the mortgage is not one falling within section 124(9), include the statement required by subsection (1A).
- (1A) The statement is – 10
- (a) in a case where section 124(1) applies, a statement that the mortgage has been sanctioned by an order of the court or of the Charity Commission, or
- (b) in a case where section 124(2) applies, a statement that there is power under the trusts of the charity to grant the mortgage and the requirements of section 124(2) have been complied with.”; 15
- (b) omit subsection (2);
- (c) in subsection (3) –
- (i) for “subsection (2)” substitute “subsection (1)(c)”; 20
- (ii) for the words from “facts” to the end substitute “statement is true”;
- (d) for subsections (4) and (5) substitute –
- “(5) Where subsection (1)(c) applies in relation to a mortgage of land but the statement required by subsection (1A) has not been included in it, then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money’s worth, the mortgage is valid even if – 25
- (a) the mortgage has not been sanctioned by an order of the court or of the Charity Commission, or 30
- (b) there is no power under the trusts of the charity to grant the mortgage or the requirements of section 124(2) have not been complied with in relation to it (or both).”
- Universities and College Estates Act 1925* 35

24 Amendments of the Universities and College Estates Act 1925

- (1) The Universities and College Estates Act 1925 is amended in accordance with subsections (2) to (6).
- (2) After section 1 insert –

“General power over land 40

1A General power over land

- (1) A university or college has in relation to land belonging to the university or college all the powers of an absolute owner.

- (2) The power conferred by subsection (1) is subject to—
 - (a) any restriction, condition or limitation imposed by, or arising under, any enactment,
 - (b) any rule of law or equity, or
 - (c) the statutes regulating the university or college.” 5
- (3) Omit sections 2 to 38 and Schedule 1 (provisions relating to land and the application of capital money).
- (4) In section 40 (power to transfer to university or college), omit “with the consent of the Minister”.
- (5) In section 42 (saving of existing powers), omit from “: Provided that” to the end. 10
- (6) In section 43 (definitions)—
 - (a) in the opening words, omit from “unless” to “say”;
 - (b) omit sub-paragraphs (i), (ii), (viii) and (x).
- (7) Schedule 1 (which contains consequential amendments) has effect. 15

PART 3

CHARITY NAMES

25 Working names etc

- In section 42 of the Charities Act 2011 (power to require name to be changed)—
- (a) in the heading, after “name” insert “or working name”; 20
 - (b) for subsection (1) substitute—
 - “(1) If one or more of the conditions in subsection (2) are met in relation to the name or a working name of a charity, the Commission may give a direction—
 - (a) requiring the name of the charity to be changed to a name determined by the charity trustees with the approval of the Commission, or 25
 - (b) requiring that that working name of the charity no longer be used as a working name (as the case may be).
 - (1A) A direction given under this section must specify the period within which the charity is to comply with the direction.”; 30
 - (c) in subsection (2)—
 - (i) for paragraph (a) and the words before it substitute—
 - “(2) The conditions are—
 - (a) that the name or working name is the same as, or in the opinion of the Commission too like, the name or a working name of another charity,”; 35
 - (ii) in paragraph (b), for “the name” substitute “that the name or working name”;
 - (iii) in paragraph (c), for “the name” substitute “that the name or working name”; 40
 - (iv) in paragraph (c), for “its name” substitute “the name or working name”;

- (v) in paragraph (d), for “the name of the charity” substitute “that the name or working name”;
- (vi) in paragraph (e), for “the name of the charity” substitute “that the name or working name”;
- (d) omit subsection (3); 5
- (e) for subsection (4) substitute –
 - “(4) In this Act, any reference to a working name of a charity is a reference to a name that is not the name of the charity but which is used to designate the charity and under which activities of the charity are carried out.” 10

