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Public Consultation

# Registration Threshold for Charities in Northern Ireland

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May 2024

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# Ministerial Foreword

The charity sector plays a vital role in Northern Ireland and provides substantial public benefit across all of society. Charities deliver a wide range of services, often tackling complex issues and operating at the heart of our communities. The scope and diversity of the sector is a key indicator of a healthy society and it is essential, therefore, that those charities operate in an environment that allows them to thrive.

The introduction of a registration threshold in Northern Ireland below which charities would not be required to register with the Charity Commission for Northern Ireland (and provide an annual report and accounts), would be the single biggest reform to the regulatory framework since its introduction in 2008. In passing the Charities Act (Northern Ireland) 2008 the Assembly wanted to establish a level

playing field for all charities in Northern Ireland regardless of size or charitable purpose. However, times change and sectoral representatives suggest there is considerable evidence that the smallest charities have difficulties meeting their legal obligations and that this could be one of the factors leading to a fall in volunteers upon which many of these charities rely.

I encourage you to play your part in this consultation to help shape the future of charity regulation in Northern Ireland, ensuring effective and proportionate regulation, which in turn supports a vibrant and transparent charity sector, able to respond to current and future challenges for the benefit of all of society.

**Minister for Communities**

# 1. Introduction

The Charity Commission for Northern Ireland (the Commission), established by the Charities Act (Northern Ireland) 2008 (the 2008 Act), is the statutory regulator of charities in Northern Ireland (NI). Under the 2008 Act, all charities in NI are required to register with the Commission and provide an annual report and accounts for publication on its website. Representatives of the voluntary and community sector have long called for a threshold below which charities would not be required to register to reduce the burden of registration and regulation on the smallest charities within our communities. The Charities Act (Northern Ireland) 2022 makes provision for the introduction of a registration threshold in NI via secondary legislation.

The introduction of a registration threshold means that charities that fall below that threshold will not be required by law to register with the Commission nor provide an annual report and accounts to it. Charities below the threshold will be free to register voluntarily if they believe it is in their interest to do so, or be removed from the register if they are already registered but feel that it is of limited benefit to them. Where there will be no requirement for

charities under the threshold to register or submit an annual report and accounts to the Commission, charity trustees should continue to fulfil their charity trustee duties.<sup>1</sup>

The Department is consulting on the regulatory framework required for the implementation of a £20k registration threshold.

This consultation does not seek your views on whether there should be a registration threshold, but whether that £20K threshold should be based on a charity's income<sup>2</sup> only, or its income and assets<sup>3</sup>, and if assets are to be included, at what level the asset threshold should be set.

This consultation also explores the future threshold for reporting easements proposed for small charities in the **Independent Review of Charity Regulation**. Details on the background to the consultation and the rationale for, and possible impact of, a registration threshold are contained in **Annexes A, B & C**. We recommend consultees read the information in the annexes to gain a more detailed understanding of the issues prior to responding.

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<sup>1</sup> Ensure the charity is carrying out its purpose for the public benefit. 2. Ensure compliance with the charity's governing document and the Law. 3. Act in a charity's best interest (including avoiding conflicts of interest). 4. Managing the charity's resources responsibly. 5. Acting with reasonable care and skill. 6. Ensure charity is accountable.

<sup>2</sup> A charity's gross annual income is the total recorded income from all sources before deducting tax and expenses. Income can include, but is not limited to, donations, legacies, grants, other trading activities, charitable activities and investment income.

<sup>3</sup> In the context of a charity the term 'assets' refers to any resource owned or controlled by the charity including, but not limited to, cash, land, buildings, vehicles and investments.

### **Consultation Arrangements:**

We are inviting responses via Citizen Space or email by **11 August 2024**. Please check our website for details on consultation events <https://www.communities-ni.gov.uk/consultations/consultation-ps20k-registration-threshold-charities-northern-ireland>. If you require this document in an alternative format or if you have any other questions please contact: [\*\*CharitiesBranch@communities-ni.gov.uk\*\*](mailto:CharitiesBranch@communities-ni.gov.uk)  
Further information on how to respond can be found at Annex G.

## 2. Questions

### General

1. Are you completing this consultation as an individual/member of the public, a charity/charity trustee or other organisation?

- Individual/Member of the public
- Charity/Charity trustee
- Other organisation

If as an individual/member of the public, please provide your name and whether you consent to the Department publishing your name in the consultation response.

If as a charity/charity trustee or other organisation, please provide your name, charity/organisation name, charity/organisation email address and whether you consent to the Department publishing the name of your charity/organisation in the consultation response.

2. (Only complete if you selected 'Charity/Charity trustee' in Q1)  
Is your charity currently registered with the Charity Commission? Yes/No

- a. Does your charity typically have an annual income under £20k? Yes/No
- b. (Only complete if you selected 'Yes' to Q2a) Would your charity be likely to seek deregistration once a threshold is introduced? Yes/No

If yes, why?

c. (Only complete if you selected 'No' to Q2) If your charity is not currently registered, but falls below £20k annual income, would you still seek to be registered? Yes/No

Please explain your response.

### The threshold

Currently all charities in Northern Ireland are required to register with the Charity Commission for Northern Ireland. Registered charities must provide an annual report and accounts to the Commission for publication on its website. This framework provides public visibility for all charities established under the law of Northern Ireland. However, the value of this public visibility for the smallest charities calls into question whether the administrative burden placed on these charities, both in terms of the registration process itself and the resultant annual reporting and accounting, is proportionate. The Northern Ireland Council for Voluntary Action (NICVA) and others have suggested an annual income or assets<sup>4</sup> registration threshold of £20k per annum, below which there would be no requirement to register or provide an annual report and accounts.

