

THE REVIEW OF THE
REGISTER OF CHARITIES

The Recreational Charities Act 1958

August 2000



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.

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About this publication

1. This publication summarises the Charity Commission's views on the scope of s.1 of the Recreational Charities Act 1958. 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 led to this guidance.

The Review of the Register

2. The Charity Commission aims to give the public confidence in the integrity of charity. We are accountable for our decisions to the courts and for our efficiency to the Home Secretary. We carry out a variety of functions including the registration, monitoring and support of charities and investigation of alleged wrong doings.
3. The Register of Charities is a list of charities set up in England and Wales that we supervise. We have a statutory responsibility for keeping it up-to-date. The understanding of what is legally charitable has continued to evolve since the Register was first created over 35 years ago. Consequently, there are almost certainly organisations on the Register, which most people would not now regard as charitable, and organisations not on it that perhaps they might.
4. We are therefore taking a long, hard look at the Register to consider, within the law, whether those organisations which currently benefit from charitable status should continue to do so, and whether there is scope to develop further the boundaries of charitable status. Both will be done by the flexible use of our powers to apply and interpret the law.
5. The principles that we are using are all based on existing charity law. These "essential characteristics of a charity" can be found in our separate publication **The Review of the Register of Charities (RR1)**, which also explains the process in more detail.

The Recreational Charities Act 1958

6. The Recreational Charities Act 1958 ('the Act') was passed to confirm the charitable status of a wide range of recreational organisations, previously treated as charitable, whose position was in doubt following the decision of the House of Lords in **Commissioners of Inland Revenue v Baddeley [1955] AC 572**. The purpose of the Act was essentially corrective: it was not intended to extend charitable status to a wider range of recreational organisations, but to restore the position which existed before the House of Lords decision.
7. Section 1 of the Act accepts as charitable facilities for recreation and other leisure-time occupation that are provided in the interests of social welfare with the object of improving the conditions of life for the persons for whom they are intended. (For ease of reference, the full text of s.1 of the Act is reproduced in Annex B of this publication.) Examples given in s.1(3) of the Act of the sort of facilities to which that provision applies include village halls, community centres, women's institutes and recreation grounds.
8. However, the range of recreational activities available, and of organisations existing to provide them, is now significantly greater than when the Act was passed. Additionally, the importance and value of leisure time activity is increasingly accepted. As a result, we receive many applications for the registration of recreational organisations, including types which did not exist when the Act was passed.
9. Difficulties can arise in determining how far the scope of s.1 of the Act embraces the many new and varied recreational activities that are now commonplace. We therefore considered that a comprehensive review of the scope of that section of the Act was desirable. This publication sets out our views on this as a result of that review.

General requirements for charitable status

10. Any organisation claiming charitable status under the Act must have objects that are exclusively charitable. And they must possess the other essential characteristics of a charity, as set out in our publication **The Review of the Register of Charities (RR1)**.

The social welfare requirement

11. In s.1(1), the Act states that, subject to its provisions, the provision of facilities for recreation or other leisure time occupation is charitable **if** the facilities are provided *“in the interests of social welfare”*.
12. In our review, we analysed that requirement (‘the social welfare requirement’). We have to interpret the Act in accordance with Parliament’s wishes at the time the Act was passed, taking account in particular of other legislation which used the phrase *“social welfare”*. It was not open to us unilaterally to widen this beyond Parliament’s intention at the time. We concluded that to meet the social welfare requirement it is not enough for an organisation to meet the express requirements of s.1: it must also -
 - be altruistic in character; and
 - be set up to meet certain social needs. These needs are those which must be met if people’s conditions of life are not to be inadequate.

Summary

13. In determining whether an organisation providing facilities or organising activities for recreation or other leisure-time occupation is charitable under s.1 of the Act we would need to be certain that:
 - (i) it provides facilities for recreation or other leisure time occupation (see paragraph A3 of Annex A);
 - (ii) it meets the social welfare requirement. That requires that:
 - the facilities are provided with the object of improving the conditions of life (see paragraphs A5-A8 of Annex A). That requires that the facilities:
 - are provided solely with that object, and
 - are capable, on an objective basis, of improving conditions of life;
 - the facilities are available to the public at large or to a restricted class of persons who may be regarded as having special need of those facilities (see paragraphs A9-12 of Annex A);
 - the organisation is altruistic in nature (see paragraph A14 of Annex A);
 - the facilities are set up to meet certain social needs, ie needs which must be met if people’s conditions of life are not to be inadequate (see paragraphs A15-A17 of Annex A); and
 - (iii) it meets the public benefit requirement. That requires that:
 - the organisation benefits the public or a sufficient section of the public and any benefit to private individuals is no more than incidental or ancillary to that public benefit;
 - its overall effect is not harmful;
 - if the organisation adopts a membership structure, it does so only as a matter of administrative convenience for the better delivery of benefits rather than to restrict them, and membership is in practice open to all who wish to join (see paragraphs A30-A33 of Annex A); and
 - it is not set up substantially for the benefit of its members (see paragraphs A34-A35 of Annex A);
 - there is no legally binding preference regarding the use of the facilities in favour of a non-charitable body or class of people (see paragraphs A36-37).

