

THE REVIEW OF THE
REGISTER OF CHARITIES

Promotion of Urban and Rural Regeneration

March 1999



The Charity Commission

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public confidence and trust. Most charities must register with the Commission, although some special types of charity do not have to register. There are some 180,000 registered charities in England and Wales. In Scotland the framework is different, and the Commission does not regulate Scottish charities.

The Commission provides a wide range of advice and guidance to charities and their trustees, and can often help with problems. Registered charities with an annual income over £10,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong.

Contents

About this publication	2
Urban and rural regeneration	2
Tests for charitable status	2
Further information	3
Annex - Guidance on the charitable status of bodies promoting urban and rural regeneration	4
Charitable regeneration organisations	4
Front-line bodies and co-ordinating bodies	4
Spectrum of activities	5
Public and private benefit	5
Criteria to determine public v private benefit	5
Impact on the community	6
Social and economic deprivation	7
Area of benefit	7
Beneficial class	7
Objects	7
Model objects	8

About this publication

1. This publication summarises the Charity Commission's views on the extent to which the promotion of urban and rural regeneration is charitable. We have considered this as part of our Review of the Register of Charities. We are very grateful to all those who contributed to the public consultation that has led to the formation of the detailed guidance, which can be found in the Annex.

Urban and rural regeneration

2. Following public consultation, the Charity Commission has recognised the promotion of urban and rural regeneration for public benefit in areas of social and economic deprivation as a charitable purpose in its own right. Charitable regeneration organisations can achieve this by the maintenance or improvement of the physical, social and economic infrastructure and by assisting people who are at a disadvantage because of their social and economic circumstances. This guidance does not cover organisations set up solely for the purpose of community development.
3. Regeneration organisations might do some, or all, of the following:
 - provide financial or other assistance to people who are poor;
 - provide housing for those in need and help to improve housing standards generally in those parts of an area of deprivation where poor housing is a problem;
 - help unemployed people find employment;
 - provide education, training and re-training opportunities and work experience, especially for unemployed people;
 - provide financial or technical assistance or advice to new businesses or existing businesses where it would lead to training and employment opportunities for unemployed people;
 - provide land and buildings on favourable terms to businesses in order to create training and employment opportunities for unemployed people;
 - provide, maintain and improve roads and accessibility to main transport routes;
 - provide, maintain and improve recreational facilities;
 - preserve buildings in the area which are of historic or architectural importance;
 - provide public amenities.They may, of course, undertake other activities as well.

Tests for charitable status

4. Broadly speaking in order to be charitable a regeneration organisation will normally need to demonstrate that:
 - it has effective criteria to determine whether or not an area is in need of regeneration;
 - it will undertake at least 3 or 4 of the activities listed in paragraph 3 above, and that these activities cover a broad spectrum of regeneration work;

- the public benefit from its activities outweighs any private benefit which might be conferred on individuals or companies. This means it must have clear criteria by which to determine this; and
- its objects are exclusively charitable.

The annex sets this out in more detail.

5. Relevant objects could include some or all of the following:

“The promotion for the public benefit of urban or rural regeneration in areas of social and economic deprivation (and in particular [specify area]) by all or any of the following means:

- (a) the relief of poverty in such ways as may be thought fit;
- (b) the relief of unemployment in such ways as may be thought fit, including assistance to find employment;
- (c) the advancement of education, training or retraining, particularly among unemployed people, and providing unemployed people with work experience;
- (d) the provision of financial assistance, technical assistance, or business advice or consultancy in order to provide training and employment opportunities for unemployed people in cases of financial or other charitable need through help:
 - (i) in setting up their own business, or
 - (ii) to existing businesses;
- (e) the creation of training and employment opportunities by the provision of workspace, buildings and/or land for use on favourable terms;
- (f) the provision of housing for those who are in conditions of need and the improvement of housing in the public sector or in charitable ownership provided that such power shall not extend to relieving any local authorities or other bodies of a statutory duty to provide or improve housing;
- (g) the maintenance, improvement or provision of public amenities;
- (h) the preservation of buildings or sites of historic or architectural importance;
- (i) the provision or assistance in the provision of recreational facilities for the public at large and/or those who, by reasons of their youth, age, infirmity or disablement, poverty or social and economic circumstances, have need of such facilities;
- (j) the protection or conservation of the environment;
- (k) the provision of public health facilities and childcare;
- (l) the promotion of public safety and prevention of crime; and
- (m) such other means as may from time to time be determined subject to the prior consent of the Charity Commissioners for England and Wales.”

