

Charity Test Guidance

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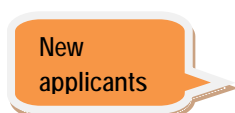
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Glossary of terms

Introduction

How to use this Guidance

Our Guidance is split into sections to help you find parts most relevant to you. Key phrases within a section are shown in **bold blue type** and information most relevant to organisations that want to become a charity is highlighted with the New applicants icon:



The glossary provides you with further information, definitions and descriptions of some key terms. We've highlighted these key terms in **bold purple type**. Clicking on these terms will take you straight to the **glossary**.

This Guidance doesn't tell you what the process is to become a charity; this is set out on our **becoming a charity** page.

Who is this Guidance for?

The Guidance is for:

- the **charity trustees** of existing charities
- organisations that want to become a **charity**
- professionals who advise charities and organisations wanting to become a charity.

This Guidance is about how we, the **Scottish Charity Regulator**, interpret and apply the **charity test**. It explains what we take into consideration when deciding if an organisation can become, or continue to be, a charity in Scotland. We also identify some other matters charity trustees should be thinking about to make sure that their charity continues to meet the charity test set out in the **Charities and Trustee Investment (Scotland) Act 2005** (referred to in this Guidance as **the 2005 Act**).

What is charitable status?

To be a Scottish charity or a charity registered in Scotland your organisation must pass the charity test and be entered on the **Scottish Charity Register**.

This registration tells the public (and the tax authorities and funding organisations) that:

- your organisation meets the charity test
- your organisation is regulated or supervised by the Scottish Charity Regulator
- the charity trustees (the people who control and manage it) must act in certain ways and provide certain information to us and to the public.

What is the charity test?

The charity test is set out in the 2005 Act. Your organisation can only be entered in the Scottish Charity Register and be a charity in Scotland if it passes this test. To pass the charity test your organisation will have to meet the following requirements:

- it must have only **charitable purposes and**
- its activities must provide **public benefit** in Scotland or elsewhere.

It will fail the charity test if:

- its **governing document** allows its **assets** to be distributed or applied for non-charitable purposes
- its governing document expressly permits government **Ministers to direct or control** its activities
- it is a **political party** or one of its purposes is to advance a political party.

When we look at whether or not your organisation provides public benefit, we need to consider if:

- there is any **private benefit** from your organisation's activities
- there is any **disbenefit** to the public from its activities
- you put any **unduly restrictive conditions** on accessing the benefit your organisation provides.

In this Guidance we explain how we make our decisions on becoming a **charity**.

What is a governing document?

A governing document is the document that sets up an organisation and says what its purposes are. It will usually deal with other matters such as:

- who manages and controls the organisation

- what their powers are
- what they can do with the organisation's money and other **assets**
- how decisions are made
- any rules about membership of the organisation.

An organisation's governing document will usually depend on its **legal form** and provide evidence for assessing some key parts of the **charity test**:

- charitable purposes
- use of assets
- Ministerial control
- party political purposes.

How we assess the charity test

We look at your organisation's governing document, the whole picture of what you do (or plan to do), and the benefit this can provide. We also look at any private benefit, disbenefit or undue restriction. Depending on what your organisation does, these factors may not be issues, but some could have a big impact on your ability to pass the charity test.

We must follow good regulatory principles such as proportionality and consistency, and we apply these when looking at the **charity test**.

Charitable purposes and how to write them

What are charitable purposes?

Your organisation's purposes are usually set out in the objects, aims or purposes section of the **governing document**.

The purposes say **what** your organisation has been set up to achieve and should reflect its broad aims, rather than the day-to-day activities.

Anyone reading the purposes in your governing document should be able to get a clear picture of what your organisation intends to achieve.

You do not have to use the wording from the charitable purposes in the 2005 Act, as long as it is easy to see from your organisation's purposes how they relate to the ones set out in **the 2005 Act**.

You only need to have one **charitable purpose** to meet this requirement of the charity test. Generally, the more charitable purposes an organisation has the more information we need in your application about how you will advance them. This can cause delays in the application process, and it is often better to focus on a small number of clear charitable purposes at the start.

Charities can apply to us for **consent** to change their charitable purposes as their activities and aims change over time.

How to write charitable purposes

Each purpose you have must fit within at least one of the **16 charitable purposes** set out in **the 2005 Act**.

With applications to become a **charity** we often find that charitable purposes are worded as a description of activities, which might advance a charitable purpose but not as a charitable purpose itself.

Making sure that the charitable purposes are clear and understandable should help you to communicate with your **beneficiaries**, the public and us what your organisation does or wants to do.

Unclear or badly worded charitable purposes might mean that there is a delay with your application or that it may be refused.

We find that purposes written in the way set out below will, for many organisations, be sufficient:

'To **advance**... [charitable purpose] by... [very brief outline of activities]'

'To **promote**... [charitable purpose] by... [very brief outline of activities]'

'To **provide**... [charitable purpose] by... [very brief outline of activities]'

'To **relieve**... [charitable purpose] by... [very brief outline of activities]'

If you intend to benefit a particular group of people or a particular geographical area, then this should be clearly stated too. For example:

'To **advance** the health of under 16s living in Fife by providing healthy eating and fitness sessions in schools.'

New applicants

You can get help and advice from [a number of organisations](#) when you are writing the purposes.

How we make our decisions and what to do if you don't agree

How we make our decision:

We will use your **governing document** (or draft version) to decide whether or not your organisation has only **charitable purposes** (the first requirement of the **charity test**).

We will also look at your governing document to see if any of these exceptions apply:

- **use of assets** for non-charitable purposes
- **ministerial direction or control**
- **party political purposes**.

To decide on **public benefit** (the second requirement of the **charity test**) we look at what your organisation does or plans to do. We look at your application form and any other information you send to support it (for example business plans, grant applications or leaflets.) If we need more information, we will let you know.

If your organisation passes the charity test, we will enter it on the **Scottish Charity Register** and let you know its charity number.

If there seems to be an issue with your organisation passing the charity test, we will usually contact you to explain the problem. If you cannot resolve the issue and your organisation fails the charity test, we cannot enter it on the Scottish Charity Register and will send you a refusal notice.

What to do if you don't agree:

If you disagree with our decision to refuse your application to become a charity, you can ask us to review the decision. You must do this within **21 days** of our sending you the refusal notice. Our review decision might be to confirm, vary, revoke or reverse the original decision, and we will let you know the outcome within 21 days of receiving your review request.

If you are unhappy with the review decision, you can appeal to the **Scottish Charity Appeals Panel (SCAP)**. You must do this within **28 days** of our review decision. SCAP might decide to confirm our decision, to overturn it, or ask us to make our decision again. SCAP's decision can be appealed to the Court of Session.

Charitable purposes

(a) the prevention or relief of poverty

Summary

This purpose covers directly relieving poverty, preventing it and addressing its causes.

We take a broad view of 'poverty' and recognise that poverty is relative to the economic and social context. The causes and consequences of poverty are complex and can overlap with other charitable purposes.

Full Detail

What do we mean by poverty?

In the past poverty has been viewed as a lack of money or material things. However, the reasons for poverty and the effects it has on people are complex. The links between poverty and poor health or unemployment, for example, may mean that charities seeking to relieve or prevent poverty are also addressing other **charitable purposes**.

What poverty means in different situations will depend on what the organisation aims to do, who they aim to help and where they work. For example, an international **charity** working in the world's poorest regions might be addressing a lack of the basic essentials such as clean water, food and shelter. In comparison, a charity working in Scotland might help low income households (by Scottish standards) to improve their living standards.

It is also within the scope of this charitable purpose to try to stop people who are at risk from actually falling into poverty.

Charities addressing issues of poverty do not need to confine their activities to providing relief to individuals. Where it is shown that particular groups suffer from poverty or are at risk of it because of characteristics they share, then addressing their poverty can be charitable.

Which activities might provide public benefit when advancing this purpose?

Activities that seek to **relieve** poverty are those that address its consequences. They include direct help to individuals, families or communities in need, such as:

- providing shelters, food or other essential supplies following a natural disaster
- providing clean drinking water
- providing facilities such as clinics or schools in poorer communities overseas
- emergency disaster relief funds
- grants of money
- provision of free or low cost goods such as food, furniture or clothing
- payment for services such as household repairs, laundry, meals-on-wheels
- payment of fees and expenses or provision of equipment associated with vocational training, language and numeracy courses.

In order to meet the **public benefit** requirement of the **charity test** an organisation must have criteria for selecting and assisting **beneficiaries** to make sure that help is targeted at those in need.

Activities that **prevent** poverty are those that seek to address its causes. They include preventing those who are already poor from becoming poorer as well as helping those at risk to avoid poverty.

Activities that can prevent poverty include:

- encouraging fair trade activities
- research into the factors that contribute to poverty and the best ways to mitigate them
- campaigning on ways to prevent and tackle poverty
- money management and debt advice
- advice and assistance with applying for state benefits
- training in work skills, CV writing or preparation for interviews to improve employment prospects.

In practice, some charities registered under this purpose are also likely to be undertaking activities that provide relief to those in need because of **financial hardship** (see **charitable purpose n**).

Case studies

Case 1: identifying those in or at risk of poverty

Summary:

We received an application for a 'community kitchen,' which would provide free food to the homeless and anybody else.

Considerations:

The applicant thought this would relieve poverty and advance citizenship by having homeless people and non-homeless people eat together. We advised them that the relief of poverty needs to focus on those who would either be suffering from or at risk of poverty.

Outcome:

The applicants changed their plans so that free meals were only provided to those in poverty, as identified by referrals from other agencies and charities. The application to become a charity was successful with the relief of poverty as a charitable purpose.

DRAFT

(b) the advancement of education

Summary

This purpose covers training, research and broader education in the development of individual skills and understanding.

Education increases learning and knowledge among members of the public. Generally, education includes both teaching and learning, and the provision of information in a structured and neutral way, or training in a particular subject.

Education can be provided formally by schools, colleges and universities or it can be more informal, taking place in the community or online.

Full detail

What do we mean by education?

Education can be advanced in a range of ways. For education to provide **public benefit**, the subject or topic must be of educational value or merit. The subject must be delivered in a structured way that can educate the learner.

To be charitable, education doesn't have to be formal, but it must have a structure and be capable of educating the audience. Simply providing information is not necessarily advancing education. The intention of the activity must be to educate.

For example, a village hall website, which solely advises on the weekly activities at the hall, is not advancing education. Simply increasing knowledge doesn't advance education and in this case, there is no intention for the information to educate people.

If the same website also provides detailed historical information about the village, this could advance education, as long as it is subject to a suitable degree of moderation to ensure quality and accuracy.

To advance this purpose there must be identifiable educational value or merit from the activities and it must be clear what the benefits are to the public (or the individual recipients).

With formal education in schools, colleges or universities the educational value and benefit provided will usually be clear.

Where the educational value is less clear or the results can't be precisely measured, applicants must be able to demonstrate that there is educational value and that what they plan to do is for the **public benefit**. They should be able to describe the objective of the learning experience and what the learner will achieve, for example a recognised qualification.

Overall, in order for education to be charitable, there is a need for structure, balance and some element of quality control.

It is possible to advance education by carrying out activities which improve or support better education for the public. Activities that allow greater access to education will also fall under this purpose.

