

THE REVIEW OF THE
REGISTER OF CHARITIES

Preservation and Conservation

February 2001



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 organisations set up for the charitable purposes of preservation and/or conservation. 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.

Preservation and conservation organisations

2. Bodies set up for preservation¹ and/or conservation purposes encompass a very wide and tremendously varied group. They include bodies set up for one or more of the following purposes:
 - (i) the preservation of:
 - a specified building or complex, sometimes including a garden or other land, of historic/architectural importance or a site where a building has been or where it remains can still be seen;
 - historic buildings in general (building preservation trusts²); and
 - (ii) the conservation of:
 - a particular animal, bird, or other species etc or 'wildlife' in general;
 - a specific plant species, habitat or area of land, including areas of natural beauty and scientific interest;
 - flora, fauna and the environment generally.
3. This guidance does not cover organisations which operate purely as museums. Nor does it deal with issues relevant specifically to building preservation trusts, although much of this guidance will still be relevant to such bodies. Please note, also, that issues of sustainability, recycling and other linked topics are not covered by this guidance. Organisations applying for registration as charities operating in these areas will be considered on their own merits.

General requirements for charitable status for preservation and conservation charities

4. We have concluded that in order to be charitable, organisations for preservation and conservation will need to demonstrate that:
 - (i) **they satisfy a criterion of merit, ie:**
 - for preservation charities, there is independent expert evidence that the building or site is of sufficient historical or architectural interest (see paragraphs A5-A9 below);
 - for species conservation charities, there is independent expert evidence that the species is worthy of conservation (see paragraphs A10-A13 below);
 - for charities for the conservation of the environment, there is independent expert evidence that the land or habitat is worthy of conservation (see paragraphs A14-A15 below); and

1 'Preservation' can be taken to include restoration work in so far as this is necessary and complementary to the aims of preservation and to providing public access.

2 Such trusts typically operate by purchasing a building, restoring it and then selling it to finance their next project.

(i) they are set up for the benefit of the public, ie:

- they are not used for non-charitable purposes, such as trading (see paragraph A16 below);
 - they provide sufficient public access, either by providing sufficient physical access or provide access by suitable alternative means (see paragraphs A18-A27 below);
 - any private benefit to individuals is incidental and properly regulated (see paragraphs A31-A35 below).
5. During the consultation, we received a number of representations that it was no longer appropriate to consider preservation and conservation as two separate areas. In particular, in at least some cases, building preservation might be an aspect of environmental conservation. This is a view to which we are sympathetic and which we plan to explore further.
6. Any organisations claiming charitable status under the Charities Act 1993 must have objects that are exclusively charitable. They must also possess the other essential characteristics of a charity, as set out in our publication *The Review of the Register of Charities* (RR1).

Preservation charities

7. For organisations set up to preserve buildings, we are maintaining our current policy which reflects the position adopted by the courts, that is, to be charitable such organisations must be set up for the advancement of the education of the public.

Conservation charities

8. 'Conservation of the environment' now has a well-established meaning and we recognise it as a charitable purpose beneficial to the community. We will therefore register such organisations as charities provided that they satisfy the criteria set out in the Annex.
9. A possible object for such organisation is:
"to promote the conservation protection and improvement of the physical and natural environment".
10. Following on from this, we also accept that an object *"to promote the conservation of the physical and natural environment by promoting biological diversity [or biodiversity³]"* is charitable.
11. It is also acceptable for environmental charities to have an additional object of advancing the education of the public where appropriate.

Registration with other bodies

12. In addition to registration as a charity, we recommend that organisations should consider a range of approaches, for example formal recognition or listing by a body such as English Heritage, Cadw, English Nature or The Countryside Council for Wales. Examples of relevant listing are as a Site of Special Scientific Interest (SSSI), and Area of Outstanding Natural Beauty or a National Nature Reserve. It would be useful if, in their application for registration, such organisations could provide us with a list of the bodies which they have considered and the results of any application. Such listing may also provide evidence of merit. It is for the applicant organisation to assess which type of listing best suits their needs.
13. Such listing may be an additional protection for the property of an organisation which is charitable. It will not replace charity registration, which is obligatory for organisations which fall within the registration criteria. However, where it transpires that an organisation is not charitable, or where the issue of charitable status is not clear (where, for example, there is a doubt as to the merit criteria), then listing is a feasible alternative.

