

The public benefit requirement



**The Charity Commission for Northern Ireland's statutory
guidance on the public benefit requirement**

By law, charity trustees must have regard to this guidance

The Charity Commission for Northern Ireland is the regulator of charities in Northern Ireland, a non-departmental public body sponsored by the Department for Social Development.

Our vision

To deliver in partnership with other key stakeholders in the charitable sector “a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission’s effective delivery of its regulatory and advisory role”.

Further information about our aims and activities is available on our website www.charitycommissionni.org.uk

Equality

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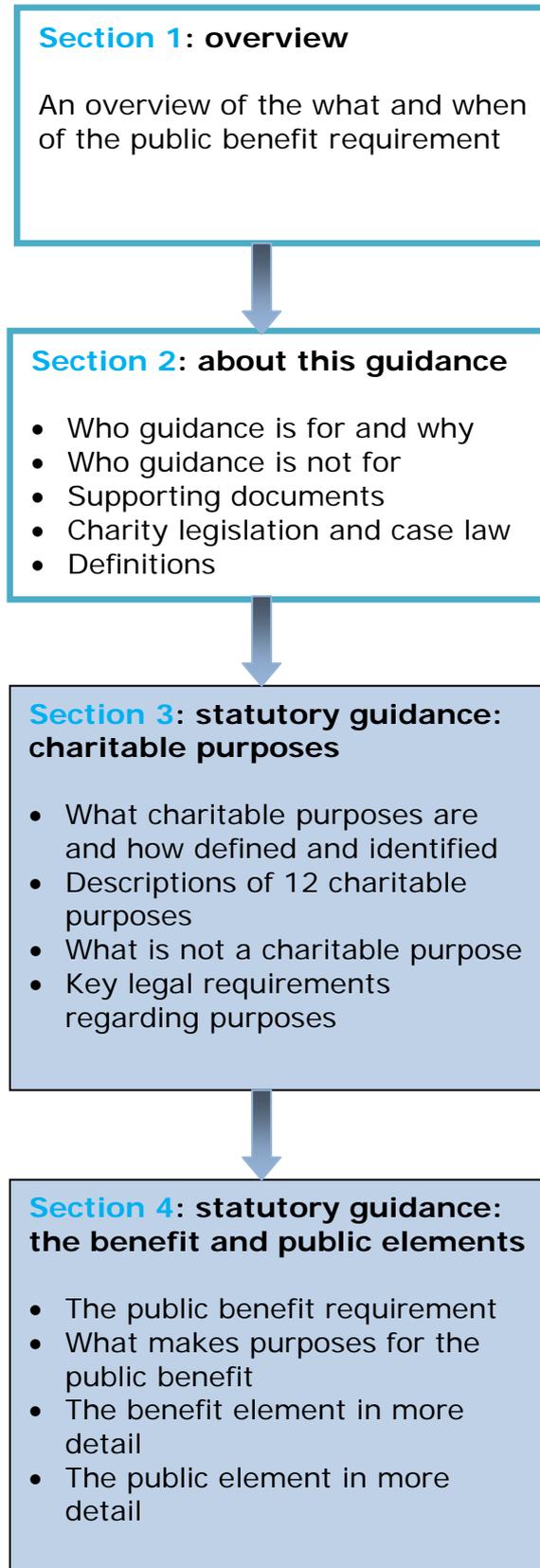
Online or in print

If you are viewing this guidance online, you will be able to navigate your way around by clicking on links either within the contents page, summary flow chart or text.

The Commission has produced a glossary which provides further information, definitions and descriptions of some key terms. The words in **bold green type** indicate words that are found in the separate [Public benefit glossary](#).

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Flow chart



Section 1: overview of the public benefit requirement guidance

1.1 What is the purpose of this guidance?

This statutory guidance specifically relates to the public benefit requirement as part of the definition of charity. The guidance is intended to promote awareness and understanding of the public benefit requirement amongst anyone connected to or involved with **charities** in Northern Ireland. Sections 1 and 2 of this document explain what the guidance is and how it should be used. Sections 3 and 4 constitute the statutory guidance itself.

