

**PUBLIC BENEFIT REPORTING AND
ASSESSMENT**

**PARTIAL REGULATORY IMPACT
ASSESSMENT**

March 2007

1 The public benefit requirement

1.1 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’.

1.2 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.

1.3 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 current presumption in 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.

1.4 This Partial Regulatory Impact Assessment should be read alongside the Charity Commission’s consultation paper, *Consultation on Draft Public Benefit Guidance*.

2 Purpose and intended effect of measure

2.1 The public benefit requirement, as explained in section 1 above, is a legal test of purposes which a charity must pass before it can be registered; but charities already on the register must also be mindful of the continuing need to meet the requirement. Our *Consultation on Draft Public Benefit Guidance* sets out proposals for ways in which

charity trustees might report on how their charity meets the public benefit requirement.

2.2 Our proposals are proportionate and consistent with the principle that small charities should not have the same regulatory requirements as larger ones. The proposals also reflect the established principle that charities which are subject to audit are also subject to different levels of accountability and hence are required to provide more detailed information, in their Trustees' Annual Reports (TARs), than those not subject to audit.

2.3 Implementation of the proposals would be dependent upon changes being made to the Charities (Accounts and Reports) Regulations 2005 ('the 2005 Regulations'). The Regulations are made by the Minister for the Cabinet Office and any changes will be subject to a separate public consultation, in the first half of 2007.

2.4 Our *Consultation on Draft Public Benefit Guidance* invites comments on the proposals and, of particular relevance to this Partial Regulatory Impact Assessment, 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 TAR.

2.5 Subject to the necessary changes to the 2005 Regulations, it is likely that the proposals could be implemented for accounting periods commencing October 2007 onwards. Taking account of charities' different year-ends, the regulations will not fully commence until September 2008. Because charities have 10 months in which to submit their accounts, the first full set of data will not be available until mid 2010 (i.e. 10 months after a year-end date of September 2009).

2.6 The proposed changes to the 2005 Regulations will explicitly require charity trustees to report on how their charity meets the public benefit requirement. This Partial Regulatory Impact Assessment considers the costs and the impact for charities in complying with those proposed changes.

2.7 Our *Consultation on Draft Public Benefit Guidance* also sets out proposals for how we will assess the public benefit of applicants for registration, as well as for charities already registered. As this initial consultation focuses on the high level principles, we have not provided an estimate of the likely cost to charities of our undertaking such assessments, since we are unable to say at this stage how many charities will need to be assessed. This will be considered further as part of our planned work to examine the public benefit of specific types of charity. We have, however, included a range of indicative figures to illustrate potential costs.

3 Devolution

3.1 The proposals would only affect charities already registered in England and Wales, or which may be required, or seek, to register, now or in the future.

4 The background

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

4.2 Charity trustees have a general duty to act in the best interests of their charity and to benefit the public. Part of this duty involves keeping their activities under regular review to ensure that they are effectively furthering the purposes for which the charity was set up.

4.3 In recent years, in response to a growing public demand for greater transparency and accountability by charities, there have been changes to the reporting and accounting requirements for charities. For example, in 2005 a new Statement of Recommended Practice: Accounting and Reporting for Charities (SORP 2005) was introduced, after consultation, and it includes a new approach to the presentation of the Trustees' Annual Report (TAR), stressing the reporting of activities and performance against a charity's objectives.

4.4 In line with this general trend, we think that charities should be required to report on how they meet the public benefit requirement and that this might best be done using existing reporting frameworks. It therefore follows that in the majority of cases, if charity trustees are mindful of their general duties, and (if the charity has an income in excess of £250,000) they are following the requirements of SORP 2005, then they will find it relatively straight-forward to assess the benefit that their charity provides to the public. Our regulatory costs are based on this premise.

