

Consultation on  
**Draft public benefit guidance**



The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 190,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income or expenditure over £10,000 must provide annual information and accounts to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

# Contents

Page

Introduction by Dame Suzi Leather

1

About the consultation on draft public benefit guidance

2

Draft public benefit guidance: Charities and public benefit

8

The wider context for charities

42



# Introduction by Dame Suzi Leather

## Dear Reader,

For hundreds of years charities have been the heart of civil society, carrying out charitable work for the benefit of successive generations. Today, there are thousands of charities working in diverse and innovative ways to help create a better society.

The wide range of activities, services, views and values which charities offer and reflect is a distinctive feature of the sector. There is great value in having that variety. The freedom that charities have to innovate and challenge is also an important part of maintaining a healthy democracy. Charities offer us, as individuals, as beneficiaries and as citizens, the chance to explore and foster our own individual views on what is important in life. At a time of mass communication, instant internet access and global brands, the variety, uniqueness, and dedicated focus of much charitable activity seems all the more valuable. Like biodiversity in the natural world, the pluralism of charitable activity is worth protecting and sustaining.

Part of nurturing that flourishing diversity is maintaining the independence of charities: both individually and collectively. But charities are not given *carte blanche* to do whatever they wish. By law, charities must have charitable purposes which provide public benefit. The Charities Act 2006 reinforces the requirement that their purposes benefit the public, and that this applies to every charity in England and Wales. The Act also broadens the list of charitable purposes and gives the Charity Commission, the independent regulator of charities, statutory objectives which include promoting awareness and understanding of public benefit as well as enhancing the effectiveness of charities and improving their accountability.

The draft guidance explaining the public benefit requirement that the Charity Commission is now issuing for consultation, is therefore very important and I would like as many as possible to comment on it. This is relevant to new and existing charities alike. The public benefit requirement is a legal test of purposes which a charity must pass before it can be registered; but existing charities must also be mindful of the continuing need to meet that requirement.

There is an implied covenant between charities and society: in return for having purposes which are charitable and provide public benefit, charities may enjoy the benefits that come with being a charity – such as the reputation and tax advantages. Since these apply through the life of a charity, and not just when it is first set up, it is reasonable that charities continue to publicly account for the benefit to the public they provide.

I believe that charities will want to do this in ways which accord with public understanding and expectations. The research we have done on public understanding of public benefit reveals that the legal hurdle, whilst being the only authoritative and legitimate way of deciding whether a charity is providing public benefit, does not always chime with how the public thinks charities provide public benefit. This is more than a semantic problem; it is a communication and accountability challenge for the Charity Commission and for charities themselves.

As charities focus on meeting the public benefit requirement of the Charities Act, we also want to help them to give a better account of how they benefit the public in ways which are relevant and meaningful to the public. Included in this document therefore, whilst distinct from the formal consultation, are the results of research we have done on public expectations of public benefit. These views are codified into Citizen's Standards. They have been included so that, as well as considering the draft guidance on meeting the public benefit requirement, charities can also begin to consider how they can better articulate their own effectiveness. We intend to carry out further consultation with charities on this subject and work with them to ensure that we have the right encouragement in place to help charities have greater impact, improve their accountability and strengthen their independence, creativity and effectiveness.

This consultation is a vital step in enabling us to raise awareness and understanding of the public benefit requirement and I look forward to receiving feedback on our draft public benefit guidance. This is a fundamentally important issue for charities and society and I welcome your views on it.



**Dame Suzi Leather**  
Chair

# About the consultation on draft public benefit guidance

## 2.1 The purpose of this consultation

All charities must have charitable purposes which are for the public benefit. (A 'purpose' is the overall goal or aim of the charity which is usually set out in its governing document.) This is known as the 'public benefit requirement'.

This requirement is reinforced by the Charities Act 2006 ('the Charities Act') which:

- includes a statutory definition that, to be a charity, an organisation must have purposes which:
  - fall within the descriptions of charitable purposes set out in the Act; and
  - are for the public benefit;
- removes the presumption that currently exists that charities relieving poverty or advancing education or religion benefit the public;
- gives the Charity Commission a public benefit objective to promote awareness and understanding of the operation of the public benefit requirement;
- requires us to publish guidance to help meet our public benefit objective;
- requires us to carry out what consultation we consider necessary before issuing that guidance; and
- provides that charity trustees must have regard to guidance we publish on public benefit when they exercise any powers or duties where the guidance is relevant to them doing so.

The Charities Act does not define what is meant by 'public benefit'; that remains governed by the existing law, which is based on decisions which have been made by the courts and the Charity Commission over the years. But the Act does remove the presumption that currently exists in charity law that organisations relieving poverty or advancing education or religion benefit the public. This means that, in future, **all** charities will have to demonstrate that their purposes benefit the public.

This consultation is about our draft public benefit guidance, which is included in section 3. Our draft guidance sets out what are the principles of public benefit and our approach to assessing the public benefit of charities.

In particular, we welcome comments on:

- the ways in which we will promote awareness and understanding of the public benefit requirement, starting with our draft guidance *Charities and Public Benefit*;
- the ways in which we will assess whether charities meet the public benefit requirement; and
- the ways in which charities might report on the public benefit they provide.

We have prepared a partial *Regulatory Impact Assessment*, which is available on our website, to assess the impact for charities of our proposals for ways in which we might assess the public benefit of existing charities and ways in which we think charities might report on how they meet the public benefit requirement.

A 'Regulatory Impact Assessment' is a better regulation tool which analyses the likely impacts of a government policy and the range of options for implementing it.

## 2.2 Why we are consulting on our draft guidance now

The Charities Act received Royal Assent on 8 November 2006. The provisions in the Act relating to public benefit are expected to come into force in early 2008. The impact of the public benefit requirement will be reviewed within 3 years of it coming into force.

Once those provisions do come into force, charity trustees will be under a legal obligation to have regard to our guidance on public benefit.

We therefore think it is important to consult on our draft guidance at an early stage so that charity trustees can have advance knowledge of it, and have the opportunity to comment on it and its likely effect on their charity, before they become under a legal obligation to have regard to it.

## 2.3 Why this consultation is important for charity trustees

This consultation is especially important for charity trustees because, when the provisions in the Charities Act relating to public benefit come into force, all trustees will be required to take account of guidance on public benefit published by the Charity Commission when they are exercising any powers or duties where the public benefit requirement is relevant. This new statutory duty reinforces the general duties that trustees already have to act for the public benefit.

Because of this new statutory duty, it is important that charity trustees and their advisers are familiar with, and understand, our draft guidance so that they know how to make sure their charity meets the public benefit requirement and how to avoid decisions that might adversely affect their charity's public benefit. It is also important for trustees to understand the criteria we will use to assess whether or not their charity meets the public benefit requirement.

We are very keen to receive feedback from charity trustees about our draft guidance to help us get it right and produce a good quality product.

The principles of public benefit set out in our draft guidance are the principles upon which we will assess the public benefit of charities. Since all charities currently have to have purposes which benefit the public (even those where the benefit could to some extent be presumed), we are not expecting large numbers of charities to be unable to meet the public benefit requirement, but neither can there be any guarantees that every charity currently on the register will be able to show that it still meets that requirement.

Some charity trustees may not have previously thought about their charity's public benefit and so may need to start thinking about this now. We would therefore like to know if charity trustees find our draft guidance helpful in helping them to think about whether their charity meets the public benefit requirement.

## 2.4 Our draft public benefit guidance

We are now issuing for public consultation our draft public benefit guidance, *Charities and Public Benefit*.

To accompany our draft guidance, we have also issued on our website our *Analysis of the law underpinning Charities and Public Benefit*, which explains the legal basis for the principles of public benefit we have identified.

Before we publish our draft guidance, we want to give everyone the opportunity to find out about our proposed approach to public benefit and comment on any aspect of it. We would like this consultation to help us identify any improvements that we can make to the draft guidance and to identify problems that charities may experience, either in understanding the draft guidance or in meeting the public benefit requirement.

In particular, we are interested in any specific concerns people may have about the ability of certain types of charity to meet the public benefit requirement, in the light of the principles of public benefit set out in our draft guidance.

We welcome comments on the consultation questions which are included throughout our draft guidance but we also welcome any other comments or observations on any aspect of the draft guidance, on the legal analysis which underpins the guidance, or on the partial *Regulatory Impact Assessment* we have prepared.

## 2.5 Consultation with specific types of charity

Following our consultation on our draft guidance on public benefit, we plan to carry out further consultations on the effect of the principles of public benefit set out in our draft guidance for specific types of charity (or 'sub-sectors').

In order to prioritise our work in this area, and so maximise the use of our resources, our decisions on which sub-sectors to consider first will take account of issues of risk and public interest.

Following our consultation on our draft public benefit guidance, our first set of sub-sector consultations will be on:

- Charities for the prevention and relief of poverty;
- Charities for the advancement of education;
- Charities for the advancement of religion; and
- Fee-charging charities.

These concern organisations either affected by the removal of the presumption of public benefit or about which public benefit concerns were raised during the debate on the Charities Bill.

A great deal of debate and consultation will be carried out before any decisions are taken about how it is expected that particular types of charity meet the public benefit requirement and certainly before we take decisions on the public benefit of particular charities on the register as a result of these consultations. We are keen to receive feedback from charities concerned with the areas listed above and will be actively engaging with charities in those sectors as part of those sub-sector consultations.

**If you are involved with a charity which falls within one of these areas and/or are interested generally in any of those particular topics, and would like to be notified when the sub-sector consultations begin, please send your details (either a postal address or, preferably, an email address to the contact listed at section 2.12 below) specifying which consultation(s) you are interested in.**

We will also discuss the issue of public benefit with charities which form part of a particular sub-sector, with relevant umbrella bodies and with users of those charities' services. Where appropriate, we will commission more wide-ranging research, both on how the purposes of particular charities provide public benefit and on the public's views of those purposes.

We will draw on the information which we have as the regulator of charities. We collect standard information for the purposes of maintaining a database of charities and for monitoring those charities. We also have information from our day-to-day work with charities who seek advice on working effectively, through visits and meetings with charities and through our work to achieve compliance with the law and to investigate maladministration and abuse.

As a result of our consultations and research, we will publish further guidance and information on how, in practice, charities within a particular sub-sector can meet

the public benefit requirement, and the results of our research studies showing the extent to which those types of charity currently meet that requirement.

## 2.6 How we will make decisions concerning public benefit pending the production of detailed guidance

We will continue to make decisions on the public benefit of charities based upon the legal principles of public benefit set out in existing case law, as amended by the public benefit provisions in the Charities Act once they come into force in 2008. We already have mechanisms in place for dealing with public benefit issues which arise in connection with applications for registration of new charities or in the course of our casework in relation to existing charities.

As we develop, and consult on, our draft guidance on public benefit, and our planned future consultations on the public benefit of specific charity sub-sectors, this will help to inform the decisions we make on the public benefit of individual charities, as will any decisions taken by the courts or the new Charity Tribunal on public benefit.

Proposals for ways in which we might assess public benefit for new and existing charities are set out in section J of our draft guidance.

## 2.7 Timetable for our public benefit consultations

The table opposite sets out an indicative programme for the Commission's broad approach to public benefit. It includes tentative dates for each stage of the work. These dates will be reviewed as the work progresses and may vary, for example, depending on the volume or nature of responses to consultation.

