

Churches and charity regulation: 1993–2009

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This article explores the impact of charity law and regulation on churches in the period 1993–2009 in the jurisdictions of England and Wales, Scotland, and Northern Ireland. In the past, churches have often escaped the full requirements of charity regulation on issues such as registration, reporting, and accountability to regulators. Many of these exemptions have been removed as a result of modernization of charity law throughout the UK, and the implications of these changes are explored both normatively and qualitatively.

The article explores ways in which charity regulation in the United Kingdom impacts specifically on Christian churches, primarily in the period since 1993 when the Charities Act 1993 started to be implemented in England and Wales, and as a result of further issues implemented under the Charities Act 2006. It also takes account of developments arising from the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Act (Northern Ireland) 2008.

The charitable recognition of churches is outlined in the article, but the focus is on regulatory issues which follow from charitable status. Particular attention is given to areas where such regulation impinges differently on churches and religious charities, as compared to other charities—either by way of special exceptions in the legislation, or because of general requirements which are particularly demanding for churches. The main areas considered are:

- The start of mandatory charity registration—even for churches.
- The rules on trustee benefits and remuneration.
- The inclusion of churches in the requirement to prepare a trustees' annual report, including a public benefit statement.

A further area—the impact of the statutory frameworks for charity accounting—is considered separately in this edition (Morgan, 2009, pp. 343–346)—the results of which are also considered in the present article.

The approach is primarily normative—based on direct analysis of the various primary and secondary legislation. However, it also draws on workshops over a 12-year period with charity treasurers and finance officers (including from churches) seeking their perceptions of the

requirements, supplemented by reviews of financial statements from churches or church bodies.

Structures

The various Christian churches operating in the United Kingdom have a variety of legal forms and structures, but in virtually all cases the relevant entities are charities of some kind. Some of these date back centuries, and a full discussion is outside the scope of this article. But by way of example, three main forms of organization are to be found¹:

- In some denominations, the structures are locally based. In particular, most Baptist and other independent churches are governed by trust deeds or constitutions with a separate trust or association for each local church—i.e. each church is a separate charity with its own governance.
- In some cases the primary structure is at regional or diocesan level: for example the Roman Catholic Church in England and Wales operates primarily through its 22 dioceses each of which is constituted as a separate charity. The parishes are not separately established: in each case the diocesan charity, governed by its own board of trustees², incorporates the parishes of the diocese³.
- Some of the smaller denominations, such as the Moravian Church, operate as one entity combining local congregations, schools, and national work in a single charity—in this case, established by a 1749 Act of Parliament.

The Church of England has a range of structures at different levels: each parish is governed by a parochial church council (PCC) which is a corporate charity, but there are also

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separate entities for diocesan boards of finance (constituted as charitable companies⁴) and at national level the Archbishops' Council. Both PCCs on the one hand and the Archbishops' Council on the other are established under Church Measures (which have the same legal status as Acts of Parliament). The Methodist Church and the United Reformed Church, like the Church of England, have a range of legal structures at different levels (in each case dependent on primary legislation specific to the denomination), as does the Church of Scotland, by way of structures (or 'courts') established under Scots law.

There are also many more specialized entities (which are not specifically considered in this article) ranging from religious orders, to cathedrals, to the Church Commissioners.

The church sector thus encompasses a huge range of sizes and structures. At the one extreme, a rural free church without its own minister, or an Anglican PCC of a parish which only has one service once a month, might have an income of only a few hundred pounds, but it is still a charity in its own right. At the other end, the Church Commissioners reported gross income of £172 million in 2007.

Churches and charitable status

Virtually all Christian churches and many church-related bodies are charities under the laws of the United Kingdom, though the details of this can only be examined separately in relation to the different legal systems of England and Wales, Scotland, and Northern Ireland. (See Breen *et al.*, 2009 for an analysis of the differences and overlaps in charity regulation between these systems.)

England and Wales

In England and Wales, charity law dates back to the 1601 Statute of Charitable Uses. A permanent body of Charity Commissioners⁵ was established in 1853. A systematic register of charities was first created by the Charities Act 1960. Since the 1960 Act allowed the Commissioners to determine whether or not an institution was to be placed on the register it meant that the Commissioners were, in practice, given the power of charity recognition.