4.5 Our proposals are designed 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.

5 Why are we doing this? (The rationale for Intervention)

5.1 The Commission has a statutory duty to keep a register of charities. Section 1(1) of the Charities Act defines a 'charity' as "*an institution which (a) is established for charitable purposes only, and (b) falls to be subject to the jurisdiction of the High Court in the exercise of its jurisdiction with respect to charities*". Section 2(1) of the Charities Act defines a 'charitable purpose' as "*a purpose which (a) falls within subsection (2) [which sets out a list of descriptions of charitable purposes] and (b) is for the public benefit*". The Commission therefore needs to ensure that all the charities on the register satisfy those

definitions, including the requirement that their purposes are for the public benefit.

5.2 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 a 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 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.

5.3 Charitable status brings with it a number of financial and practical benefits. As we explain in section J5 of the consultation document, we think that the public demand for greater transparency and accountability by charities about the benefits to the public they provide out-weighs any additional costs of producing the information.

5.4 Assessing whether charities are continuing to meet the public benefit requirement is an important tool in maintaining an accurate register. If the Commission fails to meet its public benefit objective, there is a risk that there will be charities on the register which are not for the benefit of the public. This will affect the overall credibility of the register, and how it is perceived and used by the public, by potential donors and funders, and by others with an interest in charities. It will also affect the ability of the Charity Commission to meet another of the Charities Act 2006 objectives, which is “to increase public trust and confidence in charities”.

6 Consultation

Within government

6.1 Copies of our *Consultation on Draft Public Benefit Guidance* have been sent to government departments with an interest in the public benefit of charities.

Public consultation

6.2 At this stage we are consulting on our draft guidance on public benefit. The consultation is compliant with the Cabinet Office’s code of practice on consultation. This will include:

- placing the consultation on our web-site (www.charitycommission.gov.uk);
- placing an article in the latest edition of our newsletter CC News;

- including a direct link to the consultation from CC Direct email correspondence;
- launching an on-line survey about our public benefit consultation; and
- engaging with various different types of charity about their public benefit.

6.3 Following this first-stage consultation, we plan to carry out further consultations on the effect of the principles of public benefit for specific types of charity, starting with the following sub-sectors:

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

6.4 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.

6.5 We will draw on the information which we have as the regulator of charities. We collect standard information for the purposes of maintaining a register 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.

6.6 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.

6.7 The consultation questions which relate specifically to public benefit assessment and reporting are as follows:

- Q.14. Do you have any comments on our proposals for assessing the public benefit of charities on the register?
- Q.15 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 of £500,000 or less, or the fuller public benefit statement, for charities with an annual income over £500,000, might take.

- Q.16 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?
- Q.17 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.

6.8 In responding to these questions, we would be interested to know from charity trustees or their advisors what they consider the impact (in terms of time and cost) is likely to be of producing a statement on public benefit in their Trustees' Annual Report.

7 Options for reporting and assessing public benefit

A Reporting public benefit:

Option 1 – Do nothing

7.1 Benefits:

- No increase in the regulatory burden on the sector.

7.2 Issues and risks to consider:

- The Charity Commission does not fulfil its statutory public benefit objective. The position and reputation of the regulator would be damaged.
- Risk that there will be organisations on the register of charities which do not meet the public benefit requirement.
- Risk of damaging public trust and confidence.

Option 2 – Require all registered charities with an annual income of £500,000 or less (the new audit threshold) to include a simple statement in their Trustees' Annual Report ('TAR') on how their charity meets the public benefit

requirement, and require all registered charities with an annual income over £500,000 to provide us with a fuller written explanation in their TAR on how their charity meets the public benefit requirement.

7.3 Benefits:

- Trustees are currently required by the SORP to state their aims and objectives, and to provide details of the activities undertaken to achieve these objectives. Whilst trustees are being asked to report slightly differently against the charity's aims, objectives and activities, in most cases common material will be used. We recognise that a more detailed evaluation will be required by charities with an income over £500,000.
- The proposal uses the same basic threshold at which charities' accounts are required to be independently audited. The proportionate use of the audit threshold also acts as a proxy for public accountability and assurance which warrants more detailed disclosure.
- Trustees are made aware of how to fulfil their obligations to ensure their charity provides public benefit, and focus their efforts on maximising benefit to the public. The draft guidance on public benefit has been put together in such a way that it should help trustees avoid the need to seek external help with preparing their statement.
- We believe that greater transparency regarding how charities benefit the public is likely to support public trust and confidence.

