NICVA RESPONSE TO INDEPENDENT REVIEW OF CHARITY REGULATION QUESTIONNAIRE

1. Registration

Q. Should there continue to be a statutory requirement that all charities register?

Yes  No  X

Q. On what figure should the minimum threshold for registration be based?

The annual income of the charity
The overall assets of the charity
A combination of annual income and assets of the charity  X

Q. What should the minimum threshold figure be?

At least £10,000 and below £20,000. The actual figure requires further consideration and discussion, in particular, need to have a discussion about assets and define what that is. For the purposes of charity registration, we believe assets should mean premises. Some small organisations may still want to be registered to receive the benefits of charity registration and should still be allowed to do so, as is the case in England and Wales.

Since the enactment of the Charities Act (NI) 2008, we have identified that a de-minimis threshold is needed so that very small charities are not required to register, and we have highlighted this many times to both the Charity Commission and DFC over the years. Most of the respondents to our 2020 survey on issues with charity regulation have also highlighted this as an issue and have called for a de-minimis threshold to be introduced for charity registration. This issue was also brought up by participants at all of the recent engagement meetings.

Q. If the registration threshold were to change so that not every charity was required to register, what impact might this have on charity beneficiaries, charity donors, or charity funders?

This would have a very positive impact on organisations as only those that wanted to benefit from charity registration could do so. We do not believe that the beneficiaries and donors of very small organisations expect them to register as a charity. Quite often small organisations are in their local community or else they’re made up of a community of likeminded people and they attract donations from people that know them.

The Charity Commission does not scrutinise all the accounts and reports that are filed with it, so there is no guarantee that because a charity is up to date on the charity register that the accounts and reports that it has filed are accurate. In fact, the Commission only scrutinised 19% of the accounts and reports that were filed with it in the 2019-20 period. Charity funders should not make it a requirement that a small charity needs to be registered to receive its funding as it is not the registration
process that makes an organisation a charity, it just confirms it. Charities should not be required to register to benefit funders to carry out a tick box exercise.

There is a real danger that existing small organisations are going to wind up rather than having to register and/or report annually to the Commission. Trustees of smaller organisations have told us, and other helper groups, that they find the regulations overwhelming and it all just seems a bit “too much” for them. The Department should be mindful that these very small organisations do not have the benefit of staff to help them and many of the small charities that are/have been ‘in default’ on the register have older Trustees who sometimes find the process of reporting online quite difficult.

NICVA is also concerned that it is discouraging new organisations from forming as once they realise that if they constitute, they will then be required to register it is not something that they’re prepared for. As one Network put it at the engagement meeting….it is killing volunteering (in terms of volunteering on a committee). It is also important to note that in order to prove you’re not a charity you have to go through the registration process as it’s the only way to know for sure that you’re not unless you’re a CASC or a CIC.

Q. Have you had any experience of the charity registration process?
Yes X No

Please clarify in what capacity?

As a Helper Group and also registering our own charity. As a Helper Group we have helped many charities with the registration process and there has been resistance from smaller organisations about having to register. Organisations that meet the charity definition, but which don’t identify as being charities and never sought charity tax status with HMRC such as small historical societies, environmental groups and sporting organisations, do not all want to be registered or benefit from being a registered charity.

Q. Do you think the existing charity registration process is the best means for the Charity Commission to fulfil its statutory duty to create an accurate register of charities in Northern Ireland?
Yes No X No view

Please explain your answer. (If you have no view please type ‘no view’ in the text box).

The Commission needs to create and maintain an accurate register of charities however the current process has some failings. Namely a de-minimis threshold is needed so that small organisations should not be required to register if they don’t want to. We note from our experience in helping and advising organisations with the charity registration process, that there has been resistance from smaller organisations about having to register. Organisations that meet the charity definition, but which don’t identify as being charities and never sought charity tax status with HMRC such as small historical societies, environmental groups and sporting organisations, do not all want to be registered or benefit from being a registered charity.
In terms of their approach to registration, i.e., registering one at a time as opposed to the Scottish approach, this only works in an acceptable timeframe if the Commission is given the resources to carry out this work. For example, in the early days of registration, staff were seconded from the Department to help with registration but once they left registration got much slower.

