



Charity Registration:

When Should it be Voluntary?

A consultation document from the Charity Commission and the Home Office

August 2000

Comments by: 16 October 2000

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CHARITY REGISTRATION : WHEN SHOULD IT BE VOLUNTARY?

Summary

1. In most cases charities must register with the Charity Commission. However, for some charities registration is voluntary. This paper explains the current position, and invites your views on the policy on voluntary registration.
2. In doing so it:
 - explains what registration as a charity is intended to achieve;
 - explains how charity registration can be voluntary for certain charities and considers when that might be appropriate; and
 - suggests possible new criteria for voluntary registration in the future and discusses how they might be applied

This consultation is about listening to the views of those with an interest in charities and of charities themselves. It is about finding an approach to voluntary registration that reduces unnecessary duplication of effort by charities, without compromising the supervision or the public accountability of charities.

3. A summary of the questions in this paper is at Annex A.

We would welcome your views by 16 October 2000. Please reply to:

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It would be helpful if you could say if you are responding on behalf of a charity.

4. This document can be seen on the Charity Commission's website at <http://www.charity-commission.gov.uk> and copies can be printed from this site.

5. Further copies can also be obtained by 'phoning 020 7674 2408. If you would prefer the document on audio cassette please contact John Ruffe-Williams on 01823 345414.

6. Mae nifer o'n taflenni ar gael yn Gymraeg erbyn hyn. Cewch y wybodaeth ddiweddaraf gan yr Uned Gyhoeddiadau yn ein swydfa yn Taunton (Ffon 01823 345182).

7. If you would like to discuss the issues before responding, please telephone David Bogie at the Charity Commission on 020 7674 2469.

8. Under the Code of Practice on Access to Government Information, comments may be made publicly available unless respondents specifically request otherwise. Please tell us, therefore, if you want your response to remain confidential.

Introduction

9. The Charity Commission has maintained a register of charities in England and Wales since the Charities Act 1960. It continues today under the provisions of the Charities Act 1993. For many charities registration is compulsory. For others it is voluntary. These charities which do not have to register are called 'excepted charities' in the legislation as they are excepted from the requirement to register. We estimate that there are currently over 100,000 excepted charities in England and Wales, compared with 186,000 registered charities.

10. There is also a third category of charity – exempt charities – which Parliament has said cannot register. This category includes many state schools, universities, some industrial and provident societies, and a number of national museums. Nothing in this consultation will affect them.

What does voluntary registration currently mean in practice?

11. Charities that do not have to register with the Commission appear on the Register only if both they wish to do so and the Commission is satisfied that there is a public interest in their registration.

12. Regardless of whether they are on the Register they can ask the Commission for advice and support. They also are subject to its investigation powers. In addition they are subject to exactly the same rules as registered charities for the preparation and scrutiny of accounts and the keeping of accounting records. They are similarly bound by the same rules on fundraising and public collections.

When does voluntary registration apply?

13. Broadly speaking there are two routes to voluntary registration.

14. The Charities Act itself includes provisions for voluntary registration. For example at present charities with annual income of £1,000 or less do not have to register unless they have permanent endowment or the use or occupation of land. These very small charities are felt to be too small to merit the degree of scrutiny compulsory registration brings.

15. The Charities Act also provides for voluntary registration to be introduced on a discretionary basis, normally by regulations made by the Secretary of State. These can cover classes of charity (and so cover charities started after the regulations were made). The Commission also has powers to make registration voluntary on a case by case basis. A list of the main classes of charities currently excepted through regulation is at Annex B.

Reasons for Review

16. The current arrangements for voluntary registration have their roots in the 1960s. Today they can cause confusion and misunderstanding. Moreover, changes to legislation mean the purpose of registration with the Commission is now very different from that in the 1960s. If registration is to be voluntary for some charities in the future this must be based on criteria that are clear and widely understood and which reflect the aims of a modern register.

What Is The Point Of Registration?

17. A natural starting point for any discussion on voluntary registration is to look at what registration is intended to achieve. Three key purposes of registration are:

- (i) to provide evidence of charitable status, where this is of interest to the charity or the public;
- (ii) to provide a way for charities to be accountable, for example by making basic information publicly available and by enabling the general public and the Commission to get in touch with charities; and
- (iii) to enable large charities to be actively monitored (the Commission currently monitors registered charities with income or expenditure over £10,000).

Do you agree that (i), (ii) and (iii) capture all the essential purposes of registration? If not, what additions or changes would you suggest, and why?

When Might Registration Be Voluntary?

18. There are no plans to remove the current option of voluntary registration for certain very small charities. (At the moment this applies to those with an income of not more than £1,000). Do you think that registration should be compulsory for all other charities?

19. Another possibility would be to raise the £1,000 figure, for example to £2,000 or more. Would you favour that? If the threshold was raised in that way, should registration be compulsory for all other charities including those that currently only have to register voluntarily?

