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BRIEFING FOR THE
HOUSE OF COMMONS
PUBLIC ADMINISTRATION
SELECT COMMITTEE

JULY 2012

Regulating charities: a landscape review

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National Audit Office

Regulating charities: a landscape review

Briefing for the House of Commons Public Administration Select Committee

July 2012

This paper draws together evidence on the current landscape of charity regulation and the charity sector more generally. It examines the role and coverage of the various regulators and other charity sector bodies, and suggests issues which the Public Administration Select Committee might like to consider in future inquiries.

Contents

This review was conducted by Elizabeth Hogarth, Henry Midgley and Charles Nancarrow under the direction of David Clarke.

For further information about the National Audit Office please contact:

National Audit Office
Press Office
157–197 Buckingham Palace Road
Victoria
London
SW1W 9SP

Tel: 020 7798 7400

Enquiries: www.nao.org.uk/contactus

Website: www.nao.org.uk

Twitter: @NAOorguk

Summary and matters for consideration

Introduction

1 Charities play a significant role in the economy and public services. They contribute to every walk of life, including the arts, education and research, support vulnerable groups, and are increasingly involved in providing public services. We estimate that the annual income of the charity sector in England and Wales is around £113.1 billion. This is made up of charities registered with the Charity Commission (£55.4 billion)[1] and unregistered charities (£57.7 billion).

2 Charities largely rely on donors, government grants and contracts, and investments for their income, and receive fiscal benefits to help them meet their public benefit objectives. HM Revenue & Customs estimated that tax relief to charities and individuals donating to charities, was worth at least £3.6 billion in 2011-12. The government has put in place a variety of regulations and regulators to give the public confidence that charities are legitimate and operate well. The most significant of these are the Charity Commission and HM Revenue & Customs.

3 The Charities Act 2006, which sets out how all charities in England and Wales are registered and regulated, required a review of the Act after five years. In 2011, the Minister for the Cabinet Office appointed Lord Hodgson to review the Charities Act 2006, and the findings of this review will be published in summer 2012. Lord Hodgson's review aims to understand how the 2006 Act is operating, how effective it is, and whether the legal framework for charities in England and Wales is fit for purpose.

4 This briefing draws together evidence on the current landscape of charity regulation and the charity sector more generally. It examines the role and coverage of the various regulators and other charity sector bodies, and suggests issues which the Public Administration Select Committee might like to consider in future inquiries. It covers various bodies across the regulatory landscape, but focuses in particular on the Charity Commission, which is the independent regulator for charities in England and Wales. The Commission's current corporate structure was brought in by the Charities Act 2006. It is an independent, non-ministerial department with quasi-judicial powers, whose legal decisions may be appealed to the First-tier Tribunal (Charity) and the High Court. It is audited by the National Audit Office and lays its annual report and accounts before Parliament.

1 We use income data from 2009-10 in our analysis of registered charities. This is the latest year for which detailed financial information is currently available, due to the time lag for filing accounts. For all other analysis in the report, we use the most recent data available.

Key findings and matters for consideration

5 **The Charity Commission plays an essential role in supporting public trust and confidence in the charity sector. It takes a risk-based approach to regulation, whereby it focuses its resources on those areas it considers are the greatest threat to public trust and confidence. Declining resources mean that it increasingly relies on self-help measures for charities.** The Commission uses most of its resources to meet its statutory objectives to ensure the accountability of charities and that they comply with legal obligations. It relies mainly on external reporting, for example from trustees, to identify when charities are not complying with charity law, with 77 per cent of serious concerns being raised externally in 2010-11. The Commission has raised general awareness of the requirement to report concerns, with serious incident reports more than doubling between 2009-10 and 2010-11. However, charities still significantly under-report fraud and theft: £6 million in 2010-11, against the National Fraud Authority's estimate of potential fraud in the sector of £1.1 billion. The Commission had a budget of £32.3 million in 2008-09, which is projected to fall to £22.5 million in 2014-15. To help meet its budget, the Commission is increasingly promoting self-help as a means of meeting its other statutory objectives.

Issues that the Committee might like to inquire into further are:

- whether the Commission can maintain public trust and confidence in charities, given its declining resources;
- whether trustees and other stakeholders can fulfil their roles well enough for the Commission to rely heavily on them;
- whether the Commission's role is broad enough to meet stakeholder expectations, for example it has no role in ensuring that charities invest their resources appropriately or wisely, unless trustees act outside of their powers; and
- how far the Commission uses the best practice of other sector regulators, or learns from their experiences in the face of declining resources.