26 Power to delay registration of unsuitably named charity

After section 45 of the Charities Act 2011 insert –

“45A Power to delay registration following s. 42 direction

- (1) The Commission may delay the registration of a charity if the Commission has given a direction under section 42 (“the section 42 direction”) requiring the name of the charity to be changed. 15
- (2) A delay under subsection (1) may last until the first to occur of –
 - (a) the charity trustees notifying the Commission of the charity’s new name and the date of the name change, or
 - (b) the expiry of the maximum postponement period. 20
- (3) The “maximum postponement period” is the period of 60 days beginning at the end of the period specified in the section 42 direction for giving effect to the direction.
- (4) If any relevant proceedings are commenced, any day on which the relevant proceedings are ongoing is to be disregarded for the purposes of determining whether the period of 60 days mentioned in subsection (3) has elapsed. 25
- (5) Each of the following are “relevant proceedings” –
 - (a) proceedings on an appeal brought to the Tribunal under section 319 against the section 42 direction or against any steps taken by the Commission with a view to securing compliance with the section 42 direction; 30
 - (b) proceedings on an application made to the Tribunal under section 321 for the review of the Commission’s decision to institute an inquiry under section 46 in respect of matters connected with the section 42 direction; 35
 - (c) proceedings on an application for judicial review of the Commission’s decision to give the section 42 direction or to take any steps with a view to securing compliance with the section 42 direction; 40
 - (d) proceedings on an application under section 336 in respect of disobedience to the section 42 direction.
- (6) Relevant proceedings are commenced when a notice, claim form or other document is sent or delivered to, or filed with, the Tribunal or court for the purpose of commencing the proceedings. 45

- (7) Relevant proceedings are ongoing until—
 - (a) the proceedings (including any proceedings on appeal or further appeal) have been concluded, and
 - (b) any period during which an appeal (or further appeal) may ordinarily be made has passed.”

5

27 Power to delay entry of unsuitable name in register

After section 45A of the Charities Act 2011 insert—

“45B Power to delay entry of name in register following a s. 42 direction

- (1) If the charity trustees of a charity notify the Commission under section 35(3) of a change of name of the charity, the Commission may delay changing the charity’s name in the register if the Commission has given a direction under section 42 (“the section 42 direction”) requiring the new name to be changed. 10
- (2) A delay under subsection (1) may last until the first to occur of—
 - (a) the charity trustees notifying the Commission of the charity’s further new name and the date of the further name change, or 15
 - (b) the expiry of the maximum postponement period.
- (3) The “maximum postponement period” is the period of 60 days beginning at the end of the period specified in the section 42 direction for giving effect to the direction. 20
- (4) If any relevant proceedings are commenced, any day on which the relevant proceedings are ongoing is to be disregarded for the purposes of determining whether the period of 60 days mentioned in subsection (3) has elapsed.
- (5) Each of the following are “relevant proceedings”— 25
 - (a) proceedings on an appeal brought to the Tribunal under section 319 against the section 42 direction or against any steps taken by the Commission with a view to securing compliance with the section 42 direction;
 - (b) proceedings on an application made to the Tribunal under section 321 for the review of the Commission’s decision to institute an inquiry under section 46 in respect of matters connected with the section 42 direction; 30
 - (c) proceedings on an application for judicial review of the Commission’s decision to give the section 42 direction or to take any steps with a view to securing compliance with the section 42 direction; 35
 - (d) proceedings on an application under section 336 in respect of disobedience to the section 42 direction.
- (6) Relevant proceedings are commenced when a notice, claim form or other document is sent or delivered to, or filed with, the Tribunal or court for the purpose of commencing the proceedings. 40
- (7) Relevant proceedings are ongoing until—
 - (a) the proceedings (including any proceedings on appeal or further appeal) have been concluded, and 45

- (b) any period during which an appeal (or further appeal) may ordinarily be made has passed.”

28 Power to direct change of name of exempt charity

In Schedule 9 to the Charities Act 2011 (transitory modifications), omit paragraph 10 and the italic heading preceding it. 5

PART 4

CHARITY TRUSTEES

29 Powers relating to appointments of trustees

After section 184A of the Charities Act 2011 insert –

“Invalid appointment of charity trustee” 10

184B Power to confirm trustee appointments etc

- (1) Subsection (2) applies if –
 - (a) a person acts, or intends to act, as a charity trustee in relation to a charity, but
 - (b) there is not, or might not be, a valid appointment or election of that person to a qualifying position in relation to that charity. 15
- (2) The Commission may, with the consent of the person concerned, by order provide that for the purposes of anything done (or not done) on or after the date of the order –
 - (a) any defect in the person’s appointment or election to a qualifying position (including any absence of appointment or election) is to be ignored in relation to the charity, and 20
 - (b) so far as is necessary for those purposes, a valid appointment or election to that qualifying position is to be treated as having been made in respect of the person. 25
- (3) For the purposes of this section a position is a “qualifying position” in relation to a charity if, as a result of a person holding that position, the person is a charity trustee of the charity.
- (4) The fact that a position is not a position in a charity does not prevent it from being a qualifying position in relation to the charity. 30
- (5) An order under subsection (2) may include –
 - (a) provision with respect to the vesting in or transfer of property that the Commission could make on the removal or appointment of a charity trustee by it under section 69 (Commission’s concurrent jurisdiction with High Court for certain purposes); 35
 - (b) provision that an act of a person who is the subject of the order is valid notwithstanding that there was not at the time the act was carried out a valid appointment or election to a qualifying position in respect of that person. 40
- (6) An order containing provision made by virtue of subsection (5)(a) has the same effect as an order made under section 69.”