A review of charity regulation (Woodfield, 1987) led to the Charities Act 1992, subsequently consolidated in the Charities Act 1993. The 1993 Act has now been extensively amended by the Charities Act 2006 (for details see Lloyd, 2007, and Morgan, 2008b).

The face of the 2006 Act states what has been a matter of case law for centuries (Luxton, 2001;

O'Halloran, 2007) namely that a charity is an institution established exclusively for charitable purposes⁶. A charitable purpose must satisfy two tests: the purpose must fall within the list of 13 possible 'heads of charity'⁷ (this is broadened extensively from the former four heads established in case law⁸); and the purpose must be for the public benefit⁹. It follows from this definition that an organization subject to the law of England and Wales which meets the tests of charitable purposes and public benefit *is* a charity—regardless of registration with the Charity Commission or any other body. Thus, any organization either is or is not a charity (Morgan, 2008a). If it is a charity, it becomes subject to much of the regulatory requirements of the Charities Act 1993 (as amended), whether or not it is registered with the Charity Commission—but as a charity it also gains the tax advantages applicable to charities.

Within the heads of charity, 'the advancement of religion' has long been recognized as a charitable purpose and this is continued in the 2006 Act¹⁰. So an institution with objects concerned with the advancement of the Christian faith will fall within this. In the governing documents or legislation establishing church bodies, the purposes may be expressed more narrowly—for example, 'the advancement of the Roman Catholic religion', or even 'the advancement of the Protestant Evangelical faith' (possibly as set out in a long doctrinal statement), or sometimes in terms of provision of a building for public worship¹¹. But in each case, such bodies are manifestly established within the overall head of advancing religion. (Some religious charities will have other objects in addition, falling within other heads, for example, they may also be established for advancement of education.)

On the second issue of the public benefit requirement, prior to the 2006 Act charities for the advancement of religion were 'presumed' to meet this (Luxton, 2001; Charity Commission, 2008c). This presumption is removed by the 2006 Act¹², so the public benefit must now be explicit and trustees must have regard to Charity Commission guidance on this¹³ (see below for the reporting implications). But few churches would wish to restrict their beneficiaries; indeed, the whole notion of 'public worship' or 'advancing the faith' implies a wide class of beneficiaries. Hence, there is little doubt that virtually all churches are charities, whether judged under the traditional understanding of 'charity' from case law or under the new definition in the Charities Act 2006¹⁴.

However, until recently, many churches and

church bodies in England and Wales were exempted or exempted from registration with the Charity Commission, which has led to considerable confusion about charitable status in the church sector. Few clergy, church council members, or even church treasurers, have been aware of their status as charity trustees (Morgan, 1999) and charitable status has often been of interest only in terms of the right to recover income tax on donations under Gift Aid¹⁵.

Scotland

Until recently, Scotland lacked any general system of charity regulation. While the courts could intervene to protect charitable property under the laws of public trusts, charity recognition was largely a matter of recognition for tax purposes by the Inland Revenue (subsequently HM Revenue & Customs—HMRC).

An initial system of charity regulation was established by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, giving some charity-specific powers to the Lord Advocate¹⁶, and establishing regulations on charity accounting¹⁷, but it did not create a register of charities. The English definition, as followed for tax purposes¹⁸, was used to define 'Scottish charities' for regulatory purposes also (Breen *et al.*, 2009).

However, criticism of this regime and the imposition of the English definition of 'charity' (McFadden, 2001; Burt and Taylor, 2001) led to a major change through the Charities and Trustee Investment (Scotland) Act 2005. This has created a statutory Office of the Scottish Charity Regulator (OSCR), and introduced a compulsory register of Scottish charities¹⁹. Apart from limited exceptions for charities established elsewhere with little presence in Scotland (provided they make their status clear²⁰), no organization may describe itself as a 'charity' in Scotland unless it is entered on the register.

A 'charity test' set out in sections 7–9 of the 2005 Act created a new definition of 'charity' in Scotland. It has similarities to the English legislation but there are some important differences of detail. The list of purposes is presented under 16 heads, rather than 13, with a number of variations in the wording. The definition of 'public benefit' is more explicit than the English definition: it includes consideration of any 'disbenefit' and of any restrictions on benefits (including fee-charging). 'The advancement of religion' appears in the list of charitable heads, and even with the tighter Scottish definition of public benefit, it is hard to see any churches falling outside the charity test. Scottish churches are therefore manifestly

charities under the terms of the 2005 Act. But, unlike England and Wales²¹, there are no exceptions from the registration requirement, and in recent years all Scottish churches have therefore become registered with OSCR.

