



CHARITY COMMISSION ANNUAL RETURN 2023 CONSULTATION

Issued 1 September 2022

ICAEW welcomes the opportunity to comment on the annual return 2023 consultation published by the Charity Commission on 9 June 2022, a copy of which is available from this [link](#).

For questions on this response, please contact representations@icaew.com quoting REP 69/22

We appreciate that the Commission wants to be well informed about the sector, but completing the annual return is a formal requirement where charities will be expected to provide accurate answers so that it is important that the Commission is clear why the information is needed and what use will be made of it. The questions should also be clear to avoid risk of misunderstandings and to ensure consistency. We believe that some questions could be simplified or clarified and that the Commission should consider further whether it could obtain some of the information it wants (or needs) by means other than a compulsory return to be completed by all charities to reduce the administrative burdens on the sector.

This response reflects consultation with ICAEW's Charity Committee which includes representatives from members in public practice with experience of the sector and the charity community.

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ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
icaew.com

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Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

KEY POINTS

1. We have some general observations about the proposed form and approach, as noted below. We also provide more detailed comments on the proposed annual return questions in the Appendix. We have indicated in square brackets to which consultation questions our comments relate but have not responded specifically to each of the questions in every case.
2. Some of our comments relate to questions that have been carried across from the old form. It may be that they have not proved problematic in practice, but we note them for completeness.
3. We would have found it more helpful had the Commission provided a mark-up showing the changes made to the existing form with the explanations etc included as annotations.

PURPOSE BEHIND THE QUESTIONS

4. We understand that the Commission may find it useful to have the type of information it is asking for in the proposed annual return, but this needs to be balanced against the time, effort and resources required by all the charities that will need to complete the form. We are not convinced the balance is right and it would be helpful if the Commission could explain more fully why it needs some of the information and what use it is going to make of the information when it has it.
5. There is, for example, a difference between asking for information because it helps the Commission understand trends in the sector and requiring information to be disclosed that the Commission may use for regulatory/enforcement purposes. In the first case, it may not be necessary for charities to resolve every potential ambiguity/uncertainty or to gather concrete evidence to verify answers, whereas the onus is higher in the second case.
6. This general observation provides colour for several our specific comments on the proposed form. As completing and submitting the questionnaire is a formal requirement, we take the view that it could be used for enforcement purposes so that the questions need to be very carefully framed (on the assumption, correct or not, that charities will take care in responding). For instance:
 - It is unclear to us why the examples on income are selected. Are they considered particularly risky/volatile? The focus is on quantity/amounts, but other matters (of a subjective nature) may be important depending on the nature of the relationships.
 - The questions on spending outside England and Wales are potentially onerous. If the aim is to identify transactions outside the regulated banking system, this could be posed as the question (rather than amounts for every country regardless of the mechanism). Money flows may not be straightforward – the initial destination may not be where the ultimate spend and/or benefit occurs, particularly for charities working with multiple partners. There is a risk of answers being misinterpreted without context on how that charity operates and interacts with overseas partners.
 - The question about addresses gives rise to interpretative difficulties. The Commission already has information on regions where charities operate so why does it need this?
7. The more the Commission intends to rely upon the information provided, the more important it will be that it is correct. We note, however, that charities are providing the information themselves and it may be not have been verified (in the way, for instance, that financial information in the trustees' annual report and accounts is reviewed through an audit or independent examination, where the relevant thresholds are met).
8. There are some questions (eg on policies) which appear to be asking whether the charity is complying with legal requirements. If the charity answers 'no', it is self-incriminating. If it

answers yes, what comfort will the Commission take from this? We do not believe that the AR should be used as a compliance checklist, not least because there are so many requirements that charities must meet and it cannot possibly cover them all (and even asking about some may distort priorities).

