

## Private Action, Public Benefit

### A Major Shake up for Charity Law

This article highlights the main areas of change which were proposed by the Prime Minister's Strategy Unit in their long awaited report entitled "Private Action, Public Benefit", published at the end of September 2002 and the Government's response to this report which was published in July 2003. The Strategy Unit's recommendations aimed to:

- modernise Charity Law;
- improve the range of available legal forms;
- develop greater accountability; and
- ensure independent and fair regulation.

The major news from the response is that a draft Charities Bill is to be published as soon as possible.

#### Modernising Charity Law

Current charity law is over 400 years old and based on the 1601 Statute of Elizabeth. Under this statute there are four categories of charity; relief of poverty, advancement of education, advancement of religion and other purposes beneficial to the community. These four categories do not accurately reflect the range of organisations, which should be charitable today. The Strategy Unit proposed that a charity should be defined as an organisation, which provides a public benefit and has one or more of the following purposes:

1. The prevention and relief of poverty.
2. The advancement of education.
3. The advancement of religion.
4. The advancement of health.
5. Social and community advancement.
6. The advancement of culture, arts and heritage.
7. The advancement of amateur sports.
8. The promotion of human rights, conflict resolution and reconciliation.
9. The advancement of environmental protection and improvement.
10. Other purposes beneficial to the community.

From the Government's response it is felt that a revised definition of charity should be incorporated in the draft Charities Bill.

#### Improving Legal Form for Charities and Voluntary Organisations

In the past, a company limited by guarantee was a popular choice of governing structure for charities. However, Company Law was not designed with charities in mind and charities have suffered from the administrative burden of dual regulation.

The report recommended a new legal form of company especially for charities called a charitable incorporated organisation (CIO). The main characteristics of this legal form are:

- Incorporated legal form.
- Members liability limited.
- Foundation and membership format – this means that it would be appropriate for charities with and without a membership structure.
- Explicit statement of trustees duty of care, consistent with the Trustee Act 2000.
- Transfer mechanisms to ease conversion from other incorporated forms and default provisions for new and existing charities to convert to a CIO by special resolution.

The Government's response accepted this proposal and, therefore, should be incorporated in the draft Bill.

For community based enterprises the Strategy Unit recommended the establishment of a community interest company. The test of whether an organisation is in the public interest would not be as onerous as a test for charitable status and Community interest companies would therefore not have the tax advantages of charities.

This was also accepted in the response and it is hoped that this new legal form will be included in the Companies Bill which is set to be introduced some time this year.

Currently charities are only able to trade if the trading activity is connected with, or ancillary, to furthering their objects. Any substantial trading must be undertaken by a separate trading company. The Strategy Unit found that an increasing proportion of charity income was achieved by trading activities. Therefore the Strategy Unit recommended that

charities should be able to trade without the need for a separate company subject to the trustees having a specific duty of care to the charity in relation to trading.

However, the Government did not accept this recommendation to allow charities to undertake all trading within the charity.

### **Building the Public's Trust in the Sector**

The Strategy Unit found that there was some evidence to suggest that, in general, charities and other not for profit organisations were not producing sufficiently accessible information that was relevant to the public needs. It was felt that this in the longer term could undermine public trust and confidence. The Government has proposed to introduce a Standard Information Return.

The legislation governing fund-raising was found to be outdated and restrictive and the report suggested that fund-raising regulations should be replaced by a unified licensing system for all public collections covering basic minimum requirements. In addition a self-regulatory initiative, based on a new voluntary code of practice, should be introduced to promote and raise awareness of good practice in fund raising. If the voluntary initiative fails, the Home Secretary should have the power to set up a compulsory system. This was accepted in the Government's response.

The report also recommended that liaison arrangements already in place between the Charity Commission, Local Authorities and the Police should be strengthened to take stronger action against bogus fund-raising which affects public confidence in the sector.

Other methods suggested to increase public confidence in the sector included wider diversity of trustees recruited by charities and participation in the charitable sector in the citizenship component of the National Curriculum.

### **Ensuring Independent Open and Proportionate Regulation**

One of the major recommendations in this area was that red tape be cut back for smaller charities by increasing the threshold for charity registration from £1,000 to £10,000. This would free tens of thousands of charities from the need to register. There would also be a new status of small charity for those which are too small to register.

In response to this, the Government felt that the registration level for smaller charities should be set at £5,000 rather than £10,000 and that charities under this limit may voluntarily register.

The Strategy Unit also proposed a more open and accountable Charity Commission with a larger board. The Commission will have to report to Parliament on new, clear statutory objectives, and hold open Board Meetings. It will also issue reports on performance in areas of the charitable sector.

The Government accepted that reforms to the Charity Commission are needed and it would seem that such reforms are likely to be included in the draft Charities Bill.

The Government also accepted the recommendation that there should be easier appeals against legal decisions made by the Charity Commission to a new independent tribunal. This will enable trustees to challenge decisions at a reasonable cost.

### **Next Step**

One now awaits the imminent publication of the draft Charities Bill. Once published this will provide further guidance and information on the changes charity law can expect.

This information sheet has been prepared to highlight some key issues relating to Charity Law. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at March 2004 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Jeremy Passmore at [jeremy.passmore@ts-p.co.uk](mailto:jeremy.passmore@ts-p.co.uk) or call on 01892 510000.