7.4 Issues and Risks to consider:

- Public benefit issues are not determined by a charity's income alone. For example, 15,697 charities currently have an income between £100,000 and £500,000 and would, under these proposals, only be required to provide a simple statement, rather than a detailed explanation. Therefore there is a risk that charities are not targeted by reference to appropriate criteria. However, the proposals allow for the assessment of charities based on risk criteria.
- At present, the proposals are based upon the current requirement that all registered charities have to produce a TAR. The government is committed to a review in 2007 of the financial thresholds contained within the charity legislation. The Commission will work with colleagues from the Office of the Third Sector on this review which is an important opportunity to explore proposals that would reduce the burden on the charitable sector. Many thresholds are in areas that are central to the transparency and accountability

of the sector but we will use the review to consult on thresholds that would better reflect a modern, risk-based, approach to regulation.

- We believe that all charities should have to prepare annual accounts. However, our initial work shows that relatively modest changes in other areas could have a significant impact. For example, at present, all registered charities have to prepare a TAR and those with income over £10,000 have to send it to the Commission. This could be changed so that charities below higher thresholds of, say, £25,000 do not have to prepare a TAR. This would of course affect the number therefore required to report on their public benefit.
- The Commission will need to apply proportionality and risk criteria in assessing the responses as, under this proposal, 168,000 charities will be required to report on the public benefit they provide in their TARs.
- If the guidance is not widely understood, then there is a risk that trustees will incur additional costs by having to seek external assistance in preparing their statement.

Option 3 - a) Charities with an annual income between £10,000 and £100,000 should self certify on their Annual Return that their charity continues to meet the public benefit requirement and that they have had regard to our guidance on public benefit where relevant; b) charities with an annual income between £100,000 and £1 million should provide a written explanation in their TAR of how they consider their charity meets the public benefit requirement; and c) charities with an annual income over £1 million should provide a fuller written explanation of how they consider their charity meets the public benefit requirement in a bigger and more refined Summary Information Return.

7.5 The Charity Commission considered this option, but rejected it at an early stage because of concerns that:

- the three different reporting formats might be confusing for charity trustees and their advisors; and that
- it introduced a new, arbitrary reporting threshold of £100,000.

B Assessing public benefit

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

7.7 Our consultation paper sets out proposals for assessing the public benefit of both applicants for registration and charities on the register:

Applicants for registration

7.8 Section J3 of the consultation paper sets out our proposals for assessing the public benefit of applicants for registration.

7.9 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. We do not think the proposals will add to the costs for an organisation seeking registration.

Charities on the register

7.10 Section J4 of the consultation paper sets out our proposals for assessing the public benefit of charities on the register.

7.11 These proposals will be informed by our sub-sector consultations. We might undertake pilot assessments prior to these consultations being completed, but such pilots would be incorporated into existing mechanisms and we do not anticipate that they will give rise to any additional impact for charities.

7.12 We will use the sub-sector consultations as a way of providing guidance to charities in those areas on how to meet the public benefit requirement. By having regard to that guidance, we anticipate that the number of charities unable to meet the requirement will be minimised.

7.13 We will also use that process to identify the likely number of charities that we think may have difficulty meeting the public benefit requirement, even with the benefit of further, more specific guidance. Where we do need to undertake public benefit assessments, these might be achieved in one or more of the following ways:

- Desk top assessment
- Assessment by telephone
- Public benefit assessment visit

7.14 We are unable at this stage to estimate the total cost to charities of our undertaking such assessments, as we do not know how many charities will need to be assessed, but a typical cost to an average charity for each option is set out in section 8 of this document, alongside some illustrative costs.

