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Save the Charities from Political Interference! Charity Commission Must be Stopped from Taking the Law Into its Own Hands, warns Politeia's new pamphlet.

Charities, which have played such a part in British society over the centuries, are now an endangered species, warns Politeia's new study, *Making Law? Parliament v The Charity Commission*. Though the new Charities Act of 2006 has not in fact fundamentally changed the law, the Government's regulator, The Charity Commission, is acting as if it has done so, to the detriment of many charities.

Professor Peter Luxton* explains that since Elizabethan times the law has held that certain public activities such as education, relieving poverty and promoting religion, are charitable and of benefit to the public. Others were added by the 2006 Charities Act but, as Professor Luxton emphasises, the interpretation of public benefit under law did not change.

However, the Charity Commission appears determined to overturn this traditional interpretation. Already a number of independent schools believe they will lose charitable status unless they meet the Charity Commission's checklist or 'guidance'. Meanwhile the universities, whose independence on admissions has been threatened by political threats, fear they will be next on the hit list.

Other charities are suffering, unequal to the complex and confusing guidance emanating from the Regulator, worried that their work for good causes though long held to be charitable, will not meet the Regulator's criteria. Normally the law could be tested in the courts, but charities often work on a shoestring and so they are not in a position to bring a test case to the Tribunals because of the costs involved.

Why has this happened? There is some evidence that the Labour government may under political pressure from the left, have initially intended to change the law, but stopped short of including an activities test or any change to case law (which happened in the Scottish equivalent). So the Charity Commission may now be seeking to accomplish political ends by the back door, encouraged by those of its members who are or were supporters of the Labour Party. Whatever the reason, the law, as enacted by Parliament, should be respected and charities should not be threatened by the Commission's arguably distorted interpretation of it. Luxton proposes three clear and relatively simple ways to tackle the problem:

- The appointment of a full time Commission member with legal expertise.
- The setting up of a fighting fund to help charities test the law (a suitors' fund) paid through a £10-00 levy on all charities (with 200,000 charities that would bring £2m)
- The drastic pruning of the verbose sections of the Act (imported from other Acts) which describe the Charity Commission's objects and duties. Rather, the Commission's functions should be simply and clearly defined.

***Peter Luxton** has been Professor of Law at Cardiff University since 2007, having previously been Professor of Property Law at the University of Sheffield. His books include *Charity Fund-raising and the Public Interest* (Aldershot, 1990) and *The Law of Charities* (Oxford University Press, 2001). He is a member of the advisory editorial board of the *Charity Law & Practice Review*.

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For an e-version please click http://www.politeia.co.uk/Portals/0/Making_Law_by_Peter_Luxton.pdf

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