

# High definition

Zahra Kanani translates the legal meaning of key charitable terms

The statutory definition of “charity” enjoys a long history dating back to the preamble to the Statute of Charitable Uses 1601. The courts traditionally considered the preamble as the foundation of the definition of charitable purpose as well, but extended it by recognising analogous purposes to those listed in the preamble—that is to say, those within its “spirit and intendment”. In *Income Tax Commissioners v Pemsel* [1891] AC 531, Lord Macnaghten developed this further by adopting a four-part classification of charitable purposes, which was used as the basis for the subsequent development of charity law.

It was always implicit that in order to be charitable, a purpose had to be for the public benefit. This article summarises the current legal definitions of “charitable purpose” and “public benefit”.

## Key definitions

Section 1 of the Charities Act 2011 (CA 2011) provides that a “charity” is: “An institution which (a) is established for charitable purposes only, and (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.”

The term “charitable purpose” is defined by s 2(1) as: “A purpose which (a) falls within section 3(1), and (b) is for the public benefit.”

## Charitable purposes

Section 3(1)(a) to (l) of CA 2011 lists 12 specific purposes which may be classed as charitable. The descriptions of the purposes in sub-sections 3(1)(a) to (c) roughly correspond to the first three of Lord Macnaghten’s categories, namely, relief of poverty, advancement of education and advancement of religion. The description of purposes falling in sub-sections 3(1)(d) to (l) correspond to purposes which had previously been recognised as falling within the fourth category stipulated by Lord Macnaghten, namely, “other purposes beneficial to the community, not falling under any of the preceding heads”.

Sub-section 3(1)(m) adds other purposes which are recognised as charitable by virtue of s 5 (recreational and similar trusts) or under the law in force immediately before 1 April 2008 or which may reasonably be regarded as analogous to or within the spirit of another charitable purpose. This sub-section is intended to enable new charitable purposes to continue to be recognised in the same manner as under the previous law.

## Public benefit

Section 4(1) of CA 2011 sets out the public benefit requirement. In order to satisfy the requirement, two limbs must be satisfied: (i) there must be an identifiable benefit; and (ii) the benefit must be to the public or a section of the public.

The benefit provided must be clear and related to the charitable purpose and any detriment should not outweigh the benefit. The “public” aspect of public benefit means that the purpose must benefit either the public at large or a sufficient section of the public. There is one exception to the rule that both limbs must be satisfied. The “poverty exception” states that in some cases (but not all), charities set up for the relief or

prevention of poverty only need satisfy the first limb—these are generally charities set up to relieve poverty among a class of persons defined by reference to, say, family or employment.

CA 2011 imposes a “public benefit objective” on the Charity Commission by requiring it to promote awareness and understanding of the operation of the public benefit requirement and by further requiring it to issue guidance on the public benefit requirement. In the Commission’s view, the public benefit objective extends to promoting awareness and understanding of the duty of charity trustees to administer their charity for the public benefit.

By virtue of regulations made under s 162 of CA 2011, charity trustees are required to report annually on public benefit (although this was originally introduced following the Charities Act 2006 (ChaA 2006)). Charity Commission guidance states that charity trustees “are required” to report the following in their annual report:

- i a summary of the charitable purposes of the charity;
- ii a report of the main activities undertaken to carry out its charitable purposes for the public benefit; and
- iii a statement by the charity trustees as to whether they have complied with the duty “to have regard” to the public benefit guidance published by the Charity Commission when exercising any powers or duties to which the guidance is relevant.

The public benefit reporting requirement is seen as an important tool in providing transparency and maintaining public trust and confidence as well as being a report to the charity’s stakeholders, although a minority view it as yet another regulatory burden.

While the legislation might appear to lay down more prescriptive tests, in practice, it does not change the fundamental principles behind “charitable purpose” or “public benefit”. Charities are afforded significant privileges and the public benefit reporting requirement is a welcome development to maintain public trust and confidence in charities. As Lord Hodgson stated in his review of ChaA 2006: “To relax the rules on the type of organisation that is entitled to access this special status risks compromising the role and position of the sector as a whole..”

**Zahra Kanani is a Solicitor at Forsters LLP. Website: [www.forsters.co.uk](http://www.forsters.co.uk)**

