

CHARITIES ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Sections 1 – 3: Meaning of “charity”; Meaning of “charitable purposes”; The “public benefit” test

13. The preamble to the Statute of Charitable Uses 1601 (sometimes known as the Statute of Elizabeth I) contained a list of purposes or activities that is sometimes described as the first statutory definition of charitable purposes; but that list - because it was in the preamble, not the body of the Act - did not form part of the statute law. It was, in effect, a list of purposes or activities that the State believed were of general benefit to society, and to which the State wanted to encourage private contributions.
14. The list in the preamble to the 1601 statute has nevertheless formed the foundation of the modern definition of charitable purposes, which has developed entirely through case law. This has come about because the courts, in considering whether or not a particular purpose was charitable in law, have tended to look for an analogy between the purpose under consideration and the 1601 list, and to recognise the purpose as charitable if an analogy with the 1601 list could be found.
15. [Section 1](#) provides a general statutory definition of charity for the purposes of the law for the first time. It follows the definition of charity in the Charities Act 1993.
16. [Section 1\(1\)](#) establishes the meaning of charity. By specifying that a body or trust is a charity if established for charitable purposes "only", section 1(1)(a) preserves the current rule to the effect that a body or trust which has non-charitable as well as charitable purposes is not a charity.
17. [Section 1\(1\)\(b\)](#) excludes institutions outside England and Wales from the scope of charity as defined by the Act since the jurisdiction of the High Court extends only to England and Wales.
18. [Subsections \(2\) and \(3\)](#) of section 1 deal with references to a charity in legislation apart from this Act. Subsection (3) covers legislation and documents in which a charity is defined by reference to the Charitable Uses Act 1601 or the preamble to that Act and provides for that definition to be supplanted by the one in this Act. Subsection (2) covers all other definitions of charity in legislation apart from this Act and preserves those definitions.
19. [Section 2](#) of the Act contains the first statutory definition of “charitable purpose”. This definition still relies on a considerable body of case law.
20. The meaning of "charitable purpose" is supplied by section 2(1), which provides that a purpose is charitable if it meets two criteria:
 - that it falls under one or more descriptions or “heads” of charity in section 2(2); and

*These notes refer to the Charities Act 2006 (c.50)
which received Royal Assent on 8 November 2006*

- that it is for the public benefit.
21. Each of the paragraphs in section 2(2) is a description or “head” of charity rather than a fully-stated purpose in itself. Within each of those descriptions lie a range of purposes all of which fit the description but each of which is a different purpose in its own right. The list of descriptions, taken as a whole with the purposes underlying the descriptions, encompasses everything which is to be a charitable purpose.
 22. The list of descriptions of charitable purposes in *subsection (2)* of section 2 contains 12 specific descriptions (paragraphs (a) to (l)) and one general description (paragraph (m)) which brings in the purposes described by *subsection (4)*. The list of specific descriptions covers the great majority of purposes that are recognised as charitable but does not cover everything: paragraph (a) of subsection (4) covers those purposes that are currently recognised as charitable but that do not fall under any of the specific descriptions in paragraphs (a) to (l).
 23. Paragraphs (b) and (c) of section 2(4) cover purposes that are analogous to, or within the spirit of, any other charitable purposes (i.e. purposes falling within any of paragraphs (a) to (l) of subsection (2), existing charitable purposes, or purposes which themselves have been recognised as charitable under subsection (4)(b) or (c)). These provisions enable the meaning of “charitable purpose” to be expanded in the future by allowing for the possibility of new charitable purposes to be recognised.
 24. *Subsection (5)* of section 2 preserves the existing meaning of the terms used in the specific descriptions in subsection (2) or (3) of that section.
 25. **Section 3** deals with public benefit. Under the existing law there is a presumption that purposes for the relief of poverty, the advancement of education, or the advancement of religion – in other words the purposes that would fall under paragraphs (a) to (c) of section 2(2) - are for the public benefit. No other purposes benefit from that presumption. The effect of the presumption at present is that, when the status (charitable or non-charitable) of an organisation established for the relief of poverty, the advancement of education, or the advancement of religion is being considered, the organisation’s purpose is presumed to be for the public benefit unless there is evidence that it is not for the public benefit. By contrast, organisations established for all other purposes, which do not benefit from that presumption, have at the time their status is being considered to provide evidence that their purpose is for the public benefit.
 26. *Subsection (2)* of section 3 abolishes the presumption that organisations for the relief of poverty, the advancement of education, or the advancement of religion enjoy, putting all charitable purposes on the same footing. Abolishing the presumption will not by itself have the effect of depriving poverty relief, educational and religious organisations that were registered as charities while the presumption existed of their charitable status.
 27. *Subsection (3)* makes clear that the term “public benefit”, wherever it occurs in sections 1-3, refers to the existing concept in charity law in England and Wales. The concept of public benefit will remain in the common law. Guidance that the Charity Commission issues under section 4 (see below) will explain the public benefit concept.