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TO

Make provision about social investment by charities

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:—

1 Power to make social investments

- (1) In the Charities Act 2011, after section 292 insert—

“PART 14A

SOCIAL INVESTMENTS

- 292A Meaning of “social investment”** 5
- (1) This section applies for the purposes of this Part.
- (2) A social investment is made when a relevant act of a charity is carried out with a view to both—
- (a) directly furthering the charity’s purposes; and
- (b) achieving a financial return for the charity. 10
- (3) References to an act of a charity are, in the case of an unincorporated charity, to an act of the charity trustees.
- (4) A relevant act of a charity is—
- (a) an application or use of funds or other property; or
- (b) taking on a commitment in relation to a liability of another person (such as a guarantee) that puts the charity’s funds or other property at risk of being applied or used. 15
- (5) An act mentioned in subsection (4)(a) is to be regarded as achieving a financial return if its outcome is better for the charity in financial terms than expending the whole of the funds or other property in question. 20
- (6) A commitment mentioned in subsection (4)(b) is to be regarded as achieving a financial return if—

- (a) it is not called upon; or
 - (b) it is called upon without resulting in the expenditure of the whole of the funds or other property put at risk.
- (7) The fact that a relevant act of a charity is regarded as the making of a social investment for the purposes of this Part does not of itself make the act an investment for any other purpose. 5

292B General power to make social investments

- (1) An incorporated charity has, and the charity trustees of an unincorporated charity have, power to make social investments.
- (2) The power conferred by this section may not be used to make a social investment involving – 10
 - (a) the application or use of permanent endowment, or
 - (b) taking on a commitment mentioned in section 292A(4)(b) that puts permanent endowment at risk of being applied or used, unless the charity trustees expect that making the social investment will not contravene any restriction with respect to expenditure that applies to the permanent endowment in question. 15
- (3) The power conferred by this section –
 - (a) may be restricted or excluded by the trusts of the charity;
 - (b) is (subject to paragraph (a)) in addition to any other power to make social investments that the charity or charity trustees may have. 20
- (4) This section applies in relation to charities whether established before or after this Part comes into force.

292C Charity trustees' duties in relation to social investments 25

- (1) This section applies in relation to social investments that are made after this Part comes into force, whether or not made by the exercise of the power conferred by section 292B.
- (2) The charity trustees of a charity must, before exercising a power to make a social investment – 30
 - (a) consider whether in all the circumstances any advice about the proposed social investment ought to be obtained;
 - (b) obtain and consider any advice they conclude ought to be obtained; and
 - (c) satisfy themselves that it is in the interests of the charity to make the social investment. 35
- (3) The charity trustees of a charity must from time to time review the charity's social investments.
- (4) When carrying out a review the charity trustees must – 40
 - (a) consider whether any advice about the social investments (or any particular social investment) ought to be obtained; and
 - (b) obtain and consider any advice they conclude ought to be obtained.
- (5) The duties under this section may not be restricted or excluded by the charity's trusts. 45

(6) In the case of an unincorporated charity, the duties under this section apply in relation to relevant social investments in place of any duties under sections 4 and 5 of the Trustee Act 2000 that would otherwise apply.

(7) In subsection (6) “relevant social investments” means social investments that are investments for the purposes of Part 2 of the Trustee Act 2000.”

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2 Consequential amendment of the Trustee Act 2000

(1) The Trustee Act 2000 is amended as follows.

(2) In section 4 (standard investment criteria), after subsection (3) insert —

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“(4) This section has effect subject to section 292C(6) of the Charities Act 2011 (which disapplies the duties under this section in cases where they would otherwise apply in relation to a social investment within the meaning of Part 14A of that Act).”

(3) In section 5 (advice), after subsection (4) insert —

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“(5) This section has effect subject to section 292C(6) of the Charities Act 2011 (which disapplies the duties under this section in cases where they would otherwise apply in relation to a social investment within the meaning of Part 14A of that Act).”

3 Extent, commencement and short title

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(1) This Act extends to England and Wales only.

