

## **Charity Commission powers and trustee disqualification**

### **Department for Digital, Culture, Media and Sport**

### **RPC rating: fit for purpose**

#### **Description of proposal**

The Department's impact assessment (IA) covers the measures relating to Charity Commission powers and trustee disqualification in the Charities (Protection and Social Investment) Act 2016. A final stage IA on the measures contained in the Bill was rated fit for purpose by the RPC on 17 June 2014. This opinion is attached as annex 1 to this document. The present enactment stage IA updates the previous IA to include two measures added during the Bill's passage through Parliament.

#### Measure 1: Professional Fundraiser and Commercial Participator Agreements

Professional fundraisers and commercial participators must already have in place a written agreement with any charity for whom they are soliciting donations. The new measure requires the fundraising agreement to include the following additional information:

- details of any fundraising standards or scheme for fundraising regulation to which the professional fundraiser or commercial participator has voluntarily subscribed;
- how the professional fundraiser or commercial participator will protect vulnerable people and other members of the public from behaviour that:
  - is an unreasonable intrusion into a person's privacy,
  - is unreasonably persistent, or
  - places undue pressure on a person to give;
- how the charity will monitor compliance with the agreement.

#### Measure 2: Auditable charities' annual reports

Charities whose accounts have to be audited in accordance with section 144(2) of the Charities Act 2011 (currently, those with a gross annual income over £1m or with a gross annual income over £500,000 and assets with an aggregate value exceeding £3.26 million) will be required to set out their approach to fundraising in their annual

reports. This includes, in particular, whether they use professional fundraisers or commercial participators, the number of fundraising complaints they or their agents receive and how they ensure that their fundraising does not subject vulnerable people to undue pressure.

## **Impacts of proposal**

### Measure 1

Based upon information from the Institute for Fundraising and the Fundraising Regulator, the Department estimates that 2,000 'large charities' (charities that spend more than £100,000 per year on fundraising) will have between two and four fundraising agreements each, and that 4,200 to 10,500 smaller charities will each have one fundraising agreement. The Department assumes that it will take between 1.5 and 2 hours for a manager in the fundraising body to revise the existing agreement, and for the equivalent person in the charity to review and agree it. Using hourly wage data from ASHE, the Department estimates a one-off cost of £1.1 million and an annual cost of £0.2 million.

### Measure 2

The audit thresholds indicate that this measure could affect up to 7,130 charities. It is estimated that between 50 per cent (3,565) and 75 per cent (5,348) of these charities undertake public fund-raising and will therefore need to set out their approach to fundraising in their annual report. It is assumed that it will take an hour for a charity manager and the same for a trustee to pull together and approve the specific information required by the proposal to be included in the annual report. Using ASHE data, the cost is estimated at £0.2 million each year.

Taken together, these two additional measures increase the EANDCB from the previously validated final stage figure of £0.42 million to a (rounded) £1.0 million.

## **Quality of submission**

The Department has provided a clear and proportionate assessment of the two additional measures. It has also updated the previous estimates using more recent ASHE data. The measure is a qualifying regulatory provision that should be accounted for under the business impact target. The RPC is able to validate the Department's enactment stage EANDCB of £1.0 million.

The RPC notes that the use of the audit threshold effectively grants an exemption to the smallest charities from the new annual report requirement. The IA would benefit from some further discussion of the wider benefits of the two additional measures, particularly in protecting vulnerable people.

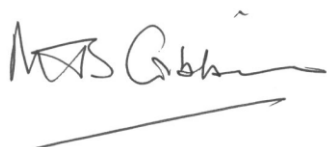
The RPC's comments on the overall IA (excluding the two additional measures covered by this opinion) are in the opinion on the final stage IA, attached as annex 1.

### Departmental assessment

Classification	Qualifying regulatory provision (IN)
Equivalent annual net direct cost to business (EANDCB)	£1.0 million
Business impact target score	£5.0 million
Business net present value	-£8.96 million
Societal net present value	-£8.96 million


### RPC assessment<sup>1</sup>

Classification	Qualifying regulatory provision (IN)
EANDCB – RPC validated	£1.0 million
Business impact target score	£5.0 million
Small and micro business assessment	Sufficient



**Michael Gibbons CBE**, Chairman

<sup>1</sup> For reporting purposes, the RPC validates EANCB and BIT accounting figures to the nearest £100,000.