There is, however, a complication, in that the English definition of charity continues to apply in Scotland for tax purposes²² (for example for Gift Aid). Nevertheless, for the reasons given, Scottish churches readily fall within both definitions.

Northern Ireland

Although some regulation of charities in Northern Ireland was established under the Charities Act (Northern Ireland) 1964, as in Scotland the recognition of charities has been largely a matter of tax recognition by the Inland Revenue (now HMRC). The latest English charity definition now applies for tax purposes in Northern Ireland²³.

However, the Charities Act (Northern Ireland) 2008 which is being commenced in stages from 2009 onwards (DSDNI, 2008) has established a Charity Commission for Northern Ireland (CCNI) and a compulsory system of charity registration will be introduced²⁴, similar to Scotland, (though with a separate register for external charities operating in Northern Ireland²⁵).

The 2008 Act introduces a new definition of 'charity' for Northern Ireland, which is closer to the English definition than the Scottish²⁶. There are 12 heads of charity, rather than 13, but linked to a tighter public benefit requirement (similar to Scotland). 'The advancement of religion' is included, so by the same arguments as above, there is little doubt that any church institution established under the law of Northern Ireland is a charity, whether under the existing definition, or the new definition in the 2008 Act (when implemented).

Regulatory implications

If churches are charities, for the reasons explained above, it might be expected that the full force of charity regulation would always apply to churches and that they would be treated in the same way as other charities. However, this is not necessarily the case, since for many years church institutions have enjoyed some exemptions from the general framework of charity regulation. The exemptions are by no means restricted to the established churches (Church of England, Church of Scotland): many of the concessions apply to places of worship of all kinds, or to charities connected with most Christian denominations.

Prior to the 1993 Act, issues of charity

regulation received little attention from authors in the field of ecclesiastical law and practice. For example, in an extensive text on English canon law Moore and Briden (1985) make no reference at all to the Charities Act 1960 and ‘charitable purposes’ are mentioned only in one brief comment regarding the treatment of collections. Even a book on parish finance (Carter and Perry, 1984) mentions that ‘a PCC is a charity’ only when discussing deeds of covenant²⁷ and investments. Even after the passing of the 1993 Act, it was often necessary to use the term ‘churches and charities’ (for example Morgan, 1998, p. 2) because few churches appreciated that they were charities.

This lack of interest in charity regulation in the church sector is all the more surprising since property or funds given for the advancement of religion is generally subject to the same legal protection as charitable property given for other purposes, and churches, as charities, are entitled to the full range of charity tax reliefs.

Charity registration

In England and Wales, the Charities Act 1960 in principle required all charities in England and Wales to be registered if they had more than £15 per year income, but it contained a number of exceptions. It stated that ‘no charity is required to be registered in respect of a registered place of worship’²⁸ (defined in terms of the Places of Worship Registration Act 1855). It also allowed for regulations or orders to be made exempting certain categories of charities. Furthermore, it contained a schedule of ‘exempt charities’ which included ‘the Church Commissioners and any institution which is administered by them’²⁹. Moreover, the Act completely excludes any application to ‘ecclesiastical corporations’ and to property trusts for consecrated property³⁰, which the Charities Act 1992 extended to include glebe land held by a Diocesan Board of Finance³¹.

The 1992 Act (consolidated in the Charities Act 1993) greatly extended the regulation of charities, especially in terms of financial reporting and the powers of the Charity Commissioners, but it retained these categories with few changes. So, since 1960, there has effectively been a hierarchy of four forms of charitable status in England and Wales:

- Registered charities (subject to the full requirements of the Charities Acts).
- Excepted charities (not required to register as charities, but subject to most of the other requirements—in particular, from the 1993 Act they were required to prepare accounts in accordance with the Act).

- Exempt charities—institutions which remained subject to the general framework of the Charities Acts, but excluded from most of the powers of the Charity Commissioners.
- Excluded charities—bodies which the courts would recognize as holding property in trust for charitable purposes, but falling outside the definition of a ‘charity’ for the 1960 and 1993 Acts.

