ALEXANDRA PALACE & PARK **Agenda Item No.** 3

Committee :	**Alexandra Palace and Park Panel**
Date :	**17th December 2002.**

Report Title :	**Response to Consultation Document.**

Contact Officer :	**Keith Holder**
Designation :	**General Manager**

1.0 PURPOSE

1.1 To recommend a response to the Strategy Unit publication; Private Action, Public Benefit.

2.0 SUMMARY

2.1 The Board considered a summary document at its meeting on 29 October 2002.

2.2 The period for consultation closes on 31 December 2002. The document is proposing wide ranging changes to the framework within which charities operate. The proposed responses are limited to those that affect the operation of this charity.

3.0 RECOMMENDATIONS

3.1 The General Manager responds to the Cabinet Office Strategy Unit in accordance with the comments in Appendix 2 attached.

Report authorised by Keith Holder.....(Signature)
General Manager (Designation)

4.0 Local Government (Access to Information) Act 1985

The papers used in compiling this report were limited to Private Action, Public Benefit published by the Cabinet Office Strategy Unit.

5.0 REPORT

5.1 My report to the Board of trustees on 29 October included a summary of the proposals contained in Private action, Public benefit prepared by Deliotte Touche. I noted in my covering report that the principal document ran to some 97 pages and would need close scrutiny to identify potential impact on Alexandra Park and Palace Charitable Trust.

5.2 Whilst reading and considering the various proposals the Charity Commission published its own response to the document. The Commissions response, a copy of which is attached at Appendix 1 is a suitable document to use as a basis for formulating this charity's response in the consultative process.

5.3 I have approached the proposed response on a "by exception" basis. Where the Commissions comments run parallel to those, which are relevant to this organisation, it is recommended they should be accepted. However there are some areas which either impact on day-to-day management issues or cover the regulatory role. The analysis of the comments and the proposed response is listed in Appendix 2. The format used is to show the proposal in bold and the response immediately thereafter.

6. Financial Implications/Comment

6.1 Corporate Services has been sent a copy of this report.

7. Legal Implications/Comment

7.1 The Trust's Solicitor has been sent a copy of this report.

8. Equal Opportunities Implications

8.1 There are no perceived equal opportunities implications in this report.

APPENDIX 1

The Charity Commission's response to the Strategy Unit review

Contents

Introduction

The Charity Commission welcomes this review and supports the great majority of its proposals. The review, if implemented promptly and in substantially its published form, will:

- promote public confidence in charities;
- help charities to serve their users and clients better; and
- help the Commission to regulate charities in the public interest.

Whether or not they require legislation, many of the proposals in the report will require a good deal of further work and thought. The Commission wishes to be an active and committed partner in this and will offer Home Office and SU colleagues more detailed comment in due course on a number of issues. We are likely also to want to contribute further views on particular issues in response to growing discussion and debate within the sector during the second part of the consultation period and beyond.

Charitable status

R1 – That charity be redefined in law, based on the principle of public benefit and falling under one of ten new purposes of charity.

The Commission welcomes this recommendation. One of the Commission's priorities in recent years has been to ensure that, within the existing law, the definition of charity develops in response to social and economic changes. Recent examples of new purposes we have recognised as charitable in this way include the promotion of human rights and the promotion of religious tolerance. Both before and after any change in the law, we will continue to take a positive and inclusive approach to charitable status.

For the reasons set out in the review, there is advantage in a new statutory list of charitable purposes describing the scope of charity more fully and clearly than the existing four heads.

We believe that many of the new purposes will need to be further defined in statute. This will be necessary both where the margins of an existing purpose are being redefined, as with the purpose for the advancement of religion, and in relation to the new purposes in the list.

The review suggests that the proposed statutory redefinition excludes "none of the objects currently recognised as charitable". However, it does exclude recreational charities whose charitable status is secured by virtue of the Recreational Charities Act 1958. If the new statutory list is to include all currently charitable objects, recreational charities will have to be added to the list (allowing repeal of the 1958 Act).

We welcome the review's statement that the new statutory definition is meant to be a one-off change, leaving the law to evolve in response to social and economic changes as it does at present.

Public Benefit

The Commission agrees that, to qualify as charitable, all organisations should satisfy the same test of public benefit. In practical terms, this is already the position. Although there is a presumption that organisations falling under the current poverty, education and religion heads are established for the public benefit, this presumption is "rebuttable". In other words, where there is reason to doubt that a particular charity, or applicant for registration, would meet the public benefit test which applies to other charities, the presumption falls. Because of this, while the proposal to adopt a single, universal public benefit test is right in principle, we do not believe that it will make a significant difference in many cases to the status either of existing organisations or of new ones.

