



23 April 2012

Our ref: ICAEW Rep 56/12

Charities Act 2006 Review
C/O Office for Civil Society
4/16, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

By email charitiesactreview@cabinet-office.gsi.gov.uk

Dear Sirs

Charities Act 2006 Review – Call for Evidence: The definition of charity and public benefit requirement

ICAEW welcomes the opportunity to comment on the *Charities Act 2006 Review – Call for evidence: The definition of charity and the public benefit requirement* published by the Cabinet Office in February, a copy of which is attached as an Appendix.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW has a Charities Technical Sub-Committee and a Charities & Voluntary Sector Group with over 3,000 members. Many ICAEW members are active in charities and the voluntary sector; approximately 30,000 are charity trustees, treasurers, school governor and in other voluntary roles.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

Yours sincerely

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APPENDIX

Charities Act 2006 Review – Call for Evidence

The definition of charity and the public benefit requirement

Issue:

The Charities Act 2006 provided a new statutory definition of charity, based on a list of headings of charitable purposes, and re-emphasised the importance of public benefit. The Act also gave the Charity Commission a new objective of promoting awareness and understanding of the public benefit requirement, and of issuing guidance on public benefit. There has been much debate and some controversy around some aspects of these changes, but have the 2006 Act changes made it clearer what a charity is, and how they can demonstrate their public benefit?

Background:

Prior to the Charities Act 2006, there was no statutory definition of charitable purposes. Instead, the definition was set out in case law, built up since the preamble to the Statute of Elizabeth I (1601) which contained the first list of charitable purposes. In the Nineteenth Century the Courts refined that list into four heads of charity:

- i) The relief of poverty;
- ii) The advancement of education;
- iii) The advancement of religion; and
- iv) Other purposes beneficial to the community.

To be a charity, an organisation had to exist for wholly charitable purposes (from the above list), and those purposes had to be for the public benefit. It was generally considered that charities for the relief of poverty, the advancement of education or the advancement of religion were presumed to exist for the public benefit, whilst charities under the fourth head had to demonstrate their public benefit in order to qualify for charitable status.

The 2006 Act aimed to clarify what constitutes a charity in the 21st Century, with a clearer and more explicit list of charitable purposes, retaining the flexibility for what is considered a charitable purpose to continue to evolve over time, and re-emphasising the public nature of charity.

The 2006 Act contains a list of 13 'headings of charitable purposes', including the catch-all 'other purposes beneficial to the community' ((the last bullet point) below).

The full list of purposes is:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- the advancement of animal welfare;

- the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
- and a catch-all head, which can be summarised as any other purpose already recognised in law as charitable, along with other purposes analogous to, or within the spirit of, purposes that are recognised as charitable.

The 2006 Act also made it clear that there should be no presumption of public benefit for charities of any particular purpose. The intention was to create a level playing field, particularly in the case of charities for the advancement of education, advancement of religion and the relief of poverty that were considered to have benefited previously from a presumption of public benefit.

The Act gave the Charity Commission a new statutory objective of promoting awareness and understanding of the public benefit requirement, along with a specific duty to publish guidance on public benefit. The Commission issued draft guidance on public benefit for consultation in 2007, and received over 900 responses. It published its final public benefit guidance in January 2008, and followed that with more detailed guidance and specific consultation with groups of charities likely to be most affected.

The changes relating to the definition of charity, including the list of heads of charitable purposes and the changes to the public benefit requirement, came into force on 1 April 2008, shortly after the creation of the Charity Tribunal. At the same time, a change was brought in requiring charity trustees to report in their Trustees' Annual Report on their charity's public benefit.

There was significant debate in Parliament during the passage of the Act on both the heads of charitable purposes, and the changes relating to public benefit. Some aspects of the public benefit changes have been controversial, particularly around the Commission's guidance as it applies to charities that charge high fees for their services, and the extent to which poor people are afforded the opportunity to benefit from a charity's services.

The Charity Commission's guidance on public benefit was challenged by the Independent Schools Council, and an Upper Tribunal ruling in 2011 has meant that the Commission has had to withdraw some specific parts of its guidance, pending revision during 2012. The Tribunal ruling did, however, confirm many of the principles set out in the Commission's public benefit guidance.

The Charity Tribunal is currently considering another case relating to public benefit, and whether the 2006 Act has had any implications for benevolent charities. A ruling on this reference is expected shortly.

The definition of charity (charitable purposes and the public benefit requirement) applies in England and Wales (and throughout the United Kingdom in relation to access to charity tax exemptions and reliefs). Charity law and regulation is a devolved matter in Scotland and Northern Ireland, and there are different (although in the most part similar) definitions that apply in those jurisdictions. The Calman Commission recommended that there should be a single, UK-wide, definition of charity, to address concerns about differences in the definitions of charity arising between different parts of the UK. This review will consider what appetite, if any, there is from charities and other stakeholders in the Scotland and Northern Ireland, as well as those charities that operate throughout the UK, for a single, UK-wide, definition of charity.

Who should respond?

Anyone can respond, and all responses will be considered.

Deadline for responses:

The deadline for receiving responses to this call for evidence is 16 April 2012.