Do you think the registration process could be improved?

Yes x  No  No view

Q. In what ways could the registration process be improved?

The Commission needs more resources to enable it to register more charities from the Combined list.

The Public benefit test needs improved. The Commission should consult with Helper Groups to make improvements on this, as this is quite often the stumbling block for a lot of organisations completing the registration process, both large and small organisations.

Some charities want a charity registration certificate as this is sometimes asked for by businesses that provide offering to charities. An electronic version of this could easily be offered and the charity could print it out at its own expense.

2. Reporting

Q. On a scale of 1 to 5 (where 1 is poor and 5 is excellent), how would you rate the existing annual charity reporting system?

No view  1 (poor)  2 [3]  4  5 (excellent)

Q. What, if anything, could be done to further improve the reporting system?

The requirements need to be more proportionate for smaller charities. At the engagement meetings, and through our previous work, charities of all sizes and professionals that work with them acknowledge that a reporting threshold is needed so that small charities do not need to submit accounts and reports to the Commission. Some felt that if you costed out the time and effort that went into accounting for the income of small charities it would work out more than the income received in the first place. With regard to the size of the threshold, some suggested that we should mirror the £25,000 threshold for filing accounts in England and Wales others suggested a threshold of £10,000. Further discussion is required to gauge an appropriate threshold.

Presentation of financial information on the charity register from SORP accounts should be changed. The financial information that is displayed on the charity register can give the impression that a charity is spending too much to generate income in
relation to spend on charitable activities (especially for those with group accounts), which isn’t an accurate picture of the finances. Need more information on the charity register to explain how finances are displayed as it is unlikely that donors will open the pdf of annual accounts.

There is currently no flexibility in terms of charities exceeding the income threshold for the income bands. A buffer year, or two years as is permitted under company law, is needed to allow charities to keep within the rules of their usual income threshold. Charities that exceed the income threshold in one year, out of the ordinary eg as a result of fundraising for a capital project, have to then produce accrual accounts and/or get an audit for that particular year which is extremely expensive and time consuming.

Annual monitoring returns – can be difficult to extrapolate the information required from the accounts. Also does it require 3 separate documents when SORP Accounts and reports are just one document. Need more guidance within the AMR.

The quality of accounts and reports on the charity register indicates that charities are not complying with the accounting and reporting requirements. CCNI needs to scrutinise more accounts and reports but needs the resources to do this. Also, the Commission needs to communicate more effectively with accountants and independent examiners, some of whom produce accounts and IER using the wrong form of words.

Q. Unincorporated charities with annual income below £250,000 may submit Receipts and Payments accounts. If a charity is a company, regardless of its income, it must prepare accrual accounts. All charity accounts in this bracket must be independently examined. In your view, is this arrangement sufficiently proportionate as it stands?

Yes No x No View

Q. Please tell us why and what changes you would like to see.

It is unfortunate that charitable companies under the £250,000 threshold need to prepare accrual accounts that comply with the Charities SORP as these are quite often not understood as readily by non-financial trustees as R&P accounts. Also, charities in this income bracket quite often have to outsource the work of preparing accrual accounts as they don’t have the technical expertise in house. This obviously is an additional cost to the charity. We would ask why is it necessary for small charitable companies to prepare accrual accounts given that Companies House will accept abbreviated accounts from micro companies which are under £632,000? (we know that charities shouldn’t do this but some are, so companies house accepts them so is it the case that the stricter requirement is coming from charity law and company law just reflects these requirements?)

Q. All charities with annual income between £250,000 and £500,000 must prepare accrual accounts. These accounts must be independently examined by an
accredited independent examiner. In your view, is this arrangement sufficiently proportionate as it stands?

Yes  x  No  No View

Q. Please tell us why and what changes you would like to see.

This arrangement is proportionate as the independent examination is the lesser requirement, a charity at this level also has the option to have a full statutory audit.