30 Remuneration of charity trustees etc providing goods or services to charity

In section 185 of the Charities Act 2011 (remuneration of charity trustees etc providing services to charity) –

- (a) in the heading, before “services” insert “goods or”;
- (b) in subsection (1), in the words before paragraph (a), before “services” insert “goods or”; 5
- (c) in subsection (2) –
 - (i) in Condition A, in paragraph (a), for “services” substitute “goods or services, or goods and services,”;
 - (ii) in Condition A, in paragraph (b), for “services” substitute “goods or services, or goods and services,”; 10
 - (iii) in condition B, for “services” substitute “goods or services, or goods and services,”;
- (d) for subsection (3) substitute –
 - “(3) This section does not apply to any remuneration for services provided by a person in the person’s capacity as a charity trustee or trustee for a charity or under a contract of employment. 15
 - (3A) Any entitlement to receive remuneration under subsection (2) is in addition to and does not affect any entitlement to receive the remuneration by virtue of – 20
 - (a) any provision contained in the trusts of the charity;
 - (b) any order of the court or the Commission;
 - (c) any other statutory provision contained in or having effect under any Act.” 25

31 Remuneration etc of charity trustees etc

After section 186 of the Charities Act 2011 insert –

“186A Remuneration etc for work already carried out

- (1) This section applies to a person who –
 - (a) has carried out work for or on behalf of a charity, and 30
 - (b) is a charity trustee or trustee for the charity (or was one when the work was carried out).
- (2) If the condition in subsection (3) is met, the Commission may by order –
 - (a) require the charity trustees of the charity to pay the person such remuneration for the work as must be specified in the order; 35
 - (b) authorise, to such extent as must be specified in the order, any benefit already received in connection with the work to be retained.
- (3) The condition in this subsection is that the Commission considers that it would be inequitable for the person not to be paid the remuneration or not to retain the benefit. 40
- (4) In determining whether to make an order under this section, the Commission must in particular have regard to –

- (a) whether, if the person had not carried out the work, the charity would have paid someone else to carry it out,
- (b) the level of skill with which the work was carried out,
- (c) any express provision in the trusts of the charity prohibiting the person from receiving the remuneration or retaining the benefit, and 5
- (d) whether remunerating the person or allowing the person to retain the benefit would encourage breaches of trust or breaches of duty by persons in their capacity as charity trustees or trustees for charities.” 10

32 Trustee of charitable trust: status as trust corporation

- (1) After section 334 of the Charities Act 2011 insert –

“Trustee of charitable trust: status as trust corporation

334A Status of certain trustees of charitable trusts

- (1) For the purposes of the provisions listed in subsection (2), “trust corporation”, in relation to a charitable trust, includes a trustee of or for the charitable trust if that trustee is a body corporate and itself a charity. 15
- (2) The provisions are –
- (a) section 117(1)(xxx) of the Settled Land Act 1925,
 - (b) paragraph (18) of section 68(1) of the Trustee Act 1925, 20
 - (c) section 205(1)(xxviii) of the Law of Property Act 1925,
 - (d) section 55(1)(xxvi) of the Administration of Estates Act 1925, and
 - (e) section 128 of the Senior Courts Act 1981.”
- (2) The amendment made by subsection (1) has effect in relation to any trustee of or for a charitable trust, even if the trustee became the trustee of or for the charitable trust before the amendment comes into force. 25

PART 5

CHARITY MERGERS

Gifts to merged charity 30

33 Gifts to merged charity

- (1) The Charities Act 2011 is amended as follows.
- (2) In section 239 (effect of registration of CIO), for subsection (3) substitute –
- “(3) Subsection (4) applies to a gift if –
- (a) the gift would have taken effect as a gift to one of the old CIOs if it had not been dissolved, and 35
 - (b) the date on which the gift would have taken effect is a date on or after the date of the registration of the new CIO.
- (4) The gift takes effect as a gift to the new CIO.”