A number of church institutions fall into the last two categories, but these rarely include local churches. Many churches fall into the second category, but the excepted charities also include charities within the scout and guide movements, and armed forces charities. The Charities (Exception from Registration) Regulations 1996³² include churches or connected charities in most Christian denominations³³. The only major denomination not listed is the Roman Catholic Church, although even if a church is outside these Regulations, it may be possible to argue that it is excepted as a charity ‘in respect of a registered place of worship’³⁴ (but there is some doubt whether this exception just applies to the building or whether it extends to resources for ministry if they are held as part of the same charitable trust).

However, when the UK government instituted a review of charity and not-for-profit regulation following the 2001 general election, the resulting report concluded:

In order to promote trust and confidence in the regulatory system as a whole it is important that all organizations with charitable status should be subject to the same accountability requirements. However, a large number of charities—exempt and excepted charities—are not currently required to register with the Charity Commission. They do not have to submit reports and accounts to the Charity Commission although they enjoy the same tax reliefs and recognition as other charities. Allowing these organizations to avoid regulation as charities creates anomalies, is confusing for the public, and threatens the integrity of the status (Cabinet Office, 2002, para. 7.89).

It recommended that excepted charities (and exempt charities where there was no other regulator) should be required to register (though with a higher threshold of £100,000 income initially, to manage the process).

This was a radical step, implemented in the Charities Act 2006³⁵ and commenced from 31 January 2009³⁶, which is starting to affect a wide range of larger churches, across virtually all the Protestant denominations. The Charity

Commission agreed with representatives in the main denominations to schedule the registrations over nine-month period (Charity Commission, 2009a): a search of the online register in April 2009 indicates that over 200 Church of England PCCs were registered as charities (some had registered voluntarily in late 2008) and there are also a small number of new registrations in other denominations (mainly Methodist bodies).

The Minister for the Cabinet Office has the power to reduce the £100,000 threshold over time: the intention is that eventually the same registration threshold would apply to all charities—thus effectively removing the concept of ‘excepted charities’, but assurances were given in Parliament that this would not happen before a five-year review of the Act in 2011.

As explained, there is no system of excepted charities in Scotland, so *all* Scottish churches which had been recognized as charities for tax purposes were initially added to the register maintained by the OSCR (initially as an agency of Scottish Ministers but from 2006 with regulatory powers under the 2005 Act). These churches were immediately faced with the requirement to complete Annual Returns for OSCR, and from 2008 they had to start filing accounts under the 2005 Act.

The 2005 Scottish Act retains an earlier concept of ‘designated religious charities’³⁷, but such charities were *not* exempted from accounting provisions of the Act, still less from registration. The designation simply reduces the powers of OSCR in areas such as restricting changes to a charity’s governing document or the suspension of trustees. Nine religious bodies are currently designated as having the relevant supervisory capacity and as meeting the public benefit test³⁸ (OSCR, 2007).

The move to registered charity status is, for many churches, a major change and it remains to be seen what impact this will have: it seems likely that church council members etc. will become much more conscious of their duties as charity trustees and of the wider obligations of charitable status.

Trustee benefits

One of the central planks of charitable status in all the UK jurisdictions is that charity trustees should not normally benefit from their position as trustees—or, at the least, any private benefits to trustees must be incidental compared to the public benefit provided by the charity. This is one of the key principles in the Charity Commission’s guidance on public benefit (Charity Commission, 2008a, p. 27)—but the principle is long established in case law (Luxton,

2001, p. 370). Although minor concessions are allowed under the Charities Act 2006³⁹, the latest version of the Commission’s guidance on trustee payments (Charity Commission, 2008b) reinforces the principle. OSCR (2009) has also stressed this in recent guidance.

The principle is that no trustee should receive payment or other benefits from a charity (other than reimbursement of expenses) unless the payment is authorized by statute, or by the courts, by the governing document of the charity, or by regulatory authority⁴⁰. The principle applies to all charities, including churches, but until recently, with most churches not registered as charities, it was easy for unauthorized trustee remuneration to take place without regulatory intervention (though technically it should be still have been highlighted by an auditor or independent examiner as a potential breach of trust). However, trustee remuneration is an issue which causes a particular problem for churches. Most secular charities now operate on the basis of an unpaid board of trustees where the staff (including the chief executive) are not trustees (they simply report to the trustees). If attending trustees meetings they do not have vote. But, in a church, this arrangement would require a priest or minister in receipt of a salary or stipend to be accountable to lay trustees, and many churches see this as theologically unacceptable. In most churches, the minister is a voting member of the church council or equivalent body, and if salaried he or she is thus a paid trustee.

