

# Charity law

## The current position (England and Wales)

“Public benefit is a requirement for all organisations which profess to be charitable. All charities must show that they exist for the public benefit. This means that they serve either the community as a whole or a sufficient (appreciably important) section of the community. The general principles are that the number of those eligible to benefit must not be negligible, they must constitute a group or class which can be considered to be a public class and any defining connecting link must not be a personal relationship such as family or employer/ee. The court or the Commission determine what is a sufficient section of the community by examining the class of individuals to be benefited in relation to the charitable purposes declared. The class may be limited by reference to particular types of charitable need, by geographical area and by other criteria consistent with the charitable purposes.

.....

Currently, the first three heads of charity, namely for the relief of poverty, the advancement of education and the advancement of religion, enjoy a presumption of public benefit. This means public benefit is recognised as established and need not be demonstrated unless any doubt arises. For charities with purposes in the fourth head, it must be positively shown”.<sup>1</sup>

The SRP is defined in Rule 2 as an educational charity.

2.1 The Society is established for charitable purposes only.

2.2 The object of the Society shall be the education of the public in the study, practice and appreciation of the art of music and the allied arts and in particular (without prejudice to the generality of the foregoing) the promotion of the education of the public in the study, practice and appreciation of the recorder and its repertoire and in pursuance of the foregoing object and within the limits permissible to charity the Society may (inter alia and not so as in any way to limit its powers hereunder) .....

Therefore under current law, our “public benefit is recognised as established and need not be demonstrated”.

## The Charities Bill<sup>2</sup>

The proposed legislation provides that a charity will have to have purposes which fall within those defined in the new legislation and be for the public benefit. *The presumption of public benefit will be removed.* The effect of this will be that the existence of public benefit will need to be addressed at any time the charitable status of an organisation is being considered by the court or the Commission. This will be done by reference to the common law rules which currently govern the law on public benefit, which will be preserved.

The SRP will therefore need to be able to demonstrate public benefit as that will no longer be assumed as a consequence of being an educational charity.

## Charitable purposes

As the Bill stands (13 July 2006), charitable purposes are defined<sup>3</sup> as

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the Crown;
- (m) any other purposes within subsection (4). (*i.e. purposes analogous to the others*)

The SRP clearly can claim purposes (b) and (f). The question for us is how we meet the additional requirement “for the public benefit”, noting that “it is not to be presumed that a purpose of a particular description is for the public benefit”.

The Charity Commission published two papers in January 2005 *Public Benefit – the Charity Commission’s approach*<sup>4</sup> and *Public Benefit – the legal principles*<sup>5</sup>. These discuss how “benefit” and “public” might be interpreted, for example

“The benefit must be to the public at large, or to a sufficient section of the public”.

With regard to membership organisations:

“Some charities have a membership structure under which the members are also the charity’s beneficiaries. In this case, any restrictions placed on who may join as a member must be reasonable and justifiable in the circumstances if the public benefit of the organisation is not to be compromised”.

When the Bill becomes law, the Commission is required to issue guidance in pursuance of its “public benefit objective” after a period of public consultation.

My opinion is that we now have sufficient information about the shape of future charity law to begin a review of our activities and financial arrangements to ensure that we shall meet the test of public benefit. There will need to be adjustments when the Bill becomes law and guidance has been issued by the Charity Commission to clarify how the public benefit test will be applied.

## Scotland

Charity law was reformed in Scotland in 2005<sup>6</sup> and mostly came into force in April 2006. The Office of the Scottish Charity Regulator (OSCR) was created (previously registration of Scottish charities was administered by Her Majesty’s Revenue and Customs). In February 2006 the SRP committee reviewed OSCR guidance available at that time and agreed that the SRP should register with OSCR as a cross-border charity. Revised guidance has now been issued by OSCR and the Charity Commission<sup>7</sup>. What this boils down to is that if we carry out “significant” activities in Scotland we should register, and are asked to do so by 25 October 2006.

If registered, we shall have to submit an Annual Return to OSCR as well as to the CC. We shall not have to prepare separate accounts for Scotland, but will be expected to provide a narrative in the report of activities in Scotland. We shall need to add the Scottish charity number to our letterhead. If not registered, we shall no longer be allowed to describe ourselves in Scotland as a charity unless we qualify it as “a charity registered with the Charity Commission”.

The “charitable purposes” in Scotland are similar (but not completely identical) to those in the Charities Bill for England and Wales. The public benefit test appears the same. OSCR guidance notes are available and the following extract from “Meeting the Charity Test” appears relevant.

“Where the charity’s benefit is directed at its membership then we will need to consider public access to such membership, and whether the membership criteria are justifiable and reasonable given the nature of the charitable purpose. (Prospective) charities, which exist to primarily benefit their members, and which have a closed or unduly restricted membership, will not be considered as providing a public benefit.”<sup>8</sup>

I suggest we confirm that SRP should register with OSCR.

Andrew Short

13 October 2006.

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<sup>1</sup> <http://www.charity-commission.gov.uk/spr/submerge.asp>

<sup>2</sup> <http://www.charity-commission.gov.uk/news/charbill.asp>

<sup>3</sup> <http://www.publications.parliament.uk/pa/cm200506/cmbills/213/06213.1-7.html#j201>

<sup>4</sup> <http://www.charity-commission.gov.uk/spr/pbcca.asp>

<sup>5</sup> <http://www.charity-commission.gov.uk/spr/pblp.asp>

<sup>6</sup> Charities and Trustee Investment (Scotland) Act 2005

<http://www.opsi.gov.uk/legislation/scotland/acts2005/20050010.htm>

<sup>7</sup> <http://www.oscr.org.uk/publicationitem.aspx?id=65c7f261-e853-4d3d-8a4d-3e04bd079861>

<sup>8</sup> <http://www.oscr.org.uk/DocumentViewer.aspx?id=aec25378-896e-448a-bb07-906b8b715a96>