



CHARITY COMMISSION
FOR ENGLAND AND WALES

GUIDANCE

What makes a 'charity'



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Part 1: About this guide

In this guide where you see '(legal requirement)' it means the paragraph contains a legal or regulatory requirement.

This guide outlines what the law in England and Wales says a charity is.

This guide is relevant to you if you are thinking of setting up or registering a charity in England and Wales.

It is also relevant to you if you are a trustee of an existing charity wishing to change your charity's purpose.

What the law says a charity is

To be a charity in England and Wales, your organisation must satisfy the definition of a charity in the Charities Act (legal requirement).

The Charities Act says that a 'charity' is an institution which

- is established for charitable purposes only (see part 2 of this guide) and
- is subject to the control of the High Court's charity law jurisdiction (see part 5 of this guide)

'Must' and 'should': definition

The word 'must' is used where there is a specific legal or regulatory requirement that you must comply with. 'Should' is used for minimum good practice guidance you should follow unless there's a good reason not to.

The Commission also offers less formal advice and recommendations which trustees may find helpful in the management of their charity.

Part 2: About charitable purposes

Purposes

Your organisation's 'purpose' is what it is set up to achieve.

A charity's purpose is usually set out in the 'objects clause' of its governing document (the legal document that creates a charity and says how it should be run).

To be a charity your organisation must have charitable purposes only. It cannot have some purposes that are charitable and some that are not (legal requirement).

Charitable purposes

To be a 'charitable purpose' (as defined in the Charities Act) it must (legal requirement):

- fall within the descriptions of purposes in the Charities Act (see part 3 of this guide) and
- be for the public benefit - the 'public benefit requirement' (see part 4 of this guide)

To be charitable, a purpose must satisfy both of these criteria. The purpose must be certain so that, if necessary, it could be enforced by the court (legal requirement).

A purpose might not be certain:

- because the wording used to express the purpose in the governing document is unclear or
- because the scope and meaning of that purpose is not clear

If a purpose itself lacks certainty it cannot be charitable because it will not be clear that it:

- falls within one or more of the descriptions of purposes or
- is for the public benefit

Purposes that cannot be charitable purposes

Your organisation's purpose cannot be a charitable purpose if it:

- does not fall within the descriptions of purposes and is not for the public benefit, including if it is:
 - a political purpose - see Annex 2
 - unlawful or against public policy
 - intended to serve a non-charitable purpose

How the law decides what is a charitable purpose

For further guidance on how the law decides what a charitable purpose is, see Annex 3.

Charities carrying out purposes internationally

A charity cannot have purposes that are illegal under the law of England and Wales (legal requirement).

The law of England and Wales is not universal and the laws of other countries will differ. This means some charities that are registered in England and Wales might have purposes that are not legally valid in another country.

The general position is that if a purpose would be charitable if it were carried out in England and Wales, it will also be considered charitable if a charity registered in England and Wales intends to carry out that purpose in other countries.

Similarly, if a purpose is considered to be of detriment or harm if carried out by a charity in England and Wales, it will also be considered to be of detriment or harm if it is to be carried out in other countries by a charity registered in England and Wales.

Part 3: About the 'descriptions of purposes'

The Charities Act lists 13 'descriptions of purposes'.

The 'descriptions of purposes' is a list of broad headings that a purpose must fall under to be a charitable purpose (legal requirement).

Each description serves as a general heading under which a range of different charitable purposes fall.

The list of descriptions of purposes, taken as a whole with the range of purposes that fall under each description, covers everything recognised, or which may be recognised, as charitable in England and Wales.

The 13 descriptions of purposes

The 13 descriptions of purposes listed in the Charities Act are:

- (a) the prevention or relief of poverty
- (b) the advancement of education
- (c) the advancement of religion
- (d) the advancement of health or the saving of lives
- (e) the advancement of citizenship or community development
- (f) the advancement of the arts, culture, heritage or science
- (g) the advancement of amateur sport
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- (i) the advancement of environmental protection or improvement
- (j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- (k) the advancement of animal welfare
- (l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services
- (m) any other purposes currently recognised as charitable or which can be recognised as charitable by analogy to, or within the spirit of, purposes falling within (a) to (l) or any other purpose recognised as charitable under the law of England and Wales

The Charities Act does not define what each of these descriptions of purposes mean. However, it does provide some definitions, or partial definitions, for some of the descriptions. These are set out in Annex 4.

Where any of the terms used in the descriptions of purposes has a particular meaning in charity law in England and Wales, the term must be taken as having the same meaning where it appears in the descriptions of purposes (legal requirement).

