

Public Benefit and the Advancement of Religion: Summary of Consultation Responses

About this summary

This document summarises the feedback received by the Charity Commission in response to its consultation on draft supplementary guidance on *Public Benefit and the Advancement of Religion*.

The draft guidance has now been revised and published under the title *The Advancement of Religion for the Public Benefit*. This document explains how we have responded to the consultation comments, and signposts relevant sections in the published guidance.

Background information

The Charity Commission is established by law as the independent regulator and registrar of charities in England and Wales.

To be recognised in law as a charity, an organisation must have charitable purposes which are for the public benefit. This is known as the 'public benefit requirement'. Although all charities already have to meet this requirement, the Charities Act 2006 highlights it by explicitly including public benefit in the definition of a charitable purpose. It retains the current law on public benefit but creates a level playing field by requiring all charities to demonstrate, explicitly, that their purposes are for the public benefit; previously the law presumed this to be the case for charities which advance education or religion or relieve poverty.

The Act does not contain any new definition of public benefit or suggest how charities should meet that requirement. It does give the Charity Commission the new objective of promoting awareness and understanding of the operation of the public benefit requirement, and requires the Commission to issue, and consult on, guidance on public benefit to which charity trustees are required to have regard when running their charity.

In January 2008 the Commission published its general guidance on public benefit, *Charities and Public Benefit*, following a four-month public consultation on draft guidance, which generated nearly 1,000 responses. Following publication of that guidance, the Commission launched a series of consultations on draft supplementary guidance on the public benefit of those charities most directly affected by the changes in the Act – that is charities established for the prevention and relief of poverty, the advancement of education, the advancement of religion and also fee-charging charities, which were highlighted during debates on the Charities Bill.

The consultation process

On 29 February 2008 we published draft supplementary guidance on *Public Benefit and the Advancement of Religion* for consultation. The consultation period was 16-weeks, ending on 30 June.

We sought to raise awareness of the consultation in a range of ways including: publication on our website; direct mailings by post and email; routine contact with charities and their representative organisations; a press release and media work; provision of speakers at a number of external events; a small external discussion group and one-to-one engagement meetings with interested charities and others.

We have engaged with numerous MPs and peers to raise their awareness of our approach to public benefit, including our consultations on draft supplementary public benefit guidance, through a series of events as well as written briefings, individual meetings and appearing before Parliament's Public Administration Select Committee.

Responses to the consultation on *Public Benefit and the Advancement of Religion*

We received 263 responses in total.

All the responses we received have been recorded, analysed and taken into consideration. We are grateful to everyone who took the time to respond.

In view of the number of responses we received, and the detail and complexity of many of them, this document summarises the key themes and issues that emerged from our analysis of the responses, rather than summarising what each response contained.

Anyone who wishes to see a full list of responses, or copies of individual responses, should contact Charity Commission Direct on 0845 300 0218.

General comments about the draft supplementary guidance

- Overall, general comments on the draft guidance were positive, with responders making complimentary comments about its clarity, helpfulness and style.
- However, many responders also said that the guidance would benefit from being simplified and shortened.

Actions taken:

We have simplified and shortened the guidance, whilst retaining all the key elements.

For example, we have moved some of the more detailed examples or explanations, into annexes.

We have also re-structured the sections on public benefit around the key questions for charity trustees set out in section G8 of *Charities and Public Benefit*. This has the advantage of retaining the links to the principles of public benefit whilst allowing greater freedom when drafting the guidance to focus on the particular issues that are relevant to charities covered by the supplementary guidance.

Signpost - See section D and E and Annexes A - C

- Particular issues on the overall guidance raised by some responders were:
 - concern about the amount of guidance on public benefit responders perceived that charity trustees would have to have regard to;
 - questioning of whether our supplementary guidance properly forms part of the Commission's statutory guidance on public benefit to which charity trustees must have regard;
 - a call for even greater clarity about which aspects of the draft guidance represent a legal requirement and those aspects which are best practice advice.

Actions taken:

Although all of the guidance contained in *The Advancement of Religion for the Public Benefit* is of relevance for charities whose aims include advancing religion, not all of the material in that guidance is statutory guidance on public benefit.

We have therefore clearly identified which sections of the guidance are supplementary public benefit guidance to which trustees of charities whose aims include advancing religion must have regard.

In addition, we use the term ‘must’ when referring to a specific legal or regulatory requirement and we indicate throughout the guidance which sections contain a legal or regulatory requirement. Those sections are marked with the symbol **L**. We use the term ‘should’ when referring to items we regard as minimum good practice.

Signpost – Sections D, E and F are supplementary public benefit guidance.

- A few responders disliked our use of the term ‘aims’ when referring to an individual charity’s purposes, although they recognised that this term is defined in our guidance as meaning a charity’s individual purposes.

Actions taken:

We have continued to use the term ‘aims’ when referring to an individual charity’s purposes, as we think it is important to be able to distinguish clearly in the guidance between an individual organisation’s purposes and the descriptions of purposes in the Charities Act 2006. We have also clarified our definitions of the terms ‘purposes’ and ‘charitable purposes’.

Signpost – See section B6 for definitions of the terms ‘aims’, ‘purposes’ and ‘charitable purposes’.

Comments about our draft supplementary guidance on public benefit and the advancement of religion

- There were a variety of comments about how we defined what is a religion in our draft supplementary guidance. Although some alternative definitions were suggested or preferred by some, most responders agreed with the characteristics of a religion outlined in our draft guidance. A number of responders were more concerned with our giving reassurance that particular religions are included within the definition (than with the definition itself) and confirmation that the terminology used in the definition does not have to be used by charities advancing religion when describing or referring to their beliefs or practices (such as using the term ‘God’ rather than ‘supreme being’).