All charities with an annual income greater than £500,000 must prepare accrual accounts. These accounts must be audited. In your view, is this arrangement sufficiently proportionate as it stands?

Yes  No  x  No View

The threshold for the preparation and audit of group accounts needs to be raised as £500,000 (after consolidation adjustments) the current audit threshold, is too low which causes unnecessary expense to the charity. For example, a charity with an income of £400,000 and its trading subsidiary with an income of £120,000 is currently required to have an audit of each entity as their combined income is over £500,000. The audit threshold for group accounts should be increased to £1m for this reason.

We recognise that this may result in the audit threshold having to be increased for all charities which should be positive in terms of the cost of carrying out an audit. We recognise also that charities with an income of £500,000 or other may still choose to have an audit.

**Reporting – independent examination**

Q. Should there be a financial threshold below which independent examination is not required?

Yes  x  No  No View

Q. Can you think of any advantages of introducing a threshold?

The threshold for independent examination should be aligned with the new threshold for filing accounts with the Commission. Small charities have had difficulty in finding an independent examiner. Before the new requirements came in many small charities would have used a relative of a trustee to carry out the independent examination who quite often would not have charged the charity for doing this. But given the definition of connected person for the purposes of carrying out an independent examination, the relative may no longer be eligible. Also, since the Directions for independent examination were introduced its also more difficult to find someone willing to carry out an independent examination, sometimes this can be because of concerns about personal liability of the examiner.

Q. Can you think of any disadvantages of introducing a threshold?
Many organisations will already have the requirement to carry out an independent examination in their governing document so would still be obliged to do this. There can be a misconception that an independent examination is just a quick look at the accounts but carried out properly, in line with the Commission’s 10 directions for independent examination, an independent examination can be a very effective form of scrutiny for small to medium sized charities. But there is considerable work involved and does a charity with a very small income merit this work? We believe not.

Would the development of an online financial template for submission of receipt and payment accounts be helpful for smaller charities?

Yes  No  x  No View

While the Commission should provide more templates to help charities prepare accounts and annual reports, the creation of an online financial template would only serve to create more problems for small to medium charities. There are currently no regulations for the presentation of receipt and payment accounts except that they must include a statement of assets and liabilities. If an online template were required it would only serve to create mayhem for those that have laid out their R&P accounts in a slightly different way to the online template. Also accounts which have been approved by the board and also ratified by the members, (for those charities with members) should not be changed to input them into the charity register. The signed accounts is what should be uploaded as this is what has been approved. The Commission already has a template for R&P accounts available on its website, it needs to modify it for charities of different sizes, for example, a charity with £27,000 income is quite different to one with £190,000 income.

3. Day to day engagement by the Charity Commission

Q. Have you ever had any experience of engaging with the Charity Commission?

Yes  x  No

Q. In what contexts do you engage with the Charity Commission?

On a scale of 1 to 5 (where 1 is poor and 5 is excellent) how would you rate your experience of engagement with the Charity Commission?

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Please explain your answer:
As a Helper Group and a Critical Friend of the Commission we would have substantial engagement with the Commission. When a charity registers with the Commission, sometimes their information is not acceptable to the Commission and if it’s not clear what the charity has to do, we get in touch with the Commission on behalf of the charity to clarify matters. Also, as a helper group we have had to contact the Commission re other matters such as the AMR and information on the charity register. As a critical friend we would highlight any issues that we encounter with its guidance and we have in the past reviewed its draft guidance before publishing it. We also have helped out with testing new registration functionality.

Q. Have you met any challenges when engaging with the Charity Commission?
Yes x  No

Since the Commission has changed to NI Direct it is more difficult to get a quick answer by phone to a query which we would’ve been able to do in the past. Now we use email as we know who to contact with a particular query, but we recognise, as a helper group that charities get frustrated with not being able to speak to someone in the Commission. At the engagement meetings, participants also highlighted that it was very frustrating not being able to talk to staff, for those that did get to talk to staff to seek advice, they were very positive about the helpfulness of the staff.