The **Charities Act (Northern Ireland) 2008** requires the Charity Commission for Northern Ireland to issue guidance on the public benefit requirement.

As well as having a duty to produce this statutory guidance, the Commission recognises that guidance is needed because the law on public benefit:

1. has evolved over many years
2. is considered on a case by case basis and may vary according to the particular **charitable purposes**
3. is complex and is continuing to develop and change.

1.2 What is the public benefit requirement?

The public benefit requirement is defined in the Charities Act and states that **purposes** must be for the public benefit to be charitable. **Charity trustees** must know and be able to identify the purposes of their charity.

The Charities Act states that charity trustees must have regard to statutory guidance produced by the Commission when exercising powers or duties related to the guidance.

The Commission will always consider public benefit on a case-by-case basis. The trustees of well governed charities should not face any challenges in identifying the public benefit that their organisation seeks to provide through its charitable purposes.

1.3 What does it mean to have regard to this guidance?

Having regard to the public benefit requirement guidance means charity trustees must be able to show that they are aware of the guidance and that they have taken it into account in making a decision where the guidance is relevant. Trustees must have regard to sections 3 and 4 of this document.

1.4 When is the guidance relevant?

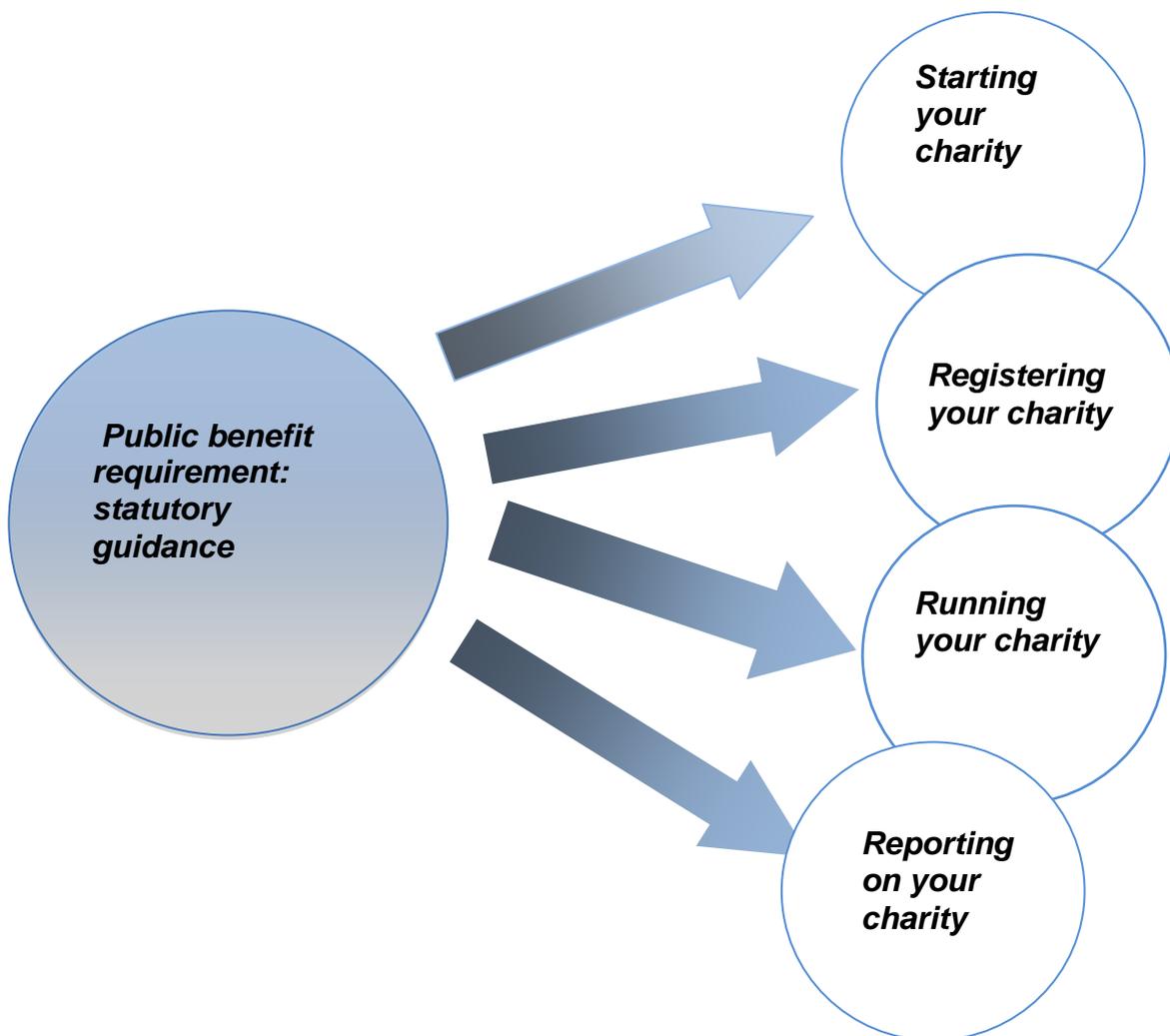
The Commission has identified four broad contexts where charity trustees must have regard to the Commission's *Public benefit requirement* guidance. The Commission will provide further supporting documents on these four contexts:

