

REVIEW OF THE CHARITIES ACT 2006: TERMS OF REFERENCE

Background

The Charities Act 2006 (the 2006 Act) requires (in s.73) the Minister for the Cabinet Office to appoint a person to undertake a review of the Charities Act 2006. The review must result in a report, which will be presented to the Minister for the Cabinet Office and which the Minister must lay in Parliament.

Aim of the Review

The aim of the review is twofold;

- 1) To report on the operation and effectiveness of the provisions of the 2006 Act.
- 2) To consider whether further changes could be made to improve the legal and regulatory framework for charities.

Structure of the Review

The review will be able to interview representatives of the charity sector and other interested bodies and will gather evidence and seek views from relevant stakeholders. The review will be independent; the findings and recommendations of the review will represent the views of the reviewer. The reviewer will be supported by designated officials from the Office for Civil Society, and sponsored by the Executive Director of the Office for Civil Society.

The review will aim to report to the Minister for the Cabinet Office before summer recess 2012. On completion, the review is to be compiled into a report, including recommendations, to be presented to the Minister for the Cabinet Office, for the Minister to lay in Parliament.

Scope of the review

This review fundamentally aims to understand how the 2006 Act is operating in practice, how effective it is, and whether the legal framework for charities in England and Wales is fit for purpose now and in the future. In doing so, the review will need to take into account the significant political, economic, social and technological changes in the sector's wider operating environment since the 2006 Act was passed. Therefore, the review should take a broad approach and should seek to address these three issues: what is a charity and what are the roles of charities?; what do charities need to have/be able to do in order to be able to deliver those roles?; what should the legal framework for charities look like in order to meet those needs (as far as possible)? Note, however, that formal recommendations should relate only to the third of these.

In answering these questions, the review should also relate the following core principles:

- The need to maintain public trust and confidence in charities;
- The need to maintain the independence and diversity of the sector;

- The need to ensure the sustainability and resilience of the sector;
- The need to facilitate innovation and growth in the sector.

The breadth of these questions and principles will give the review scope to address a wide variety of issues. However, within this broad framework, s73 of the 2006 Act requires that the impact of the 2006 Act on the following matters must be considered in the review:

- i) public confidence in charities;
- ii) the level of charitable donations;
- iii) the willingness of individuals to volunteer;
- iv) charities that were “excepted” but have had to register as a result of the Act;
- v) the status of the Charity Commission as a non-Ministerial Department.

In addition, within the context of the three main questions set out above, the review should consider the following specific matters, which have all been brought to the attention of the Government by the sector and others as issues requiring consideration:

- a) The operation of the 2006 Act provisions relating to the definition of charity and the changes made by the 2006 Act in relation to the public benefit requirement, taking into account any relevant decisions of the Upper Tier Tribunal (Chancery and Tax);
- b) The licensing regime for public charitable collections - the review should consider whether the 2006 Act provisions are workable and represent value for money, or whether there is an alternative approach under existing or new legislation that could meet the objective of a licensing scheme that is proportionate, facilitating responsible fundraising whilst deterring bogus collections and preventing public nuisance;
- c) The two Calman Commission recommendations relating to i) a UK-wide definition of charity, and ii) measures to prevent regulatory burdens for charities registered in one part of the UK but operating additionally in other parts of the UK. This should include seeking views from the devolved administrations and charities that operate throughout the UK;
- d) The success of self-regulation of fundraising as delivered by the Fundraising Standards Board (FRSB), and should also consider whether the scheme could be strengthened or whether Ministers should consider exercising the reserve power in the 2006 Act to regulate fundraising;
- e) The success of the First Tier Tribunal (Charity) – and the range of Charity Commission decisions that are appealable to, or reviewable by, the Tribunal;

- f) Measures to reduce bureaucracy on charities, including relevant recommendations from the Red Tape Task Force Report “Unshackling Good Neighbours” and improvements to the rules regulating the disposal of charity land (following an Office for Civil Society public consultation in 2010 which recommended reform);
- g) The objectives, functions and structure of the Charity Commission, including relevant recommendations from the Charity Commission’s own Strategic Review;
- h) Measures to facilitate social investment or “mixed purpose” investment by, and into, charities;
- i) The operation of the charity merger provisions of the 2006 Act, making recommendations for the improvement of these provisions (in light of the known flaws in existing law);
- j) The 2006 Act provisions, and the policy approach to, the regulation of exempt charities as charities – including the “principal regulator” approach;
- k) The transparency and accountability of the charity sector, including current accounting, reporting, audit procedures (and within this, various financial thresholds for different requirements and the system of cross-border reporting) and the operation of fundraising disclosure statements);
- l) Thresholds for registration of charities, including the £5,000 general registration threshold, and the £100,000 registration threshold for excepted charities;
- m) The effectiveness of organisational forms available to charities, including the Charitable Incorporated Organisation;
- n) Methods of supporting and encouraging individuals to volunteer as trustees, recognising concerns about trustee liability.

For the avoidance of doubt, the review may also consider any other matters in relation to charity law as it sees fit, and may consider other matters subject to the agreement of the Cabinet Office.