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<sup>4</sup> In the context of a charity the term 'assets' refers to any resource owned or controlled by the charity including, but not limited to, cash, land, buildings, vehicles and investments.

Many charities are small in terms of annual income, but some may have significant value in terms of assets. Whilst an income only threshold should be simpler and more straightforward to calculate and understand, it could mean a loss of Commission oversight of charities that own substantial property, have cash in the bank, or investments. There is no asset registration threshold in England and Wales, which currently operates a £5k income only threshold. However, in England and Wales, there is a combined income and asset threshold in relation to audit requirements for annual reporting where the asset element is over £3.26m. This figure, which we understand has risen over the years through inflation, is currently being reviewed. In Scotland, there is no registration threshold, however there is also a combined income and asset threshold for audits of annual reports, the asset element being over £2.8m. There is no consideration of **assets** for registration or annual reporting for charities regulated by the Irish Charities Regulatory Authority.

**Possible implications of an income only threshold**

Example 1 – A registered Charity A has an annual income of £11k but assets of £8.5 million. This balance comes as a result of a donation with conditions that a building will be purchased and used as an investment property. Should a threshold be introduced that did

not take account of assets this charity would be able to deregister and the Commission would have no oversight as to how that donation was used.

Example 2 – An unregistered Charity B has an annual income of less than £15k but assets of over £5 million. Should a threshold be introduced that did not take account of assets there would be no requirement for this charity to register or to provide annual accounts and reports. The Commission receives a concern in relation to this charity. The Commission would have no regulatory oversight and would require sight of Charity B’s Governing document to determine jurisdiction before commencing an inquiry into the concern. Once any inquiry was closed, regardless of the findings, Charity B would still not be required to register and would not come to the attention of the Commission again unless another concern was raised.

3. Do you believe the registration threshold should be either;  
(Please select one response only)
- a. £20k, income only? Or,
  - b. £20k income, and assets based?

Please state your reasons

- i. (Only complete if you selected ‘b’ for Q3) What level do you believe the asset threshold should be set at?

Please provide your reasons.



## Deregistration

Charities that are currently registered may wish to deregister when the registration threshold is introduced, or they can choose to remain on the register. If the charity has not complied with its annual reporting requirements, or has only recently registered and has not yet been required to submit accounts, the Commission will not have the evidence that it is in fact a charity below the threshold and entitled to deregister. All trustees of charities, whether registered or not, have a duty in law as stipulated in **s63 of the 2008 Act** to ensure accounting records are kept which show and explain all the charity's transactions.

4. If accounts for the last full financial year have not been filed with the Commission at the point at which the charity applies to deregister, what evidence, if any, should the charity be required to provide to the Commission to prove that it is a charity that would be entitled to deregister? (Please select one response only).

- a. Yes, the charity should be required to provide evidence to the Commission that its income falls below the threshold.
- b. No evidence, except a letter from the charity's Chair stating that they are below the threshold.
- c. No view.

Q4a. (Only complete if you selected 'a' for Q4) What evidence should the charity be required to provide to the Commission (Please select all that apply)

- i. The last full year's accounts that have been compiled, where available?
- ii. A full year's bank statements from all the charity's bank accounts?
- iii. An auditor's or independent examiner's report for the previous year?
- iv. No evidence, other than completing a form issued by the Commission?
- v. Other?

If you answered 'Other' please explain your answer.

## Charities which experience a 'spike' in income which may take them above any threshold

The introduction of a registration threshold will likely benefit the majority of small charities that choose to deregister or choose not to register by virtue of the threshold. However, there could be an additional complication for those charities for which their income will fluctuate above and below any such threshold year on year.

Commission analysis shows that a total of 840 charities have submitted Annual Monitoring Returns<sup>5</sup> that have moved above or below the threshold at least once. Nineteen charities have moved above/

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<sup>5</sup> The Annual Monitoring Return is an online form that all registered charities must complete and submit along with their charity accounts, trustees' annual report and audit or independent examiners report for the financial year.

below the threshold four times and four charities have done so on five occasions.

**Possible implications for those charities who fluctuate above and below the threshold**

Example 3 - Charity C deregisters because it is below the threshold. It gets a spike of income in 2027/28 that takes it £1k over the threshold. Charity C would be required to register immediately after the 2027/28 financial year even if it has been below the threshold for the previous 5 years. Charity C's income then returns to levels below the threshold in 2028/29. If it chose not to remain registered, it would be required to apply for de-registration again after the 2028/29 financial year. If it then rose above the threshold in 2029/30 it would be required to apply for registration immediately after that financial year. This process could be repeated again and again.

Once the threshold is introduced, such charities that chose to deregister would then be required to register for any year in which they were above the threshold. This is a situation which the Department would wish to avoid as it would create an additional burden on those charities and on the Commission, and would not be a good use of public funds. Finding a way to effectively manage this situation for both the charity and the Commission is important.

5. After the threshold is introduced how should a spike in a charity's income, which takes it over the threshold in a particular year, be dealt with? (Please select one response only)
- (i) Apply for registration even though it might return to previous 'below threshold levels' in subsequent years and would have to apply for deregistration if it did not want to remain registered?
  - (ii) Only apply to register with the Commission if it is over the threshold by a % of its income in that particular year?
  - (iii) Trustees monitor income for the next 2 years after the first spike and if remaining above the income threshold in both subsequent years must apply for registration with the Commission?
  - (iv) Other?