7.15 We will consider what further action might be needed (including a specific RIA for public benefit assessments) as part of our sub-sector consultations.

8 Cost to charities of reporting and assessing public benefit

A Reporting public benefit - costs

Option 1 – Do nothing

8.1 There would be no additional cost to the sector.

Option 2 – Require all registered charities with an income of £500,000 or less audit threshold to include a simple statement in their Trustees' Annual Report ('TAR') on how their charity meets the public benefit requirement, and require all registered charities with an annual income over £500,000 to provide us with a fuller written explanation in their TAR on how their charity meets the public benefit requirement.

Charities of £500,000 or less income threshold:

8.2 The Commission considers that this will involve trustees giving consideration to the principles outlined in the draft guidance on public benefit, so that they can 're-focus' the information on the charity's aims, objectives and activities which would already be contained in the TAR. We therefore consider that this will not give rise to any additional costs to this part of the sector.

Charities with an income of over £500,000 and £1 million or less:

8.3 The Charity Commission's Simplification Plan has identified the average regulatory cost (i.e. excluding costs which would have been routinely occurred, known as Business as Usual Costs) for a charity in this income bracket preparing a TAR as £552 per charity.

8.4 We estimate that there will be a 20% to 25% increase in regulatory costs for charities in this income group from this proposal, falling to 10 to 15% from year two onwards.

8.5 There are 3,400 registered charities in this income group, giving an additional cost of between £375,000 and £469,000 in year one and £188,000 and £282,000 in subsequent years.

8.6 In addition, some 2,000 currently excepted and exempt charities in this income group will have to register, when the relevant provisions of the Charities Act come into effect. Estimates of the additional costs of the current regime are in our Simplification Plan. These proposals would add a further £220,000 to £276,000 in year one and £110,000 to £165,000 in subsequent years.

Charities with an income of over £1 million:

8.7 The Charity Commission's Simplification Plan has identified the average regulatory cost (i.e. excluding costs which would have been

routinely occurred, known as Business as Usual Costs) for a charity of this size preparing a TAR as £537.

8.8 We estimate that in the first year of the new public benefit requirement coming into effect there will be a 20% to 25% increase in regulatory costs for charities in this income group, falling to 10 to 15% from year two onwards.

8.9 There are 5,230 registered charities in this income group, giving an additional cost of between £562,000 and £702,000 in year one and £281,000 to £421,000 in subsequent years.

8.10 As outlined in 8.6 above, the Charities Act will require some 3,000 currently excepted and exempt charities in this income group will have to register. The additional costs of these proposals will be between £322,000 and £403,000 in year one and £161,000 to £242,000 in subsequent years. These costs are in addition to the costs identified in our Simplification Plan for charities moving from exempt or excepted status to registered status.

Summary of additional reporting costs:

8.11 The following table shows a summary of additional reporting costs for charities:

Category	Year one costs	Subsequent annual costs
Registered charities with an income between £500, 000 and £1 million	£375,000 to £469,000	£188,000 to £282,000
Currently except or exempt charities with an income between £500,000 and £1 million	£220,000 to £276,000	£110,000 to £165,000
Registered charities with an income above £1 million	£562,000 to £702,000	£281,000 to £421,000
Currently except or exempt charities with an income above £1 million	£322,000 to £403,000	£161,000 to £242,000
Totals	£1,479,000 to £1,850,000	£740,000 to £1,110,000

Assessing public benefit - costs

8.12 We have identified different ways in which we might undertake assessments of whether charities are demonstrating public benefit.

8.13 The provision of public information, via charities' TARs, will be the prime way for charities to demonstrate their public benefit. Public benefit assessments will complement this public information. As

explained above, until we have completed the first stage consultation, we cannot produce detailed figures on the balance and type of assessments we will undertake or the costs to charities of our undertaking public benefit assessments. Our second stage consultation will cover these aspects in more detail.

8.14 However, at this stage, we have set out below typical costs to an average charity for each option and some illustrative figures for the overall impact for charities. These options are not exclusive.