Starting your charity: which includes knowing what it means to have exclusively charitable purposes which are for the public benefit.

Registering as a charity in Northern Ireland: which includes demonstrating that your organisation has exclusively charitable purposes which are for the public benefit.

Running your charity: which includes the duty to carry out a charity's purposes for the public benefit.

Reporting on your charity: which includes reporting on how the trustees have carried out the charity's purposes for the public benefit.



Section 2: about this guidance

2.1 What is meant by statutory guidance?

Statutory guidance is guidance to which **charity trustees** must have regard when exercising any powers or duties to which the guidance is relevant (see contexts above). This is a legal requirement set out in the **Charities Act**. In addition to this statutory guidance, the Commission has produced supporting documents which provide further information on the 12 charitable purposes detailed in the Charities Act. Sections 3 and 4 of this document constitute the statutory guidance.

2.2 For whom is this guidance intended?

This guidance is for charity trustees, management committees, boards or anyone involved in the running and decision making within a charity, or those acting on behalf of a charity, for example a solicitor, accountant, agent or adviser.

This guidance applies to all **charities** which have **control and direction** over their governance and resources, whether they are:

- companies, trusts or associations
- small, medium or large
- branches
- employers of staff or staffed solely by volunteers.

Charity trustees and those that have responsibility for the affairs of charities must read and have regard to this guidance.

2.3 Why do charities need it?

To be a charity in Northern Ireland an organisation:

- must have **purposes** which fall under one of 12 descriptions of purposes listed in the Charities Act and
- the purposes must be for the public benefit.

Purposes mean what the charity is set up to achieve. This is different to '**activities**', which means what the charity does in order to carry out its purposes. A charity's purposes will normally be set out in a **governing document**.

This document is essential to all charities. It provides guidance on what the law says on public benefit in Northern Ireland and how the Commission takes account of and applies that law. Consider this guidance when:

- starting a charity
- applying to register for charitable status
- running your charity

- reporting annually on your activities in pursuing your purposes.

This statutory guidance will continue to evolve and develop over the coming years and as the law develops and is implemented.

2.4 To which organisations does this not apply?

Not every good cause is necessarily a charity. This guidance is not relevant if the organisation is not a charity, for example, if the organisation is:

- a **Community Amateur Sports Club (CASC)** registered with HMRC
- a **Community Interest Company**
- a political party or any organisation **established** for any **political purpose**
- a **commercial organisation**
- a non-charitable **social enterprise**
- a non-charitable **trading arm**
- a **co-operative society**.