6 **The landscape of charity regulation and oversight is complex, with a number of bodies carrying out related functions.** The charity sector in England and Wales consists of charities registered with the Charity Commission (estimated annual income of £55.4 billion) and unregistered charities (estimated annual income of £57.7 billion). Unregistered charities fall into two categories: exempt or excepted. Exempt charities do not register with the Commission because they are overseen by another public body, called a principal regulator. A principal regulator is usually the sponsoring public body of a charity, for example the Department for Environment, Food and Rural Affairs is the principal regulator for the Royal Botanic Gardens, Kew. However, not all principal regulators have been appointed yet, so there are a number of unregulated charities in this sector. Excepted charities do not have to register with the Commission, usually because their income falls below the registration threshold. Some excepted charities want to claim tax relief and so apply to HM Revenue & Customs to be recognised as a charity for tax purposes. Various activities of charities are self-regulated, for example many fundraising activities or charity shops. The police or local authority license charities that fundraise through street collections.

Issues that the Committee might like to inquire into further are:

- how far HM Revenue & Custom's role in recognising charitable status creates potential confusion or gaps in the regulatory regime;
- whether the Commission should regulate areas that it currently does not cover, such as fundraising, to avoid confusion, and to minimise the overall costs of regulating the charity sector; and
- whether regulation extends widely enough, given the large numbers of unregistered charities, which make up more than half of the charity sector by income.

7 **The increasing number of organisations that work in the public interest but are not regulated as charities, such as social enterprises, may confuse the concept and purpose of charity regulation.** Organisations, such as social enterprises, mutuals, and community interest companies, provide a wide range of services that benefit the general public, ranging from care services to leisure facilities. However, these organisations are often not constituted as charities, nor are they legally recognised as such. This means that they do not have to meet the standards set out by the Charity Commission for their work benefiting the public. There is a risk the public will think that these organisations are charities because of the nature of their work. Any inappropriate actions by them may undermine public trust and confidence in charities more widely.

Issues that the Committee might like to inquire into further are:

- whether the regulatory framework sufficiently considers the public's perception of what is and is not a charity; and
- whether the reputational risks to charities associated with organisations that work in the public interest but which are not charities, are acceptable.

8 Small charities, in particular, are facing a challenging environment but may not be as well supported by the Charity Commission with its declining resources. The largest charities have increased their share of the sector's income. Charities with an annual income of over £10 million saw their share of the sector's income rise from 43 per cent to 57 per cent between 1999 and 2011. Furthermore, small charities are proportionately less able to absorb financial risks. In 2009-10, charities with an annual income of less than £10,000 had an assets-to-income ratio of 5:1, compared to 20:1 for those with an annual income of over £1 million. As the Charity Commission encourages charities to rely on self-help measures, there is a risk that smaller charities will face increasing challenges.

Issues that the Committee might like to inquire into further are:

- how far small charities are adequately supported by the current regulatory arrangements; and
- whether the government and regulators sufficiently understand the small charities sector.

9 The government is looking to involve charities more in providing public services, but this will have implications for their independence. Over the last five years the government has moved away from awarding grants to charities, to contracting with them. In 2010, 23 per cent of charities already cited delivering public services as their primary function. Data from 2012, from the National Council for Voluntary Organisations, estimated that government income supplied 38 per cent of the voluntary sector's income. There is a risk that relying on income from the government will compromise charities' ability to remain independent and comment on government policies.

Issues that the Committee might like to inquire into further are:

- whether the government understands the impact of its actions on the charity sector; and
- whether moves to contract with the charity sector are compromising its ability to remain independent.

10 Despite the Commission improving transparency and reporting, it is difficult for donors to assess how much money makes it to the end cause; and charities find it difficult to report on how they meet their public benefit objectives. The Commission has successfully increased the number of accounts filed on time, now covering 96 per cent of the sector by income, and it publishes these on its website. However, charities find it more difficult to report on their public benefit. Recent research found that smaller charities find it particularly difficult to clearly understand who the intended beneficiaries of the charity are. It also found that all charities found it difficult to explain how the intended beneficiaries had benefited. Furthermore, it is difficult for the lay reader to interpret accounting information to understand how much of a charity's income is directed to the intended causes.