To advance education, a charity should present information in a neutral and balanced way. If it reaches conclusions, they should be based on evidence, analysis and reasoning. Information which is provided with the aim of persuading people to form a specific conclusion, or which tries to influence the audience to adopt a viewpoint, does not advance education.

Which activities might provide public benefit when advancing this purpose?

Activities that can advance education include:

- providing pre-school or after school care
- visits to the theatre and other arts facilities
- providing school books, either domestically or overseas
- supporting a school overseas, including building or maintaining schools and supporting teacher training
- providing student welfare or accommodation
- supporting and encouraging parents to engage more with their children's education
- providing support for students with barriers to learning
- undertaking academic research and publishing the results online, or in peer-reviewed journals
- maintaining an academic library with access for academics and students
- making materials or objects capable of educating available to the public, such as in libraries or on databases
- independent accreditation of courses or course providers
- setting exam and qualification standards
- providing financial assistance and bursaries.

Case studies

Case 1: not advancing education

Summary:

We received an application from an organisation which promoted and co-ordinated presentations on a variety of subjects, taking place in relaxed informal settings such as a community hall or pub.

Considerations:

The only qualification for delivering a presentation was that volunteers be passionate about the subject matter and know 'a fair bit' about it. No vetting would take place of the presentation or the volunteers' level of knowledge or expertise. Therefore, any educational value was a matter of chance.

Outcome:

We were not satisfied in this case that the activities would advance education and the application to become a charity was refused.

Case 2: advancing education overseas

Summary:

We received an application from an organisation that raises funds to support children to go to primary and secondary school in two adjacent villages in an African country.

Considerations:

We had to decide if the organisation would be advancing education and providing public benefit through this financial support. The organisation gave us information to show that they had an established relationship with the schools identified, processes in place to transfer money, and to monitor progress.

Outcome:

The organisation became a charity with the advancement of education as one of its purposes.

Case 3: Need for balanced and structured educational activities

Summary:

An organisation applying to become a charity stated that one of its purposes was to advance education through a better understanding of constitutional structures. Its proposed activities included drafting a written constitution for Scotland and ensuring that constitutional change was publicly debated in Scotland.

Considerations:

In our initial status decision, we took the view that the advancement of education was not one of the purposes, since some of the organisation's activities were intended to persuade people to adopt a particular viewpoint concerning constitutional provision and changes. For this reason among others, we refused to register the organisation as a charity. The organisation asked us to review this decision, providing evidence that its intended activities were structured and based on a balanced and reasoned analysis of evidence on constitutional issues in general rather than simply putting forward a particular political or party-political viewpoint.

Outcome:

On the evidence provided on this and the other issues in question, we revoked our original decision and the application to become a charity was successful.

DRAFT

(c) the advancement of religion

Summary

This purpose involves advancing serious and coherent beliefs in gods or spiritual principles, and the worship of them.

Organisations can advance religion through activities such as seeking new followers for their system of belief, helping people to practise their beliefs, raising awareness of their system of beliefs and undertaking duties and activities such as missionary and outreach work.

Full Detail

What do we mean by religion?

To be charitable there are a number of features a system of belief must have to be considered a religion:

- belief in a god or goddess or a number of gods or goddesses, a supreme being, a divine or transcendental being or entity or spiritual principle ('supreme being or entity'), on which the system of belief is focused
- worship or reverence by the individual believer of the supreme being or entity which is the focus of the religion
- an identifiable positive, moral or ethical framework
- a level of seriousness, coherence and importance.

Where a system of philosophical belief does not involve belief in a Supreme Being or entity but has some of the other characteristics listed above, advancing it may still be a **charitable purpose** under the **analogous purpose**.

Which activities might provide public benefit when advancing this purpose?

There are many ways a **charity** can provide **public benefit** when advancing religion. These include:

- providing facilities for public worship
- holding the appropriate services, rituals and ceremonies open to the public, or providing buildings or other facilities to allow services, rituals and ceremonies to take place

- raising awareness and understanding of the beliefs or practices of a particular religion, for example by providing books or online materials
- providing education or instruction in a particular religion
- undertaking or encouraging missionary, outreach or pastoral work in the community or in places like hospitals and prisons
- seeking new followers
- facilitating or undertaking devotional acts such as visiting the sick or dying
- working to advance public understanding of religion in general.

Some charities carry out activities that relieve the needs of disadvantaged people, in line with the teachings or duties of their religion. While the religious doctrines involved may guide the way such charities carry out these activities, we would regard them as advancing other charitable purposes. For example, the **relief of poverty** or **the relief of those in need**, rather than directly advancing religion and we would expect the charity's **governing document** to state these purposes.

To provide public benefit under this purpose, the benefit must not be confined to a closed religious order or an inward looking group that excludes the wider community. Where the benefit is restricted to particular groups of people, these restrictions must not be undue.

When we look at whether conditions on access to benefit are **unduly restrictive**, the beliefs and doctrines of the religion are relevant. For example, the doctrines of a particular religion may mean that only members of that religion or people of a particular age or gender can attend specific ceremonies, or parts of them. Where such restrictions have a clear basis in the doctrines of the religion and their religious activities it is unlikely that the restriction will be undue.

(d) the advancement of health

(including the prevention or relief of sickness, disease or human suffering)

Summary

This purpose covers advancing physical and mental health, conventional medicine and complementary or alternative therapies. Where non-conventional methods are used in the diagnosis, treatment or cure of health conditions we may ask for additional information.

Full Detail

What do we mean by advancing health?

To be charitable, advancing health generally means:

- helping people to maintain or improve their health
- preventing or curing ill-health and disease
- providing formal or informal counselling or support
- providing medical equipment and facilities
- undertaking medical research
- providing relief to those suffering from illness.

When we look at applications to become a **charity** with this purpose we have to be sure that advancing health is actually what the organisation is set up to do. If any health benefit is a by-product of an organisation's main activity, it is unlikely to provide **public benefit** under the advancement of health.

For example, providing children with outdoor play equipment may indirectly improve their general health but it is more likely to provide public benefit under the provision of **recreational facilities**.

There is an overlap between activities that advance health and those that advance **public participation in sport**. Encouraging the public to take part in sport is charitable because of the positive health benefits it brings. An organisation advancing public participation in sport will need to have other activities which focus directly on improving health – such as providing information and support to improve the public's diet – if it is to advance health as well.

Which activities might provide public benefit when advancing this purpose?

The activities can be direct and focus on curing disease, illness or relieving symptoms and suffering. Alternatively, they can be preventative activities aimed at improving public health more widely. Activities can indirectly advance health, for example providing support to families of the terminally ill.

New applicants

Non-conventional methods

Health can be advanced in different ways, using conventional medicines and approaches, alternative or complementary therapies, or a combination of methods.

If an organisation wants to advance health using a non-conventional method, we often need further information to help us decide whether the alternative or complementary therapy is independently recognised as effective. This is particularly important if the organisation plans to diagnose, treat or cure a health condition. Different standards of evidence will be required depending on how widely accepted or experimental the therapy is.

The type of independent evidence we look for is usually in the form of papers in reputable peer-reviewed journals so that we can assess if using the method could provide public benefit.

For example, where an organisation claims to cure a form of cancer if sufferers follow a specific diet, we would expect to see a high level of independent, peer-reviewed evidence that the treatment is effective. Without this kind of evidence, it is difficult to show that the therapy will advance health and therefore be charitable. If the organisation does not intend to diagnose or cure sufferers, but simply aims to relieve their suffering, it may still be charitable under another purpose, **the relief of those in need by reason of ill health** where a lower standard of evidence may be acceptable.

Case studies

Case 1: Application refused – lack of independent evidence

Summary:

An organisation applied to become a charity with the advancement of health purpose. Its main activity would be to fund stem cell treatment for children with type 1 diabetes and autism in treatment centres overseas.

Considerations:

We asked the organisation to provide independent, reputable evidence that this treatment was capable of helping children in the way that it claimed. The applicant was unable to supply evidence of the efficacy of stem cell treatment for either of these types of disorder.

We conducted some online research, which suggested that while there was research interest in stem cell treatment for these disorders, this had not progressed to the stage of developing treatments.

Outcome:

We looked at the information publicly available about the treatment, finding that it was at an experimental stage and had not been proven to be successful. We decided the activities of the organisation did not advance health and we refused the application.

Case 2: Successful application

Summary:

An organisation applied to become a charity with the advancement of health purpose. Its main activity involved promoting breastfeeding and supporting new parents in a local area.

Considerations:

We had to decide if the activities advanced health as well as providing other benefits.

Outcome:

There is clear, independent evidence that breastfeeding has positive health benefits for mothers and babies. The application to become a charity was successful without us needing to ask any questions.

Other information

The [House of Lords Report on complementary and alternative medicine](#) sets out the legal considerations when looking at complementary and alternative medicines.

(e) the saving of lives

Summary

This purpose focuses on saving people whose lives are in danger, and on protecting life. Activities in pursuit of this purpose might include the provision of rescue services and training in first aid or other life saving techniques.

Full Detail

What do we mean by saving lives?

This purpose is specific to activities that directly contribute to the saving and protection of human life. It doesn't cover other activities that **advance health** or **relieve poverty** or other kinds of need, which may indirectly result in the saving of lives by fewer people dying from disease or poor living conditions. The focus must be on the saving of lives.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- providing life saving equipment, such as defibrillators
- raising money for and/or supporting the Emergency services
- providing First Aid training
- community First Responders
- mountain Rescue
- suicide prevention programmes.

Case studies

Case 1: Providing life saving equipment

Summary:

We received an application from an organisation that wanted to provide Public Access Defibrillators (PADs) for use in remote rural areas of Scotland.

Considerations:

We had to decide if providing PADs for use in the community would save lives. The

organisation provided evidence that showed in the case of cardiac arrest, the sooner help is given the better the survival rates.

They told us that when an emergency call is made the operator is aware that there is a PAD in the area and will inform the caller where it is sited and how to access it while also alerting the local doctor and ambulance service.

Outcome:

Given the remote locations in question and the importance of quick action in cardiac cases, we decided that providing PADs would save lives. The application was successful and the organisation is now a charity.

Case 2: funding suicide prevention

Summary:

An organisation applied to us with purposes including the saving of lives: it intended to fund counselling for those at risk of suicide.

Consideration:

We asked the organisation for more information about its activities to see how they related to its purposes. It told us that people looking for help would be assessed against generally accepted criteria of suicide risk. The organisation would fund most of the cost of sessions with approved counsellors for those assessed as being at risk.

Outcome:

We considered that the organisation's activities in trying to reduce the number of suicides were intended to provide public benefit in saving lives, and we registered it as a charity.

(f) the advancement of citizenship or community development

Summary

This purpose focuses on benefits to the community rather than the individual. These include:

- the advancement of citizenship

Charities with this purpose seek to help people to be active citizens individually or through community organisations and networks. Such charities might help these organisations to work more closely with individuals to influence change in their communities.

- The advancement of community development

Charities with this purpose might intend to improve the life of the community as a whole. They might regenerate urban or rural communities by improving the physical, social and economic infrastructure and assist people in those communities who are in need.