Please explain your answer.

If you have answered yes to (ii) what should that % be?

Please explain your answer.

## **Powers of and services provided by the Commission**

The Commission has many powers and provides many services to charities under the 2008 Act to act for the protection of charities, make administrative schemes, agree to changes in a charity's constitution, approve trustee resolutions, give directions about dormant bank accounts, provide advice and guidance to charities etc. If, following the introduction of a registration threshold, it is decided the Commission does not retain these powers for unregistered charities, it could have negative implications for unregistered charities here if they act ultra vires<sup>6</sup> or in contravention of their governing document. For example, a charity may change its purposes without the authority of the Commission and inadvertently include non-charitable purposes. This could put the proper functioning of charities, and in some cases charitable assets, at risk.

It is also the case that the vast majority of concerns raised about charities do not involve criminal behaviour. If the introduction of a registration threshold includes the removal of statutory powers to act for the protection of charities from the Commission in respect of charities which choose not to register by virtue of the threshold, members of the public would have no-one to report their concerns to. This has the potential

to lead to a lack of public trust and confidence in the regulator and the sector.

**The Explanatory Notes for the 2008 Act** may assist you with the next section.

### **If the Commission does not retain its regulatory powers over charities not registered by virtue of the threshold**

Example 4 - Charity D wishes to transfer an asset which was received as a gift for a specific purpose, but which cannot be used for that purpose, to another charity. Under the current framework, the charity could apply to the Commission for a Cy-près Scheme (a Cy-Près Scheme is a legal document which provides for the transfer of an asset intended for one charitable purpose to another charitable purpose which is as close as possible to the original) without cost or application to the Court. If the Commission did not retain the power to make Schemes for those charities that choose not to register by virtue of the threshold, their only avenue to obtain such a Scheme would be through the Court which would incur costs, including legal costs.

Example 5 - A whistleblower within Charity E may currently raise a concern with the Commission, which could investigate the concern, open a statutory inquiry if required and use the powers under s33 – 36 to act for

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<sup>6</sup> Beyond one's legal power or authority.

the protection of that charity. Should these sections be disapplied for charities which choose not to register by virtue of the threshold, the whistleblower would have no body to raise the issue with. If the matter was one of criminality, they could raise the matter with the PSNI, as is currently the case, however the vast majority of concerns do not arise from criminality. There would therefore be a regulatory gap and public trust and confidence in charities which choose not to register by virtue of the threshold could be adversely affected.

6. Do you believe that the Commission should retain the same powers to act for the protection of charities and provide the same services to charities that are not registered by virtue of the threshold? Yes/No/No view

If you have answered No, please explain why.

### Determination of jurisdiction

Where a charity has been registered but has chosen to deregister, providing no changes have been made to its governing document, it should be a straightforward matter for the Commission to determine jurisdiction in the use of its powers or the provision of its services as this charity will remain a charity in law. However, where an organisation below the threshold has never previously been registered and chooses not to register by virtue of the threshold, the

Commission would require the power to gather information from that organisation to determine whether it is a charity and therefore if it has jurisdiction. In England and Wales, the regulator requires such an organisation to apply for registration.

### The requirement to determine jurisdiction

Example 6 - A member of the public raises a concern about organisation F which the member of the public believes to be a charity. If organisation F has never been through the Commission's registration process, the Commission will need to determine in the first instance whether organisation F is in fact a charity. Without the power to order organisation F to provide the necessary documentation, to determine charitable status, the Commission could take no action against organisation F, which may require regulatory intervention.

Example 7 - Similar to example 6, if a member of the public raises a concern about organisation G **which claims to be a charity**, but has never been registered, the same situation will arise requiring the Commission to have the power to order documents to determine jurisdiction.

7. Should the Commission have the power to either: (Please select one response only)

- a. order any documents from any organisation in order to determine charitable status and jurisdiction? Or,
- b. Make the organisation apply for registration to determine jurisdiction, as is the case in England and Wales?

Please explain your answer.

8. Should there be any sanction for failing to comply? Yes/No/No view
  - a. (Only complete if you selected 'Yes' to Q8) What should that sanction be?
    - Dealt with in the same way as failure to comply with other orders of the Commission in line with **Section 174** of the 2008 Act. Section 174 allows the Commission on application to the High Court to bring a case for failure or refusal to obey certain orders within the 2008 Act.
    - Other.

If you have answered "other", please explain your answer.

- b. (Only complete if you selected 'No' to Q8) Please explain your answer.

### **Visibility required of charities which choose not to register by virtue of the threshold**

The loss of public visibility provided by the register was a concern for some respondents to the Independent Review of Charity Regulation. If it were determined

that a charity should not have to provide evidence that it fell below the threshold it would not come to the attention of the Commission unless a concern were raised about it, as is the case in England and Wales. The public would only have an organisation's word that the body they may be donating to is in fact a charity. Where an organisation which identifies as a charity, has never been registered with the Commission, and is not required to register by virtue of the threshold, there is a risk that it would not meet the legal definition of a charity. Funders, however, could request sight of any evidence during their application process.