**Day to day engagement by the Charity Commission - compliance resources**

Q. Do you avail of any of the following charity compliance resources? (Please select all that apply).

- Charity Commission website guidance
- Helper Group Support
- Phone Support from the Charity Commission
- Roadshows/Events run by the Charity Commission
- Roadshows/Events run by Helper Groups
- None of the above

If so, how do you rate their usefulness?

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<th>Of limited use</th>
<th>Somewhat useful</th>
<th>Quite useful</th>
<th>Very useful</th>
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Charity Commission website guidance

- Qty.
4. Compliance procedures

Q. Have you had any experience with the Charity Commission exercising its compliance role?

Yes  x  No

Q. In what capacity have you experienced the Charity Commission exercise its compliance role? (Please select all that apply).

☑ As a charity trustee or member of a charity subject to a compliance procedure;
☐ As an individual raising a concern with the Charity Commission about a charity;
☑ Other

Please state: As a helper group assisting a charity with raising its concern about another charity. Also assist with registration and have assisted with appeals when a charity has been turned down. Assisted charities to get out of default by advising on their reporting requirements. Advise charity trustees to report serious incident reports. Assisted with various consents.

Q. On a scale of 1 to 5 (where 1 is poor and 5 is excellent) how would you rate your experience of dealing with the Charity Commission in its role to improve compliance?
Q. Please elaborate on your rating below.

Over punitive response in relation to accounts and reports being filed late. If accounts are filed late, it will say so in red writing on the charity register for a year even if accounts filed one day late.

The tone of official correspondence from the Commission to charity trustees is too stern and could be softened. While we understand that the Commission is the regulator, the tone of emails should not be so that it frightens trustees into wanting to leave the charity.

One charity that we helped with their appeal on being turned down as a charity ended up having to spend over £7,000 on legal fees to go to the Charity Tribunal. The Commission did a sudden u-turn on its decision and the charity was registered. The additional information that was submitted to the Commission during the internal appeal process should have been sufficient and the charity should never have had to incur these legal fees.

Q. On balance, were the Charity Commission’s compliance procedures easy to follow?
Yes x No

Q. Did your experience of engagement have a positive outcome for your charity?
Yes x No x

Q. Are there any specific elements of the Charity Commission’s compliance procedures that could be improved?
Yes x No

Q. Please explain what elements of the Charity Commission's compliance procedures could be improved.

The labels on the charity register should be changed in relation to when accounts are filed late. If it was filed 1 day late then that would be better to know than simply display that they were received late.

Also there is a misconception that the Commission checks all accounts and reports and so the register should highlight this. Filed on time does not mean that they have been checked by the Commission.
5. Investigation powers

Q. Have you raised, or assisted a charity to raise, a concern with the Charity Commission about a charity?

☐ Yes ☐ No

Q. What has been your experience of the Commission’s procedures for dealing with such concerns?

Assisted another helper group to report a charity to the Commission that was winding up. The reason it was winding up was because the Trustees wanted to retire and didn’t want the charity/or possible didn’t trust anyone else to run the charity. With this particular case, there were local people willing and able to serve as trustees but the serving trustees didn’t want to let them become trustees and keep the charity going. The Commission wouldn’t intervene citing that they were complying with the governing document in winding it up. The Commission did not take any notice of the needs of beneficiaries in this case.

In a different case, a charity working (a charity working overseas) felt quite frustrated that the Commission did not appear to take on board concerns that it raised about another charity that is working with the same person that they had serious concerns about in their work overseas.

It may be the case that it is not the Commission’s policy to communicate back to complainants about the progress of a concern or indeed the concern may not have rated highly enough on the Commission’s list of complaints if it only investigates ‘highest risk concerns’. If the later is true then it is very alarming for charities that are doing everything that is required of them only to find out that the Commission doesn’t appear to care about the vital information that they have concerning another charity that is in danger of losing charity money.

