

Submission in response to the Consultation on Draft public benefit guidance.

Church Society is itself a charity whose purposes are largely for the advancement of religion, it also administers a number of subsidiary charities consisting of properties and funds.

Overall Observations

We are very concerned about the possible use of the recent charity legislation and public benefit guidance to discriminate against charities whose purpose is the advancement of religion. Two particular aspects of the consultation document highlight this concern.

1. Religious charities are concerned primarily with spiritual wellbeing. However, this document and legislation seem to focus largely on materialistic concerns. It is entirely understandable that Principle 3 should require that the poor must be able to benefit from a charity, but is materialistic in focus. Religious charities have often rightly had a bias to the poor but their primary concern is spiritual. The guidance seems to hint that there is something more than material benefit but does not articulate this.
As an example the Church of England, as a national church, has a duty in law for the 'cure of souls' of all the people of England. This is a purpose with a clear benefit, to all people, established in law. Would the 'cure of souls' be deemed a proper benefit under the new proposals?
2. The proposals put far too much reliance on 'public opinion', which is difficult if not impossible to govern and quantify. The English legal system, and this includes the law relating to charities, has to a large extent relied on precedent. This provides a good and proper historical safeguard against the tyranny of whoever is in control. Recent legislation, the charities proposals included, have tried to reflect what is understood to be changed public opinion. However, what this really means is that a small group of people become the arbiters of what this opinion is and dissenting views are generally ignored. This means that what is represented as a particular view of the public may not be so, and yet this is then to be used to make important decisions. Our current system of relying on case law and precedent provides a necessary check against the whims and misunderstandings of whoever happens to be in power at any given time.

Response to questions

Q1 Clarity

No comment

Q2 Expression of public benefit

The principles should make it clear that all four principles need to be satisfied.

Q3 Accurate summary of the law

No comment.

Q4 Modern social conditions and Q5 Public opinion

See observation 2 above.

No credible explanation is given of how public opinion will be evaluated.

This provision opens the way for discrimination against religious groups, which have hitherto been charities because a small group of people who claim to be able to gauge public opinion decide that these charities are going against the tide.

Q6 Interpretation of Principle 1

The examples of principles given are all material in nature. As explained in observation 1 above religious charities are as concerned with spiritual wellbeing.

It should also be recognised that for many religious charities proselytising is one of their primary purposes, this is an aspect of concern for spiritual wellbeing. There has been great freedom in this country to do this, unlike many others, and yet there is a great danger that this freedom will be lost. Charity legislation could become a weapon used against religious groups.

Q7 Ancillary benefits

No comment

Q8 Interpretation of Principle 2

The chief concern with this Principle is the assertion that 'benefit will be affected where restrictions are irrational, unreasonable or unjustified'. This is potentially open to great abuse. There needs to be far more said on what this means in practice.

Many religious charities are potentially open to all but in reality may impose certain conditions on beneficiaries, sometimes related to their beliefs or behaviour. We fear that such distinctions will fall foul of the proposed interpretation.

Q9 Interpretation of Principle 3

See observation 2 above.

Q10 Terminology

There is nothing wrong with 'the poor'.

Q11-15

No comment.

Q16 Demonstration of Public Benefit

The way the proposals are framed will discriminate against religious charities as explained in the observations because the focus is too materialistic.

Q17 New charities

As in so many areas recent rules and regulations are stifling charitable and benevolent activity. For example voluntary work with children has become so complex that many people are unwilling to get involved. This is a general problem and the new legislation is just part of. These guidelines in themselves are not especially onerous, but they are one more piece of red tape.

Submitted by Revd David Phillips, General Secretary on behalf of the Council (Trustees) of Church Society.

5 June 2007

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