3 Diversity of plant and animal life.

Further information

14. If you are interested in setting up a charity with preservation and/or conservation purposes, please contact our registration staff on 0845 300 0218.

Effect of this guidance on existing charities

15. There should be no need for existing charities to change their objects as a result of this guidance although conservation charities may wish to consider the effect of paragraphs 8-11. However, trustees should review the charity's methods of operation to ensure that they comply with the law and, as far as possible, our recommendations. In particular they should note the legal requirements and good practice recommendations regarding:
 - public access (paragraphs A18-A28);
 - the inclusion of access details in the charity's annual report (paragraph A29-A30);
 - the involvement of former owners (paragraph A31-A35); and
 - the inclusion of all documents produced for the public that the organisation is a registered charity (paragraph A36).
16. If trustees are in doubt as to the application of this guidance or have any other queries they should contact us on 0845 300 0218.

Effect of this guidance on grant making charities and charities owning multiple sites

17. This guidance has relevance for charities that make grants for preservation and/or conservation purposes (rather than undertaking active work in this area themselves). Such charities include those established with wide charitable objects and general grant giving powers. They also include charities owning multiple sites (which may wish to take more of an overview of the merit of the land they hold). In both cases, in order to satisfy itself that it is fulfilling charitable purposes, any charity in this position must take this guidance into account when giving grants or purchasing property.

Annex A - Guidance on the charitable status of bodies promoting preservation and conservation

Merit criteria

- A1.** Organisations in the area of preservation and conservation need to satisfy a criterion of merit in order to achieve charitable status.
- A2.** This guidance sets out some basic merit criteria which we will apply in the context of preservation and conservation organisations seeking registration as charities. An organisation whose application for registration is initially unsuccessful may be able to reapply if the circumstances relating to the building, species or habitat they are concerned with change in the future.

Expert evidence

- A3.** Organisations applying for registration should be able to satisfy us as to the appropriate merit criteria (details of which are given below) by providing independent expert evidence, that is authoritative and objective, from a reputable body or individual. We do not intend to set up an exhaustive list of acceptable experts as we feel that promoters should have some freedom in their selection of expert. Ultimately, it is for promoters to decide which expert they will use and to submit that evidence to us with their application for registration.
- A4.** We do, however, reserve the right to verify the suitability of an expert (for example, by seeking the views of an appropriate government or umbrella body). Any system we develop to do this will be flexible, objective and independent and we will not be relying on particular bodies to the exclusion of others. We will reach our own conclusions on merit based on the criteria, but will take the views of the promoter and the independent expert into account in doing so.

Preservation charities

Evidence of historical or architectural significance

- A5.** Preservation organisations seeking registration should provide independent expert evidence, that is authoritative and objective, from a reputable body or individual, that their building or site is of sufficient historical or architectural significance to merit preservation for the public benefit. Examples of the former would include buildings which have played a significant role in industrial and technological advance as well as those which have architectural or historical merit.

Listing

- A6.** For buildings with English Heritage listing, a production of that listing with an explanation of why the listing was given will be sufficient to raise an assumption of merit when the listing is Grade I or II*. If the listing is lower we may at our discretion require additional evidence as to merit. There may be cases (such as a nationally famous historic building) where the existence of merit is so obvious that only the most basic of evidence (for example, a history and description of the building concerned) will be required.

