

Charities Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN SPECIAL PUBLIC BILL COMMITTEE

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 3

LORD HODGSON OF ASTLEY ABBOTTS
LORD STEVENSON OF BALMACARA

- 1★ Page 3, line 9, at end insert –
“(2A) For the purposes of this section “amendment” includes the entire replacement of the trusts of the charity.”

Member’s explanatory statement

This amendment provides that the power of amendment in proposed section 280A can be used to replace the entire governing document of an unincorporated charity with a new governing document.

- 2 Page 4, line 14, at end insert –
“(9A) Subsection (8) does not apply to an amendment which re-states the effect of the relevant provision or provisions as it was or they were prior to amendment.”

Member’s explanatory statement

This amendment provides that Charity Commission consent is not required for purely drafting amendments, which do not change the meaning of protected Clauses (Clauses of the kind described in proposed section 280A(8) of an unincorporated charity's governing document).

Clause 12

LORD ETHERTON

- 3 Page 13, line 37, at end insert –
“(4) No regulations under subsection (3) may be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament.”

Member's explanatory statement

This amendment, recommended by the Delegated Powers and Regulatory Reform Committee, would require the regulations under subsection (3) of section 285 of the Charities Act 2011 (inserted by Clause 12 (amount permitted to be borrowed from permanent endowment and time limit for re-payment)) to be made pursuant to the affirmative resolution procedure.

Before Clause 36

LORD ETHERTON

4 Insert the following new Clause—

“Consent for the taking of charity proceedings

In section 115 of the Charities Act 2011, after subsection (4)(b) insert —

“, or

- (c) if, within 60 days of the receipt by the Commission of a request for consent, the Commission has neither granted nor refused consent, in which case consent will be deemed to have been given.””

Member's explanatory statement

This amendment specifies an exception to the prohibition in section 115 of the 2011 Act on taking charity proceedings without authorisation by the Charity Commission. The exception is where the Commission has failed to respond within 60 days to a request for consent, in which case consent will be deemed to have been given.

After Clause 36

LORD HODGSON OF ASTLEY ABBOTTS
LORD STEVENSON OF BALMACARA
BARONESS BARKER
BARONESS STOWELL OF BEESTON

5 Insert the following new Clause—

“References to the Tribunal

- (1) In section 325 of the Charities Act 2011, in subsection (2), for “with the consent of the Attorney General” substitute “where the Commission has given the Attorney General 28 days’ notice of its intention to make such a reference”.
- (2) In section 326 of the Charities Act 2011, in subsection (1), at the end insert “provided the Attorney General has given the Commission 28 days’ notice of his or her intention to make such a reference”.

Member's explanatory statement

This amendment implements the Law Commission's recommendations that the Charity Commission should not be required to obtain the consent of the Attorney General before making a reference to the Tribunal and vice versa.

LORD ETHERTON

6★ Insert the following new Clause—

“References to Tribunal by the Commission

In section 325 of the Charities Act 2011, after subsection (2) insert —

After Clause 36 - continued

- “(2A) If, within 60 days of receipt by the Attorney General of a request to consent to make such a reference, the Attorney General has neither given nor refused consent, authorisation will be deemed to have been given.
- (2B) If the Attorney General refuses consent within such period of 60 days, the Attorney General must publish a comprehensive statement of the Attorney General’s analysis and of the reasons for the refusal.””

Member’s explanatory statement

The proposed new subsection 325(2A) of the 2011 Act provides an exception to the prohibition on the Charity Commission making a reference to the Tribunal without the consent of the Attorney General. It provides that where the Attorney General has neither refused nor granted consent within 60 days consent will be deemed to have been given. The proposed new subsection 325(2B) stipulates that the reasons for any refusal of consent must be published.

7

Insert the following new Clause—

“Right of appeal

In Schedule 6 to the Charities Act 2011 (appeals and applications to Tribunal), insert in the table the following new entries—

“Decision by the Commission under section 67A(4)(b) not to grant written consent.	The persons are— (a) the charity trustees; (b) 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.
Decision by the Commission under section 280A(7)(a) to give or refuse written consent.	The persons are— (a) the charity trustees; (b) 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.””

Member’s explanatory statement

These amendments are consequential on (1) Clause 7 of the Bill (cy-près application of proceeds of fund-raising), which requires under the new section 67A(4)(b) the Commission’s written consent if the money or property exceeds £1,000, and (2) Clause 3 of the Bill (amendment of trusts of an unincorporated charity) which requires under the new section 280A(7)(a) the written consent of the Commission to amendments to which section 280A(8) applies.

Clause 37

LORD PARKINSON OF WHITLEY BAY

8 Page 28, line 23, leave out subsection (1) and insert –

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

(1A) In section 337 (other provisions as to orders of Commission) –”

Member’s explanatory statement

This amendment is consequential upon the amendment at page 28, line 31.

9 Page 28, line 24, at end insert –

“(a) after subsection (2) insert –

“(2A) Where an application is made for an order under this Act or the Commission proposes to make such an order, the Commission –

(a) may itself give such public notice as it thinks fit of the contents of the order applied for or proposed to be made, or

(b) may require it to be given by –

(i) any person making an application for the order, or

(ii) any charity that would be affected by the order.”;

Member’s explanatory statement

This amendment makes provision for public notice of the contents of an order applied for or as proposed to be made, including provision enabling the Charity Commission to require another to give public notice.

10 Page 28, line 25, at end insert –

“(3ZA) Where the Commission’s written consent is sought 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 contents of the consent sought, or

(b) may require it to be given by the charity.”

Member’s explanatory statement

This amendment makes provision for public notice where the Charity Commission’s written consent is sought, including provision enabling the Charity Commission to require another to give public notice.

11 Page 28, line 31, at end insert –

“(4) In section 338 (directions of the Commission or person conducting inquiry), in subsection (2), for “any such directions” substitute “a direction of the Commission under any provision of this Act”.”

Member’s explanatory statement

This amendment alters section 338(2) of the Charities Act 2011, which applies provision in section 337(1) to (3) about orders made by the Charity Commission to directions given by the Commission, in consequence of the amendment at page 28, line 24, which inserts section 337(2A).

Schedule 2**LORD PARKINSON OF WHITLEY BAY****12**

Page 36, line 18, at end insert –

“19A In section 24 of the Cathedrals Measure 2021 (No. 2) (investment powers, etc), after subsection (7) insert –

“(7A) The members of the Chapter of a cathedral may not pass a resolution under –

(a) section 282 of the Charities Act 2011 (resolution to spend larger fund), or

(b) section 284A of that Act (power to borrow from permanent endowment),

unless the Chapter has obtained the consent of the Church Commissioners.””

Member’s explanatory statement

This amendment of the Cathedrals Measure 2021 relates to clauses 10 and 12 and requires a cathedral chapter to secure the consent of the Church Commissioners before resolving under section 282 to spend part of a larger endowment fund or under section 284A to borrow from permanent endowment, as a chapter must for similar matters under that Measure.

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