(2014) 16 Ecc LJ 72–76 © Ecclesiastical Law Society

PARLIAMENTARY REPORT

May–September 2013

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CHARITIES AND CHARITY LAW

England and Wales

In July the Charity Commission issued new guidance on decision-making for charity trustees.[1] The avowed purpose of the guidance is 'to help increase trustees' confidence when making decisions, and inform their processes', and the Commission points out that, if the need arises and something goes wrong, trustees have to be able to demonstrate how they have followed the principles set out in the guidance.

In September, at long last, the Commission published its revised public benefit guidance to replace the previous version which had been rendered partly inoperative by the Upper Tribunal's judgment in *Independent Schools Council*.[2] The new guidance is split into three short, high-level guides on the public benefit requirement itself, on running a charity and on reporting. In addition, the Commission has also published new guidance on 'What makes a charity', dealing with charitable purposes and the jurisdiction of the High Court.

The consultation draft was designed to be read on-line – and at over 20,000 words long is extremely labyrinthine. The final version is considerably shorter and, mercifully, available as a series of PDF files. What is odd, however, is that the Commission has left on its website its current supplementary guidance, including 'The advancement of religion for the public benefit'. The Commission says that the supplementary guidance 'is now under review in light of the revised general guidance and … no longer forms part of our public benefit guidance, but will remain available to read until we publish replacement guidance'. Very strange: one might have thought that superseded guidance was worse than no guidance at all.

1 'It's your decision: charity trustees and decision making', available at <http://www.charitycommission.gov.uk/detailed-guidance/trustees-staff-and-volunteers/its-your-decision-charity-trustees-and-decision-making/>, accessed 25 October 2013.

2 *Independent Schools Council v Charity Commission for England and Wales* [2011] UKUT 421 (TCC).

https://doi.org/10.1017/S0956618X13000847 Published online by Cambridge University Press

Northern Ireland

In June the main provisions of the Charities Act (Northern Ireland) 2008, as amended, were brought into force by the Charities (2008 Act) (Commencement No 4) Order (Northern Ireland) 2013, and at the end of July the Charity Commission for Northern Ireland (CCNI) published its guidance on the public benefit requirement.[3] Shortly afterwards it announced (via Twitter) a consultation on its draft interim reporting proposals for registered charities. The consultation opened on 23 September and was to close on 13 December. The intention is that the reporting requirements for all newly registered charities will be phased in. Under phase one – the interim requirements – registered charities will have to submit an annual return to the Commission, including their annual accounts and reports in the format in which they currently prepare them. Under the second phase, expected to come into operation for accounting periods beginning on or after 1 January 2015, charities will be required to prepare their accounts and provide external scrutiny reports in a form to be set out in Regulations.

Following that announcement, the Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2013 was laid, making transitional provision for the purposes of the 2008 Act and the establishment of the register of charities. The 2013 Order reverses a previous decision of the Charity Tribunal for Northern Ireland and restores the policy intention under which institutions established under the law of Northern Ireland which have been granted charitable status for tax purposes are to be treated as charities. This brings them within the jurisdiction of the CCNI, pending a decision concerning their registration in the register. It also allows the current 'deemed list' of charities to be updated and for the Commission to exercise its functions under those provisions of the Act which have come into operation since the earlier 2011 Order was made.

GIFT AID SMALL DONATIONS SCHEME

The Small Charitable Donations Regulations 2013, SI 2013/938 (which take forward the Gift Aid Small Donations Scheme), were made on 18 April and came into effect the following day. In July HM Revenue & Customs finally published its detailed guidance on the operation of the Scheme as Chapter 8 of its notes for charities and Community Amateur Sports Clubs.

LISTED PLACES OF WORSHIP GRANT SCHEME

Changes to the scope and operation of the Listed Places of Worship Grant Scheme took effect from 1 October. Works to pipe organs, turret clocks, bells

3 Available at <http://www.charitycommissionni.org.uk/Library/pdf_documents/Public%20benefit%20requirement%20July%202103%20pdf.pdf>, accessed 25 October 2013.

https://doi.org/10.1017/S0956618X13000847 Published online by Cambridge University Press

and bell-ropes, which had been excluded from the scope of the Scheme at its last revision, again became eligible for grant. Most important, however – given that it is almost impossible to undertake any repair or alteration to a listed building without professional advice – is that it is once more possible to reclaim the VAT on fees for professional services directly related to eligible building work.