- (3) In section 244 (effect of confirmation of resolution to transfer property etc to another CIO), for subsection (2) substitute –
- “(2) Subsection (3) applies to a gift if –
- (a) the gift would have taken effect as a gift to the transferor CIO if it had not been dissolved, and 5
 - (b) the date on which the gift would have taken effect is a date on or after the date on which the resolution is confirmed (or treated as confirmed).
- (3) The gift takes effect as a gift to the transferee CIO.”
- (4) In section 311 (effect of registering charity merger on gifts to transferor), for subsection (2) substitute – 10
- “(2) Subsection (2A) applies to a gift, other than an excluded gift, if –
- (a) the gift would have taken effect as a gift to the transferor if the transferor had been in existence, and
 - (b) the date on which the gift would have taken effect is a date on or after the date of the registration of the merger. 15
- (2A) The gift takes effect as a gift to the transferee.”
- (5) The amendments made by this section have effect in relation to all gifts made on or after the date this section comes into force; and it does not matter if the will or other document, agreement, transaction or other means which gives rise to the gift was executed or entered into before that date. 20

Vesting declarations

34 Vesting declarations: exclusions

- In section 310(3) of the Charities Act 2011 (exclusion of certain property from automatic vesting following a vesting declaration) – 25
- (a) omit paragraph (a);
 - (b) for paragraph (b) (but not the “or” following it) substitute –
- “(b) any land held by the transferor under a lease or agreement if, had the transferor assigned its interest in the land on the specified date to the transferee, that assignment would have given rise to – 30
- (i) an actionable breach of covenant or condition against alienation, or
 - (ii) a forfeiture.”.

35 Vesting permanent endowment following a merger 35

- In section 306 of the Charities Act 2011 (meaning of “relevant charity merger”), in subsection (2) –
- (a) in paragraph (a), omit “a”;
 - (b) omit paragraph (b) and the “and” before it.

PART 6

LEGAL PROCEEDINGS

36 Costs incurred in relation to Tribunal proceedings etc

After section 324 of the Charities Act 2011 insert –

“324A Power to authorise costs to be incurred in relation to proceedings 5

- (1) The Tribunal may make an authorised costs order on the application of a charity or charity trustees of a charity.
- (2) An authorised costs order is an order –
 - (a) made in respect of proceedings brought, or proposed to be brought, before the Tribunal or on appeal from it, and 10
 - (b) authorising payment out of the funds of the charity of costs falling within subsection (3).
- (3) Those costs are costs incurred, or to be incurred, in connection with the proceedings –
 - (a) by the charity, 15
 - (b) by its charity trustees, or
 - (c) by any other person, so far as the charity or its charity trustees are ordered by the Tribunal or the court hearing the appeal to bear them.”

PART 7 20

GENERAL

37 Public notice of Commission consent

- (1) Section 337 of the Charities Act 2011 (other provisions as to orders of Commission) is amended as follows.
- (2) After subsection (3) insert – 25

“(3A) Where the Commission gives written consent under section 67A, 198, 226 or 280A in relation to a charity, the Commission –

 - (a) may itself give such public notice as it thinks fit of the giving or contents of the consent, or
 - (b) may require it to be given by the charity.” 30
- (3) In the heading, after “orders” insert “etc”.

38 “Connected person”: illegitimate children

In section 350(1) of the Charities Act 2011 (connected person: meaning of “child”), omit “and an illegitimate child”.

39 “Connected person”: power to amend

- (1) After section 352 of the Charities Act 2011 insert –

“352A Power to amend definition of “connected person”

The Secretary of State may by regulations amend this Act to alter what is a “connected person” for the purposes of any provision of this Act.” 5

- (2) In section 348 of that Act (regulations subject to affirmative procedure etc) –

- (a) in subsection (1), after paragraph (c) insert –

“(d) regulations under section 352A (power to amend definition of “connected person”).”; 10

- (b) in subsection (2), for “or (c)” substitute “, (c) or (d)”. 10

40 Minor and consequential provision

Schedule 2 (which contains minor and consequential provision) has effect.

41 Extent, commencement and short title

- (1) This Act extends to England and Wales only, subject to subsection (2).