Date	Stage
8 November 2006	Charities Bill receives Royal Assent and becomes the Charities Act 2006
27 February 2007	The requirement for the Commission to develop guidance and consult on the public benefit requirement comes into force (Charities Act 2006, section 4)
7 March 2007	Commission launches 3 month consultation on draft public benefit guidance - <i>Charities and Public Benefit</i>
March – June 2007	Commission carries out full public consultation. Commission also begins discussion on the application of the public benefit principles for specific charity sub-sectors
6 June 2007	Consultation on draft public benefit guidance ends
June – September 2007	Commission analyses responses and revises guidance
October 2007	Commission publishes public benefit guidance - <i>Charities and Public Benefit</i>
November 2007	<p>Commission launches 3 month public consultation on draft sub-sector guidance dealing with the public benefit of:</p> <ul style="list-style-type: none"> <li>• Charities for the prevention and relief of poverty</li> <li>• Charities for the advancement of education</li> <li>• Charities for the advancement of religion</li> <li>• Fee-charging charities</li> </ul> <p>Commission begins pilot public benefit assessments of charities which may have difficulty meeting the public benefit requirement</p>
January 2008	Sub-sector consultations end
Early 2008	The new definition of charity and the public benefit requirement come into force (Charities Act 2006, sections 1, 2, 3 and 5)
June 2008	Commission publishes sub-sector guidance
September 2008	Commission publishes results of pilot public benefit assessments and commences formal assessments
2010	3 year review of the impact of the public benefit requirement

## 2.8 Other work we will be taking forward in relation to public benefit

This consultation is specifically about our draft public benefit guidance. However, we think it is also important to say something about the wider context in which we think charities are operating and the relationship between this and charities and public benefit.

Following our consultation on our draft guidance on public benefit, we will encourage further debate about the accountability of charities and the role of public expectations of charities. This broader context is discussed at section 4.

We have included, in section 4, some material on the promotion of good practice, to encourage charities to find new and better ways to provide benefit to the public, and on what is important to the public about charities and public benefit, including some *Citizens' Standards on Public Benefit*.

Whilst the material in section 4 does not form part of our consultation, and is not part of our draft guidance on public benefit, we hope that charities will find it informative and thought-provoking.

## 2.9 How, where and when to send comments on this consultation

We would be grateful for all replies in writing or by e-mail, which should be headed 'Consultation on Draft Public Benefit Guidance' and sent by post to:

Charity Commission Direct  
PO Box 1227  
LIVERPOOL  
L69 3UG

or by email to: [enquiries@charitycommission.gov.uk](mailto:enquiries@charitycommission.gov.uk)

### Responses are requested by 6 June 2007

Where appropriate we encourage you to provide evidence to support your response. If you are a representative group, please provide a summary of the people and organisations you represent with your response. If you represent a charity, it would be helpful if you could state your organisation's charitable purpose.

Please note that responses, including the name and address of respondents, may be made public unless confidentiality is specifically requested.

## 2.10 Monitoring responses to this consultation

We are keen to take account of the opinion of everyone who can help us develop our policy and guidance. However, we know that we do not always hear from those representing the black and minority ethnic sector who could make a contribution.

We are taking steps to make sure that everyone who wants to do so has the opportunity to contribute to our consultations, but we need some help. In order to monitor the responses to this consultation will you please complete and return the monitoring form which is available on our website.

It is not compulsory to complete this form but, if you do respond, we will ensure that it is detached from your consultation response on receipt and that the information remains confidential. Alternatively you can send this form separately to:

Jim Melton Bradley  
Customer Services Manager  
Charity Commission  
Woodfield House  
Tangier  
Taunton  
Somerset  
TA1 4BL

## 2.11 What will happen at the end of the consultation period?

We will consider the feedback we receive and use it to inform the revision of our draft guidance *Charities and Public Benefit*.

We will review our draft guidance taking into account the comments that we have received by the end of the consultation period. We aim to publish a summary of the responses to this consultation on our website within three months of the closing date of the consultation.

We aim to include the final guidance in a new publication, *Charities and Public Benefit*, later this year. We will also consider what further guidance may be needed.

## 2.12 Further information

If you have any further queries about this consultation, please contact:

Patrick Smidmore  
Charity Commission  
Woodfield House  
Tangier  
Taunton  
Somerset  
TA1 4BL

Email: [publicbenefit@charitycommission.gsi.gov.uk](mailto:publicbenefit@charitycommission.gsi.gov.uk)

If you wish to make an enquiry by telephone, have queries about any other aspect of the Commission's work or would like to order any of our publications, please telephone Charity Commission Direct on 0845 300 0218 (or 0845 300 0219 minicom for hearing impaired callers).

## 2.13 Consultees

A copy of this consultation document has been sent to a number of key sector umbrella bodies and other organisations and individuals who have expressed an interest in the subject. If you think there are particular interested parties who should be consulted, please let us know.

## 2.14 Cabinet Office Code of Practice on Consultation

This consultation has been designed to comply with the six consultation criteria in the Cabinet Office Code of Practice on Consultation:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses
3. Ensure that your consultation is clear, concise and widely accessible
4. Give feedback regarding the responses received and how the consultation process influenced the policy
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate

Respondents are invited to comment on the extent to which the criteria have been adhered to and to suggest ways of further improving the consultation process. If respondents have comments or complaints about the consultation process they should contact:

Sue Smith  
Charity Commission  
Harmsworth House  
13-15 Bouverie Street  
London  
EC4Y 8DP

Telephone: 0845 300 0218

# Draft public benefit guidance

## Charities and public benefit

The following is a list of all the consultation questions which appear throughout the draft guidance:

Consultation question	Section
<b>Q1.</b> What do you think of the clarity, style, format and language overall used in our draft guidance?	
<b>Q2.</b> Do you think the way we have expressed the principles of public benefit can be clearly understood?	see section C5
<b>Q3.</b> Do you think the four principles of public benefit set out in our draft guidance are an accurate summary of the law?	see section C5
<b>Q4.</b> Do you have any comments on our understanding of the role of modern social conditions in assessing what is and is not of benefit to the public?	see sections D1 and D2
<b>Q5.</b> Do you have any comments on our understanding of the role of public opinion?	see section D3
<b>Q6.</b> Do you have any comments on our interpretation of principle 1?	see section E
<b>Q7.</b> What are your views about the extent to which ancillary benefits can or should be taken into account when assessing an organisation's public benefit?	see section E6
<b>Q8.</b> Do you have any comments on our interpretation of principle 2?	see section F
<b>Q9.</b> Do you have any comments on our interpretation of principle 3?	see section G
<b>Q10.</b> We have used the term ' <i>people on low incomes</i> ' as it is a commonly used term and we believe it best describes, using modern terminology, the people whom the courts have previously referred to as ' <i>the poor</i> '. Do you prefer the use of an alternative form of wording to ' <i>people on low incomes</i> '? If so, which alternative expression do you prefer and why?	see section G1
<b>Q11.</b> Do you have any comments on our interpretation of principle 4?	see section H
<b>Q12.</b> Do you think the ten questions we have set out in the draft guidance would help charity trustees and promoters to assess whether their organisation meets the public benefit requirement?	see section I
<b>Q13.</b> Are there any other questions that you think it would be helpful to include?	
<b>Q14.</b> Do you have any comments on our proposals for assessing the public benefit of existing charities?	see section J4
<b>Q15.</b> Do you have any comments on our proposals for ways in which different sized charities might report on their public benefit? In particular, do you have any comments on our proposal to ask the Minister for the Cabinet Office to change the Charities (Accounts and Reports) Regulations 2005 so that charities will be required to provide a public benefit statement in their Trustees' Annual Report? We also welcome comments on what form the simple public benefit statement, for charities with an annual income below £500,000, or the fuller public benefit statement, for charities with an annual income above £500,000, might take.	see section J5
<b>Q16.</b> Do you have any specific concerns about the ability of certain types of charity to demonstrate public benefit, in the light of the principles of public benefit set out in our draft guidance? If so, what are those concerns and how do you think we might address them?	
<b>Q17.</b> Do you think that charity trustees and people setting up new charities will be able to apply the principles set out in our draft guidance to their charity so that they can show that they meet the public benefit requirement? If not, what changes or further guidance on the principles do you think would be helpful? Please note, we will be providing further guidance on the public benefit of specific types of charity following future consultations on specific charity sub-sectors.	

# Charities and public benefit

## Contents

**A. Foreword**

**B. Introduction**

**C. Summary**

### **The Principles of Public Benefit**

**D. A modern approach to public benefit**

**E. Principle 1:** There must be an identifiable benefit

**F. Principle 2:** Benefit must be to the public, or a section of the public

**G. Principle 3:** People on low incomes must be able to benefit

**H. Principle 4:** Any private benefit must be incidental

### **Assessing Public Benefit**

**I. How to assess if an organisation provides benefit to the public**

**J. The Charity Commission's approach to public benefit**

**K. Further information and advice**

Draft guidance from the Charity Commission about the legal requirement that all charities must have charitable purposes which benefit the public.

## A. Foreword

A message from the Chair and Chief Executive of the Charity Commission to charity trustees and anyone thinking of setting up a new charity.

### Dear Reader,

Charities exist to create a better society. The 190,000 charities registered with the Charity Commission have an annual income of £36 billion, almost 600,000 paid staff and 900,000 trustees. They have a wide range of purposes, and seek to achieve them through many different routes. Society and individuals benefit in many different ways from charities, and charities benefit from the considerable advantages that arise from charitable status. These are partly reputational – people are more likely to offer time, energy or money to a registered charity. It opens doors: many grant-makers only give to charities. Then there is the tax relief which comes from charitable status – reductions in business rates, generally no income tax or stamp duty and sometimes special tax treatment.

All charities must have charitable aims (or ‘purposes’) which benefit the public. This is known as the ‘public benefit requirement’. The Charities Act 2006 reinforces this requirement by explicitly including public benefit in the definition of a charitable purpose. It also recognises the importance of public benefit by giving the Charity Commission a new objective, to promote awareness and understanding of the operation of the public benefit requirement.

We need to articulate and explain the concept of public benefit in a way which is consistent with the law and clear to the public. This draft guidance explains, in general terms, what the public benefit requirement means. It is intended to help trustees, and organisations seeking to register as charities, better understand what it means to meet the public benefit requirement.

There is a clear relationship between the benefits of charitable status and the need for charities to benefit the public. Charities are precious - they play a vital and unique role at the heart of our society and should be able to demonstrate the benefit of their charitable aims. That is the essence of the public benefit requirement.



**Dame Suzi Leather**    **Chair**  
**Andrew Hind**        **Chief Executive**

## B. Introduction

### B1. What is this draft guidance about?

The purpose of this draft guidance is to:

- explain the requirement that, to be a charity, an organisation must have charitable purposes which benefit the public;
- raise awareness and understanding of the public benefit requirement amongst the public and the charitable sector; and
- explain how the public benefit requirement operates in practice, including the principles we will apply when assessing the public benefit of individual charities and the further work which we will do to develop our approach to assessing public benefit.

This draft guidance deals with public benefit in general terms. We will publish further guidance later, after further consultation, about how the public benefit requirement applies specifically to different kinds of charity.

Separate guidance which explains the legal underpinning for the principles of public benefit set out in this draft guidance can be found in *Analysis of the law underpinning Charities and Public Benefit* on our website.

