



23 April 2012

Our ref: ICAEW Rep 54/12

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: The Charity Commission

ICAEW welcomes the opportunity to comment on the *Charities Act 2006 Review – Call for evidence: The Charity Commission* 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

Anne Davis

Head of Charity and Voluntary Sector

T +44 (0)1908 546 233

M +44 (0)7918 746 958

E anne.davis@icaew.com

APPENDIX

Charities Act 2006 Review – Call for Evidence

The Charity Commission

Issue:

The Charity Commission is the independent registrar and regulator of charities in England and Wales. The Charities Act 2006 established a new constitutional framework which clarified the Commission's objectives, functions and duties, and how it should operate, including it being led by a larger, more diverse board. The Review is looking at whether the Act has achieved its aims. It is also considering the role, functions and duties of the Charity Commission, at a time of reducing resources, together with its independence from government and whether or not it should continue to be a government department.

Background:

The Charity Commission regulates the charity sector in England and Wales and supports trustees in fulfilling their duties by providing guidance and advice, (Scotland and Northern Ireland have similar but different arrangements).

The Charity Commissioner's Status as a non-Ministerial Government Department

The Charity Commission is a Non-Ministerial (Government) Department (NMD). However, unlike some other regulatory NMDs, the Charity Commission is not subject to Ministerial direction or control in the exercise of any of its functions or powers. This is because it was considered that the Charity Commission should be able to operate independently of Government influence, but that it should have access to Government without being seen to be part of it. The Charity Commission's independence reflects its roots, in the mid nineteenth century, as a quasi-judicial body, created to have a parallel jurisdiction with that of the High Court in respect of charities – much of which it continues to have to this day.

Some people have suggested that an alternative status would be more appropriate for the Charity Commission, but no-one has suggested a credible alternative that would preserve the Commission's independence whilst giving it access to Government without being seen as part of Government. The Review will consider the status of the Charity Commission as a government department.

The Commission's objectives, functions and duties

The Charities Act 2006 established the Charity Commission as a body corporate with an expanded board. Its five objectives are:

1. The public confidence objective – to increase public trust and confidence in charities.
2. The public benefit objective – to promote awareness and understanding of the operation of the public benefit requirement.
3. The compliance objective – to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
4. The charitable resources objective – to promote the effective use of charitable resources.
5. The accountability objective – to enhance the accountability of charities to donors, beneficiaries and the general public.

Its six general functions are:

1. Determining whether institutions are or are not charities.
2. Encouraging and facilitating the better administration of charities.
3. Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.

4. Determining whether public collections certificated should be issued, and remain in force, in respect of public charitable collections.
5. Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives. This includes the maintenance of an accurate and up-to-date register of charities.
6. Giving information or advice, or making proposals, to any Minister of the Crown on matters relating to any of the Commission's functions or meeting any of its objectives. This includes complying, as far as reasonably practicable, with any request from a Minister of the Crown for information or advice relating to any of its functions.

Its six general duties are:

1. So far as is reasonably practicable the Commission must, in performing its functions, act in a way –
 - a. which is compatible with its objectives, and
 - b. which it considers most appropriate for the purpose of meeting those objectives.
2. So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of –
 - a. all forms of charitable giving, and
 - b. voluntary participation in charity work.
3. In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.
4. In performing its functions the Commission must, so far as is relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).
5. In performing its functions the Commission must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities.
6. In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

The Review aims to assess whether these changes have been effective in their aim of allowing the Commission's performance to be assessed against its objectives, and its impact on the charitable sector to be judged (note that there is a separate call for evidence on public charitable collections). The Charity Commission, like other Government Departments, is facing a significant reduction in its budget (33% real terms by 2015). The Commission itself has said that it will have to prioritise its work, and that business as usual is not an option. It has undertaken a restructuring exercise to meet the challenges over the coming years. In December 2011 it set out its Strategic Plan for the period to 2015 ([Charity Commission Strategic Plan](#)).

The Commission's two key strategic priorities are:

- Developing the compliance and accountability of the charity sector;
- Developing the self-reliance of the charity sector.

The Plan sets out the regulator's new Vision, Mission and Values, with the Vision being 'Charities you can support with confidence'.

Sub-Regulation

Some people have suggested that the Charity Commission's regulatory approach does not meet the needs of many, especially specialist charities. The Review will also consider, therefore, whether there is scope for a sub-regulation approach, with approved sub-regulators responsible for some charities. This could be along similar lines to the sub-regulator model operated by the Financial Services Agency (FSA) in the authorisation and regulation of Independent Financial Advisers (IFAs) or for a "principal regulator" approach introduced by the Charities Act 2006 for the regulation of exempt charities. The role of these sub-regulators/principal regulators would be to promote compliance by charity trustees with their charity law obligations.

They would not have any of the Charity Commission's investigation or enforcement powers but could call on the Commission to investigate a charity for which they were responsible. The Commission would also retain the power of intervention in any charity at any time.

Who should respond?

Anyone can respond, and all responses will be considered.

However, we will be particularly interested to hear from charity trustees and their staff who are involved in the day-to-day administration of these organisations, their advisers and umbrella bodies.

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:

- (a) **Should the Charity Commission remain as a non-Ministerial Government Department?**
- (b) **If you think there is another structure/status that would be more appropriate, please give details and reasons why it would be better.**

It is important that the Charity Commission remains as a non-Ministerial Government Department. As an independent regulator this helps enable the Charity Commission to further enhance the charity brand and promote public confidence since it is removed from political pressure. It might be useful to refer to research on how other countries and regions regulate non-profit organisations in order to explore different structures and style of regulation which can range from controlling to facilitative. We draw your attention to a number of books which collate high quality research on issues of charity and non-profit regulation in different countries, for example: Garton, Jonathan - *The Regulation of Organised Civil Society* (Hart Publishing 2009) and Phillips, Susan (ed) - *Governance and Regulation in the Third Sector: International Perspectives* (Routledge 2009).

