

BOOK REVIEW

Paul Bater¹

Charity Law (2nd edition)

by Kerry O'Halloran

Published by Round Hall, Dublin, 2010

ISBN: 978-1-85800-546-1 (hardback). 585 pages. Price: £285

The first edition of this book soon became an essential guide to contemporary charity law in Ireland. When the first edition appeared in 2000 this reviewer noted² that the announcement by the Irish Government of proposals to review the legal framework of the voluntary sector occurred too late for inclusion in the book and expressed the hope that they would lead to legislation that that would warrant the production of a second edition. This has now come to pass following the enactment of the Charities Act 2009.

Although some aspects of the original White Paper proposals remain to be legislated, the 2009 Act is the centrepiece of the reform of the legal framework for Irish charities. In providing for the first time a statutory definition of charitable purposes and public benefit, albeit essentially a restatement of the common law characteristics recognised by the courts, the 2009 Act mirrors the approach adopted in the recent charity statutes enacted in the three UK jurisdictions³. As yet it is too soon to identify any effect on the development in Ireland of the concept of charitable purposes. Of more immediate significance are the provisions of the Act requiring all Irish charities, and foreign charities operating in Ireland, to register with the new Charities Regulatory Authority (CRA) and empowering the CRA to regulate and supervise their charitable activities.

¹ Managing Editor, *Charity Law & Practice Review*.

² See the review of the first edition in *CL&PR* [2001] Vol. 7 No. 2 at 173-175.

³ Charities Act 2006 (England and Wales); Charities Trustee and Investment (Scotland) Act 2005; Charities (Northern Ireland) Act 2008.

In contrast to the recent approach in England and Wales, the Irish Government has chosen to decouple the question of charitable status for regulatory purposes (which will now be determined initially by the CRA) from the issue of which organisations are to benefit from charity tax reliefs (which remains under the jurisdiction of the Revenue Commissioners). Moreover, the 2009 Act provides that the Revenue Commissioners are not bound by any decision of the CRA concerning the public benefit status of an organisation. This approach may have been influenced by the pressure on Ireland to remove the restriction on the grant of income tax reliefs to foreign charities that was a feature of the tax regime prior to its amendment in Finance Act 2010 to extend these reliefs to charities established in other EEA member states.

Another area where the influence of recent UK charity statutes is apparent lies in the creation of a new Charity Appeals Tribunal. However, its jurisdiction is significantly limited to a review of registration decisions by the CRA without the ability to establish binding case law precedents. Although an appeal will lie from the Tribunal to the High Court on a point of law, the costs involved in such litigation must make it doubtful whether these changes will facilitate the development of Irish charity law through the judicial system.

The book comprises six parts. The first part examines the concepts and principles underpinning, and the historical background to, Irish charity law. Part 2 outlines the regulatory framework and the roles of the relevant agencies. Part 3 provides a detailed analysis of the historical and contemporary interpretation of charitable purposes and public benefit. The fourth part examines the various legal forms available to charities, and discusses their governance and management. Part 5 reviews the regulation of fundraising and the various tax reliefs granted to charities and their supporters. The sixth and final part looks at the procedures for terminating a charity including the use of *cy-pres* schemes. These chapters are supplemented by a bibliography and a detailed index and tables of cases and statutes.

The book largely follows the format of the first edition, but the author has taken the opportunity to devote less attention to the procedural aspects of running an Irish charity and to focus more on analysis of recent changes in the law. This is reflected in particular in a more extensive discussion of those charitable purposes that fell under the fourth *Pemsel* head and of the various charity tax reliefs. The book is all the better for this decision and this edition confirms its status as an essential guide for those interested in establishing or operating a charity in Ireland.