Further information

- 6.** If you are interested in setting up a charity to promote urban and rural regeneration, please contact us.

Annex - Guidance on the charitable status of bodies promoting urban and rural regeneration

Charitable regeneration organisations

A1. A charitable regeneration organisation must:

- be working to regenerate an area (or areas) of social and economic deprivation (see A15-A17 below);
- normally undertake **at least 3 or 4** of the activities listed in paragraph 3 above, covering a broad spectrum of regeneration work, aimed at addressing the problems of the area (or areas) (see A4 below);
- have activities which do not confer an unacceptably high level of private benefit on particular individuals or companies (see A5-A6 below);
- have objects in its governing document that are exclusively charitable in law (see A21-A23 below).

Front-line bodies and co-ordinating bodies

A2. Regeneration organisations may operate in at least three different ways:

- as 'front-line' bodies, ie directly undertaking the different aspects of a regeneration project;
- as 'co-ordinating' bodies, ie conducting the project but contracting other agencies (which may include charities) actually to carry out the distinct elements of the project;
- as bodies which do a combination of the above.

A3. We need to know in which way a regeneration organisation will operate. Where regeneration organisations are using other agencies (ie are acting wholly, or in part, as co-ordinating bodies), we also need to know:

- the criteria they will employ in order to determine which agencies to use;
- whether they will always confirm that those charities undertaking work on their behalf have the necessary power to enter into contracts with it;
- what, precisely, will be the relationship between the regeneration organisation and its agents; and
- whether the regeneration organisation will have sufficient overall control over the activities of its agents in order to ensure that regeneration is achieved.

Spectrum of activities

A4. We would normally expect a charitable regeneration organisation (regardless of whether it is a co-ordinating or front-line body) to be undertaking **at least 3 or 4** of the activities listed in paragraph 3 above **and** for those activities to cover a broad spectrum of regeneration work. So, for example, an organisation which concentrated solely on providing assistance to unemployed people - even if it did so in a number of the ways listed above - would not be set up for the purpose of regenerating the area in question. This is because regenerating an area necessarily entails addressing more than one particular social problem, such as unemployment. Such an organisation may however be charitable for other reasons - see for example our guidance *Charities for the Relief of Unemployment* (RR3).

Public and private benefit

- A5.** A charity must confer a benefit on the public as a whole or on a sufficient section of the public. Most of the tangible benefits of urban or rural regeneration would normally seem to go, in the first place, to individuals and individual businesses rather than the wider public.
- A6.** If an organisation is to be a charity its purposes and activities must therefore be restricted so that any private benefits arise **only** as a necessary means of achieving the overall charitable purpose and are incidental to it. It would **not** be acceptable if the private benefits were an end in themselves. The status of the organisation will therefore depend on its poise in this respect. This will have to be determined in each particular case.¹

Criteria to determine public v private benefit

A7. An organisation applying for registration will therefore have to demonstrate that its activities will not result in an unacceptable level of private benefit.

For example, in an area which is 'deprived' largely because of its poor housing and high crime rate, but which has a reasonably low level of unemployment, activities aimed at reducing further the level of unemployment - such as retraining - will have only a minor effect on alleviating the deprivation of the area. The public benefit is therefore more likely to be outweighed by the element of 'private' benefit which will accrue to employers.