Connection with a person or event

- A7.** If the building is to be preserved because of its connection with a particular person (for example, where a famous person was born, dies or spent a significant period of their lives, or where a significant historical event took place) then the independent expert evidence should be able to satisfy us as to all of the following:
- the person or event is of sufficient educational, historical or scientific interest;
 - the building has a real connection with the person or event and is significant in the person's life;
 - a significant part of the surviving fabric relates to the period during which the person occupied it or in which the event took place;
 - if the building is not used as a museum or in any other way to educate the public about the person or event in question, then the building must itself be of sufficient merit for its preservation to be charitable regardless of its connection.
- A8.** These criteria should be seen as starting points. If an organisation is not able to satisfy them all, we will not automatically reject an application but rather the case will be looked at as a whole to see if the merit test is satisfied in some other way.
- A9.** Particular considerations apply where the application relates to a building or site associated with a living or recently deceased person. It is particularly difficult to assess long term merit in such cases. In addition to the above, therefore, evidence of the person's potential for historical significance should be provided and the trustees will be expected to re-evaluate the benefit to the public of the charity after an appropriate period. If it appears that the organisation's objects are no longer charitable, the trustees should seek advice from the Commission.

Conservation charities

Conservation of rare or endangered species

- A10.** The criterion for merit we are adopting in relation to species conservation charities is that conservation of a species can be charitable if, on independent expert evidence that is authoritative and objective, from a reputable body or individual:
- the species is rare or in danger of extinction; or
 - there is evidence that it will reach that stage if steps are not taken,
- provided in both cases that conservation is overall not harmful to humankind.
- A11.** For example, the conservation of a particular species of animal will be beneficial (because it both contributes to zoological science and may have environmental benefits or may preserve a gene pool necessary for some public good). But equally that conservation may simultaneously have consequences which are detrimental to the community – as where the particular species is verminous and/or especially destructive of agriculture. However, even dangerous species have their role to play in preserving biodiversity and they may have an importance which only becomes apparent to future generations. All species have a role to play in the ecosystem even if they are also responsible for such problems as crop destruction. The conservation of such species in appropriate circumstances could therefore be justifiable. Also a species should not be regarded as harmful to humans just because it stands in the way of economic expansion. The Charity Commission and, ultimately, the courts must therefore take a view whether, on balance in the particular circumstances of any case, the aim will or may work for the benefit of the public.

Conservation of other species

- A12.** Within the context of the merit criterion we will adopt a presumption that all species are worthy of conservation unless there is evidence to the contrary. If an appropriate expert can confirm that it is not possible at present to gauge the exact level of danger to a particular species, we will exercise any doubt in favour of the proposed charity. Eligible organisations will include those set up to conserve species which will become endangered in the future, or which are only endangered in a particular locality. Any charity set up to conserve a species, either nationally or locally, could also have the power to establish and preserve relevant habitats.
- A13.** If the species is not in danger, then in order for an organisation connected with the species to have charitable status, there needs to be a real educational purpose to the organisation. For example, a particular species may be worthy of conservation in principle but may at present be thriving to such an extent that it does not require any conservation effort. However, a charity could still be established to educate the public about the species and to research into it, and this activity could include monitoring its status for the future. This educational test will be applied to all organisations in this sphere. (An example is zoos which may also be charitable as promoting conservation if they have a breeding programme. They should also, of course, satisfy the minimum statutory requirements for health, safety and welfare and zoo licensing). It would also be a legitimate activity for a conservation charity to control the numbers of a species which is endangering the natural balance of a region because it is too prolific.

Conservation of the environment

- A14.** Acceptable objects for organisations concerned with the general conservation of the environment include:

“To promote the conservation, protection and improvement of the physical and natural environment” and

“To promote the conservation of the physical and natural environment by promoting biological diversity [or biodiversity]”.

- A15.** Proposed environmental conservation charities should provide evidence from an independent expert that is authoritative and objective to satisfy us that the organisation’s land or habitat is worthy of conservation. A starting point for this could be that the area has an international or national designation such as a Site of Special Scientific Interest (SSSI), and Area of Outstanding Natural Beauty or a National Nature Reserve but other evidence will also be accepted. Organisations with wider objects to promote conservation generally will need to give examples of particular projects to satisfy us that they will be providing a real benefit to the public.