Full Detail

The advancement of citizenship or community development includes a number of different but connected areas. Among these, **the 2005 Act** includes:

- (i) the promotion of **civic responsibility**, **volunteering**, the **voluntary sector** or the **effectiveness or efficiency of charities**, and
- (ii) **rural or urban regeneration**.

The advancement of citizenship

Charities that advance citizenship may seek to develop and inspire civic values and encourage voluntary and community activity.

What is the promotion of civic responsibility?

This involves the development and teaching of civic values, for the good of a

community or society as a whole. For example, promoting democracy and equality, and engagement with social and political processes.

Activities might aim to:

- reduce anti-social behaviour
- prevent individuals from becoming socially excluded
- assist people to live better, safer or more fulfilled lives by encouraging social inclusion.

What is the promotion of volunteering?

This includes promoting the concept of **volunteering** and the value and benefits that **volunteering** can bring, both for the volunteers and those who benefit from their activities.

Simply engaging volunteers to carry out activities for a **charity** is unlikely to provide **public benefit** under this purpose. Nearly all charities need volunteers, but this does not mean that the promotion of **volunteering** is the reason that they are established.

New applicants

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- linking potential volunteers to volunteering opportunities
- encouraging best practice in organisations to improve volunteer retention and the volunteering experience
- assisting volunteers who have additional support needs
- holding awards for volunteering
- helping establish new volunteering projects
- encouraging organisations to improve their capacity to support and train volunteers.

What is the promotion of the voluntary sector?

This refers to organisations that provide services and assistance to voluntary organisations, whether charitable or not. Under this purpose, an organisation must promote the **voluntary sector** as a whole, or a sufficient section of it.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- helping to create new voluntary organisations
- extending the activities of voluntary organisations into new areas or to a wider range of **beneficiaries**
- supporting networks that bring voluntary organisations together and facilitating partnerships with other sectors
- representing the interests of the voluntary sector to planners and policy makers, to make sure that the sector's activities are included in national and local strategies
- extending participation in the voluntary sector to sections of the community who are under-represented.

What is the promotion of the effectiveness or efficiency of charities?

This refers to activities that make sure that charities are well run or allow charitable resources to be used more effectively. For example, providing support and advisory services to voluntary organisations to improve their management, administration and operations.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- supporting the administration of charities (for example through provision of accountancy or secretarial services)
- providing training to **charity trustees**, employees or volunteers
- giving advice to charities (for example on fundraising or investments)
- helping charities to promote their activities (for example by designing a common website facility or organising a charity fair)
- providing equipment, facilities or accommodation to charities.

The advancement of community development

Organisations set up to **advance community development** will seek to support people and community groups to identify and articulate their needs, then take practical action to address those needs.

New applicants

Services do not always need to target groups or areas that are categorised as deprived or disadvantaged. Community development activities can seek to address issues of inequality and social justice, bringing about changes that improve the quality of life for the whole community.

Communities vary in size and nature and can be defined by locality, interest or identity (for instance ethnic origin or sexual orientation). While there is no minimum size, the openness and inclusiveness of communities to new members will be factors in deciding if organisations provide public benefit.

Which activities might provide public benefit when advancing this purpose?

Some activities might focus on local decision making and infrastructure:

- encouraging and supporting public involvement in the planning and development process
- helping the development of a community plan to identify local needs and set out a programme for addressing them
- building and maintaining partnerships between community groups, voluntary organisations and public sector bodies that contribute to local decision making
- delivering specific projects or targets that are part of an agreed community plan
- upgrading village streetscapes, other public areas and open spaces, but not work to shop fronts or commercial buildings.

New applicants

Giving grants or financial support to other community bodies may also advance **community development** but only where the grants would address an identifiable community need, or would result in identifiable benefits to the community as a whole. Whether this activity advances **community development** will depend on the type of organisations being supported, the reason for the financial support and what the intended outcome of the support is.

Other community development activities may include:

- developing and operating community newspapers, local radio stations and community websites

- operating neighbourhood schemes with a view to improving the lives of those living there (for example community safety projects)
- providing buildings, vehicles or equipment which benefits the community in a number of ways. This may include a centre providing facilities, activities and services that help promote people's ability to participate in community life.

Such facilities or services may be available to defined groups such as young people, retired people or disabled people, or they may be open to the entire community.

Rural or urban regeneration

Regeneration is the process of reversing the economic, physical and social decline of places where market forces alone are not enough.

Organisations set up for **regeneration** must have an overall goal of improving the social, economic and/or physical quality of life of the whole community in areas where the need for improvement can be clearly demonstrated (for example, by indicators of social or economic deprivation).

Charities registered under this purpose are often led by the community and identify the issues and opportunities in their area. They make the decisions and are responsible for delivering the economic, social and environmental change.

To be charitable, a **regeneration** organisation will normally need to demonstrate that an area is in need of **regeneration**, and that its activities will cover a broad spectrum of **regeneration** work.

Evidence of deprivation can be taken from the local Community Plan or the Scottish Index of Multiple Deprivation. It could include information about levels of vacant and derelict property, out of work statistics, health and education outcomes.

New applicants

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- providing financial or other assistance to people who are living in poverty
- providing housing for those in need and to help to improve housing standards generally in those parts of an area of deprivation where poor housing is a problem
- helping unemployed people to find employment

- providing education, training and re-training opportunities and work experience, especially for unemployed people
- providing financial or technical assistance or advice to new businesses or existing businesses where it would lead to training and employment opportunities for unemployed people
- providing land and buildings on favourable terms to businesses in order to create training and employment opportunities for the unemployed
- providing, maintaining and improving roads and accessibility to main transport routes
- providing, maintaining and improving recreational facilities
- preserving buildings in the area which are of historic or architectural importance
- improving digital connectivity, particularly in rural areas
- providing amenities and facilities for use by the public, with or without charge.

Case studies

Case 1: a community development charity

Summary:

An organisation based in a small village outside Edinburgh applied for charitable status with purposes including advancing community development in the area.

Consideration:

The organisation had a broad range of activities, based on a consultation within the community. These included developing a community garden, establishing an annual community festival, and operating a farmers' market. We looked particularly at issues such as the ownership of the garden and possible benefit to individuals from the market, but the evidence suggested that any private benefit was incidental to the benefit to the community. The organisation also intended to establish a project generating electricity from renewable sources. This activity did not directly further its community development purpose. However, the project was to be set up as a separate subsidiary company paying any profits to the organisation to finance community development grants. Our view was that such payments would be likely to provide public benefit in furtherance of this purpose.

Outcome:

Taking into account the whole picture of the organisation's intended activities and its proposed structure, we found that it passed the charity test and the application to become a charity was successful.

Case 2: promoting the voluntary sector

Summary:

We received an application to become a charity from an organisation whose purposes were to promote citizenship and community development by promoting the third sector in Scotland.

Consideration:

The organisation intended to explore new funding mechanisms for charities and voluntary bodies in Scotland ('the third sector'), helping them to achieve their own objectives. In response to our questions, the applicant was able to reassure us that the organisations benefiting from its activities would either be charities or other organisations set up for the benefit of the community which did not allow profits to be distributed for other purposes.

Outcome:

We were satisfied that the organisation intended to provide public benefit by promoting the voluntary sector, and registered it as a charity.

DRAFT

(g) The advancement of the arts, heritage, culture or science

Summary

Advancement of the Arts: this can cover a wide range of imaginative, creative and expressive activities.

Advancement of Heritage: this can cover a country's local or national history and traditions, and the preservation of historic land and buildings.

Advancement of Culture: focuses on the identification, preservation or celebration of the distinctive character of a society, or group within a society.

Advancement of Science: covers a range of scientific and technological subjects including academic disciplines, research, exploration, practical experimentation and scientific debate.

Although they are linked in the 2005 Act, a charity does not need to advance all four of them to have this charitable purpose. For example, a charity may only advance science.

Full Detail

What do we mean by advancing the arts?

Art can take many forms:

- visual arts - painting, sculpture, photography, video and film
- performing arts - music, singing, dance, drama and storytelling
- written arts - literature, poetry, creative writing and composition
- design arts - graphics, fashion and architecture.

A charity might advance the arts at local, national or international level through both amateur and professional art.

Art can be a medium for advancing other **charitable purposes**. Where an organisation uses art as a means of achieving another purpose, for example **advancing health** through art therapy, we will not usually see this as advancing the arts as well.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- increasing public exposure to, appreciation of, or involvement in the arts
- reaching out to new audiences
- providing opportunities for participation by people who might otherwise be excluded
- improving facilities and venues where art is produced, displayed or performed
- encouraging high standards by raising artistic skills and nurturing talent.

Artistic merit is a matter of opinion and applies to art that has popular appeal as well as art that is only of interest to a minority of people.

To provide **public benefit** the art must be enlightening, inspiring, or of value to the public. Where artistic merit is not immediately obvious we may seek expert evidence to verify its value. This doesn't mean that art cannot amuse or entertain; but when we decide if it is charitable, the ability of art to stimulate thought or discussion is important.

New applicants

When advancing art, benefit may be to the wider public and to artists themselves. By training artists, charities can help to sustain a pool of artistic talent, which contributes to the cultural life of the nation. While artists or arts businesses might gain **private benefit** from a **charity** advancing the arts, this cannot be the primary purpose.

What do we mean by advancing heritage?

The advancement of heritage can cover a country's local or national history and traditions, and the preservation of historic land and buildings.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- restoring and preserving historic buildings, monuments and sites of historic or architectural importance
- collecting, cataloguing and displaying artefacts and records in museums and archives
- preserving memories through oral or recorded history projects
- running historical and archaeological societies

- preserving historical traditions such as carnivals, festivals and re-enactments of historically significant events
- promoting traditional crafts and skills.

When assessing public benefit, the extent to which the public has access to sites, buildings and collections will be an important factor, especially where heritage **assets** remain in private ownership. Benefit must be primarily to the public and any private benefit to individuals must be incidental.

New applicants

Heritage assets must be worthy of preservation and display due to their aesthetic quality, educational value or historical significance and we would usually look to see evidence of this. For example, whether a building or monument has been 'listed' by a relevant organisation.

What do we mean by advancing culture?

Culture means the defining features or characteristics of a particular society or section of a society, and includes:

- history
- language and literature
- art and craft
- music, singing and dance
- food
- fashion.

Which activities might provide public benefit when advancing this purpose?

Activities that preserve, commemorate, and celebrate these cultural features for public benefit can advance this **charitable purpose**. For example, cross-cultural exchanges, multi-cultural and 'fusion' events that aim to promote tolerance, understanding and interaction between people of different cultures may advance this charitable purpose.

What do we mean by advancing science?

The advancement of science covers a broad range of scientific and technological subjects including academic disciplines, research, exploration, practical experimentation and scientific debate.

If the main aim is to advance the scientific knowledge and understanding of those taking part, the appropriate charitable purpose may be the **advancement of education** in science, rather than advancing science itself.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- improving public understanding of scientific subjects
- providing opportunities for the public to participate in scientific research, experimentation or expeditions
- supporting and publishing research into scientific subjects that will bring practical benefits or improve conditions of life
- stimulating scientific debate and applying it to the moral and ethical questions of the day
- sharing of scientific knowledge through societies and institutions.

New applicants

Research and development carried out to gain commercial advantage (**private benefit**) is unlikely to be charitable, even if the public may obtain some benefit from it later on.