Issues that the Committee might like to inquire into further are:

- the effectiveness of reporting on public benefit in increasing transparency; and
- how far donors and other interested stakeholders can put pressure on charities to use their resources efficiently.

Part One

The charity sector and its relationship with the government

1.1 This part examines the landscape of charity regulation. It covers the definition of a charity, the scale and diversity of the sector, and its financial resilience. The key points are as follows:

- Charity law is designed to protect assets given to organisations to further charitable goals with a public benefit, and derives from centuries of case law and legislation. To gain relief from certain taxes, charities must also be run by 'fit and proper' persons. HM Revenue & Customs estimated that tax relief to charities, and individuals donating to charities, was worth at least £3.6 billion in 2011-12.
- The charity sector is large and diverse. In 2009-10,[2] there were approximately 160,000 registered charities in England and Wales with an estimated combined income of over £55.4 billion. We estimate there are over 191,000 unregistered charities with a combined income of at least £57.7 billion. There are also organisations, such as social enterprises and mutuals which work in the public interest but which often sit outside of charity law and regulation.
- After a long period of growth charities are faced with declining incomes, with smaller charities particularly vulnerable. Around two-thirds of charities rely on a single source for the majority of their income.

What is a charity?

1.2 The legal definition of a charity was first set out in the Charitable Uses Act 1601. This Act listed purposes or activities beneficial to society, where the State wanted to encourage private contributions. Case law from 1891 later established four classes of charitable purposes as being for:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- other purposes beneficial to the community.

Since then, a number of statutes and cases, including trust law, have created a complex landscape of charity law.

2 We use income data from 2009-10 in our analysis of registered charities. This is the latest year for which detailed financial information is currently available, due to the time lag for filing accounts.

1.3 The recent 2006 and 2011 Charities Acts (the Charities Act) were aimed at modernising the various laws and providing an overarching legislative framework for England and Wales.[3] The Charities Act was supplemented by the Charities (Accounts and Reports) Regulations 2008, which introduced a requirement to report on public benefit. The definition of a charity has also been incorporated into tax law so that charities can obtain tax relief from HM Revenue & Customs. Charities in Scotland and Northern Ireland do not have the same legal definition as charities in England and Wales.

Charitable purpose and public benefit

1.4 To be legally recognised as a charity in England and Wales an organisation must have exclusively charitable purposes, according to the descriptions in the Charities Act (**Figure 1**), and these purposes must be for the public benefit.

Figure 1
Descriptions of purposes listed in the Charities Act

Descriptions of purposes

- The prevention or relief of poverty.
- The advancement of education.
- The advancement of religion.
- The advancement of health or the saving of lives.
- The advancement of citizenship or community development.
- The advancement of arts, culture, heritage or science.
- The advancement of amateur sport.
- The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity.
- The advancement of environmental protection or improvement.
- The relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage.
- The advancement of animal welfare.
- The promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services.
- Other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

Source: Charities Act 2011

3 The 2006 Act was repealed in its entirety with the introduction of the 2011 Act.

1.5 The Charities Act gave the Charity Commission a new public benefit objective, "to promote awareness and understanding of the operation of the public benefit requirement". **Figure 2** sets out the general principles of public benefit, which the Commission identified in the public guidance it issued in 2008. The Commission recognises that the concept of public benefit will change as society's needs and circumstances change.

1.6 A Charity that wants to be registered by the Commission, must supply information on their benefit to the public, by providing:

- a summary of its charitable purposes;
- a summary of the main activities undertaken to further its charitable purposes for the public benefit; and
- a trustees' statement on whether the charity has complied with the duty to 'have regard' to the public benefit guidance published by the Commission.

Figure 2
Charity Commission guidance on the public benefit requirement

Principles of public benefit

Principle one: there must be an identifiable benefit or benefits:

- It must be clear what the benefits are.
- The benefits must be related to the aims.
- Benefits must be balanced against any detriment or harm.

Principle two: benefit must be to the public, or a section of the public:

- The beneficiaries must be appropriate to the aims.
- Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted by geographical or other restrictions.
- People in poverty must not be excluded from the opportunity to benefit.