Section 19 of the Charities Act (Northern Ireland) 2008 states that an organisation's status as a registered charity must be clearly visible on certain documents issued by, or on behalf of, that charity. Failure to state registered status is an offence which may lead to a fine. Documents on which the statement of registered status must appear include:

- all notices, advertisements and other documentation issued by, or on behalf of, the charity and for soliciting money, such as collection tins, ballot tickets, collection baskets, collection envelopes or other property for the benefit of the charity.
- all written orders for money or goods, such as bills of exchange, promissory notes, endorsements, cheques to be signed on behalf of the charity.

- all bills, invoices, receipts and letters of credit.

This obviously comes with a cost for charities.

### Public visibility

Example 8 – Charity H is currently registered and is required to quote its registration number on all official publications etc. which allows any member of the public to know that it is a charity without having to refer to the register of charities. After the introduction of the threshold, Charity H decides to deregister. Charity H will no longer have a registration number and will have to change all of its documentation to remove the fact that it was a registered charity. If this section of the 2008 Act is not extended for those charities who choose not to register by virtue of the threshold, there will be no requirement for Charity H to advise the public that they are in fact an unregistered charity by virtue of the threshold. If, however, this section is extended to require their new status to be put on all official publications etc, this requirement may come at a cost to Charity H. It may pose particular difficulties if Charity H then fluctuates above and below the threshold as they will have to change their documentation every time they register or deregister (see example 3 above).

9. What public visibility should be required of charities falling below the threshold and choosing not to register? (Please select one response only)

- They should be required to state their status (i.e. a charity not required to register by virtue of the threshold) on all documentation produced by the charity as per section 19 of the 2008 Act.
- They should only be required to state their status on websites or social media.
- None.
- Other.
- No view.

Please explain your answer.

### Instruction to change the name of a charity

**Section 20 of the 2008 Act** allows the Commission to instruct a registered charity to change its name if it is the same or like that of another registered or unregistered charity. If the power in this section is not extended to cover charities that are not registered by virtue of the threshold, then the Commission could not instruct them to change their name, but only instruct the registered charity, which may have a more legitimate historical relationship to that name.

### Charity Name Changes

Example 9 – Charity I is a registered charity established 100 years ago. Charity I's name is 'Charity Northern Ireland'. Charity J is newly formed and chooses not to register as its income falls below the threshold. Charity J calls itself 'Charity NI'. A concerned member of the public alerts the Commission to the formation of the new charity and the confusion it is causing as its name is similar to that of Charity Northern Ireland. If s20 is not extended to cover charities that are not required to register because of the threshold, the Commission, if it agreed with the member of the public that there was confusion, could only instruct Charity I to change its name, even though it was established 100 years ago, has a more historic claim to the name and is widely known by the public.

10. Should the Commission have the power to instruct a charity falling below the registration threshold and choosing not to be registered to change its name? Yes/No/No view  
Please explain your answer.

### False statements about the status of a charity

**Section 156** of the 2008 Act states that it is an offence for a person to ask for money or other property for the benefit of an organisation by misrepresenting that organisation to be a registered charity. This could arise where the organisation is a charity in law, but not registered, or it is not a charity at all. It also stipulates that someone who is accused of such misrepresentation can offer the defence that they had reasonable grounds to believe that it was a registered charity. The maximum penalty under s156 is a £5,000 fine after being prosecuted in a magistrates' court.

A charity falling below the threshold and choosing not to register could misrepresent itself as a registered charity in order to raise funds. Under the current legislation this would be an offence.

### False statements about the status of a charity

Example 10 – Charity K, which was a registered charity, chooses to deregister but fails to remove its charity number and registration status from all publications etc. A volunteer raising funds for Charity K uses materials which feature the old registration number. Such a volunteer could potentially be guilty of an offence but could claim in their defence that they had reasonable grounds to believe that Charity K was still registered.



The question arises as to whether it should be an offence to misrepresent an organisation as a charity exempt from registration by virtue of the threshold to raise funds when it is, in fact, not a charity at all. Extending this offence could be a key provision in protecting the public from false claims of charitable status for unregistered organisations which are not charities.

**False statements about the status of a charity**

Example 11 – Organisation L posts leaflets for a clothing collection in Lisburn. The leaflets state that Organisation L is a Charity exempt from registration by virtue of the threshold. It subsequently transpires that Organisation L is not a charity or a charity exempt from registration.

11. Do you believe that a person should be guilty of an offence if they ask for money or other property for the benefit of an organisation by misrepresenting that organisation as a charity exempted from registration by virtue of the threshold, if that organisation is not in fact a charity? Yes/No/No view

Please explain your answer.

(Only complete if you selected 'Yes' for Q11)

a. Do you believe that person should be able to offer a defence that they had reasonable grounds to believe that the institution was a charity? Yes/No/No view

Please explain your answer.

b. Do you believe that the offence should carry a maximum fine of £5,000 after being prosecuted in a magistrates' court? Yes/No/No view

Please explain your answer.

**Annual reporting requirements for charities below the threshold which choose to remain registered or register voluntarily**

The Independent Review of Charity Regulation proposed several annual reporting easements for charities with an annual income below £25k. This was in the context that all charities in NI should continue to be registered. Nevertheless, these easements may be of significant benefit to registered charities with an annual income below the registration threshold reducing the regulatory burden and encouraging them to remain on the register, or apply for registration voluntarily, to ensure public visibility and increase public trust and confidence. Recommendations 42 & 43 of the Independent Review proposed that to reduce the burden of annual reporting for charities with an annual income of £25k or less, amendments should be made to legislation to implement the removal of the requirements to file an annual statement of account and the independent examination of those accounts. Instead, charities in this bracket would be required to complete an annual monitoring return



and a simplified online financial template setting out basic financial information. The intention of this recommendation is to reduce the reporting burden and the costs associated with independent examination for smaller charities.

