Charity law reform – all talk and no action?

In the year since Lord Hodgson published his report into charity law there has been a lot of discussion about his recommendations but, so far, little action.

Rosamund McCarthy and Christine Rigby look at the current state of charity law reform

It is now over a year since Lord Hodgson published his 159-page report reviewing charity law and making recommendations for change. In the meantime there has been high-profile discussion (especially in parliament) about whether charity law, and the Charity Commission, are fit for purpose. But can we expect reform any time soon?

What has happened so far?
The government issued an interim response to Lord Hodgson’s report in December 2012, and a fuller response is expected when parliament returns from its summer break. In the interim, two parliamentary committees have also had their say:
- the Public Administration Select Committee (PASC) published its report on the Charities Act in May 2013; and
- in the same month the Public Accounts Committee (PAC) published a report on the Charity Commission.

And if that was not enough, the National Audit Office also plans to report in the autumn on the Charity Commission’s ‘effectiveness as a regulator of registered charities’.

What plans are there to implement suggested changes?
The Law Commission, which is a government advisory board responsible for reviewing existing law and drafting new legislation, does have time set aside in the next two years to implement changes to charity law. The full details of its remit will be published in a consultation paper in the first half of 2014, but already we have a fairly clear idea that the Commission will be focusing on some very technical areas and not necessarily progressing all recommendations from Lord Hodgson, the PASC or the PAC.

What areas are likely to be changed?
The Law Commission has already indicated it plans to look at:
- areas where trustees might be given more autonomy, such as disposals (and mortgages) of charity land and making ‘ex gratia’ payments out of charity funds;
- safeguarding bequests to charities that have merged;
- easier ways for Royal Charter bodies to amend their charter; and
- widening the powers of the Charity Tribunal – for example to give the Tribunal power to suspend the effects of a Charity Commission scheme or decision pending the outcome of an appeal.

The Law Commission is still considering whether it will also carry out a review of the issues relating to social investment by charity trustees – BWB’s Luke Fletcher and Stephen Lloyd have met with the Law Commission to encourage them to do this.

So far, it is disappointing that the Law Commission seems unlikely to tackle some of the bigger issues like the role of the Charity Commission or widening the remit of the Charity Tribunal so it can hear appeals against any decision or non-decision of the Charity Commission. But it’s possible that with enough political will, some of these other areas might be tackled as well.

In any event, from what government has said to date, legislation implementing any reforms is not expected before 2016.

What other areas are hitting the headlines?

The Charity Commission and charity regulation

Lord Hodgson and the PASC were both clear about the need for the Commission to focus its resources on regulation, with the latter commenting that the Commission’s objectives, now set out in the Charities Act 2011, represented ‘an ambition that the Commission could never fulfil, even before the budget cuts were initiated’. The PAC was concerned that ‘the Commission’s approach to regulation and enforcement
“It is disappointing that the Law Commission seems unlikely to tackle some of the bigger issues like the role of the Charity Commission or widening the remit of the Charity Tribunal so it can hear appeals against any decision or non-decision of the Charity Commission. But it’s possible that with enough political will, some of these other areas might be tackled as well.”

Lacks vigour’. With the National Audit Office review in the pipeline, we can certainly expect more rhetoric here, though whether that translates into changes to the law (or better still, improved funding for the Commission) is difficult to predict.

Lord Hodgson was supportive of some level of charging by the Charity Commission for filing annual returns and for charity registration. However, the government’s initial response was lukewarm, and the PASC report was not supportive of charging, except for imposing fines for late filing of annual returns.

**Public benefit**

As ever, there were strong views on public benefit. Lord Hodgson’s report and the government’s interim response were both in favour of keeping things as they are, with no statutory definition of public benefit. The PASC took a very different view, describing the Charities Act as ‘critically flawed’ in relation to public benefit, and recent controversial public benefit cases as ‘an administrative and financial disaster for the Charity Commission and the charities involved’. The PASC has recommended that the Act should be revisited by parliament. The government’s response will indicate its reaction to the PASC recommendation, but it is difficult to see parliamentary time being made available for any amendments to the statutory public benefit provisions.

**Fundraising**

Here Lord Hodgson’s proposal was for the sector to continue to develop a system of self-regulation, with a further review in five years’ time. The PASC was supportive of this recommendation, and noted the progress already made in this respect, but recommended that if statutory regulation became necessary, the cost should be borne by the charities themselves. For the moment, government is funding some initial consultancy work on creating a sustainable self-regulatory system for fundraising, which the Institute of Fundraising (as commissioning body) put out to tender in June 2013.

**Campaigning**

The PASC did not recommend any changes to the rules on political campaigning by charities. This is a welcome development. However, as predicted by BWB’s Philip Kirkpatrick in our Spring 2013 Update (http://www.bwbllp.com/knowledge/2013/02/28/charity-and-social-enterprise-spring-update/), the PASC recommended that charity annual returns should set out how much of a charity’s spending has been on political and communications work.

**What’s next?**

The next thing to look out for – and by the time you are reading this it may well be out – is the full government response to Lord Hodgson’s report. This may indicate that the government is going to ‘fast track’ some areas separate to the work the Law Commission is doing. Otherwise, we may see further change within the Charity Commission as to what it prioritises and that, in reality, may have as much or more impact on charities than much of the proposed law reform!

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Find out more

- The Public Administration Select Committee Report: [http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/76/7602.htm](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/76/7602.htm) and [http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/76/76vw01.htm](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/76/76vw01.htm)