This is probably true for other whistle-blowers reporting concerns about charities to the Commission if it is not possible for all concerns to be investigated. There is a danger that future concerns may not be reported to the Commission if people feel that the Commission is not interested in it.

Charity trustees have also reported to us that they have filed a serious incident report with the Commission but haven’t heard anything back. If the Commission is content with the course of the proposed outline of action of the trustees then it should tell the Trustees this. Some accountants reported the same issue with reporting matters of material significance.

At the engagement meeting, a participant explained that the Commission told the media that it had opened an inquiry into his charity (six months previously) but that it had not alerted the charity of the existence of the inquiry. This public disclosure resulted in one of their main funders suspending a major grant which consequentially resulted in unforeseen staff redundancies. In disclosing this information to the media before it had completed its investigatory processes, the Commission’s actions had severe negative consequences for this charity. If a charity is being investigated
surely it would be natural justice that the Trustees have the right to know? We recommend that Trustees be informed if they are being investigated unless its safeguarding or a threat to life.

Some of the participants at the engagement meetings that had been subject to a statutory investigation felt that the Commission didn’t fully understand their powers.

Q. Has your charity ever been subject to an investigation by the Charity Commission?
   - Yes
   - No
   - Not applicable

Q. On a scale of 1 to 5 (where 1 is poor and 5 is excellent) how would you rate the current investigation framework in terms of fitness for purpose?
   (Required) 1 (poor) 2 3 4 5 (excellent)

Are there any other statutory or non-statutory approaches (not described above) short of the use of a Statutory Inquiry which could be implemented as part of the regulatory framework to assist with achieving resolution of concerns in relation to charities?
   - Yes
   - No
   - No view

6. Enforcement and Appeal Procedures

Q. In your experience to date, has the Commission in its implementation of the Charities Act struck the right balance between supporting charities to do the right thing and deterring or dealing with misconduct?
   - Yes
   - No
   - No view

Q. Please explain your answer.

Aside from the concerns outlined in the previous section. Self regulatory guidance issued by casework staff when charities are registering is helpful to charities as it can help improve governance in the charity and compliance with its governing document.
Q. This question asks whether the Commission requires additional powers to enable it to protect charitable assets and support good governance in charities. Should the Charity Commission be given the power:

- to remove a trustee (and thereby disqualify him or her), even if the trustee resigns before being removed?  
  
- to direct trustees not to take a particular action if it considers that the action would amount to misconduct or mismanagement?

- to remove a trustee who is otherwise disqualified from being a charity trustee?

- to issue a formal warning when it considers that a breach of duty has occurred without the need to first open a statutory inquiry?

Q. If you wish to explain your responses to any of the questions above, please do so in the box below (e.g., whether you think the Commission requires additional powers, why you think it should, or should not be given the specified powers).

Currently, a trustee could avoid being removed as a trustee from a charity by simply resigning from the board. By giving the Commission the power to remove a trustee who has resigned ensures that the trustee is not eligible to serve on another charity.

**Enforcement and Appeal Procedures - Appeal of Regulator Decision**

Q. Have you had any experience of the Commission’s internal review process to challenge a decision?

- Yes  
- No  
- Not applicable

Q. What has been your experience of the Commission’s internal review process to challenge a decision?

If a charity is unhappy with a decision of the Commission, they currently have two routes open to them – they can appeal to the Charity Tribunal and the Commission also offer an internal decision review. In the case of registration or casework decisions (which were made by Casework Officers when staff could make decisions), a different Casework Officer undertakes the review.

We have had both positive and negative experiences in helping charities appeal registration decisions of the Commission. Learned to speak to a caseworker rather than relay on written communication as they were generally more helpful when you spoke to them. Too short a time frame to submit the appeal for reasons outlined below.

Q. Do you think that the Commission’s internal decision review process could be improved?

- Yes  
- No  
- No view
Q. How do you think the Commission’s internal decision review process could be improved?

The option of internal decision review should be kept, but needs changed so that the review is carried out by a staff member at the next level eg if a Casework Officer made the decision the review should be completed by the Casework Manager.