A8. On the other hand, in an area of high unemployment, such activities are likely to have a considerable effect on the regeneration of the area, and the public benefit is more likely to outweigh any private benefit accruing to employers.

¹ The distinction was made clear in the case of **IRC v Oldham Training and Enterprise Council (1996) STC 1218**. One of the objects of Oldham TEC was the **provision of support services and advice to new businesses**. The court decided that the object allowed the organisation to promote the private interests of individuals regardless of whether there would be any consequential benefits to the wider community. The benefit to the community was found to be too remote from this activity and the object was not charitable.

Conversely, in the case of **ViRSA Educational Trust**, the Commissioners decided that registration could proceed. This organisation was established to carry out research into the availability of retail and other services in villages, **to provide training and guidance to rural communities on establishing and maintaining those services and to promote trades and crafts connected with the rural economy as a whole**. The organisation was charitable because it provided support to rural communities generally. (An organisation which promoted particular village shops would confer too high a degree of private benefit on the proprietors to be charitable.)

A9. Organisations applying for registration must develop their own criteria for measuring the public and private benefit arising from their activities. Possible criteria include:

- the length of time a person has been unemployed and the cost of that to the state as against the charitable monies which the regeneration organisation might pay to an employer to engage an unemployed person;
- the relative density and sparsity of the population;
- changes in the rate of participation of local people in local community events;
- reduction in crime rates;
- reduction in unemployment rates;
- the change in length of waiting lists for homes, and the number of homes for sale;
- an increase in public facilities.

A10. Other criteria can, of course, be used if the trustees think they are more appropriate. Indeed, trustees may wish to use social scientists or other experts in this field to determine how best to identify and measure public and private benefit.

A11. Before registering the body we will need to consider if the criteria are reasonable, and determine the poise of the organisation.

Impact on the community

A12. An important aspect of regeneration is the positive impact on the community which should flow from the improvements to the economic and social environment from a regeneration project. This is relevant to, and should be considered as part of, the process of determining whether a regeneration organisation is set up for public or private benefit. For example, a regeneration organisation which demonstrates that it has the support and participation of a large part of the local community is much more likely to be set up for public benefit than one which is set up and run by a group of business representatives.

A13. Three further identifiable factors to consider in assessing the poise of an organisation are therefore:

- the extent to which local residents and workers support the regeneration proposals and are involved in them;
- the impact of the activities on the local community; and
- the composition of the trustee body - eg independence from any funding bodies, companies or businesses who stand to benefit in any way from the activities of the organisation. (Where the charity needs the views, advice and expertise of businesses and interested parties it can obtain this informally, or through sub-committees or advisory committees, rather than trusteeship.)

A14. If some of the trustees **will** have a private interest in the activities of the charity, the governing document must contain provisions to deal with declaration of interests and interested trustees being absent from discussions, and not voting on matters, which affect them. Moreover the promoters must demonstrate that it is in the interests of the charity to have such individuals as trustees notwithstanding their private interests in the activities of the charity.

Social and economic deprivation

- A15.** The trustees of the organisation must have criteria to identify deprivation so as to: (a) demonstrate to us that they have identified areas of social and economic deprivation, and (b) so they can determine if and when regeneration of a particular area has been completed. We need to decide before registration whether the criteria are actually effective for that purpose.
- A16.** Different criteria may be appropriate in different areas to address different aspects of deprivation. For example, the use of a 'level of crime' criterion might be appropriate in an inner-city area, but less so in a rural area suffering primarily from poor public services and high unemployment.
- A17.** The trustees should be alert to a variety of sources of evidence. These may or may not incorporate factors used in official indices, such as the Department of Environment, Transport and the Regions' Index of Local Conditions.

Area of benefit

- A18.** The areas to be regenerated must be large enough to encompass a sufficiently large beneficial class. This would normally rule out organisations set up to regenerate particular roads.
- A19.** The objects clause of the charity should normally stipulate the particular geographical area (local, national or international) in which it will operate. Trustees will need to give specific consideration to this in the governing document, the wording of appeals and the way in which any surplus funds will be applied (see also A21-A23 below on this).