### B2. Previous guidance

This booklet replaces previous guidance on public benefit contained in our booklet, *RR8: The public character of charity*.

We have updated our guidance on public benefit to make it more accessible for trustees and to reflect changes in the law on public benefit arising from the Charities Act 2006.

### B3. Further information and advice

There are many resources which trustees can use to help them make sure their charity provides benefit to the public.

Details of where trustees can find further information can be found in section K of this draft guidance.

### B4. Some technical terms used

Although we have tried to write this booklet in everyday language, we have had to use technical terms in places.

This list explains some of them.

**Public benefit requirement:** The 'public benefit requirement' means the legal requirement that all charities must have charitable purposes which benefit the public. In this draft guidance we use the following terms when talking about this requirement: 'the public benefit requirement', 'public benefit' and 'benefit to the public'.

**Purpose(s):** When talking about charities, we use this term to mean the overall goal(s) or aim(s) of a charity, which is usually set out in its governing document. These are sometimes referred to as a charity's 'objects'.

**'Must' and 'should':** In this booklet, where we use 'must', we mean it is a specific legal or regulatory requirement affecting trustees or a charity. Trustees must comply with these requirements. We have used the **L** symbol to help you easily identify those sections which contain a legal or regulatory requirement.

We use 'should' for items we regard as minimum good practice, but for which there is no specific legal requirement. Trustees should follow the good practice guidance unless there is a good reason not to.

**Governing document:** A legal document setting out the charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal Charter, Scheme of the Commissioners, or other formal document.

**Trustees:** The people who serve on the governing body of a charity. They may be known as Trustees, Directors, Board Members, Governors or Committee Members. Charity Trustees are responsible for controlling the management and administration of a charity.

**Beneficiary or Beneficiaries:** The people who benefit from a charity.

Consultation questions:

**Q1.** What do you think of the clarity, style, format and language used in this draft guidance?

## C. Summary

### C1. What is 'public benefit'?

**L** 'Public benefit' is the legal requirement that all charities must have charitable purposes which benefit the public.

A 'purpose' is the overall goal or aim of the charity which is usually set out in its governing document.

### C2. The Charities Act and public benefit

**L** The Charities Act 2006 ('the Charities Act') reinforces the 'public benefit requirement' by explicitly including public benefit in the definition of a charitable purpose.

The 'public benefit requirement', as it is set out in the Charities Act, requires that an organisation's purposes are for the public benefit. This is known as a 'purposes test'.

When considering whether an organisation's purposes are for the public benefit, the Charity Commission may need to consider the organisation's activities in order:

- to clarify what its purposes are (ie to understand the meaning of the words used);
- to decide whether those purposes are charitable (ie that the purposes fall within, or are analogous to, the descriptions of charitable purposes in the Charities Act); and
- to ensure that the purposes will, or may, operate for the public benefit.

In order to decide whether or not a purpose will, or may, operate for the public benefit, we may need to consider the potential consequences of an organisation carrying out a particular purpose. This means that we may need to consider relevant factual background information, such as asking for evidence of activities and proposed activities, in order to show that the organisation's purposes will satisfy the principles of public benefit set out in this draft guidance. The extent to which activities can be considered when assessing whether an

organisation's purposes are for the public benefit is considered in more detail in our *Analysis of the law underpinning Charities and Public Benefit*.

The Charities Act does not contain any new definition of public benefit or suggest how charities should demonstrate that their purposes are for the public benefit. The Charity Commission, as the independent regulator for charities in England and Wales, is responsible for deciding how the public benefit requirement will operate.

The provisions in the Charities Act mean that, for the first time, the law will require charities which advance education or religion or relieve poverty to explicitly demonstrate that their purposes provide public benefit. The law has previously presumed this to be the case for these types of charities. This means that, in future, **all** charities will have to show that their purposes provide benefit to the public. Apart from that, the current law on public benefit, which is based on decisions which have been made by the courts and the Charity Commission over the years, is the same.

The public benefit requirement is not a new requirement for charities. Charities already have to have purposes which benefit the public. Although prior to implementation of the Charities Act the public benefit of the purposes of poverty, religious and educational charities could be presumed, it was still the case that there had to be benefit to the public for any organisation to be a charity. However, the Charities Act does reinforce this requirement by explicitly including public benefit in the definition of a charitable purpose, by giving the Charity Commission a new objective to promote awareness and understanding of the public benefit requirement and by requiring charity trustees to have regard to our guidance on public benefit, upon which the Charities Act requires us to consult as appropriate.

We will base our decisions about what is or is not charitable on the underlying case law on charity and public benefit. We will follow the courts' approach and develop our decisions on public benefit in the context of changing economic and social conditions, including public attitudes.

Appeals against our decisions on charitable status, including public benefit, can be made to the Charity Tribunal, introduced by the Charities Act, in a relatively easy and inexpensive way, as well as, ultimately, to the courts. It is anticipated that the Charity Tribunal will be set up in 2008.

### C3. Why the need for this draft guidance?

**L** Under the provisions in the Charities Act, charity trustees must have regard to guidance we publish on public benefit when they exercise any powers or duties where that may be relevant.

Trustees, and their advisers, therefore need to be familiar with, and understand, our guidance. They need to know how to make sure their charity meets the public benefit requirement and make sure they do not take decisions that might adversely affect their charity's public benefit. It is also important for trustees to understand the criteria we will use to assess whether or not their charity meets the public benefit requirement.

### C4. What purposes are charitable?

**L** The Charities Act defines 'charitable purposes' as those that fall within the descriptions of charitable purposes set out in the Act and which are for the public benefit.

Charitable purposes include those purposes that the law currently recognises as charitable, as well as new charitable purposes which may be recognised as charity law develops. It also includes purposes which are recognised as similar, or analogous, to another charitable purpose.

Further guidance on what purposes are charitable can be found in our *Commentary on the Descriptions of Charitable Purposes in the Charities Act* which is available on our website.

The Charities Act sets out the following descriptions of charitable purposes:

- a) the prevention or relief of poverty;
- b) the advancement of education;
- c) the advancement of religion;
- d) the advancement of health or the saving of lives;
- e) the advancement of citizenship or community development;
- f) the advancement of the arts, culture, heritage or science;
- g) the advancement of amateur sport;
- h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- i) the advancement of environmental protection or improvement;
- j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- k) the advancement of animal welfare;
- l) the promotion of the efficiency of the armed forces of the Crown, of the efficiency of the police, fire and rescue services and ambulance services;
- m) other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

## C5. What are the principles of public benefit?



What constitutes public benefit can change over time, as modern needs and circumstances change. The principles of public benefit, how they are applied and interpreted, therefore need to be assessed in the light of modern conditions.

We have identified four principles which show whether an organisation provides benefit to the public. These are:

1. There must be an identifiable benefit
2. Benefit must be to the public, or a section of the public
3. People on low incomes must be able to benefit
4. Any private benefit must be incidental

### Principle 1: There must be an identifiable benefit

- It must be clear what benefits a charity's purposes provide to the public.
- The nature of the benefit may look very different depending on what the charity is set up to achieve.
- Charities can provide different sorts of benefits to the public but must not be concerned with fulfilling a political purpose.
- Benefits must be balanced against any 'disbenefits' or harm.

### Principle 2: Benefit must be to the public, or a section of the public

- Who constitutes 'the public' will vary depending on the organisation's purposes.
- It is not a simple matter of numbers. 'The public' can mean groups, communities, society or humanity. It can mean geographical, social or economic communities; it does not just mean people in the UK.
- Where benefit is not to the public at large, benefit can be to a 'section of the public' where restricting the benefit in that way is relevant to the charitable purposes.
- But, public benefit will be affected where the restrictions are irrational, unreasonable or unjustified.

### Principle 3: People on low incomes must be able to benefit

- The term 'people on low incomes' is not defined.
- But, in England and Wales for example, it would typically cover households living on less than 60% of the average income (both before or after housing costs are taken into account) and people living on or below the level of income support.
- It does not generally include people who have a low income but are asset rich.
- Charities can charge for their services but where the charges are so high that they effectively exclude people on low incomes from benefit, either because they cannot afford, or do not have access to other funding, to pay the fees, this is likely to affect public benefit.

### Principle 4: Any private benefit must be incidental

- There is a 'private benefit' where an individual or organisation personally gains from receiving a benefit. In some cases that gain may be charitable; in some cases not.
- Charities can provide private benefits provided that those benefits directly contribute towards achieving the charity's purposes and/or are incidental to carrying out those purposes.
- A charity must provide more public benefits than private benefits.

## C6. Assessing and reporting on the public benefit of charities

Our aim will be to ensure that new and existing charities meet the public benefit requirement.

We are committed as an organisation to reducing the administrative burden of regulation on charities. In considering how new and existing charities meet the public benefit requirement, we will take a proportionate approach, taking into account what is reasonable in the particular charity's circumstances.

We will assess the public benefit of all new charities when they apply for registration. Section J3 below explains this in more detail.

For existing registered charities, we will take a risk-based approach to our public benefit assessments, focusing our resources on assessing the public benefit of charities which may have difficulty meeting the public benefit requirement. Section J4 below explains this in more detail.

In addition to our public benefit assessments of charities, we also think that charities should regularly report on how their purposes benefit the public. We think this could best be done by using existing reporting frameworks in a way that is proportionate for the size of charity. In section J5 below, we set out ways in which that reporting might be done by different sized charities.

## C7. How to assess whether an organisation meets the public benefit requirement

The following questions are designed to help organisations (either registered charities or organisations seeking to become registered charities) provide the sort of information that will help us to assess whether or not their purposes meet the principles of public benefit set out in this draft guidance:

1. *What benefit(s) does your organisation provide?*
2. *How do those benefits help fulfil your organisation's purpose(s)?*
3. *Who is your organisation primarily set up to benefit?*
4. *Does your organisation provide wider benefits to the community or society generally? If so, how?*
5. *What criteria does your organisation use to select beneficiaries? Is anyone excluded from being a beneficiary? If so, who is excluded and why?*
6. *Does your organisation have a membership where someone must be a member to benefit? If so, is it open to anyone to join? If not, who can join and why?*
7. *Does your organisation provide facilities for, or services to, the public? If so, what, if any, restrictions are there on what people can have access to or who can have access?*
8. *Does your organisation charge for its services? If so, how are charges set? Is everyone charged the full rate?*
9. *How are people on low incomes able to benefit from your organisation?*
10. *Does anyone receive private benefits from your organisation? If so, what benefits do they receive? How do those benefits contribute towards achieving your organisation's purposes and/or to what extent are they incidental?*

Consultation questions:

- Q2. Do you think the way we have expressed the principles of public benefit can be clearly understood?
- Q3. Do you think the four principles of public benefit set out in this draft guidance are an accurate summary of the law?

# The principles of public benefit

*The following sections explain the principles of the public benefit requirement*

## D. A modern approach to public benefit

### D1. Developing the law in the light of modern circumstances

**L** What constitutes public benefit can change over time, as modern needs and circumstances change. The principles of public benefit, how they are applied and interpreted, therefore need to be assessed in the light of modern conditions.

The courts develop charity law to take into account modern needs and circumstances. This means that ideas about what is of benefit to the public can change over time. Those changes are influenced (among other things) by social and economic conditions, by increasing knowledge and understanding and by changes in social values.

Changing modern conditions can give rise to new charitable purposes. It is also possible, although less common, for purposes which were once charitable to cease to become charitable.

