



23 April 2012

Our ref: ICAEW Rep 57/12

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: Exempt 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

Exempt Charities

Issue:

The Charities Act 2006 changed the way in which “exempt” charities are regulated as charities. Under the 2006 Act exempt charities either remain exempt but with a principal regulator appointed to promote their charity law compliance, or they lose their exempt status and come under the Charity Commission’s regulatory jurisdiction.

Background:

“Exempt charities” are institutions that do not register with the Charity Commission and before the Charities Act 2006 (“the 2006 Act”) were not subject to its regulatory jurisdiction. They were granted the exemption because they were considered to be adequately supervised by another body or authority. The exempt charities are those institutions that are comprised in Schedule 2 to the Charities Act 1993 (“the 1993 Act”), which is shortly to be consolidated into Schedule 3 of the Charities Act 2011. Examples of such charities are universities and the boards of trustees of various museums and galleries.

Changes to the position of exempt charities were proposed in the 2002 Strategy Unit Report, *Private Action, Public Benefit*. The report described the position of exempt charities as “*creating anomalies, confusing for the public and a threat to the integrity of charitable status*”. The lack of regulation of these organisations as charities had also resulted in some high profile cases of mismanagement that the Charity Commission’s expertise in charity law might have helped to identify at an earlier stage and resolve. The 2006 Act introduced the changes recommended by the Strategy Unit Report, which were intended to ensure that all organisations with charitable status are subject to the same accountability requirements.

In essence, under the 2006 Act, exempt charities (or groups of exempt charities) go down one of two routes:

- Wherever possible, existing bodies that have regulatory oversight of groups of exempt charities are identified and appointed as the “principal regulator” for that group of exempt charities. For example the Secretary of State for Culture Media and Sport in relation to the national museums and galleries, the Higher Education Funding Council for England in relation to exempt higher education institutions in England. In these cases the “principal regulator” already has a regulatory relationship with the relevant group of charities, although not specifically in relation to their being charities.
- Where it proves impossible to identify a suitable body to become “principal regulator” of a group of exempt charities, that group of exempt charities loses its exempt charity status. The group will become “excepted charities”. This means that they come under the Charity Commission’s full regulatory jurisdiction, and if their income exceeds £100,000 they are required to register with the Commission.

The role of the principal regulator is to promote compliance by the charity trustees with their charity law obligations. Principal regulators are appointed by the Minister for the Cabinet Office. Principal regulators do not have any of the Charity Commission’s investigation or enforcement powers, but can call on the Commission to investigate a charity for which the principal regulator is responsible.

The 2006 Act also made a number of amendments to the 1993 Act to increase the Commission’s regulatory jurisdiction in respect of exempt charities. The Commission must consult the relevant principal regulator before exercising any specific power in relation to an exempt charity.

Groups of exempt charities where a principal regulator has been appointed under the 2006 Act:

- Specified Higher Education Institutions (Universities) in England – Higher Education Funding Council for England
- Specified museums and galleries – Secretary of State for Culture Media and Sport
- Royal Botanic Gardens Kew – Secretary of State for the Environment, Food and Rural Affairs
- The governing bodies of Foundation and Voluntary schools in England – Secretary of State for Education
- The governing bodies of Foundation and Voluntary schools in Wales – Welsh Ministers (Welsh Government)
- Qualifying Academy proprietors (Academy schools) – Secretary of State for Education
- Sixth Form College Corporations – Secretary of State for Education

Groups of formerly exempt charities that are no longer exempt, and have had to register with the Charity Commission (where their income exceeds £100,000 p.a.) under the 2006 Act:

- Colleges and Halls of Oxford, Cambridge and Durham universities
- Students unions
- Higher Education Institutions (Universities) in Wales
- The Representative body of the Welsh Church
- The Church Commissioners
- Eton and Winchester Colleges
- The Museum of London

Remaining groups of exempt charities for which a decision needs to be made about the appointment of a principal regulator or loss of exempt status.

- Further Education Colleges in England and in Wales
- Registered Social Landlords that are Industrial and Provident Societies in England and in Wales
- Charitable Community Benefit Societies (a form of Industrial and Provident Society)
- Charitable Friendly Societies
- Exempt Common Investment and Deposit Funds

The review is interested in exploring the experience of exempt charities that come under a principal regulator, and those charities that have lost exempt status and now come under the Charity Commission's jurisdiction directly. In particular, whether the principal regulator approach has improved the accountability and transparency of exempt charities, and whether there have been any conflicts of interest between principal regulators' different roles.

