

CONSULTATION ON IMPLEMENTATION OF CHARITIES ACT 2009

SUMMARY REPORT FOR PUBLICATION OF RESPONSES RECEIVED

This document provides a summary of the submissions made during the public consultation conducted by the Department of Justice and Equality between 23 January 2013 and 20 March 2013 on proposals for the implementation of the Charities Act 2009.

This summary is intended to capture the key points raised during the consultation. It is not possible within the scope of this document to reflect fully all the points raised by participants in the consultation. Written submissions received during the consultation are published on the website of the Department of Justice and Equality at www.justice.ie. Please note that we are only able to publish submissions with the agreement of the author(s).

This document provides some facts and figures on the consultation, and a question by question summary of key points raised in response to the 12 consultation questions contained in the consultation document.

Facts and figures on the consultation

This consultation was open from 23rd January 2013 to 20th March 2013. Submissions were invited via an online submission form on the website of the Department of Justice and Equality. For respondents unable to make a submission online, it was also possible to send a submission by post. A public consultation meeting was held in Department of Justice and Equality on 15 March 2013. In all, 163 submissions were received. 131 (80.4%) of these were from organisations and 32 (19.6%) from individuals. The organisations were categorised as follows: *Charity (87), Community and Voluntary (12), Accountancy (6), Educational (3), Central Government (7), Legal (2), Other (9), Not Categorised (5)*. Among the charities that responded, all ICNPO groups were represented.¹ 116 (71.1%) respondents indicated that they were willing for their submission to be published. The analysis summarised below was conducted on the full set of submissions.

Question by question analysis of submissions

This section gives a summary of some of the main points that were made in the submissions, arranged according to the 12 consultation questions. It is not possible to reflect all the points made in the submissions, so the summary below focuses primarily on points that were made in numerous submissions. It does not reflect all points made in numerous submissions. It does not attribute points made to particular submissions. For a fuller view, please refer to the submissions themselves.

¹ The Johns Hopkins University International Classification of Nonprofit Organisations (ICNPO) identifies 11 groups as follows: culture and recreation; education and research; health; social services; environment; development and housing; law, advocacy and politics; philanthropic, intermediaries and voluntarism promotion; international; religious congregations and associations; business and professional associations, unions.

CONSULTATION QUESTION 1

What, in your opinion (or that of your organisation if you are responding on behalf of an organisation), should be the top three priority areas of activity for the Charities Regulatory Authority in its first three years of existence, and why?

Summary of Responses to Question 1

The three priority areas identified in the highest number of submissions are given below. Many responses to this question did not include the reasons why the given priorities were selected. However, some responses did include reasons and we have reflected some of the more commonly given reasons below.

Area of activity

Creation of a statutory register of charities

Some common reasons given for why this should be a priority area of activity

- The potential value to a wide variety of individuals and organisations, including donors (both private and corporate); charities; volunteers; state funders; and regulatory bodies of having an accurate and publicly available register of all charities operating in Ireland was identified in submissions.
- The existence of an accurate and comprehensive register of all charities currently operating in Ireland was identified in submissions as essential to the successful regulation of the charitable sector.
- The register was identified in submissions as an important mechanism for increasing transparency in the charitable sector, which in turn is regarded as important to the creation and maintenance of public trust and confidence in charities.

Area of activity

Provision of advice and support to charities

Some common reasons given for why this should be a priority area of activity

- Many submissions emphasised the importance for charities of understanding what they need to do in order to ensure that they are compliant with the regulatory requirements being introduced through the 2009 Act. Clear communication on requirements and advice on how best to meet them should therefore be provided by the Authority.
- A related issue identified was the importance of clear communication both to charities and members of the public about the role and powers of the Authority and the timeframe for the roll out of its activities. A number of submissions proposed that the Authority's investigative and enforcement activities should only be rolled out following a sufficient lead-in period in which the emphasis would be on educating and advising charities about their obligations.
- Numerous areas were identified in which respondents felt it would be helpful for the Authority to develop guidance. These included: governance; fundraising; financial and activity reporting; duties of trustees; financial and risk management; application of public benefit test; and establishing and winding up a charity.