2.5 Do charity trustees need legal advice to understand the guidance?

This guidance does not and could not set out the legal position in relation to every charity. If, having read this guidance, charity trustees are unsure about their legal obligations on public benefit, they may wish to seek legal or other independent advice. However, it is our intention that anyone should be able to understand the public benefit guidance, without needing to seek legal advice; the Commission has considered carefully the balance between ensuring legal accuracy and readability for charity trustees and members of the public.

In order to help charity trustees, the Commission uses examples throughout this statutory guidance and the supporting documents. These examples are mostly taken from case law, that is, where legal decisions have been made which may have an impact on similar organisations or situations in the future. The examples are taken from principles derived from case law or which fall from the description of **charitable purpose**.

The Commission hopes that as we begin to register and regulate charities in Northern Ireland, we will be able to introduce some case studies into the guidance based on real life Northern Ireland examples.

2.6 What are the supporting documents?

The Commission has produced a series of **supporting documents** relating to each of the 12 descriptions of charitable purposes listed in the Charities Act. These provide more detailed information on each of the descriptions of charitable purposes. Some of the charitable purposes have more information than others, this is because their definition may be more legally complex or

because the law has been tested in the courts and developed more in this area than others.

Charity trustees can choose which supporting document is relevant to them. For some charities, this may mean one piece of guidance, for other charities and umbrella bodies a number of the supporting documents may be relevant.

It is best practice that charity trustees read any supporting document that is likely to be relevant to their charity as this will help to increase their understanding of the statutory guidance.

2.7 Public benefit and case law

Public benefit has not been considered by the courts in relation to every purpose that is capable of being charitable. The supporting documents set out where the law has developed in relation to public benefit for each of the descriptions of purposes, giving relevant examples, where possible.

Some examples are drawn directly from decisions made by the courts. Where few or no decisions of the courts exist in relation to a particular charitable purpose, the Commission takes account of the principles from other decisions and applies them, where appropriate.

Where there is a decision of the courts which is binding in Northern Ireland, the Commission is legally obliged to follow it. Where there is persuasive case law in another jurisdiction that may inform our decision, the Commission may take that into account.

The Commission will look at each set of circumstances individually in making a determination on whether an organisation has purposes which are for the public benefit.

2.8 Charity legislation

References in this guidance document to the 'Charities Act' are to the **Charities Act (Northern Ireland) 2008** and the **Charities Act (Northern Ireland) 2013**.

2.9 Where to find definitions of key terms?

Definitions of key terms can be found in the separate glossary to this statutory guidance which can be accessed or downloaded from the Commission's website. When viewing this guidance online, click on any of the words in bold green type to go directly to the definition in the glossary.

Section 3: statutory guidance - charitable purposes

3.1 What are charitable purposes?

A charity is defined both by its **purposes** and by the public benefit which flows from those purposes. It is not possible to understand public benefit fully without being very clear about what the charity's purposes are.

According to the **Charities Act**, all the organisation's purposes **must**:

- fall under one or more of the list of 12 descriptions of charitable purposes in the Charities Act
and
- be for the public benefit.

In this guidance the term

- 'charitable purposes' means purposes falling within the 12 descriptions of purposes set out in the Charities Act which are for the public benefit,
and
- 'purposes' means those purposes particular to an organisation.

3.2 How are charitable purposes defined and identified?

3.2.1 What are purposes?

A charity's purposes set out what the charity seeks to achieve and are usually detailed at the beginning of its **governing document**, sometimes in the **objects** section.

It is important that the governing document fully states what the charity's purposes are so that they are clear to:

- the **charity trustees**
- the **beneficiaries** and supporters
- the general public.

To be a charity in Northern Ireland, organisations must have exclusively charitable purposes. This means that the purposes must all be charitable rather than some of the purposes being charitable and others not.

