

Social Enterprise UK briefing on Charities (Protection and Social Investment) Bill

Report Stage



SEUK briefing 3
15 July 2015

SOCIAL ENTERPRISE UK

1. Social Enterprise UK was established in 2002 as the national body for social enterprise in the UK. We are a membership organisation. We conduct research; develop policy; campaign; build networks; support individual social enterprises; share knowledge and understanding; support private business to become more socially enterprising; and raise awareness of social enterprise and what it can achieve.
2. Social enterprises are businesses driven by social or environmental objectives whose surpluses are reinvested for that purpose in the business or in the community. They operate across a wide range of industries and sectors from health and social care, to renewable energy, recycling and fair trade and at all scales, from small businesses to large international companies. They take a range of organisational forms from co-operatives and mutuals, to employee owned structures and charitable models. Our members come from across the social enterprise movement, from local grassroots organisations to multi-million pound businesses that operate across the UK.
3. We chair the Social Investment Forum, a network of social investment and finance intermediaries (SIFs) designed to help keep money flowing around the market and ensure it reaches the social enterprises on the ground. In partnership with the Big Lottery Fund we published Social Investment Explained [1] to give interested parties a overview of the UK social investment market. Our Chief Executive, Peter Holbrook, sits on the board of Big Society Trust in an ex officio capacity. We therefore have considerable experience in social investment.

CHARITIES (PROTECTION AND SOCIAL INVESTMENT) BILL

4. Grand Committee focused on whether the new definition of social investment adequately differentiated between:
 - a) *financially motivated* investment which also happens to be in line with a charity's social purpose; and
 - b) consciously / explicitly *socially motivated* investment.
5. This is an important issue which needs further deliberation. However, insufficient consideration was also given to the other end of the social investment spectrum, the difference between i) social investment and ii) grant-making.

6. This note expands on our briefing note to Peers at Grand Committee stage. There are two issues:
 - a) We think the proposed legislation does not reflect the Law Commission's definition of social investment.
 - b) The Law Commission's definition does not adequately differentiate between social investment, and financial investment that happens to be in line with a charity's purpose.
7. These weaknesses may mean that the legislation may not meet the Government's own aspirations for social investment.
8. We have illustrated below how we think the Law Commission, the Bill, and Social Enterprise UK definitions of social investment differ.

A SPECTRUM OF INVESTMENT



	Social				Financial
Motivation	Only social intent	Primarily social intent with potential for financial return	Primarily social intent but financial return must be greater than 0	Primarily financial intent with some conscious / explicit social expectations	Only financial intent
Note	Feasibly may be incidental financial return i.e. if grant is clawed back or unspent	Financial return is possible but of secondary importance	Return must be better than granting the money away.	Social expectations in line with a charity's social purpose in this context i.e. education, the environment or Africa, for example.	May be some indirect or incidental social impact / impact in line with a charity's purpose
Example	Grant made by a foundation	Foundation underwrites Social Impact Bond at risk	Social investor makes risk capital investment in social enterprise	Investment in the developing world, in a business making useful widgets or through an ethical SRI fund	Speculation on stock exchange or investment via a hedge fund
Law Commission					
Bill definition					
Our definition					

THE LAW COMMISSION DEFINITION OF SOCIAL INVESTMENT

9. The Law Commission definition of social investment includes “avoiding financial liability at a future date”.¹ The Law Commission’s definition, therefore, does not require a positive financial return.
10. Yet the Bill includes financial return in the definition and defines financial return in 292A (5) as “if its outcome is better for the charity in financial terms than expending the whole of the funds or other property in question.”
11. A charity may want to trial a number of innovative methods of addressing their objects through social investment. Given that the methods are innovative, they will be making them at risk. A prudent financial manager may quite reasonably predict a zero financial return on such social investments. This is still social investment and the new legislation should not preclude this.
12. The Government says “We want more social investment opportunities to be available to citizens and the managers of our savings. In the same way that finance flowing to business start-ups is the lifeblood of our economy, so it will be with social enterprises. Change in this market will not take place overnight, but it will be transformative in allowing social ventures to scale up and take on new challenges. We will do all we can to make it happen.”²
13. In the same document, Government also says: “We do not underestimate the degree of challenge, or the timescale required to realise our vision.”³
14. The Minister repeatedly stressed in Grand Committee that the wording has been drafted by the Law Commission. But the wording does not reflect the Law Commission’s definition and consequently, limits social investment in such a way that it could work against the Government’s policy aspiration to “do all that it can to make it happen.”

THE DISTINCTION BETWEEN SOCIAL INVESTMENT, AND FINANCIAL INVESTMENT

15. The definition in the Bill fails to sufficiently differentiate between *financially motivated* investment which also happens to be in line with a charity’s social purpose, and consciously / explicitly *socially motivated* investment.

¹ Social Investment by Charities The Law Commission’s Recommendations, paragraph 1.35

² Growing the Social Investment Market, 2011 Exec Summary

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61185/404970_SocialInvestmentMarket_acc.pdf

³ Ibid, paragraph 2.3

16. All investment has some kind of social impact, much of which can be positive and in line with charitable purposes. Social investment is not just a financial investment which produces social return; lots of financial investments produce positive social returns.

17. There seems to be no clear answer from Government as to how social investment is to be differentiated from a *financially* motivated investment which also happens to be in line with a charity's social purpose. Rather, the Minister offered the suggestion that the "Charity Commission and the courts would be astute to shams; they would look at the substance of a transaction and if it is a financial investment, the trustees would be expected to comply with the financial investment duties."⁴

18. Prevention is better than cure. Resolving this uncertainty in legislation would be better than leaving it to the Charity Commission and the courts.

PROPOSED AMENDMENTS

19. We therefore propose the following amendments for Peers to consider tabling at Report stage.

Clause 13: The Power to make social investment

20. Clause 13 The Power to make social investment defines social investment. The Bill's definition of social investment may inadvertently catch some non-social investment which happens also to meet a charity's objectives. The three following amendments seek to bring the Bill's wording closer to the Law Committee's recommendations and may be beneficial:

Amendment 1

292A (2) "social investment is made when a relevant act of a charity is carried out with a view to primarily -

- a) directly furthering the charity's purposes; while also
- b) achieving a financial return for the charity."

21. This amendment is supported by Social Enterprise UK, Locality, and the Social Investment Business.

Amendment 2

292A (5) An act mentioned in subsection (4)(a) is to be regarded as achieving a financial return if its outcome **is equal** or better for the charity in financial terms than expending the whole of the funds or other property in question and may include:

- (i) income
- (ii) capital growth
- (iii) full or partial repayment of the investment, or

⁴ Hansard, 1 July 2015: Column GC208

(iv) avoiding incurring financial liability at a future date.”

Amendment 3

Delete 292A 6.

Clause 14: Reviews of the operation of this Act

22. Peers discussed at length the importance of ministerial review. The aim of Clause 13 of the Bill is to clarify the existing ability of charities to make social investment, and in doing so facilitate—where appropriate—social investment. Clause 14 specifies a number of issues the review must include. Given the purpose of Clause 13, it is remarkable that a commitment to review social investment, and specifically the relationship between grant-making and social investment, is not on the face of the Bill.

Amendment 4

“14 (1) The Minister for the Cabinet Office must carry out reviews of the operation of this Act including, on each review, how the Act affects—

- (a) public confidence in charities,
 - (b) the level of charitable donations,
 - (d) the relationship between grant-making and social investment,
- and (c) people’s willingness to volunteer.”

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