Public benefit requirement

General requirement

- A16.** All charities must be set up for the benefit of the public. This general requirement is explored in detail in our publication *The Public Character of Charity* (RR8). We will look at all applications for charitable status to ensure that the organisation is set up for the benefit of the public and not for private benefit. We will also monitor existing charities to ensure that the charity is only pursuing exclusively charitable purposes. In the case of preservation and conservation charities, if the primary purpose of an organisation is, in reality, to run a business established (for example) to grow crops for the profit of individuals or to breed birds for private shooting then the organisation will not meet this requirement.

A17. There are two specific aspects of the public benefit requirement which are of particular relevance to organisations set up for the purpose of preservation and conservation. These are:

- the need for public access; and
- public v private benefit.

Access

Physical access

A18. When a charity is set up to maintain a particular building, site or habitat, the most obvious and usual way of satisfying the public benefit requirement is for the public to have direct physical access to view its particular qualities at first hand. However, physical access is not the only way in which the public benefit requirement can be satisfied. We think that the legal principles governing the need for physical access as set out in the **Grove-Grady**⁴ line of cases (according to which physical access to a site was a requirement for charitable status) are now out of date and a more flexible approach can be adopted. We see this as an example of an area where, in the light of changing social and economic circumstances, the characteristics of charity have evolved.

A19. Our policy is that there should be a presumption of physical access to a site when deciding if the public benefit requirement has been satisfied, but we will adopt a flexible approach to the level of access needed to satisfy that requirement. Access needs to be consistent with the aims of the charity so that visitors should not be allowed access at the expense of deterioration of a fragile property or environment.

Limiting or excluding physical access

A20. If an organisation can make out a case (by supplying us with the appropriate expert evidence) for the limiting or excluding of physical access to a site or property, they can still satisfy the public benefit requirement by putting in place alternative means of informing the public about the charity and its activities. Some examples are:

- Access to part of the site if access to the whole is harmful.
- Facilities to view the site from the outside.
- Viewing through video cameras, telescopes or other equipment.
- Computer simulations and Internet sites.
- TV and radio coverage.
- Videos, books, discussions and lectures.

A21. These are simply indicators of possible appropriate means and do not provide an exhaustive list. We will consider any other appropriate means of satisfying the public benefit requirement.

Specific aspects of public access

A22. Our consultation highlighted some specific issues in connection with access. Any organisation applying for charitable status should therefore bear in mind the following:

⁴ **Re Grove-Grady; Plowden v Lawrence [1929] 1 Ch 557.** The case was used as an authority in the 1953 case of **Re Glyn's Will Trusts (The Times 28 March 1953)** where a gift of a piece of land near a by-pass as a sanctuary for birds and wild flowers was held not to be a valid charitable trust. In that case access was at the discretion of the trustee. As with buildings, conservation without physical access by members of the public was not seen as charitable.

Houses and sites open at any time but only by special appointment:

A23. Opening a house or site only by special appointment as a means of affording physical access to a property should only be considered if it can be shown by evidence that more general access is not practicable or in the charity's interests (for example because of the fragility of the site or its remoteness, or if it is legitimately occupied by a third party). Such access can be acceptable with proper guidelines (which we will discuss with the organisation at registration stage) and monitoring. Bodies whose only proposed means of satisfying the public benefit requirement is by this type of access can therefore expect to be queried at registration stage and may also be monitored after registration so that we can ensure that there is sufficient continuing public benefit. The organisation will have to satisfy us that there is a proper system in place for publicising the proposed arrangements and recording how they work in practice. This should include a readily available contact point for prospective visitors.

Quality of access both in relation to time and areas of the site/building:

A24. We normally expect all of the most interesting parts of a site or property to be included in the public access arrangements and for the site to be open frequently enough to cater for all types of visitor (for example, at weekends as well as during the working day). However, we accept that in appropriate cases an organisation may be able to make out a case that opening on fewer but more popular days can be of more overall benefit to the public than opening more frequently but at inconvenient times. This will be considered carefully in the context of each individual case⁵.

