

Charities Bill – Responding to the Law Commission report ‘Technical Issues in Charity Law’

We discuss some points of particular relevance to Higher Education Institutions (HEIs) in the recent Charities Bill.

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“The purpose of the Bill is to address a range of issues in charity law which hamper charities’ day to day activities, by implementing the majority of the recommendations in the Law Commissions 2017 report ‘[Technical Issues in Charity Law](#)’.”

The [briefing paper](#) to accompany the Queen’s Speech details the main benefits of the Bill. The changes will remove ‘inappropriate burdens and unnecessary administrative and financial burdens whilst safeguarding the public interest in ensuring that charities continue to be properly run’. There was an overarching stress on ensuring that the law governing the entire charitable sector works better for all.

There are five main elements that will affect charities, including Higher Education Institutions:

1. Amending governing documents

For those charities governed by Royal Charter, charity trustees will be able to amend provisions more easily than under the current regime. This will remain subject to the Charity Commission and Privy Council’s approval, but it will make it less onerous to amend governing documents.

This is a welcome change which will enable HEIs to update their governing documents when required and to effect those changes more easily than is currently the case.

2. Land disposal

Charities will have access to a much wider pool of professional advisors when it comes to land disposal. This should make the process more straightforward and streamlined, saving institutions both time and money when selling land.

This change should allow and enable trustees to access the professional advice which is appropriate for the circumstance of each individual land disposal. For certain universities and colleges, the law around the disposal of land will be simplified to align with broader charity and trust law.

3. Permanent endowment

Charities will have greater flexibility over how they can make use of their permanent endowment. The definition of permanent endowment will be reformulated to provide greater clarity.

This will include the trustees being able to borrow up to 25% of the value of their permanent endowment funds without the need for the Charity Commission’s approval. This will be subject to the charity being about to recoup that expenditure within 20 years’ time. There will also be more latitude for charities to use their permanent endowment, including allowing trustees to borrow up to £25,000 of the permanent endowment funds without the approval of the Charity Commission.

4. Paying for goods

Charities will have greater flexibility in accessing goods from trustees when it is in the best interests of the charity, without requiring the permission of the Charity Commission and even if it is not expressly stated in the governing documents of the charity.

Equally, trustees will be able to delegate decision making regarding ex gratia payments to staff. However, for all charities, it would be worth ensuring that regulations are in place to ensure that this power is not misused.

5. Failed appeals

Where there has been a failed appeal for a charity, charities will be able to take advantage of new proportionate rules. This includes the ability to spend donations below £120 on similar charitable purposes without the need to ask individual donors for their permission.

The overall changes have the backing of the Charity Commission, as it believes that these rules will make life simpler for trustees and will ensure that charities can maximise the benefits they work to deliver. The changes will ease some of the regulatory pressures placed on the trustees and align with the Charity Commission's 2018-2023 strategy, to give trustees the tools they need to succeed.

However, it will take a while for these changes to come into effect so a little more patience will be needed.

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