The review will consider whether the exempt charity regime (either as it currently stands, or appropriately modified) could be applied to other specific groups of charities that could come under a principal regulator, as a model for "sub-regulation". Would such an approach result in more effective and efficient regulation of some specific groups of charities? What, if any, changes would be needed to make such an approach work effectively (for example how to ensure continued public availability of information about exempt charities)?

Who should respond?

Anyone can respond, and all responses will be considered. However, we are particularly interested to hear from exempt charities, formerly exempt charities, their representative bodies, and the principal regulators of exempt charities.

We are also keen to hear from other charities, umbrella bodies, and stakeholders on whether the exempt charities regime under the 2006 Act could be extended to other groups of charities to increase co-regulation between the Charity Commission and a 'principal regulator' of a group of charities.

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: The Charities Act 2006 made significant changes to the way in which exempt charities are regulated. What are your views on the strengths and weaknesses of the principal regulator approach?

Effective and efficient regulation of charities is important to protect the public and maintain trust in the sector. The principal regulator approach for exempt charities helps to ensure charities comply with charity law as well as other relevant guidance by the regulator.

The strength of the principal regulator approach is that you have existing specialist regulators which provide regulation and advice for particular types of charities as well as ensuring compliance with charity law.

A significant drawback to the principal regulator approach is that it leads to fragmented regulation for charities in areas such as governance, financial reporting and audit. For example, academies are exempt charities and are not required to have an audit under charity law. However, they must comply with the requirements of their own regulators. In the Young People's Learning Agency handbook, there is a requirement for all academies to have an audit every year regardless of income levels. This is not the case for charities regulated by the Charity Commission. In general, only charities with income greater than £500,000 require an audit.

The term 'exempt charity' is not typically well understood by the public. Most members of the public are aware that charities usually register with the Charity Commission (but smaller charities don't need to). The fact that exempt charities are not registered with or supervised by the Charity Commission complicates matters as far as the general public is concerned. And the term exempt charity is sometimes confused with tax exemption for charities.

Question 2 (for exempt charities and their representative bodies only): What has been your experience of coming under a principal regulator? Has it been a positive experience? Have there been any problems? Can you foresee any problems in future?

N/A

Question 3 (for charities that have lost exempt status as a result of the 2006 Act): What has been your experience of registering with the Charity Commission and coming directly under its regulation? Has it been a positive experience? Have there been any problems? Do you do foresee any problems?

N/A

Question 4: Do you have any examples of conflicts of interest arising between a principal regulator's role in promoting compliance with charity law, and any of their other roles?

While ICAEW is not aware of specific examples of conflicts of interest, we would like to draw your attention to possible conflicts which may arise from the principal regulator approach which need to be managed in order to ensure that charities remain independent and effectively regulated.

First, there may be conflicts between the principal regulator and the Charity Commission on compliance with charity law. Under this approach, the Charity Commission cannot exercise its compliance powers over an exempt charity without discussing this with the principal regulator. As far as we understand, these conflicts are managed by having memoranda of understanding between regulators which are supplemented with discussions as appropriate.

Secondly, there may be a perceived conflict of interest to the public of principal regulators providing funding for exempt charities. For example, the Young People's Learning Agency is responsible for funding academies and overseeing the financial management of academies by setting standards and the regulation which needs to be followed for governance and financial management. Similarly, the Higher Education Funding Council for England (HEFCE) distributes funds to universities. While we would prefer for all charities to be regulated by the Charity Commission (please see question 5), a particular way forward for the education sector might be to create a principal regulator for education, which includes universities, sixth form colleges, academies etc.

Question 5: Do you consider that the exempt charity status coupled with the principal regulator approach could become a model of formal co-regulation that could apply to other focused groups of specialist charities? Do you have any suggestions for specific groups of charities (and their potential principal regulator) that this could apply to? Under such a model, what powers should the 'principal regulator' have?

We would prefer all charities to be registered and regulated by the Charity Commission. While we appreciate that the government has tried to reduce the regulatory burden on charities by implementing the principal regulator approach, we think that this approach makes it more difficult to implement an efficient, effective and harmonised system of regulation for all charities. The principal regulator approach for charities creates added complexity for the charities, their advisors and the public.

Question 6: Do you have any suggestions for groups of exempt charities for which a decision on the appointment of a principal regulator, or registration with the Charity Commission, has not yet been made (e.g. Charitable Community Benefit Societies)?

No

Question 7: Do you have any other comments about the regulation of exempt charities?

No

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.
- 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.