Beneficial class

- A20.** It may be that the people living and working in a particular, deprived area belong predominantly to a particular racial, ethnic, religious or other group, and this group will inevitably be the main beneficiary of the organisation's activities. This is unobjectionable in terms of charity law **as long as** the benefits are not additionally **restricted** solely to the members of that group. This would constitute a 'class within a class', and is too small a beneficial class for charities set up to promote regeneration.

Objects

- A21.** An organisation cannot be charitable if its objects are too vague and uncertain to be carried into effect or controlled by the court. 'Regeneration' means rebuilding or revitalising an area (Chambers' English Dictionary, 7th Edition), and 'urban and rural regeneration' bears a corresponding meaning. These terms alone lack the certainty required of charitable objects.
- A22.** We have therefore developed model objects that are (a) sufficiently clear and precise, (b) make clear what activities will be carried out, and (c) show that the public benefit will outweigh any private benefit. These are set out in A25 below.
- A23.** If an organisation is furthering any of the purposes in A25, but **not** as part of a regeneration scheme, the organisation will not be charitable under the 'promotion of regeneration'. Instead we will need to consider if it is charitable under a different charitable purpose.

Model objects

A24. Not all of the sub-clauses listed in (a)-(m) below will be appropriate for every organisation. Some organisations may only be undertaking activities encompassed by, for example, sub-clauses (a), (b), (e) and (f). The list of sub-clauses is intended to be a 'menu' from which the organisation should select those which encompass its various activities.

A25. In some cases an organisation may wish to undertake activities which do not fall within any of the suggested sub-clauses. If it is to be a charity it will need a new sub-clause to reflect this, which must be supported by detailed legal argument from the promoters.

"The promotion for the public benefit of urban or rural regeneration in areas of social and economic deprivation (and in particular [specify area]) by all or any of the following means:

(a) the relief of poverty:

This is likely to be appropriate for most, if not all, regeneration charities.

(b) the relief of unemployment:

This is based on the decision in the case of **IRC v Oldham Training and Enterprise Council (1996) STC 1218**. It is now accepted that it is charitable to set up unemployed people in trade or business. Regeneration organisations whose activities include relieving unemployment will need to demonstrate that: (a) they are relieving unemployment for the public benefit in a way that is likely to have significant impact on regenerating an area of social and economic deprivation; (b) their activities are directed to the benefit of the community or to a significant section of the community in a way which can be demonstrated objectively; and (c) any benefit to private interests will be strictly incidental to the primary purpose of promoting regeneration (see also our publication *Charities for the Relief of Unemployment* (RR3)).

(c) the advancement of education, training or retraining, particularly among unemployed people, and providing unemployed people with work experience:

This is not limited to supporting the work of universities, schools and other educational establishments. It may also include apprenticing and training or re-training (both in terms of re-skilling and in how to find work) unemployed people (see also our publication *Charities for the Relief of Unemployment* (RR3)).

(d) the provision of financial assistance, technical assistance or business advice or consultancy in order to provide training and employment opportunities for unemployed people in cases of financial or other charitable need through help: (i) in setting up their own business, or (ii) to existing businesses:

The provision of loans, grants and services to help unemployed people to start up new businesses or trades has been held to be charitable so far as it is directed at relieving poverty (**Verge v Somerville (1924) AC 496 AT 506; and re Tree (1945) Ch 325**). The provision of grants and other assistance to existing businesses is also acceptable **if** it is for the purpose of creating employment or training opportunities for unemployed people and the assistance provided is commensurate with the charitable need at which it is directed (see our publication *Charities for the Relief of Unemployment* (RR3)). The provision of advice to individuals, voluntary organisations and/or businesses on how to access financial support, in order to provide training and employment opportunities to unemployed people for the purposes of regeneration, would fall within the ambit of this sub-clause.