There is also an issue with the deadline to appeal/request a decision review, which is currently set at 42 days from the date of the original decision. We think this needs to be longer to give charities more time to gather evidence in their support – it should be three months.

In addition, the time limit for both routes currently runs concurrently meaning that if a charity availed of decision review and the decision was upheld, the time limit for lodging an appeal may be passed. We know there is the option of submitting an appeal and then asking that this be stayed pending the outcome of the decision review, but most people would not be aware that they can do this. We think this needs to be changed also.

**Enforcement and Appeal Procedures - Alternative approaches**

Q. Are there other statutory or non-statutory approaches which could be implemented to provide the opportunity for independent review of a regulatory decision short of an appeal to the NI Charity Tribunal?

- Yes
- No
- No view

Elaborate please…

The Commission could introduce an appeal to the Charity Commissioners however the deadline to appeal to Tribunal would need to be extended. The Tribunal should be the last resort for charities and not encouraged at the same time as submitting a decision review request.

**7. Delegation Powers**

Q. Do you think it is appropriate to delegate some decisions to Commission staff?

- Yes
- No
- No view

Q. At present, the Charities Act provides that it is the Charity Commissioners who decide when a statutory inquiry is opened. Do you think that other decisions or particular categories of decisions should remain the decision of Charity Commissioners and not be delegated to staff?

- Yes
- No
- No view
Q. Do you agree that decisions that are more administrative in nature, such as charity registration or the making of schemes, may be generally delegated to Commission staff, as is the case in other jurisdictions?

[ ] Yes  [ ] No  [ ] No view

If you wish to explain your responses to any of the questions above, please do so in the box below.

The Charity Commission staff need to be able to carry out the day to day, routine work of the Commission including straightforward consents.

More complex work such as making schemes should be dealt with by the staff legal team.

Statutory inquiries, decisions to remove or suspend a Trustee and appointment of an interim manager should be dealt with by the Charity Commissioners.

8. The Role of the Department for Communities in Charity Regulation

Q. By establishing the Charity Commission and creating a register of charities, the Charities Act aimed to increase charity transparency and accountability to better support public trust and confidence in the charity sector. In your view, are there gaps in the current regulatory framework that prevent these objects being met?

[ ] Yes  [ ] No  [ ] No view

Please elaborate.

As mentioned before, too few accounts and reports are being scrutinised by the Commission. The charity register therefore gives the illusion of accountability when the accounts and reports may not even conform to the regulations.

So the register is filled with poor practice. Poor practice is replicated both by the charity doing it (because they assume that it has been checked and is therefore ok) and by other charities who see it on the register.

The Commission should perform at least a basic check. They need to look at what is uploaded before it is published so they can remove bank statements, minutes of AGM and other documents that are erroneously uploaded.

In relation to basic compliance checks - they are currently carried out on a percentage basis due to a lack of resource in the Commission. It would help if the compliance team could have got secondees for a year or so, in the same way the casework team did to help with the start of registration and casework. Then 100% could have been checked and this would have helped with ensuring what is on the register is good practice.
Commission should be more robust in explaining what is needed. If the Commission wants to bring credibility to the sector, they need to be more vocal in explaining what they expect trustees to do and checking what they have done.

Q. It is a global experience that the introduction of more robust charity regulation regimes aimed at improving transparency can increase the regulatory burden borne by charities. On a scale of 1 to 5 (where 1 is poor and 5 is excellent) how would you rate your experience of complying with the Charities Act?

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In your view does the regulatory burden need to be reduced?

- Yes
- No
- No view

Q. Please tell us why/how this could be done to reduce the regulatory burden whilst retaining the transparency required to maintain public trust and confidence.

We need regulation that is proportionate to the size of the charity. Expecting a charity with an income of £3,500 to conform to the same accounting and reporting rules with a charity who’s income is £220,000 is not proportionate. The accounting and reporting thresholds therefore need revised to help relieve the burden on small charities.

The Role of the Department for Communities in Charity Regulation - Section 167 Register & CIO

Do you currently work for a charity, or provide advice to charities in a professional capacity?