20. Both of those options would mean that voluntary registration depended only on the size of the charity, not its purposes, or the existence of any parallel form of supervision or activity.

21. Whatever the exceptions provided for very small charities, it might be possible to achieve the purposes of registration by other means. In that case, voluntary registration could prevent unnecessary duplication of effort by the charity. Parliament has given the Secretary of State powers to enable that to happen. Should there be some form of system for voluntary registration if the purposes of registration are being met in another way?

The possible Responsible Body approach

22. How might a future system of voluntary registration work? At the moment a number of umbrella bodies already perform a range of functions in respect of groups of charities. Sometimes that includes elements of both support and regulation. One possibility might be to build on that if both the umbrella body and the charities wished. Regulations might provide for registration being voluntary if charities complied with certain procedures. Before considering whether to make such regulations the Secretary of State would first wish to be satisfied that the umbrella body met certain criteria. If it subsequently ceased to do so the Secretary of State could revoke the regulations and the charities would have to register. In this paper we call these umbrella bodies “Responsible Bodies”. Such a body might or might not be a charity.

23. To achieve the three aims of registration a Responsible Body would have to meet certain criteria. Those might include:

- (a) active monitoring, comparable with the Commission's, to identify areas in which help and guidance might be needed;
- (b) effective intervention to prevent problems or to sort them out;
- (c) clear minimum standards, which would support the Commission's guidance on the hallmarks of a well-run charity;
- (d) provision of an appropriate degree of public accountability. The detail would depend on the degree of public interest in the charities covered by the Responsible Body but possibilities include:
 - i) some form of contact list readily available to the public, such as a Yearbook or internet site, listing all the charities covered by the Responsible Body; or
 - ii) providing certain details that would be accessible via the Commission. This might range from details of specific charities to simply a means of directing queries to the Responsible Body;
- (e) willingness to co-operate with the Commission. That would, for example, cover agreement to circulate Commission guidance or advice to charities.

24. A Responsible Body would not need to have systems that were identical to the Commission's. Indeed different Responsible Bodies could have different systems. For example the Commission's monitoring system has to be designed to cover a wide range of charities. A Responsible Body on the other hand would only monitor charities that were similar to each other. It could focus its attention only on issues that were of particular relevance to that group.

25. A Responsible Body would be expected to take account of the thresholds the Commission uses. At the moment the Commission monitors charities with income or expenditure over £10,000. There would not be the need to monitor charities below that threshold, therefore. But it follows that a monitoring programme that only covered charities over a significantly higher threshold might not be acceptable.

26. One potential concern could be that the existing relationship between a potential Responsible Body and the charities it was responsible for might prevent the Responsible Body taking a firm line if problems arose.

27. It is important to remember, however, that the Responsible Body would not be taking over the Commission's legal responsibility for unregistered charities. They would remain within the Commission's jurisdiction and subject to the full range of its powers. It might well be, for example, that a Responsible Body would have to refer some cases to the Commission perhaps because they were particularly difficult or complex.

28. Equally it would be possible for the Commission to take action against individual charities or, in extreme cases, for registration to be made compulsory if the Responsible Body's support or supervision proved inadequate.

Do you think the Responsible Body approach is a sensible basis for voluntary registration in the future? Can you describe a better method?

If you do agree with this approach, are the suggested criteria which Responsible Bodies would need to meet appropriate?

Does this approach go too far? Should, for example, the criteria for voluntary registration be so tightly drawn as to cover very few charities in practice?

Should all charities over a certain size (e.g. those with an income of over £250,000 a year) have to register, even if smaller charities of that type only had to register voluntarily?

Monitoring Responsible Bodies

29. It would be important for the Commission to have an active relationship with each Responsible Body. However, the legislation at present does not allow the Commission or the Secretary of State to control Responsible Bodies. The only sanction (if a Responsible Body was not carrying out its functions) would be to require all the charities concerned to register. The details of the arrangement between the Commission and the Responsible Body might vary from one Responsible Body to another according to the nature of the charities involved. The possibilities include:

- (a) asking Responsible Bodies to prepare an annual report to the Commission. The Commissioners' Annual Report to Parliament could include a reference to Responsible Bodies' performance;
- (b) Responsible Bodies being subject (voluntarily) to a specially designed monitoring process by the Commission and/or

- (c) sampling by the Commission– requesting a selection of charities to submit their accounts or complete some other form of return to help assess the performance of their Responsible Body.

We would welcome your views.

What other factors should we take into account?

30. There are also wider issues that have to be borne in mind. For example, there might be dangers in making registration voluntary for too many charities no matter how good the criteria are in theory.

31. One of the purposes of the Commission's register is to offer the public a reliable central record of charities in England and Wales. It should be the obvious place to look for anyone trying to obtain information about charities or a particular charity. If there were large numbers of Responsible Bodies, each effectively running its own register, the public might end up with no clear idea of where to look for details of a charity.