Moreover, even if authorized, any trustee remuneration must be disclosed as a note to charity accounts⁴¹, and for many churches the disclosure of clergy salaries or stipends is a sensitive issue. The issue also affects paid organists, caretakers, youth workers and other officers who are sometimes appointed as members of the church council or equivalent.

For clergy in the denominations governed by statute, the principle of clergy remuneration may not be a problem as there will generally be legislation permitting such payments, but even so the payments should be disclosed in the accounts (see Morgan, 2009 on the broader impact of charity accounting requirements). However, such disclosure seems to be a thorny issue: many sets of church accounts reviewed for this study contained notes such as ‘no trustee received any remuneration in their capacity as a trustee’. This is not sufficient: if the charity paid any remuneration or other benefits to a trustee (or to a connected person such as close relative of a trustee) the details should be fully disclosed if the charity’s accounts are to comply with the SORP⁴² and regulations.

In other churches, any clergy remuneration will be *ultra vires* if the clergy are charity trustees, unless there is express provision in the governing documents. The Charity Commission is generally prepared to authorize remuneration clauses in the governing documents of religious charities where there are adequate controls to ensure such remuneration is not excessive, but many churches are governed by old trust deeds or constitutions which lack such provision.

Trustees' reports

Excepted charities in England and Wales are required to prepare annual accounts, but the Charities Act 1993 does not generally require such charities to prepare a trustees' annual report (TAR). Churches which need to register thus trigger this as a new requirement⁴³. TARs are also required for all Scottish charities under the Charities Accounts (Scotland) Regulations 2006⁴⁴. However, many churches hold an annual meeting at which the church council or equivalent trustee body reports back to the wider membership, and it should not be difficult in principle to present such information in the form of a TAR. (In the Church of England, PCCs are already required to produce an annual report complying with requirements under the Church Accounting Regulations: the requirements of the Charities Act 1993 are not substantially different.)

Nevertheless, one issue which seems to have created particular concern is that, as a result of the removal of the presumption of public benefit, in England and Wales for the years ending 31 March 2009 onwards, the TAR must include a 'public benefit statement'. The TAR must include two requirements: a statement as to whether or not the trustees have had regard to the Charity Commission's guidance on the public benefit requirements⁴⁵; and a summary of 'the main activities undertaken by the charity during the year to further its charitable purposes for the public benefit'⁴⁶.

It is not the aim of this article to explore the full impact of the public benefit requirement on religious charities, but the reporting requirements are not onerous and much of the difficulty has come from churches which have assumed that 'public benefit' implied a need to show benefits unrelated to their religious aims. The Charity Commission (2009b) has already published an example of a trustees' report showing how a church can address this requirement and even in their 2008 financial statements, a number of registered church charities have begun to include such statements. For example, one charity states in its trustees'

report:

How the charity benefits the public. Our Lord Jesus Christ gave humanity two great commandments when he told us to love both God and neighbour; as a Christian it is impossible to do one without the other (Archdiocese of Cardiff, 2009).

The report proceeds to spell out the work of the charity in relation to Christ's commandments, with reference to public worship, provision of buildings for prayer and reflection, and pastoral work in the community, including a reference to the latest Papal Encyclical, showing that the charity is meeting the public benefit requirement while remaining true to Catholic teaching.

Conclusions

The various changes in charity law over the period 1993–2009, affecting all three UK jurisdictions, have led to a gradual change from a position where churches often failed to realize they were charities at all, to a state where churches are increasingly subject to the same forms of regulation as other charities. This has been explored in relation to three key areas: charity registration, the rules on trustee benefits, and the need for trustee reports including public benefit statements, with a fourth area—the charity accounting requirements—considered in a separate article (Morgan, 2009).

While any organization subject to regulatory changes has to devote time and effort to complying, churches have little to fear in a formal sense. Churches, being established in most cases for the advancement of the Christian faith to a wide range of beneficiaries, manifestly meet the new definitions of 'charity' for all jurisdictions of the UK, so the real impact of the changes is simply to require them to meet the same standards of accountability as other charities.