3.2.2 What are the descriptions of charitable purposes?

The Charities Act sets out 12 descriptions of purposes that relate to **charities** in Northern Ireland. An organisation's purposes must fit within one or more of the descriptions for it to be charitable. These are:

1. The prevention or relief of poverty
2. The advancement of education
3. The advancement of religion
4. The advancement of health or the saving of lives
5. The advancement of citizenship or community development
6. The advancement of the arts, culture, heritage or science
7. The advancement of amateur sport
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
9. The advancement of environmental protection or improvement
10. The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
11. The advancement of animal welfare
12. Any other charitable purposes.

For more detailed information on each of these descriptions, refer to the separate supporting documents relevant to the organisation's purposes.

A charity's purposes may fall under one or more of the 12 charitable purposes. There can be some overlap between different descriptions, so the Commission advises charity trustees to read about each of the descriptions in order to determine how the charity's purposes best fit under one or more of the headings.

It is possible to have organisations with opposing views on various issues that are each still charitable. It is not the Commission's role to make moral judgements one way or another.

3.2.3 When are purposes not charitable?

Charities must work towards the advancement of their purposes in everything they do. A charity must have exclusively charitable purposes. This means that it cannot have some charitable purposes and other non charitable purposes.

A purpose is not charitable if it:

- does not fit under one or more of the descriptions of purposes in the Charities Act, or
- is not for the public benefit, or

- is political; that is, to make a change in law or policy in a jurisdiction, or
- is unlawful.

3.2.4 Can a charity adopt the wording of the descriptions of charitable purposes?

A charity may wish to adopt the wording of one of the descriptions of purposes to describe its own purposes.

This may be sufficient, but a charity must not take this approach if none of the charitable purposes fully covers what it has been set up to achieve.

3.2.5 What are the key legal requirements with regard to purposes?

Charity trustees must:

- know and be able to identify the purposes of their charity
- work to advance and promote these purposes only
- be able to identify which description of charitable purposes in the Charities Act their own organisation's purposes best fit
- be able to confirm that their organisation's purposes are exclusively charitable.

Section 4: statutory guidance - the public and benefit elements

4.1 What is the public benefit requirement?

The **Charities Act** sets out a legal requirement that all **charities** have **purposes** that are for the public benefit.

These are the two elements of public benefit:

1. Benefit: This is about the benefit flowing from the charity's purposes. For a charity's purposes to satisfy the benefit element of public benefit, that benefit must have three key features, it must:

- flow from the charity's purposes
- be capable of being demonstrated
- be beneficial, not harmful.

2. Public: This is about who may benefit from the charity's purposes. For a charity's purposes to satisfy the public element, the benefit which may flow from those purposes must:

- be to the public or to a **section of the public**
- not provide a **private benefit** to individuals unless this benefit is **incidental**.

Each of these areas is explored in more detail in the relevant separate supporting documents for each of the 12 **charitable purposes** listed in the Charities Act, including, where applicable, the **poverty exception**. The detail in the separate supporting documents relevant to the organisation's purpose or purposes should provide some useful examples which may identify:

- the benefit which will flow from the charity's purposes and
- the section of the public the charity's purposes will benefit.

4.1.1 What makes a purpose for the public benefit?

For an organisation to be a charity, not only must all of its purposes fit within at least one of the descriptions of purposes, but all of its purposes must be for the public benefit. This means that each of the purposes must fulfil the criteria set out above for the two elements of public benefit to be satisfied.

In practice, this means that a charity must be able to show that its purposes:

1. can provide a benefit, and
2. this benefit is to the public.

The nature of the public benefit and the way it may be demonstrated will be different for each purpose and for each set of circumstances within that purpose.

For example, the nature of the benefit and the **beneficiaries** of a charity whose purposes are to conserve an area of protected woodland will be different from those of a charity whose purpose is to provide residential care for older people. The purposes of both charities may be for the public benefit, but what the benefit is and who can benefit are different.