R2 – The Charity Commission should undertake ongoing checks on the public character of charities.

To be charitable, an organisation must have a "public character". The main thing that determines whether this requirement is met or not is access – whether or not the services or other benefits the charity provides are available to everyone, or to a sufficiently wide group within the community. Charges are a factor, and often an important one, in assessing this, but they do not in themselves necessarily call a charity's public character or its charitable status into question. Fees, even quite high ones, may not prevent those of ordinary financial means from gaining access to the services or benefits the charity offers – charitable care homes, which are able to offer services widely to the less well-off because of the availability of state benefits, are one example.

For this reason, fees alone would not be the right criterion on which to select charities for "public character" review. (The wider range of factors that, under the law as it stands, affect "public character" is explored in the Commission's publication The Public Character of

Charities, which can be found on our website.

The Commission believes that any duty to review the public character of charities should be clearly defined in legislation. The legislation should specify, in particular:

- what criteria are to be used to identify charities for review;
- what criteria are to be used to decide whether or not an organisation under review has a public character. These criteria would determine which if any charities' status could be affected by the public character checks, and how seriously;
- what should be done with the assets of charities which do not meet those criteria.

Trading

R3 – To amend charity law to allow charities to undertake all trading within the charity, without the need for a trading company. The power to undertake trade would be subject to a specific statutory duty of care.

There are arguments both for and against this proposal. Inevitably, it would expose charity assets to greater risk. It also involves a reduction in the clarity of the distinction between trading and direct charitable activities which, over time, could have a negative effect on donors' perceptions. The new freedom would put a high premium on charities' ability to identify and control risk. Many charities would need advice and guidance from specialist advisers on how best to structure their trading activities so as both to minimise bureaucracy and mitigate risks to their assets. Measures that charities took to mitigate risk would have their own costs attached. Trustees of unincorporated charities would need to consider the risks of direct trading very carefully indeed, given the personal liabilities involved.

On the other hand, the proposal is in the same liberalising spirit as other recent deregulatory developments, such as the changes to investment rules made by the Trustee Act 2000. The Commission has taken an active part in these developments, for example by accepting a more flexible "total return" approach to invested funds and the income they produce when that suits charities' needs. These changes are all designed to give trustees greater freedom – balanced with a duty of care - in deciding how to deploy resources to best advantage. The present proposal would put trading, as a form of income generation, on the same footing as fundraising – an area where the great majority of charities have a record of proportionate and successful investment.

On balance, the Commission supports the proposal as an extension of choice. We are conscious, however, that many charities will prefer to retain the safeguards and the transparency in financial relationships that come from operating through trading subsidiaries.

In the early years of any new arrangements, the Commission would monitor closely the costs and benefits to charities which exercised the freedom to trade as a way of generating income.

Campaigning

R4 – That the Charity Commission guidelines on campaigning should be revised so that the tone is less cautionary and puts greater emphasis on the campaigning and other non-party political activities that charities can undertake. The legal position should continue to be that charities can campaign providing that:

- **A charity's activities are a means to fulfilling its charitable purpose;**
- **There is a reasonable expectation that the activities will further the purposes of the charity and benefit its beneficiaries, to an extent justified by the resources devoted to those activities;**
- **Its activities are based on reasoned argument; and**
- **Its activities are not illegal**

The Charity Commission should distinguish between this position, which is a statement of legal and regulatory requirements, and good practice. It may wish to publish advice on good practice, but in doing so should emphasis that trustees have the freedom to pursue whatever activities they judge to be in the best interests of the charity.

The Commission accepts this recommendation.

The current guidelines are widely seen as providing positive and user-friendly solutions in what used to be a problem area. We are happy to look at the scope for further improvements in consultation with charities and others.

Mergers etc

R5 – That the Charity Commission should provide specific advice to facilitate mergers, possibly by creating a dedicated internal unit.

R6 - That a package of legal measures should be introduced that will facilitate mergers and, more generally, the administrative running of the charity.

The Commission welcomes these recommendations.

It is already our policy to encourage charities to consider joint working, up to and including merger in appropriate cases, wherever that is in the best interests of their clients. We already provide extensive advisory and enabling support to charities pursuing merger, and were delighted last year to be able to assist the Imperial Cancer Research Fund and the Cancer Research Campaign to fulfil their ambitions to merge in the interests of greater effectiveness in their research activities. We will seek to expand our capacity for similar work. We are considering options for this, including a dedicated unit within the Commission.