Other major points of interpretation

14. In considering the scope and extent of s.1 of the Act we have further concluded that:

- Providing facilities and organising events for specific social contact or entertainment purposes (as opposed to the provision of recreational facilities to be used for any purpose, including entertainment) is not generally capable of falling within the Act. The exception to this is where facilities meet a clear social need which needs to be met if people's conditions of life are not to be inadequate. (See paragraphs A.20-23 of Annex A.)
- The provision of facilities for a single sport is less likely to meet the social welfare requirement than the provision of facilities for a range of sports. (See paragraphs A.24-26 of Annex A.)

Annex A deals with these points in further detail.

Annex A Guidance for organisations wishing to register as a charity under the Act

The Commission's interpretation of the scope of s.1 of the Act

- A1.** Three key elements must be satisfied before an organisation is entitled to charitable status under s.1 of the Act. They are that:
- the organisation must provide, or assist in the provision of, "*facilities for recreation or other leisure time-occupation*";
 - those facilities must be provided "*in the interests of social welfare*" (the 'social welfare requirement'); and
 - the public benefit requirement must be met.
- A2.** To be charitable under the act all three elements must be met. It is not sufficient for an organisation to meet only one or two of them. We have therefore looked in detail at what each of these requirements mean.

What can be regarded as facilities for recreation or other leisure time occupation?

- A3.** We interpret this widely: it seems potentially to extend to any activity people undertake for their own enjoyment outside work. However, this does not mean it is necessarily charitable to provide those facilities. To be charitable the social welfare and public benefit requirements must also be met.

The social welfare requirement

- A4.** The Act provides (in s.1(2)) that the social welfare requirement will not be met "unless -
- (a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and
 - (b) either
 - (i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or
 - (ii) the facilities are to be available to the members or female members of the public at large".

When are facilities provided with the object of improving conditions of life?

- A5.** There are two elements to this question. Firstly, the object of improving the conditions of life must be the only object or purpose of providing the facilities, irrespective of the motive of those who may use them. Secondly, the facilities must be *capable*, on an objective basis, of improving the conditions of life of those for whom they are provided.
- A6.** There is no requirement for this purpose that those for whom the facilities are provided should be deprived or disadvantaged in some way: peoples' conditions of life may be improved for this purpose regardless of their social or economic position. (See **Guild v IRC [1992] 2 AC 310.**)
- A7.** Clearly, facilities provided for the purpose of promoting healthy recreation will improve conditions of life. But, in some circumstances, facilities which are not aimed at improving health may also be regarded as improving conditions of life. Examples include facilities of the kinds specifically referred to in s.1(3) of the Act, namely village halls and community centres.

A8. It may therefore be possible to conclude that facilities are capable, objectively speaking, of improving conditions of life where the dominant feature of the facility is that it will:

- reduce social exclusion (whether caused by age, disability, poverty, language or ethnic origin);
- encourage public participation; or
- improve education or health where previously no, or no adequate, facilities existed.

The classes of person for whom the facilities must be provided

Special classes referred to in s.1(2)(b)(i) of the Act

A9. Where facilities are provided for a particular class of person identified within the Act, such as poor, sick, young or elderly people, little difficulty generally arises in accepting those facilities as charitable. Such groups of people may be regarded as having special needs because they are at some disadvantage, compared to the rest of the community, when it comes to finding, providing, financing, organising or managing suitable facilities for recreation or other leisure-time occupation. Providing recreational facilities for such groups might easily therefore be considered to meet a social need.

A10. We also accept that certain groups, such as some ethnic minority groups¹, may be able to demonstrate a special need for the recreational facilities in question, due to their social or economic circumstances.

Public at large

A11. The effect of s.1(2)(b)(ii) of the Act is that, where facilities are not provided with the object of improving the conditions of life of a class of people as identified in section 1(2)(b)(i), then, to be charitable, the facilities must be available to “*the public at large*”. To meet that requirement we consider that facilities must be available to anyone who wishes to use them, without being subject to any election to membership or payment of a prohibitive entrance fee. Neither should anyone be excluded from using the facilities due to their lacking (or having) any personal qualification - whether to do with their age, gender, race, or financial circumstances, or their social, religious or political views.

