

The Charities Bill and Learned and Professional Societies

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Learned and professional societies are voluntary membership bodies concerned, in the first case, with the development of a subject discipline through research, meetings and publications, and, in the second, with the regulation of professional practice by setting standards to begin and to continue professional activity – including assessing continuing professional development, regulating practice according to a code of professional conduct, and operating a disciplinary code. In fact, many professional societies undertake learned society activities at the same time. Most societies are incorporated as limited liability companies by guarantee although some are incorporated by Royal Charter. Many are also registered as charities on the grounds that their objects are educational and that there is a considerable public interest in the regulatory and developmental work that they do.

The Charities Bill is intended to modernise the law and status relating to charities and to provide a definition of “charity”. It followed the publication of the recommendations of the Strategy Unit and now includes:

- new forms of incorporation such as the CIO (the Charitable Incorporated Organisation);
- improved accountability and transparency;
- limited payment to trustees for special services over and above

their trusteeships. (A recent survey has shown that three-quarters of those asked did not want trustees paid as trustees);

- power to be given to the Commission to relieve trustees of liability in appropriate cases – a power currently available only in the High Court.

Most of these matters do not concern learned and professional societies whose accountability to their educated (and often demanding) memberships has to be transparent, who regard election to trusteeship/council membership as a privilege, and whose democratic procedures are unlikely to countenance trustees being relieved of any liability. There is a view that the Bill, when enacted, will not much affect societies because they constitute a small and atypical sector of the larger charity world which is significantly concerned with fund-raising – an activity with which most societies are not greatly involved.

There is also a view which fears that proposed emphasis on the public benefit test for future charity registration might well affect societies. If the proposed legislation has independent schools in its sight, many might see societies as similar bodies charging high fees for services primarily provided for their own members. Larger societies have a high profile in respect of the public protection they give by codes of conduct and disciplinary hearings but smaller societies are often by-passed when

complainants and employers deal with allegations of malpractice without reference to the professional society concerned. Furthermore, the public interest in the advancement of subject knowledge is not necessarily rated as highly as the benefits provided by the society to its members. The Foundation for Science and Technology has prepared a paper for discussion with the Commission about the fundamental roles of the learned and professional societies in respect of their contribution to public benefit and it is hoped that agreement on this issue will be reached in the near future.

In discussions with the Charity Commission about this issue so far, the matter of the application of the public benefit test – which is the point at issue – has been addressed as follows:

- there are three elements to this test: social value, poise, and accessibility. Social value is currently presumed in the case of educational, religious, and welfare purposes but, of course, that presumption could be rebutted (eg the presumption does not turn a school for pickpockets into an educational charity). The change contemplated by the Bill is that social value would not be presumed in the future in the case of any of the four (to become twelve) heads of charity. But learned societies should have little difficulty in demonstrating the social value of the work in which they are engaged;

- in respect of poise (the balance between public and private advantage), the predominance of public advantage would continue to be required. This is an issue which is of relevance to the charitable status of societies but there appears to be no change in the law here and there are precedents to show how the law has been applied in favour of the charitable registration of societies in the past;
- in respect of accessibility, the benefits of the charity would have to continue to be accessible by the public. No change is made by the Bill. The problem here – although not perhaps of any great concern to learned societies – is with the current law. Does the accessibility test depend simply on the breadth of the beneficiary class stated in the trusts of the charity? Or does the question of practical exclusion by cost of the services provided also have to be taken into consideration. (As

Mr Justice Darling once memorably said : “the law, like the Ritz Hotel, is open to all!”)

One area in which there would be an undoubted benefit is in respect of the proposed Charitable Incorporated Organisations (CIO) which would avoid the current problem of an applicant for charity registration having to register as a limited liability company before applying for charity status and then finding that the Charity Commission wanted changes to the objects thus requiring another general meeting to change the objects clause in the memorandum of association. There will also be the advantage of abolishing the dual reporting to, and regulation by, the Registrar of Companies and the Charity Commissioners.

Although there was no reference to the liability of members being limited other than in the event of a winding up, the Commission has confirmed that members' liability

for the debts of the CIO would be limited probably on the lines of the present guarantee companies. The Bill provides that CIO would have to be in the charity's title yet current legislation provides for the omission of Ltd in titles of appropriate registered companies – a provision universally used by societies which are incorporated – and it is hoped that a similar exemption will apply (otherwise societies might have to adopt devices such as using the society's name as the banner and printing the fuller name in smaller type underneath). The position of societies incorporated by Royal Charter is not clear: presumably they will have to register as charities under the existing procedure (which will remain in being) because they cannot be incorporated twice – by Charter and as a CIO – and they are unlikely to want to surrender their Charters!