We are preparing a regulatory report on collaborative working and mergers, which will be published in the first quarter of 2003.

Endowments

R7 – Criteria for allowing trustees to spend capital should be revised.

The Commission welcomes this recommendation.

Legal forms

R8 – That a Community Interest Company be established.

The Commission welcomes the report's proposals to create a wider and more flexible range of institutional forms for not-for-profit organisations.

We have considered whether it would be possible to set up a CIC in charitable form. At the moment, based on the characteristics of the CIC described in the review, we believe that it would be possible. We take the view that any CICs which were charitable should be subject to registration and regulation by the Commission on the same basis as other charities. If CICs could be charitable, we would want to contribute to development of the form and to the discussion as to how they should be regulated.

R16 – The DTI's Social Enterprise Unit will consult further on the feasibility and value of a branding scheme in order to identify whether there is an option that could be taken forward and supported by government.

The Commission welcomes this recommendation.

The Commission recognises the growing importance of social enterprise as a source of benefit to the community, and will support the growth of social enterprise by charities. We have published guidance on our website making it clear that many charities will be able to fund social enterprise as part of their mainstream activities.

R17 – That a new legal form designed specifically for charities, the Charitable Incorporated Organisation (CIO), be introduced, which will only be available to charitable organisations.

We welcome this recommendation.

The Commission has enthusiastically supported, and taken an active part in, the development of this proposal for a tailor-made form of incorporation for charities. It would be of significant long-term benefit to many charities by allowing them to adopt governing documents which are more clearly adapted to their purposes and activities, and which allow worthwhile efficiency gains through the elimination of dual regulation by the Commission and Companies House.

Information

R18 – As part of their Report and Accounts, the largest charities (those over the proposed new £1m audit threshold) should complete an annual Standard Information Return. This should highlight key qualitative and quantitative information about the charity, focusing on how it sets objectives and measures its outcomes against these.

The Commission welcomes this recommendation.

We share the review's belief that there is a valid demand for more consistent information about charities that allows their performance to be more easily judged and comparisons and choices to be made more easily between them. Charities and umbrella bodies should embrace this demand, which reflects the public's valid interests, as donors, volunteers, clients, supporters and taxpayers, in the efficiency and effectiveness with which charitable funds and assets are used.

The Standard Information Return will be a useful start. Its development over time will offer charities and their representatives opportunities both to make themselves better accountable, and to present their achievements more effectively and rigorously to existing and potential clients and supporters. In appropriate cases, the Commission will cooperate with other organisations that maintain databases, analyse information and put the results into the public domain.

R19 – The next charity SORP should deveiop improved methods for apportioning costs and expenditure, enabling more meaningful financial comparisons between organisations to be made.

R20 - Improvements should continue to be made to the SORP to strengthen its focus on achievements against objectives, organisational impact and future strategy.

The Commission welcomes these proposals.

SORP is reviewed annually, as is required by the Accounting Standards Board. These proposals will be considered as part of the annual review (which will also consider the recommendations for SORP made by the Treasury's recently-published cross-cutting review of the role of the voluntary sector in service delivery).

The apportionment of costs was considered at the last (November 2001) annual review of SORP. As a result we published an information note to help clarify the distinction between those publicity costs which should be treated as fundraising expenditure and those which should be treated as charitable expenditure.

R21 – For charities with total annual income of over £1 million, the Charities (Accounts and Reports) Regulations 2000 should be amended in line with the obligations of pension fund trustees to declare their ethical investment stance in their annual reports.

R22 - Smaller charities which have significant holdings of equities should also make a declaration of their ethical investment stance on a voluntary basis, as a matter of good practice.

R23 - The ability of charities to follow a broad ethical investment policy should be clarified.

The Commission welcomes these recommendations.

We are now revising our published guidance on investment issues. The revised guidance will include a clear explanation of the current legal rules on ethical investment by charities.

Auditors

R24 – Auditors of all charities should have the same statutory protection from the risk of action for breach of confidence or defamation, as do the auditors of charities which are not companies.

The Commission welcomes this recommendation.

Fundraising

R25 – A new, updated and unified local authority licensing scheme for public collections should be introduced, focusing on basic minimum requirements and geared towards encouraging legitimate collecting activity within the constraints imposed by competition for space and the avoidance of public nuisance.

The Commission agrees that the current regulatory system for public collections does not work well and needs modernising.