(h) the advancement of public participation in sport

Summary

This purpose focuses on advancing public participation in a sport that involves physical skill and exertion. It is not enough just to promote sport. The 2005 Act says that to be charitable public participation in sport must be advanced. An organisation with this purpose must be able to demonstrate that it provides opportunities for a wide range of participants.

Full Detail

What do we mean by sport?

To be charitable, sport means an activity that must involve both physical skill **and** exertion.

New applicants

Where there is doubt as to whether an activity is a sport, we may consider the following:

- is the activity governed or regulated by a set of rules or customs?
- is there a governing body?
- is the activity structured and organised?
- is there an element of competition and of increasing the health and fitness of the participants?
- has the activity been recognised as a sport by a national body?

It is not essential to have answers to all of these questions and each case will be looked at individually. However, if the activity does not fit any of the above, then it's less likely that we would regard the activity as a sport.

We will look to bodies such as Sportscotland and Sport England to see if they recognise activities as sports. However, not everything recognised by these bodies will be recognised under **the 2005 Act**.

Does it provide opportunities for public participation?

Organisations applying to become a **charity** with this purpose must be able to demonstrate that they provide sufficient opportunity for the public to take part. We will look at whether the organisation caters for a range of participants in terms of skill or ability, physical condition, age and sex. We recognise that many sports charities

will have to limit the number of participants at any given time. We focus on how they **encourage public participation**.

We accept that competition is an inherent and motivating factor in many sports and that sports charities will strive to be successful. It can be acceptable for charities to have activities aimed at elite or professional athletes, as long as this is part of a range of activities aimed at wider **public participation**. Organisations that select people only based on ability are unlikely to meet the **public participation** requirement. For example:

- a youth football charity, which is open to all, identifies that a number of these players show potential. The charity would be allowed to give those players advanced training.
- a gymnastics club that provides coaching to a wide range of participants may have some who perform at competition level. If the club only accepted those with the potential to perform at competition level, this would not be charitable.

Which activities might provide public benefit when advancing this purpose?

Ways in which sports organisations can encourage people to take part include:

- giving access to the organisation's own specialist sports equipment
- the loan or affordable hire of sports equipment
- holding introductory 'taster' sessions with no commitment to join.

Activities which don't involve physical skill and exertion can still be charitable but under another purpose, for example **'the provision of recreational facilities'** purpose.

How people join or participate in a sports organisation is an important factor when we consider the organisation's **public benefit**, and whether access to its activities is **unduly restricted**. Membership should be open and transparent. If people have to be recommended or take part in trials before they can join in, it is unlikely that there is opportunity for **public participation**.

Case studies

Case 1: lack of public participation in sport

Summary:

An organisation linked to a professional football club applied to become a

charity with the ‘the advancement of public participation in sport’ as its purpose. Two broad areas of activity were proposed:

- to work within the community through football coaching in schools and in coaching camps, and
- youth development work in under-13 and under-19 year old youth teams.

Considerations:

The participation in the youth teams was based on ability, subject to a contract with the professional football club, and only available to male players.

Outcome:

We decided that participation was not available to the public at large and we refused the application to become a charity.

Other examples of organisations which have applied for charitable status under this purpose but which have not satisfied the public participation requirement include:

- an organisation established solely to support alpine ski racers to represent Scotland or Great Britain
- an organisation established to provide funding for a Karate squad to attend international Karate competitions within the UK and abroad
- an organisation for a synchronised skating team where the minimum skill level required for participants was Skate UK level 10 standard, that requires months or in some cases years of coaching.

Case 2: interpretation of a sport

Summary:

An organisation that promotes yoga applied to become a charity under this purpose.

Considerations:

Yoga is not universally accepted as a sport. However, the applicant submitted independent evidence that participation involves physical skill and exertion. They also advised us that Sport England recognises yoga as a sport, with the British Wheel of Yoga as the governing body.

Outcome:

We decided that the evidence supplied showed that yoga comes under the description of a sport in the 2005 Act. The organisation became a charity with the advancement of public participation in sport as one of its charitable purposes.

Case 3: encouraging public participation

Summary:

An organisation, which delivers a 'Try Rugby' community programme to all school children in a local area, applied to become a charity.

Considerations:

We had to decide if the organisation encouraged participation on an equal and inclusive basis. They told us that they organise 'taster sessions' for primary school children, interschool rugby festivals and weekly activities during the curriculum for all secondary pupils. For those wishing to participate more often, the organisation provides additional supervised sessions, mentoring and personal skills development.

Outcome:

The application was successful and the organisation became a charity within a month of applying.

DRAFT

(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

Summary

This purpose covers a wide variety of activities, recognising that providing facilities (such as buildings) or organising activities that give people the opportunity to make constructive use of their leisure time, can be charitable.

The benefits can be available to the general public or targeted at people who might be disadvantaged in their ability to take part in recreational activities.

Full Detail

What do we mean by recreational facilities or activities?

To be charitable, an organisation must provide the recreational facilities or activities with the primary intention that they will **improve the conditions of life** of the people using them or taking part in them.

The 2005 Act says that to be charitable the recreational facilities or activities must be either:

- available to members of the public at large, or to male or female members of the public at large, or
- primarily intended for persons who need them because of their age, ill health, disability, financial hardship or other disadvantage.

What does ‘improve the conditions of life’ mean?

When we look at whether people’s lives can be improved under this purpose, it is important for us to look at the context in which facilities or activities are provided. For example:

- if the location of the facilities or activities is geographically isolated
- if there’s a lack of public transport in the area making it harder for people to get to other facilities or activities

New applicants

- the size of the community and the kind of facilities or activities are available in similar areas
- the lack of alternative facilities that are accessible and affordable for the intended users.

If there is evidence that an organisation is addressing these kinds of issues when looking to provide recreational facilities or activities, then it is likely to be advancing this purpose.

What does ‘the public at large’ mean?

This means that the facilities or activities are generally open to all. The 2005 Act allows facilities or activities to be made available only to male members of the public or to female members of the public. This includes facilities and activities that are available to both sexes, but at different times or in different locations.

This doesn't mean that recreational charities can't have a membership structure. If they do, we need to decide if the organisation provides **public benefit**. We look at:

- whether benefits are restricted to members only
- any comparisons between benefits available to members and non-members
- if the membership structure is adopted simply for administrative purposes and not as a way of limiting the number of members
- the level of any membership fees
- if any charges are **unduly restrictive**
- if membership is open to anyone.

No one should be excluded on the grounds of age, race, or religious or political beliefs.

What does ‘primarily intended for people who are disadvantaged’ mean?

This means that recreational facilities and activities are targeted at people who might be disadvantaged compared with the rest of the community when accessing recreational services. This part of the purpose looks at meeting a social need due to age, ill health, disability, financial hardship or other disadvantage. Examples of facilities that target these groups include:

- youth centres
- adventure playgrounds for disabled children

- centres for older people
- welfare institutes for people of certain (former) employment such as armed forces personnel or miners.

Which activities might provide public benefit when advancing this purpose?

We view facilities as being available to the public at large even where clubs and groups rather than individuals use them, if the facilities are generally available to all clubs or groups.

Facilities available to the public include those used for a range of social and entertainment activities within:

- community centres
- village halls

and those designed for particular types of recreation:

- outdoor adventure centres
- fitness centres - where not all of the activities taking place are considered **sports**
- games or music halls
- reading rooms and libraries.

Examples of recreational facilities and activities that are capable of **improving conditions of life** include:

- encouraging people to take up pastimes or pursuits that will be beneficial to their health and wellbeing
- reducing social exclusion
- opportunities for new learning and practising skills.

(j) the advancement of human rights, conflict resolution or reconciliation

Summary

This purpose covers relieving the victims of human rights abuse, raising awareness of human rights, and securing the enforcement of human rights law. It also includes the resolution of conflicts on a national or international scale and the promotion of restorative justice and mediation or reconciliation between individuals, organisations, authorities or groups.

Full Detail

What do we mean by advancing human rights?

Human rights are rights which:

- are fundamental to what it is to be human
- involve matters of right and wrong
- apply to all
- set out the ways in which the State must or must not act towards people, or allow others to do so.

Human rights are a broad and constantly evolving concept. They apply to the core civil, political, economic and social rights contained in the widely recognised statements of human rights, including:

- the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations
- the International Covenant on Civil and Political Rights
- the European Convention on Human Rights
- the Human Rights Act 1998.

Where an organisation is set up to advance the rights described in any of the above, it is likely that its purposes will be charitable.

Where the rights being advanced are not those described in any of the above we need to see and consider evidence as to how and why they are considered human rights.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- relieving the need of victims of human rights abuses
- raising awareness of and support for human rights
- securing the enforcement of human rights law.

These activities may provide **public benefit** in any part of the world.

What do we mean by advancing conflict resolution or reconciliation?

This includes the resolution of conflicts on a national or international scale and relieving the suffering, poverty and distress arising from such conflicts. It also covers identifying the causes of the conflict and seeking to resolve such conflict, the promotion of restorative justice and reconciliation between those involved in conflict situations.

Advancing conflict resolution or reconciliation includes activities aimed at resolving or preventing conflict and disputes between individuals, families, organisations or groups.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- the promotion of restorative justice
- undertaking research to identify causes of national or international conflicts and possible solutions to these conflicts
- relationship counselling or mediation.

Case studies

Case 1: Mediation services

Summary:

An organisation applied to us to set up a charity providing mediation services to minority ethnic communities in Scotland.

Considerations:

We had to decide if the mediation services in family conflict, community disputes, and workplace issues would advance conflict resolution and reconciliation. The organisation provided us with detailed information about the mediation process and the techniques used.

Outcome:

We were satisfied that the mediation services were structured and would advance conflict resolution and reconciliation. The organisation became a charity.

DRAFT

(k) the promotion of religious or racial harmony

Summary

This purpose focuses on actively promoting harmony and the lessening of conflict between people from different races, religions or belief systems.

Full Detail

What do we mean by promoting religious or racial harmony?

This involves actively promoting harmony and lessening conflict between people of different races, religions or belief systems, or between people with a belief system and people with none.

Which activities might provide public benefit when advancing this purpose?

In this case, a **charity** must be able to show that there is disharmony, or the potential for disharmony that it aims to prevent, among the groups it intends to work with.

Ways of providing **public benefit** in promoting religious or racial harmony include:

- schemes to bring together immigrants and existing residents in a particular area
- providing structures for inter-faith dialogue.

Case studies

Case 1: A successful application to promote racial harmony

Summary:

An organisation applied to become a charity with the main aim of raising awareness and improving relationships between the Gypsy Traveller community in Scotland, the wider community and statutory and voluntary services.

Considerations:

First, we had to decide whether there was disharmony or the potential for it, between the Gypsy Traveller community and the wider community. Then we had to look at the organisation's activities, whether they would promote racial harmony and address the challenges identified.

Outcome:

We found that there was evidence of disharmony and the activities provided public benefit by promoting understanding and awareness on both sides. The organisation's application to become a charity was successful.

(I) the promotion of equality and diversity

Summary

This purpose covers the elimination of discrimination and the promotion of diversity in society.

Full Detail

What do we mean by promoting equality and diversity?

This focuses on the elimination of discrimination, by valuing and respecting differences, and encouraging and promoting inclusiveness within society.