(2) This Act comes into force on such day as the Minister for the Cabinet Office may by regulations made by statutory instrument appoint.

(3) This Act may be cited as the Charities (Social Investment) Act 2015.

CHARITIES (SOCIAL INVESTMENT) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Charities (Social Investment) Bill. They do not form part of the Bill.
2. The Notes should be read in conjunction with the Bill. They are not a comprehensive description of the Bill. Where a clause or part of a clause does not require any explanation or comment, none is given.
3. The Bill extends to England and Wales only. The Bill does not deal with matters within the legislative competence of the National Assembly for Wales and does not affect the functions of Welsh Ministers.
4. The Bill gives effect to recommendations of the Law Commission in its Recommendations Paper, *Social Investment by Charities* (September 2014). It introduces a power for charities to make social investments and sets out the duties that must be complied with by charity trustees when making social investments, whether pursuant to the statutory power or otherwise. It also makes consequential amendments to the Trustee Act 2000.

COMMENTARY ON THE CLAUSES

Clause 1: Power to make social investments

5. Clause 1 amends the Charities Act 2011 by inserting Part 14A, which contains three sections: section 292A (meaning of “social investment”); section 292B (general power to make social investments); and section 292C (charity trustees’ duties in relation to social investments).

Section 292A: Meaning of “social investment”

6. Section 292A defines “social investment” for the purposes of Part 14A.
7. Subsection (2) defines a social investment by reference to the objectives that are sought to be achieved by entering into the transaction. A relevant act of a charity is a social investment if it is done with a view to both (a) directly furthering the charity’s purposes and (b) achieving a financial return for the charity.
8. Traditionally, charities have either applied their funds in direct furtherance of their purposes – for example by making grants to beneficiaries – or invested their funds – for example by purchasing government bonds – to yield a financial return which can then be applied in direct furtherance of the charity’s purposes. A social investment is an act done with the objective of achieving both of these outcomes.

9. Any valid act done by a charity (or its charity trustees) can be said to be done in furtherance of the charity's purposes; the powers of the charity cannot be exercised for any other purpose. The requirement in subsection (2)(a) that an act must be done with a view to *directly* furthering the charity's purposes means that there must be a sufficiently close causal connection between the act done and the charitable good achieved. The purchase by a charity of government bonds with the sole objective of providing an income for the charity would not directly further the purposes of the charity within subsection (2)(a) since the investment has little proximity to the charitable good achieved by spending the income. The purchase, by contrast, of shares in a medical research company by a charity for the advancement of medicine could directly further the purposes of the charity because it brings about a charitable good in the form of the work of the company. The word "directly" should not be read as excluding the possibility of the achievement of the charity's purposes in effect being done by a third party, as in the example above.
10. Examples of acts that might constitute social investments include:
- (1) a charity for the support of homeless people lets out housing at a low rent;
 - (2) an overseas development charity invests in a fair trade tea production enterprise that is expected to yield a low financial return;
 - (3) a charity for the advancement of medicine makes a high-risk investment in a medical research company which is in the early stages of developing a potential new treatment; and
 - (4) a charity for the reduction of reoffending invests in a social impact bond to fund a project which provides support to those leaving prison.
11. A relevant act of a charity is defined by subsection (4). An application or use of funds or other property (subsection (4)(a)) includes purchasing an asset such as land or shares, advancing money by way of loan and granting permission to use or occupy land (for example by lease or by licence). Taking on a commitment in relation to the liability of another person (subsection (4)(b)) includes guaranteeing the liability of another person and providing security for such a liability. An act of the charity is, in the case of an unincorporated charity, an act of the charity trustees (subsection (3)) since an unincorporated charity has no legal personality.
12. A charity may wish to make a social investment out of funds or other property held on special trust. Property held on special trust is property which is held and administered for any special purposes of the charity on separate trusts relating only to that property: Charities Act 2011, section 287(1). The reference to the charity's purposes in subsection (2)(a) is, in the case of a social investment out of funds or other property held on special trust, to the special purposes of the special trust.