The last attempt to modernise the regulation of public collections (Part III of Charities Act 1992) foundered on the practical detail of implementation, so great care has to be taken to get it right. Close consultation with practitioners, local authorities and the regulatory and enforcement authorities will be essential. In particular, it is important to be clear about:

- which types of fundraising or collection will require a license and which will not;
- how the new licensing system will cope with changes in fundraising methods or techniques; and
- which places are covered by the requirement to obtain a licence before carrying out a collection;
- what criteria a local authority is to use, and what checks it may carry out on the fitness and propriety of organisations to collect, when deciding whether or not to grant a licence.

The Commission disagrees with the review's proposal to treat public places differently from privately-owned sites to which the public has free access for the following reasons:

- the proposals would give local authorities "public nuisance" powers to control the number of collections and maintain a balance between local and national charities. Their efforts in both areas would be undermined if they could not take account of collections on shop premises, railway stations and other privately-owned areas;
- treating public and private places differently might undermine the proposal to abolish the system of exemption orders for collections taking place over a substantial part of the country, by allowing (for example) a charity to obtain permission from the head office of a supermarket chain to collect in each of its stores and car parks on the same day;
- collections by people going from pub to pub would be excluded. These collections should continue to be regulated because they are particularly open to abuse. This type of collection is regulated under the current legislation, as it falls within its definition of a house to house collection.

R26 – Government should support, with seed-corn funding, a new fundraising body to develop the self-regulatory initiative. The body would become self-financing, perhaps by a small levy on donated income, although the method of financing would be a matter for the body itself. This would be based on a new voluntary Code of Practice designed to promote good practice in fundraising, and to raise awareness of the sector's commitment to good practice among the general public.

R27 - The Home Secretary should be given the power to introduce statutory regulation, which he would exercise if he considers self-regulation to have been ineffective or inadequate.

The Commission agrees that high standards of practice in fundraising are crucial to public confidence in charities, and welcomes the recommendation that self-regulation should be given a chance in this area, with the possibility of state regulation if that fails.

If self-regulation is to succeed we believe that the self-regulatory body must:

- establish standards which have credibility with donors, the media, consumer groups, regulators and charities themselves;
- build on the valuable start already made by the institute of Fundraising and others in setting standards, including a "donor's charter" setting basic principles of good practice;
- have clearly-defined relationships with the statutory authorities, including the Commission , which have a role in regulating fundraising;
- avoid, and be seen to avoid, "capture" by fundraisers; and
- have meaningful sanctions and be willing to deploy them against fundraisers who fall below acceptable standards of practice.

R28 – The legislation should be amended to require a specific statement of the return that will be made to charitable, philanthropic and benevolent purposes from promotional ventures.

R29 - The Home Office should issue guidance, building on that already available, setting out the form of statement appropriate to the particular type of promotion proposed.

The Commission welcomes these recommendations. We suggest that:

- the legislation be amended to prevent commercial partners from evading the controls by using third parties as agents; and
- the corresponding requirement on professional fundraisers should be made more specific and covered in the Home Office guidance.

At present, appeals that are identical from the donor's perspective can be subject to different degrees of regulation depending on whether they are carried out by professional fundraisers or by charity staff who are paid to raise funds. The legislation should address this inconsistency,

for which no good reason exists.

R30 – The liaison arrangements already in place between the Charity Commission, local authorities and the police should be strengthened by means of protocols setting out agreements on joint working.

The Commission accepts this recommendation.

Working effectively with the other agencies engaged in countering bogus fundraising is already a high priority for the Commission. Over the past year we have established a series of formal agreements with other regulators and public authorities, including local authorities and the police, as part of a major project to strengthen our capacity to investigate and deal with abuse.

Performance improvement

R31 – That Government provides support to the sector for work on performance improvement as part of its wider commitment to build the sector's capacity. The sector should work collectively to bring forward proposals by April 2003.

R32 - Specific sub-sectors (groups of organisations involved in the same area of service provision) should pilot test an approach to developing common performance indicators and benchmarking for the organisations in their area. If this were to prove successful, it could be used to encourage other sub-sectoral groupings to follow similar approaches. It is not proposed that the Government or the Charity Commission would have a role in the exercise.

The Commission welcomes these recommendations.

Trusteeship

R33 – That the citizenship component of the National Curriculum should contain more to encourage learning about, and participation in, charitable and not-for-profit activity, including volunteering and trusteeship.

The Commission welcomes this recommendation.

R34 – The SORP should provide for annual reports to include a statement of procedures for recruitment, induction and training of new trustees.

The Commission accepts this proposal, which will be implemented in the annual review of SORP.