Charities with this purpose have the promotion of equality and diversity in society as the primary focus of their activities rather than a secondary aim. For example, having an equal opportunities policy does not advance this purpose unless the organisation is specifically set up to promote equality and diversity.

New applicants

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- advocacy or campaigning by disabled people for better access to public facilities
- raising awareness of discrimination against LGBT (Lesbian, Gay, Bisexual, and Transgender)
- people providing training schemes for employers to raise awareness of equality and diversity issues.

Case studies

Case 1: Supporting LGBT in rural areas

Summary:

An organisation applied to become a charity with the aim of supporting Lesbian, Gay, Bisexual and Transgender (LGBT) people living in rural communities and educating the wider community about LGBT through awareness-raising events and programmes.

Considerations:

We looked at the organisation's intended activities, which included helping LGBT people get more equal access to health, education, training, employment and parenting services. There was evidence that LGBT people in rural areas experienced particular difficulties in having their needs and rights recognised and met by public services and the community in general.

Outcome:

We decided that the organisation's activities were intended to provide public benefit in promoting equality and diversity in their area, and we registered it as a charity.

DRAFT

(m) the advancement of environmental protection or improvement

Summary

This purpose focuses on protecting or improving the environment, and can include:

- the preservation and conservation of the natural environment
- the promotion of sustainable development
- the conservation or protection of wildlife in general, or of particular species, habitats or areas
- the protection of green spaces in a particular area
- sustainable creation and use of energy and other resources.

Full Detail

What do we mean by environmental protection or improvement?

To be charitable the advancement of environmental protection or improvement generally means:

- the protection or conservation of a specific plant, animal species, habitat, or area of land or water, including areas of natural beauty and scientific interest
- the protection of green spaces in a particular area
- the sustainable management of natural resources
- the reduction of pollution and waste
- the investigation of climate change
- the promotion of energy saving measures and the use of renewable energy.

Which activities might provide public benefit when advancing this purpose?

Where an organisation is set up to conserve the environment by protecting plants, animal species, habitat or land they must be able to show that it requires conservation or protection. For example, organisations set up to protect a particular species must be able to provide independent evidence that the species is rare or in danger of extinction.

Organisations should also be prepared to provide evidence that there is **public benefit** in protecting the species. Sometimes the preservation of a particular species can have a negative effect on the local environment or community. For example, an

New applicants

invasive species that causes damage to the ecosystem and could lead to the extinction of a native species.

Evidence of environmental or conservation benefits can be obtained from a number of sources and may be relevant when we consider this purpose. For example:

Scottish Natural Heritage publishes lists of:

- designated protected areas
- protected species in Scotland
- sites of Special Scientific Interest
- designated nature conservation marine protected areas
- National Scenic Area
- National Nature Reserves.

WWF-UK produces lists outlining the conservation status of a large number of species worldwide.

Organisations which aim to promote conservation generally or on a small scale will need to give details of specific projects and be able to describe how these will provide public benefit.

Where an organisation simply acts in a way that is environmentally friendly, for example making sure that it recycles as much as possible, we would not consider this to be the advancement of environmental protection or improvement.

New applicants

Sustainable development

This purpose includes the promotion of **sustainable development**.

Sustainable development is often described as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

Organisations whose purposes are to advance environmental protection or improvement by the promotion of **sustainable development** must be able to show that:

- they design their activities to balance different, and often competing, needs against an awareness of environmental, social and economic limitations.

Where an organisation has other **charitable purposes** involving urban or rural regeneration its **governing document** often requires that it pursues these purposes in the interests of **sustainable development**.

DRAFT

(n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage

(including relief given by the provision of accommodation or care)

Summary

This purpose involves helping people who are in need because they are disadvantaged compared to others. Charities may benefit people affected in this way by providing care, support, practical assistance or accommodation to eliminate or reduce the disadvantage.

Full Detail

The activities undertaken in fulfilment of this purpose are only open to those who are disadvantaged and in need; they are not open to the general public. This means that organisations should have criteria setting out what they mean by ‘in need’ and how they will identify people who are in need. The assistance given under this purpose must be linked to relieving the needs associated with the disadvantage in question. For example, those in need because of financial hardship must be helped in a way that relieves that financial hardship.

New applicants

What do we mean by ‘those in need’?

The people this purpose focuses on must be in need because they are disadvantaged due to:

- **age**
- ill-health
- disability
- financial hardship or
- other disadvantage.

The disadvantage may be permanent, for example people with chronic or terminal ill health, a physical disability or learning difficulty. Alternatively, it could be temporary related to a person’s stage of life or present circumstances, for example following bereavement, becoming unemployed or recovering from an illness.

Beneficiaries may also experience more than one disadvantage. For example, a person in poor health may find it difficult to work and therefore have a reduced income.

Age in this purpose refers to a person's stage of life, rather than just to old age. This purpose is relevant to organisations which:

- care for and bring up children or provide support to parents
- provide youth clubs or activities for young people
- assisting with life transitions such as leaving care or retirement
- run care and nursing homes.

The relief provided by charities under this purpose may aim to:

- counter or alleviate the effects of the disadvantage
- assist individuals to overcome the disadvantage or recover from it
- generally improve the conditions of life of disadvantaged people.

In all cases, the intention behind the activities must be to provide relief to those who are in need because of an identified disadvantage.

Which activities might provide public benefit when advancing this purpose?

Activities might include:

- providing home care and practical assistance with daily tasks to enable people to remain living independently for as long as possible
- providing relief from loneliness and isolation through befriending schemes and drop in centres
- providing transport, equipment or medical supplies that aid mobility, alleviate discomfort or improve a person's quality of life
- providing financial assistance
- providing specialist advice, guidance and advocacy services
- providing accommodation, including:
 - social housing by Registered Social Landlords
 - almshouses
 - hostels
 - care homes
 - hospices
- rehabilitating ex offenders
- supporting migrants, refugees and asylum seekers

- supporting homeless people
- supporting victims of crime or survivors of abuse
- providing respite for carers.

Where an organisation's purpose is relieving the needs of people with a particular disadvantage, its activities must clearly be directed towards those people to be able to show **public benefit**. We expect such organisations to be able tell us how they identify those in need of their help.

For example, older people may be more likely to need company or practical help at home. It does not necessarily follow that all older people will have this need, and we would expect a **charity** providing this kind of help to show how it identifies the people it would assist.

Where an organisation limits the help it gives to people with a particular protected characteristic under the **Equality Act 2010**, the conditions the organisation puts on access to help must comply with the requirements of that Act. If they do not, we may need to decide if the organisation **unduly restricts** access to the benefit it provides.

Case study

Case 1: relieving the needs of people in specific situations

Summary:

An organisation applied to us for charitable status: it intended to provide a night shelter for asylum seekers who would otherwise have to sleep rough.

Considerations:

The organisation explained to us that its services were intended to relieve the specific basic needs for accommodation and food of migrants and asylum seekers who, due to their particular immigration status, had no access to benefits or other homeless services. Only people who could show they were in this kind of need would be accommodated. There was a particular need for these services in the area where the organisation intended to operate.

Outcome

We were satisfied that the charity would provide public benefit in relieving the needs of this particular group of people (among other purposes), and we registered it as a charity.

Other information

Charities and Equality Guidance

(o) the advancement of animal welfare

Summary

This purpose focuses on the prevention of cruelty to animals or the prevention or relief of suffering by animals, rather than the conservation of a specific animal or species.

Full Detail

What do we mean by animal welfare?

To be charitable, the advancement of animal welfare means preventing or relieving the suffering of animals. This could be animals in general or a particular type of animal.

It does not mean the conservation of a particular animal, bird, or of wildlife in general. Organisations set up for the conservation of a specific animal or species fall under [the advancement of environmental protection or improvement](#).

Which activities might provide public benefit when advancing this purpose?

Activities that provide [public benefit](#) when advancing animal welfare include:

- rescuing, rehabilitating or rehoming animals
- providing veterinary treatment
- running shelters for abandoned, abused or injured animals
- any other activities that relieve the suffering of animals or advance their wellbeing.

Organisations with this [charitable purpose](#) should be able to demonstrate that they have the facilities, expertise, and equipment to provide the appropriate level of care for the animals in question.

Sometimes, animal welfare organisations will have to show that they hold an appropriate licence in relation to the species they work with. For example, an organisation running a wildlife park would require a zoo licence.

Case studies

Case 1: Rehoming racehorses

Summary:

A charity established in England and Wales applied to us for charitable status in Scotland with purposes including the welfare and rehabilitation of unwanted or vulnerable racehorses and former racehorses.

Consideration:

The charity provided evidence that as well as working directly to rehome and retrain racehorses which were at risk of neglect or abuse, it worked to raise awareness of those issues in the horseracing industry through promotional and educational programmes.

Outcome

We considered that that charity's purposes related clearly to the advancement of animal welfare, and that its activities provided public benefit for that purpose. We registered it as a charity in Scotland.

(p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

Summary

This purpose recognises that economic circumstances and social needs are constantly changing and that charitable purposes may evolve in future as charities find new ways of meeting those needs and providing public benefit. It gives us flexibility to recognise purposes that resemble an existing charitable purpose but which are novel or different in some way.

This is not a freestanding purpose on its own, nor is it a catchall to allow charities to pursue any other purpose they may feel is relevant. It is for us to decide if a particular purpose is analogous to one of the other 15 charitable purposes set out in the 2005 Act.

Under this purpose, the advancement of any philosophical belief (whether or not involving belief in a god) may be analogous to the advancement of religion.

Full Detail

What do we mean by analogous?

To be charitable, analogous means that the purpose is comparable or similar in nature to one of the other 15 **charitable purposes** listed in **the 2005 Act**, and we decide if a purpose is recognised as analogous.

The requirement that the new purpose is analogous to an existing charitable purpose means that the flexibility given to us to make our decision is balanced by the need to make sure there is a consistent approach to the development of charitable purposes.

We consider that a new purpose might be regarded as analogous to one or more of the existing charitable purposes in the 2005 Act when:

- it combines aspects of established charitable purposes into a distinctive and coherent whole that reflects current social contexts and needs
- it includes or resembles certain aspects of an existing charitable purpose but also has new or different elements
- it becomes appropriate to recognise as a freestanding purpose something that was previously considered as an activity under an existing charitable purpose.

Examples of analogous purposes

A number of purposes have already been recognised as analogous and therefore charitable.

The advancement of a philosophical belief (whether or not involving belief in a god):

The 2005 Act specifically recognises this purpose as analogous to the **advancement of religion**. In deciding whether a belief is capable of being advanced in this way we must be satisfied that:

- it relates to a weighty and substantial aspect of human life, behaviour, morality and values
- it has an identifiable formal content
- it is more than a deeply held opinion or feeling and must have a high level of cogency, coherence, seriousness and importance
- it is not self-serving or established mainly for the benefit of its leaders or a closed community of members.

The relief of unemployment:

We consider this purpose to be analogous to the **relief of poverty**, in view of the well established link between unemployment and poverty.

Charities registered under this purpose are often set up to assist unemployed people in general or a significant section of the community, for example in areas of social or economic deprivation. Their activities might include assisting unemployed people to:

- find and retain employment
- get training in work-related skills
- benefit from apprenticeships and work placements.