Area of activity

Activities to increase public trust and confidence in charities

Some common reasons given for why this should be a priority area of activity

- Many submissions identified a role for the Authority in engaging with the public to raise awareness of its own mission and mandate. This could help to enhance public confidence in the charitable sector by demonstrating that it is subject to regulation. It was acknowledged that this would demand resources.
- More broadly it was felt that while the publication by the Authority of information about charities could help to increase trust and confidence, this activity needed to be coupled with an effective monitoring, investigation and enforcement function in order for the full benefit to be realised in terms of increased public confidence.
- Increasing public trust and confidence in charities is an explicit function of the Authority. Some submissions identified that establishing how this should be achieved and how measured should be an early priority activity.

CONSULTATION QUESTION 2

What are the main reasons you would consult the Register of Charities?

Summary of Responses to Question 2

Reasons commonly given are summarised below. Many of the reasons given implied support for the inclusion in the register of information fields additional to those mandated by section 39(7) of the Charities Act. This is dealt with in the summary of responses to consultation question 4 below.

- To establish that a given charity is a genuine registered charity and complies with regulatory requirements.
- To seek information and conduct research on specific charities or categories of charities, or on the charitable sector as a whole. Areas identified for information seeking and research included contact information, governance arrangements, charitable activities, advancement of charitable purpose, use of funds raised, trends in staffing and volunteering.
- As a resource for charities themselves to facilitate collaboration and avoid duplication of effort.

CONSULTATION QUESTION 3

How often do you think you would consult the published statutory Register of Charities?

Summary of Responses to Question 3

Among respondents who gave a specific estimate, the most common estimate was several times a year. Many responded that the frequency of their use of the register would depend in part on the type and quality of information available and the form in which it was available.

CONSULTATION QUESTION 4

What, if any, information additional to that required under Section 39 (7) of the Charities Act do you think should be included in the published Register of Charities?

Summary of Responses to Question 4

Submissions contained a wide variety of suggestions for additional information that might be included in the Register of Charities. A broad categorisation of recurring suggestions is given below:

- Information aimed at making it easier to identify and contact the charity and its subsidiaries and branches.
- Information about the income of the charity, its sources and uses, together with a link to the charity's annual accounts.
- Information about the legal structure (including links to constitutional documents) and governance practices of the charity, and its status in other jurisdictions if applicable.
- Information about the activities of the charity, both charitable and commercial, together with a link to the charity's annual report. Information on the charitable objects of the charity and how these are fulfilled by its activities.
- Information on the staffing and organisational structure of the charity.
- Evidence of compliance with regulatory requirements, including codes of practice if applicable. Information on any enforcement actions taken by the Authority with respect to the charity. A list of any organisations that have been removed from the Register, together with the reason(s) for their removal.

CONSULTATION QUESTION 5

Do you agree with the proposed fee structure?

Summary of Responses to Question 5

38% of respondents stated that they agreed with the proposed fee structure, while 53.3% did not, and 8.7% provided no response. Where there was disagreement with the proposed structure, a number of recurring reasons can be identified. These are summarised below.

- The proposed structure places a disproportionate burden on lower and middle income charities.
- The use of gross annual income to calculate the bands could be problematic for some categories of charities, in particular those that receive substantial state funding to meet salary costs (e.g. schools), and those that have multiple subsidiary bodies.
- Lack of alignment between proposed fee bands and proposed financial reporting thresholds.
- Concern was expressed in a number of submissions about possible future increases in fee levels.

Some respondents were opposed to the levying of any registration fee. In some cases this opposition was general, while others felt that specific types of charities should be exempted from the requirement to pay a fee. Reasons given included the following:

- Concern that charities that already pay regulatory and other statutory fees to other state bodies would incur a double burden.
- Concern that payment of a regulatory fee could discourage charitable donations.
- Concern that reliance by the Authority on registration fees for part of its income could compromise its independence.

- Concern that charities, many of whom have experienced recent reductions in income, cannot afford to pay a registration fee.
- Concern that the costs of levying the fee, both in terms of administrative costs and potential adverse consequences, will outweigh any benefits derived.
- Concern that the levying of a fee on all registered charities could discourage non tax-exempt charities from meeting their statutory obligation to register.

A further point made in a number of submissions was that it would be important both to charities paying the fee and to the donor public that sufficient information be made available about the costs of running the Authority, the proportion of these costs being met by the registration fees and the specific uses to which the registration fees were put.

CONSULTATION QUESTION 6

If you answered "no" to question 5 above, what alternative fee structure to the one proposed above would you prefer to see put in place?

Summary of Responses to Question 6

Most submissions that replied to this question proposed alternatives that rebalanced the fee structure in favour of lower income charities. These included: a waiver for small charities; increasing the threshold under which only a token fee would be paid; reducing the level of the lowest "real" fee from €75; creating additional upper bands for higher income charities; and allowing charities with numerous constituent bodies to be covered by a single fee (e.g. schools).