Examples of where new charitable purposes have been recognised in the light of modern conditions include our decisions in recent years to recognise as charitable purposes:

- the promotion of urban and rural regeneration;
- the promotion of community capacity building;
- the promotion of equality and diversity;
- the promotion of religious harmony;
- conservation of the environment; and
- the promotion of sustainable development.

An example of where a purpose ceases to be charitable in view of changing social attitudes and conditions involves the National Anti-Vivisection Society, whose main purpose was to abolish vivisection (laboratory experiments on living animals). In 1895 the court accepted that the Society's intention was to benefit the community and that it was a charity. However, in 1948 the House of Lords took the view that the Society was not charitable because even though abolishing vivisection would help laboratory animals, and thus morally elevate humanity, this benefit was far outweighed by the damage caused to humans by the loss to medical science and research (and the consequent detriment to public health).

More commonly though, in the case of 'old-fashioned' charitable purposes we will find a way to modernise them so that they can have relevance for modern day living. For example, we might agree to alter the purposes of a charity concerned with the provision of marriage portions for poor maids in a particular locality to the relief of poverty of women in that area.

### D2. The Charity Commission's approach to applying and interpreting the law

**Our decisions about what is charitable, and what is or is not of benefit to the public, will be strongly influenced by what is relevant and appropriate for the modern social conditions of the day. We will underpin our approach to public benefit by taking a modern interpretation of the law.**

Ensuring that charities are relevant in modern day circumstances does not mean that what is 'old' or 'old-fashioned' is necessarily 'bad' or 'wrong', nor does it just mean what is popular today.

For example, it is not within the Charity Commission's remit to look into traditional, long-held religious beliefs or to seek to modernise them.

It does mean not assuming that something is beneficial simply because it may have been regarded as beneficial years ago; it means ensuring that what charities do remains beneficial today.

The current law provides a basis for taking decisions on public benefit but it draws on a very limited number of cases. The charity sector is diverse; charities have a wide range of purposes and seek to achieve them through very many different routes. The law on public benefit applies differently in respect of different charitable purposes. Applying principles drawn from a small number of cases involving particular charities and situations will involve difficult judgments and interpretations of the law to be made by the Commission.

We will apply and interpret charity law to ensure that the benefits provided by charities to the public remain relevant for today's society. In some circumstances, this may mean that some existing charities may be required to alter the way in which they carry out their charitable purposes in order to show that their purposes still provide benefit to the public.

In extreme cases, where the trustees are co-operating with us but the organisation is unable to meet the public benefit requirement, we may need to ensure that any charitable assets of the organisation will in the future be applied for other charitable purposes as close as possible to those purposes that have ceased to provide public benefit. This would only happen where it was not possible for an organisation to meet the public benefit requirement.

Examples of the sorts of circumstances in which it might be appropriate for us to take modern conditions into account when considering what is of benefit to the public include:

- where economic ideas and conditions and ideas of social service have changed;
- where the habits, ideas and practices of society have changed and as a result there has been a change of legislation; laws have become obsolete or have been repealed, and habits have become obsolete and have fallen into disuse;
- where, by a change in the law, the purposes of an established charity may become superfluous or even illegal; and
- where, with increasing knowledge, it appears that a purpose which was once thought beneficial is now considered detrimental to the community.

How we approach assessing modern social conditions depends upon what is relevant for the particular charitable purpose or particular charity that we are considering. In most cases, an evidence-based approach is likely to help us decide what the modern social conditions are in relation to the charitable purpose that is to be carried out. It might, for example, involve looking at indicators such as areas of social deprivation, local demographics and census results, government or sector reports or surveys, etc. The extent to which we can take public attitudes into account in this context is dealt with below.

Different sorts of evidence might be needed depending upon whether we are:

- assessing the overall benefit of carrying out a particular charitable purpose (where the evidence may be of a more general nature); or
- assessing the benefit of a particular charitable purpose being carried out by a particular charity in a particular way or in a particular locality (where the evidence needed may be much more specific).

### D3. The role of public opinion

**In reaching decisions generally on what is of benefit to the public, the courts and the Commission have proper regard to public opinion; but public opinion cannot decide what is or is not charitable.**

Charitable status is not decided on the basis of popularity.

Public opinion can be deeply divided on an issue and public attitudes about particular issues can change over time. Charities are often innovative and pioneering and may be concerned with matters the merits of which have yet to be proven, or which the general public has yet to appreciate or recognise as having value. Charities are sometimes engaged in controversial matters about which there may be divided and strongly-held public views, or are working in areas or use particular methods that are not popular but are nevertheless valuable.

Sometimes, different charities can legitimately hold opposing views about a particular issue, and yet both can still benefit the public.

For example, charities concerned with the promotion of animal welfare and charities concerned with the promotion of health or relief of sickness may put forward opposing arguments regarding the use of animal experimentation in medical research. Both purposes can provide benefit to the public, but in different ways.

Therefore, in order to decide whether or not a particular purpose provides public benefit, it is for the Charity Commission or the courts or the Charity Tribunal to be satisfied that there is a benefit to the public, whether or not the public, or indeed other charities, agrees that there is such a benefit.

However, where the benefit to the public is not obvious, the general approach taken by the courts has been to look for evidence of public benefit. For certain kinds of benefit, this may include taking into account any general consensus of objective and reasoned opinion, although that opinion alone would not necessarily decide the matter.

Decisions about public benefit reflect ordinary life, taking into account generally accepted views on the nature and usefulness of what an organisation aims to achieve and

its benefit to the public. So, whilst public opinion cannot decide what is charitable, it can be a useful factor to be taken into account in helping us to understand what modern social conditions are, and which in turn can enable us to shape the legal understanding of what is charitable in a way that is relevant for modern society.

Consultation questions:

- Q4.** Do you have any comments on our understanding of the role of modern social conditions in assessing what is and is not of benefit to the public?
- Q5.** Do you have any comments on our understanding of the role of public opinion?

## E. Principle 1: There must be an identifiable benefit

### E1. Clear benefit



It must be clear what benefit a charity's purposes provide to the public.

The benefit to the public should be capable of being identified and defined. In some cases a purpose may be so clearly beneficial to the public that there would be no need for further proof of public benefit to be provided. In other cases, the element of benefit to the public may be more debatable or depend on the circumstances and will need to be shown by evidence.

For example, there may be a need to show the architectural or historical merit of a building that is to be preserved or the artistic merit of an art collection where that is not obvious.

### E2. Benefit must be related to purposes



The nature of the benefit may look very different depending on what the charity is set up to achieve.

The Charities Act 2006 provides that each and every charitable purpose must be for the benefit of the public. Therefore the benefits that an organisation provides must be (directly or indirectly) related to achieving its stated charitable purpose(s).

It also means that where a charity has more than one purpose, it will need to show that each of its purposes benefits the public. The public benefit shown by one or more of its purposes cannot be used to 'off set' any lack of public benefit of its other purposes.

For example, an arts charity which promotes the arts by staging high class operatic performances in a building which is of historic and architectural importance. It has two purposes. The first purpose is to advance the art of opera. The second is the preservation of an important national building. It would not be sufficient, for example, if the second purpose provided benefit to the public but not the first.

Every charity must be set up for the benefit of the public, but the law does not adopt the same practical measures to assess public benefit in every type of case. This means that the ways in which the public benefits can differ for different charitable purposes.

For example, the public benefits of conserving an endangered species are very different from the public benefits of relieving poverty, which in turn are very different from the public benefits of advancing education or religion.

### E3. Different sorts of benefits

Charities can provide different sorts of benefits to the public.

In some cases, the benefit to the public is obvious; in some cases less so. Some benefits go directly to individuals in a way that is clear and can be measured.

They are the sort of benefits that can be physically experienced and that people receive 'first-hand'. Most charitable purposes will involve these sorts of benefits.

For example, the benefits that come from:

- giving grants or clothing or food to people in financial need;
- giving medical care to people who are sick;
- giving someone an education;
- giving public access to an historic building;
- providing housing to homeless people;
- providing people with facilities for sport and recreation.

In some cases the benefits may be harder to see and measure, such as those that benefit society as a whole. They are the sort of benefits that people receive indirectly, or where benefits received by individuals have a 'knock-on' benefit to others.

These sorts of benefits may be difficult to define or describe. But even though some benefits are not touched or seen, they can still be identified and experienced, such as an appreciation of the arts, or the positive feelings we have when we help sick animals. These sorts of benefits can be taken into consideration provided that the benefit is clear.

For example, the benefits that come from:

- preserving an endangered species;
- promoting the efficiency of doctors, nurses, police, or the armed and emergency services;
- conserving the environment;
- caring for sick, injured or homeless animals;
- promoting artistic or literary appreciation;
- preserving the nation's historic buildings or landmarks;
- preserving a beautiful landscape;
- promoting the efficiency of other charities;
- relieving public funds, such as by providing a scanner at a hospital which enables the hospital to use its resources in other areas.

Certain sorts of benefit do not necessarily have a greater weighting or importance than others, even those that are easier to identify and quantify. The weighting or importance of different benefits will largely depend on the nature of the charitable purpose being fulfilled.

In some circumstances, benefits that are more difficult to define or measure may be regarded as having greater importance or impact than those that are more obvious since they may benefit a much larger number of people, or the benefits may be more enduring.

For example, the wider benefits to society generally that arise from rehabilitating young offenders or drug addicts may be regarded as having a greater benefit because of the wider impact than the benefits to the individual offenders or drug addicts who are helped.

In some circumstances those sorts of wider, society benefits alone (such as the benefits to the sick of providing medical training to doctors or nurses or the benefits to society from conserving the environment) may be sufficient for an organisation to meet the public benefit requirement.

One benefit to society which is sometimes cited is that charities can relieve public funds.

For example, an independent school educates pupils who would otherwise have to be educated at public expense or a private hospital provides medical care for patients who would otherwise be treated by the NHS.

Although we can take this type of benefit into account with other sorts of benefits, it would not normally be sufficient if there were no other public benefits.

#### E4. Benefits must be balanced against any 'disbenefits' or harm

**L** 'Benefit' means the overall benefit to the public. It is not simply a question of showing that some benefit may result.

The achievement of a particular purpose may provide some benefit to the public but, in achieving that benefit, may also have detrimental or harmful effects; known in Scottish charity law as a 'disbenefit'. If the detrimental or harmful consequences are greater than the benefits, the overall result is that the purpose would not be charitable.

Examples of things that might be considered a 'disbenefit' or harmful might include:

- preserving a species that at a particular time or in a particular context is considered verminous or harmful (such as preserving malaria-carrying mosquitoes or plague-carrying rats);
- promoting something that is illegal or widely regarded as immoral;
- something that is damaging to the environment;
- something that is dangerous or damaging to mental or physical health;
- something that encourages or promotes violence or hatred towards others;
- restricting a person's freedom;
- something which is a sham or which intentionally deceives or misrepresents.

#### E5. Benefit must not be concerned with fulfilling a political purpose

**L** Charities can legitimately undertake political activities and campaigning in carrying out their charitable purposes, but a charity's purposes cannot be political.

A 'political purpose' means any purpose directed at furthering the interests of any political party; or securing, or opposing, any change in the law or in the policy or decisions of central government or local authorities, whether in this country or abroad.

'Political' has a particular meaning within charity law and is covered in more detail in our separate guidance *Political Activities and Campaigning by Charities*.

