



23 April 2012

Our ref: ICAEW Rep 62/12

Charities Act 2006 Review
C/O Office for Civil Society
4/16, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

By email charitiesactreview@cabinet-office.gsi.gov.uk

Dear Sirs

Charities Act 2006 Review – Call for Evidence: Charity registration thresholds and excepted charities

ICAEW welcomes the opportunity to comment on the *Charities Act 2006 Review – Call for evidence: Charity registration thresholds and excepted charities* published by the Cabinet Office in February, a copy of which is attached as an Appendix.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW has a Charities Technical Sub-Committee and a Charities & Voluntary Sector Group with over 3,000 members. Many ICAEW members are active in charities and the voluntary sector; approximately 30,000 are charity trustees, treasurers, school governor and in other voluntary roles.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

Yours sincerely

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APPENDIX

Charities Act 2006 Review – Call for Evidence

Charity registration thresholds and excepted charities

Issue:

The existing legal framework sets out a scheme for when and how charities are required to register with the Charity Commission (or another regulator if appropriate – see call for evidence on exempt charities). However, there is ongoing discussion as to whether the current thresholds and regimes applicable to different types of charity achieve the right balance between accountability and bureaucracy.

Background:

The Charity Commission has responsibility (in England & Wales) for maintaining the register of charities. While inclusion on the register entitles organisations to a registered charity number, it is not necessary for an organisation to be registered in order to be a charity; there are a large number of unregistered but entirely legitimate charities. It is, however, a legal obligation for all charities with an annual income over £5,000 to register with the Charity Commission (apart from exempt charities and excepted charities – see below). Failure to register does not mean that the organisation is not a charity, but that the charity is in breach of its legal obligations. Registered charities are required to comply with the Charity Commission's reporting and accounting rules, which become more stringent as levels of income increase (see also the separate call for evidence on accounting and reporting requirements). This Review seeks to understand whether the registration threshold is set at an appropriate level and what the implications of any changes would be for organisations involved.

There is little doubt that the register is a vital means of maintaining public confidence in both individual charities and the charitable sector as a whole. However, potential donors and funders can tend to overlook unregistered charities simply because they do not have a registration number. This gives charities that have "registered charity status" an unintended advantage over legitimately unregistered charities.

The Review will, therefore, be considering how a level playing field might be created that ensures that charities that are not registered are not unfairly disadvantaged. One way of achieving this might be to implement the provision introduced by the Charities Act 2006 (now section 30(3) of the Charities Act 2011) that requires the Charity Commission to register charities that want to register voluntarily (the Charity Commission actively discourages voluntary registration at present¹).

The Charities Act 2006 also changed charity registration requirements significantly. There are three types of charity that are not required to register with the Charity Commission; charities with an income of less than £5000 per year (of which there are estimated to be 80,000), exempt charities (of which there are estimated to be just under 10,000) and charities excepted by regulations from the requirement to register unless their income is more than £100,000 (excepted charities, of which there are estimated to be 100,000). The changes for exempt and excepted charities are explained on the Charity Commission's website². The nature and regulation of exempt charities is discussed in a separate call for evidence.

Excepted charities are regulated by, but not registered with, the Charity Commission. They can choose to register voluntarily, though most currently opt not to as registration triggers the accounting and reporting requirements already mentioned.

¹ www.charitycommission.gov.uk/Start_up_a_charity/Do_I_need_to_register/Resources_for_very_small_charities.aspx

² www.charitycommission.gov.uk/Start_up_a_charity/Do_I_need_to_register/regreq.aspx#a2

The main groups of excepted charities are religious charities from certain Christian religious denominations (including Parochial Church Councils), scouts and guides, and armed forces service non-public funds. They are something of a historical anomaly; in the 1960s, when most charities were being required to register with the Charity Commission (but the Commission exercised no regular oversight function), these organisations were excepted as they were already supervised by their own umbrella body.

The Charities Act 2006 sought to rectify this anomaly. The Act required all excepted charities with an annual income of over £100,000 to register with the Charity Commission. This threshold is temporary, and the original intention was that it would reduce (ultimately to the same level as the general registration threshold i.e. currently £5000, but possibly a higher figure). However, the Act prohibits the Minister from reducing the excepted charities registration threshold further until the Report of this review has been laid in Parliament.

This Review seeks to understand what the impact of registration has been on those formerly excepted charities that have been required to register and, in light of this, to make recommendations on whether and, if so, how, this process should continue. It will also explore alternative approaches to managing the registration and regulation of excepted charities, such as transformation into exempt charities with a principal regulator (with principal regulators having a working relationship the Charity Commission). For example, could the umbrella organisation of a Christian religious denomination act as principal regulator for its constituent churches or chapels, so eliminating the need for such churches or chapels to register?

The Review will also be exploring whether a similar “principal regulator” approach might also be applied to registered charities that have a national umbrella charity and separate branches that are also registered charities. This would save the branches from the burdens of registration, but at the same time leave their charitable status intact.

Who should respond?

Anyone can respond, and all responses will be considered.