The Independent Review also recommended that the nature of the threshold, particularly in respect to whether assets should be included, be explored.

12. Should the threshold for future template reporting and removal of the independent examination requirement align with the registration threshold of £20k or should the income element be £25k as recommended by the Independent Review? (Please select one response only)

- a. Align with registration threshold of £20k.
- b. £25k reporting threshold as recommended by the Independent Review.

Please explain your answer.

Q12a. Should there be an asset element included in the reporting threshold? Yes/No/No view

Please provide your reasons.

(Only complete if you selected 'Yes' to Q12a) What level do you believe the asset threshold should be set at?

Please provide your reasons.

### Feedback

13. Did you find the consultation document including its background annexes to be useful?

- Yes.
- No.
- Did not read them.

Please explain your answer.

# Background

Many of us know someone who volunteers with a charity, donates, or benefits from the many services they provide to society. Charities are often described as the lifeblood of our communities and the work they do cannot be underestimated. Charities are able to reach deep into our communities, where Government does not, to deal with some of the biggest challenges facing our society. The 2008 Act sets out twelve descriptions of charitable purposes ranging from the relief of poverty, the advancement of health to environmental protection and animal welfare, which clearly show the spectrum of issues which charities help to address.

Volunteers, funders and donors are essential to the work of the charities on which a lot of society depends. Unfortunately, and despite all attempts to the contrary, volunteering within society has fallen making it more difficult for charities to attract and retain this vital resource. It must be recognised that the majority of trustees of charities are volunteers. Whilst there may be many reasons for the decline in trustee volunteering, one reason that comes up in discussions again and again, is the need for the smallest charities to register with the Commission

and the resultant annual reporting and accounting ‘burden’ that flows from it.

The introduction of a registration threshold, below which a charity would not be required to register with or report to the Commission, is a fundamental change to the regulatory framework in NI. It was the express will of the Northern Ireland Assembly in making the 2008 Act that “Every institution that is a charity under the law of Northern Ireland must be registered in the register of charities”. Unlike England and Wales there were no exceptions or exemptions from this requirement. However, over a decade later there is a clear view that this “level playing field” approach has had a detrimental effect on small charities in particular and the charity sector as a whole. As a result, the previous Minister for Communities, Deirdre Hargey, made provision in the 2022 Act for the introduction of such a threshold by way of regulations. She subsequently rejected the Independent Review of Charity Regulation’s recommendation that all charities should be continued to be required to register and set out that the Department would instead develop policy and begin to draft legislation that would see the introduction of a £20k threshold.

# The rationale for a registration threshold

The register of charities provides public visibility for charities and is a common feature of charity regulation across the world. The fact that a charity is registered provides a level of confidence that a charity is well run and attuned to its statutory responsibilities. Publication of a charity's annual report and accounts provides charities with the ability to showcase their work and achievements. However, the value of registration to very small charities is debatable and public confidence in these groups is more likely to be attested to by word of mouth in the area in which they operate. Many of these charities do not receive grants from government or other funders and may not even be registered with His Majesty's Revenue and Customs (HMRC) for the various tax reliefs available to charities.

Volunteering is essential for the effective functioning of the smallest charities in our communities. Small charities such as Parent Teacher Associations, youth groups and local Community Associations rely on the goodwill and time commitment of volunteers who could be family members,

ex school members, friends, or those who just want to give something back to society to enable them to provide the undoubted benefits that these charities bring. Most charities falling below the prospective threshold, are unlikely to have paid staff who could help the Trustees to comply with the added tasks that being a registered charity brings. The fact that the registration and reporting process is IT based<sup>7</sup> also requires a level of computer literacy that some trustees may not have. There is anecdotal evidence from helper groups that a number of charities avail of the services of helper groups<sup>8</sup> or ask family members to assist them with the process.

Although the Commission advises that compliance rates in terms of timely filing of accounts and reports does not differ greatly for those with an annual income below £20k and those above £20k, it advises that the quality of the reports is poorer for the smallest charities.

In terms of timely filing, figures analysed for the 2018 reporting year (AR18), which is the last full year prior to the **McKee & Hughes**

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<sup>7</sup> In line with the UK's Digital Strategy.

<sup>8</sup> Groups and umbrella organisations who volunteer to provide practical support to individual organisations going through the registration process.

**(and others) v The Charity Commission for Northern Ireland** indicated that were 2,309 charities that reported income of less than £20k, which equated to 43% of annual monitoring returns received by the Commission. Whilst charities in the under £20k income category did not achieve compliance rates as high as those in the over £20k category, the variance

was small with 80/81% filing by their deadline date, compared with 90% for charities with income greater than £20k.

However, in terms of the quality of reporting, Table A shows that there is a clear difference in the quality of the accounts provided by those under £20k, as indicated by the pass / fail rate.

**Table A**

Basic compliance check (BCC) outcomes 2018/19					
	<£5k	>£5k <£10k	>£10k <£20k	>£20k	Total
<b>BCC's of those sampled</b>	21% (115)	10%(57)	8% (46)	61% (336)	100% (554)
<b>Pass</b>	19%	22%	22%	61%	45%
<b>Fail</b>	81%	78%	78%	39%	55%

# What impact would a threshold have on charity regulation

Some concerns had been expressed during the Independent Review of Charity Regulation that unregistered charities may not be able to avail of funding opportunities or charitable tax reliefs, and the loss of visibility would make such charities harder to regulate and thereby reduce the public's trust and confidence in charities.