An alternative suggested was for a basic flat registration fee to be accompanied by a range of specific service charges, for example for filing of annual returns and changes to registration details. Late filing penalties were also proposed, as was a charge for access to information held by the Authority on registered charities.

It was also suggested that the fee could be set as a percentage of a charity's income.

Several submissions proposed that the fee bands be aligned with the financial reporting thresholds.

CONSULTATION QUESTION 7

Do you agree with the proposed income thresholds for financial accounting and reporting by charities?

Summary of Responses to Question 7

53.3% of respondents said that they agreed with the proposed thresholds, while 39.8% said that they did not agree with the proposed thresholds, 6.9% provided no response.

Among those who did not agree, reasons commonly given are summarised below.

- Concern at the potential for the financial reporting requirements to impose an undue burden on charities, and in particular smaller charities. This was accompanied by proposals to increase all thresholds, in particular the audit threshold of €100,000, due to concern at the cost of compliance.

- A countervailing view that the proposed thresholds may be insufficient from a financial management and accountability perspective for lower income charities and that even the accounts of very small charities should be subject to some regular reporting requirements and the possibility of external scrutiny.
- The merit of aligning the thresholds with those that apply to charities that are registered as companies. Also alignment with the UK Charity SORP (Statement of Recommended Practice).

Other points raised and suggestions made included:

- A system of random checks by the Authority on the accounts of all charities, in particular small charities not required to file accounts annually.
- The provision of clear guidance by the Authority on all aspects of financial accounting and reporting, including on what constitutes 'proper books of account' and on the role of independent examiners.
- The need for further consultation on any regulations to be made in this area.
- Ongoing review of thresholds and amendment if it emerges there is an undue burden on any category of charity.
- Flexibility within the thresholds to accommodate variations in income.
- The inclusion of value of assets and numbers of employees/volunteers as additional criteria for determining accounting and reporting requirements.
- The development of specified reporting procedures under the IAASB International Standards on Assurance Engagements (ISAEs) as an alternative to audit for some charities.

CONSULTATION QUESTION 8

Are there alternative income thresholds to those proposed above that you would prefer to see put in place?

Summary of Responses to Question 8

29.5% of respondents offered alternative thresholds, while 55.8% did not. 14.7% provided no response.

The most common alternative lower threshold proposed was €25,000, followed by €50,000. The most common alternative upper (audit) threshold proposed was €250,000, followed by €500,000. Some submissions proposed that the thresholds be aligned with the Companies Acts or the UK Charity SORP.

Other points raised included:

- That it would be preferable if the audit/examination requirements for a particular threshold applied only once the thresholds had been exceeded for two or three consecutive years.
- The need to make appropriate arrangements for charities that are legally independent entities but belong to a national network with an aggregate income that would put them over a threshold.

CONSULTATION QUESTION 9

What information would you like to see included in the annual financial reports provided by registered charities to the Charities Regulatory Authority?

Summary of Responses to Question 9

A large number of responses to this question suggested that the content of financial reports should match the requirements of the UK Charity SORP, adapted and simplified as necessary for smaller charities. It was noted that SORP requires some information on charitable activities, in addition to financial information.

Specific content areas proposed are summarised below.

Information on Income

- Information on income, including sources (grants; income earned from commercial activities; contracts for services; donations; legacies; interest and investments, etc.) and restrictions.

Information on Expenditure

- Information on expenditure, including a clear breakdown showing expenditure on charitable programmes; administration (including governance costs); fundraising (including advertising, professional fees and commission); salaries, pensions and benefits (front-line and support staff); government taxes and charges; and care of members (for religious charities).

Other Information

- Information on assets, including maintenance costs
- Reserves policy
- Long-term expenditure commitments
- Information on fundraising methods and practices
- Statement of compliance with any relevant codes of practice
- Statement of interests
- Statement of compliance with Department of Public Expenditure and Reform Circular 17/2010
- Statement of any payments made further to an agreement under s.89 of the Charities Act 2009

Other points raised included:

- That it would be preferable to align the requirements with those of the Companies Acts in order to ensure consistency across the charitable sector.
- Concern that the Charities Act requirements in relation to financial accounting and reporting will apply only to a relatively small proportion of registered charities and this has the potential to create difficulty.
- The importance of clear and comprehensive guidance from the Authority on reporting requirements, including the provision of templates.
- The need to avoid a double reporting burden for any charities that are required to submit accounts to other Government bodies, possibly through development of a single reporting standard.
- That it would be useful if financial information on charities could be published by the Authority in a format that allowed analysis, including comparative analysis.

