

# Charity Briefings

## Meeting the Charity test

In order to meet the Charity test, and therefore be eligible to be entered on the Scottish Charity Register a charity must (A) have purposes which consist only of one or more of the Charitable purposes and (B) provide a public benefit in Scotland or elsewhere.

There are 16 charitable purposes listed in the Act (7(2)):

- (a) the prevention or relief of poverty
- (b) the advancement of education
- (c) the advancement of religion
- (d) the advancement of health
- (e) the saving of lives
- (f) the advancement of citizenship or community development
- (g) the advancement of the arts, heritage, culture or science
- (h) the advancement of public participation in sport
- (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended
- (j) the advancement of human rights, conflict resolution or reconciliation,
- (k) the promotion of religious or racial harmony
- (l) the promotion of equality and diversity
- (m) the advancement of environmental protection or improvement,
- n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage
- (o) the advancement of animal welfare
- (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

The Act makes is clear that the advancement of health includes the prevention or relief of sickness, disease or human suffering and the relief of those in need by reason of age etc includes the provision of accommodation or care.

The advancement of citizenship or community development includes rural or urban regeneration, and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities.

"Sport" means sport which involves physical skill and exertion.

The provision of recreational facilities applies only in relation to recreational facilities or activities which are primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or available to members of the public at large or to male or female members of the public at large.

The advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the advancement of religion

The second leg of the charitable test is the charity must provide a public benefit. (7(1)(b)) No particular purpose is presumed to provide a public benefit and therefore it will be for the charity to show that it does provide a public benefit.

OSCR has recently issued guidance on public benefit test.

The benefit must be an identifiable benefit but this can take many different forms. Benefits can be tangible (the relief of sickness or financial hardship are obvious examples) or intangible. Intangible benefits are less easy to find but the English position is that the Charity Commission will take into account the general consensus of fair-minded or unprejudiced opinion. Examples include the benefits of education.

Further, benefits can be either direct or indirect. Direct benefits again are clear. For example a person who receives medical care is receiving a direct benefit. Examples of indirect benefits include the benefit to patients where a charity provides accommodation of recreational facilities for nurses in order to improve their efficiency and performance. So the provision of a scanner in the hospital demonstrates a provision of both direct and an indirect benefit. It directly provides benefit to those who use it and indirectly it benefits other patients in the hospital by enabling the hospital to use its other resources in other ways.

In determining whether or not the public at large benefit OSCR will consider in each case whether any criteria for limiting of the benefits are justifiable and reasonable given the nature of the charitable purpose and whether those who can benefit constitute overall a sufficient section of the public even if in some cases the actual number of beneficiaries may be quite small.

For the purpose of the charity test there must be a clear link between the body's charitable purposes, its activities in furtherance of those purposes and the public benefit that arises from those activities. Indirect benefits will not be taken into account. This is significantly different from the public benefit test in England where indirect benefits are taken into account. For example a school (whose charitable purpose is the education of children) making its facilities available to adult members of the public in general in England would be considered to be of public benefit whereas in Scotland it would not as there is no direct link between the charitable purpose and the section of the public who are benefiting.

In determining whether a body provides a public benefit regard must also be had to how the benefit to be gained by any members of the body itself compares with the benefit gained by the public at large. Also any dis-benefit incurred or likely to be incurred by the public must be balanced against the benefit gained or likely to be gained by the public at large.

Dis-benefit is more than the mere absence of benefit. It is the equivalent to harm and to be taken into account the dis-benefit or harm should affect the public at large or at least a sufficient or a relevant section of the public.

Where any dis-benefit caused is due to reasonable and necessary actions in connection with the charities purposes and it is the generally accepted result of such action then such dis-benefit may be largely disregarded.

Further, regard must be had as to whether any benefit provided to a section of the public only is unduly restrictive as a result of any conditions of obtaining that benefit (including any charge of fee). The Act accepts that that there may be a certain level of restriction however the issue is whether any condition is unduly restrictive.

The fact that a charity provides benefits that will be charged for and will be provided mainly only to people who can afford to pay the charge does not necessarily mean that the organisation is not set up for and does not operate for the benefit of the public. OSCR will consider whether there are means by which potential beneficiaries who would otherwise be excluded from the benefit can still access the benefit and whether this results in a reasonable and acceptable level of access.

Some services provided by charities are very expensive to provide and donations from private or public bodies may only partially cover the costs of providing that service. A fee may be made that is out with the reach of some yet if that charge does still no represent the true costs of providing the service the provision of the service still can meet the Charity test.

Finally on the question of public benefit, where an organisation is set-up to provide and maintain particular facilities such as a library for the benefit of the public restrictions on public access must be reasonable and appropriate in the circumstances. For further guidance from OSCR on meeting the Charity test please follow:-<http://www.oscr.org.uk/Guidance.stm>