A12. We regard facilities as being available to the public at large, even if used only or mainly by clubs, provided that the facility is available to all clubs which wish to use them.

Other components of social welfare

A13. In our review, we considered whether s.1 of the Act contained an exhaustive definition of the social welfare requirement. Our view is that it does not. Ordinary principles of statutory interpretation, supported by statements made by Ministers when the Act was passed, in our view make it clear that s.1(2) was not intended to be an exhaustive definition of the meaning of “*the interests of social welfare*”. It seems, instead, that it should be understood in the sense in which it had been judicially interpreted in the context of other legislation. While no all-embracing definition has ever been given, decided cases in other contexts suggest that the expression implies elements of both altruism and social obligation.

Altruism

A14. This involves seeking to provide something for the benefit of others rather than oneself. So if people band together for their own benefit (for example, to establish a social club for their own benefit) they are not engaged in social welfare. In practice an organisation will meet this requirement if it is not ‘self regarding’ (see paragraph A34).

¹ Decisions of the Charity Commissioners, Volume 4, pages 17-21.

Social obligation

- A15.** This involves providing facilities which ought to be provided as a matter of social obligation, because if they are not people's conditions of life will be inadequate. 'Adequacy' for this purpose should be assessed by reference to the reasonable needs of the community as a whole in respect of social contact, mental stimulation and physical exercise.
- A16.** The following factors might be relevant in considering whether the facilities were ones which ought to be provided as a response to inadequate community provision of this kind:
- any geographical isolation on the part of the community;
 - any lack of public transport;
 - any lack of local alternative facilities at affordable prices; and
 - the size of the community and comparisons with facilities available elsewhere.
- A17.** What may represent an appropriate level of facilities may of course change over time. We will therefore need to take account of changing social circumstances in considering whether there is a social need for a particular recreational facility.

Use of facilities and organising of activities

- A18.** By virtue of s.1(3), the Act extends not only to the provision of facilities but also to the organising of activities. Where an organisation is organising activities as well as providing facilities, those activities must also meet the social welfare requirement if it is to be regarded as charitable under the Act.
- A19.** This does not mean, though, that the activities of the separate organisations which use the facilities have to meet the social welfare requirement: the Act is only concerned with the activities of the organisation providing the recreational facilities itself. Thus there is no requirement that the organisations using a village hall or community centre should be charitable or that their activities should meet the social welfare requirement.

Social contact/ entertainment

- A20.** Consistently with what is said above, there is no objection in principle to a charitable organisation set up under the Act providing premises for general public use which may then be used by individuals or groups for the purposes of social contact or entertainment. (Village halls and community centres provide examples of this.)
- A21.** The position is more complex where the organisation *itself* provides social contact or entertainment. Where that is the case, we would not generally accept that doing so met the social obligation aspect of the social welfare requirement: we would not generally regard the provision of facilities of this kind as meeting a social need of the kind which ought, as a matter of social obligation, to be met.
- A22.** For example, it is charitable to provide a community centre which might be hired for any purpose, such as playing bridge, line dancing or running whist drives. But the groups hiring the facilities for those purposes would not themselves be charitable. Nor would it generally be charitable to provide facilities specifically for one of those purposes.
- A23.** Of course, the conditions of life of some people (eg elderly people) may well be such that providing them with facilities for social contact or entertainment could be seen as meeting the social welfare requirement because they have need of those facilities by reason of their age. Exceptionally, the same might be true in relation to the inhabitants of a particular geographical community (eg an isolated community with few or no facilities, whose members have insufficient resources of their own to provide facilities of the kind most people would take for granted). Additionally, there is no objection to the provision of entertainment on an occasional basis where it is undertaken for the purpose of fund-raising.

Facilities for sport

- A24.** In principle the Act can apply to multi-purpose sports facilities, such as sports centres or recreation grounds (which can be charitable under other principles of charity law even if the Act does not specifically apply to them). Although such facilities are, of course, used by clubs and teams for playing competitive sport, they are provided for use by the public at large - by people of all ages, of varying degrees of proficiency and of varying states of health. No special equipment is needed (or at least none which cannot be provided through a modest entrance fee). Such facilities are therefore fairly characterised as ones for healthy recreation rather than ones for the promotion of sport and are, therefore, facilities provided with the object of improving conditions of life.
- A25.** However, facilities of this kind can be contrasted with facilities for a single sport, which are used only for the purpose of playing that particular sport. In considering the scope of s.1 of the Act, it is more difficult to regard a facility for the playing of a particular sport as one that is provided with the object of improving conditions of life, since it seems to be concerned essentially with the promotion of the sport in question. It may also be difficult to accept that the provision of facilities for a single sport meets the social obligation aspect of the social welfare requirement, particularly if they can only be used by people who have acquired a given level of skill.
- A26.** Whilst the provision of facilities for a *single* sport may fall within s.1 of the Act, therefore, we shall always need to examine carefully whether they also meet the social welfare and public benefit requirements. Whether they do so will depend on the facts of the particular case.