- That alignment of requirements with those applicable in neighbouring jurisdictions would be helpful.
- That any arrangements put in place should be subject to review and amendment where necessary.

CONSULTATION QUESTION 10

What information would you like to see included in the annual activity reports provided by registered charities to the Charities Regulatory Authority?

Summary of Responses to Question 10

Suggestions commonly made for information to be included in the annual activity reports of charities are summarised below. Some of the areas covered were also proposed for inclusion in the financial reports.

Basic Information

- A statement of the vision, mission and values of the charity, as well as its charitable objects.
- Changes to key registration information including trustees, registered office, charitable objects.

Activities

- A description of the main activities (including fundraising and commercial activities) carried out by the charity during the reporting period. Special focus on activities commenced or discontinued during the reporting period.
- An explanation of why the particular activities have been selected, and how the activities delivered public benefit and contributed to the advancement of the charitable purpose of the charity. Evidence of social impact, on the client group and more broadly (qualitative and quantitative) could be included where available.
- The geographical locations of activities.

Outcomes

- An account of whether objectives and targets for the year were met, with reasons given for any that were not met, factors affecting performance, and lessons learned.
- Information on the approach taken to impact assessment and programme evaluation.

Planning

- Some information on planned activity for the next reporting period, including objectives and targets, where applicable.

Statements and Policies

- Statement of compliance with relevant legislative and regulatory requirements including any applicable codes of practice (e.g. governance, fundraising).
- Information on risk management.
- Information on governance, including approach to board performance and renewal.
- Reserves policy.
- Data protection policy.

Resources

- Some basic financial information, including income received during the reporting period (with a breakdown of sources, and to include estimated value of goods donated) and main areas of expenditure. This was deemed important particularly because many registered charities will not be required to file accounts with the Authority.
- Information on staffing, including numbers of employees and volunteers, some information on salaries and benefits, approach to professional development.
- Statement on asset base and exposure to debt.
- Information on the cost of service delivery.
- Information on steps taken to accommodate and/or address reductions in income, where applicable.
- Information on the extent to which expenditure concurred with donor intention.

Format of Reports

- Some respondents felt the report should be presented in a prescribed form and that it would be important for the Authority to develop a template for this.
- The report should be made on an online form and could be pre-populated with existing information from the register in order to reduce the administrative burden for the reporting charity.

Other Points Raised

- The focus of reports should be on 'telling the story' of the reporting period with an emphasis on information of relevance and interest to the public. Information should be consistent with other sources, capable of validation and drawn from a clear evidence base.
- The level of detail should be proportionate to the size of the charity, but the essential information sought should be consistent across the sector. Notwithstanding this, in developing reporting templates, cross-referencing with existing requirements for any sub-sectors, e.g. approved housing bodies, should be carried out.
- The report should be formally signed off by the Charity Trustees.
- Some respondents recommended alignment with existing requirements for Directors' Reports under the Companies Acts.
- Report requirements should acknowledge the commercial sensitivity of certain information, e.g. fundraising innovations. Charities should not be required to disclose such information.
- There could be voluntary disclosure of any 'notable' information that may be considered to be in the public interest (or alternatively to confirm that no such information exists).
- Charities should have the discretion to provide additional information.
- A means of benchmarking the effectiveness of charities should be developed, in order to facilitate comparative analysis of reports.

CONSULTATION QUESTION 11 – FOR CHARITABLE ORGANISATIONS ONLY

What type of report and accounts filing system would you be most likely to use? (For charitable organisations only)

Summary of Responses to Question 11

66.9% responded that they would be most likely to use an online filing system for annual reports and account, while 7.4% responded that they would be most likely to use a postal system. 1.2% wanted to allow for both, and 24.5% provided no response.

CONSULTATION QUESTION 12

If there are any other comments or suggestions you would like to make about any of the issues dealt with in this consultation document, please add them here.

Summary of Responses to Question 12

A wide range of issues emerged in responses to this question. To facilitate analysis of this part of the consultation, we have grouped some more commonly made points into themes and provided a brief summary below. Many of the points were also contained in responses to other consultation questions.

