

DSC CONSULTATION RESPONSE

Charity Commission Annual Return for 2017

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1. Background to the consultation

Charities complete an Annual Return which requires them to submit information about their activities and finances to the Charity Commission. This is valuable information which the Commission can use to identify potential regulatory concerns and to take action where necessary. It is fundamental for the transparency of the sector and is important in allowing the giving public to see how their donations are being used.

As the Commission improves and rolls out new digital services, it is consulting on a new system which would see charities updating the information they provide on a more frequent basis so that a more accurate picture of the charity can be maintained, reflecting changes that occur throughout the year.

Although this seems like a good idea on the face of it, DSC has some concerns relating to the practicality of regular updates, the potential burden particularly on small charities, and the basis on which questions will be targeted, particularly in the context of a future review of the information being collected which will be undertaken soon.

2. Summary of key points

- **Obligation to update data** – While it may be a good idea to give charities the option to update more regularly, it is unclear whether the Commission would expect every charity to update information more often than annually. Will it be a requirement ('must') or best practice ('should')? What does 'should' mean in this context?
- **Frequency of updating data** – It is unclear how often the Commission would expect information to be updated. While some charities may be able to update information as soon as it changes, other charities may find it more difficult – for example smaller charities or those whose trustees only meet a couple of times a year.
- **Maintaining data quality** – Will the process of updating information include any scrutiny by the Commission of Annual Return information that is supplied by trustees? If not, there may be errors and inaccuracies introduced into the data.
- **Relevance of self-disclosed Annual Return information to risk priorities** – While it may be appropriate to structure and segment future Annual Return questions around some of the Commission's risk priorities, it is difficult to see how this would work with others. Any targeting of particular charities with questions themed around the Commission's risk priorities must be done on the basis of a fair, consistent, evidence-based framework, to ensure particular types of charities are not unfairly burdened. For example, how would a question on the Annual Return provide meaningful data about potential terrorism or extremism risks?

- **Consultation process** – Given that the information that is collected in the Annual Return may change after this review, the logic of conducting the present consultation isn't completely clear and makes it difficult to comment on the implications of the Commission's proposed changes. See question responses below.

3. Comments on the online questionnaire

DSC has responded to the consultation, which was available via an online portal, here: <https://vovici.com/wsb.dll/s/122beg59d49>

In addition we have published our response for the benefit of others who may wish to use it to inform their own responses. A number of the relevant questions are repeated below, together with our responses.

**7) Do you believe that the fundamental information about charities should be kept up to date by charities throughout the year so that the Charity Register is accurate?
[Yes / No / Don't know]**

We answered 'don't know' because there is a lot of uncertainty in 'should'. It might be a good idea in principle, but any regulatory impact depends on whether this is going to be a requirement or something that is requested of charities

8) Please use this space to record any comments you may have

DSC believes that giving charities the opportunity to update fundamental information throughout the year would be beneficial to charities, donors and the wider public, allowing records to be kept up-to-date and accurate as changes occur. This supports the Commission's objective of 'continuously improving the nature and quality of the data we make available to the public', as set out in its Statement of Regulatory Approach.

However, we have concerns about the level of obligation implied in the use of the term 'should'. We take 'should' to mean something that is considered by the Charity Commission as best practice and therefore a standard that trustees are expected follow.

Whether a charity updates information more frequently or just annually should be entirely at the discretion of the trustees. It is worth remembering that different charities may meet more or less frequently; trustees may only meet a few times a year. In which case, what does 'up-to-date' mean? As soon as any new information is available? Or after trustees convene and make decisions as to what is going to be changed? The Commission will need to provide context that individual trustees can reasonably interpret.

The Commission needs to be clear about what it is expecting; we believe that requiring information to be up-to-date in real time is unrealistic, both for charities and for the Commission. The use of the term 'should', by the definition provided in *CC3: The Essential Trustee*, implies that the Commission will expect trustees who are not keeping fundamental

information up-to-date on a regular basis to give satisfactory reasons for not doing so. This risks placing too great a burden on staff and trustees of charities. It is also unclear whether charities will still be required to submit an 'Annual' Return if they are already keeping information updated on a rolling basis.

The Commission has recently emphasised its role in enabling and supporting trustees, and it is in this light that this change must be assessed. Requiring trustees to update information more regularly may seem a fairly minor ask now, but what implications will arise once the Commission reassesses the questions in the Annual Review, as planned? Respondents are being asked to judge whether information should be kept up-to-date, without actually knowing what information will be required going forward. This consultation slightly puts coach before horse – and it might have been better to consult on both the questions and frequency of updating simultaneously.