New applicants

Creating jobs within a **charity** does not fall under this purpose. The fact that an organisation needs employees to function does not mean that they are set up to relieve unemployment.

The promotion of the efficiency and effectiveness of policing and the promotion of the efficiency and effectiveness of the armed forces:

We consider these purposes analogous to the **advancement of citizenship**. This is because we see that the achievement of efficient and effective police or armed forces is a necessary condition for citizens to exercise their rights. Examples of charities that fall under this purpose include regimental associations.

Case studies

Case 1: Advancement of a philosophical belief (secular Humanism)

Summary:

We received an application from an organisation that promotes the principles and practice of secular Humanism.

Considerations:

We had to consider if secular Humanism has the necessary qualities to be analogous to the advancement of religion.

We looked at the definition: 'the moral, intellectual and social development of individuals and the community, free from theistic, religious and dogmatic beliefs and doctrines and as further defined in the International Humanist and Ethical Union (IHEU) Declaration of the World Humanist Congress of 2002'. We looked at whether the belief in secular Humanism relates to a weighty and substantial aspect of human life, behaviour, morality and values.

Outcome:

We concluded that secular Humanism does fulfil the criteria needed to be analogous to the advancement of religion. The organisation became a charity with the analogous purpose of advancing a philosophical belief (secular Humanism).

Public benefit

Summary

To pass the charity test an organisation must:

- have only charitable purposes, **and**
- have activities which provide public benefit in Scotland or elsewhere.

To see whether an organisation provides public benefit or (in the case of applicants) intends to provide public benefit, we look at what it does or plans to do to achieve its charitable purposes. Having charitable purposes will not on its own mean that the charity test is met; an organisation's activity must also provide public benefit.

Full Detail

What is public benefit?

In general, public benefit is the way that a charity makes a positive difference to the public. Not everything that is of benefit to the public will be charitable. Public benefit in a charitable sense is only provided by activities which are undertaken to advance an organisation's **charitable purposes**.

Charities can provide public benefit in many different ways and in differing amounts.

Some benefits are easy to understand and measure. If your organisation sets out to help people with a certain type of disease, it is easy to point to the benefit its activities provide in relieving sufferers' symptoms or in curing them. It is more difficult to measure the benefits of other types of charities, for example, a society preserving a part of our heritage, but that does not mean that there is no benefit.

Sometimes there is benefit to the public as a whole from a charity's activities as well as to the people they are directly meant for. An example would be activities that promote literacy and health awareness among women in developing countries. As well as directly benefiting the women concerned, there is indirect benefit to the public in those societies by improving public health, especially in children.

There is no specific level of benefit that a charity must provide; many charities operate on a small scale or in small communities but are still able to show that they do provide public benefit.

However, an organisation must actively provide benefit or (in the case of applicants) intend to provide it. In general, if a **charity** does nothing for a prolonged period, it is

unlikely to be providing public benefit, and this may result in it failing the **charity test**. There are some exceptions where this principle does not apply.

One is where a charity is set up to act if a particular event occurs in the future, and where public benefit is provided because the charity is there 'just in case'. For example:

- a charity is set up to relieve the needs of those who might be made homeless by flooding in a flood-prone area of Scotland – there may be no floods and therefore no activity for several years, but the existence of the charity allows prompt relief when a flood does occur
- after the takeover of one charity by another, the charity which has been taken over continues as a 'shell', purely to receive legacies and pass them to the new charity – there may be long periods where no money is received or transferred, but the 'shell' charity provides benefit by making sure that donations reach the right destination.

What does public mean?

The 'public' part of public benefit doesn't necessarily refer to the general public as a whole. Some charities will potentially benefit everyone in a community. For example, a charity, which has **recreational purposes** where activities are open to all. However, most charities will have limits on who they benefit, and some charities will only benefit a small number of people.

How many people a charity benefits and who they are will depend on the charitable purposes set out in the **governing document**: most charities are established to benefit a particular group. For example, many charities benefit children in general while others are established to benefit children of a certain age or those with specific needs.

How does the benefit link to charitable purposes?

Generally, to be taken into account in the assessment of public benefit, an organisation's activities must be clearly intended to advance its charitable purposes.

Where an organisation carries out some activity that is not directly related to or connected with its purposes, any benefit from that activity will not be taken into account in our assessment of public benefit. However, if the activity is genuinely

incidental (a by-product of its main activities), then it will not be a problem in terms of the public benefit requirement or the organisation's duty to act within its charitable purposes.

For example, a community theatre group with the purpose to **advance the arts** also collects cash donations for a local hospice in the intervals of its shows. This activity clearly doesn't advance the arts but does not adversely affect the overall picture of the group's public benefit.

If **charity trustees** feel that their charity's activities no longer reflect the purposes in its **governing document**, then they might decide to seek our **consent** to change the charitable purposes. It is good practice to review a charity's governing document on a regular basis to make sure that it is still accurate and relevant for the charity.

How does a charity demonstrate it provides public benefit?

This is a key part of being a charity. Charities must describe the work that they do, and their achievements, in their **Trustees Annual Report**. This information allows the public to see how much public benefit arises from a charity's activities; it is also important because it requires all charity trustees to review their purposes, activities and achievements annually.

Our Guidance on the individual **charitable purposes** has more information on what activities may provide public benefit in the advancement of each purpose.

How do we assess public benefit?

To be on the **Scottish Charity Register**, an organisation must have only charitable purposes and provide public benefit.

In terms of the 2005 Act, in order to decide whether an organisation provides public benefit or (in the case of applicants) intends to provide public benefit the following elements must be considered:

- The comparison between the benefit to the public from an organisation's activities; and
 - any **disbenefit** (which is interpreted as detriment or harm) to the public from the organisation's activities
 - any **private benefit** (benefit to anyone other than the benefit they receive as a member of the public).

- The other factor that we must take into account in reaching a decision on public benefit is whether any condition an organisation imposes on obtaining the benefit it provides is unduly restrictive. This includes fees and charges. See **undue restrictions** for more information.

While considering these factors, we make a judgement on the whole picture of public benefit in the organisation being looked at. We do this based on all the facts and circumstances applying to the organisation.

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Private benefit

Summary

When we decide if an organisation provides public benefit, we must look at:

- whether anyone benefits from the organisation as a private individual rather than as a member of the public (this is private benefit)
- how this private benefit compares to any public benefit the organisation provides.

If it appears that the organisation has been set up wholly or mostly for the private benefit of individuals, it is unlikely that it will pass the charity test.

Full Detail

What do we mean by private benefit?

Individuals can, do, and should benefit from the activities of charities. However, where individuals, other than members of the public, benefit from an organisation's activities, we will regard this as private benefit.

The fact that some private benefit exists does not on its own mean that an organisation will fail the **charity test**. We look at the private benefit in the context of the whole benefit the organisation provides, or intends to provide, in pursuit of its purposes.

To pass the charity test any private benefit must be **incidental** to the organisation's activities that advance its **purposes**:

- **incidental** means that the private benefit is a **necessary** result or by-product of the organisation's activities and is not an end in itself.

We must make a judgement on the balance between the private benefit and the **public benefit** resulting from the activities of an organisation. If the private benefit is not **incidental** to the activities in pursuit of the organisation's purposes, then we need to consider whether the **charity** is being set up or run for the private benefit of individuals.

For example, a heritage charity plans to use its funds to restore a historic mill belonging to a private individual. The owner will benefit from the value added to his property from this activity.

In this case, we would look for reassurances that firm arrangements were in place to make sure that the private benefit to the owner is removed or minimised. Examples of this would be a firm undertaking to transfer ownership to the charity or for it to take a long-term lease of the property. Whatever action the charity took, it would need to make sure that any private benefit is outweighed by the public benefit from continued access to the property and use for charitable purposes. Where this is not possible, and the private benefit appears to be the real purpose rather than being **incidental**, the organisation may fail the **charity test**.

What is incidental private benefit?

Private benefit is **incidental** when it is a by-product of the provision of benefit in pursuit of a charity's purpose and not a purpose of the charity itself.

A common example of **incidental** private benefit is a charity with paid staff. This is private benefit to the staff, but if the charity cannot operate on a purely voluntary basis, then paying suitable staff at a reasonable rate is **necessary** to the pursuit of its purposes.

In some cases, it will not be clear that paying a salary or providing some other benefit to a particular person is **necessary** to let the charity achieve its aims. In those cases, we need to consider if the private benefit is **incidental** or whether the charity has been set up for the benefit of that person.

Many charities have a membership structure and in most cases this is not a problem. However, where a charity has members, and the members get particular benefits from the charity, we need to be satisfied that these benefits are **incidental** to the purpose of the charity. Benefits that are trivial or of little value will not usually cause a problem.

Members of a charity can also be the main people who benefit from its activities (for example Girl Guides, Scouts or similar groups). Where a charity directs benefit at its membership we need to consider how far there is public access to that membership. Any criteria for membership must be justifiable and reasonable bearing in mind the charity's **purposes**. If a charity exists primarily to benefit its members **and** it has a closed or **unduly restricted** membership, then its ability to provide **public benefit** will be in doubt.

For example, a professional body that provides training, and improves the standards and status of their profession, will benefit its membership. If the organisation can demonstrate that the focus of its activities is towards the indirect benefit to the public

through the maintenance of high professional standards and practice, then the private benefit to the members may be regarded as **incidental**.

When is private benefit unlikely to be incidental?

One example is where the main **beneficiaries** of a charity are its members, and all the members are also **charity trustees** (and there are no other potential members or beneficiaries). The charity then exists for self-interest or private benefit only and not **public benefit**.

We have particular concerns where the charity trustees of a charity are the people benefiting from it as private individuals.

Where a charity trustee is to be **remunerated** for services provided to the charity, the other charity trustees must make sure the following remuneration conditions set out in **the 2005 Act** are met:

- the remuneration must be reasonable in the circumstances
- there is a written agreement between the charity and the trustee
- the agreement sets out the maximum amount which can be paid
- the trustees are satisfied that the payment is in the best interests of the charity
- less than half of the total number of trustees are receiving payment for services
- there is no prohibition on such payment in the **governing document**.

These requirements apply in a similar way to people connected to charity trustees.

Even if the trustees feel they have met the remuneration conditions, we still need to consider how the private benefit compares with the public benefit the charity provides.

For example, a charity may have made sure that less than half of the total number of charity trustees are paid a salary or getting other benefits, but we may still take the view that the private benefit is not **incidental**. If this is the case, we may decide that the charity is not providing public benefit.

How we make our decision

We make a judgement on the whole picture of **public benefit** in the organisation being looked at, including:

- the balance of public benefit and **private benefit**

- the balance of public benefit and **disbenefit**
- whether any condition on accessing the benefit is **unduly restrictive**.

We do this based on all the facts and circumstances applying to the organisation.

Case studies

Case 1: Establishing a charity for personal gain

Summary:

We received an application to become a charity from an organisation which intended to provide counselling services. The organisation had three co-founders (prospective charity trustees); one would be employed as the Chief Executive and the other two as paid counsellors.

Considerations:

We acknowledged that it might well be necessary to employ individuals in salaried positions but queried with the applicant why they thought they were the most suitable people for the positions. The three co-founders alone made the decision to appoint themselves as 'Executive Directors', and drew up a draft governing document which permitted **only** the Executive Directors to be paid. It was not clear if the co-founders had specialist skills and experience which would justify their direct recruitment, or if they had considered carrying out a fair and open recruitment process to identify the most suitable candidates for the positions.

