



## Charity Commission's New Guidance on 'Public Benefit'

The Charities Act 2006 brought 13 heads of charity up to date and placed them all under one piece of legislation. An organisation set up to be a charity under any of those thirteen heads will in future need to be able to demonstrate to the Charity Commission that they exist 'for the public benefit'. While the Act provides minimal guidance on what constitutes public benefit, the Commission has now produced general guidance on the issue without attempting to define what public benefit actually is

The Guidance identifies two key principles:

- there must be an identifiable benefit:
  - it must be clear what the benefits are
  - the benefits must be related to the aims
  - benefits must be balanced against any detriment or harm
- the benefit must be to the public or an appreciable section of the public;
- the beneficiaries must be appropriate to the aims
- where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted:
  - by geographical or other restrictions; or
  - by ability to pay any fees charged
- people in poverty must not be excluded from the opportunity to benefit
- any private benefits must be purely incidental

### More guidance due

The Commission guidance was published on 16 January 2008 and is available on the Charity Commission website at:

[www.charitycommission.gov.uk/Library/publicbenefit/pdfs/publicbenefittext.pdf](http://www.charitycommission.gov.uk/Library/publicbenefit/pdfs/publicbenefittext.pdf).

During February and March the Commission is undertaking a consultation on draft supplementary guidance on 'public benefit' for:

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

The supplementary guidance on these charities will be published from July 2008.

## Statutory obligations

The new public benefit provisions in the Charities Act 2006 (sections 1, 2, 3 and 5) will come into force in March. Once in force, those sections will mean that as well as satisfying a general charitable purpose listed in section 2(2) of the Act (the advancement of education or health for example), the charity must also be able to demonstrate that it operates for the public benefit. The Charity Commission will be using existing case law to assist with applying this test and appeals against decisions of the Charity Commission will be heard by the new Charities Tribunal which has been established under s8 of the Act. By fulfilling its duty to hear and decide appeals, the Charities Tribunal will be in a position to shape the definition of public benefit and provide guidance on what it means.

Under the new legislation, charities now also have an obligation to report to the Charity Commission on how they fulfil their public benefit as part of their Trustees' annual report.

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