The Commission's regulatory report "Trustee Recruitment, Selection and Induction", published in March 2002, showed that, currently, recruitment and induction practices often leave much to be desired. Charities need to move away from their current overwhelming reliance on personal invitation in recruiting trustees towards more open methods, and to seek greater diversity. Too often, induction practices fail to include making trustees familiar with charities' legal purposes and powers, and with current and recent financial information.

R35 – A trustee body should have a statutory power to pay an individual trustee to provide a service to a charity (outside their duties as a trustee) if they reasonably believe it to be in the charity's interests to do so.

The Commission has reservations about this proposal.

We see the advantage for charities in being allowed to pay trustees who provide services to their charities, often at reduced cost, which are outside the duties of trusteeship. Some charities' governing documents already allow this; in other cases, the Commission authorises it where it would be in the charity's best interests.

The risks of providing a universal power to pay remuneration of this kind are that:

- a damaging perception might be created, in relation both to specific charities and to charities generally, if it became widespread practice for charities to prefer a trustee to an unconnected contractor; and
- the Commission's experience is that some charities will have difficulty managing the inherent conflict of interest and confusion of roles which arise when a board of trustees has a commercial relationship with one or more of its number.

If the proposal is adopted, it is important that safeguards should be provided. These should, for example, limit the number of members of trustee bodies who could be paid, and specify duties that trustees would have for managing the conflicts of interests that would be involved.

R36 – Charity trustees should be able to apply to the Charity Commission as well as the court for relief from personal liability for breach of trust where they have acted honestly and reasonably.

The Commission welcomes this recommendation.

Charity Commission – objectives etc

R37 – The charity regulator should have clear strategic objectives in statute setting out what result it exists to achieve as regulator..

R38 - Indicators should be developed by the regulator, in consultation with interested parties, to allow its performance against its objectives, and its impact on the charitable sector, to be judged.

R39 - Legislation should require the Commission to report its performance against its objectives in its annual report.

The Commission welcomes these recommendations.

The Commission's current statutory mandate was set by Parliament over forty years ago. As the review recognises, we have made good progress recently in turning ourselves into an effective, modern regulator within our current statutory remit. But we agree that the time is right for Parliament to renew our mandate in modern terms. We welcome the increased accountability and clarity of purpose that these proposals will bring.

R40 – Legislation should require the Charity Commission to hold an open Annual General Meeting at which to present its report and answer questions. It should continue its programme of regional meetings.

The Commission welcomes this proposal.

It is a logical extension of the events we have held in past years to present our annual report to the sector and to account for our activities and performance.

R41 – That the Charity Commission should open its Board meetings to the general public.

The Commission is committed to openness and accountability and welcomes the stress that

the report places on this principle.

In the last two years, we have put reports on our inquiries into the public domain for the first time, and begun a process of publishing on our website both the working instructions that we provide to our caseworkers, and key decisions that the Commission has made on status and similar issues. We will look for ways to take openness further by publishing a wide range of Board papers and holding open Board meetings.

While openness remains the objective, all organisations are entitled to opportunities to discuss in confidence issues such as "blue skies" options for policy and strategy, negotiating and influencing issues in relation to partners, stakeholders and funders, and internal management matters. It is obvious, too, that much of the decision-making of a regulator in particular may need to take place in confidence if its effectiveness is to be safeguarded and duties of confidentiality to third parties are to be preserved. For these reasons, the Commission believes that not all of its meetings and decisions can or should take place in public.

Charity Commission information services

R42 – The Charity Commission should develop a better focus on the needs of stakeholders other than the regulated constituency by:

- **Providing advice on giving aimed at potential donors**
- **Making standard information about the largest charities available on its website**
- **Signposting on its website to other appropriate bodies that members of the public should contact if they wish to complain about a particular aspect of a charity's work or mode of conduct.**

The Commission accepts this recommendation.

We have been developing plans along these lines for some time independently of the review, and will consider how these can be further developed. Our website is a very powerful means of communicating with stakeholders, currently receiving around 800,000 hits a month. We are committed, not only to improving its usefulness to charities, but also to widening its appeal to other stakeholders.

Our e-business strategy aims to enable us, by 2005, to offer all of our services electronically, without compromising levels of service to customers who want to deal with us using non-electronic means.

We are currently supporting a bid, by a consortium of voluntary sector bodies, for funds to develop a website providing public information about the activities, finances and performance of charities.

Registering charities

R43 – The Commission should seek to separate the process of judging whether or not an applicant is a charity from that of assessing viability.

R44 - The circumstances in which an "activities test" can be used as an aid to interpreting purposes should be clarified in statute.