13. Subsection (5) makes clear that funds or other property do not have to be applied or used with a view to generating a financial profit (whether in the form of income or capital growth), or even to be neutral from a financial perspective, in order for the act to qualify as a social investment. A social investment may be loss-making. But an application or use of funds that is expected to result in a total loss of those funds is not a social investment; it is in effect a grant. So a social investment (a) may increase in value and/or yield an income, (b) may be financially neutral (for example, an interest-free loan or a rent-free lease), or (c) may decrease in value (for example, if only part of the initial outlay is recovered).
14. A guarantee or other commitment can qualify as a social investment. Subsection (6) provides that such a guarantee or commitment will be made with a view to a financial return (under subsection (2)(b)) where the charity trustees expect that it will not be called upon in full or at all.
15. A social investment might also amount to an investment for other purposes, such as under the Trustee Act 2000 and under accounting rules, but subsection (7) makes clear that a transaction can be a social investment without also being an investment for such other purposes.

Section 292B: General power to make social investments

16. A general power to make social investments is conferred by subsection (1).
17. Subsection (2) imposes a condition on the exercise of the power in relation to permanent endowment. Permanent endowment is property held subject to a restriction on its being spent for the purposes of the charity. A charity is to be treated for the purposes of the Charities Act 2011 as having permanent endowment unless all property held for the purposes of the charity may be spent for those purposes without distinction between capital and income: Charities Act 2011, s 353(3). Subsection (2) provides that the power is not to be used to make a social investment using permanent endowment unless the charity trustees expect that any restriction on spending the permanent endowment will be complied with; in most cases this means that the charity trustees must expect the value of the permanent endowment to be maintained. This is in contrast to other funds, which may be used to make a social investment provided that a financial return is expected, where a financial return is anything short of total loss of the funds.
18. Subsection (3)(a) provides that the power may be restricted or excluded by the trusts of the charity. The trusts of a charity are the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not: Charities Act 2011, s 353(1). This may include, for example, statutory provisions in the case of a body established by statute.
19. Subsection (3)(b) provides that the power is, subject to subsection (3)(a), in addition to any other power that the charity or charity trustees have to make a social investment. The power supplements rather than replaces other social investment powers.
20. Subsection (4) makes clear that the power applies to charities in existence when Part 14A comes into force (that is, the date on which the Bill comes into force) as well as to charities established after that date.

Section 292C: Charity trustees' duties in relation to social investments

21. The duties set out in this section apply whenever a social investment is made after the commencement of Part 14A, whether or not making the social investment in question involves the exercise of the power conferred by section 292B(1). In other words, the duties apply whether or not the new power conferred by this Bill is the power used to make the social investment in question.
22. The duties cover steps to be taken before a social investment is made (subsection (2)) and a duty to review the charity's social investments from time to time (subsection (3)).
23. The duties may not be restricted or excluded by the trusts of the charity (subsection (5)).
24. Some social investments will also be investments for the purposes of Part 2 of the Trustee Act 2000. In such cases, the duties in this section replace the duties in section 4 (standard investment criteria) and section 5 (advice) of that Act; this is the effect of subsections (6) and (7).
25. A social investment made before the commencement of Part 14A is not subject to the duty to review under subsection (3). That is the effect of subsection (1). Where such a social investment made by a charitable trust is also an investment for the purposes of Part 2 of the Trustee Act 2000, the corresponding duties of that Act will apply.

Clause 2: Consequential amendment of the Trustee Act 2000

26. Clause 2 makes consequential amendments to the Trustee Act 2000 which reflect section 292C(6) of the Charities Act 2011: see paragraph 24 above. The amendments insert words into sections 4 and 5 of the Trustee Act 2000 to refer to the effect of section 292C(6) in disapplying the duties in those sections in the case of investments that are also social investments to which section 292C applies.

Clause 3: Extent, commencement and short title

27. Under clause 3(2), the Bill will come into force on a single day appointed by the Minister for the Cabinet Office in regulations.