CONSISTENCY AND CLARITY OF DEFINITIONS OF TERMS

9. There are several areas where terminology used is unclear or inconsistent with usage elsewhere in the document (see, for instance, our comments on the AR questions on 'income stream' grants received, addresses and structure and membership in the Appendix).
10. We assume that the Commission will address inconsistencies etc following the consultation, but the issue underlines our view that the purpose of the questions needs to be disclosed. Improved clarity/certainty may lead to more complex definitions that could result in more analysis and work being required by charities. Is what the Commission needs to know sufficiently important to merit this, or could there be a simpler way?
11. Even if the points we have noted are addressed, it is likely that charities will have questions about the interpretation of some of the questions. As the Commission will want a consistent approach, we suggest that it provides a dedicated function (perhaps with a separate e mail address) to take and answer questions about the form and, if there are numerous questions on the same point, issue guidance (or update the form). It would also be helpful for there to be an expected response time for charities from this dedicated function so that this can be considered for the annual return submission deadline.

MINIMISING REGULATORY BURDEN

12. As mentioned above, we believe that the Commission might reduce the regulatory burdens involved in answering the questions if it clarified the purpose for asking and use it intends making of the information. In some cases, it might be better to seek the information my other, less formal, means.
13. As a general principle, we believe that government and its agencies should not request information that they already have access to and are permitted to use/share for the purpose. As examples in the current context, this includes information that is contained in accounts filed with the Commission and, for international humanitarian spend, disclosure via the International Aid Transparency Initiative (IATI), which is a requirement for recipients of FCDO grants (if accountability for international funding flows is a goal of the Commission).

PUBLICATION OF INFORMATION

14. It was helpful of the Commission to note what information it will publish alongside each of the questions. We suggest that the form is designed so that this is immediately apparent to charities when they see each question.
15. The Commission is subject to the Freedom of Information regime, and we assume that it is therefore possible that it may be required to disclose information provided to it under that regime (which could then become public) even if it does not intend disclosing in the ordinary course. We suggest that it make this clear in the return form, perhaps indicating how it would deal with any such request, and that it also considers the nature of some of the questions it asks in that context (if it has not already done so).

FLEXIBILITY FOR COMMISSION IN ASKING QUESTIONS [Q1/22]

16. The consultation document proposes (para 2.3) that the Commission should be able to add a question in response to specific events and also (para 2.4) that it should have flexibility to

remove questions each year (which we take to mean that it will also be able to add questions or, if not, will include questions that it feels it will be able to dispense with in future).

17. The intention appears to be to enable the commission to dilute the formalities currently required when implementing changes to the annual return (by making regulations under the Charities Act).
18. The Commission has explained the limited circumstances in which it intends to use any such powers. However, we believe that the Commission should be at least accountable for its actions as it is now, and that any requirements for it to consult etc should be retained. We do not believe an annual return is a logical tool to use for obtaining information on an urgent basis, for obvious reasons. We believe that it is an appropriate tool for obtaining formal information, eg necessary to maintain the register of charities and that a high degree of stability is important, so that information can be compared over a period of years and that users know what to expect (and can use systems etc that have been adapted to respond).

APPENDIX

Comments on Charity annual return questions 2023

Annual return questions	ICAEW comments
Section: Financial period [Q.2 Q-6]	
<p>You will be asked to confirm the charity's financial period.</p> <p>If the financial period end dates displayed are incorrect, you can change them in the Change the charity financial period service.</p>	
Section: Income and spending	
<p>You will be asked to enter the charity's income and spending in the financial period for this annual return in the boxes provided. Please round all figures to the nearest pound (do not enter decimal points or commas).</p>	
Section: Income [Guidance - 3.2-3.4]	
Was more than 70% of the charity's income derived from one income stream in the financial period for this return?	Regarding "income stream" it is unclear at what level income should be aggregated for this purpose.
Has the charity received a donation(s) exceeding 25% of total income from a single Corporate Donor(s) in the financial period for this return?	Why is there a distinction between corporate and other donors? <i>See also under Key Points, Purpose of Questions.</i>
Has the charity received a donation(s) exceeding 25% of total income from an individual(s) in the financial period for this return?	As above
Has the charity received a donation(s) exceeding 25% of total income from a single trust in the financial period for this return?	As above
Has the charity received a donation(s) exceeding 25% of total income from a single connected party in the financial period for this return?	We suggest that guidance clarifies if this would include a trading subsidiary providing support to the parent charity.
Section: Trustee payments [3.5-3.9]	
For what were any of the trustees paid during the financial period for this return?	
a. paid for being a trustee	

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b. paid for a role within any of the charity's trading subsidiaries or connected organisations
 c. paid for providing goods and/or services to the charity or any of its trading subsidiaries or connected organisations

During the period covered by this annual return, did any of the trustees resign and take up employment with the charity?