Charity law draws a distinction between political purposes and political activities. Charities cannot undertake political purposes because neither the courts nor the Charity Commission is in a position to judge whether a political purpose is or is not for the benefit of the public. However, a charity can undertake political activities and campaigning as a way of carrying out its charitable purposes, provided that:

- it is not the dominant means by which the charity carries out its charitable purposes; and
- there is a reasonable expectation that the extent to which the political activities will further the charity's purposes justifies the resources the charity commits to those activities.

For example, a charity for the relief of poverty abroad could campaign in favour of the adoption of human rights in a particular country if it could be shown that the adoption of those rights would tend to relieve poverty in that country. Or, a charity concerned with relieving the victims of human rights abuse, in the course of doing so, may identify measures which might be taken by the government in question (or by other governments) to prevent that abuse.

However, an organisation which was set up for the purpose of seeking the repeal of the Human Rights Act 1998, or which used political means as the dominant way of carrying out its purposes of preventing and relieving poverty, for example, would not be charitable.

## **E6. Benefits that are not directly related to purposes**

All charities can potentially carry out a limited amount of ancillary (or incidental) activities in carrying out their work which may or may not be directly related to achieving their charitable purpose(s).

Where such activities provide a benefit to the public, but are not directly related to achieving the charity's charitable purposes, they will not be taken into account in assessing public benefit.

## **E7. Questions to help assess whether an organisation meets this principle**

We have identified ten questions to help assess whether an organisation meets the principles set out in this draft guidance. These can be found in full in section I1.

The following are those questions which will help us assess whether an organisation meets principle 1:

1. What benefit(s) does your organisation provide?
2. How do those benefits help fulfil your organisation's purpose(s)?

Consultation questions:

- Q6.** Do you have any comments on our interpretation of principle 1?
- Q7.** What are your views about the extent to which ancillary benefits can or should be taken into account when assessing an organisation's public benefit?

## F. Principle 2: Benefit must be to the public, or a section of the public

### F1. Who are 'the public'?



The benefit must be to 'the public', or to a section of 'the public'. Who constitutes 'the public' will vary depending on the organisation's purposes. It is not a simple matter of numbers. 'The public' can mean groups, communities, society or humanity.

'The public' can mean geographical, social or economic communities; it does not just mean people in the UK.

Who constitutes 'the public' varies according to what the charity is set up to do.

For example, in the case of a charity providing a local village hall or community centre, 'the public' might mean people living in a particular town or village. In the case of a medical research charity, 'the public' might mean the sufferers of a particular disease anywhere in the UK (or elsewhere). In the case of a charity concerned with conserving an endangered species, 'the public' might mean humanity.

Where 'the public', ie the beneficiaries, are defined by reference to geographical areas (ie people living in a particular place), the geographical areas need to be clearly defined but they are not restricted to the UK. An organisation can be a charity which is set up and registered in England and Wales whose beneficiaries are entirely outside the UK. It is not necessary to show benefit to people living in the UK unless the purpose of the charity is to benefit people in the UK. However, purposes carried out in other countries which are contrary to UK public policy would not be charitable.

For example, purposes whose effect would be to damage UK relations with a friendly state, or to undermine our national security, would not be charitable.

Charities can operate on a local, national or international level. In some cases, the benefit is to humanity and so extends beyond all geographical boundaries.

For example, in the case of a charity concerned with relieving the sickness of AIDS sufferers in Africa, then 'the public' would be AIDS sufferers in Africa. However, in the case of a charity providing a recreation ground in a town or village, 'the public' would be people living in, or visiting, that town or village. In the case of the preservation of an endangered species, 'the public' is likely to be worldwide.

'The public' can also mean social or economic communities, ie people who are connected by a particular charitable need or social circumstance or share a common disadvantage.

For example:

- Children and young people;
- Elderly people;
- People with a disability;
- People with a particular disease or medical condition;
- People on low incomes;
- Key workers in urban areas.

The starting point for a charity would usually be to provide as much benefit as possible, given the nature of the purpose it is set up to achieve and what resources it has. In general, the greater the individual need of the beneficiaries, or the more limited the resources available to the charity, the greater the justification there will be for narrowing the number of people who will be helped.

The potential number of beneficiaries must not be numerically negligible. However, the actual number of beneficiaries who can benefit at any one time can be quite small provided that the benefits are available to anyone who qualifies as a beneficiary.

For example, a charity with a legitimately small number of beneficiaries might be one which offers only a small number of places for the services it provides, such as a small number of available rooms in an almshouse or care home, but those places are open to anyone who is eligible to apply for them.

In some cases, it might be possible to show that a benefit to a small section of the public is sufficient.

For example, an organisation concerned with relieving the suffering caused by a very rare disease will provide benefit to the public even though few people need to use its services. Although the rarity of the disease inevitably means that few people at any given time will be affected by it, society as a whole benefits from the fact that anyone who has the disease now, or in the future, is eligible to benefit.

There may be some groups of people within society which, though small in number, are suffering some common disadvantage.

For example, there are many registered charities designed to cater for the educational, social and personal safety needs of vulnerable people in particular circumstances. In these cases the relatively small number of beneficiaries is justified because of the need that they have which is being addressed; society as a whole benefits from the fact that those people are helped.

What must be considered in each case is whether any limitations placed upon who benefits are justifiable and reasonable given the nature of the charitable purpose to be achieved and whether those who can benefit can, in that context, be regarded as a section of 'the public'.

When considering who are 'the public' or a section of 'the public' for a particular charitable purpose, what is important is who could benefit, as well as who is benefiting. It includes potential beneficiaries (ie those that could benefit in the future) as well as actual beneficiaries.

For example, a charity provides benefit to the public if the benefits it offers are made widely available even though in practice only a few people from time to time take advantage of those benefits.

'The public' can include both members of today's generation as well as future generations. However, in general, benefiting future generations should not come entirely at the expense of today's. There is a balance to be struck between providing for future generations and benefiting people today.

For example, in order to ensure the sustainability of the planet for future generations, it may be necessary for today's generation to make certain lifestyle changes or accommodate short-term restrictions or limitations in order to secure longer-term environmental benefits for the future. Similarly, it may be necessary to restrict or deny access to an important archaeological site or conservation area to today's generation in order to preserve it for the future. But equally the benefit, for example, of providing for the relief of hunger of future generations needs to be balanced against the need to provide for people who are starving today.

## F2. When can benefit be to a 'section of the public'?

**L** Where benefit is not to the public at large, benefit can be to a 'section of the public' where restricting benefit in that way is relevant to the charitable purposes. But public benefit will be affected where the restrictions are irrational, unreasonable or unjustified.

The nature of some charitable purposes is such that it would not be appropriate to restrict the benefits to a section of the public.

For example, it would not be appropriate, or make sense, to restrict the benefits of preserving an endangered species or finding a cure for a particular disease to a particular section of the public. The nature of the benefits that come from those charitable purposes are the sort that benefit, and should benefit, the public as a whole.

To be a charity, where an organisation restricts the benefits it provides to a 'section of the public', the restriction must be rational, reasonable and justifiable given the nature of its charitable purposes.

For example, benefit cannot usually be restricted to a particular group of people based on their hair colour or support for a particular football team unless having those qualities were clearly linked to the charitable purpose to be carried out.

It is generally reasonable to restrict the benefit to a particular geographical area.

For example, it is appropriate for the benefit of a recreation ground to be available to people living in, or visiting, the particular place where the recreation ground is located.

However, it may or may not be appropriate to place further restrictions on who can benefit.

For example, in the case of the provision of a public amenity, such as a bridge or a highway, the benefit should usually be available to anyone in that particular locality and not further restricted to, say, people in that area of a particular sex, or religion, or hair colour, since making those further restrictions has nothing to do with the reason why the provision of that amenity might be charitable.

Whether the beneficiaries are defined by reference to qualifications of charitable need (such as sickness or financial hardship for example), by a particular geographical area, or other criteria, the resulting number of beneficiaries, or potential beneficiaries, must be sufficiently large or open in nature in order to be considered 'the public' and must be consistent with the charitable purposes to be achieved.

As a general rule, those who benefit from the charity must not be defined by a personal connection, such as family relationship or common employer. In the past, organisations concerned with the relief of poverty have been treated as an exception to this rule. However, when we come to consider the effect of the public benefit provisions in the Charities Act 2006, and the principles set out in this draft guidance, for particular charity sub-sectors, we will consider further whether this exception still survives.

At the extreme, charities should not be seen as 'exclusive clubs' that only an elite few can join, since the benefit to 'the public' from that is very limited. But neither is it necessary for all charities to benefit all of the public. In general, the more open, outward-focused and inclusive the purpose, the greater the benefit to the public it can provide. So, where the purpose of a charity is more closed, inward-focused and exclusive, the greater the justification for that that may be needed in order to show that there is still sufficient benefit to the public. Where the reason for limiting the people who can benefit is in order to deal with some common disadvantage shared by those people then this is more likely to show benefit to the public than where that is not the case.

Where an organisation's purposes are concerned with providing or maintaining particular facilities for the benefit of the public, any restrictions on public access

(such as limited opening hours or limitations on what areas people have physical access to) must be reasonable and appropriate in the circumstances if it is to show benefit to 'the public'. In such cases, the degree of public access (however that is provided) must be sufficient overall for the organisation to claim that it provides public benefit. Charities must also ensure that they comply with the law regarding access to services.

For example, where appropriate, trustees must have regard to the provisions of the **Disability Discrimination Act 1995 & 2005** regarding the provision of physical access to buildings for people with disabilities.

Some charities have a membership structure under which the members are also the charity's beneficiaries. In this case, any restrictions placed on who may join as a member must be reasonable and justifiable in the circumstances if the public benefit of the organisation is not to be affected.

For example, where a person has to be a member in order to benefit, a membership system which required potential members to be proposed and seconded by existing members may lack the necessary 'public' element; being primarily a private members' club.

However, access to membership may, in certain circumstances, be properly limited, as explained above, where this is linked to the charity's purpose.

For example, the beneficiaries might be limited:

- to people living in a particular geographical area;
- where, in order to provide benefit to the public, it is reasonable to expect the members to have reached a certain standard of skill or knowledge or possess particular qualifications (such as a performing orchestra or choir);
- where a particular membership structure is appropriate for the better provision of benefits (provided that all those who might benefit can apply to join and there are objective criteria for deciding membership);
- where practical reasons (such as limited space) dictate a limit upon membership numbers, such as where there is limited access to recreational facilities for health and safety reasons. (In such cases it is reasonable to have a waiting list for membership provided the next available membership is offered on a 'first come, first served' basis.)

In some cases access to the benefits of an organisation are restricted to people who can afford to pay the fees it charges for its services. Where this is the case, it may be that the benefits are not available to a sufficient section of the public in order to satisfy this principle and it may be necessary to look for other benefits which are available to people who cannot afford to pay the fees. This may also affect the ability of the organisation to satisfy the third principle, that people on low incomes must be able to benefit. Guidance on this can be found in section G below.

Charity trustees also need to be aware of the effect of discrimination legislation when defining their charity's beneficiaries.

For example, although beneficiaries can be defined by reference to race, nationality, ethnic or national origin, the Race Relations Act 1976 prevents charities from defining their beneficiaries by skin colour. Where a charity defines its beneficiaries by reference to their skin colour in its purposes, the effect of the Race Relations Act is that the purposes are treated as if that reference were omitted.