Where the benefit is less clear or is of a controversial nature, **charity trustees** may need to show evidence of benefit, for example:

- the architectural or historical merit of a building that is to be preserved
- the artistic merit of an art collection
- the healing benefit of an alternative or complementary therapy.

4.2 What is the benefit element?

Benefit is the way in which an organisation's purposes are beneficial and the extent to which they are beneficial.

For a charity's purpose to satisfy the benefit element, the benefit must have three key features. Benefit must:

- flow from the charity's purposes
- be capable of being demonstrated
- be beneficial, not harmful.

4.2.1 Does the benefit flow from the charity's purpose?

The Commission will look at the benefit which flows from a charity's purposes when considering public benefit. Where a charity has more than one purpose, each of those purposes must meet the public benefit requirement.

It is therefore very important that charity trustees have a clear understanding of their charity's purposes and the benefit which flows from them.

There are different types of benefit that a charity may provide:

- direct benefit: this is the benefit beneficiaries may receive through the charity carrying out its purpose. For example, patients benefiting from attending a charitable hospital.
- indirect benefit: this is benefit that is received in ways other than through the charity carrying out its main purpose. For example, a charity which assists nurses through funding or accommodation will indirectly benefit the patients who are cared for by those nurses.
- wider benefit: this is benefit to the community at large which flows from a charity's purposes. For example, the benefit to society from having a healthier population.

The Commission will consider a mix of these types of benefit flowing from an organisation's purposes on a case-by-case basis when assessing whether those purposes are for the public benefit.

Examples

Different sorts of benefit that might flow from charitable purposes include:

- in the case of the advancement of health or saving of lives, individuals becoming well as a result of receiving medical care
- in the case of the advancement of education, enhanced knowledge and understanding in young people through receiving an education
- in the case of the prevention or relief of poverty, relief of the poor through the provision of grants, clothing or food
- in the case of the advancement of the arts, culture, heritage or science, enhanced public understanding of history through access being granted to a historic building or an important landmark being preserved for the enjoyment of future generations
- in the cases of the advancement of citizenship or community development and the advancement of amateur sport, improved community life through sports and recreation facilities being maintained so that they can be used by a local community
- in the case of the advancement of animal welfare, the promotion of the capacity of people for compassion by caring for injured or abandoned animals
- in the case of the advancement of religion, the adoption of a moral framework which encourages people to be good citizens.

A charity cannot provide a private benefit unless it is an incidental benefit. Sometimes there may also be incidental benefits that may result from a charity carrying out its purposes. For example, medical staff who will be employed by a charity set up to provide health centres in deprived areas may enhance their employment prospects because of the experience they gain. This is a private benefit to those individuals, which is incidental to, and a consequence of, the way in which the charity's purposes are carried

out for the public benefit, but it is not part of the charity's purposes to provide this benefit to those individuals. While this may be worthwhile, it is not a benefit to the public which flows from the charity's purposes and the Commission does not take it into account in assessing public benefit.

4.2.3 The benefits must be capable of being demonstrated

Benefits are demonstrated by being:

- recognisable, or
- identifiable, or
- definable, or
- capable of description.

Some types of benefit are easier to identify than others. For example, it is easy to identify the benefit associated in carrying out a purpose to relieve poverty where the objective is to improve a person or group's financial circumstances.

In the case of an organisation with the purpose of conserving a specific piece of land, for example, the Commission may require evidence that the land is worthy of conservation.

In some cases the benefit is more difficult to evidence as it may not be capable of being physically defined by measurement or quantifiable but must still be capable of being demonstrated, for example:

- the sense of well-being from appreciating a beautiful landscape
- a sense of inspiration from appreciating the performing arts
- improved behaviour as a result of being involved in a public act of worship.