In the financial period for this return, what percentage of total grants were made to:
 a. Individuals
 b. Other charities

This appears to be in the wrong section. Any charity with a material activity of grant making would have already disclosed this split in the accounts but if grant making is not material is this useful information?

Are any of the above connected parties to the charity?

Section: Income from government contracts

How many contracts (other than grant agreements) did your charity have from central government or a local authority?

If 1 or above, what was the total value of the contracts held from central government or a local authority?

Section: Income from government grants

How many grants did your charity receive from central government or a local authority?

“Receive” as used in this question implies the grants are new in that year, but this appears to be inconsistent with “held” used in the following question which indicates all grants that were active in the period.

If 1 or above, what was the total value of the grants held from central government or a local authority?

Section: Income from outside the UK [4.4-4.6] [Q.7, Q.8]

During the financial period for this annual return, did the charity receive income from outside of the UK?

If you answer ‘Yes’, you will be presented with a table of countries. Select countries the charity received income from or select

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<p>'Unknown/don't know if applicable'. Then answer the following questions.</p>	
<p>How was overseas income received by the charity in the financial period for this return? (Tick all that apply)</p> <ul style="list-style-type: none"> a. bank transfer b. cash courier c. crypto-currency d. informal money transfer systems e. money service bureau f. money transfer without money movement (for example Hawala) g. online payment methods (for example Paypal) h. third party transfer / cash courier i. a banking service other than the UK banking system j. other 	<p>Is all this necessary or is the objective to identify transfers outside the normal banking system? <i>See also Key Points, Purpose behind the questions.</i></p>
<p>What is the value of income by country? For each country specify the source and amount of income from the options:</p> <ul style="list-style-type: none"> a. overseas governments or quasi government bodies; (including European Union or European Commission) b. overseas charities, non-government organisations or not for profits c. individual donors resident overseas d. overseas institutional donors (for example private company donations) e. unknown/don't know 	<p>Current guidance only asks for this for payments over £25k. Has this been removed as a de minimis?</p> <p>This question caused some confusion in the past and the text regarding individual donors and overseas donors and was amended in the 2022 annual return to refer to individuals resident overseas and other overseas institutions. The current iteration seems less clear, eg for organisations such as schools (which are no longer referred to explicitly).</p> <p>If the intention is to cover all overseas income there should be an option to include income from overseas investments, but there is a risk of duplication of reporting since the information would also be expected to be disclosed in the charity's accounts.</p>
<p>Section: Operating and spending outside England and Wales</p>	
<p>During the financial period for this annual return, did your charity operate outside England and Wales?</p>	<p>This was covered by recent guidance (as below) which we found helpful and would like to see carried forward to the new AR. "The geographical area where the charity does its work or provides its benefit. This data will be used to provide public information about charitable activity overseas or example, even if a charity operating an orphanage in Romania has its base in Hertfordshire, the area of operation should be shown as Romania.</p>

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For example, if a charity provides funding/grants to other charities or organisations based outside England and Wales to spend on their behalf, this would constitute operating outside England and Wales. E.g. A charity based in England and Wales gives a grant to a local charity or NGO based in Yemen to build a school. The area of operation should be shown as Yemen."

If you answer 'Yes', you will see a table of countries. Select the countries the charity delivered its charitable activities in (including via partners or third parties). Then answer the following questions

Record the total expenditure by Country

This can be very difficult to answer because in some cases it requires significant over-simplification of the reality of international flows of expenditure, eg in the case of research grants. Grants may not be neatly geographically targeted and might be split between multiple partners and locations, potentially flowing via one partner to others further downstream. The benefit could be impossible to define geographically because the research outcomes may end up being widely applied in the long term. IATI (the International Aid Transparency Initiative) is specifically designed for this type of analysis and better suited to it. See *Key points regarding minimising regulatory burdens*.