A25. We recommend that whenever possible a plan of opening hours should be included in a registration application with projected visitor numbers if available. We would make it clear, however, that charitable status is not dependent on visiting numbers and we accept that some sites and houses have more potential for visitors than others. The important factor is that the site should be easily accessible to all those who wish to visit it. Nor will we want to approve every change in opening arrangements: this is an administrative matter within the discretion of the trustees and only becomes relevant to us if any change casts doubt on whether the charity still satisfies the public benefit requirement.

Where the site or the historical remains are not visible and has protected status:

A26. Notwithstanding that a site may have protected status, we recognise that the active management of it by a charity can still be needed to protect it even if the remains concerned are buried and invisible. If the public benefit requirement can be satisfied, for example through exhibitions of photographs and artefacts, then we will still be prepared to consider the organisation for charitable status.

Where access to the building, garden or land is out of the charity's control because it is occupied or owned by a third party

A27. We recognise that the fact that a building is privately owned is not an automatic bar to charitable funds being spent on it. However, any organisation wishing to operate as a charity and use its funds in this way must still satisfy us that it satisfies the public benefit requirement. The organisation also needs to ensure that it receives a benefit commensurate with the amount of money it expends. The proposed charity will also need to show that it has an effective degree of control over use of its funds and access to the property. There may be circumstances in which viewing a site from the outside or nearby would be sufficient, but organisations who apply for charitable status in these circumstances can expect to be subject to close scrutiny by us both before and after registration. It is still our view that whenever possible the charity should have a legal interest in the property or site concerned.

⁵ However, we maintain our view that as a starting point gardens should be open to the public for not less than three months a year and houses for not less than six months a year. If there is more restricted opening, we will need reasons as set out above to enable us to conclude that the benefit requirement is satisfied.

Charitable status and other access requirements

A28. We recognise that bodies applying for charitable status may already be subject to access requirements as a result of accepting a grant from bodies such as English Heritage, Cadw or the Department for Culture, Media and Sport, or because the property has been made subject to a tax exemption. It must be remembered that these bodies are considering an access requirement usually as part of a provision of a grant or tax exemption and not as fulfilling a legal requirement of a charity. It may well be that the evidence required to fulfil public benefit criteria as a charity are stricter than the access requirements of other bodies, and promoters should be prepared for this when they submit their registration application.

Access details in Annual Reports

A29. Charities have obligations set out in the Charities Act 1993 to prepare an annual report and submit it to us. We recommend that it would be good practice for preservation and conservation charities which are responsible for sites or buildings to state, either in their annual report or elsewhere.

- the numbers of people who visit the property and, where appropriate, the numbers who have enquired but been unable to visit;
- the arrangements to publicise opening hours either nationally or within the locality, depending on the importance of the property;
- Where access is limited or not available, the justification for continuing such a policy, with details of alternative methods used to inform the public of progress.

A30. Where the information is not in the report itself, we recommend that the report should explain how to obtain the document which contains the information. For example, the report could state an address from which site-specific guidebooks, containing the relevant figures, could be obtained. It is appropriate for charity trustees to take account of the funds available to them when deciding how detailed the information in the report should be.

Public v private benefit

Former owners

A31. It is often the case, especially with historic houses, that property which is the subject of a proposed charitable trust is to be given or leased to the charity by the member of the family who not only owns but also lives in it, and that the transfer is on the basis that they or their relatives will continue to occupy the property once it is administered by the Charity. The family members may also intend to be trustees of the proposed charity, or may be employed by it.