32. Are there ways in which this difficulty could be overcome? For example, is there a way of giving anyone seeking details of charities a clear pointer towards the relevant Responsible Body? If the National Association of XYZ Trusts was a Responsible Body, for example, someone looking for an XYZ Trust could be told that such charities could register voluntarily and the enquirer could be given contact details for the National Association.

33. Another way of tackling the problem would be to restrict the number of Responsible Bodies. That might, however, be perceived as arbitrary and potentially unfair.

34. An alternative approach would be to make registration voluntary only when there was a Responsible Body that covered a significant number of charities (a minimum of 500 or 1,000 charities, for example). That could help to strike a better balance between the savings offered to charities and the risks of fragmentation of the register. In practice this would also mean that Responsible Bodies were relatively large. Such Bodies would, in any event, be more likely to have the infrastructure necessary to support and supervise charities adequately.

How much - if any - information about unregistered excepted charities should be available from the Commission? Is it sufficient for there to be clear pointers to the relevant Responsible Body?

Should there be a limit on the number of Responsible Bodies? If so, what number?

Do you believe that Responsible Bodies should be expected to cover a significant number of charities? If so, how many should that be?

What Next?

35. This consultation will inform Ministers' decisions later this year on the way ahead on voluntary registration in the future and decisions by the Commission on exceptions by order.

Summary of Questions

1. Do you agree with the three purposes of registration set out at paragraph 17? If not what changes would you suggest and why?
2. Do you think that all charities with an annual income of over £1,000 should be required to register?
3. One option might be to raise the £1,000 threshold for example to £2,000 or more. Would you favour this? If the threshold was raised in this way, should registration be compulsory for all other charities which currently have only to register voluntarily?
4. If the purposes of registration are being met by other means, should registration be voluntary?
5. (a) Do you think the Responsible Body approach described in paragraphs 22-28 is a sensible basis for a system of voluntary registration in the future? Can you describe a better method?

(b) If you do agree with this approach, are the criteria suggested in paragraph 23 which Responsible Bodies would need to meet appropriate?

(c) Does this approach go too far? Should, for example, the criteria for voluntary registration be so tightly drawn as to cover very few charities in practice?

(d) Should all charities over a certain size have to register even if smaller charities of that type only had to register voluntarily?
6. How should Responsible Bodies be monitored?
7. How much - if any - information about charities that had voluntarily decided not to register should be available from the Commission? Is it sufficient for there to be clear pointers to the relevant Responsible Body?
8. Should there be a limit on the number of Responsible Bodies? If so, what number?
9. Do you agree that Responsible Bodies should be expected to cover a significant number of charities? If so, how many should that be?

Current Arrangements For Voluntary Registration

The Secretary of State has made a number of regulations making registration voluntary. Most of these owe their origins to the 1960s, when the Register of Charities was first created. Where possible we have estimated the number of charities within each group.

Religious Charities Connected With Particular Denominations

There are about 25,000 religious charities for whom registration is voluntary. Those involved are certain Baptist, Congregational, Evangelical, Unitarian, Welsh Presbyterian, Methodist, United Reformed Church, Quaker, Church of England, and Church of Wales charities. The 1996 provisions replaced ones that mostly dated from the early 1960s. They expire on 1 March 2001.

Scouts And Guides

Scout and Guide groups only had to register voluntarily under the Charities Act 1960 as long as their income arose only from accumulated income rather than permanent endowment. The basis for the income threshold was changed in the 1993 Act and this exception probably no longer applies. There are over 50,000 Scout and Guide groups, for whom registration could be made voluntary.

Voluntary Schools/School Premises

1960s regulations originally made registration voluntary for those state schools that were charitable voluntary schools, if they had no permanent endowment or if their only permanent endowment was the school premises. The School Standards and Framework Act 1998 made registration voluntary for foundation and voluntary schools provided they had no property apart from school premises. This means that the 1960s regulations are probably no longer needed. Depending on the results of the consultation they could be repealed.

Armed Forces' Charities

Around 25,000 charities wholly or mainly concerned with the promotion of the efficiency of the armed forces currently only need to register voluntarily. They must meet a number of conditions, which are intended to make sure the provision only covers charities run by units of the armed forces and covered by their internal controls.

Certain Trusts For The Advancement Of Religion, Conditional On The Upkeep Of Graves

There is no reliable estimate of the number of charities involved. The practical effect of these charities is to ensure graves are well maintained.

Certain Universities

A 1966 regulation excepted from registration those universities that were not then exempt. The 1993 Act enables any university to be declared exempt by means of an Order in Council. We are not aware of any universities which are now relying on the 1966 regulation. We suggest it could be repealed at the first convenient opportunity. Should there ever be a need for new universities to be excepted in the future this could readily be done by Orders of the Commission.