RECENT CHARITY LAW DEVELOPMENTS

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There were a number of interesting developments and publications in 1993 which helped clarify certain areas of charity law and practice. For example, The Charity Commission was extremely busy during the first half of 1993, publishing new documents and guidance notes for charities and their advisers.

Model Governing Documents for Charities

To help people starting new charities and to speed up the process of registration, the Charity Commission has now produced a range of Model Governing Documents. The new model documents will be particularly useful to those setting up smaller charities, with limited access to legal or other technical help.

Three different versions are available:

GD1 Model Memorandum and Articles of Association for a Charitable Company;

GD2 Model Declaration of Trust for a Charitable Trust;

GD3 Model Constitution for a Charitable Unincorporated Association.

Copies of the new Model Governing Documents are available free of charge from any of the Charity Commission's offices.

Investigating Charities

The Charity Commission has also published three new explanatory booklets about the way they investigate and check abuse. The booklets spell out the legal basis of the Commissioners' work in this area, the procedures for carrying out inquiries into charities and the powers they have to protect charity property.

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The Commissioners have published these booklets because they believe that it is important for charity trustees, other bodies concerned with charities and the public to understand the Commissioners' role and objectives in inquiring into charities. In particular, charity trustees or other people involved in an inquiry should, as a general rule, be told what to expect and what their rights are and be shown that the Commissioners procedures are impartial and thorough.

New Charity Accounting Proposals

Changes in the way charities prepare and present their accounts are proposed in an 'exposure draft' - SORP 2 - published on 17th March 1993, by the Charity Accounting Review Committee, set up under the auspices of the Charity Commission.

The main changes are:

- A more prescriptive approach;
- An expanded trustees' report
- A new statement of financial activities;
- A new basis for valuation of investments;
- A new expenditure classification;
- New proposals on summarised accounts.

Copies of the draft proposals are available from the Charity Commission's London Office.

Setting up a Charity in Scotland

The Inland Revenue published a new leaflet on 22nd March 1993 - CB(1) 'Setting up a Charity in Scotland.' This explains, in simple terms, how to apply for recognition as a Scottish charity and the tax reliefs available to a recognised charity. It also gives details of various leaflets and information packs which are available to assist charities and people thinking of setting up a charity in Scotland.

The leaflet is available from Inland Revenue, Claims (Scotland), Trinity Park House, South Trinity Road, Edinburgh EH5 3SD.

The Inland Revenue and Covenants

On 24th March 1993, the Inland Revenue published guidance for charities about the provisions in Finance (No.2) Act 1992 which relax the rules for tax relief for some charitable covenants. In response to enquiries from charities, the guidance, given in an Inland Revenue Press Release, provides a model form of words which charities could use in new deeds of covenant intended to take advantage of the relaxation in the rules.

Some charitable covenants are written to last for four years or until some later event (for example the donor giving up membership of the charity at some time after the end of the four years). Under the previous rules these covenants ceased to be effective for tax purposes after four years, whether or not the power to terminate the covenant was actually exercised. If charities wanted to continue to receive tax relief on covenants of this type, they had to get donors to sign new covenants every four years.

For covenants which include such powers of termination, the new rules, contained in section 27 Finance (No.2) Act 1992, will allow tax relief to run on without the covenant having to be renewed or replaced, provided the donor's power to stop making payments cannot be exercised within the four year period. The tax relief can continue until the covenant is actually terminated. This simplifies the previous rules and will reduce administration for charities, particularly those which operate membership covenants.

The Press Release tells that some enquirers have asked whether this change means that a covenant which is written to run for four years only (with no alternative termination date) will be regarded as continuing after the end of the four years. The Inland Revenue considers that the new rule does not have that effect. Such covenants must still be renewed at the end of the four years if the donor wishes to continue the payments. The new rule can apply only where the terms of the covenant itself provide for the covenant to continue until a later event.

The Press Release also tells that some charities have asked what form of words should be used in a deed of covenant which is to continue after the first four years until the donor terminates it at a later date. The Inland Revenue considers that the appropriate form of words in any particular case will depend on precisely what result the donor wishes to achieve - for example, the nature of the event on which he or she wishes to be able to terminate the covenant. If the donor does not want to specify a particular event, the Inland Revenue consider that a possible form of words would be:

> 'I promise to pay [the charity] during my lifetime, such a sum as after deduction of income tax at the basic rate amounts to £....per annum provided that I may revoke in writing this deed of covenant at any time after the expiry of four years from....[enter here date on which the first payment is due to be made under the deed.]'

The change applies to new covenants made on or after 7th May 1992. It also applies to existing covenants where the power to terminate the covenant could not have been exercised before 7th May 1992.

Charities and the Budget

The Chancellor made several proposals in the Budget that will affect charities. In a Press Release issued on Budget Day,[2] it was announced that the Chancellor's intention is to promote charitable giving, to encourage new people to join payroll deduction schemes and to enable those employees already giving the maximum to give more if they wish. The three specific amendments are:[3]

- The minimum limit for gift aid donations was reduced from £400 to £250 and the new limit applied from 16th March 1993 (Budget Day);

- The annual limit on charitable gifts qualifying for income tax relief under the payroll giving scheme was increased from £600 (£50 per month) to £900 (£75 per month). The new limit applied from 6th April 1993;

- It was announced that legislation will be passed to give tax relief on an employer's voluntary contribution towards a charitable agency's costs in running a payroll giving scheme. The legislation will formalise an existing concession,[4] and will apply to expenditure incurred from 16th March 1993.

The Charities Aid Foundation has welcomed these changes, which were broadly in line with their hopes for reform. However, it was considered to be disappointing that the payroll giving upper limit has not been removed completely.[5]

The Budget measures are expected to boost the income of charities by about £30 million. But, the cost of full rate V.A.T. on the fuel that institutional and caring charities use to fulfil their activities will have an adverse affect on charities' income. One estimate is that it will cost some £27 million.[6]

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2 Inland Revenue Press Release, 16th March 1993, [1993] STI 466.

3 See now Finance Act 1993, sections 67 - 69.

4 Concession B32.

5 *Charities Aid Foundation Newsletter* April 1993

6 *Charity*, April 1993, p.3.