So, a charity with purposes that read "*for the benefit of black women in financial need*" would be treated as having purposes "*for the benefit of women in financial need*".

### F3. Questions to help assess whether an organisation meets this principle

We have identified ten questions to help assess whether an organisation meets the principles set out in this draft guidance. These can be found in full in section I1.

The following are those questions which will help us assess whether an organisation meets principle 2:

3. Who is your organisation primarily set up to benefit?
4. Does your organisation provide wider benefits to the community or society generally? If so, how?
5. What criteria does your organisation use to select beneficiaries? Is anyone excluded from being a beneficiary? If so, who is excluded and why?
6. Does your organisation have a membership where someone must be a member to benefit? If so, is it open to anyone to join? If not, who can join and why?
7. Does your organisation provide facilities for, or services to, the public? If so, what, if any, restrictions are there on what people can access or who can have access?

Consultation questions:

- Q8.** Do you have any comments on our interpretation of principle 2?

## G. Principle 3: People on low incomes must be able to benefit

### G1. What does the term 'people on low incomes' mean?

The term 'people on low incomes' is not defined but, in England and Wales for example, it would typically cover households living on less than 60% of the average income (both before or after housing costs are taken into account) and people living on or below the level of income support.

**It does not generally include people who have a low income but are asset rich.**

Court decisions regarding the public benefit of charities have referred to charities not excluding 'the poor'. We are suggesting the use of the term 'people on low incomes' as a more modern equivalent of 'the poor'.

It is important to understand that poverty can exist in different degrees and may be short or long term. A person does not have to be 'destitute' to be considered 'poor' or a 'person on low income'. For more detailed guidance on this, please see our separate publication *Charities for the Relief of Financial Hardship*.

When deciding who would constitute 'people on low incomes' it is important to consider the context for the charity in question, ie what the charity is set up to achieve and where it operates.

For example, does it operate in a relatively affluent area in the UK or in the poorest areas in developing countries?

### G2. What does 'must be able to benefit' mean?

#### L

People on low incomes must be able to benefit from a charity.

The benefits charities provide to the public vary greatly, depending on the nature of the charitable purpose, the size of the charity and how and where it operates.

What is important is that people on low incomes have the opportunity to benefit. In many cases, people on low incomes benefit in the same way as people who are more affluent.

For example, the benefits which arise if an endangered species is preserved, or medical science is advanced, or people's human rights are protected, apply equally to people regardless of their personal financial circumstances.

In general, this means that there are not two types, or classes, of benefit; one for people on low incomes and one for everyone else.

It does not mean that every charity must have beneficiaries who are on low incomes. The fact that people on low incomes may choose not to benefit does not affect the public benefit of the organisation offering the benefit. Nor does it mean that charities must help every person on a low income; charities have limited resources and cannot help everyone. What is important is that people have the opportunity to benefit whatever their income.

However, where a charity charges for its services this can have the effect of excluding people who, because of their financial circumstances, cannot afford to pay the fees and so may not have the same opportunity to benefit, or may not be able to benefit in the same way, as someone who is more affluent. The effect that this situation can have on assessing an organisation's public benefit is considered in detail below.

### G3. Charities charging fees for their services

Charities can charge for their services but where the charges are so high that they effectively exclude people on low incomes from benefiting, either because they cannot afford, or do not have access to other funding, to pay the fees, this is likely to affect public benefit.

Examples of charities that may charge their users for access to their services and facilities include:

- educational organisations (such as schools and universities);
- private hospitals;
- care homes;
- recreational charities (such as sports or leisure centres, recreation grounds or village halls) that charge for hire of facilities;
- artistic, preservation and conservation charities (such as theatres, museums and stately homes) which charge entry to view performances, exhibits, land or properties;
- charities that charge for membership (whether annual, seasonal or daily); and
- charities that charge for publications.

A charity may charge fees which more than cover the cost of the services or facilities it provides. This is acceptable provided that the charges are reasonable and necessary in order to carry out the charity's purposes, for example in maintaining or developing the service being provided. However, where the charges are so high that they effectively exclude people on low incomes, this is likely to affect public benefit.

Charging fees should not be confused with other forms of financial contribution to charities, such as in the case of religious charities, whose core beliefs may involve a financial contribution from followers, in the form, say, of tithes. Generally, if benefit is not dependent upon the payment of a financial contribution then this will not affect public benefit. However, public benefit might be affected in circumstances where there is significant pressure placed upon beneficiaries to make a financial contribution, or where the financial contribution needed to benefit is substantial compared to the financial means of the contributor, even though benefit is not legally dependent upon such a contribution being made.

### G4. Assessing whether charging affects public benefit

**L** In considering the extent to which charging by a charity might affect its ability to demonstrate benefit to the public, the following broad principles apply:

- different sorts of benefits to the public may be taken into account in deciding whether an organisation is set up and operates for the benefit of the public;
- the fact that the charitable facilities or services will be charged for, and will be provided mainly to people who can afford to pay the charges, does not necessarily mean that the organisation is not set up for, and does not operate for, the benefit of the public;
- however, an organisation which excluded people on low incomes from any benefits would not be set up and operate for the benefit of the public.

These principles will apply in a way which takes account of the nature of the particular charitable purpose and the law which applies to it, the particular circumstances of the organisation and the modern conditions under which the organisation operates.

These broad principles mean that the charging of high fees can, in some circumstances, affect whether the benefits are available to the public.

Where access to the benefits is based on the ability to pay the fees charged, it must be clear that benefit can still be provided to the public generally, or to a sufficient section of the public, which must include people on low incomes.

The ways in which benefit may still be provided to the public will vary depending upon the purpose and the circumstances of each organisation. Provided it can be shown that sufficient public benefit is provided, it will in general terms be a matter for the trustees to decide what methods the charity will use to ensure and show that its purposes provide public benefit. In assessing the overall public benefit provided by a fee-charging charity we will take into account the totality of the benefits it provides.

For example, in the case of an arts charity which charges high fees, it might provide a range of benefits including:

- giving the public access to a high standard of artistic work;
- providing free or subsidised seats at performances to people who cannot afford to pay the full fees charged (such as providing concessions for students, pensioners and the unwaged or to school parties) and arranging TV and radio broadcasts of performances to reach a wider audience;
- providing arts educational material on the internet;
- supporting arts groups and providing specialist training in the arts of singing, music, drama, dance etc;
- providing arts spaces, working in collaboration with Arts Councils, developing craft and technical skills and working with members of minority ethnic communities;
- providing leadership in the cultural sector, helping to set a 'gold standard' in arts;
- preserving the arts for the benefit of future generations.

Applying this approach in cases where high fees are charged for services or facilities, we will consider the following issues:

- Does the level at which fees are set have the effect of preventing people on low incomes from accessing the services or facilities?

This will clearly depend upon the level of fees charged and the service provided. The number of people on low incomes who cannot access the charity's benefits will vary in direct relation to the level of fees charged.

For example, if the fees charged are £20,000 to attend a vocational training course they are likely to exclude a substantial number of people from accessing the benefits, including people on low incomes. If the fees charged are 50 pence to gain entry to a community centre's facilities, then the number of people who may be excluded are likely to be very few.

- If this is the case, is it possible to show that people on low incomes are not excluded from any possible benefits?

'Not excluding' people on low incomes does not mean providing some sort of 'token' benefit to a person or persons on a low income; it must be more than minimal or nominal benefit or benefit which occurs merely by chance.

Conversely, a public benefit requirement which required there to be no financial barriers to accessing benefits would be tantamount to an unrealistic 'gold standard' for fee-charging charities to meet.

Where people on low incomes are unable to benefit from a charity in an immediate or direct way, because they cannot afford to pay the fees charged for its services, there must be other reasonable ways available to them to benefit.

## 65. Identifying benefits to people on low incomes

Direct, or 'first-hand', benefits to people on low incomes will usually be looked for first, especially where fees are charged. But indirect, or 'knock-on', benefits may also be taken into account.

In most cases it will be usual to expect direct benefits to be provided, especially where fees are charged. In the context of fee-charging charities, where direct benefits are provided, there should usually be reasonable access to those benefits by a sufficient section of the public, including people on low incomes.

How much access is required will be looked at in further guidance on how the public benefit principles apply particularly to fee-charging charities.

Fee-charging charities are encouraged to be innovative and imaginative in considering how to maximise the benefits they can offer to the public, and in particular to people who cannot afford to pay the fees charged.

Examples of ways in which direct, or 'first-hand', benefits might be provided to people on low incomes include:

- providing concessions, subsidised or free places (for example, in the case of schools by offering scholarships, bursaries or assisted places, or in the case of theatres or concert halls by offering concessionary tickets);
- the existence of accessible insurance or other benefit schemes, for example, medical insurance schemes (but it would have to be shown that people on low incomes were able to sufficiently access the services through these types of schemes);
- the availability of other sources of funding to help meet the costs of any fees charged, such as funding offered by a local authority to pay for a place in a care home;
- providing wider access to charitable facilities or services. For example, some charities may provide additional facilities or services for people on low incomes who would otherwise be excluded. Some charities may lend equipment or staff out to other charities or groups which provide the same facilities or services to people on low incomes. For example, a charitable independent school allowing a state maintained school to use its educational facilities;
- the educational benefits to state school pupils who are able to attend certain lessons or other educational events at independent schools;
- benefits to pupils in state schools, who may include those from families on low incomes, arising from the collaboration and partnerships between state schools and independent schools;
- the benefits of free access to specialised medical equipment not available in the local NHS hospital or through a number of beds in the private hospital being made freely available to NHS patients; or
- the increased appreciation of literary or artistic performances gained by people on low incomes who are able to attend musical concerts or theatre performances through concessionary tickets.

Examples of ways in which indirect, or 'knock-on', benefits might be provided to people on low incomes include:

- benefits to the sick, including those on low incomes, where a charity provides medical training to nurses or doctors;
- benefits to the residents in a state-run care home, including those on low incomes, from a private care home working alongside it to help the state-run home meet local needs for the provision of care which it would otherwise be unable to do; or
- benefits to the public generally where a charity provides key worker accommodation to emergency services workers which in turn helps improve their efficiency and performance.

When considering whether fee-charging affects public benefit, the following general factors may be relevant:

- Whether and how people on low incomes may otherwise access those services or facilities. This is likely to vary from charity to charity and for different charitable purposes.

It may be necessary to look in some detail at whatever arrangements are available to enable people on low incomes to benefit. By way of illustration, in the examples above, if the discount on the price of the concert tickets means the amount payable still prevents people on low incomes from going to the concert, or, if a charge is made for the medical insurance and it is beyond the reach of people on low incomes, or, if the school charges the other educational charity or state school for use of the facilities, then these arrangements will affect the extent to which this can be taken into account and how much weight they have.

- What is the nature and extent of the benefit provided?

This may include considering how far the type of service or facility provided is one for which there is a public need, and how far the service or facility provided contributes towards meeting that need.

For example, a hospital not run by the NHS may provide specialised scanning equipment which is not available in the local NHS hospital, or an elderly person in a home might be provided with care for longer than he or she would have received it from the public service provider.

Additional weight may be given to the value of the benefits of providing a specialised service, such as a school or hospital that addresses a specific need.