- Yes
- No

If your charity is active in Northern Ireland, is it subject to additional regulation by any of the following charity regulators?: (please tick all that apply)

- The Irish Charities Regulatory Authority (CRA)
- The Office of Scottish Charity Regulation (OSCR)
- The Charity Commission for England and Wales (CCEW)
- A charity regulator in another jurisdiction. Please give details in the text box.

- None of the above
Q. Please provide details of the charity regulator in another jurisdiction below.

n/a

Q. Does exposure to multiple charity regulation regimes and charity regulators present challenges in operating your charity?

☐ Yes ☐ No ☐ No view

Q. Please elaborate on the challenges your charity faces.

Charities which are classified as Section 167 charities have said that they currently don’t experience too much difficulty but want to ensure that they are not faced with onerous reporting requirements in NI. Section 167 charities want early engagement.

Q. What difficulties do eligible s.167 institutions currently experience from non-registration and regulation under the Charities Act, if any?

Charities which are classified as Section 167 charities need to be commenced so that charities registered in another jurisdiction can get registered here. Currently not able to access/or have had a great difficulty accessing funding streams specific to NI. Also some have explained that donors, because they can’t see a NI charity number think that the money is not being spent in NI.

Q. Is the commencement of s.167 a matter that the Department should prioritise?

☐ Yes ☐ No ☐ No view

Q. Could you please explain the reasons for your answer?

To be able to access funding in NI and also so that donors can see that they are registered in NI which helps them to understand that they’re spending donations in NI.

Q. What steps could be taken to improve mutual cooperation between charity regulators in neighbouring jurisdictions so as to enable more streamlined regulation of cross-border charities?

Charities registered in one jurisdiction that have full reporting in that jurisdiction should not be expected to do the same in another. On the 167 register, there could be a link to the reports and accounts of the charity’s entry on the charity register where they file the full accounts and reports.

At the engagement meetings some felt that CCNI should work more closely with ROI to streamline processes for charities that operate on the island of Ireland.

The Role of the Department for Communities in Charity Regulation - Charitable Incorporated Organisation (CIoOs)

Q. Is the commencement of the provisions relating to CIoOs a matter that the Dept should prioritise?

☐ Yes ☐ No ☐ No view
Q. Could you please explain the reasons for your answer?

We understand that the Commission has limited resources, but the introduction of the CIO is very much needed. Charities are converting from unincorporated associations into companies ltd by guarantee to benefit from the limited liability aspect of the company. They are doing this without fully realising that companies have to prepare accrual accounts that then must comply with the charities SORP.

For smaller charities, the cost of doing this is significant in comparison to preparing receipts and payments accounts which does not require the same specific expertise. If charities under £250K could register as CIOs they could benefit from both limited liability and prepare R&P accounts.

Anecdotally we’re hearing that people are unwilling or anxious about sitting as trustees because they’re concerned about their personal liability. The limited liability that is provided by both the CIO and company structure is comforting to many trustees.

The CIO structure would also reduce the burden of dual registration and adherence to company law. The current example of how charitable companies are being impeded by company law is that they are no longer permitted to have their AGM online if their Articles prohibit it, but if they were not a company the Charity Commission would let them do it so as to comply with current public health guidelines.

We have stressed the importance of making the CIO available to the Charity Commission when it consults on its strategic plan every three years but unfortunately the Commission and/or DFC do not appear to see the importance of introducing this legal structure.

Q. Would your charity avail of the opportunity to become a CIO?

- Yes
- No
- Not applicable

9. Other Matters for Consideration

Q. We will not be revisiting past decisions. However, we are keen to understand what can be learned from them. What changes, if any, in the processes of engagement with charities and communication of decisions could develop stronger positive relationships between the Commission and its stakeholders?

Please state below. (Required)

Helper Groups do a lot of work in helping charities both with the registration process and compliance. Unfortunately, the Commission has not provided any refresher training for helper groups in recent years which is not helpful to the helper groups or the charities they advise.
At the engagement meetings some felt that the Commission could do more to help charities via advice and guidance as they’re too focused on compliance.