The Commission has also not given any detail about whether the information that is provided by trustees throughout the year will be checked or scrutinised before publication on the charity's record. If information updated outside the annual return goes straight onto the record without any checking, there is a risk of introducing errors or inaccuracies into the data.

9) Do you agree that the questions in the Annual Return should be structured so that they match the Commission's regulatory risk priorities?
[Yes / No / Don't know]

We answered 'don't know because we're still not sure how much the questions will change.

10) Please use this space to record any comments you may have

A nuanced approach to gathering information on charities – based on common regulatory issues that are likely to crop up with different groups of charities – is an interesting idea that should be explored. Whether the questions should closely match the Commission's regulatory priorities is another question.

For example, asking children's charities questions about safeguarding makes sense. But how would the Commission ask sensible questions about terrorism and extremism which yielded useful information? If it was trying to red flag charities at risk of such problems (which will be relatively few), a question on the Annual Return (Are you an extremist? Tick this box yes/no) is unlikely to provide the data the Commission seeks.

Without further clarity about what the new questions will involve, we are unable to say whether we agree or disagree with the structuring of questions around the Commission's regulatory risk priorities.

Without this information, it is also unclear what the impact will be on smaller charities. Although the Commission says that ‘for many charities there will be fewer questions for them to answer in the annual return’, it is not clear how many charities will benefit from this on the whole.

If the Annual Return will be seeking information from charities based on their activities rather than their size and relative capacity for more regulatory compliance, this move could place a disproportionate burden on many small charities.

It is unclear whose needs are being served in an effort to collect ‘only the information that is needed for regulatory purposes’. Is this for the benefit of charities, streamlining the information that they have to provide, or is it motivated by the Commission’s interest in minimising its workload?

11) Do you agree that more detailed questions within any theme should be targeted only at charities for which the information is relevant?

[Yes / No / Don’t Know]

In our answer we said ‘don’t know’. A targeted approach makes sense but again it depends on the depth required for particular themes.

12) Please use this space to record any comments you may have

Ideally, a charity should only be asked questions that are relevant. In this respect, we welcome a targeted approach, to ensure that resources are used efficiently and that regulation is proportionate and reflective of the diversity of charities. However, it is important that the questions also take into account income thresholds and do not place too great a burden on small charities (see answer to question 10).

More clarity is needed about the basis on which questions will be targeted. The Commission has said it will focus questions on its priority risk issues; what criteria will be used to assess which issues and questions are relevant to which charities? We would like assurances that, for example, a specific group of charities will not be unfairly burdened with additional regulation due to instances of bad practice in a minority of charities with similar objects or characteristics. Will, for example, Islamic faith-related charities face additional and unfair regulatory pressure under the Commission’s priority of combatting terrorism and extremism?

If questions are adapted to target certain charities, it must be on the basis of a fair, consistent, evidence-based framework to assess risk. Otherwise, the Commission may jeopardise its goal of supporting and enabling trustees. This again raises the question of why the Commission has chosen to consult on this issue separately and at this early stage, when key information that will determine the effect of these changes on charities is forthcoming.

13) Where appropriate we encourage you to provide evidence in support of your response. If you are a representative group, please provide a summary of the people and organisations you represent as part of your response.

DSC is not a representative or membership body but we have a longstanding interest in charity law and regulation, and we believe that charity regulation should be appropriate, proportionate and enabling (see below).

4. About the Directory of Social Change

The Directory of Social Change has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of charities and other voluntary organisations are crucial to the health of our society.

Through our publications, courses and conferences, we come in contact with thousands of organisations each year. The majority are small to medium-sized, rely on volunteers and are constantly struggling to maintain and improve the services they provide.

We are not a membership body. Our public commentary and the policy positions we take are based on clear principles, and are informed by the contact we have with these organisations. We also undertake campaigns on issues that affect them or which evolve out of our research.

We view our role as that of a ‘concerned citizen’, acting as a champion on behalf of the voluntary sector in its widest sense. We ask critical questions, challenge the prevailing view, and try to promote debate on issues we consider to be important.

5. DSC’s principle of Responsible Regulation

a) Regulation should be proportionate

Regulation must strike a balance between perceived risk and intended benefit. It should recognise the diversity of voluntary sector activity and be developed and applied in a proportionate way.

b) Regulation should be appropriate

Regulation must be informed by the characteristics, capacity, and needs of the organisations and individuals that are being regulated. Insofar as is possible it should be focussed, rather than acting as a blunt instrument that has unintended effects.

c) Regulation should be enabling

Regulation should seek to empower rather than control voluntary activity. The reasons for the regulation and the regulation itself must be properly understood by those institutions which are applying it. It should be accessible and intelligible to those being regulated. It

should seek as far as possible to encourage self-regulation rather than focus simply on enforcement.