For example, the additional educational needs that may arise for pupils with dyslexia or the specialised treatment on offer to patients with a particular form of cancer. However, a school which only benefits more affluent dyslexic pupils or a hospital which only benefits wealthy cancer patients would not be charitable.

- The nature and extent of any wider public benefit.

It would not be sufficient if the only benefit available to people on low incomes is the wider benefit which the public in general receives where a service provided by a charity relieves public funds. (Such benefits are primarily to taxpayers and people on low incomes may pay little or no tax.)

## G6. Questions to help assess whether an organisation meets this principle

We have identified ten questions to help assess whether an organisation meets the principles set out in this draft guidance. These can be found in full in section I1.

The following are those questions which will help us assess whether an organisation meets principle 3:

8. Does your organisation charge for its services? If so, how are charges set? Is everyone charged the full rate?
9. How are people on low incomes able to benefit from your organisation?

Consultation questions:

**Q9.** Do you have any comments on our interpretation of principle 3?

**Q10.** We have used the term '*people on low incomes*' as it is a commonly used term and we believe it best describes, using modern terminology, the people whom the courts have previously referred to as '*the poor*'. We have considered the following alternative forms of wording to '*people on low incomes*':

- (i) '*The poor*' - This wording has previously been used by the courts but we think it might now be considered old-fashioned and potentially misleading.
- (ii) '*People in financial hardship*' - Although we think this is an improvement on '*the poor*' it is a less commonly used term than '*people on low incomes*'.
- (iii) '*The less well-off*' - We think this is preferable to '*the poor*' but it perhaps lacks clarity (ie less well-off than what or whom?) and is a relative term that may not be generally understood.
- (iv) '*People with limited financial means*' - Again, although we think this is an improvement on '*the poor*' and could include

both the level of a person's income and the value of any assets they own, the term '*limited*' perhaps lacks clarity (ie how limited?) and is not as commonly used as '*people on low incomes*'.

- (v) '*People who are economically disadvantaged*' - This is a relative and subjective term (ie how disadvantaged?) and could therefore be open to a great deal of different interpretation.
- (vi) '*People of restricted financial means*' - This is a relative and subjective term (ie how restricted?) and could therefore be open to a great deal of different interpretation.
- (vii) '*People of ordinary financial means*' or '*people of moderate financial means*' - We believe this term goes beyond what is currently set out in charity law, extending beyond people who are '*poor*', and would therefore require legislation in order to be used.

Do you prefer the use of an alternative form of wording to '*people on low incomes*'? If so, which alternative expression do you prefer and why?

## H. Principle 4: Any private benefit must be incidental

### H1. What does 'incidental private benefit' mean?



There is a 'private benefit' where an individual or organisation personally gains from receiving a benefit. In some cases, that gain may be charitable; in some cases not.

Charities can provide private benefits provided that those benefits directly contribute towards achieving the charity's purposes and/or are incidental to carrying out those purposes.

A charity must provide more public benefit than private benefits.

Examples of private benefits that directly contribute towards achieving a charity's purposes include giving a grant to an individual to relieve their financial hardship or providing someone with an education.

Examples of private benefits that are incidental to carrying out a charity's purposes include paying reasonable salaries to a charity's staff or where there are limited profits to businesses as a result of charitable regeneration projects.

In general, a private benefit is legitimately incidental if:

- it arises as a necessary, but secondary, consequence of a decision by the trustees; and
- that decision is directed only at furthering the organisation's charitable purposes (as opposed to a separate purpose of, in effect, providing private benefit); and
- the amount of benefit is reasonable in the circumstances.

If it is desirable to confer benefits on the members of an organisation in order to carry out its charitable purposes, generally the private benefit to the members can be regarded as incidental. However, an association which is supported by its members for the purpose of providing benefits for themselves cannot usually be a charity. It is a question of degree; does the organisation exist primarily for the advantage of its members or has the membership structure been adopted solely as an effective way of delivering charitable benefits or for administrative convenience?

### H2. Questions to help assess whether an organisation meets this principle

We have identified ten questions to help assess whether an organisation meets the principles set out in this draft guidance. These can be found in full in section I1.

The following are those questions which will help us assess whether an organisation meets principle 4:

10. Does anyone receive private benefits from your organisation? If so, what benefits do they receive? How do those benefits contribute towards achieving your organisation's purposes and/or to what extent are they incidental?

Consultation questions:

- Q11.** Do you have any comments on our interpretation of principle 4?

# Assessing public benefit

The following sections set out the ways in which the Charity Commission will assess the public benefit of charities

## I. How to assess whether an organisation provides benefit to the public

**I1. The following questions are designed to help organisations (either registered charities or organisations seeking to become registered**

**charities) provide the sort of information that will help us to assess whether or not they meet the principles set out above:**

### Principle 1:

- 1 What benefit(s) does your organisation provide?
- 2 How do those benefits help fulfil your organisation's purpose(s)?

### Principle 2:

- 3 Who is your organisation primarily set up to benefit?
- 4 Does your organisation provide wider benefits to the community or society generally? If so, how?
- 5 What criteria does your organisation use to select beneficiaries? Is anyone excluded from being a beneficiary? If so, who is excluded and why?
- 6 Does your organisation have a membership where someone must be a member to benefit? If so, is it open to anyone to join? If not, who can join and why?
- 7 Does your organisation provide facilities for, or services to, the public? If so, what, if any, restrictions are there on what people can access or who can have access?

### Principle 3:

- 8 Does your organisation charge for its services? If so, how are charges set? Is everyone charged the full rate?
- 9 How are people on low incomes able to benefit from your organisation?

### Principle 4:

- 10 Does anyone receive private benefits from your organisation? If so, what benefits do they receive? How do those benefits contribute towards achieving your organisation's purposes and/or to what extent are they incidental?

#### Consultation questions:

**Q12.** Do you think these questions would help charity trustees and promoters to assess whether their organisation meets the public benefit requirement?

**Q13.** Are there any other questions that you think it might be helpful to include?

## J. The Charity Commission's approach to public benefit

### J1. The Charity Commission's public benefit objective



The Charities Act 2006 gives the Charity Commission a new public benefit objective 'to promote awareness and understanding of the operation of the public benefit requirement'.

It also requires us to publish guidance to help meet our public benefit objective and carry out what consultation we consider appropriate before issuing that guidance. This draft guidance sets out, and explains, the overarching principles of the public benefit requirement and how they apply to all charities.

### J2. Considering public benefit in the context of different charitable purposes

Charities cover a diverse range of purposes. Whilst every charity must have charitable purposes which benefit the public, the law does not adopt the same practical measures to assess public benefit in every type of case.

This means that the ways in which public benefit can be demonstrated can differ for different charitable purposes. Because of this, the public benefit requirement is likely in practice to look different for different groups of charities.

In order to provide clear information about how the public benefit requirement is met by different groups of charities, we will issue guidance about what public benefit means for different types of charity. In some areas this is likely to be complicated, but we will use our knowledge and experience of working with charities to explain clearly what the law is and ensure it keeps up with the modern social and economic conditions of society.

We will also carry out research studies showing the extent to which different types of charity are fulfilling the public benefit requirement.

The feedback we obtain from our public consultations on public benefit, and the findings of our research studies, will help to provide more detailed information about how different sorts of charities can meet the public benefit requirement, which in turn will help to inform our public benefit assessments of charities.

When deciding which groups of charities to look at first we will take account of issues of risk and public interest.

For example, concerns have already been raised about educational institutions and hospitals and about other charities which charge fees. The Charities Act also removes the presumption of public benefit for poverty, educational and religious purposes. As a result, many such charities will be thinking about the public benefit requirement for the first time.

We will draw on the information which we have as the regulator of charities. We collect standard information for the purposes of maintaining a database of charities and for monitoring those charities. We also have information from our day-to-day work with charities who seek advice and for which we make legal changes to enable them to work effectively in changing circumstances, through visits and meetings with charities and through our work to achieve compliance with the law and to investigate maladministration and abuse.

We will also discuss the issue of public benefit with charities which form part of the particular group, with relevant umbrella bodies and with users of those charities. Where appropriate we will commission more wide-ranging research, both on how the purposes of particular charities provide public benefit and on the public's views of those purposes.

We will take into account other factors, such as measures to widen access to the services and facilities of fee-charging charities by people who might find taking up their services difficult because of the fees charged.

### J3. Assessing the public benefit of new charities

**L** In accordance with the provisions in the Charities Act 2006, every organisation entered on the Register of Charities will need to show positively that it has charitable purposes which are for the benefit of the public.

When an organisation applies for registration as a charity, it will need to explain how its purposes provide benefit to the public. In some cases, it will also need to provide supporting evidence. Following this consultation, we will consider revising our registration application form to include specific questions about public benefit.

As the case is now, we will use the information an organisation provides on its application form to decide if their purposes are charitable and provide sufficient benefit to the public. In most cases this will be obvious.

Assessing public benefit for applications from organisations using well-known charitable purposes and using an approved governing document is likely to be relatively straightforward.

Where it is not straightforward, (for example where the organisation's purpose is relatively new or has some unusual feature) we will assess the information carefully against the principles outlined in this draft guidance, and, where necessary, will clarify with the applicants how the organisation's purposes will provide benefit to the public. Where appropriate, we will give an organisation advice on how to alter its purposes to provide sufficient benefit to the public.

Where an organisation applying for registration does not meet the public benefit requirement, we may provide advice where possible about how to alter or restructure its purposes to enable it to meet the requirement. Where an organisation cannot demonstrate that its purposes provide benefit to the public, then it cannot be registered because it will not be a charity.

### J4. Assessing the public benefit of existing charities

**L** A charity must continue to meet the public benefit requirement throughout its life.

In assessing whether charities meet the public benefit requirement, we wish to take a proportionate approach, taking into account what is reasonable in the particular charity's circumstances. We also wish to avoid duplication and are committed as an organisation to reducing the administrative burden on charities.

We propose taking a risk-based approach to our public benefit assessments of existing charities, focusing our resources on assessing the public benefit of charities which may have difficulty meeting the public benefit requirement.

For example, our risk criteria might include:

- charities affected by a change in the law (eg the removal of an existing presumption in charity law that certain purposes provide benefit to the public);
- charities about which public benefit concerns were raised during the debate on the Charities Bill (such as fee-charging and religious charities);
- charities where changing social conditions have an impact on the ability of those charities to demonstrate that their purposes continue to provide benefit to the public.

We propose asking the trustees of registered charities, selected on the basis of our risk criteria, to provide a more detailed explanation of how they consider their charity meets the public benefit requirement.

For example, this might include high fee-charging charities which may have difficulty in demonstrating benefit to people on low incomes, or charities where there is a high degree of private benefit, where it may be difficult to show that the private benefit is merely incidental.

## J5. Charities reporting public benefit

We think that charity trustees should report on how their charity meets the public benefit requirement.

All charities have to provide benefit to the public in order to qualify for charitable status. Charitable status brings with it a number of financial and practical benefits.

For example:

- people are more likely to offer time, energy or money to a registered charity;
- many grant-makers only give to charities;
- charities do not normally have to pay income/corporation tax (in the case of some types of income), capital gains tax, or stamp duty, and gifts to charities are free of inheritance tax;
- charities pay no more than 20% of normal business rates on the buildings which they use and occupy to further their charitable purposes;
- charities registered with the Charity Commission have the benefit of a charity registration number and the badge/brand of charity, for fundraising purposes, and can maximise the financial benefit through Gift Aid arrangements.

