

BOOK REVIEW

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The Charities Act Handbook, A Practical Guide

by Bates Wells Braithwaite; Edited by: Alice Faure Walker and Julian Blake

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This ‘practical guide’ to the Charities Acts¹ updates the previous edition, which was published after the Charities Act 2006. As the authors note, in the world of charity law ‘much has happened since then.’² In addition to covering the substance of the law, the authors discuss the background to the legislation, including Lord Hodgson’s review³ and the Law Commission’s programme of review of charity law. A guide to all charity law must of necessity be voluminous, and this volume is no disappointment in that regard. Chapter topics cover the role of the Charity Commission, charitable purposes and public benefit, registration, exempt charities, charity names, remuneration of charity trustees, land transactions, powers of the Charity Commission to protect and assist, challenging the Charity Commission, charity investments, permanent endowments, regulation of charitable companies, charitable incorporated organisations, unincorporated charities, mergers, schemes, control of fundraising (general, professional fundraisers, and commercial participators), charity accounts, and miscellaneous charity law matters. The book concludes with a very limited consideration of the how the Acts apply to Scotland and Northern Ireland. Written by practitioners with significant experience in charity law, the book is accessible and useful.

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1 Charities Act 1992; Charities Act 1993; Charities Act 2006; Charities Act 2011; Charities (Protection and Social Investment) Act 2016.

2 Alice Faure Walker and Julian Blake (eds.), *The Charities Acts Handbook, a Practical Guide* (LexisNexis 2016) preface.

3 Cabinet Office: *Trusted and Independent: giving charity back to charities: Review of the Charities Act 2006* (2012)

The comprehensiveness of the book precludes a summary of every section, but some highlights will be discussed. The chapter on charitable purposes and public benefit is a good starting point for consideration of whether a potential charity is likely to be charitable.⁴ The discussion around each of the listed charitable purposes in section 3(1)-(4) of the Charities Act 2011 provides helpful context to the bare statutory language. For example, the section covering the purpose for advancement of religion in section 3(1)(c) sets out some of the difficulties encountered in the ‘vexed question’ of how religion is defined for charity law, clarified by a 2013 Supreme Court decision.⁵ In the discussion of the Charity Commission guidance on public benefit there is recognition of the dilemmas faced by charity trustees, who must make decisions about how their charities will meet the public benefit requirements, guided only by the now very summary pieces of statutory guidance on public benefit.⁶ The authors provide some further coverage of public benefit and relief of poverty charities and public benefit and religious organisations.⁷ However, in light of these recognised difficulties in defining public benefit and the acknowledged insufficiency of the statutory guidance, it might have been useful to include more references to relevant case law, thereby providing a starting point for the motivated reader who must explore the topic more deeply.

The chapters on the powers of the Charity Commission to protect and assist⁸ and on challenging the Charity Commission⁹ are particularly helpful. The chapter on the powers of the Charity Commission is timely in light of the new enforcement powers granted in the Charities (Protection and Social Investment) Act 2016.¹⁰ The perspective of the authors is interesting, considering their involvement in a successful judicial review of a Charity Commission action that fettered the trustees of a charity in the future exercise of their fiduciary duties.¹¹ There is a useful discussion of the strategic advantages and disadvantages of seeking decision review or instead making a direct application to the Charity Tribunal when challenging a

4 Faure Walker and Blake (n 2) 17.

5 Faure Walker and Blake (n 2) 21; *R (on the application of Hodkin and anor) v Registrar of Births, Deaths and Marriages* [2013] UKSC 77.

6 Faure Walker and Blake (n 2) 35-38.

7 Faure Walker and Blake (n 2) 40-41.

8 Faure Walker and Blake (n 2) 107.

9 Faure Walker and Blake (n 2) 155.

10 See further, Francesca Quint, ‘Protection of charities under the Charities (Protection and Social Investment) Act 2016: Too little or too much?’ [2016] *Charity Law & Practice Review* 19, 1.

11 *Order, R. on the Application of Cage Advocacy UK Ltd v Charity Commission* [2015] CO/2562/2015.

Charity Commission decision.¹² The authors highlight the danger of seeking decision review exclusively when the 42 day time limit for applications to the Tribunal dates from the original decision, rather than the date of any reconsideration in many cases. The discussion of the Charity Tribunal itself is balanced, and considers the frustrations of the gaps and limited powers of the Tribunal, as well as proposals for reform.¹³

In the chapter on charity investments,¹⁴ the authors cover the limits of ethical investments and the *Bishop of Oxford* case.¹⁵ They also helpfully set out the conclusions from a written legal opinion from Christopher McCall QC, for which the authors gave instructions in 2015. This opinion considers that in light of global warming a large number of charities may need to re-evaluate how they approach investments, particularly those that are 'carbon intensive'.¹⁶

The strategic advantages and disadvantages of the charitable incorporated organisation (CIO), as well as the legal requirements, are set out in Chapter 14.¹⁷ The chapter contains practical guidance to this relatively new legal form.

As discussed in Chapter 18¹⁸ on fundraising, recent changes to the self-regulation of fundraising reflect the present intense scrutiny of fundraising in the charitable sector. Following various scandals around charitable fundraising in 2015 and the Etherington Review¹⁹ the new single Fundraising Regulator was established. The authors make clear that the self-regulated status of fundraising is in jeopardy. The chapters on professional fundraisers²⁰ and commercial participants²¹ set out the requirements for charities working with such third parties.

The book includes appendices containing the full text of the Charities Acts and relevant regulations. It is helpful to have these in one text, but it does raise the

12 Faure Walker and Blake (n 2) 159-160.

13 Faure Walker and Blake (n 2) 164-166.

14 Faure Walker and Blake (n 2) 181.

15 *Harries (Bishop of Oxford) v Church Commissioners* [1992] 1 WLR 1241 (HC).

16 Faure Walker and Blake (n 2) 191.

17 Faure Walker and Blake (n 2) 221.

18 Faure Walker and Blake (n 2) 313.

19 Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire, *Regulating Fundraising for the Future: Trust in Charities, Confidence in Fundraising Regulations* (September 2015).

20 Faure Walker and Blake (n 2) 321.

21 Faure Walker and Blake (n 2) 343.

page count from a more manageable 399 pages to a size that one will hesitate to carry back and forth from the office.

Full of practical and accessible information, the book will be useful for charity lawyers, other charity professionals, and charity trustees and administrators themselves. It is a difficult balancing exercise to pitch a guide of this nature at a sufficiently high level to reach a broad audience, while still being comprehensive enough to be useful. *The Charities Acts Handbook* succeeds admirably.