The Commission accepts these recommendations. We believe, however, that looking at the viability of charities at the point of registration is lawful, and very much in the public interest. So, our surveys show, do organisations applying for registration, whether or not they are successful. Both elements of the gateway – deciding charitable status and assessing viability – are important and proper functions for the Commission.

We will look again at the gateway procedure with a view to keeping the two elements more clearly distinct, while maintaining each of them. This will not need primary legislation.

We are clear about the circumstances in which the law allows us to use an "activities test" (para 7.33 of the review), but agree that statutory clarification of these circumstances would be helpful.

Statutory audit

R45 – That all charities with income of £1m or more in any financial year should be required to have their accounts for that year professionally audited. The independent examination requirement should apply to charities with income between £10,000 and £1m. The latter threshold should be re-examined if the audit threshold for non-charitable small companies changes.

The Commission welcomes this recommendation, with one reservation.

The proposal is consistent with developments in European and UK company law, and would send a deregulatory signal that many charities would welcome. Some charities below the new professional audit threshold would make useful resource savings on audit fees.

However, the financial affairs of some charities with significant assets would go unaudited, and thought should be given to imposing an asset threshold as well as an income threshold.

This change would increase the demand for independent examiners and reporting accountants. There is a risk, which will need to be carefully assessed and managed, that the pool of competent people willing to act as examiners and reporting accountants might not be large enough at first to take on several thousand new examinations. The level of expertise required to examine charities of this size is likely to mean that a high proportion of examiners and reporting accountants will charge for their services.

Charity Commission – role etc

R46 – The Charity Commission's advisory role should be defined in statute to give a clearer focus on regulatory issues.

The Commission welcomes this recommendation.

Our statutory function currently allows us to give advice and information to trustees "on any matter affecting their charity". While flexibility remains important, expectations of the Commission's advisory role could and should be more clearly defined than this. In practice, virtually all the advice we give is on matters of clear regulatory relevance. As regards information for charities on good management practice and other, wider, non-regulatory issues, there are now far more sources of good quality advice available elsewhere than there were forty years ago, when the Commission's advisory role was first formulated. In dealings with individual charities the Commission already signposts many of these other sources, and we are actively seeking to improve this element of our service further.

R47 – The Charity Commission should review, with sector participation, and report on the performance of different charitable sub-sectors with a view to correcting information failures and enabling stakeholders to maximise beneficiaries' interests and better fulfil underlying charitable objects.

The Commission accepts this recommendation.

The Commission agrees with the Government that league tables are not the best way forward for charities. These reviews, like our programme of regulatory reports, should therefore be

concerned with objective evidence-gathering, analysis and reporting. The intention is to give incentives for charities to perform more effectively and cost-effectively by increasing the transparency of their operations and enabling donors, and other commentators and stakeholders, to compare performance more readily, but the sophistication of the analysis required for this should not be underestimated.

R48 – That the charity regulator should continue to operate at arms length from Ministers. It should become a statutory corporation called the Charity Regulation Authority, whose relationship with Ministers is clearly defined in statute.

The Commission welcomes the substance of these proposals. We believe that the intention will be easier to achieve if the Commission's present name is retained, and other means are used to clarify the regulatory nature of its role.

The ability to regulate impartially is vital. We welcome the recommendation to retain and enhance the Commission's current independence as a regulator. We agree that the relationship between the regulator and Ministers could usefully be further defined and clarified by Parliament.

Subject to the need for careful attention to be paid to the detail of what will inevitably be a complex technical matter, the Commission welcomes the proposal to convert it into a corporate body with clearer independence and clearer statutory relationships with both the Government and the charity sector.

Name

The Charity Commission should retain its present name. The review itself correctly argues that the organisation should seek higher recognition and profile with the public. This will be much easier if we build on recognition of our current title and functions, which is already very widespread among those who deal with us directly, than if we start from scratch with a new name.

R49 – Legislation should enable the number of Commissioners to be increased from five to nine, with one Commissioner appointed by the Secretary of State for Wales. There should be separate Chair and Chief Executive posts.

The Commission welcomes the proposal to expand the Board to nine.

This would allow a welcome extension of the diversity and range of skills, background and experience available for the governance of the organisation. Pending the necessary primary legislation, we will explore ways of working towards the underlying intention within the constraints of the current statutory framework, which allows a maximum of five Commissioners.

The proposal to split the chair/CEO functions needs more thought, and possible effects on the Commission's governance, leadership and accountability need to be more fully explored.

