Charity Law and regulation

Charity law and regulation is a key policy area for NCVO. Charity law covers the setting up and operation of all charities, regardless of their size or type. It is important because:

- It is the legal and regulatory framework that assures special charitable status. The rewards this status brings are only granted to organisations that exist to achieve a particular ‘good cause’ and do so for public benefit.
- Charities rely on the willingness of the public to give their time and money for the causes they care about, so the law has to reflect public perceptions about what is charitable in order to keep public trust and confidence high.

Charities Act

- This is the main piece of legislation affecting charities is the Charities Act 2011, which came into effect on 14 March 2012. It sets out how all charities in England and Wales are registered and regulated, and replaces the Charities Act 2006, as well as most of the Charities Acts 1992 and 1993.
- The key aim of the Charities Act 2006 was to simplify and clarify the law, by: reducing bureaucracy, especially for smaller charities; providing a definition of charity; and modernising the Charity Commission’s functions and powers.
- We think that overall it is a good piece of legislation and has achieved many of its objectives, in particular making clearer the purpose of charitable status with the introduction of the universal public benefit test.

The Charity Commission

- The Charity Commission is the independent regulator for charities, responsible for registering and regulating charities in England and Wales.
- NCVO believes that the Commission’s core role is to protect the public’s interest in the integrity of charity by ensuring that charities focus on the purposes which give them charitable status and carry them out for the public benefit. It is important for the sector to have a strong and independent regulator, whose key role is to promote compliance and accountability.

Public Benefit

- All charities must have exclusively charitable purposes and be established for public benefit. Public benefit is the cornerstone of charity and a central tenet for maintaining public trust and confidence. It is important that the law is clear and that trustees understand their duties in this area.
• The Charities Act 2006 removed the previous automatic presumption that charities established for the relief of poverty, the advancement of religion, and the advancement of education were for the public benefit.

• NCVO has consistently argued that to maintain public trust in the ‘charity brand’ it’s important that there is a level playing field where all charities must demonstrate public benefit. This is because public benefit is the main justification for the benefits, including public support and tax reliefs, which charities receive.

Payment of trustees

• For many years, there has been a debate surrounding the issue of whether not trustees should be paid. Most recently, this was suggested by Lord Hodgson in his Charities Act Review of 2012.

• NCVO believes the voluntary principle goes right to the heart of what it means to be a charity and is what makes our organisations distinctive. The role of trustees is based on this principle, and should remain a voluntary one.

• Charities shouldn’t have automatic power to pay trustees and it is vital for public trust and confidence that appropriate checks and balances are kept in place.

Campaigning and the law

• Charities that wish to campaign in England and Wales must be careful to follow the Charity Commission’s guidance CC9: Speaking Out, which outlines the legal framework in which charities can campaign.

• Most importantly it highlights that campaigning and political activity can be legitimate and valuable activities for charities to undertake.

• However, a charity cannot exist for a political purpose, which is any purpose directed at furthering the interest of any political party or securing or opposing a change in the law or policy.

• A charity must always stress its independence and ensure that any involvement it has with political parties is balanced. A charity must never give support or funding to a political party, nor to a candidate or politician.

• The Lobbying Act 2014 sets out additional rules for organisations in the run up to the election. It regulates the spending that non-party campaigners, including charities, can spend on certain campaigning activities in the period before an election.

• The key changes are:
  – an increase in the threshold at which non-party campaigners must register with the Electoral Commission;
  – a broader range of regulated activities;
  – constituency limits;
and a reduction of the overall amount organisations can spend.

- The Electoral Commission has produced guidance for non-party campaigners affected by the Act. NCVO has also produced an FAQ guide for charities.
- NCVO is committed to defending the voluntary sector’s right to campaign. We see it as a vital and valuable way for charities to work towards achieving their purposes. It is important that government protects charities’ right to campaign within the law, and respects their independence and essential role as a voice for their cause.

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- Read Elizabeth’s blog posts.