The Commission should be more helpful in assisting charities with their late or incorrect entries on the charity register.

With regard to guidance on the Commission’s website, some felt that it was difficult to find and that the search engine is not good at all. Some also wanted more guidance as is the case in England and Wales. Clearer guidance on ex-gratia payments to Trustees and staff was also asked for as well as clearer guidance on large reserves held by charities.

A concern was also raised about the section on links to terrorism in the Commission’s guidance on serious incident reporting. A participant believed that the guidance should be reviewed and amended as it needs to differentiate between engaging with, and actually supporting members of terrorist organisations, which is important in the NI context where people could be engaging to bring about peace in their areas. It was suggested that the Commission should review the guidance from England and Wales to make improvements and consult with the sector here on what is appropriate.

Need the Commission to be more pro-active about getting information out, eg, there are not enough CCNI alerts going out.

Q. Are there other issues relevant to effective charity regulation that have not been directly raised in the preceding sections on which you would like to comment?

The current issue with the decision-making powers of the Charity Commission has caused a certain amount of alarm within the charity sector especially to find out that the register is void for some. NICVA appreciates that the Department is working out how best to fix this and asks that registered charities will not be required to register again.

Also, due to the High Court decision, the Commission is currently not sending reminders to charities to inform them that their accounts and reports are due to be filed on the charity register. This is causing charities to forget to file their reports with the Commission. We have requested that the Commission resume this notification, but it is unable to do so as they can only communicate with charities about their statutory obligations.

As cy-pres schemes were made by Commission staff, there is uncertainty whether these still stand in light of the High Court Decision.

While the detail of the Law Commission’s recommendations to address technical issues in charity law in England and Wales was not discussed, it was highlighted at the engagement meetings. Given that our Charities Act 2008 is primarily based on charity law from England and Wales, the Department should take note of the recommendations and implement any necessary changes to address technical issues in our legislation.
Q. Please explain what other issues relevant to charity regulation have not been directly raised?

The previous Department’s (DSD) role in implementing charity legislation. We repeatedly called for a de-minimis threshold once it became apparent that all charities would have to register but unfortunately the Department’s approach to charity legislation appears to be one of ‘belt and braces’. We can see examples of this in the issues that we have had with the Charities Act 2008.

For example, this legislation was copied in large part from the legislation in England and Wales but where it deviated from it was to introduce something stricter from the Scottish legislation, namely the public benefit test, which created so many problems with the establishment of the charity register. When it came to the accounting and reporting legislation, the Department wanted to introduce low thresholds for audit at a time when the audit threshold in England & Wales was increasing to £1m. There appears to have been an attitude of mistrust of the sector as the Department feels the need to put more onerous requirements on the charity sector in NI.

The Department needs to focus more on principles and proportionality and not quantity, for example, does it make it right to make every organisation register just because we have a sizeable number of smaller organisations? Legislation needs to be proportionate to the size of income of the organisation and not to the size of the sector. The hundreds of small charities that were in-default on the charity register should be evidence enough for the Department to see that proportionate regulation is needed and that very small charities should not have to register.

Q. Having considered this Questionnaire, what are the most important recommendations that you think need to come out of the Review?

Please state below.

- De-minimis threshold needed for charity registration
- Accounting and reporting threshold needed for very small charities
- Charitable Incorporated Organisation (CIO) structure needs to be introduced
- Section 167 register needs to be introduced.
- Poor quality control of the reports and accounts on the charity register needs actioned
- Tone of Charity Commission’s communications is too stern
- NI Direct is quite poor at fielding enquiries on behalf of Commission, please revert back to Commission staff.

With regard to this independent review of charity regulation we would like to highlight to the Department that the number of responses may not be as high as the Panel would like. There has been an excellent turnout at the engagement meetings and quite often when people attend consultation meetings they don’t follow up with a written response so in considering the responses to this review process, the Department needs to take cognisance of the number of participants at the engagement meetings along with the issues raised at them.