Territories

R50 – The Charity Commission should open an office in Wales.

The Commission accepts this recommendation, subject to availability of resources.

We are in dialogue with the Welsh Assembly and sector interests in Wales, and will take the issue into account in our business and resource planning for 2003/04 and future years.

R51 – A new umbrella committee, on which all UK charity regulators are

represented, should be created, to ensure a consistent regulatory approach UK-wide and to share information and best practice.

The Commission welcomes this proposal.

Appeal process

R52 - That an independent tribunal should be introduced to hear appeals against the legal decisions of the Commission as registrar and regulator. This will be introduced alongside a streamlined single stage internal review procedure.

The Commission accepts that public expectations of the availability of redress against decisions by public authorities are growing, and that this is right and healthy. We have already sought to improve redress within the current statutory position by introducing new, formal complaint procedures, including an element of independent review in appropriate cases; and by providing a system for the internal review of formal decisions with which those affected are in disagreement.

We believe that this has gone a considerable way towards achieving the underlying purpose of the review's recommendations in this area. It is, however, for the Government to decide, following consultation, whether further formal redress short of litigation against decisions by the Commission is needed on major matters such as refusal of registration or trustee removal. Should they so decide, we would be prepared to work constructively and willingly with Government on the development of such a system.

Small charities

R53 – The threshold for compulsory registration should be raised to £10,000. The two criteria relating to permanent endowment and use/occupation of land should no longer apply.

R54 - All charities below the new registration threshold should have the status of "Small Charity". They would not be entitled to register as charities, but those that made tax repayment claims would have acceptance from the Inland Revenue of their charitable status – as is already the case for unregistered charities in England and Wales, and for all charities in Scotland and Northern Ireland.

R55 - There should also be a change in the law to enable funders who are legally limited to funding registered charities also to fund "Small Charities".

The Commission believes there are strong arguments both for and against these proposals.

On the one hand, they would simplify compliance and reduce costs for some small charities. On the other, they would reduce by about 60% the number of charities on which information is available through the Commission's public register, and would take away a status which many small charities value. We would propose allowing charities to register voluntarily below the new threshold in return for some monitoring proportionate to their size.

The reduction in bureaucracy for currently-registered small charities which leave the register should not be overestimated. The proposals would release such charities from the obligation to complete, annually, one form updating their details on the public register. The Commission's regulatory functions, including the giving of advice and if necessary its investigatory powers, would not be disapplied.

It makes sense to align the compulsory registration threshold with the monitoring threshold, so that the accounts and activities of all registered charities are subject to some degree of systematic monitoring oversight. But, as the review recognises, the ending of voluntary

registration would deprive small charities of their badge of official recognition. This could be a real disadvantage for some in their dealings with funders and with other people and institutions. Some of the latter may tend to equate registration with respectability, and view unregistered charities with a degree of suspicion. It might take some years for this perception to be overcome, even with the benefit of Inland Revenue recognition and the introduction of "Small Charity" status.

Excepted charities

R56 – Excepted charities with incomes above the new proposed registration threshold should be required to register. A higher registration threshold could be set initially, to ensure a manageable process of registration.

The Commission welcomes this recommendation and the proposal for the process of registration to be phased.

Exempt charities

R57 – The monitoring regimes to which housing associations, universities and colleges as exempt organisations are subject should be adapted to cover basic charity law requirements.

R58 - The reports and accounts of exempt charities should clearly set out the voluntary funds they hold and how they use them. The same level of information about exempt charities as is required of charities should be made accessible on or via the Charity Commission website.

R59 - The Charity Commission should be given a power to investigate exempt organisations on the request of their 'main regulator'.

R60 - Larger exempt charities, without a 'main regulator' should be registered with the Charity Commission.

The Commission welcomes these recommendations.

Impact of regulation

R61 - The Charity Commission, with advice from the Cabinet Office's Regulatory Impact Unit, should quantify the impact of regulation on charities and other not-for-profit organisations, monitor it over time, publish the results and highlight areas where regulation appears excessive.

The Commission welcomes this proposal. As the Commission is part of the regulatory apparatus, and in the interests of securing the credibility of the exercise, we believe that this task would be best taken forward jointly with an academic or other disinterested partner body or bodies.

A charity Ombudsman

The Commission believes that the opportunity should be taken to strengthen the accountability of charities in ways additional to those proposed in the report. We believe in particular that there is a place for a charity Ombudsman.

