

## Public Benefit Consultation

From 23 April 2007, charities only have to be registered with the Charity Commission if they have an annual income of over £5,000. This change was introduced by the Charities Act 2006.

The Charity Commission has launched its consultation on the draft public benefit guidance which it has produced. The guidance is available on the Charity Commission's website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk).

The Charities Act 2006 emphasises that charities must meet the public benefit requirement. To be charitable at law, organisations must be established for purposes legally recognised as charitable and for public, not private benefit. The Act removes the presumption of public benefit in favour of charities established for the relief of poverty, advancement of education and the advancement of religion. When the relevant provisions of the Act come into force (expected 2008), organisations that have in the past benefited from the presumption will have to actively demonstrate that public benefit is at the heart of their purposes.

The Charities Act 2006 also requires the Charity Commission to publish guidance explaining what the public benefit requirement is and how charities can ensure that they comply.

The Charity Commission might need to consider an organisation's activities in detail to decide whether these purposes are charitable and will, or may operate for the public benefit.

The draft guidance makes it clear that the Charity Commission, as Regulator for charities in England and Wales is responsible for deciding how the public benefit requirement will operate.

*It must be emphasised that the public benefit requirement is not a new requirement and that all charities must have purposes which benefit the public. However, the removal of the presumption will put an active duty upon all charities to demonstrate how they provide public benefit when the relevant provisions of the Act come into force.*

The Charity Commission has identified four principles which show whether an organisation provides public benefit:

- 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

It must be clear what benefits the charity's purposes provide to the public. This will vary depending upon the type of charitable organisation and the activities it carries out to fulfil its purposes. The draft guidance also emphasised that a charity's purposes must not be concerned with fulfilling a political purpose or objective.

### Principle 2

What constitutes "the public" varies depending upon the charity's purposes. Although a sufficiently wide section of the public must benefit, it is not merely a numerical matter. The Charity Commission is clear that "the public" can mean groups, communities, society or



humanity. It can also mean geographical, social or economic communities and is not limited to people in the UK.

### Principle 3

Principle 3 is one of the main principles which will be of concern to charities that charge high fees for their services. The draft guidance gives no definition of "people on low incomes". However, it gives the example that in England and Wales it would typically cover households living on less than 60% of the average income (both before and after housing costs are taken into account) and people living on or below the level of income support.

The draft guidance acknowledges that charities need to and can charge for their services. Otherwise it would be impossible to secure cost recovery and plough funds back into fulfilling their aims and improving their services. However, if the charges are so high that they effectively exclude people on low incomes from benefiting, charities must look at ways in which they can open up their services or facilities to people on lower income.

Many fee charging charities such as independent schools already have systems in place to share their facilities with state schools or open up access to pupils on low incomes via bursary schemes etc. Such activities are directly linked to fulfilling their educational objectives. However, we recommend that all charities (not just independent schools) take a look at their activities to ascertain whether access to their services/facilities is sufficiently wide to fulfil the public benefit requirement. Charities should be imaginative and explore how they might widen access to their facilities (to make



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» sure that people on low incomes are not totally excluded by virtue of any fees charged). Fee charging charities should also publicise their activities and what they are doing to widen access to their facilities to generate awareness in the local communities within which they operate. The trustees' report should also deal with this and minutes of trustee meetings should show that it is under consideration.

#### Principle 4

The draft guidance makes it clear that there is "private benefit" where an individual or organisation personally gains from receiving a benefit. It is possible in some circumstances for that gain to be charitable, however in other circumstances it is not.

The Charity Commission makes it clear that any private benefits must directly contribute towards achieving the charity's purposes or be incidental to carrying out those purposes.

Overall, a charity must provide more public benefits than private benefits. If in doubt, organisations should seek legal advice.

#### Conclusions

The consultation on the draft public benefit guidance ends on 6 June 2007. We would urge all charities to familiarise themselves with the draft guidance and respond to the Charity Commission if they see fit.

The provisions in the Charities Act 2006 relating to public benefit are not

expected to come into force until early 2008. However, as above we recommend that charities prepare now.

The Charity Commission intends to review the impact of the public benefit requirement within three years of the relevant provisions and the Act coming into force.

As soon as the relevant provisions come into force in early 2008, charity trustees will have a legal duty to have regard to the Charity Commission's guidance on public benefit.

The draft guidance gives charity trustees an opportunity to gain advanced knowledge of the public benefit requirement and what their organisation should be doing to fulfil it.

When the consultation period ends on 6 June 2007, the Charity Commission will analyse the responses and revise the draft guidance between June and September 2007.

The Charity Commission will then publish the final guidance entitled "Charities and Public Benefit" in October 2007.

The Charity Commission will then launch a three month public consultation on more detailed sub-sector guidance. This will deal with specific types of charities such as those which relieve poverty, advance education and religion and fee charging charities.

We will keep organisations updated through our legal alert publications and e bulletins.

## New Charity Commission Guidance – Safeguarding Children

The Charity Commission has updated its previous guidance for charities working with children to make sure that it is up to date.

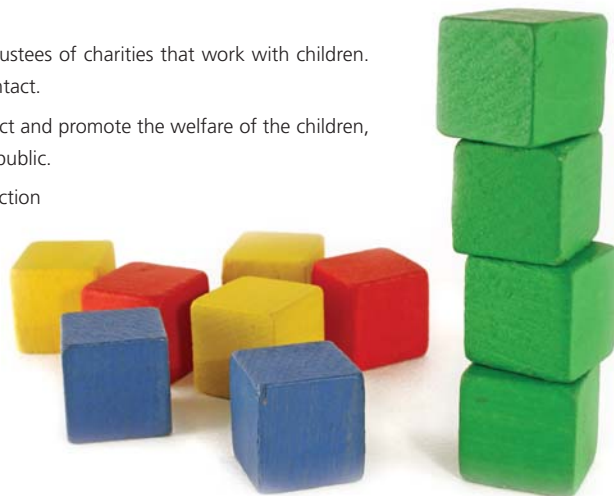
The Charity Commission's new publication "Safeguarding Children" is essential reading for trustees of charities that work with children. It emphasises that trustees have a duty of care towards the children with whom they have contact.

It emphasises that safeguards in place within charities which work with children not only protect and promote the welfare of the children, but also enhance the confidence of trustees, staff, volunteers, parents/carers and the general public.

The publication gives practical hints and tips and sets out the requirements for a child protection policy and what must be included within it.

It also details procedures and systems that can be put in place in relation to child protection and what these should include.

The guidance is available on the Charity Commission's website:  
[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)



### Political Campaigning

Charities have long been aware that political campaigning is not regarded as a charitable purpose at law. The Charity Commission's draft guidance on public benefit makes this position clear.

However, the Charity Commission has now acknowledged that political campaigning can be part of charities' work and has published new advice on political campaigning. The guidance is aimed to prevent charities being unnecessarily cautious about what they can and cannot do under the law.

The publication aims to clarify what is and is not currently permitted. In short, the advice states that as long as campaigning to change the law or Government policy furthers the charity's objects, it is allowed. However, such activity cannot be the charity's sole reason for existing.

The publication also states that in very extreme cases, the Charity Commission might remove a charity from the Register if it was clear that it was established for purely political as opposed to charitable purposes.

If any doubt about whether an activity could constitute political campaigning and would or would not be allowed, charity trustees should seek legal advice.

#### INFORMATION

If you have any queries on any issues raised in this bulletin, or any charity matters in general please contact:

Gerry Morrison or Ralph Coyle on (01904) 625790

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

*The law is stated as at 14 May 2007*

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