Some procedural changes will be needed to address the new requirements, but from the analysis above and in the related article it is clear that the accounting requirements are the most demanding area. However, both in England and Wales, and in Scotland, churches have been subject to charity accounting regulations since the mid 1990s: the only new reporting requirements are to provide a trustees' report with the accounts, to submit the report and accounts to the Charity Commission or OSCR, and to complete an annual return. Moreover, in England and Wales, even this initially only affect churches over £100,000 income.

The full impact of the latest changes will take time to assess, but in a modern society comprising

people of all faiths and none, it would be anachronistic for Christian churches to continue to receive the benefits of charitable status without the normal standards of accountability. Indeed, churches will no doubt benefit from closer relationships with the rest of the charity sector which will surely emerge as they become more visible through charity registration. ■

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Notes

- ¹ The principal source for this information is the published accounts of various church entities described.
- ² The term 'trustees' is used in this article in the sense of 'charity trustees' as defined by s. 97(1) of the Charities Act 1993, i.e. 'the persons having the general control and management of the administration of a charity'. Most of the responsibilities of charity regulation considered in this article fall on the charity trustees. Many churches, however, use different terms internally, for example 'church council members', 'members of the Diocesan Board of Finance', 'church elders' or 'diaconate'. Note: Trustees in this sense are to be distinguished from 'holding trustees', i.e. those who just hold the title to charitable property. Holding trustees are not discussed in this article.
- ³ Provision for parishes is made under Roman Catholic Canon law, but this has no force in English law.
- ⁴ A company limited by guarantee which is also a charity.
- ⁵ From 2007 the Charity Commissioners became the Charity Commission (by virtue of s. 1A of the Charities Act 1993, inserted by s. 6 of the Charities Act 2006).
- ⁶ 2006 Act, s. 1: the new definition took effect from 1 April 2008.
- ⁷ 2006 Act, s. 2(2).
- ⁸ The key case is the judgment of Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531.
- ⁹ 2006 Act, s. 3.