There are also a range of benefits which cannot be measured or quantified so easily.

There has been growing public demand in recent years for greater transparency and accountability by charities, reflected for example in changes to reporting and accounting requirements for charities.

For example:

- a new Statement of Recommended Practice: Accounting and Reporting for Charities (SORP) which recommends a new approach to the presentation of the Trustees' Annual Report, stressing the reporting of activities and performance against a charity's objectives;
- the introduction of a new Summary Information Return (SIR) for charities with an annual income of over £1 million, which requires trustees to report on the impact of their activities, and the publication of completed SIRs on our website; and
- the online publication on our website of an increasing number of charities' scanned accounts and our *Accounts aren't optional* and *File Early* campaigns to encourage more charities to file accounts and annual returns on time.

In line with this general trend, we think that charities should be encouraged to report on how they meet the public benefit requirement and that this might best be done using existing reporting frameworks (as many already do).

We also recognise the need to balance the desire for greater transparency and accountability by charities about the benefits to the public they provide, against our commitment to reduce the administrative burdens on charities.

We do not think there is a 'one size fits all' approach to reporting on public benefit. We have therefore set out below proposed ways in which we think different-sized charities might report on how they meet the public benefit requirement.

**For charities with an annual income below £500,000:**

For charities below the new audit threshold introduced by the Charities Act, we propose asking the trustees to include a simple statement in their Trustees' Annual Report on how their charity meets the public benefit requirement.

We think this should be more than a simple confirmation that the charity meets the public benefit requirement but needs to be no more than a short statement on how the charity's purposes have provided benefit to the public during the year. We think that the statement should confirm that the trustees have had regard to our guidance on public benefit where that has been relevant.

These charities could be encouraged to voluntarily provide fuller public benefit statements in their Trustees' Annual Reports and we could also undertake public benefit assessments of those charities in this income bracket where we think there is a risk that they do not meet the public benefit requirement.

**For charities with an annual income above £500,000:**

For charities above the new audit threshold introduced by the Act, we propose asking the trustees to provide a fuller explanation in their Trustees' Annual Report on how their charity meets the public benefit requirement.

We think that charities in this income bracket should provide a more detailed account of how the charity's purposes have provided benefit to the public during the year.

For example, for high fee-charging charities where the public benefit may not be immediately obvious given the high level of fees charged, one way in which they might quantify their charity's public benefits would be to assess and report the (financial, social or other) value of the benefits they provide, alongside the value of the tax breaks, or other benefits, they receive.

We think that the statement should also confirm that the trustees have had regard to our guidance on public benefit.

We could also undertake public benefit assessments of those charities in this income bracket where we think there is a risk that they do not meet the public benefit requirement.

These proposals are consistent with the established principle of charities which are subject to audit being asked for more detailed information than those not subject to audit. These proposals are dependent upon the necessary changes being made to the Charities (Accounts and Reports) Regulations 2005 ('2005 Regulations'). The Regulations would need to be made by the Minister for the Cabinet Office and would be subject to a separate public consultation later, in the first half of 2007.

We invite comments on these proposals and, in particular, on our proposal to ask the Minister to change the 2005 Regulations so that charities will be required to provide a public benefit statement in their Trustees' Annual Report.

Subject to the necessary changes to the 2005 Regulations, it is likely that these proposals could be implemented for accounting periods commencing October 2007 onwards, with the first full set of data available from mid 2010.

## J6. Working with charities that are not meeting the public benefit requirement

Where individual charities are not meeting the public benefit requirement then we will need to take further action where necessary.

Where charities are not meeting the public benefit requirement but are able to, our action might include helping the charity amend its stated purposes so that it is able to meet the requirement. We might also use our regulatory powers to enforce change if the trustees are not co-operating with us.

For example, we might use our powers to appoint new trustees or use our new powers in the Charities Act to give directions to the trustees when those powers come into force.

However, we anticipate we might need to do this in only a few cases.

In extreme cases, where the trustees are co-operating with us but the organisation is unable to provide sufficient public benefit, we may need to ensure that any charitable assets of the organisation will in the future be applied for other charitable purposes close to any purposes that no longer provide sufficient public benefit. This would only happen where it was not possible for an organisation to meet the public benefit requirement.

At this stage it is not possible to be more specific about what action we might take. This is because our approach will be informed by the results of our future work highlighting the ways in which charities with particular purposes can meet the public benefit requirement in modern society. It will also depend upon the powers an individual charity has in its governing document to address the issues itself.

Appeals against our decisions, including decisions to refuse registration and decisions to amend a charity's purposes, are currently reviewable under our internal decision review system and, ultimately, by the courts. Following the setting up of the Charity Tribunal, established by the Charities Act, in 2008 charity trustees can make a further appeal against our decisions to the Tribunal, once our internal decision review system has been completed.

Consultation questions:

**Q14.** Do you have any comments on our proposals for assessing the public benefit of existing charities?

**Q15.** Do you have any comments on our proposals for the ways in which different-sized charities might report on their public benefit? In particular, do you have any comments on our proposal to ask the Minister for the Cabinet Office to change the Charities (Accounts and Reports) Regulations 2005 so that charities will be required to provide a public benefit statement in their Trustees' Annual Report? We also welcome comments on what form the simple public benefit statement, for charities with an annual income below £500,000, and the fuller public benefit statement, for charities with an annual income above £500,000, might take.

**Q16.** Do you have any specific concerns about the ability of certain types of charity to demonstrate public benefit, in the light of the principles of public benefit set out in this draft guidance? If so, what are those concerns and how do you think we might address them?

**Q17.** Do you think that charity trustees and people setting up new charities will have any difficulty understanding and applying the principles set out in this draft guidance to their charity so that they can show that they meet the public benefit requirement? If not, what changes or further guidance on the principles do you think would be helpful? Please note, we will be providing further guidance on the public benefit of specific types of charity following future consultations on specific charity sub-sectors.

## K. Further information and advice

### K1. Sources of information

There are many resources that charity trustees and their advisers can use to help them understand whether their charity is meeting the public benefit requirement.

This section does not provide a definitive list of all the sources of information available, but it offers a good overview and a useful starting point. You can find details of other sources of information in Useful links on the home page of our website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

### K2. Key Charity Commission publications

The Charity Commission produces a wide range of publications and website guidance giving information and advice to charity trustees and the general public on issues relating to charity law, regulation and best practice.

The full list of publications is on our website and in *Charity Commission Publications*, but the list given here is a selection based on the issues covered in this draft guidance.

#### **Charity Commission publications:**

- RR1a Recognising New Charitable Purposes
- CC4 Charities for the Relief of Financial Hardship
- CC9 Political Activities and Campaigning by Charities
- CC11 Payment of Charity Trustees
- CC21 Registering a Charity

#### **Website publications:**

Commentary on the Descriptions of Charitable Purposes in the Charities Act

To obtain copies of these or any of our publications you can:

- View and print them from our website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)
- Order during office hours (0800 – 2000 weekdays or 0900 – 1300 Saturdays) by phoning us on 0845 300 0218 (or 0845 300 0219, minicom for hearing impaired callers); or
- Write to Charity Commission Direct, PO Box 1227, LIVERPOOL, L69 3UG

# The wider context for charities

## 4.1 Encouraging good practice in accountability

We encourage charities to be innovative in finding new and better ways to provide benefit to the public and to encourage the spread of good practice.

We aim to stimulate this process by establishing with different parts of the charity sector what the spread of good practice is in delivering public benefit, publicising this and enabling individual charities, where appropriate, to compare themselves with others. This would enable independent boards of trustees working in similar areas to share ideas about how they, and other charities, are achieving results. The improvement efforts which are already being made by many would be showcased more explicitly and we could monitor progress of what has been achieved.

We could issue guidance about what public benefit means for different types of charity and carry out research studies showing the extent to which those charities are fulfilling the public benefit requirement. We could encourage professional and sub-sector bodies to publish composite reports highlighting the performance of their particular charities, showcasing good practice and sector 'norms'. Although we recognise that there may be circumstances where it will be more appropriate for the Charity Commission to produce these. All this would be subject to future consultation.

## 4.2 Citizens' Standards on Public Benefit

The public provides considerable support for charities. Therefore, it is in the interests of charity trustees to have regard to what the public thinks about the ways in which charities provide public benefit.

We have asked members of the public for their views on what is important for them about how charities benefit the public. Those views form the basis of some *Citizens' Standards on Public Benefit* which are set out below.

Details of how these *Citizens' Standards on Public Benefit* were produced can be found in *Public perceptions of public benefit*, a report prepared for the Charity Commission by Opinion Leader, which is available on our website.

These *Citizens' Standards* are not a legal requirement for charities. They do not form part of the Charity Commission's draft guidance on public benefit. However, they are something which we think charities might usefully consider. They help to give an indication of where charities might demonstrate increased accountability and effectiveness in the context of providing benefit to the public and which, in turn, can help to increase the public's trust and confidence in charities. We therefore think this will also help further the Charity Commission's new statutory objective 'to increase public trust and confidence in charities'.

## Citizens' Standards on Public Benefit

There are five key expectations that members of the public have identified as core to the public benefit of charities:

### 1. Responding to need

- Responding to need is seen as the essence of charitable activity.
- Charities should benefit particular groups in society, such as the poor, sick, disabled or elderly.
- Charities are also seen as able to help fill a gap in state provided services.
- In terms of how many people should benefit - the public feels that it is legitimate for a charity to benefit a small number of people if those people are in great need. However, if the benefits are less obvious or more subtle and are not responding to great need, a greater number of people should benefit.

### 2. Enhancing lives

- Charities should strive to make an improvement to society and, in so doing, benefit as many people as possible.
- Charities should aim to enhance peoples' lives; by providing obvious benefits to their beneficiaries but also by providing subtle benefits to the wider community.
- In addition, charities are seen to enhance lives by allowing people to volunteer and get involved with charitable activities.

### 3. Education and development

- Education here is understood in the broadest terms.
- There are several aspects to the education charities can provide, including personal improvement and edification of beneficiaries/volunteers.
- Charities are also expected to share their specific knowledge and skills with beneficiaries, volunteers and the wider public and the public welcomes the opportunity for charities to develop public understanding of their charitable cause.

### 4. Fostering a sense of community

- Charities are seen as caring about others and tackling problems in society.
- They help create awareness of social problems and inequalities and reach out to the community.
- People believe that charities should promote social cohesion through their activities and should also be as socially inclusive as possible and engage the wider community - especially charities that cater for particular religious or cultural groups.

### 5. Consideration of future generations

- Charities are felt to act as guardians of heritage, cultural practice and the positive, cohesive structures of society.
- Charities that consider the knock-on effects of their activities for future generations provide greater benefit than those that focus only on the present.

# Notes



# Notes

This publication can also be accessed at the Charity Commission's website: [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

© Crown copyright 2007. This publication may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

This publication is printed on paper obtained only from sustainable resources and is totally chlorine free.  
Supplied by Linney Group.  
xxxxxx xx/2007

**You can obtain large-print versions  
of this publication from the Charity  
Commission on 0845 300 0218**

**Charity Commission**

Telephone: **0845 300 0218**

Minicom: **0845 300 0219**

By post: **Charity Commission Direct**

PO Box 1227

Liverpool

L69 3UG

Website: **[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)**

**Consultation on draft public benefit guidance. March 2007.**