Supporting charities in meeting the new requirements

There was support for an early emphasis on communication and education to help ensure that charities are well prepared and equipped to meet the new requirements before they are in force. Many respondents emphasised the need to avoid an undue regulatory burden, in particular on smaller charities, and also where there is a risk of a double burden. Clear guidance and communication and strong leadership from the Authority were deemed to be important in avoiding this. There was widespread support for the development of reporting guidance and templates.

Managing the transition process

The importance of a smooth transition of the Office of Commissioners of Charitable Donations and Bequests for Ireland into the new Authority was mentioned. There was support for a phasing in of reporting requirements by reference to charity size, on the basis that smaller charities with more limited resources might need additional time to adjust. Some concern was expressed that some organisations placed on the register by virtue of their CHY status might not in fact meet the definitions/requirements of the Act for charitable organisations. A process of liaison with CHY charities in advance of the publication of the register would be required to address such issues.

Resourcing and governance of the Authority itself

A number of submissions emphasised the importance of transparency and accountability of the Authority itself. Membership of the Authority should reflect sectoral and general public interest. Several submissions stressed the role of resources in ensuring that the Authority is fit for purpose and can discharge its functions effectively. In particular, the planning and delivery of the outreach and communications activities that will be required in order to inform charities and the public about the role of the Authority and the obligations of charities under the Act, will require to be resourced. The establishment of the necessary IT systems to support the operation of an online registration, reporting and payment system will also need to be resourced.

Areas for future development

Submissions contained a large number of suggestions for other activities that might be undertaken by the Authority, in consultation with charities and relevant authorities and professional bodies, as the implementation process progresses. It was acknowledged that some of these would require amendments to the Charities Act.

These included:

- The development of guidance for Charity Trustees.
- Work to support the monitoring and evaluation of the effectiveness of charity programmes and activities.
- Approval of the Statement of Guiding Principles for Fundraising and the Governance Code for Charities, and further development of rules and guidelines for fundraising and management of funds.
- Additional consultation between the Minister, the Authority, An Garda Síochána and fundraising charities on the collection permits system, to take place before the commencement of section 93 of the Act which extends the requirement for permits to non-cash collections.
- Consultation with the accounting sector on any regulations, guidance or templates for charity accounting.
- Consultation on registration and reporting requirements for “connected charities” (charities with multiple CHY numbers and CHY numbers with multiple charities).
- The development of a searchable database from registration and reporting data to facilitate the production of sector information, sub-sector analyses and trends.
- Monitoring and investigation functions that strengthen over time and should support anti-moneylaundering efforts.
- A complaints reporting system to include provision for anonymous complaints.
- Some submissions expressed concern at the lack of comprehensive coverage of the financial reporting provisions of the Act and suggested this should be re-examined.
- The value of registering and regulating schools as charities was questioned by some respondents.
- A re-examination was proposed of the status of sporting bodies with respect to the Charities Act on grounds *inter alia* that they deliver public benefit, but also to address concern that there is a risk sporting bodies might be disadvantaged in fundraising in comparison with registered charities once the register is published.
- A re-examination was proposed of the exclusion of the promotion and protection of civil and human rights as a charitable purpose.

Other points made in responses to Question 12

Many other views were expressed in responses to this question. It is not possible to reflect all of these. Some more commonly expressed views are paraphrased in the statements below.

- The priority for all charities should remain advancement of charitable purpose and meeting the needs of clients and target beneficiary groups.
- Strong governance and accountability are in support of this priority but should not detract from it.
- Transparency is essential to the successful implementation of this regulatory regime.
- The position of charities with their head office outside Ireland, or with their head office in this jurisdiction but with all-island activities should be taken into account.

- The position of charity companies should be taken into account in framing reporting templates. In practice there are varying levels of financial disclosure by charity companies.
- The position of religious charities that devote some of their resources, including premises, to the care of elderly members should be taken into account.
- Some concern was expressed that the application of a registration fee could have an adverse impact on charitable and philanthropic giving.
- Some concern was expressed at the potential for the Authority to restrict the advocacy work of charities.
- The Authority should work with charity umbrella bodies to ensure clarity of expectations over the role of the latter.
- The Authority should work with Revenue to provide clear communication of the separate roles and responsibilities of the two Bodies.
- It will be important to ensure cross-departmental co-ordination throughout the implementation process.
- Useful models and lessons learned from neighbouring jurisdictions should be factored into the implementation process.
- It will be important to establish the Charity Appeals Tribunal at an early stage.
- The consultative approach to implementation should be maintained following the formal establishment of the Authority.