4.2.4 Is the purpose beneficial, not harmful?

Whilst benefit may flow from purposes if they are carried out, there may also be some **harm**. The existence of harm does not necessarily mean that the purpose is not charitable. However, any such harm must not outweigh the benefit.

An organisation cannot be a charity where there is clear evidence that, if its purposes are carried out, there is likely to be more harm than benefit.

For example, in a case concerning an organisation, the purpose of which was to end the vivisection of animals, it was held that any benefit to the public was outweighed by the harm to medical science, and therefore the health of the public, that would be caused if the organisation achieved its aims.

4.3 What is the public element?

For a charity's purposes to satisfy the public element it must know who the intended beneficiaries are and how they might benefit. The benefit which may flow from the charity's purposes must:

- be to the public or to a section of the public
- not provide a private benefit to individuals unless this benefit is incidental.

All the purposes must meet the public element of public benefit, however, there are limited exceptions for charities whose purpose is to relieve poverty (the poverty exception). This is explained in the supporting documents.

4.3.1 Who are the charity's intended beneficiaries?

The charity's intended beneficiaries are the people who can benefit from its charitable purposes. Anyone who could benefit is a potential beneficiary.

When deciding who potential beneficiaries are and who they should be, charity trustees can include members of future generations, for example, promoting sustainability of the planet for future generations. However, this must not come completely at the expense of people today.

4.3.2 What is a section of the public?

This may differ from charity to charity, depending on the relevant charitable purpose. For some purposes, the benefit may be to the public generally. For others, a section of the public will be sufficient. For example:

- a charity with the purpose of providing a community centre for the benefit of the inhabitants of a town
- a charity with the purpose of medical research into a particular disease.

A charity cannot have the purpose of benefiting a named individual or individuals. However, a charity can be named after a specific individual, for example, a founder or beneficiary. In general, a charity cannot have the purpose of benefiting people by reference to their relationship to an individual or organisation, even if there are many such people, although this is subject to the poverty exception. For example, an organisation which had the purpose of making grants for the education of the children of employees of a particular company would not be a charity. The benefit in such a case is being conferred on a group of private individuals not a section of the public.

A **section of the public** includes, but is not limited to, people who:

- are connected by a particular charitable need or social circumstance
- share a profession
- share a geographical area
- share a common characteristic or disadvantage, for example:
 - children and young people
 - elderly people
 - people with a disability
 - people with a particular disease or medical condition
 - people in poverty.

There is no set minimum number of people who have to benefit from a charity's purposes in order for it to be for the public benefit. The actual number of people who benefit at any one time can actually be quite small, as long as anyone who could qualify for benefit is eligible. For example:

- a charity set up to support sufferers of a very rare illness may only benefit a few people, however, this is fine provided that anyone who suffers from the illness can potentially benefit.

4.3.3 Charging

Case law has established that a charity's purposes cannot exclude the poor. Charities can, however, charge a fee for the services or facilities they offer, although it would be unusual for this to be set out in its purposes. Charities usually charge a fee because:

- the services or facilities provided are expensive to run
- there is a need to charge in order to operate, for example, a charity may hire out its facilities on occasion.

4.3.4 What does incidental benefit mean?

For a charity's purposes to satisfy the public element, benefit to people who are not the intended beneficiaries must be no more than incidental. This is because a charity's purposes must be for public, rather than for private, benefit.

To be properly regarded as an incidental benefit the benefit should normally be significantly less valuable than the main charitable benefit provided to the beneficiaries.

Benefit to people who are not the charity's intended beneficiaries is incidental when they:

- contribute towards achieving the charity's purposes and/or
- are a necessary result or by-product of carrying out the purposes.

Examples include:

- a sense of well-being to those who would work for the charity, such as volunteers
- an increase in the value of neighbouring property if a charity were to carry out its purpose of regenerating a particular area.