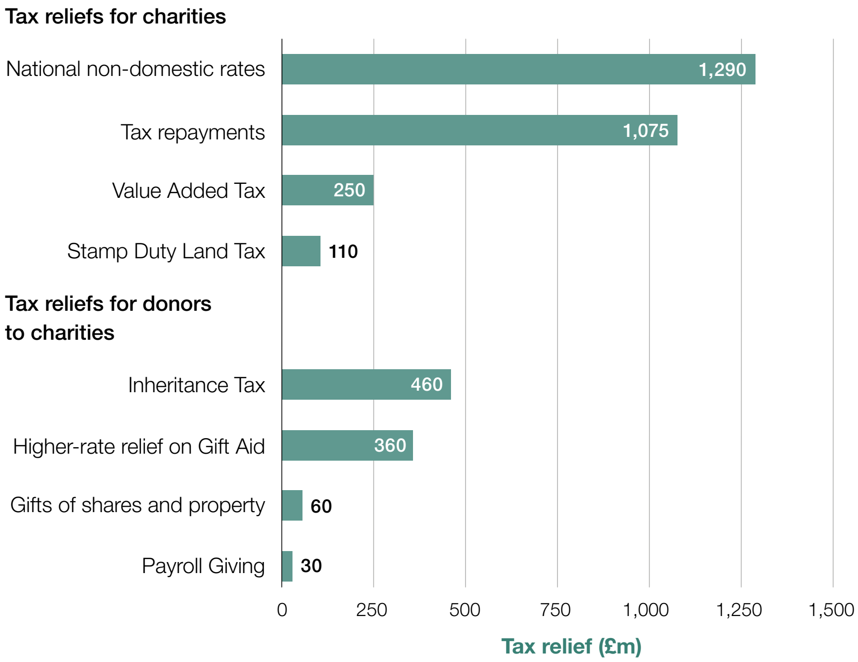
Source: Charity Commission Charities and public benefit: the Charity Commission's general guidance on public benefit, 2008, revised October 2011

Recognition as a charity for tax purposes

1.7 As charities seek to provide public benefits, Parliament allows them a number of tax exemptions on income and gains, and on profits for some activities when applied for charitable purposes. People who donate to charities also receive some tax exemptions, such as higher-rate relief on Gift Aid. To receive tax benefits, HM Revenue & Customs through legislation requires that organisations meet the conditions set out in the Charities Act on charitable purpose and public benefit. In addition, HM Revenue & Customs applies a 'fit and proper persons' test to ensure that charities are managed or controlled by individuals who do not present a risk to the charity's financial position.

1.8 In 2011-12, HM Revenue & Customs estimated that tax reliefs for charities and donors to charities were worth at least £3.6 billion (**Figure 3**). There are other tax reliefs in addition to those in Figure 3, for example on capital gains for transfers to charities. However, HM Revenue & Customs cannot quantify these reliefs and their impact, as charities do not have to report the transactions concerned.

Figure 3
Tax relief for charities and donors to charities in 2011-12



Source: HM Revenue & Customs

1.9 The Finance Act 2010 allowed UK nationals to claim higher-rate tax relief on Gift Aid on donations to foreign charities from specified countries (in the EU and EEA). As part of that reform, the Finance Act 2010 defined the charities that could receive this tax relief and did so by using the English and Welsh legal definition of a charity. As Scottish and Northern Irish law defines a charity differently to English law, Scottish and Northern Irish charities may not receive this tax relief under the basis of the 2010 Finance Act.

The composition of the charity sector

Diversity of the sector

1.10 The charity sector in England and Wales is hugely diverse in purpose, size, structure and legal constitution. Charities have very different capacities, capabilities and institutional interests.

1.11 **Figure 4** overleaf illustrates the variety of charities' roles, using data from the National Survey of Charities and Social Enterprises. In 2010, the main role of 23 per cent of charities was providing public services, while another 23 per cent provided other services, such as financial, leisure or retail as their main role.

1.12 The charity sector includes both charities registered with the Charity Commission and unregistered charities. Unregistered charities are either exempt charities or excepted charities. We cover the regulatory arrangements for exempt and excepted charities in more detail in Part Three.