(e) the creation of training and employment opportunities by the provision of workspace, buildings, and/or land for use on favourable terms:

This is primarily, but not exclusively, intended to cover the provision of land, buildings and/or workspace at less than market rent, in all likelihood for use as an industrial or business park.

The trustees will need to explain what criteria they will use to determine whether or not the provision of land on favourable terms is appropriate in a particular case, so we can be clear if the organisation is set up for public (as opposed to private) benefit.

The trustees will also need to show that they have considered the terms of occupation in order to secure the maximum long term benefit from the charity. This will include:

- which method of providing land and buildings (lease or licence) would be most suitable to provide the kind of assistance required;
- the terms of the lease or licence to be granted to a beneficiary;
- whether it is appropriate for tenants to obtain security of tenure;
- prohibiting assignment of the lease;
- providing for a surrender of the lease in certain circumstances (including if the tenant is no longer entitled to use of the land, building or space as a beneficiary under the terms of the criteria being used by the trustees);
- protecting the charity's interest in the event of insolvency on the part of the tenant; and
- providing for rental increases over the years in relation to the tenant business's increasing ability to pay more, up to a market rent.

We would regard any such dispositions as being to beneficiaries of the charity, in furtherance of its objects, and they will therefore be covered by sub-section 36(9)(c) of the Charities Act 1993. This means they will not have to be authorised by Order of the Commissioners.

(f) the provision of housing for those who are in conditions of need and the improvement of housing in the public sector or in charitable ownership provided that such power shall not extend to relieving any local authorities or other bodies of a statutory duty to provide or improve housing:

A charitable regeneration organisation will inevitably be working in an area or areas of social and economic deprivation. If the trustees have identified lack of, or poor, housing as contributing to the deprivation then addressing that problem will be relieving a charitable need (ie the social and economic deprivation). To enable a charity to do this it will need an express object relating to the provision of housing.

The trustees will need to demonstrate: (i) that the area of benefit is, as a whole, socially and economically deprived; (ii) that they have identified those parts of the area of benefit where poor housing is a problem contributing to the social and economic deprivation of the area; and, (iii) that the provision and/or improvement of housing in those parts will result in regeneration of the area of benefit generally.

We envisage that most regeneration organisations that undertake activities under this sub-clause will act, in this context, as a co-ordinating body. The trustees will need to indicate the criteria they will use to decide which public sector or charitable housing they will assist, the organisation that will carry out the front-line work and upon what terms.

If a regeneration organisation is proposing to act as a front-line body, in this context, it will need to satisfy us that the provision of housing overall will relieve the charitable purpose of regeneration and that it will not confer undue private benefit. The terms of occupation must be commensurate with the provision of charitable relief.

Here again, however, the charity must not relieve the local authority of its statutory duties in this area.

(g) the maintenance, improvement or provision of public amenities:

This covers the provision of roads and other transport routes and facilities, the improvement of the water main supply, the provision of libraries, museums, public halls, parks, gardens, improved street lighting and CCTV. It could also encompass the provision of gas or electricity supplies to deprived remote areas, with a view to enabling those areas to attract investment.

However, we will have to consider whether or not the organisation is relieving the local authority of any statutory obligations it may have in these areas - which is not a charitable activity.

We will also have to consider whether the private benefit which might accrue will outweigh the overall public benefit. The promoters will have to show precisely who will benefit from the improvements, and whether this private benefit can be regarded as incidental.

For example, where improvements to transport routes are envisaged, we will have to consider whether any private benefit will accrue to the various authorities - many of which are now private bodies - which bear responsibility for maintaining the routes. They will have to show that the benefit to the transport authority would be incidental to the overall achievement of regeneration for the public benefit.