 <b>Regulatory Policy Committee</b>	<b>Opinion</b>	
<b>Impact Assessment (IA)</b>	Charity Commission powers and trustee disqualification	
<b>Lead Department/Agency</b>	Cabinet Office	
<b>Stage</b>	Final	
<b>IA number</b>	Not provided	
<b>Origin</b>	Domestic	
<b>Expected date of implementation</b>		
<b>Date submitted to RPC</b>	22 April 2014	
<b>RPC Opinion date and reference</b>	17 June 2014	RPC14-CO-2092
<b><i>Departmental Assessment</i></b>		
<b>One-in, Two-out status</b>	<b>IN</b>	
<b>Estimate of the Equivalent Annual Net Cost to Business (EANCB)</b>	<b>£0.42 million</b>	
<b>RPC Overall Assessment</b>	<b>GREEN</b>	
<p><b>RPC comments</b></p> <p>The IA is fit for purpose. The Department has provided an informative and well-reasoned IA, complete with a Small and Micro Business Assessment in support of its proposal. The Department has consulted fully on the proposal.</p> <p>The RPC confirms the proposal scores as an 'IN' with an annual cost to business and civil organisations of £0.42 million.</p>		
<p><b>Background (extracts from IA)</b></p> <p><b>What is the problem under consideration? Why is government intervention necessary?</b></p> <p>The IA explains that: <i>“Various weaknesses and loopholes have been identified in the powers of the Charity Commission to tackle abuse or mismanagement in charities. These are preventing the Charity Commission from effectively and efficiently tackling abuse in charities. The Charity Commission itself has requested these new or enhanced powers. The National Audit Office recommended (December 2013) that Cabinet Office support the Charity Commission in seeking legislation to make these changes. The Prime Minister’s Extremism Task Force (December 2013) also recognised the need for more effective Charity Commission powers to contribute to the fight against extremism and terrorism.”</i></p> <p><b>What are the policy objectives and the intended effects?</b></p>		

The IA explains that *“The intended effects of these proposals are:*

- *More effective and efficient compliance and enforcement by the Charity Commission where there is serious misconduct or mismanagement or risk to charity property.*
- *Preventing unsuitable people from being involved in running charities (with safeguards to facilitate rehabilitation of offenders).*
- *No significant regulatory impacts on compliant charities / individuals.*
- *To support public trust and confidence in charities and their regulation.”*

### **Comments on the robustness of the OITO assessment**

The IA says that this is a regulatory proposal that would impose a net cost to business and civil organisations (an IN) with an estimated equivalent annual net cost to business and civil organisations of £0.42 million.

Charities will incur familiarisation costs. A small number will face costs of bringing a decision review or appeal to tribunal where the Commission wrongly exercises its compliance powers.

The Department’s OITO assessment is consistent with the current Better Regulation Framework Manual (paragraph 1.9.10). Based on the evidence presented, it provides a reasonable assessment of the likely impacts.

### **Comments on the robustness of the Small & Micro Business Assessment (SaMBA)**

The SaMBA is satisfactory. The SaMBA confirms that most charities are small or micro-sized organisations and that the policy could not be delivered if these organisations were exempt from the proposals. The IA states that exemption is not compatible with the policy objectives and refers to feedback it received from organisations representing small charities which were supportive of the proposed measures.

In terms of mitigation, the Department considers that it would be impractical and confusing to create different categories of trustee based on different sizes of charity. The main costs resulting from the measures are familiarisation costs. The Charity Commission will therefore work with representative bodies of small charities to ensure its guidance will be simple, clear and easily accessible to all.

### **Quality of the analysis and evidence presented in the IA**

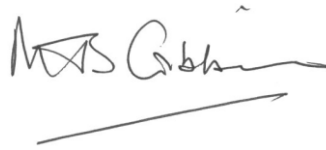
The proposal includes a number of measures that will strengthen the powers of the Charity Commission to tackle abuse of charities effectively. The Department has consulted fully on the proposal. The measures include extending the Charity Commission’s powers to disqualify a trustee, introducing a new official warning power, and a power to direct a charity to wind up its activities.

All 200,000 charities will need to become familiar with the changes to the existing criteria for disqualification of trustees. The Department estimates that it will take one trustee, one hour to read the updated guidance on trustee disqualification and to brief the trustee board at a meeting. The Department estimates total familiarisation costs to be £4.5 million. The RPC is satisfied that the assumptions made by the Department are reasonable.

In addition, a small number of charities will face the costs of bringing a decision review or appeal to the tribunal where the Charity Commission wrongly exercises its compliance powers. The estimate, based on historic data, has been adjusted to take account of the Commission's recent more proactive approach. For the purposes of the assessment, the Department estimates that the rate of decision-reviews will be 15% (16 cases) and for tribunal appeals, 5% (5 cases). The analysis assumes a success rate against the Charity Commission of 20%. The IA estimates these investigation costs at £300 per decision review and £10,600 per charity tribunal appeal. The Department consulted the Charity Commission on these estimates. The RPC considers these estimates to represent a fair reflection of the Commission's regulatory activity going forward.

The principal benefit of the measures, which has not been monetised, is in maintaining public trust and confidence in the regulation of charities.

**Signed**



**Michael Gibbons, Chairman**