How to submit your response:

Please send your response by e-mail to charitiesactreview@cabinet-office.gsi.gov.uk

Alternatively you can write to:

Charities Act 2006 Review

C/O Office for Civil Society

4/16, HM Treasury

1 Horse Guards Road

London SW1A 2HQ

Question 1: Do you consider the list of headings of charitable purposes in the Charities Act 2006 is clearer than the position that preceded the 2006 Act? Could it be improved (preferably without extending the list)?

Yes, but we are not clear as to whether lobbying by a charity would be considered to be a charitable purpose in itself since it is not currently listed under the list of 13 headings of charitable purposes. Perhaps this might could be clarified with further guidance rather than a change in the headings of charitable purposes.

Question 2: Have you read the Charity Commission's guidance on public benefit, and if so, has this helped you to develop your understanding of what public benefit means, and its relevance to your charity?

Yes but it is our experience that the awareness of public benefit by charities is not as high as it should be. The research conducted by Sheffield Hallam University (SHU) for the Charity Commission on *Public Benefit Reporting (PBR)* found that even amongst large charities (those over £500K income) only around 26% of registered charities were fully meeting the requirements, and for smaller charities it was much weaker still. Moreover it was found that even some cases where public benefit reporting was tackled fairly well on paper, the wording had been inserted by an accountant or member of staff with no real understanding by the trustees.

We note that SHU and The Institute of Voluntary Action Research (IVAR) are doing further research for the Commission in 2012 on *Perceptions of the Public Benefit Requirement* and this may contribute further. Certainly we believe that at present only a small minority of trustees have a clear understanding of the Commission's guidance (which they are required by law to consider in their decision making).

Since 2008, charities have to report on the way they achieve public benefit in their annual trustee report. We think public benefit is being interpreted more generally, in terms of aims or purposes of a charity and activities and achievements of the charity rather than focusing on what the charity has achieved for the benefit of the public (i.e. implementation of the aims not just compliance with the aims)

From a governance and accountability perspective, evidence of public benefit should go beyond simply stating the aims of the charity and the activities of charity to support the aims. Public benefit should also consider the outcomes, results/impact of those activities for the benefit of the public.

There are other social enterprise organisations which deliver public benefit e.g. Community Interest Companies, Industrial and Provident Societies and Co-operatives. If social enterprises are to become more prominent, these types of organisations should also have to comment in their reports whether they have delivered public benefit.

Question 3: Has the requirement to report on public benefit in the Trustees' Annual Report helped you to reflect on your charity's aims, achievements and activities in the context of providing public benefit? Has this been helpful?

We believe that this requirement has been helpful to charities, beneficiaries and donors but that additional guidance is needed linking the current guidance to outcomes/results/impact (please see question 2 above).

Question 4: The current definition of public benefit is based on case-law. An alternative would be for a definition, or part-definition, of public benefit in statute. The main argument for not pursuing a statutory definition is that it would not have the

flexibility of the case-law definition to adapt and evolve over time, and for it to be relevant to all charities with very different circumstances. Should we retain the case-law definition, or move to a statutory definition (or part-definition)? What are the pros and cons of each approach?

Good regulation seeks to avoid unintended consequences as a result of inflexibility to meet the demands of infinitely variable circumstances. We accordingly endorse the preference expressed to retain the definition in case law, as a statutory definition would be less able to adapt and evolve over time

Question 5: Does having slightly different definitions of charity in different parts of the UK give rise to any problems? What would be the advantages and disadvantages of a single definition of charity that applies throughout the UK? (it would be helpful if you could indicate where your charity is based, and whether it operates throughout the UK)

We would support having one definition of charity since it would lead to legal and regulatory simplification. In the UK and Ireland, charitable status is based on an organisation meeting one of the heads of charity objects listed in the Act and meeting the public benefit test. However, there are differences in terms of implementation by regulators. For example, in England and Wales, an organisation meeting the charitable objects and public benefit is a charity, irrespective of whether they have registered with the Charity Commission or HMRC, whereas in Scotland an organisation does not become a charity until it is registered. The criteria for registration in Scotland are broadly similar to those principles found in England and Wales.

In addition, the definition of charity for tax purposes is different to the definition of a charity by law. A charity for tax purpose must be established for charitable purposes only, meet a jurisdiction condition, a registration condition and a management condition.

Question 6: Do you have any other comments about the definition of charity or the public benefit requirement?

None

Respondent details:

Name:	Anne Davis	
Position:	Head of Charity and Voluntary Sector	
Organisation Name:	ICAEW	
Organisation size (income) – charities only	Not applicable	
Is your organisation a charity?	No	

What happens next?

- We will acknowledge receipt of all responses, although we cannot provide a detailed response to each individual submission.
- All responses will be considered in forming the report of the review.
- The aim is for the report of the review to be laid in Parliament and published in July 2012.

The small print:

All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want your response to remain confidential, you should explain why confidentiality is necessary and your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer by your IT system will not, of itself, be regarded as binding on the department. Contributions to the review report will be anonymised if they are quoted, unless we contact you and you give us your permission to use a particular quote.

Individual contributions will not be acknowledged unless specifically requested.