However, we are particularly interested to hear from formerly and currently excepted charities, as well as charities themselves more broadly.

Deadline for responses:

The deadline for receiving responses to this call for evidence is 16 April 2012.

How to submit your response:

Please send your response by e-mail to charitiesactreview@cabinet-office.gsi.gov.uk

Alternatively you can write to:
Charities Act 2006 Review
C/O Office for Civil Society
4/16, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Question 1: Should the annual income threshold for compulsory charity registration remain at £5000? If not, what should it be? Please give reasons for your answer.

Yes, in our view, the annual income threshold for compulsory charity registration should remain at £5,000. There was a public consultation by the Charity Commission in 2008 on the financial thresholds and reporting provisions contained in the Charities Act 2006. The results from this consultation provide support for the compulsory charity registration limit to remain at £5,000.

Question 2: Should excepted charities be required to register with the Charity Commission? If so, should the registration threshold be the same as for other charities, or should it be at another level?

As noted in our response to the call for evidence on the Charity Commission, we believe that the Charity Commission should be the principal regulator for all charities (including excepted charities) and that the Charity Commission should be the lead regulator for the recognition of charitable status for the purposes of tax law as well as charity law. Currently, HMRC can also recognise the charitable status of organisations for tax purposes.

This suggestion will help to harmonise regulation in the sector, thereby decreasing complexity and fragmentation.

All charities, including excepted charities, should be registered with the Charity Commission at the £5,000 income threshold. If this was implemented, the term excepted charity would no longer be needed other than in relation to charities under £5,000 income. This would help to make it easier for the public to understand the system.

Question 3 (excepted/formerly excepted charities only): What were, or would be, the implications of registration? What impact has this had/would it have on your organisation? Are there any additional changes that could be made to alleviate any negative consequences?

Feedback from our members working or volunteering in charities has suggested that in many cases there were few implications of implementing such a proposal, since their umbrella organisation already required the information that would be required by the Charity Commission. However, umbrella organisations vary enormously in terms of their level of oversight of such issues. As a result many excepted charities have some understanding of their charitable status. Registration would have a positive impact in ensuring that such organisations would be in direct communication with the Charity Commission, they would have the status of a registered charity number (which makes it much clearer to third parties that they are charities) and subject to the relevant thresholds. Their Trustees Report and Accounts would also be available on the Commission's website.

Question 4 (all registered charities): What would the implications be for your organisation if the registration threshold was raised and your organisation was no longer registered? Are there any additional changes that could be made to alleviate any negative consequences?

Our members do not support an increase in the registration threshold. In their view registration facilitates fund raising and improves accountability and transparency in the sector. However, if the registration threshold is increased, this should not lead to enforced de-registration for charities already registered but now falling below any new limit. We also believe that given the benefits of registration, voluntary registration should be permitted and encouraged.

Question 4 (unregistered charities only) Do you believe that your charity is unfairly disadvantaged in any way because it is not registered? If so do you want to register your charity or can you suggest another way to overcome the difficulty?

Registered charities derive benefit from their registration, both in law (for example, the right to claim gift aid) and by custom and practice (for example, individuals are more likely to give to a registered charity). Given these benefits, we would support a move to encourage more charities to voluntarily register with the Charity Commission. This would also help to improve the sector's accountability and transparency.

Also, charities which do not voluntarily register with the Charity Commission, should still have the option to benefit from tax exemptions by registering with HMRC. This option should still remain for unregistered charities, but as explained above we only support this for those under £5,000 income.

Question 5: Are there any groups of excepted or registered charities that would be suitable to become exempt charities with a principal regulator? (Please explain why)

No, there are already too many regulators with different regulatory frameworks.

Question 6: Are there any alternative models of regulation that could be appropriately applied to either excepted charities, or charities more generally (for example, a system of sub- or co-regulators that work with or report to the Charity Commission)?

Our members recommend that the Charity Commission should regulate all registered charities. Adding any sub- or co-regulators would add unnecessary complexity to the sector. In order to be able to properly and fully carry out this role, the Charity Commission should be properly funded.

Question 7: Do you have any other comments about the registration of charities or excepted charity status?

No comments

Respondent details:

Name:	Anne Davis
Position:	Head of Charity and Voluntary Sector
Organisation Name:	ICAEW
Organisation size (income)	Not applicable

Is your organisation a charity?	Yes/No
If so, is it registered with the Charity Commission?	Yes/No
Is your organisation an excepted charity?	Yes/No
If not, has it ever been an excepted charity?	Yes/No

What happens next?

- We will acknowledge receipt of all responses, although we cannot provide a detailed response to each individual submission.
- All responses will be considered in forming the report of the review.
- The aim is for the report of the review to be laid in Parliament and published in July 2012.

The small print:

All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want your response to remain confidential, you should explain why confidentiality is necessary and your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer by your IT system will not, of itself, be regarded as binding on the department. Contributions to the review report will be anonymised if they are quoted, unless we contact you and you give us your permission to use a particular quote.

Individual contributions will not be acknowledged unless specifically requested.