How much money did your charity send outside the UK regulated banking system in total (enter amount to nearest £)?

When sending money outside England and Wales, did your charity transfer money other than via bank to bank transfer?

If you answer 'Yes', you will be asked:

What methods to transfer money did the charity use and what was the value? (Tick all that apply)

- a. cash courier
- b. crypto-currency
- c. informal money transfer systems
- d. money service bureau
- e. money transfer without money movement (for example Hawala)
- f. online payment methods (for example Paypal)

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<p>g. third party transfer / cash courier h. a banking service other than the UK banking system i. other</p>	
<p>Does the charity have formal written agreements in place with its overseas partners?</p>	<p>The glossary defines “partner”, but we think the meaning remains unclear, Where, for instance, would grantees fall in this context? Grantees do not necessarily do work on behalf of the organisation funding them and they aren't necessarily delivering goods or services to anyone either (eg research grants are used to conduct research for public benefit.)</p>
<p>Section: Service delivery – premises [5.1-5.4] [Q.9, Q.10]</p>	
<p>Does the charity use more than one address to deliver services or manage its operations?</p>	<p>Does this include home addresses in cases where staff are entirely or mostly remote? If so, privacy & security concerns arise, as well as regulatory burdens. Also, it is not clear whether details of overseas locations would be required, if applicable.</p> <p>There is also ambiguity around what is meant by “manage its operations”. And, in respect of delivery of services, this could lead to significant volume of addresses, in the case of home carers, for example.</p> <p>Many charities now provide services digitally. In these cases where is the location of the service provision? There are data protection and related risks in disclosing the addresses of beneficiaries.</p>
<p>If you answer ‘Yes’, you will be asked: Please enter the addresses</p>	
<p>Section: Property [5.5] [Q.11-14]</p>	
	<p>Is this question only relevant to unincorporated charities? If so, it would be helpful to make that clear at the outset. Also, we suggest that the definitions should be included in the text rather than the glossary so that it is easier for charities to understand that question (which is presumably only relevant to a small minority).</p>
<p>Section: Data protection and cyber security [5.6] [Q.11-14]</p>	

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Are any of the charity's websites hosted outside of the UK at the date of this return?

We think that guidance will be needed on this if the question is retained. What is the underlying concern? If it relates to data security, cloud-hosted services like Microsoft Office, DocuSign, Mural, etc, used for internal administration are potentially a bigger risk than external-facing websites. Are they in scope of this question? If so, it could be very difficult to answer.

If you answer 'Yes', you will be asked:
In what country are your websites hosted?

Section: Structure and membership [5.7-5.8] [Q.11-14]

Is the charity a federated or regional member of another registered charity?

The definition of a regional member "A separate charity with its own board of trustees linked to a national charity" does not define 'regional' and could catch national or international members.

Is the charity affiliated to another registered charity (such as in a consortium)?

We believe that explanations provided in the glossary should be incorporated into the question for ease of use. It may be that further guidance will be required on this.

Is the charity a member of any professional or umbrella bodies?

As above.

Does your charity have people or organisations which act as members?

As above – also is the question really whether a person is a member of a charity or not? What is the significance of "act as"?

The glossary says that if a charity has members, their role will be defined in the charity's governing document. This is clear but would catch many thousands of charities incorporated as private companies limited by guarantee (and relevant Charitable Incorporated Organisations). Is that intended, and, if so, what does it tell the Commission that it doesn't already know?

If "member" or "act as" member is intended to be wider than members having rights under the charity's constitution, further definition will be required – the distinction, for instance, between "member" and "beneficiary" may not always be an obvious one.

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If you answer 'Yes', you will be asked:
Do the charity's members have rights under the charity's Governing Document?

See above.

Section: Subsidiaries [5.13][Q.11-14]

Does the charity have any trading subsidiaries?

If you answer 'Yes', you will be asked:
During the financial period of this return, have any of the charity's trading subsidiaries dissolved?

How many trustees are also Directors of the trading subsidiaries?

