Charities Act 2006 Review – call for evidence
The definition of charity and the public benefit requirement

Issue
The Charities Act 2006 provided a new statutory definition of charity, based on a list of headings of charitable purposes, and re-emphasised the importance of public benefit. The Act also gave the Charity Commission a new objective of promoting awareness and understanding of the public benefit requirement, and of issuing guidance on public benefit. There has been much debate and some controversy around some aspects of these changes, but have the 2006 Act changes help clarify what a charity is, and how they can demonstrate their public benefit?

Background
Prior to the Charities Act 2006, there was no statutory definition of charitable purposes. Instead, the definition was set out in case law, built up since the preamble to the Statute of Elizabeth I (1601) which contained the first list of charitable purposes. In the nineteenth century the courts refined that list into four heads of charity:

i) the relief of poverty
ii) the advancement of education
iii) the advancement of religion
iv) other purposes beneficial to the community

To be a charity, an organisation had to exist for wholly charitable purposes (from the above list), and those purposes had to be for the public benefit. It was generally considered that charities for the relief of poverty, the advancement of education or the advancement of religion were presumed to exist for the public benefit, whilst charities under the fourth head had to demonstrate their public benefit in order to qualify for charitable status.

The 2006 Act aimed to clarify what constitutes a charity in the 21st century, with a clearer and more explicit list of charitable purposes, retaining the flexibility for what is considered a charitable purpose (which continues to evolve over time), and re-emphasising the public nature of charity.

The 2006 Act contains a list of 13 ‘headings of charitable purposes’, including the catch-all ‘other purposes beneficial to the community’.

The full list of purposes is:
• the prevention or relief of poverty
• the advancement of education
• the advancement of religion
• the advancement of health or the saving of lives
• the advancement of citizenship or community development
• the advancement of the arts, culture, heritage or science
• the advancement of amateur sport
• the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
• the advancement of environmental protection or improvement
• the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage
• the advancement of animal welfare
• 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
• and a catch-all head, which can be summarised as any other purpose already recognised in law as charitable, along with other purposes analogous to, or within the spirit of, purposes that are recognised as charitable

The 2006 Act also made it clear that there should be no presumption of public benefit for charities of any particular purpose. The intention was to create a level playing field, particularly in the case of charities for the advancement of education and religion, and the relief of poverty that were considered to have benefited previously from a presumption of public benefit.

The Act gave the Charity Commission a new statutory objective of promoting awareness and understanding of the public benefit requirement, along with a specific duty to publish guidance on public benefit. The Commission issued draft guidance on public benefit for consultation in 2007, and received over 900 responses. It published its final public benefit guidance in January 2008, and followed that with more detailed guidance and specific consultation with groups of charities likely to be most affected. The changes relating to the definition of charity, including the list of heads of charitable purposes and the changes to the public benefit requirement, came into force on 1 April 2008, shortly after the creation of the Charity Tribunal. At the same time, a change was brought in requiring charity trustees to report in their trustees’ annual report on their charity’s public benefit.

There was significant debate in Parliament during the passage of the Act on both the heads of charitable purposes, and the changes relating to public benefit. Some aspects of the public benefit changes have been controversial, particularly around the Commission’s guidance as it applies to charities that charge high fees for their services, and the extent to which poor people are afforded the opportunity to benefit from a charity’s services.
The Charity Commission’s guidance on public benefit was challenged by the Independent Schools Council, and an upper tribunal ruling in 2011 has meant that the Commission has had to withdraw some specific parts of its guidance, pending revision during 2012. The tribunal ruling did, however, confirm many of the principles set out in the Commission’s public benefit guidance.

The Charity Tribunal is currently considering another case relating to public benefit, and whether the 2006 Act has had any implications for benevolent charities. A ruling on this reference is expected shortly.

The definition of charity (charitable purposes and the public benefit requirement) applies in England and Wales (and throughout the United Kingdom in relation to access to charity tax exemptions and reliefs). Charity law and regulation is a devolved matter in Scotland and Northern Ireland, and there are different (although in the most part similar) definitions that apply in those jurisdictions. The Calman Commission recommended that there should be a single, UK-wide definition of charity, to address concerns about differences in the definitions of charity arising from different parts of the UK. This review will consider what appetite, if any, there is from charities and other stakeholders in the Scotland and Northern Ireland, as well as those charities that operate throughout the UK, for a single, UK-wide definition of charity.