For more on what each of these descriptions mean, and the sorts of purposes that fall within them, see:

- **Guidance on charitable purposes**

Using the wording of the descriptions as charitable purposes

It may be possible for your charity to adopt as its purpose the wording used in one of the descriptions of purposes where that wording makes it clear:

- that what is being advanced is clearly a purpose that is recognised as being charitable for the public benefit
- how that purpose is to be achieved (such as 'the relief of poverty by')

In some cases, the wording used in the descriptions of purposes can have more than one meaning, and not all of those meanings are purposes that the law has recognised as charitable or as capable of being for the public benefit.

Where this is the case the Commission will let you know whether that wording can be used as the charity's purpose and whether it needs to be made clearer.

Deciding whether your purpose 'falls within' the list of descriptions of purposes

The Commission decides whether your purpose 'falls within' one of the descriptions of purposes by looking at:

- whether your purpose is something that the courts or the Charity Commission recognise as falling within:
 - relevant case law or principles derived from relevant case law
 - any definition of the description that appears in the Charities Act

New and novel purposes

Sometimes it is not obvious whether a purpose does or does not fall within the descriptions of purposes, for example where a purpose may be new or novel.

We will let you know as appropriate if this is an issue with your organisation's purpose.

Part 4: About 'the public benefit requirement'

The 'public benefit requirement' is the requirement in the Charities Act that, to be a 'charitable purpose', a purpose must be 'for the public benefit' (legal requirement).

There are 2 aspects of public benefit:

- the 'benefit aspect'
- the 'public aspect'

The 'benefit aspect'

The 'benefit aspect' of public benefit is about whether the purpose is beneficial.

To satisfy the 'benefit aspect' of public benefit (legal requirement):

- a purpose must be beneficial
- any detriment or harm that results from the purpose must not outweigh the benefit

The 'public aspect'

The 'public aspect' of public benefit is about who the purpose benefits.

To satisfy the 'public aspect' of public benefit the purpose must (legal requirement):

- benefit the public in general, or a sufficient section of the public
- not give rise to more than incidental personal benefit

Guidance on the public benefit requirement

In general, for a purpose to be 'for the public benefit' it must satisfy both the 'benefit' and 'public' aspects (legal requirement).

However, if the purpose is to relieve or prevent poverty different rules apply.

For guidance on the public benefit requirement (including the different rules for poverty charities) see:

- **Public benefit: the public benefit requirement** (PB1)

Part 5: The High Court's charity law jurisdiction

To be a charity your organisation must be subject to the High Courts' charity law jurisdiction (legal requirement).

That means that the court must have the power to make decisions about the administration and purposes of your organisation as a charity (legal requirement).

Your organisation cannot be a charity in England and Wales if it is subject to another country's jurisdiction, including Scotland, Northern Ireland, the Isle of Man or the Channel Islands.

Where your organisation's governing document does not make it clear that it falls within the High Court's charity law jurisdiction, the Commission will let you know.

The following factors can indicate that your organisation falls within the High Court's charity law jurisdiction:

- your governing document adopts the law of England and Wales to govern it
- most of your trustees live in England and Wales
- most of your organisation's property is in England and Wales
- your organisation's centre of administration is in England and Wales

Independent of outside control

To be a charity, an organisation must be independent of outside control in a way that would prevent it being subject to the control of the High Court (legal requirement).

Part 6: Further information

This part provides links to other guidance which you may find of interest in relation to this guide.

The following are included in the Commission's set of public benefit guides:

- **Public benefit: the public benefit requirement** (PB1) (legal requirement)
This guide explains the legal requirement that a charity's purpose must be for the public benefit. This is known as the 'public benefit requirement'.
- **Public benefit: running a charity** (PB2) (legal requirement)
This guide explains public benefit in the context of running a charity.
- **Public benefit: reporting** (PB3) (legal requirement)
This guide explains the trustees' duty to report in their trustees' annual report on how they have carried out their charity's purposes for the public benefit.

The following are not included in the Commission's set of public benefit guides:

- **Public benefit: an overview**
This guide gives an overview of the Charity Commission's public benefit guidance. It explains:
 - how understanding public benefit will help a charity's trustees
 - the trustees' duty to 'have regard' to the Commission's public benefit guidance
 - some key points to know about the law relating to public benefit
- **Analysis of the law relating to public benefit**
This analysis of the law may be of interest to charity trustees who wish to know more about the legal basis of the Commission's guidance.
- **Start up a charity**
General guidance on setting up and registering a new charity.
- **Speaking out: guidance on campaigning and political activity by charities** (CC9) (legal requirement)
This publication gives guidance on the legal and regulatory framework for charities wishing to engage in campaigning and political activity.

Annex 1: Technical terms used in this guidance

The following terms are used in this guide, and should be understood as having the specific meanings given:

The Charities Act: the Charities Act 2011.

Charity trustees: the people who serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members. Charity trustees are responsible for the general control and management of the administration of a charity.

