



## Annual Return 2018 consultation

ICAEW welcomes the opportunity to comment on the *Annual Return 2018 consultation* published by the Charity Commission for England and Wales on 1 September 2017, a copy of which is available from this [link](#).

This response of 24 November 2017 is made by ICAEW's Business Law department. This is the professional and public interest voice on business law matters for ICAEW and is a leading authority in its field. Widely recognised as a source of expertise, the department is responsible for submissions to regulators and standard setters and provides a range of resources to professionals, providing practical assistance in dealing with business law issues affecting ICAEW's members.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 147,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

Copyright © ICAEW 2017  
All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact [representations@icaew.com](mailto:representations@icaew.com)

[icaew.com](http://icaew.com)

## MAJOR POINTS

1. There are some elements of the proposals that may be helpful to charities, such as moving some questions to the 'update charity details' section. However, we are concerned about a number of the proposals and some aspects of the consultation process.
2. The Commission itself describes these as the most significant changes since 2013. We believe that further time should be allowed for such significant changes to be considered fully and that the Charity Commission should delay implementation to allow for this.
3. We are not using the online questionnaire to respond as it seems to be designed for charities. We note, however, that it asks closed questions in a way that we think is unlikely to provide a true reflection of respondent opinion. For instance, answering 'no' to some questions could appear to be self-incriminatory. In some cases the Commission asks whether it should publish a charity's answers on the charity's public register page, but charities might reasonably expect to know in advance whether or not their responses would be treated in this way as it might colour the nature of their response. Charities may rely upon advisors and not be aware of all matters pertinent to the questions. It is therefore important that the Commission takes into account feedback received through the broader consultation exercise it is undertaking and does not rely unduly on the questionnaire responses.
4. In its introduction to the consultation, the Commission states that the changes are intended to reduce the amount of information that small charities have to supply and that new questions are 'targeted'. However, many of the new questions apply in a blanket way to all charities over the £10,000 income threshold even though it is extremely unlikely that they could be relevant to many charities of this sort of size. It is difficult to see how this is 'targeted'.
5. The Commission gives general explanations for requiring more information, in particular that the information will help it identify areas of concern in performing its regulatory functions and will be useful for the public. But in a number of cases it is difficult to see how the information obtained will meet these objectives in practice. For the information to be useful, it needs to be accurate and consistent. Yet some of the proposed questions are ill-defined which may lead to inconsistent answers across the sector. Others call for a degree of technical knowledge that makes them susceptible to error when provided by such a range of charities, especially those operated by volunteers. We do not believe that users of the register would be able to rely upon such information if it is requested in the form proposed.
6. Some of the information requested is already included in a charity's financial statements under the accounting regulations and SORP. This seems to be unnecessary duplication of effort. While the existing requirements call for some duplication and it may be convenient for users to see the headline figures extracted separately, such an approach needs to be used sparingly. Where financial information is requested that is not already contained in the financial statements, as is the case in a number of the new proposed disclosures, the amount of work required to obtain the information could be substantial. We see little justification for these requirements.
7. We have suggested elsewhere (including in the recent SORP consultation), that the financial statements are not the place for certain additional information to be included. That remains our view. However, the Commission needs to consider very carefully whether it is sensible to require additional disclosures of this kind in the annual return, given the additional burdens this would impose on charities and the risks regarding accuracy and reliability noted above.
8. Accounting standards, the SORP and, in relevant cases, independent examination or audit, promote accuracy and consistency of relevant information. The controls do not apply to the additional information being proposed here, which may undermine its accuracy and credibility.

9. The annual return 2017 and 2016 divided questions between 'governance' (Part A) and 'financial details' (required only of larger charities, in Part B). Many of the questions in new Part A are of a financial, rather than governance, nature and the rationale for the proposed division of the new return into Part A 'Charity Information' and Part B 'Financial Details' is now unclear. The practical implications of making this change, including risk of inadvertent error need to be assessed fully - many charities designate different staff to address governance or financial matters and this change is likely to result either in additional work or less reliable information.
10. The consultation refers to 'transparency' and how it 'might' be useful, it is not clear to us what the Commission actually intends to do with much of this information in practice. In some cases the questions do little more than ask a charity to confirm that it is complying with law, or self-incriminate if it does not confirm. Some of the changes appear to relate to recent high profile experiences in the sector and it is right that regulatory approach should be informed by experience. However, the annual return should not be used as a checklist for compliance with all laws or risks or it will become ever more unwieldy.
11. Through the annual return, the Commission seems to be asking charities for information that would best be obtained elsewhere. We are not convinced that this information will enable the Commission to have a reliable and clear view of charities at risk. The annual return is not audited and the information disclosed depends on the competence, honesty and information available to the person completing it.
12. We believe that the concerns outlined in this response need to be addressed before the Commission takes these proposals further so that it can demonstrate that it has met its regulatory duties, including to :
  - act in a way that is compatible with the encouragement of all forms of charitable giving and voluntary participation in charity work; and
  - have regard to the principles of best regulatory practice (these include the principles that its regulatory activities must be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).