- (2) An amendment made by – 15

(a) section 24;

(b) Schedule 1;

(c) paragraph 12 or 45 of Schedule 2,

has the same extent as the enactment or provision to which it relates.

- (3) This section comes into force on the day on which this Act is passed. 20

- (4) The other provisions of this Act come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint and different days may be appointed for different purposes.

- (5) Regulations under subsection (4) may make consequential, transitional or saving provision. 25

- (6) This Act may be cited as the Charities Act 2021.

SCHEDULES

SCHEDULE 1

Section 24

AMENDMENTS OF THE UNIVERSITIES AND COLLEGE ESTATES ACT 1925: CONSEQUENTIAL AMENDMENTS

<i>Law of Property (Amendment) Act 1926 (c. 11)</i>	5
1 In the Schedule to the Law of Property (Amendment) Act 1926 (minor amendments), omit the entry relating to section 3 of the Universities and College Estates Act 1925.	
<i>Landlord and Tenant Act 1927 (c. 36)</i>	
2 In section 13 of the Landlord and Tenant Act 1927 (power to apply and raise capital money), in subsection (1), omit “, or under the University and College Estates Act, 1925,”.	10
<i>Landlord and Tenant (War Damage) Act 1939 (c. 72)</i>	
3 In section 3 of the Landlord and Tenant (War Damage) Act 1939 (raising of money for making good war damage on settled land, etc) –	15
(a) omit paragraph (d) and the “or” preceding it;	
(b) omit from “, or Part I of the First Schedule” to the end.	
<i>Universities and Colleges (Trusts) Act 1943 (c. 9)</i>	
4 (1) Section 2 of the Universities and Colleges (Trusts) Act 1943 (schemes for administering university and college trusts) is amended as follows.	20
(2) Omit subsection (2).	
(3) In subsection (3) –	
(a) omit from “, subject to the modification that” to “as aforesaid;”;	
(b) omit “, subject to the modification aforesaid”.	
(4) Omit subsection (5).	25
<i>Coast Protection Act 1949 (c. 74)</i>	
5 In section 11 of the Coast Protection Act 1949 (incidence of coast protection charges, etc), in subsection (2)(a) –	
(a) omit “and by section twenty-six of the Universities and College Estates Act 1925”;	30
(b) omit “and by section thirty of the Universities and College Estates Act 1925”.	

Landlord and Tenant Act 1954 (c. 56)

- 6 In paragraph 6 of Schedule 2 to the Landlord and Tenant Act 1954 (provisions as to repair where tenant retains possession) –
- (a) omit “and by section twenty-six of the Universities and College Estates Act 1925”;
 - (b) omit “and by section thirty of the Universities and College Estates Act 1925”.

5

Universities and College Estates Act 1964 (c. 51)

- 7 (1) The Universities and College Estates Act 1964 is amended as follows.
- (2) Omit sections 2 and 3.
 - (3) Omit Schedules 1 and 2.

10

Forestry Act 1967 (c. 10)

- 8 In Schedule 2 to the Forestry Act 1967 (forestry dedication etc), omit paragraph 2.

Leasehold Reform Act 1967 (c. 88)

15

- 9 (1) The Leasehold Reform Act 1967 is amended as follows.
- (2) In section 24(1) (application of price or compensation received by landlord, etc), omit paragraph (b) and the “and” preceding it.
 - (3) In Schedule 2 (right to possession for purposes of redevelopment etc: supplementary provision), omit paragraph 9(2).

20

Mines and Quarries (Tips) Act 1969 (c. 10)

- 10 In section 32 of the Mines and Quarries (Tips) Act 1969 (raising of money in special cases), in subsection (2) –
- (a) in paragraph (a), omit “and by section 26 of the Universities and College Estates Act 1925”;
 - (b) in paragraph (b), omit “and by section 30 of the Universities and College Estates Act 1925”.

25

Agriculture Act 1970 (c. 40)

- 11 In section 61 of the Agriculture Act 1970 (special classes of land), in subsection (6), omit “, the Universities and College Estates Act 1925”.

30

Agriculture (Miscellaneous Provisions) Act 1976 (c. 55)

- 12 In Schedule 3 to the Agriculture (Miscellaneous Provisions) Act 1976 (enactments to which power to amend applies), omit the entry relating to the Universities and College Estates Act 1925.

Universities and College Estates Act 1925 (Amendment) Regulations 1978 (S.I. 1978/443)

35

- 13 The Universities and College Estates Act 1925 (Amendment) Regulations 1978 (S.I. 1978/443) are revoked.