Governing document: a legal document setting out a charity's purposes and, usually, how it is to be administered. It may be a trust deed, constitution, articles of association, will, conveyance, Royal Charter, scheme of the Charity Commission, or other formal document.

High Court: the principal civil court of unlimited civil jurisdiction in England and Wales. It comprises 3 divisions: Queen's Bench, Chancery, and the Family Division.

Objects: A charity's 'objects' are a statement of its purposes. Usually these are found in the 'objects clause' of a charity's governing document. However, not all charities have a governing document with an objects clause.

Usually a charity's objects clause means the same as its purposes, but sometimes they are slightly different, such as when:

- the objects clause does not adequately or fully express the organisation's purposes
- the clause contains more than just the objects, such as powers

Public benefit requirement: the legal requirement that, to be a charity, an organisation's purposes must each be for the public benefit (legal requirement).

Purpose(s) and charitable purpose(s): the Commission uses the term '**purpose(s)**' to mean the purpose(s) of an individual organisation. A charity's purpose sets out what it is set up to achieve.

To be a '**charitable purpose**' a purpose must fall within one of the descriptions of purposes in the Charities Act and be for the public benefit. This has to be demonstrated in each case (legal requirement).

The courts: the Commission uses this term to mean, collectively, the Tribunal, the Upper Tribunal and the courts.

The Tribunal: the First-tier Tribunal (Charity) is the first level of appeal against the decisions of the Charity Commission set out in Schedule 6 of the Charities Act.

The Upper Tribunal: The Upper Tribunal (Tax and Chancery Chamber) is the second level of appeal against decisions of the Commission set out in Schedule 6 of the Charities Act.

Annex 2: About political purposes

A purpose that is 'political' cannot be a charitable purpose

In charity law, a 'political purpose' cannot be a charitable purpose. That means that an organisation cannot be a charity if it has a 'political purpose' (legal requirement).

However, a charity can carry out 'political activity' if it facilitates or supports the delivery of its charitable purposes.

It may also carry out non-political campaigning activities if this clearly is a means of furthering its charitable purposes.

For more information on this see:

- **Speaking out: guidance on campaigning and political activity by charities (CC9)**

What makes a purpose 'political'

In charity law, a 'political purpose' is not simply a purpose that is concerned with party politics.

When the Commission uses the term 'political purpose' it means what charity law considers to be a 'political purpose'. That means any purpose, whether in this country or overseas, that is aimed at:

- furthering the interests of a particular political party
- securing or opposing any change in the law, whether in the UK or overseas
- securing or opposing a change in the policy or decisions of central government or local authorities or other public bodies, whether in the UK or overseas

Some organisations seeking to register as charities do not consider themselves to be 'political' organisations, but they may have a purpose which charity law considers 'political'.

Deciding whether an organisation's purpose is 'political'

The process for deciding whether an organisation has a political purpose is no different from the process generally used to decide whether any organisation does or does not have charitable purposes.

The answer lies in deciding:

- what an organisation's purposes are
- the reason why the political activity is being carried out

It is not simply a case of assessing **how much** political activity the organisation undertakes.

We need to consider a range of features when deciding whether or not an organisation is carrying out political activity to further a charitable purpose, or has a political purpose.

We will consider this where the political activity that an organisation carries out is:

- integral to the organisation's work
- at least part of the reason for the organisation's existence
- a 'freestanding' purpose, an end in itself, with no direct and immediate connection with the work of the organisation in carrying out its charitable purposes
- the sole, or continuing, activity of the organisation

We will let you know where there is an issue about whether your organisation has a political purpose.