While the Commission has extensive powers of intervention and enforcement, these powers are major ones, designed to protect the charity and its assets from abuse or serious mismanagement. They are not designed, and are not well adapted, for use to give redress

where a charity has fallen short of acceptable standards of administration in a single case or in its dealings with a particular individual. In such cases, it is most unlikely that sanctions of the kind available to the Commission – for example, freezing a charity's finances, or suspending or removing its trustees – will be appropriate or proportionate. And we are – rightly – prohibited by law from overruling a charity's trustees on matters of its detailed administration.

Where individuals feel aggrieved, the first recourse should be to a charity's own customer care and complaints arrangements. But where these cannot resolve the issue, recourse should be to an independent Ombudsman, rather than to a state regulator such as the Commission.

The Ombudsman should have the power to make recommendations to charities in particular cases, and to publish his or her findings. The model proposed by the review for fundraising supervision – self-regulation by the sector, with power to set up a state scheme as a long stop – might be equally appropriate here. Cases would typically be those where a complaint arose against a charity whose actions, although lawful and within the charity's trusts, gave rise to unfairness – for example to a client dissatisfied with service received, or a third party whose interests were adversely affected by a charity's activities.

Charities' ability to take decisions without state interference is, however, a fundamental feature of their independence and their freedom from state control. The scheme should be designed in keeping with this central principle. It should not, and could not, offer a means to arbitrate on disputes within a charity's governing body on policy or priorities. Nor should it provide a means for a charity's lawful decisions to be overruled simply because some – even most – people might have reached a different view. It would remain charities' responsibility to take such decisions, including the most difficult ones, and to stand accountable for them to stakeholders and to the public, rather than to an Ombudsman or regulator.

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R3 – To amend charity law to allow charities to undertake all trading within the charity, without the need for a trading company. The power to undertake trade would be subject to a specific duty of care.

The Commissions response is to support the proposal on balance. However there are Inland Revenue issues which should be included as part of this review and these appear to have been separated and excluded. The focus has been on the narrow definition of charity assets and resources for trading purposes. In any event amending legislation would be required to facilitate such changes and it is proposed that our response should be that further time in the consultative process is required to give more careful consideration to the proposals including taking views from the Inland Revenue.

R31 –That Government provides support to the sector for work on performance improvement as part of its wider commitment to build the sector's capacity. The sector should work collectively to bring forward proposals by April 2003.

R32 – Specific sub-sectors (groups of organisations involved in the same area of service provision) should pilot test an approach to developing common performance indicators and benchmarking for the organisations in their area. If this were to prove successful, it could be used to encourage other sub-sectoral groupings to follow similar approaches. It is not proposed that the Government or the Charity Commission would have a role in this exercise.

The Charity Commission "welcomes" these proposals. However it is clear from their response that neither the Commission nor the Government would have any role to play. The benchmarking of performance is common in the public sector and brings some advantages. Here the general comments are limited to charities where resources are scarce and both donors and beneficiaries demand and expect resources to be maximised in serving the charity's objects. The sector must ensure that it is not overburdened with administration at the expense of service delivery.

R48 – That the charity regulator should continue to operate at arms length from Ministers. It should become a statutory corporation called the Charity Regulation Authority, whose relationship with Ministers is clearly defined in statute.

The Commission broadly welcomes the changes but believes it should retain its current name. The view can be taken that the current name reflects the administrative nature of the role being played and does not recognise the regulation element of the work with charitys over the £10,000 p.a. income level. The proposal for a change of name should be supported.

R52 – That an independent tribunal should be introduced to hear appeals against the legal decisions of the Commission as registrar and regulator. This will be introduced alongside a streamlined single stage internal review procedure.

The Commissions response reflects on the changes made internally to accommodate a formal complaints procedure including an element of independent review in appropriate cases. Further there seems to be a view that the Commission would leave open the question of the proposed tribunal and adopt the governments decision in this respect. This charity's response should recognise that the current approach is internal and falls short of being truly independent. Our experience is of delays, obstruction and changes of approach without, in our view, sound reason. This charity should welcome the proposed tribunal system for dealing with dissatisfaction with the Commissions decisions without the need for expensive litigation.

R54 – All charities below the new registration threshold should have the status of "small charity". They would not be entitled to register as charities, but those that made tax repayment claims would have acceptance from the Inland Revenue of their charitable status.....

This change would remove the onus of registration from some 90,000 charities including some who have an established relationship with Alexandra Park and Palace. This change should be supported.

A Charity Ombudsman

The Commission has injected this proposal into the discussion itself. If the proposed Tribunal is adopted by Government then the independence of approach can be achieved through this route without the necessity to create a separate and possibly conflicting role for an Ombudsman.