Outcome:

The applicants were unable to give us a satisfactory explanation as to why they were best people for the jobs. Taking everything into account, we concluded that this level of private benefit to the co-founders was not incidental and the application to become a charity was refused.

Case 2: Unnecessary private benefit

Summary:

A commercial company intended to set up a charity to undertake some of its activities, which it had identified as being potentially charitable. The proposed charity would pay a regular fee to the non-charitable company for administration and back office services.

Considerations:

The applicant could not provide evidence that provision of those services by the company represented the best value option to the proposed charity or that any other

options had been considered. The charity could have carried out its own administration and back office services, or it could outsource those activities to another provider following a tender process or other assessment of value.

Outcome:

We concluded that the proposed remuneration of the connected company was not incidental because it was not necessary, as there were reasonable alternatives available. We refused the application to become a charity as any potential public benefit was outweighed by this private benefit.

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Disbenefit

Summary

Disbenefit is the opposite of benefit and we take it to mean the same as detriment or harm. What we need to look at is whether what an organisation does will cause any disbenefit to the public. If the disbenefit outweighs any benefit an organisation provides, it may fail the charity test.

Full Detail

What is disbenefit?

Disbenefit is the word used in **the 2005 Act** to describe the negative effects on the public of an organisation's activities in pursuit of its purposes as opposed to the positive effects of activities that provide **public benefit**.

Disbenefit can take a number of forms but it must involve active, identifiable disbenefit to the public, or part of the public, because of what an organisation does. For example, building a new community centre in a rural location may have an adverse impact on the environment, which could be considered disbenefit.

What do we look at?

When we decide if the organisation provides public benefit, we must also look at disbenefit (**detriment or harm**). To be taken into account, disbenefit needs to be identifiable and more than an absence of benefit.

We do not look at the perceived general advantages or disadvantages of a type of organisation, for example the perceived general arguments for or against organisations like Arm's Length External Organisations¹ (ALEOs) or fee-charging schools.

The fact that some people might disagree with what an organisation does, does not mean there is disbenefit. There would need to be evidence of actual or likely **detriment or harm** to the public, not to individuals or to organisations. The evidence must relate to what a specific organisation does, not to the effects that type of organisation might have.

¹ An ALEO is an organisation, which is formally separate from a local authority but subject to its control and influence. ALEOs can register as charities if they meet the charity test.

When we look at disbenefit, we apply the same principles as when we look at **public benefit**:

It should be possible to identify and describe the disbenefit: Disbenefit can vary in nature, scale and visibility. For us to consider it there must be evidence of actual or likely **detriment or harm**.

- **The disbenefit should clearly be a product of the organisation's activities:** there needs to be clear evidence that the disbenefit comes from the organisation's own activities. The fact that some individuals or groups in society may disagree with what an organisation does to advance its **charitable purposes** does not, on its own, amount to disbenefit.
- **The disbenefit should affect the public or a section of the public:** we will not take into account disbenefit that affects only the private interests of an individual or individuals (for example, the effect on the value of person's property from a charity carrying out its activities in the neighbourhood).

We will look at the overall picture of public benefit in the organisation's activities, taking into account any specific circumstances or constraints on the organisation. Evidence that there is disbenefit does not on its own mean that charitable status is in doubt.

Any kind of unlawful conduct arising from an organisation's activities will be disbenefit and we will give more weight to disbenefit arising from unlawful discrimination or harassment when making our decision.

How we make our decision

We are required to make a judgement on the whole picture of **public benefit** in the organisation being looked at, including:

- the balance of public benefit and **private benefit**
- the balance of public benefit and **disbenefit**
- whether any condition on accessing the benefit is **unduly restrictive**.

We will do this based on all the facts and circumstances applying to the organisation.

Case studies

Case 1: evidence of potential disbenefit

Summary:

An organisation applied to become a charity. Its main activity involved using a type of non-conventional treatment on cancer sufferers.

Considerations:

We asked the organisation to provide independent, reputable evidence that this treatment was capable of helping cancer sufferers, but it was unable to do this. We conducted some online research that suggested that the treatments were very experimental and had not been proven effective. Some of the information suggested that the treatment was potentially harmful and could cause serious health problems itself.

Outcome:

We decided that the activities of the organisation did not advance health and that the potential for disbenefit in the form of harm to the cancer sufferers was such that we refused the application.

Case 2: potential disbenefit outweighed the public benefit

Summary:

An organisation applied to become a charity with its main activity to provide care and treatment in overseas orphanages.

Considerations:

The organisation (which was already up and running) gave us evidence of the positive difference they were making to the standard of care in overseas orphanages. However, they also gave us information that stated that an individual had performed medical procedures without any formal qualifications and would continue to do so.

Outcome:

The organisation had charitable purposes and clearly provided public benefit. However, the potential for disbenefit, which could result in loss of life, was highly likely and outweighed any public benefit. Therefore, we had to refuse the application.

Undue restrictions

Summary

Most organisations put limits on who can benefit from their activities and most of the time this will not stop an organisation providing public benefit. We have to look at the organisation's purposes and decide if any restrictions are unreasonable, unjustifiable or unlawful.

When we decide if an organisation provides public benefit we have to look at whether it restricts access to the benefits it provides, and if it does, whether the restriction is undue.

Full detail

What is an undue restriction?

When we consider whether an organisation provides **public benefit**, we must consider whether any conditions, which limit access to the benefits the organisation provides to a particular section of the public, are unduly restrictive.

An unduly restrictive condition is a limit on who can access the benefit provided by an organisation where the restriction is not **reasonable or justifiable** in the context of what the organisation does and what its purposes are, or is unlawful.

The main types of restrictions we look at are:

- **charges and fees**
- geographical area of benefit
- limits on who the organisation will help.

It is important to understand that few charities benefit the whole of the public. Many charities can and do restrict access to their services or activities but still provide public benefit and so meet the **charity test**. For example, a **charity** set up to help people who suffer from a particular disease will restrict access to those diagnosed with the disease.

The link to charitable purposes

A restriction on the ability to access the benefit provided by an organisation may be justified in terms of the organisation's purposes set out in its **governing document**.

A charity's activities may also be limited to a particular country or an area within a country. This will be **reasonable** because the charity's **purposes** are to meet a need in that particular area, or because limits on its resources allow it only to help people in a small area. Where restrictions reflect the charity's purposes and are **reasonable** in other ways, then the organisation should be able to provide public benefit.

Things that are likely to make a condition unduly restrictive:

- where a condition on who can access benefit cannot be justified based on the organisation's charitable purposes
- where a condition is not connected with what the charity is set up to do, but is based on an irrelevant factor
- where an organisation says that it puts conditions on access to benefit, but cannot explain how they will operate or why they are there, then this is unreasonable.

We will take into account other factors, for instance other legal or regulatory requirements that may help us to decide whether a condition on access is **reasonable** in the context of what the charity does. Where an organisation restricts benefit in a way that breaches equality law we will generally regard this as an undue restriction. For example, an organisation restricts access to events it holds to people of a particular race, and where there is no rational link between this restriction and its charitable purpose.

If an organisation is providing facilities or services to the public (or a section of it), any restriction on public access, such as opening hours or access to a particular building, must be considered. Where these restrictions are not **reasonable** and appropriate in the circumstances, or prevent access to the benefit provided for a majority of potential **beneficiaries**, they may be undue.

If an organisation restricts benefit to one specific person, or people with a particular family connection, or people who have worked for a single employer, this is likely to be an unreasonably closed section of the public, and unduly restrictive.

Many types of charity make people pay for access to the benefit they provide. On the face of it, this restricts access to that benefit to the people who can pay the **fees or charges** involved. We may need to look at whether this makes them unduly restrictive. This will depend on the facts about the organisation and the fees involved.

What we look at when we consider fees and charges:

- **help for those who cannot pay**

Where fees are charged which affect access to a benefit, we expect there to be arrangements in place to help people who cannot afford those fees. Examples of this are discounts, grants, or bursaries to help with fees. Help that is targeted based on the individual's ability to pay, and helps people on a range of incomes, including low incomes, will count the most here.

- **the full scope of the benefit provided**

If an organisation provides some benefits free but charges for others, we will look at the whole picture of benefit and restriction when making a decision.

- **proportionality**

The bigger the fee the more evidence we will need about help for those who cannot pay.

- **transparency**

Any fee structure and arrangements for help with fees must be well publicised and clearly explained.

- **the cost of providing benefit is relevant**

Some benefits are more expensive to provide than others, and charities need to be able to cover the cost of doing what they do. We will consider this when looking at the fees and charges. We will look at how far the cost of providing the benefit is subsidised by the organisation (or others) to keep the fees charged to individuals low.

If an organisation's charges are so high that it is impossible for those who cannot afford them to benefit, and no help is offered to meet those costs, then this would be an undue restriction.

How we make our decision

Where we find that conditions on accessing benefit are restrictive, we will consider this when making a judgement on the whole picture of public benefit in the organisation we are looking at.

We make a judgement on the whole picture of **public benefit** in the organisation being looked at, including:

- the balance of public benefit and **private benefit**
- the balance of public benefit and **disbenefit**
- whether any condition on accessing the benefit is **unduly restrictive**.

We do this based on all the facts and circumstances applying to the organisation.

Case Studies

Case 1: restrictions on access to membership

Summary:

A golf club applying to become a charity restricted access to its playing facilities to members. Applications for membership had to be approved by a sub-committee of the charity trustees. There were no written rules about who could be accepted. Where applications were rejected, no reasons were given.

Consideration:

The club was unable to explain how it decided if someone could become a member. It was not able to demonstrate that any restriction on accessing the benefit had a reasonable basis. The club was not willing to modify its constitution to make clear the basis for accepting or rejecting members.

Outcome:

We found that the conditions the golf club placed on being able to take part in the sport by using its facilities were not justifiable and were unduly restrictive. Overall, we found it did not provide public benefit and the application to become a charity was refused.

Case 2: considering fees and charges

Summary:

We received an application to become a charity from a company that had been set up to advance public participation in sport, the advancement of health and the provision of recreational facilities in a particular local authority area. Its main activity was to manage sport and recreational facilities belonging to the local authority and to

deliver sports, recreational and health improvement programmes. It planned to charge for access to most of the activities it provided.

Consideration:

We asked for the full details of the activities the company planned to provide, of the charges it planned to make for them and what it planned to do for people who would not be able to afford the planned charges. We also looked at the company's business plan to see how the planned charges compared with what it thought would be the cost of providing its activities and facilities. The company had a wide range of activities. It made modest charges for access to most of its sports and fitness facilities on a pay-as-you-go basis with reduced prices for children, students and pensioners. It also offered membership-based access, including a reduced price option for people on benefits. Importantly, it offered a range of reduced price access for those on benefits, children and pensioners. Some types of facility hire were offered only at full prices, which could be quite substantial. On the other hand, some types of benefit, such as sporting activities for primary school children were provided free, as a condition of external funding received by the Company.

Outcome:

Looking at the full scope of what the company intended to do, the level of charges it intended to make and the help it was planning for people who could not afford them, we decided that the charges did not unduly restrict access to the benefit the company intended to provide. The application for charitable status was successful.