(h) the preservation of buildings or sites of historic or architectural importance:

The preservation of such buildings or sites is likely to enhance the appearance of the area and attract visitors, with the latter's attendant economic benefits. This is clearly going to contribute to the regeneration of a deprived area. However, where charitable funds are to be used on privately owned and occupied premises, we will have to have regard to the level of private benefit accruing to the owner and to weigh that against the public benefit arising from public access to the site or building.

(i) the provision of recreational facilities for the public at large or those who by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances, have need of such facilities:

This is intended to cover facilities normally covered by the Recreational Charities Act 1958 (RCA). As the model object makes it clear that the facilities will be provided for the charitable purpose of regenerating an area of social and economic deprivation for the public benefit, it is not necessary to include the RCA's words "with the object of improving their conditions of life", or the words "in the interests of social welfare".

This heading could also cover some provision of facilities/centres for cultural or arts activities. However, if the proposed cultural or arts activities do not fall squarely within the terms of this sub-clause, a separate sub-clause could be more appropriate and/or justified.

(j) the protection or conservation of the environment:

Not all buildings or sites requiring protection or improvement will fall under sub-clause (h). For example, this might cover the reclamation of derelict land for use as open space as part of a regeneration programme. As in (h) above, where charitable funds are to be used on privately owned and occupied premises or sites, we will have to consider whether the level of private benefit accruing to the owner.

Improving the environment may be relevant in the context of reclaiming derelict land as part of a regeneration project or by building and improving houses, or in other ways. However, "improving" is an entirely subjective notion. We have therefore concluded that it would not be appropriate for it to be included in the objects of a regeneration charity.

(k) the provision of public health facilities and childcare:

This may be needed where these facilities are part of the regeneration programme. For example the provision of childcare facilities may be justified where it is shown to lead to increasing the ability of parents who could not otherwise afford it to take up employment.

Here again, however, the regeneration organisation will have to demonstrate that it will not be relieving the state of any obligations it may have in this area.

(l) the promotion of public safety and prevention of crime:

This would normally be covered by sub-clause (g), and a specific provision should only be included where the regeneration organisation needs to address crime and safety as a significant part of its programme and where details of the measures to be taken have been provided (eg adequate street lighting, or the installation of CCTV).

(m) such other means as may from time to time be determined subject to the prior written consent of the Charity Commissioners for England and Wales.

We recognise that both practice and policy on urban and rural regeneration develop all the time. It may be that this will lead to more purposes being identified that are properly charitable.

3. Other Matters to be Addressed

(a) Charitable Status

- Prior to, or at the time of, registration, the trustees should be advised to use their criteria for judging public and private benefits (see A7-A11 above) as benchmarks for gauging the charity's performance in achieving its object. Their criteria should be reviewed periodically to ensure that they remain effective for this purpose.
- Once the regeneration of a particular area has been achieved, the trustees will need to apply the charity's surplus funds for either (a) similar purposes in another deprived area, or (b) other charitable purposes in the original area (depending on the terms of the governing document). The governing document (and any appeals) should therefore spell out how surplus or unused funds are to be applied.

(b) Post Registration

- If the charity owns land the trustees will need to consider how it is to be treated for accounting purposes, ie whether it will fall to be treated as functional property or investment property. This might not be clear if, for example, the property has been used for both purposes.
- The leasing of a property in furtherance of sub-clauses (e) or (f) of the model objects falls within sub-section 36(9)(c) of the Charities Act 1993, as the lessee is a beneficiary under the terms of the trusts (see also A25 (e) and (f) above).
- As an area is regenerated, the charity will have to withdraw its services and activities from that area. The trustees should bear this in mind when leasing property, in order to ensure that they can reclaim the property or its value from tenants who no longer qualify as beneficiaries, so that it can continue to be used to fulfil the charity's objects - whether these are the primary regeneration objects, or secondary objects to be furthered when regeneration is complete - (see also A25 (e) and (f) above).

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Commission on 0845 300 0218

Charity Commission

Telephone: **0845 300 0218**

Typetalk: **0845 300 0219**

Website: **www.charitycommission.gov.uk**