- ¹⁰ 2006 Act, s. 2 (2)(c).
- ¹¹ Case law has, however, established that simply placing property in trust for the purposes of a particular religion, or for aiding a particular church, is not sufficient to constitute exclusively charitable purposes: there must be a specific requirement to apply the property for the advancement or promotion of the faith or religion concerned. See, for example, the discussion and cases cited in Charity Commission (2008d), paras 2.9 and 2.13(8)–(10); also *Ellis v IRC* (1949) 31 TC 178.
- ¹² 2006 Act, s. 3.
- ¹³ 2006 Act, s. 4(6). The general guidance on the public benefit requirement is published in Charity Commission (2008a) and the specific public benefit guidance in relation to advancement of religion is in Charity Commission (2008c).
- ¹⁴ Case law has, however, established that a closed religious order does not meet the public benefit test: *Cocks v Manners* (1871) LR 12 Eq 574; *Gilmour v Coates* [1949] AC 426 (HL)—see Luxton (2001, p. 132). This principle is restated in the context of the 2006 Act in Charity Commission (2008c, p. 15).
- ¹⁵ Gift Aid is a relief which allows UK charities to recover the income tax paid by donors on their donations. For most churches, individual giving is the largest source of income, and Gift Aid is thus very significant—even the smallest churches normally operate a Gift Aid scheme.
- ¹⁶ Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, s. 1–15.
- ¹⁷ The Charities Accounts (Scotland) Regulations 1992 (SI 1992/2165), made under ss. 4–5 of the 1990 Act.
- ¹⁸ The English definition of ‘charity’ is now to be found in the Charities Act 2006 ss. 1–5, and by virtue of s. 80, this definition extends to Scotland and Northern Ireland for tax purposes. Previously, a charity was defined for tax purposes in s. 506(1) of Income and Corporation Taxes Act 1988 as ‘any body of persons or trust established for charitable purposes only’ (where ‘charitable purposes’ would have been interpreted in accordance with case law deriving from the 1601 Act).
- ¹⁹ Charities and Trustee Investment (Scotland) Act 2005, s. 3.
- ²⁰ 2005 Act, s. 14.
- ²¹ ‘Excepted charities’ in England and Wales are excepted under ss. 3–3B of the Charities Act 1993 from the requirement to register with the Charity Commission.
- ²² Charities Act 2006, s. 80(3) and (4).
- ²³ Charities Act 2006, s. 80(5) and (6).
- ²⁴ Charities Act (Northern Ireland) 2008, s. 16.
- ²⁵ 2008 Act, s. 167.
- ²⁶ 2008 Act, ss. 1–5.
- ²⁷ Prior to the Finance Act 2000, when Gift Aid became available for monetary gifts to charity of any amount, tax relief on charitable giving generally required the donor to enter into a ‘deed of covenant’ with the charity for a minimum of four years.
- ²⁸ Charities Act 1960, s. 4(4) and (9).
- ²⁹ 1960 Act, s. 4(4)(a) and Second Schedule.
- ³⁰ 1960 Act, s. 45(2). The Act defines an ‘ecclesiastical corporation’ as a corporate body within the Church of England which is either a ‘corporation sole’—for example an incumbent of a parish or a bishop; or a ‘corporation aggregate’ if it only holds property for ecclesiastical purposes.
- ³¹ Now in Charities Act 1993, s. 96(2).
- ³² SI 1996/180, made under s. 3(5) of the Charities Act 1993. The regulations were intended to be of a temporary nature, due to expire in 2001, but were extended by SI 2001/260, SI 2002/1598 and SI 2007/2655—so exceptions now continue until 1 October 2012, apart from those bodies specifically removed from excepted charity status by the Charities Act 2006.
- ³³ The exceptions are: Baptist churches; Congregational churches; churches affiliated to the Fellowship of Independent Evangelical Churches; Unitarian and Free Christian churches; Calvinist Methodist churches and the Presbyterian Church of Wales; the Church of England; the Church in Wales; the Methodist Church; the Religious Society of Friends; the United Reformed Church.
- ³⁴ Places of Worship Registration Act 1855, ss. 6 and 7.
- ³⁵ The new requirements are (or will be) contained in ss. 3–3B of the 1993 Act (as amended by the 2006 Act). In the case of excepted charities, registration for those over £100,000 income took effect from 31 January 2009. The government anticipates that the changes for exempt charities (either registration on the same basis as formerly excepted charities, or supervision by a ‘principal regulator’—under s. 11 of the 2006 Act) will be implemented from autumn 2009 (Cabinet Office, 2009).
- ³⁶ By SI 2008/3267.
- ³⁷ Charities and Trustee Investment (Scotland) Act 2005, s. 65.
- ³⁸ The list includes the six Roman Catholic dioceses in Scotland, together with the Church of Scotland, the Free Church of Scotland and the United Free Church of Scotland (although the effect of designation of the Church of Scotland for this purpose extends to all constituent parishes of the Church—around 1400 Scottish charities in total).
- ³⁹ Where necessary, s. 73A of the Charities Act 1993 (as amended by the 2006 Act) now allows for payments to trustees for specific non-trustee services to be authorized by the other trustees, but it is subject to four demanding conditions, and this provision cannot be used to make a trustee an employee. There is similar provision in Scotland under ss. 67–68 of the 2005 Act although the scope is slightly broader in that remuneration for services as a trustee or under a contract of employment can potentially be authorized.
- ⁴⁰ In England and Wales, s. 26 of the Charities Act 1993 enables the Charity Commission to authorize trustee remuneration in exceptional circumstances.
- ⁴¹ This principle is laid down in the SORP, but is also enforced by regulations: in England and Wales by the Charities (Accounts and Reports) Regulations 2008, reg. 8(10), Sch. 2, para. 1(e) and in Scotland by the Charities Accounts (Scotland) Regulation 2006, reg. 8, Sch. 1, para. 1. The Scottish regulations even requires disclosure of trustee remuneration for accounts on the receipts and payments basis, under reg. 9, Sch. 3, Part 2, para. (e).
- ⁴² Statement of Recommended Practice on Accounting and Reporting by Charities (see Charity Commission, 2005 for the latest version). See Morgan (2009) for discussion of the impact of the SORP accounting regime on churches.
- ⁴³ The requirements for a trustees’ annual report are set out in the Charities (Accounts and Reports) Regulations 2008, reg. 40.
- ⁴⁴ SSI 2006/218.
- ⁴⁵ Charities (Accounts and Reports) Regulations 2008, reg. 40(2)(c)(ii). It is a requirement of s. 4(6) of the 2006 Act that trustees have regard to the Commission’s guidance.
- ⁴⁶ Charities (Accounts and Reports) Regulations 2008, reg. 40(2)(b)(i). For charities subject to a full audit, slightly more detail is needed, reg. 40(2)(b)(ii).