Highways Act 1980 (c. 66)

- 14 (1) The Highways Act 1980 is amended as follows.
- (2) In section 87 (agreements for use of land for cattle-grids or by-passes), omit subsection (5).
- (3) In Schedule 24 (consequential amendments), omit paragraph 3 and the italic heading preceding it. 5

Agricultural Holdings Act 1986 (c. 5)

- 15 (1) The Agricultural Holdings Act 1986 is amended as follows.
- (2) In section 89 (power of limited owners to apply capital for improvements), omit subsection (2). 10
- (3) In Schedule 14 (consequential amendments), omit paragraph 13 and the italic heading preceding it.

Town and Country Planning Act 1990 (c. 8)

- 16 (1) Section 328 of the Town and Country Planning Act 1990 (settled land and land of universities and colleges) is amended as follows. 15
- (2) Omit subsection (1)(b) and the “and” preceding it.
- (3) Omit subsection (2)(b) and the “and” preceding it.
- (4) In the heading, omit “and land of universities and colleges”.

Solicitors’ Recognised Bodies Order 1991 (S.I. 1991/2684)

- 17 In Schedule 1 to the Solicitors’ Recognised Bodies Order 1991 (S.I. 1991/2684) (statutes which apply to recognised bodies), omit the entry relating to the Universities and College Estates Act 1925. 20

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

- 18 (1) The Leasehold Reform, Housing and Urban Development Act 1993 is amended as follows. 25
- (2) In Schedule 2 (special categories of landlords), omit paragraph 7 and the italic heading preceding it.
- (3) In Schedule 14 (right to terminate new lease on grounds of redevelopment: supplementary provision), omit paragraph 10.

Agricultural Tenancies Act 1995 (c. 8)

- 19 In section 33 of the Agricultural Tenancies Act 1995 (power to apply and raise capital money), in subsection (1), omit “or section 26 of the Universities and College Estates Act 1925”. 30

Housing Grants, Construction and Regeneration Act 1996 (c. 53)

- 20 In section 55 of the Housing Grants, Construction and Regeneration Act 1996 (cessation of conditions on repayment of grant, etc), omit subsection (4)(c) and the “and” preceding it.

Cathedrals Measure 1999 (No. 1)

5

- 21 In section 36 of the Cathedrals Measure 1999 (construction of references to dean and chapter, etc), in subsection (2), omit the entry relating to the Universities and College Estates Act 1925.

Trustee Act 2000 (c. 29)

- 22 In Schedule 2 to the Trustee Act 2000 (minor and consequential amendments), omit paragraph 29 and the italic heading preceding it. 10

Constitutional Reform Act 2005 (c. 4)

- 23 In paragraph 4(3) of Schedule 11 to the Constitutional Reform Act 2005 (miscellaneous amendments: Supreme Court of England and Wales), omit “the Universities and College Estates Act 1925 (c. 24)”. 15

Cathedrals Measure 2021 (No. 2)

- 24 In Schedule 4 to the Cathedrals Measure 2021 (consequential amendments), omit paragraph 4 and the italic heading preceding it.

SCHEDULE 2

Section 40

MINOR AND CONSEQUENTIAL AMENDMENTS

20

PART 1

AMENDMENTS RELATING TO PART 1

- 1 The Charities Act 2011 is amended in accordance with paragraphs 2 to 11 and 13 to 26.

Amendment relating to section 2 of this Act

25

- 2 In Schedule 6 (appeals and applications to Tribunal), for the entry relating to a decision of the Commission under section 227 to refuse to register an

amendment to the constitution of a CIO substitute –

“Decision of the Commission under section 226 to give, or withhold, consent under section 226 in relation to an amendment of the constitution of a CIO.	The persons are – (a) the CIO, (b) the charity trustees of the CIO, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.”	5
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Amendments relating to section 3 of this Act