8.15 The calculations use standard rates for average costs of:

- the time of a trustee or senior member of staff in most charities as £16.23 per hour; and
- the time of a trustee or senior employee such as a chief executive of a charity with an income over £20 million as £41 per hour; plus 30% overheads in each case.

8.16 These figures are taken from the cross government Administrative Burdens Reduction Project which used hourly rates taken from the Annual Survey of Hours and Earnings (ASHE) collected by the Office of National Statistics. ASHE provides information on the pattern of earnings and hours worked for employees in all industries and occupations.

8.17 These costs do not all represent actual expenditure by charities. Most of the work will be carried out by volunteer trustees and the costs include a financial value for such voluntary work.

Desk-top assessment:

8.18 We assume that for a proportion of desk assessments, we will need to engage one hour of a charity trustee's time, in a phone conversation, or follow up action. This represents £21 per follow up. We estimate, at this stage, that follow-up costs to charities from desk-top assessments are unlikely to exceed £20,000.

Assessment by telephone:

8.19 A telephone assessment will require greater trustee time than following up queries from a desk top assessment. Typically, it could include:

- A meeting of the trustees to discuss preparing for the assessment. (For example, a 30 minute discussion by a board or committee of six trustees is three hours time at a cost of £63.30.)
- A telephone conversation between the Charity Commission and the charity. (For example, a 45 minute conversation involving one trustee would cost £15.80.)

- In some cases trustees may need to take follow up action, such as providing further information. (For example, follow up action might require a further three hours of trustee discussion plus one time spent by individual replying to the Commission. This would cost a further £63.30.)

8.20 The costs under this category will be a mixture some, or all, of these three elements.

8.21 If all three elements were used in a telephone assessment of 100 charities the total cost would be £14,240; for 500 it would be £71,200.

Public benefit assessment visit:

8.22 At this stage we estimate that a charity which has a public benefit assessment visit may incur the following costs (including some costs incurred by a small proportion of charities with an income above £20 million):

Aspect of visit	Task	Time requirement	Total time	Cost
Preparation for the visit	Consideration of general position and consideration of specific points raised by the Commission.	2 hours – Lead trustee/chief executive 30 minute discussion by committee or board of 6 trustees	5 hours	£118
Visit	Discussion with the Commission	3 hours – two trustees plus chief executive	9 hours	£213
Follow up action		45 minute discussion by committee or board of 6 trustees, plus 2 senior staff 2 hours for one person to collate information	8 hours	£185
TOTAL			22 hours	£516

8.23 If public benefit assessment visits were carried out to 100 charities the total cost would be £51,600. If visits were carried out to

300 (the number of review visits we currently carry out each year) the cost would be £154,800.

8.24 Based on these figures, at this stage, we estimate that the regulatory costs to charities of public benefit assessments will not exceed £250,000 per annum.

9 Small Firms Impact Test

9.1 As the proposed measures only have an impact for registered charities, and currently excepted and exempt charities, they fall outside the scope of the Small Business Service.

10 Monitoring, inspection and Enforcement

10.1 For option 2, where we are proposing to ask for a written statement of a charity's public benefit, this will form part of a charity's TAR. We propose asking the Minister for the Cabinet Office to consult on changes to the Charities (Accounts and Reports) Regulations which will require charities to provide this statement in their TAR. We will use our existing enforcement procedures to ensure TARs are submitted.

10.2 The Commission does not have formal powers of inspection. However, should a charity not agree to a public benefit assessment visit we can take enforcement action by using our section 8 powers under the Charities Act 1993.

11 Sanctions

11.1 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.

12 Reducing the burden of forms

12.1 The Commission will minimize additional paperwork by using existing reporting mechanisms (the TAR) although, as explained in section 5 above, some charities may be required to provide some additional information in order for us to effectively assess their public benefit.

12.2 We will complete a full Regulatory Impact Assessment, including proposals for an implementation and delivery plan, and post implementation review once we have the results of the consultation on the public benefit guidance.