The following sections are the result of engagement with representatives of the Funders Forum, HMRC, Charity Commission for England and Wales, His Majesty's Treasury, an analysis of the Government Funding Database (GFD) and statistics provided by the Commission.

## Access to funding

As of March 2023, 2,707<sup>9</sup> registered charities that had provided an annual monitoring return reported an annual income of less than £20k. Table B which provides an analysis of government funding provided to these charities as of May 2023 shows that whilst 16% of charities below £20k have sought funding at various times in the past, none are currently in receipt<sup>10</sup>, which suggests that for the majority of charities in this income bracket, government funding may not be a huge issue. Additionally, whilst registration may be a pre-requisite for entry on to some funding streams, these smaller charities could, if they so wished, remain registered or seek registration voluntarily if it was deemed to be in their best interests.<sup>11</sup>

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<sup>9</sup> This figure was drawn from the register by DfC's charities team staff in March 2023.

<sup>10</sup> This may have been impacted by the COVID-19 pandemic as some small charities went into "hibernation" due to the pandemic and may not have sought funding.

<sup>11</sup> Charities that could meet the charitable test would remain charities in law regardless of registration status.

Table B

Charities in receipt of Government Funding				
	Total number of charities	Ever in receipt of Government Funding	Currently in receipt or with an ongoing application *	% ever in receipt of Government Funding
<b>Below £5K</b>	1689	134	0	8
<b>Between £5K and £10K</b>	516	129	0	25
<b>Between £10K and £20k</b>	502	159	0	32
<b>Total</b>	2707	422	0	16

\* Funding entered onto GFD by government funders by April/May 2023

A recent exercise undertaken by NICVA considered funding provided to the Voluntary and Community Sector by local Councils in NI. Of the 11 Councils, 6 responded. All 6 said that they would fund both registered and unregistered organisations and that the introduction of a registration threshold would have no impact on their current funding process although one stated that it was a model of good practice which they strongly encourage.

The **Funders Forum for Northern Ireland** is made up of organisations who fund and make grants in NI. The Forum conducted a desktop survey of 30 of their 34 members on the possible implications of a registration threshold. 90% of those who responded said the introduction of a registration threshold would have no impact on their work. Three

respondents said it would impact their work as they currently ask for registration as a prerequisite of funding. Some members believed that the introduction of a threshold may lead to them asking additional questions of applicants in respect to their suitability to receive such funding, and others may not be able to relax the need for registration as a prerequisite to funding. They contended that the transparency afforded by registration and reporting was important but recognised that the ability to register voluntarily would not disadvantage applicant charities.

#### Access to tax reliefs

Charities are often eligible to claim various tax reliefs including Gift Aid. The same list of 2,707 charities as was used to analyse the GFD was provided to HMRC in April

2023. HMRC checked it against their Gift Aid database and discovered that the amount claiming Gift Aid was minimal. They stated that it was likely that an even smaller amount claimed any other tax reliefs. HMRC confirmed that any charity in NI that chooses not to register with the Commission but applies to them for charitable tax relief will be subject to the test at **Schedule 6 of the Finance Act 2010** and will likely be required to comply with HMRC evidence requirements, which could prove more burdensome for those charities choosing not to be registered by virtue of the threshold than the current regime. If charities don't have to send the Commission a set of accounts due to not being registered, then HMRC may ask them to send them a set of accounts and a tax return, so the charity may not benefit from a reduction in reporting burdens. Ultimately this would be a decision for the charity trustees.

### **Loss of visibility from the register of charities**

All registered charities are required to submit annual reporting information to the Commission within 10 months following their relevant financial year end date. Charities that choose not to be registered as a result of the threshold would no longer be required to do this. If the 2,707 charities sampled above chose to deregister, it would mean that information for 42%

of those currently registered charities would not be readily available to the public. However, one cannot predict how many charities will choose to deregister and the final figure may be significantly lower than the 42%. The proposed future introduction of template reporting<sup>12</sup> and removal of the requirement for independent examination may encourage more small charities to remain on the register or seek registration, thereby reducing this figure.

### **Risk to proper running of charities**

The Commission has a number of powers under the 2008 Act to act for the protection of charities. Issues can be raised under 3 categories:

1. Concerns – issues raised in relation to charities, which could be by a member of the public.
2. Serious Incident Report – issues identified by charity trustees and highlighted to the Commission.
3. Matters of Material Significance – issues which have been noted by charity auditors or independent examiners.

Following an initial risk assessment by the Commission, there are typically four possible courses of action which will be taken, including:

1. Close the concern – no further action required.

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<sup>12</sup> This will be a simplified online financial template to simplify the process and will remove the requirement to submit an annual report and accounts. An annual monitoring return would still be required.

2. Open a self-regulatory case – resulting in guidance to assist the charity in resolving the issue itself.
3. Open a regulatory compliance case – resulting in guidance with required actions which must be complied with before the issue is resolved.
4. Open a statutory inquiry – investigating the most serious risks to a charity, and may result in the Commission using its powers to act for the protection of the charity.

Table C outlines the number of concerns received by the Commission between July 2019<sup>13</sup> and March 2023. It is notable that:

- 20% of concerns raised were about charities with an income below £20k.
- 58% of that 20% required no regulatory action.

Only one statutory inquiry<sup>14</sup> has involved a charity with income of less than £20k.