Case 3: A charity that limits access to individuals with a protected characteristic

Summary:

A specialist garden centre restricted its beneficiaries to those with a severe mental illness who were in need of a meaningful daytime activity in order to maintain/promote their recovery.

Considerations:

The charity was limiting its beneficiaries to those who share one of the protected characteristics defined in the Equality Act - disability. However, the law does permit charities to discriminate in this way by limiting the group of people it helps, provided the 'charities exception' is met.

Outcome:

In this case, the charities exception was met because the charity's governing document restricted benefits to people with a shared protected characteristic. We

were satisfied that the charity's aim was to tackle a particular disadvantage faced by people who share a protected characteristic, in this case disability.

Other information

Charities and Equality Guidance

Equality Act 2010

Report on Fee-charging schools, public benefit and charitable status

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Specific Exceptions

Use of assets

Summary

An organisation will fail the charity test if its governing document allows it to use any of its property (assets) for a purpose, which is not a charitable purpose under the 2005 Act. This applies during the lifetime of the charity and when the organisation is being wound up.

Full Detail

The 2005 Act says that a charity's **governing document** must not allow the **assets** to be used for non-charitable purposes during the lifetime of the charity or on being **wound up**. If the **governing document** does this, the organisation cannot be a **charity** in Scotland.

Examples of where this might happen are when a governing document allows:

- assets to be shared out or given to its members on wind up
- assets to be used for non-charitable purposes if it **winds up or dissolves**.

Assets must be used for purposes, which are charitable under the 2005 Act. Any definitions of 'charitable' or 'charity' in your governing document must be compatible with the 2005 Act. This can be done by adding a **definitions clause** to your governing document. See **other information** below for example clauses to use in governing documents.

New applicants

An organisation's governing document does not necessarily have to specify that its assets will be passed to another Scottish charity on wind up. However, if it says that the assets will be passed to an organisation that is not a Scottish charity, they must be used by that organisation for purposes set out under the 2005 Act.

To pass the charity test and to qualify for charitable tax relief, an organisation's governing document must allow its property to be used only for purposes that are charitable both in Scots law and in UK tax law.

New applicants

See **other information** below for example clauses to use in **governing documents**.

Case studies

Case 1: passing assets to an organisation which is not a charity

Summary:

A Parent Council's governing document stated that if the Parent Council was dissolved, its assets should be passed to the local authority.

Considerations:

When we looked at the governing document along with the law on Parent Councils, it was clear that the local authority could only use the assets for educational purposes, which are charitable.

This is because if the Parent Council dissolves the assets will pass to the local authority, as education authority, for the benefit of the school to which the Parent Council belonged.

Outcome:

The Parent Council's governing document did not allow it to distribute its assets for non-charitable purposes and we gave it charitable status.

Other information

Clauses that can be used in governing documents to make sure that this requirement of the charity test is met:

- **Asset lock:**

'For the avoidance of doubt the income and property of the organisation shall be applied solely towards promoting the organisations charitable purposes.'

- **Dissolution clause:**

'Any assets remaining after satisfaction of the debts and liabilities of the organisation shall be transferred to some other charitable body or bodies having purposes similar to those of the organisation; the identity of the body or bodies to which such assets are transferred shall be determined by the members of the organisation at, or prior to, the time of dissolution.'

- **Definitions clause:**

“Charitable body’ shall mean a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts.

‘Charitable objects’ means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.”

Cross Border constitution briefing note

HMRC charity guidance

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Ministerial direction or control

Summary

If an organisation's governing document says that government Ministers can control what the organisation does or tell it what to do, then usually that organisation cannot be a charity, even if it has charitable purposes and provides public benefit.

This applies to both Scottish and UK Ministers, but Scottish Ministers may disapply this exception (see full detail).

Full detail

The 2005 Act says that an organisation can't be a **charity** if its **governing document** allows government Ministers to control, direct or stop it from carrying out its activities. This means Scottish or UK Ministers cannot instruct or order the organisation to do something, which the organisation must then obey.

When looking at the powers that a governing document gives Ministers, we will consider whether, taken as a whole, it allows Ministers to direct or control the organisation's activities. In particular:

- How important or central to the organisation's overall activities are the functions Ministers can control?
- Can Ministers take the initiative in making an organisation do something, or can they merely react to a request from the organisation or a third party?
- Can the Ministers use their powers whenever and however they wish, or are there limits to this?

The more important, active and open-ended the powers given to Ministers are, the more likely they are to be a problem for the organisation's charitable status. If the powers in the governing document allow a Minister to actively control the organisation in important ways so that the organisation is not independent, then the organisation is likely to fail the **charity test**.

This part of the charity test applies only to powers given to government Ministers in an organisation's governing document. It does not apply to:

- powers a governing document may give to local authorities or other organisations

- other arrangements, such as contracts or service level agreements, with any organisation.

It is open to charities to enter into contracts or agreements with government Ministers, though **charity trustees** must make sure that they are acting in the interests of the charity when doing so.

Note:

The 2005 Act allows Scottish Ministers to disapply this exception for a particular organisation by making an order in the Scottish Parliament. They have done so in a number of cases, for example in relation to colleges of further education.

Case studies

Case 1: charitable status removed

Summary:

An organisation, which had been recognised as a charity under previous law, had a governing document that said:

- Scottish Ministers could issue directions to the organisation, and
- the organisation had to comply with those directions.

Considerations:

The organisation's governing document clearly gave Scottish Ministers the power to direct its activities, and there was no limit on how and when they could do so. There was no prospect of changing the governing document.

Outcome:

The organisation failed the charity test and we removed it from the Scottish Charity Register.

Case 2: Ministers made an order to disapply part of the charity test

Summary:

A different organisation had a very similar governing document to the organisation listed in Case 1. Ministers could remove the charity's trustees whenever they wished, and the charity had to seek consent for certain financial transactions. As the law allows, Ministers chose to make an order to disapply this part of the charity test for this organisation.

Considerations:

The organisation would have failed the charity test because of the powers the

governing document gave to Ministers. However, Ministers made an order to disapply this part of the charity test.

Outcome:

The organisation continues to have charitable status.

Case 3: Ministerial control was limited

Summary:

A UK wide organisation applied for charitable status in Scotland. Its governing document gave UK Ministers a number of powers over the organisation. For instance, Ministers could direct the organisation to make reports and proposals in certain circumstances, and the organisation had to ask Ministers' consent to borrow or invest some of its funds. The organisation was funded by contributions from bodies which benefited from its activities, and its governing document gave those other bodies some influence in how the organisation was run.

Considerations:

Looking at the whole picture of how the organisation's governing document worked, we felt that the influence of these other bodies meant that Ministers' ability to control or direct the organisation's activities was limited.

Outcome:

The organisation passed the charity test, and we were able to give it charitable status.

Other information

[Who's in Charge: Control and Independence in Scottish Charities](#)

[ALEOs report](#)

[Charity Trustee Guidance](#)

Party political purposes

Summary

An organisation set up to be a political party or to advance a political party cannot become a charity. This does not stop charities campaigning to further their charitable purposes.

Full detail

Even if an organisation appears to have **charitable purposes** and provide **public benefit**, it cannot be a **charity** if:

- it is a political party, or
- one of its purposes is to advance a political party.

This does not stop charities from campaigning, lobbying or taking part in other political activity, as long as:

- this activity advances their charitable purposes
- the charity's **governing document** does not prohibit this kind of activity
- the activity is not advancing a particular political party
- the **charity trustees** are acting in the charity's interests, and with due care and diligence.

Campaigning, for example to change the law or the policy of public bodies, can be a charity's main activity as long as it is advancing its charitable purposes, and political campaigning does not become a purpose in itself.

Other information

[FAQs: charities and political campaigning](#)

Glossary

Terms	Explanation
Assets	This means everything a charity owns: money, equipment, property, including heritable property (such as land, buildings, and rights attached to it).
Beneficiaries	These are the people your charity is set up to help, those who benefit from what you do.
Charitable Purposes	These are the 16 charitable purposes set out in section 7(2) of the 2005 Act .
Charity	An organisation is not a charity in Scotland unless it is entered on the Scottish Charity Register .
Charity Test	<p>This is the test set out under the Charities and Trustee Investment (Scotland) Act 2005, which determines whether an organisation can be a charity.</p> <p>The charity test has two main elements:</p> <ol style="list-style-type: none"> 1. an organisation has to show that it has only charitable purposes and 2. that it provides public benefit in achieving those purposes.
Charity Trustee	'Charity trustees' are defined in the 2005 Act as people having the general control and management of the administration of a charity. Charity Trustees can also sometimes be known as committee members, directors or board members.
Consent	<p>The 2005 Act says that you must seek consent before making any of the changes listed below. You need to ask for our consent at least 6 weeks (42 days) before you plan to implement the proposed change.</p> <p>Changes that need our consent are:</p>

	<ul style="list-style-type: none"> • changing the name of the charity • winding up the charity • amending the objects or purposes of the charity • amalgamating the charity with another body • changing the charity's legal form • applying to the court to change purposes, amalgamate or wind-up.
Disbenefit	This is the opposite of benefit and is equivalent to detriment or harm.
Governing Document	A governing document (or constitution) is the document (or set of documents) that sets up an organisation and says what its purposes are. It will usually deal with other matters, including who will manage and control the organisation, what its powers are, what it can do with the organisation's money and other assets, and membership of the organisation. For more information, see our FAQs .
Legal Form	Charities can take a number of legal forms. The legal form is the structure or entity, which then becomes a charity. The most common legal forms for charities are: <ul style="list-style-type: none"> • Unincorporated associations • Companies • Scottish Charitable Incorporated Organisations (SCIO), and • Trusts.
Ministerial direction or control	This is where a governing document gives Scottish or UK Ministers the power to direct or otherwise control an organisations activities.
Private Benefit	This is where benefit is provided to members of the organisation or other individuals not as members of the public.
Property	By 'property' we mean all property and assets (money and other assets) belonging to a charity, including heritable property (such as land and buildings and rights attached to it).

Public Benefit	This is the way a charity makes a positive difference to the public through the activities it carries out when advancing its charitable purposes. This requirement is set out in Section 8 of the 2005 Act .
Remuneration	Remuneration in the 2005 Act means any payment or benefit in kind. The 2005 Act states that a charity trustee must not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) from a charity's funds unless certain conditions are met. For more information, see our Trustee Remuneration guide .
The 2005 Act	This means the Charities and Trustee Investment (Scotland) Act 2005 .
Scottish Charity Register	This means the register of charities kept by OSCR. For more information, see the Scottish Charity Register .
Scottish Charity Regulator	We are the independent regulator and registrar for over 23,500 Scottish charities, established by the 2005 Act. For more information, see About OSCR .
Trustees Annual Report	The Trustees Annual Report is the narrative information within the charity's accounts that supports the financial information. It must contain certain information about the charity including details of the governing document and the main activities the charity has undertaken and achievements in that financial year.
Undue Restriction	This is a restriction on who can access the benefit provided by a charity, which cannot be justified.
Wind up	To wind up or dissolve a charity means that the charity ceases to exist. To do this you get our consent first. For more information, see Making Changes to Your Charity .