A32. We fully accept that the continued involvement of former owners in historic buildings trusts and in conservation trusts can be seen as a positive benefit which needs to be recognised. We also appreciate that this brings many advantages to the charity and that former owners have time and expertise which they are often prepared to continue to give to the charity at no or little cost. We also recognise that the actual donor of the property, as opposed to other family members and subsequent occupiers, is in a special position. The donor has made the decision to donate property to charity and can therefore negotiate or set the terms upon which that property is transferred. This may include reserving to the donor particular rights or benefits. Other family members are not in this position. However, we are still obliged to assess whether the arrangement overall satisfies the public benefit requirement.

A33. Therefore, although we recognise the donor's special position when considering applications, we also have to operate within charity law. In order to satisfy the public benefit requirement, a charity must not exist merely for the benefit of particular private individuals. Any benefit to an individual must either arise directly through pursuit of the charity's objects or else must be incidental or subsidiary to the achievement of the charitable purpose.

A34. In order to comply with this legal principle, organisations applying to register a charity for the preservation of a building or site need to ensure that any continued involvement of a former family owner is regulated in such a way that the public benefit requirement is still satisfied. In particular we recommend that such organisations address the following considerations:

- (a) Charities should own the properties they administer, either on a freehold or long leasehold basis. If an organisation is of the view that it cannot obtain legal title to the property it aims to preserve, but still seeks charitable status, it will need to set out why it cannot obtain title. Although this will not be an automatic bar to charitable status, the organisation will need to explain fully how the expenditure of charitable funds on a property in private ownership can be justified. The issues in paragraph A27 will then apply. Any benefits retained by a settler when property is passed to a charity should be set out in the transfer document or a written contract between the relevant parties. It is advisable to discuss the proposed terms with us before any documentation is finalised.
- (b) Any occupant of charity property should be given a formal lease at a full market rent. The level of the rent should be independently assessed but can take into account the particular characteristics of such a lease (for example, that public access to the premises is required). Bodies should not enter into such leases without consulting us first as the lease may well require our prior written authority. Even if it does not, it will have to comply with the procedures in section 37 of the Charities Act 1993⁶. The rent should be paid and evidenced by invoices or other acceptable accounting records, and the payments should appear as entries in the charity's annual accounts.
- (c) Trustees of proposed charities for the preservation of a building should always consider the position on ownership of the property's contents and explain it in their application for registration. They should be able to justify why any relevant contents have not been included and should make appropriate arrangements to identify the ownership of specific contents. The compilation of an inventory should always be considered.
- (d) Our view is that former family owners of historic buildings who remain as occupants (and their relatives) can be trustees of the proposed charity if it is in the charity's interests, but that they should only form a minority on a trustee body. In addition, the charity's governing document should also contain provisions for managing any conflict of interest (so that, for example, the affected trustees must absent themselves from any relevant discussion and not vote on matters where they have a personal interest) and the family members and close relatives who are trustees should not be in a position, either by themselves or by appointing alternatives, to form a quorum at a meeting. By "close family members" we mean:
 - The donor(s) of the property;
 - The occupier(s) of the property
 - A child⁷, parent, grandchild, grandparent, brother or sister of the donor or occupier;
 - The spouse⁸ of any of the above.

⁶ See our guidance *Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land* (CC28).

⁷ 'Child' includes a stepchild and an illegitimate child.

⁸ 'Spouse' includes a person living with another as that person's husband or wife.

A35. We have adopted this definition from Schedule 5 of the Charities Act 1993, which defines “connected persons” in charity land disposals.

Statements as to charitable status

A36. We recommend that it is good practice for charities in this area to state on all documents produced for the public that the organisation is a registered charity. There is no objection to the literature also explaining the role of the family connected with a house, but this information should be accurate and not mislead the public about the nature of the family’s occupation. It would be useful for examples of such literature to be enclosed with the application for registration. This is in addition to the legal obligations contained in section 5 of the Charities Act 1993.

Further reference

A37. For further information you may find it useful to refer to the following Charity Commission publications:

The Review of the Register of Charities	RR1
The Public Character of Charity	RR8
Speaking out: Campaigning and Political Activity by Charities	CC9
Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land	CC28
Trustees, trading and tax	CC35

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