**Table C**

Concerns raised about charities (figures from July 2019 to March 2023)							
	<£5k	>£5k <£20k	>£20k <£50k	>£50k <£100k	>£100k <£250k	£250k+	Total
<b>No Action</b>	19	25	21	28	37	105	235
<b>Self-Regulatory</b>	5	10	6	7	8	25	61
<b>Regulatory</b>	3	13	4	8	9	17	54
<b>Statutory</b>	0	1	6	3	1	6	17
<b>Total</b>	27	49	37	46	55	153	367
<b>% of concerns received</b>	7%	13%	10%	13%	15%	42%	

<sup>13</sup> When the Commission started to record this data based on income bands.

<sup>14</sup> As of March 2023 the Commission had opened **17** Statutory Inquiries.



Table D outlines the number of Serious Incident Reports and Matters of Material Significance received by the Commission between July 2019<sup>15</sup> and March 2023. It is notable that only 7% of Serious Incident Reports and Matters of Material Significance concern charities with an annual income below £20k. The reporting of Matters of Material Significance will cease to exist for those unincorporated<sup>16</sup> charities who are not registered by virtue of the threshold as they will not be required to have their accounts independently examined or audited in line with the 2008 Act. Incorporated<sup>17</sup> charities will still be required to comply with Company Law.

### Risk regarding terrorist financing and money laundering

Government has a responsibility to ensure that any changes to charity regulation do not significantly increase the risk that small charities could be used for money laundering or terrorist financing purposes. There has always been a risk that charities could be used as a cover for unlawful activities of third parties, even with the introduction of current regulatory framework in NI. This will always be the case and provided the Commission continues to retain powers to investigate unregistered charities below the threshold, this risk would not appear to be significantly increased.

**Table D**

Serious Incident Reports (SIRs) and Matters Of Material Significance (MOMS) raised about charities (figures from July 2019 to March 2023).							
	<£5k	>£5k <£20k	>£20k <£50k	>£50k <£100k	>£100k <£250k	£250k+	Total
<b>SIRs</b>	5	13	23	32	29	155	257
<b>MOMS</b>	0	1	1	1	2	27	32
<b>Total</b>	5	14	24	34	31	182	289
<b>% received</b>	2%	5%	8%	12%	11%	63%	

<sup>15</sup> When the Commission started to record this data based on income bands.

<sup>16</sup> An unincorporated charity has no “legal personality”, and so cannot enter into contracts in its own name. Trustees are personally liable.

<sup>17</sup> An incorporated charity is one which is set up with a corporate structure.

# Valuation of Assets

The 2022 Act provides the power to set thresholds for exemption from registration in relation to income, assets, or both. Determining the monetary value of assets requires the application of a suitable measurement basis. Measurement is the process of determining the monetary amounts at which an entity measures assets in its financial statements. In many cases, the cost or value of an item is known. In other cases, it must be estimated. Financial Reporting Standard 102 (FRS 102), which is applicable in the UK and Ireland sets out in detail the measurement basis permitted for many types of assets, and how these should be applied. The two most common measurement bases are historical cost and fair value.

The ability to determine the value of a charity's assets depends on the types of accounts that a charity prepares, accruals accounts or receipts and payments (R&P) accounts. Charities preparing accruals accounts should know the value of their assets from their financial statements, as they are prepared in accordance with FRS102. Therefore, incorporated charities below £20k will know the value of their assets, however, unincorporated charities may not as they will only have to list their assets if they prepare R&P accounts.

Difficulties with the valuation of assets for small charities and the lack of data on them means that it cannot be determined with any certainty the overall value of charitable funds/assets that these small charities hold. Therefore, it is not possible to state the value of the assets for charities that would be removed from the register of charities by the introduction of a threshold at various asset levels or if the threshold were to be income only.

There are numerous examples of small income churches that hold high value assets, usually in the form of fixed assets and buildings, which may be perceived by some as lower risk, as it would not be easy to dispose of church property without the public or the media becoming aware of it. There are, however, some charities that are small in terms of annual income but hold high value assets where there may not be the same transparency in relation to bank accounts/investments/fixed assets.

Table E sets out some examples from the publicly available register of charities which illustrate the difficulty in determining where any asset threshold might be set as the value of the assets range from £400k to £8.5million.

**Table E**

<b>Charity</b>	<b>Income</b>	<b>Asset value</b>	<b>Asset type</b>
<b>Charity A</b>	£11,000	£8.55 million	Bank (intention to buy a building)
<b>Charity B</b>	£0 (£20k in 2020)	£2.08 million	Investments
<b>Charity C</b>	£11,000	£402k	Fixed assets & bank
<b>Charity D</b>	£2,113	£522k	Investments & bank

Although an income only threshold would be easier to manage, as the figures above demonstrate, sizeable assets could also be removed from the public view and oversight by the regulator.

# Statutory Assessments

## **Equality Screening**

Section 75 of the Northern Ireland Act 1998 requires that public authorities have due regard to equality issues in carrying out functions relating to Northern Ireland. The Department has completed an equality screening of the proposed policy being consulted upon and have concluded that the proposals do not impact on equality of opportunity for any of the nine categories specified in section 75 (religious belief; political opinion; race; age; marital status; sexual orientation; men and women generally; disability; and dependants). We have not identified any evidence of higher or lower participation or uptake by different groups; nor that different groups have different needs, experiences, issues and priorities in relation to the particular proposal; nor that there is an opportunity to better promote equality of opportunity or better community relations by altering the proposal or working with others in government or the community at large. If you have any evidence to the contrary we would invite you to share this with the Charities Team via email or hard copy, using the details in Annex G below.