Actions taken:

Our guidance sets out the characteristics of a religion for the purposes of charity law.

It clarifies that where we (or the Charity Tribunal or the Courts) have recognised that a particular religion meets the charity law definition of a religion, and has beliefs, tenets and practices that are capable of meeting the public benefit requirement, it will not be necessary for each new organisation that advances that religion to show that it meets that definition. However, it also explains that each individual organisation will

itself still have to show that its own aims, and what it is doing to carry out those aims, will be for the public benefit.

Our guidance also makes it clear that, whilst a charity advancing religion must be able to show that the religion meets the characteristics of a religion for the purposes of charity law, it does not have to use the terminology used in the guidance when describing or referring to the religion's beliefs and practices.

Signpost – Guidance on these points can be found in sections C2, G3 and Annex A.

- Many responders wished to see more positive statements in our draft guidance about the inherently beneficial nature of religion (akin to what we have said about the generally accepted benefits of education).

Actions taken:

Whilst there is no question over the public benefit of having an educated population, the benefits of religion are not universally recognised in the same way.

However, in our guidance we do acknowledge the good that religion can do, or bring, to people.

Signpost - See the Foreword in which we say, “*Where religion helps to provide a moral and ethical framework for people to live by, it can help play an important part in building a better society*”, and section D2.

- Many responders were concerned about the distinction made in our draft guidance between the religious and the pastoral/secular work of charities advancing religion. Many commented that it is difficult to make such a distinction. Some also expressed concerns that charities advancing religion might be required to undertake secular work in order to meet the public benefit requirement, or that only the benefits of secular work might be taken into account in any assessment of public benefit.

Actions taken:

In our guidance we recognise that, for many, the separation of religious and secular work is not easy or even possible, as secular and/or other social work in these similar fields is in fact an outworking of the religion. The guidance explains why it is important, in public benefit terms, to be able to make the distinction. We also positively state that charities whose aims include advancing religion do not have to undertake secular activities in addition to their religious activities in order to meet the public benefit requirement.

Signpost - This guidance is contained in Annex B.

- A number of responses were concerned about the effect of our guidance regarding charities advancing religion operating overseas where the activities are legal in England and Wales but not in the country of operation (such as proselytising in countries where it is illegal to do so). Some consider that the end justifies the means and some make the point that staff or volunteers who may be put at risk in such circumstances do so voluntarily.

Actions taken:

Our guidance clarifies that if it is charitable to carry out something in England and Wales, it will also be charitable if carried out in other countries by a charity registered in England and Wales. Similarly, if something 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 carried out in other countries by a charity registered in England and Wales.

We do explain that there may be risks in working in a foreign country and that trustees need to assess the risks and balance the benefits of carrying out the activity against the dangers and disadvantages of doing so. This is the case even if the charity's staff or volunteers who may be placed at risk, do so voluntarily.

Signpost – Our guidance on this is contained in Annex C.

- Despite reassurances given in our draft guidance, some responders remained concerned about the effect of the Charity Commission considering public benefit in the light of current social and economic circumstances, and the extent to which public opinion might influence our decisions on public benefit.

Actions taken:

We make it clear in our guidance, and in *Charities and Public Benefit*, that charitable status is not decided on the basis of public opinion. We would have regard to public opinion where there are objective and informed public concerns about, or evidence that, the beliefs or practices of an organisation cause detriment or harm. But we emphasise that all claims of detriment or harm would have to be fully substantiated.

Signpost - See section G3 for guidance on this.

- Many responders wish to see a more positive treatment of proselytising in the guidance, and the extent to which charities advancing religion can promote particular viewpoints or interpretations of religious beliefs or doctrines (such as attitudes towards homosexuality), or restrict membership based on the need to comply with behavioural norms in line with religious teachings.

Actions taken:

Our guidance acknowledges that proselytising is used by many charities advancing religion as an established and accepted means of attracting new followers or adherents and, in some religions, is an essential part of the outworking of the religion. It also recognises that, in the majority of cases, proselytising is carried out sensitively and without coercion and does not present any public benefit difficulties.

Where charities whose aims include advancing religion hold views that, in a secular context, could be viewed as discriminatory, our guidance makes it clear that whilst such views can be held, those organisations are encouraged to be open and transparent about them so that members of the public can make informed choices about whether to attend or support those organisations.

Also, charities advancing religion can require their followers or adherents to comply with religiously-derived norms of behaviour promoted by that religion. However, where doing so involves breaking the law, or where there is evidence of detriment or harm, this will affect public benefit.

Signpost - See Annex B and section E3.

- However, a number of responders were also keen to ensure that charities advancing religion are treated equitably with non-religious or secular charities, and that charities advancing religion are not given greater freedoms to campaign, for example on political or other issues, than would be permitted for non-religious charities.

Actions taken:

Our guidance makes it clear that not everything that is done in the name of religion is advancing religion for the public benefit, and that religion cannot be used as a way of advancing a political aim or political viewpoint which happens to be held by a religious person.

Signpost – Our guidance on this is contained in sections C4 and C6.

- There were also a number of responders who stressed the importance of what the draft guidance said about the need to balance the benefits of advancing religion (recognising the importance of allowing people the freedom to practice their religion) against any detriment or harm that might also arise, particularly where religious beliefs are advanced in a way which incites hatred or violence or is coercive.

Actions taken:

Our guidance clearly states that public benefit will be affected if any organisation advancing religion promotes hatred or violence or criminal acts towards others. In addition, charities whose aims include advancing religion must not unlawfully restrict the freedom of their followers or adherents to exercise personal choice by changing their beliefs or leaving a particular religion, or branch of religion.

Signpost – Our guidance on this is contained in section D3 and Annex C.