SAME-SEX MARRIAGE AND CIVIL PARTNERSHIP

England and Wales

The Marriage (Same Sex Couples) Act received Royal Assent on 17 July. Sections 15 (Review of civil partnership) and 16 (Survivor benefits under occupational pension schemes) took effect immediately; the remainder of the Act will be brought into force by order.

Scotland

The Marriage and Civil Partnership (Scotland) Bill was introduced into the Scottish Parliament on 27 June. Besides making provision for same-sex marriage in Scotland, the Bill makes further provision as to the persons who may solemnise a marriage and as to marriage procedure itself. The Bill also makes further provision as to the places at which civil marriages may be solemnised. Sections 12 and 13[4] make provision for a new category of 'belief' marriage celebration in addition to the current provision for civil marriage and religious celebration. Moreover, if enacted the Bill will allow civil marriages to take place on any premises (other than on religious premises) agreed between the couple and the registrar and will permit civil partnerships to be registered as part of a religious or belief ceremony.

More generally, section 26 makes bigamy a statutory offence and abolishes the current offence at common law – for which the maximum penalty is currently life imprisonment. The Bill substitutes a maximum penalty of two years' imprisonment or a fine or both in the case of a conviction on indictment.

The accompanying Policy Memorandum states at paragraph 93 that the Westminster and Scottish Governments are preparing amendments to the Equality Act 2010 to provide further protection against discrimination claims generally for religious or belief celebrants who do not wish to carry out same-sex marriages or civil partnerships even if their parent body has opted in to doing so. The protection of the amendment will also extend to other persons, such as organists and choristers, who play an integral part in the religious or belief aspects of a marriage or civil partnership ceremony and to those who control the use of the premises belonging to the organisation in question.

4 Scottish bills are divided into sections, not clauses.

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It is anticipated that, should the Bill receive Royal Assent in early 2014, it will take around 12 months to promulgate the necessary Regulations and the first same-sex marriages will take place in 2015.

POLITICAL ACTIVITY BY CHARITIES

The period under review saw important developments regarding activities by charities in relation to elections or referenda.

In anticipation of the forthcoming debate about the Scottish independence referendum in September 2014 the Office of the Scottish Charity Regulator published guidance for charities on what will be acceptable.[5] The headline message is that Scottish charities may speak out in the independence referendum, including advocating a Yes or a No vote, *so long as they stay within the requirements of charity law.* In general, a charity may take part in the referendum process provided that it can show that it is advancing its charitable purposes, that its governing document does not prohibit such activity, that it is not advancing the interests of a political party and that its trustees are acting in the charity's interests and with due care and diligence.

Of much greater concern to charities generally were the provisions of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill[6] currently before the Westminster Parliament, part 2 of which seeks to regulate non-party campaigning in the year before an election. Critics were very concerned that the Bill as drafted would restrict their capacity to lobby ministers and civil servants because of an extremely vague definition of 'controlled expenditure' in relation to elections.

At the time of writing that issue appeared to have been resolved, after the Government gave an assurance that it would bring forward an amendment to restore the status quo in relation to the current definition of 'controlled expenditure' as expenditure 'which can reasonably be regarded as intended to promote or procure electoral success'. However, it was evident that the Government was not going to compromise on its intention of halving the limit on 'controlled expenditure' by charities on campaigning at the time of an election; and the Churches expressed concern that the terms of the Bill might threaten the practice of inviting candidates to public meetings on their premises at election time. If the cost of arranging such a meeting were to reach £5,000 (the proposed new threshold for registration in England and Wales) the organisers would then have to register under the legislation and comply with some fairly onerous reporting

5 Available at <http://www.oscr.org.uk/media/433188/2013-07-22_referendum_guidance_for_publication_final.pdf>, accessed 25 October 2013.

6 Available at <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0108/140108.pdf> accessed 25 October 2013.

https://doi.org/10.1017/S0956618X13000847 Published online by Cambridge University Press

requirements; it was felt that this would discourage congregations from holding such events.

Perhaps of even greater concern was the fear that the proposed new rules could apply to a range of normal and legitimate awareness-raising activities, despite their being intended as non-partisan, and inhibit the long-standing practice of church leaders making pre-election statements highlighting particular issues – such as poverty and racism – and inviting voters to reflect on them in choosing between candidates.

doi:10.1017/S0956618X13000847

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