4.3.5 What about equality legislation?

All organisations, including charities, are subject to equality legislation. The main equality laws in Northern Ireland, as stated by the Equality Commission, include the following:

- [Equal Pay Act \(Northern Ireland\) 1970](#) (as amended)
- [Sex Discrimination \(Northern Ireland\) Order 1976](#) (as amended)
- [Disability Discrimination Act 1995](#) (as amended)
- [Race Relations \(Northern Ireland\) Order 1997](#) (as amended)
- [Fair Employment and Treatment \(Northern Ireland\) Order 1998](#) (as amended)
- [Equality \(Disability, etc.\) \(Northern Ireland\) Order 2000](#)
- [Employment Equality \(Sexual Orientation\) Regulations \(Northern Ireland\) 2003](#)
- [Special Educational Needs and Disability \(Northern Ireland\) Order 2005](#)
- [Disability Discrimination \(Northern Ireland\) Order 2006](#).

The Northern Ireland Act 1998, section 75 places an obligation on public authorities, some of whom are charities, to have due regard to the need to promote equality of opportunity between people based on the following nine characteristics:

- age
- having or not having a disability
- gender
- marital status
- religion
- political opinion
- ethnicity
- sexual orientation
- having or not having dependents.

In addition, the Northern Ireland Act 1998, section 76, makes it unlawful for public authorities, some of whom are charities, to discriminate against people on the ground of religious belief or political opinion.

The purposes of public bodies or some bodies wholly funded by public bodies must not discriminate on the above grounds if they are charities

unless there is an exemption/exception under equality law for their particular purposes.

4.3.6 Exceptions for charities

There may be some exceptions to these pieces of legislation for charities, for example, if the charity's purpose is to tackle a particular disadvantage faced by people who share one of these characteristics. Charity trustees will need to refer to the relevant legislation. The Commission will produce separate equality guidance in consultation with the Equality Commission.

Supporting documents

The prevention or relief of poverty supporting document PBSD01

The advancement of education supporting document PBSD02

The advancement of religion supporting document PBSD03

The advancement of health or the saving of lives supporting document PBSD04

The advancement of citizenship or community development supporting document PBSD05

The advancement of the arts, culture, heritage or science supporting document PBSD06

The advancement of amateur sport supporting document PBSD07

The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity supporting document PBSD08

The advancement of environmental protection or improvement supporting document PBSD09

The relief of those in need supporting document PBSD10

The advancement of animal welfare supporting document PBSD11

Any other purposes supporting document PBSD12

Public benefit glossary PBG

Frequently asked questions (FAQs)

Useful contacts

Below is a list of contacts which charities may find useful.

Charity Commission for England and Wales (CCEW) www.charity-commission.gov.uk
Telephone: 0845 300 0218

Companies House www.companieshouse.gov.uk
Companies House
Second Floor
The Linenhall
32-38 Linenhall Street
Belfast
Northern Ireland
BT2 8BG
Telephone: 0303 1234 500

Department of Enterprise, Trade and Investment www.nidirect.gov.uk
Netherleigh House
Massey Avenue
Belfast
BT4 2JP
Telephone 028 9052 9900

Department for Social Development Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB
Telephone 028 9082 9000

Equality Commission for Northern Ireland www.equalityni.org
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP
Telephone: 028 9050 0600

**HM Revenue and
Customs (HMRC)**

www.hmrc.gov.uk/charities

HM Revenue & Customs
Charities Correspondence S0708
PO Box 205
Bootle
L69 9AZ
Telephone: 0845 302 0203

**Human Rights
Commission for
Northern Ireland**

www.nihrc.org

Temple Court
39 North Street
Belfast
BT1 1NA
Telephone: 028 9024 7844

**Institute of
Fundraising**

www.institute-of-fundraising.org.uk/groups/national-northern-ireland/

northernireland@institute-of-fundraising.org.uk

**Northern Ireland
Council for Voluntary
Action**

www.nicva.org

61 Duncairn Gardens
Belfast
BT15 2GB
Telephone: 028 9087 7777

Further information on our activities is available from:

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BT66 6NQ**



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