Who should respond?
Anyone can respond, and all responses will be considered.

The deadline for receiving responses to this call for evidence is 16 April 2012.

How to submit your response:
Please send your response by e-mail to charitiesactreview@cabinet-office.gsi.gov.uk
Alternatively you can write to:
Charities Act 2006 Review
C/o Office for Civil Society
4/16, HM Treasury
1 Horse Guards Road
London SW1A 2HQ
**Arts Council England’s response to the call for evidence – the role of trustees**

**Question 1:** Do you consider the list of headings of charitable purposes in the Charities Act 2006 is clearer than the position that preceded the 2006 Act? Could it be improved (preferably without extending the list)?

We do consider that the list of headings of charitable purposes in the Charities Act 2006 is clearer than the position that preceded the 2006 Act. We do not think that it needs to be improved. We would like to emphasise the importance of having arts and culture specifically cited in the list. We would wish to see the importance of the work of our sectors continuing to be recognised in the list and in the accompanying guidance.

**Question 2:** Have you read the Charity Commission’s guidance on public benefit, and if so, has this helped you to develop your understanding of what public benefit means, and its relevance to your charity?

Yes. It is very helpful in developing understanding of what public benefits means and its relevance to arts and culture charities. We particularly value the way in which examples are used to illustrate each of the principles and would wish to continue to see explicit examples that relate to our sector included in the guidance document in order to support arts and culture organisations to better understand their charitable roles and responsibilities.

**Question 3:** Has the requirement to report on public benefit in the Trustees’ Annual Report helped you to reflect on your charity’s aims, achievements and activities in the context of providing public benefit? Has this been helpful?

Yes, we believe that the requirement to report on public benefit in the trustees’ annual report is very helpful in encouraging organisations and their boards to fully engage with the meaning of their charitable role and to reflect on how they deliver this through the pursuit of their aims.

**Question 4:** The current definition of public benefit is based on case-law. An alternative would be for a definition, or part-definition, of public benefit in statute. The main argument for not pursuing a statutory definition is that it would not have the flexibility of the case-law definition to adapt and evolve over time, and for it to be relevant to all charities with very different circumstances. Should we retain the case-law definition, or move to a statutory definition (or part-definition)? What are the pros and cons of each approach?

We would support a statutory definition if it explicitly included arts and culture, allowing organisations within our sector to fulfil their potential as charities and supporting them to understand and engage with the legislation and guidance. It is vital that arts and culture organisations can continue to be recognised as charities for the invaluable work they carry out in providing opportunities for people to experience and enjoy great art and
culture and in delivering wider social outcomes under agendas such as cohesion, well-being, education and skills.

**Question 5:** Does having slightly different definitions of charity in different parts of the UK give rise to any problems? What would be the advantages and disadvantages of a single definition of charity that applies throughout the UK? (it would be helpful if you could indicate where your charity is based, and whether it operates throughout the UK)

**Question 6:** Do you have any other comments about the definition of charity or the public benefit requirement?
Respondent details:

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<tr>
<th>Name:</th>
<th>Jennifer Ngyou</th>
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<tbody>
<tr>
<td>Position:</td>
<td>Officer, Policy Development</td>
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<tr>
<td>Organisation Name:</td>
<td>Arts Council England</td>
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<td>Organisation size (income):</td>
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<tr>
<td>Main location</td>
<td>England</td>
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<td>Operates in</td>
<td>England</td>
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What happens next?

- We will acknowledge receipt of all responses, although we cannot provide a detailed response to each individual submission.

- All responses will be considered in forming the report of the review.

- The aim is for the report of the review to be laid in Parliament and published in July 2012.

The small print:
All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want your response to remain confidential, you should explain why confidentiality is necessary and your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer by your IT system will not, of itself, be regarded as binding on the department. Contributions to the review report will be anonymised if they are quoted, unless we contact you and you give us your permission to use a particular quote. Individual contributions will not be acknowledged unless specifically requested.