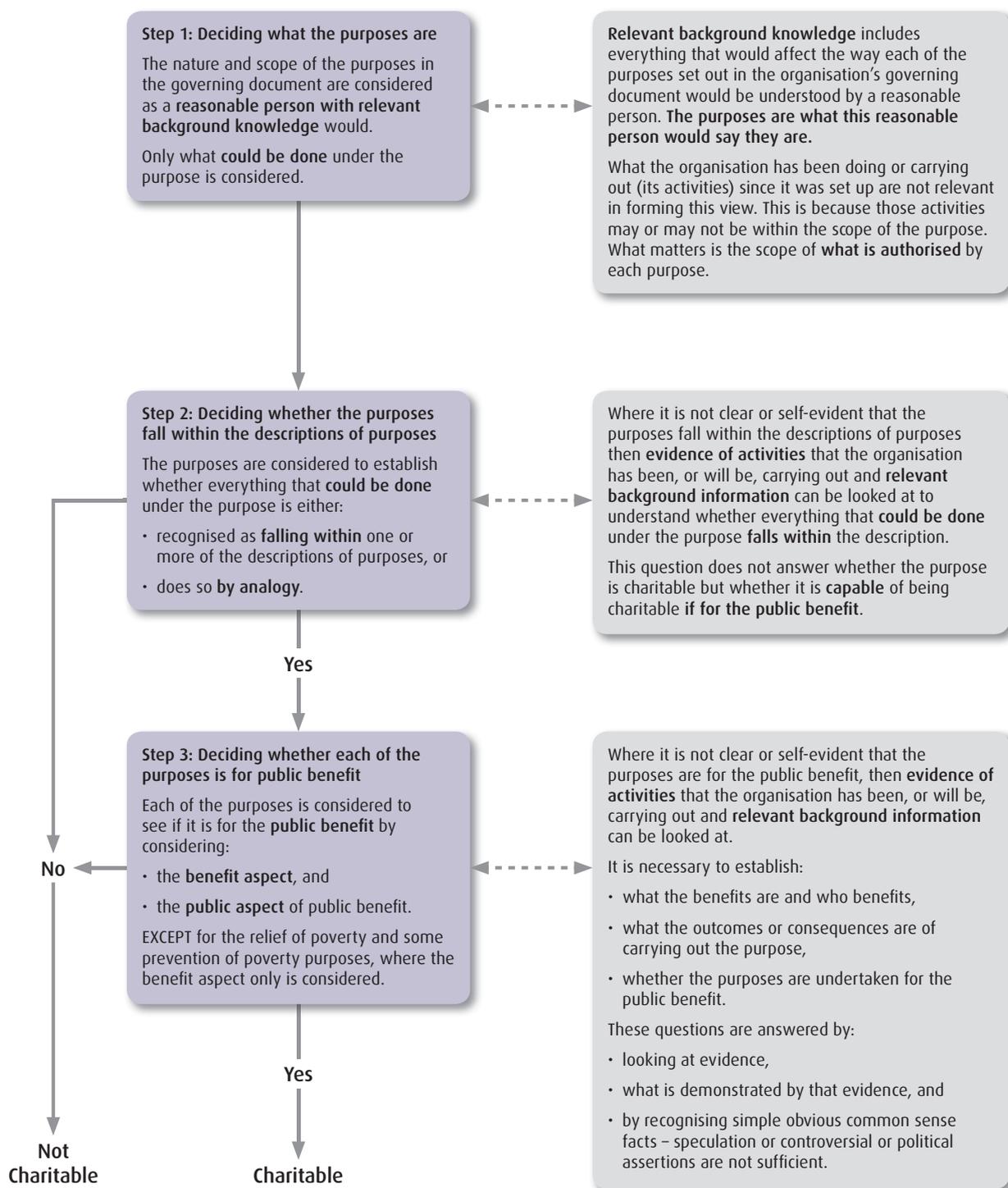
Why 'political purposes' cannot be charitable purposes

A 'charitable purpose' must be 'for the public benefit' (legal requirement).

The courts have taken the view that they are not in a position to judge whether or not a 'political purpose' is for the public benefit (and therefore whether or not it is charitable) because:

- the courts have no means of judging whether a proposed change in the law, or the policies of a political party, or a policy or decision of government, local authorities or other public bodies, will or will not be for the public benefit
- it is for Parliament, not the courts, to decide matters of public policy and changes in the law
- in the case of a purpose to change the law or policy overseas, the courts should not prejudice relations between the UK and foreign states by taking a view about whether their laws or policies should be changed or retained

Annex 3: How the law decides what is a charitable purpose



Annex 4: Definitions in the Charities Act

Part 1

Meaning of “charity” and “charitable purpose”

CHAPTER 1

General

3 (1)

(m) any other purposes -

(i) that are not within paragraphs (a) to (l) but are recognised as charitable purposes by virtue of section 5 (recreational and similar trusts, etc.) or under the old law,

(ii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or sub-paragraph (i), or

(iii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in England and Wales, as falling within sub-paragraph (ii) or this sub-paragraph.

3 (2) In subsection (1)-

(a) in paragraph (c), “religion” includes-

(i) a religion which involves belief in more than one god, and

(ii) a religion which does not involve belief in a god,

(b) in paragraph (d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering,

(c) paragraph (e) includes-

(i) rural or urban regeneration, and

(ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,

(d) in paragraph (g), “sport” means sports or games which promote health by involving physical or mental skill or exertion,

(e) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph, and

(f) in paragraph (l), “fire and rescue services” means services provided by fire and rescue authorities under Part 2 of the Fire and Rescue Services Act 2004.

(3) Where any of the terms used in any of paragraphs (a) to (l) of subsection (1), or in subsection (2), has a particular meaning under the law relating to charities in England and Wales, the term is to be taken as having the same meaning where it appears in that provision.

(4) In subsection (1)(m)(i), “the old law” means the law relating to charities in England and Wales as in force immediately before 1 April 2008.