## COMMENTS ON SPECIFIC REQUIREMENTS

### Fundraising

13. The Commission already asks for information about commercial participants and it may seem logical to extend the questions to professional fundraisers. However, if the aim is to ensure that trustees do not enter agreements recklessly or negligently, it is unclear why the same considerations would not apply to other suppliers. For larger charities there will be numerous commercial participants and professional fundraisers and the provision of the information in question in itself will shed little light on the potential complexities and concerns that may arise.

### Government funding

14. We are unclear what use the additional information will be to the Commission or other users. The concern about over reliance on income from limited sources applies as much to non-governmental sources as it does to government sources.
15. The number of contracts in itself does not provide any indication of the risk of financial viability of the charity. To assess financial viability the costs associated with the contracts needs to be known to determine whether they are profitable or loss making. (Disclosure of loss making contracts is already required under FRS 102). It would be financially prudent for trustees to try to retain profitable contracts and withdraw from loss making contracts, but understanding the number of contracts alone does provide a reliable picture of the impact of the contracts.

16. The difference between a contract and a grant can be very complex. Some charity and local authority employees are not clear on this issue and grants and contracts can require reclassification when preparing statutory accounts.
17. If the Commission wants to know if a charity is financially independent, it might ask broader questions to that effect, but it would also need to allow the charity to explain how it is mitigating any risk and it seems unlikely that the annual return would be an appropriate place for this.

## Gift Aid

18. The Commission is frank enough to admit that information available from HMRC is not useful to the Commission. If the Commission is right in thinking that the information is sufficiently important to ask every charity about it, then surely it should be worth government changing its systems so that this would not be necessary, especially as both bodies share regulatory duties.
19. It is not clear how stating the amount of gift aid claimed will help the Commission identify cases of abuse or mismanagement. The accuracy of a gift aid claim depends to a considerable degree on matters beyond the control of the trustees, including compliance by donors with tax regulations applicable to them. While charities are required to obtain donor declarations on gift aid, they cannot police compliance by donors. Neither is a comparison between amount of gift aid claimed and amount of all donations necessarily very informative because the profile of donors and their eligibility for gift aid may vary from charity to charity. For instance, gift aid may not apply for low income donors, philanthropists making major donations irrespective of tax relief or non-UK resident donors. In some cases fundraising platforms, rather than the charities ultimately receiving the donations, may claim the gift aid.
20. HMRC already conduct audits and enquiries into gift aid and charity claims. We would encourage the Commission to liaise closer with HMRC on the outcome of these audits or to rephrase the question, for example to ask if the trustees are satisfied with the systems and controls in place to claim gift aid (or are taking steps to address any concerns).

## Income received from outside the UK

21. We do not agree that charities will have the additional information readily to hand from their accounting records, unless the accounting regulations or SORP require it. For some charities, providing this information is likely to require significant additional work with little guarantee that it will be materially useful for the Commission. This is an example of the Commission seeking information that 'might' be helpful to it, but the explanations are not persuasive. We suggest that the Commission might achieve its objectives through other means, such as thematic reviews.
22. It might be more helpful and transparent if the Commission were to identify which countries and donor types are of concern to it and provide charities with guidance as to how they can alleviate those concerns (if they can, without ceasing to operate).
23. Alternatively, the questions might be subject to a threshold, for instance to charities that receive more than half their funding from overseas or more than a certain figure (particularly if the charities as small as £10,000 are to be caught).
24. The Commission should consult more fully on the detailed requirements. The options for source of income appear to be incomplete or poorly defined. For instance, they do not include 'companies' (unless a company is counted as an 'institution'.) Lack of clarity means that charities may need to seek professional advice or make assumptions (rendering the register unreliable). Further consideration and guidance might also be required for cases where it may be difficult, or impossible, to know whether or not a donor is 'resident' in the UK.