Section: Employees [6.1-6.2][Q15-18]

Enter the number of staff employed in total by your charity as at the end of the financial return period:

- a. Overseas
- b. In the UK

This should not include staff that were contracted by the charity to deliver services on behalf of the charity

What was the total amount spent on payroll during the financial period relating to this return?

During the financial period for this annual return, did any of your charity's staff receive total employment benefits of £60,000 or more?

If you answer 'Yes', you will be asked:

Enter the number of staff for each of the following salary bands:

- a. £60,000 to £70,000
- b. £70,001 to £80,000
- c. £80,001 to £90,000
- d. £90,001 to £100,000
- e. £100,001 to £110,000
- f. £110,001 to £120,000
- g. £120,001 to £130,000
- h. £130,001 to £140,000
- i. £140,001 to £150,000

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<p>j. £150,001 to £200,000 k. £200,001 to £250,000 l. £250,001 to £300,000 m. £300,001 to £350,000 n. £350,001 to £400,000 o. £400,001 to £450,000 p. £450,001 to £500,000 q. Over £500,000</p>	

What was the value of the total employee benefits (including salary) provided by the charity to its highest paid employee?

Section: Volunteers [6.1][Q15-18]

How many UK volunteers, excluding trustees, did your charity have during the financial period relating to this return?

This is an existing question, but we wonder if further definition is required to avoid charities needing to keep records on volunteers that they might not otherwise be required to keep.

Section: Financial controls [7.1][Q.19-21]

During the financial period for this annual return, did your charity review its financial controls?

This is an existing question. What proportion of charities answer 'no' and what use has the Commission made of information it obtains from asking this question? *See Key points above about the purpose of questions generally.*

Section: Governance [Q19-21]

Which of the following policies and associated procedures does the charity currently have in place? You will also be asked to provide the date of last review for each.

- a. bullying and harassment policy and procedures
- b. conflict of interest policy and procedures
- c. financial controls policy and procedures
- d. safeguarding policy and procedures
- e. complaints policy and procedures
- f. whistleblowing policy and procedures
- g. reserves policy and procedures
- h. political activities policy and procedures
- i. volunteers policy and procedures

This is a broad reaching question which could result in disproportionate work for charities, eg if a charity does not have one of the policies, because it does not need one, it may think it does or put one in place regardless, simply to give the Commission the answer the charity thinks it expects.

We think therefore, that guidance (in the question) would be helpful, including on which policies are mandatory (or expected) for all charities and any minimum expected review periods, perhaps with links to Commission guidance on each policy.

For example, charities should be following the guidance in CC9, which does not require a political activities policy as such, so why is this question being asked ?

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Section: Safeguarding [7.2-7.3] [Q19-21]

Does the charity provide services to children and / or adults at risk?

Has the charity obtained DBS checks for those that are eligible in the financial period for this return?

Section: Serious incidents [No Q19-21]

If gross income is more than £25,000 has the charity reported all Serious Incidents (including any historical incidents) that the charity became aware of during the financial period relating to this return? [

Section: External impacts [Q22]

Have there been any events over the financial period for this return that have impacted the charity's ability to operate effectively?

If you answer 'Yes', you will be asked:

Please indicate the impact of the event by using the dropdown lists below:

Estimated positive impact on or increases in:

- a. donations
- b. fundraising activities
- c. other income i.e., grants
- d. expenditure
- e. number of volunteers
- f. number of employees
- g. number of trustees
- h. total service demand

Estimated negative impact on or decreases in:

- a. donations
- b. fundraising activities
- c. other income i.e., grants
- d. expenditure
- e. number of volunteers
- f. number of employees
- g. number of trustees
- h. total service demand

We think many charities will struggle to answer this question. It doesn't seem to address the stated aim in the consultation paper. Will the Commission state what the external event they have in mind each year they use this question? If not, there is scope for a variety of interpretations.

The use of dropdown lists may alleviate this concern, eg by providing a choice of ranges, but we cannot comment fully without knowing eg how the ranges would be set, eg for percentage changes, absolute values, narrow or wide ranges.