Question 2: Is the Charity Commission an independent, fair, open and proportionate regulator? Is it an effective regulator? Please explain your reasoning, backed up with examples or case studies where possible.

We believe that the Charity Commission is an independent, fair, open and proportionate regulator. The Charity Commission is a well-organised public body which is simple to deal with. For example, it has a good website, staff are helpful and annual accounts can be filed online and in pdf format. However, we feel that the Charity Commission should increase its regulatory role in monitoring the quality and timeliness of submission of accounts and enforcing compliance with accounting, legal and regulatory requirements. For example, we have noted that some of the annual accounts filed with the Charity Commission have basic errors, for example, accounts which do not comply with the SORP, accounts which state that they are prepared in accordance with the Companies Act when the organisation is not a charitable company and accounts filed with a 'small company compilation' type report rather than an independent examiner's report.

Question 3: What changes, if any, should be made to the Charity Commission's objectives, functions and duties? Please explain your reasons for any change.

We believe that the Charity Commission should be the principal regulator for charities (including exempt 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.

Question 4: Do you think the Charity Commission is properly discharging the objectives, functions and duties as set out in this call for evidence? If not, please give reasons and practical examples.

In addition to its current responsibilities, we believe that the Charity Commission should be the key regulator for collections in public places rather than local authorities, since the current process is inconsistent and very time consuming. Given the 33% real reduction in the Charity Commission's resources by 2015, it may not be possible for the Charity Commission to determine whether certificated public collections should be issued. What is needed is consistency in the process for public collections but at a local level, so that local authorities can ensure that there are no clashes between fund raising events.

At the moment collections in public places are subject to licensing by the local authority and the conditions for obtaining the license are fairly consistent because they derive from the same regulations, but the application may vary between authorities. We would like a single set of rules to be developed and overseen by the Charity Commission (so that for example, the Charity Commission receives the reports on the conduct/proceeds of the collection from the fundraising entity) but the local authority determines whether a collection can be held in a given location, to avoid multiple collections on the same day.

Question 5: Do you think that the Charity Commission should be a regulator (a rule enforcer) or a “friend” (an adviser) or both? Can these roles be combined? Which role is most important?

We think that the Charity Commission should be the regulator and registrar for charities, including exempt charities and should be properly resourced to perform this role and provide sectoral guidance. In terms of an advisory role, we believe that the Commission should focus its resources on providing guidance rather than individual advice to charities, advisors and others. Individual and tailored advice to charities, advisors and others could be provided by umbrella and professional bodies. For example, ICAEW currently supports organisations and ICAEW members in the charity and voluntary sector through its **Business Advice Service**. Over 3000 ICAEW accountancy offices in England, Scotland and Wales offer a free business advice session to charities, social enterprises and others in the non-for profit sector. In addition, ICAEW has a free online community **Talk Charity** aimed at people working in charities or advising charities and is currently working on a **pilot project** with the Charity Commission to offer free financial controls and risk awareness reviews to charities.

Question 6: Should the Charity Commission charge for its registration and regulatory services to charities in the same way as most other regulators do? If not, why not? If so, on what basis

- (a) just a one-off registration fee; or
- (b) a registration fee and additional fees for services provided by the Commission e.g. grant of a scheme or authorisation to pay a trustee.
- (c) an annual fee linked to incomes, assets or value of tax breaks received; or
- (d) other?

The sector needs a properly resourced regulator that can protect the charity brand and inspire confidence in the public. Therefore, we support the principle of the Charity Commission charging for some of its regulatory functions, which is in line with other regulators. However, any income raised via these charges should be directed to support the regulatory functions of the Commission and should not be seen as an opportunity to decrease government funding to the Commission.

With regards to the above proposals:

- (a) We support a one-off registration fee for charities but there needs to be further consultation on how this might work e.g. would it be an annual registration based on income or asset thresholds of a charity?
- (b) We do not support a registration fee and additional fees for services provided by the Commission since we believe this undermines the independence of the Commission
- (c) We support an annual fee linked to income, assets or value of tax breaks received.

In addition, we suggest that the review should consider changing the Act to allow the Commission to charge charities for late filing of accounts, although this does not have to be on the same scale as for a company. We also think that the Charity Commission should have greater sanctions to ‘strike off’ charities in order to protect charitable assets and funds.

Question 7: Do you think that it is practical for the Charity Commission to regulate all aspects of over 180,000 charities? If not, where should it focus its regulation?

Given current resources, we do not believe that it is practical for the Charity Commission to regulate all aspects of over 180,000 charities. We feel that the Charity Commission should place greater focus on reviewing charity accounts for compliance with regulations, guidance and accountings standards, perhaps based on some form of risk-based framework.

Question 8: Do you think there would be better quality regulation if the Charity Commission could authorise specialist sub-regulators (subject to the Charity Commission or Cabinet Office continuing to be satisfied with their competence) to regulate groups of charities?

Yes, but this would require co-ordination, resources and funding and if not properly managed could lead to fragmented regulation across the sector.

Question 9: If you answered yes to Question 8, do you think sub-regulators should be able to issue a Charity Number?

Yes, but this should be co-ordinated and the registration process needs to be consistent. There should also be some safeguards in place to ensure that this does not lead to a significant increase in the number of charities being registered.

Question 10: Do you have any other comments or suggestions about the Charity Commission? (Please explain your reasoning and give practical examples where possible)

None

Respondent details:

Name:	Anne Davis
Position:	Head of Charity and Voluntary Sector
Organisation Name:	ICAEW
Organisation size (income) – charities only	Not applicable
Is your organisation a charity?	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.