## Employees' salaries

25. The requirement for disclosure of salary banding appears to duplicate information that is already required by the SORP in the annual accounts. As a result, we see little point in this requirement.
26. We do not agree that disclosing salary levels will allow funders to make more 'informed' decisions. The disclosures may result in superficial comparisons that may lead to badly drawn conclusions as to whether salaries are 'excessive' or otherwise a matter of legitimate concern.
27. The accounts are not just about 'transparency'. They provide a context for the finances of the charity including the scale of the charity. It is in that context that the SORP requirements on employees have been framed. Taking information out of context is rarely helpful.
28. More work will be required to refine the questions. To take just one example, they refer to 'salary', but 'remuneration' is the term used in SORP. 'Salary' might not, for instance, include bonuses. In general, where the Commission seeks additional information of a kind covered by SORP, we suggest that it use the same terminology. Information Sheet 1: Implementation Issues, drafted by the SORP Committee outlines the differing treatment of employers' NIC in the notes to the accounts. Of course, not all charity staff will be familiar with that terminology, so additional work may be required (of the kind required to prepare the accounts). The risk of error is higher which is an inevitable consequence if the Commission seeks information of this kind in the annual return.
29. We do not agree that the salary of the 'CEO' should be disclosed, especially when featuring it here would be so removed from the context of the activities of the charity. If such disclosures were to be required, the annual accounts might be a more appropriate place for them. Earlier comments on terminology used apply equally here. There are a number of potential consequences from requiring disclosures of this kind. For instance, there may be an upward or downward effect on salary as comparison becomes easier for individuals, an effect on mobility of CEOs between charities and a reduction in willingness of CEOs for whom financial privacy is important to become CEOs of charities at all. It is not clear which, if any, of these consequences the Commission thinks likely or desirable.
30. The Commission might more usefully ask if the charity complies with the 'Guidance for Trustees on setting Remuneration' but our comments on the usefulness of questions which may lead to self-incrimination would then apply.

## Payments to trustees

31. We are concerned that the additional question on 'other benefits' is too broad. A trustee may be a beneficiary of a charity, for instance receiving financial or other assistance.
32. Asking every charity whether any employees were formerly trustees creates additional administrative work. It is not clear how this information will assist the Commission as employing a former trustee in itself is not indicative of poor practice. On the contrary it may be helpful for charities to take on former trustees as employees. Asking this question in this way may discourage some individuals from acting as trustees or former trustees from becoming employees.

## Expenditure in countries outside England and Wales

33. Question H3 asks 'When spending money outside England and Wales, did your charity transfer money outside the regulated banking system'? The risk profile of banking in many parts of the world is not significantly different from the profile in England and Wales and the question would be more targeted if it excluded equivalent jurisdictions, such as Scotland, other EU countries and the USA.

34. The sense of the question could also be clearer. We assume that it refers to a transfer of money in the overseas country where the spending occurred, but it might be interpreted to refer to a transfer from England and Wales to the overseas country.
35. Charities working in areas where that country's own internal controls are weak, for example war zones or areas of recent disaster, often have little option than to use systems outside the regulated banking system. There is nothing wrong or suspicious about this and is often the only practical means of conducting activity in these areas. It may be practically very difficult for administration staff to determine the actual amount (and currency) of the money transferred per system, and more than one system may be used to transfer the funds (although we would expect the charity to be able to demonstrate the amount of money transferred).
36. While we appreciate that there is a higher risk profile of transferring funds by these methods and overseas in general it is not clear how identifying the systems used reduces this.

### Rate relief

37. It is to be expected that charities who can claim rates relief will claim it, so it is unclear what this question seeks to achieve.
38. It is not clear how rate relief being claimed inappropriately has led to 'significant loss of charitable funds'. Rate relief will be claimed inappropriately if the claimant is not a charity (a fraudulent claim by a non-charity) or if a charity claims rate relief without either understanding the charitable use conditions, or if having satisfied them in the past subsequently changes the use of the building. None of these situations would lead to a loss of charitable funds. It would lead to a loss of local authority funds but that is not the subject of this question.
39. If the Commission is aware that non-charities are making fraudulent claims then it is a matter for local authorities to ensure their systems are robust enough when granting rate relief, rather than being a matter for the Charity Commission. There is a risk of confusion or inefficiency if the Commission becomes involved in areas of governance and regulation properly dealt with elsewhere.

### Trading subsidiaries

40. We do not believe that this information should be required. Directors' details are readily available from Companies House. We are not clear why the number of directors who are trustees is helpful information, without, for instance, knowing how many directors the subsidiary has in total. This may vary from time to time. It is easy to remove and reappoint directors, so that it is unlikely that this disclosure requirement would stop any deliberately poor practices. A charity may have more than one subsidiary, but the same considerations would apply were the question to be asked in respect of each of them.
41. The number of directors also seems largely irrelevant to the underlying issue, which seems to relate to potential conflicts of interest. Asking this question may be taken as implying trustees of a charity should not also be directors of a trading subsidiary, but we query whether this is a useful message for the sector. The income of the trading subsidiary often has a large impact on the charity's financial viability and potential conflicts can typically be managed appropriately.

### Safeguarding

42. This is one of the questions that, in effect, asks charities to confirm that they are complying with legal requirements, something we comment on in our introductory comments. While it is clearly very important that DBS checks are carried out where required, it is not clear to us why this element of safeguarding should be singled out in this way.