## **Human Rights Act 1998**

The Human Rights Act 1998 incorporates the European Convention on Human Rights (“the Convention”) and makes it unlawful for a public authority to act in a way that is incompatible with these rights.

Evidence gathered by the Department does not show that the proposed introduction of a registration threshold would impact any rights under the European Convention on Human Rights. The Department’s view is that the proposed policy is fully compliant with Convention rights. If you have any evidence to the contrary, we would invite you to share this with the Charities Team via email or hard copy, using the details in Annex G below.

## **Rural Needs Impact Assessment**

The Rural Needs Impact Assessment (RNIA) is a process to ensure all relevant Government outputs are examined carefully and objectively to determine whether or not they have a different impact in rural areas from elsewhere, because of the particular characteristics of rural areas.

Where necessary, the process should also examine what adjustments might be made to reflect rural needs and in particular to ensure that, as far as possible, public services are accessible on a fair basis to the rural community. The Department has considered the proposed policy in relation to the rural community and has found no potential differential impacts. If you have any evidence to the contrary we would invite you to share this with the Charities Team via email or hard copy, using the details in Annex G below.

# Confidentiality of Consultations

For this consultation, and in the interest of openness and transparency, we will publish the names of participants, whether they be individuals or organisations, where they have provided clear consent. We do not intend to publish the responses of individuals but a formal response document will be published on the outcome of the consultation as soon as is practicable following the consultation period. For more information about what we do with the information please see our **privacy notice**.

Although we do not intend to publish your response, responses to this consultation may be disclosed in accordance with Freedom of Information Act 2000 (FOI) and Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the Data Protection Act 2018 and the UK General Data Protection Regulations. The Freedom of Information Act 2000

gives the public a right of access to any information held by a public authority (the Department in this case). This right of access to information includes information provided in response to a consultation.

The Department cannot automatically consider information supplied to it in response to a consultation as confidential. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Department is the data controller in respect of any personal data that you provide and the **Department's privacy notice** gives details in respect of your rights in respect of handling your personal data.

# The consultation process and how to respond

## How to Respond

Early responses are encouraged but all responses should arrive no later than 23:59 on **11 August 2024**.. Responses are requested through the preferred method of the online survey, which can be found at **<https://consultations.nidirect.gov.uk/dfc/charity-commission-for-ni-registration-threshold/>**

Alternatively, a paper or hard copy of the questionnaire can be obtained by emailing **[CharitiesBranch@communities-ni.gov.uk](mailto:CharitiesBranch@communities-ni.gov.uk)** and returned to the same address, or by post to: REGISTRATION THRESHOLD CONSULTATION, Charities Team, Voluntary and Community Division, Department

for Communities, Causeway Exchange, 1-7 Bedford St, Belfast, BT2 7EG.

If responding in an alternative format, please state whether you are responding as an individual, or representing the views of a charity or other organisation. Please also indicate if you consent to your name being published as having responded to the Consultation. Before you submit your responses please read the “Confidentiality of Consultations” section in Annex F above, which gives guidance on the legal position.

It is also proposed to run a number of consultation events, details of which will be published on the DfC website and highlighted via social media.

Framework for Consultation	Summary Detail
Topic of this Consultation	Proposed introduction of a registration threshold in NI.
Scope of this Consultation	The consultation is to seek the views of all interested parties on whether the threshold below which a charity would not be required to register should be based on income only, or income and assets, and if assets are to be included at what level the asset threshold should be set. It also seeks views on the shape of the regulatory framework for those charities that fall below the threshold and choose not to be registered.
Audience	Anyone with an interest in this area is welcome to respond.
Body responsible for this consultation	The Department for Communities.
Duration	The consultation will run for 12 weeks. It will begin on 20 May 2024 and will end on 11 August 2024.
Enquiries	E-mail: <a href="mailto:CharitiesBranch@communities-ni.gov.uk">CharitiesBranch@communities-ni.gov.uk</a> Telephone: 028 9082 9424

Framework for Consultation	Summary Detail
How to respond	<p>Please respond to the consultation in one of the following ways:</p> <p><b>Complete the questions in the online survey at:</b>  <a href="https://consultations.nidirect.gov.uk/dfc/charity-commission-for-ni-registration-threshold/">https://consultations.nidirect.gov.uk/dfc/charity-commission-for-ni-registration-threshold/</a></p> <p>By email to <a href="mailto:CharitiesBranch@communities-ni.gov.uk">CharitiesBranch@communities-ni.gov.uk</a> including CONSULTATION RESPONSE in the title line</p> <p>By post to:                      REGISTRATION THRESHOLD CONSULTATION,                      Charities Team,                      Voluntary and Community Division, Department for Communities,                      Causeway Exchange,                      1-7 Bedford St,                      Belfast,                      BT2 7EG.</p>
After the Consultation	<p>The views expressed by respondents to this consultation will be used to inform the Department's response and draft regulations to be introduced to the NI Assembly. The names of respondents to the consultation will be published where express consent has been provided.</p>

Copies of this consultation document may be made without seeking permission. This document is also available in alternative formats; please contact us to discuss your requirements. The document is published on the Department's website. If you have any queries regarding this consultation please contact the Charities Team by email (**[CharitiesBranch@communities-ni.gov.uk](mailto:CharitiesBranch@communities-ni.gov.uk)**), by post to the address above, or by telephoning **028 90 829 424**.





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