3	In section 285 (power to alter sums specified in Part 13), in subsection (2), omit – (a) the entry relating to section 267(1); (b) the entry relating to section 275(1).	10
4	In section 328 (suspension of time limits while reference is in progress), omit subsection (3).	15
5	In section 350 (connected person: child, spouse and civil partner) – (a) in subsection (1), for “and 249(2)(a)” substitute “, 249(2)(a) and 280B(3)(a)”; (b) in subsection (2), for “and 249(2)(b)” substitute “, 249(2)(b) and 280B(3)(b)”.	20
6	In section 351 (connected person: controlled institution), for “and 249(2)(d)” substitute “, 249(2)(d) and 280B(3)(d)”.	
7	In section 352 (connected person: substantial interest in body corporate), in subsection (1), for “and 249(2)(e)” substitute “, 249(2)(e) and 280B(3)(e)”.	
8	In Schedule 6 (appeals and applications to Tribunal), omit – (a) the entry relating to a decision of the Commission to notify charity trustees under section 271(1); (b) the entry relating to a decision of the Commission to notify charity trustees under section 278(1).	25
9	In Schedule 9 (transitory modifications), in the table in paragraph 26(3), omit the entry relating to “section 69O”.	30
10	In Schedule 11 (index of defined expressions) – (a) in the entry relating to “child”, for “and 249(2)(a)” substitute “, 249(2)(a) and 280B(3)(a)”; (b) in the entry relating to “civil partner”, for “and 249(2)(b)” substitute “, 249(2)(b) and 280B(3)(b)”; (c) in the entry relating to “control of institution”, for “and 249(2)(d)” substitute “, 249(2)(d) and 280B(3)(d)”; (d) in the entry relating to “substantial interest in a body corporate”, for “and 249(2)(e)” substitute “, 249(2)(e) and 280B(3)(e)”;	35 40

- (e) omit the entry relating to “transfer of property (in sections 268 to 274)”.

Amendments relating to section 5 of this Act

- 11 In section 349 (orders subject to affirmative procedure), in subsection (1), omit paragraph (b). 5
- 12 In section 5 of the Coal Industry Act 1987 (coal industry trusts), in subsection (8), for “73(1) to (6)” substitute “73(1), (2) and (5)”.

Amendments relating to section 6 of this Act

- 13 In section 66 (unknown and disclaiming donors: supplementary) –
 - (a) for the heading, substitute “Section 63A: supplementary”; 10
 - (b) in subsection (1), for “sections 63 and 65” substitute “section 63A”;
 - (c) after subsection (1) insert –
 - “(1A) Where property is applied cy-près by virtue of section 63A, all the donor’s interest in it is treated as having been relinquished when the gift was made.”; 15
 - (d) in subsection (2), for “sections 63 to 65” substitute “section 63A”;
 - (e) omit subsections (4) to (6).
- 14 In Schedule 8 (transitionals and savings), in paragraph 17 (application of sections 63, 64 and 67 to property given for charitable purposes), for “Sections 63, 64 and 67 apply” substitute “Section 67 applies”. 20
- 15 In Schedule 11 (index of defined expressions) –
 - (a) in the entry relating to “charitable purposes, failure of”, in column 1, for “sections 63 and 65” substitute “section 63A”;
 - (b) in the entry relating to “donor”, in column 1, for “63 to 66” substitute “63A and 66”; 25
 - (c) omit the entry relating to “prescribed (in sections 63 and 65)”.

Amendments relating to sections 10 and 11 of this Act

- 16 (1) In section 281 (power of unincorporated charities to spend capital: general) –
 - (a) in subsection (2), omit “given for particular purpose”; 30
 - (b) in the heading, omit “unincorporated”.
- (2) In the italic heading preceding that section, omit “unincorporated”.
- 17 (1) Section 284 (taking effect of resolution under section 282) is amended as follows.
 - (2) In subsection (1), after “282(2)” insert “or (3A)”. 35
 - (3) In subsection (1)(a) –
 - (a) after “evidence” insert “made”;
 - (b) for “the donor or donors mentioned in section 282(1)(a)” substitute “any donor or donors to the available endowment fund”.

Amendments relating to section 16 of this Act

- 25 In section 322(2) (reviewable decisions of the Commission), after paragraph (e) insert –
 “(ea) not to make an order under section 106 (power to authorise ex gratia payments etc) in relation to a charity;” 5
- 26 In Schedule 6 (appeals and applications to Tribunal), after the entry relating to a decision by the Commission not to make an order under section 105 insert –
- | | | | |
|--|--|---|----|
| “Decision by the Commission not to make an order under section 106 in relation to a charity. | The persons are –
(a) the charity trustees of the charity, and
(b) (if a body corporate) the charity itself. | Power to quash the decision and (if appropriate) remit the matter to the Commission.” | 10 |
| | | | 15 |

PART 2

AMENDMENTS RELATING TO PART 2

- Amendment relating to section 22 of this Act* 20
- 27 In section 118 of the Charities Act 2011 (meaning of “connected person” in section 117(2)), in subsection (2), in the words before paragraph (a), for “The” substitute “Subject to subsection (2A), the”.