Public benefit requirement

- A27.** Section 1(1) of the Act preserves the general requirement that to be charitable an organisation must be established for the benefit of the public. This requirement normally has various aspects:
- (a) there must be a benefit of a kind recognised by the law;
 - (b) that benefit must accrue to the public, or a sufficient section of the public, any benefit to private individuals being no more than incidental or ancillary; and
 - (c) the overall effect should not be harmful.

In the case of organisations claiming charitable status under the Act, however, it is only requirements b) and c) which are preserved by s.1(1) of the Act: the existence of benefit recognised by the law is decided under s.1(2), ie on the basis that the social welfare requirement is met.

- A28.** Complying with the public benefit requirement does not normally present a difficulty where facilities are to be provided for the public (or female members of the public) at large.
- A29.** However, where facilities are provided for a restricted class of people under s.1(2)(b)(i), notwithstanding that they may be capable of meeting a social need, it may be questionable in some cases whether the public benefit test is satisfied: difficult questions can arise in determining whether a class of people constitutes a sufficient section of the public for the purposes of the public benefit requirement. These issues also arise in relation to purposes beneficial to the community generally, though, and these questions will need to be decided in each case on the basis of general principles.

Membership provisions

- A30.** Many recreational organisations channel the benefits they provide through a membership structure. This raises the question of whether facilities provided in this way are available to the public, or a sufficient section of it, so as to meet the public benefit requirement.
- A31.** Where benefits provided by a club or association are restricted either formally or in practice to its members, the common characteristic of membership may cast doubt on whether the members are a section of the public, as opposed to being merely a private group.

A32. However, whether or not the members of a club or association constitute a section of the public is better seen as a question of degree. We believe that where benefits are confined to members of an organisation the public benefit test will be satisfied, provided that:

- (a) the membership structure is adopted (as will often be the case where recreational charities are concerned) only as a matter of administrative convenience for the better delivery of benefits, rather than as a means of limiting them; and
- (b) membership of the organisation is in practice open to all who wish to join.

A33. The requirement at (b) above will only be met if:

- there are no limitations on the number of members or their selection (such as a power of veto or a requirement for nomination);
- any expulsion provisions do not undermine the 'openness' of membership and can only be exercised for good reason and with a right to be heard;
- any subscription is set at such a level that it does not in practice deter or exclude applications for membership; and
- the use of the facilities is open equally to all members (for example, in the context of a sports facility membership is not determined by any form of selection on grounds of ability).

Self-regarding members organisations

A34. Even if it has an open membership, an organisation existing substantially for the benefit of its own members (sometimes described judicially as a mutual benefit society or 'self-regarding' members organisation) cannot qualify as a charity.²

A35. But the mere fact that the benefits of an organisation are confined to its members or subscribers does not automatically mean that it is a self-regarding members organisation. Whether that is the case seems to be a question of poise. The question is whether the adoption of the membership structure, and the benefits members receive under it, are strictly necessary for the achievement of the charitable purpose.

Rights of prior use

A36. Whilst the law in this area is not clear, we take the view that the public benefit test will not be met where, although the purposes of a recreational organisation extend to a charitable class (such as the public at large), use of its facilities is subject to a legally binding preference in favour of a non-charitable body or class (such as the members of a particular social club).

A37. This principle only applies where there is a legally binding preference in favour of a non-charitable body or class. The trustees of a charity in providing facilities under the Act are free to decide, in a proper exercise of their discretion, that a particular body or group should use the facilities at a particular time.

² See *Re Hobourn Aero Components Limited's Air Distress Fund* [1946] Ch 194; *IRC v City of Glasgow Police Athletic Association* [1953] AC 380; *Waterson v Hendon Borough Council* [1959] 2 All ER 760; and *Neville Estates v Madden* [1962] Ch 832, 854.

Annex B Section 1 of The Recreational Charities Act 1958

General provision as to recreational and similar trusts, etc

1. (1) Subject to the provisions of this Act, it shall be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:

Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

- (2) The requirement of the foregoing subsection that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless -
 - (a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and
 - (b) either
 - (i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or
 - (ii) the facilities are to be available to the members or female members of the public at large.
- (3) Subject to the said requirement, subsection (1) of this section applies in particular to the provision of facilities at village halls, community centres and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.

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