Amendment relating to section 23 of this Act

- 28 In paragraph 4(2)(b) of Schedule 1 to the Trusts of Land and Appointment of Trustees Act 1996 (land held on charitable trusts etc), for the words from “if neither” to “conveyance” substitute “if section 122(2) or 125(1) of that Act applies to the conveyance but has not been complied with”. 25

PART 3

AMENDMENTS RELATING TO PART 3 30

- 29 The Charities Act 2011 is amended in accordance with paragraphs 30 to 36.

Amendments relating to section 25 of this Act

- 30 For the italic heading preceding section 42, substitute “Names and working names”.
- 31 In section 45 (change of name where charity is a company), in subsection (2), after “with respect to” insert “the name of”. 35
- 32 In section 208(2) (refusal of application for constitution and registration of CIO) –

- (a) in the words after paragraph (a)(ii), after “the name” insert “or a working name”;
- (b) in paragraph (b), after “charity’s name” insert “or working name”.
- 33 In section 231(2) (refusal of application for conversion to CIO) –
- (a) in the words after paragraph (a)(ii), after “the name” insert “or a working name”;
- (b) in paragraph (b), after “charity’s name” insert “or working name”.
- 34 In section 237(3) (refusal of application for amalgamation of CIOs) –
- (a) in the words after paragraph (a)(ii), after “the name” insert “or a working name”;
- (b) in paragraph (b), after “charity’s name” insert “or working name”.
- 35 In Schedule 6 (appeals and applications to Tribunal), in the entry relating to a direction of the Commission under section 42 requiring the name of a charity to be changed, in column 1, for the words from “requiring” to the end substitute “requiring –
- (a) the name of a charity to be changed, or
- (b) that a working name of a charity no longer be used as a working name.”
- 36 In Schedule 11 (index of defined expressions), after the entry relating to “vesting declaration” insert –

“working name | section 42(4)”.

PART 4

AMENDMENTS RELATING TO PART 4

- 37 The Charities Act 2011 is amended in accordance with paragraphs 38, 39 and 41. 25

Amendments relating to section 30 of this Act

- 38 In section 187 (meaning of “benefit” etc) –
- (a) in the heading, omit “, “services””;
- (b) omit the definition of “services”.
- 39 In Schedule 11 (index of defined expressions), omit the entry for “services”. 30
- 40 In section 7A of the Parochial Church Councils (Powers) Measure 1956 (No. 3) (modification of section 185 of the Charities Act 2011 in its application to a parochial church council) –
- (a) after “providing” insert “goods or”;
- (b) for “(3)(a),” substitute “(3),”.
- 35

Amendment relating to section 31 of this Act

- 41 In section 187 (meaning of “benefit” etc), for “and 186” substitute “to 186A”.

PART 5

OTHER MINOR AMENDMENTS

- | | | |
|----|--|----|
| 42 | In section 199 of the Charities Act 2011 (meaning of “benefit” in section 198(2)), for the words from “include” to the end substitute “include— | 5 |
| | (a) any remuneration whose receipt may be authorised under section 185, or | |
| | (b) the purchase of any insurance which may be authorised under section 189.” | |
| 43 | In section 248 of the Charities Act 2011 (meaning of “benefit”), in subsection (2), for the words from “include” to the end substitute “include— | 10 |
| | (a) any remuneration whose receipt may be authorised under section 185, or | |
| | (b) the purchase of any insurance which may be authorised under section 189.” | |
| 44 | In section 292B(4) of the Charities Act 2011 (general power to make social investments), for paragraph (b) substitute— | 15 |
| | “(b) charities established or regulated by Royal charter;”. | |
| 45 | In section 77 of the Companies Act 2006 (change of name), in subsection (2), after paragraph (d) insert— | 20 |
| | “(e) by resolution of the directors acting under section 45(3) of the Charities Act 2011 (change of name to comply with direction of Charity Commission).” | |

Charities Bill [HL]

A

B I L L

To amend the Charities Act 2011 and the Universities and College Estates Act 1925;
and for connected purposes.

Baroness Barran

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