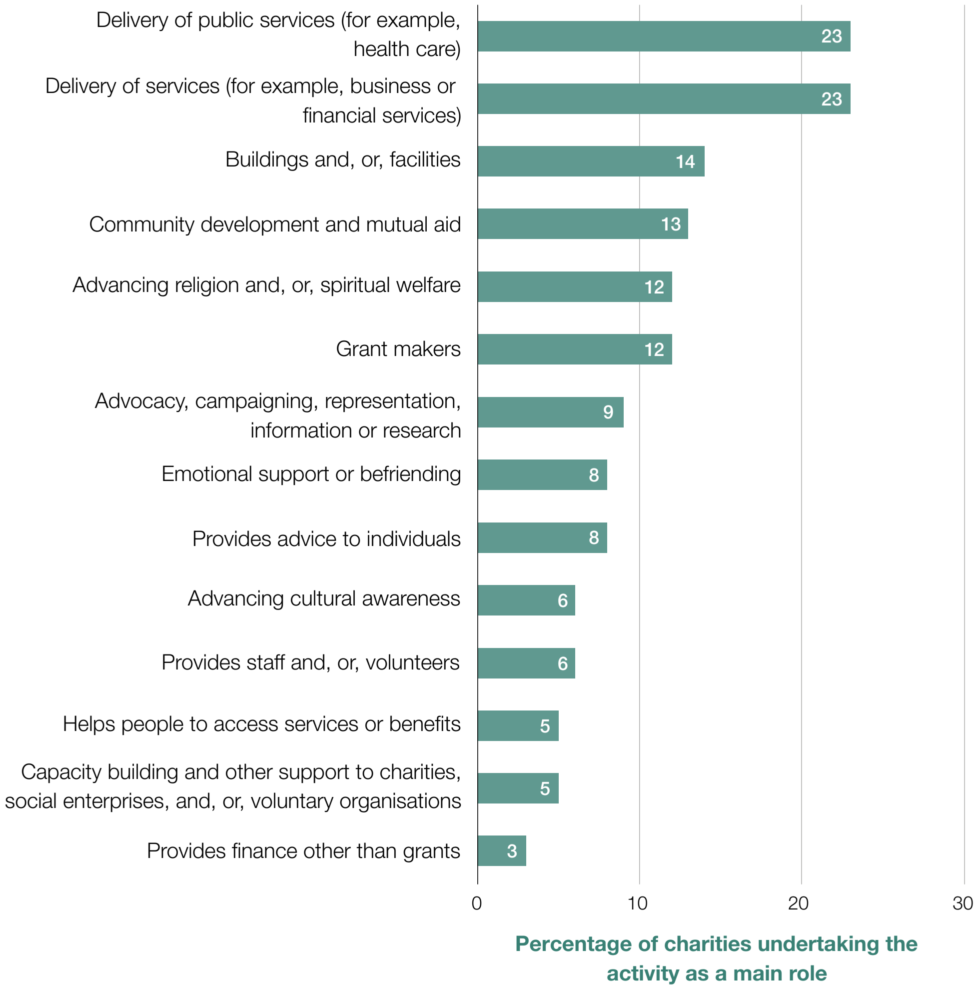
1.13 Exempt charities cannot register with the Commission because they are overseen by another regulatory body or government department, which is responsible for ensuring they comply with charity law and regulatory requirements. The exempt charity sector includes some schools, some national museums and art galleries, and higher education institutions among others detailed in **Figure 5** on pages 16 and 17.

1.14 Excepted charities do not have to register with the Commission. The two broad categories of excepted charities are:

- those below the registration threshold, which is currently those with an annual income of £5,000 or less; and
- charities that have previously been excepted by regulation or order, with an income of £100,000 or less – these include scout and guide groups, armed forces charities and many religious charities associated with the mainstream Christian denominations.

Although excepted charities do not need to be registered with the Commission, they may apply to HM Revenue & Customs for recognition as a charity for tax purposes. Although HM Revenue & Customs considers the process of recognising excepted charities a significant part of their business, currently there are no data available on the number of unregistered excepted charities which have been recognised as charities.

Figure 4
The main roles carried out by charities



NOTES
1 Survey base – 41,850 organisations identified as charities.
2 Main roles presented correspond with survey question response options.

Source: National Survey of Charities and Social Enterprises 2010

1.15 There are a number of organisations which act in the public interest, but which may not be legally recognised as charities, for example community interest companies, social enterprises and mutuals. These organisations sit outside of charity regulation. We provide a description of these organisations in Appendix Three.

Size of the sector

1.16 Figure 5 overleaf maps out the legally recognised charity sector in England and Wales. We used income data for registered charities from 2009-10[4] as well as more recent income estimates for unregistered charities to calculate the total size of the charity sector.

1.17 In 2009-10, there were around 160,000 charities registered with the Commission, with a combined income of £55.4 billion. This included around 12,000 charities that work outside the UK, accounting for 18 per cent of the sector's total income (£9.85 billion).

1.18 We estimate at least 11,000 charities with a combined annual income in 2012 of at least £57.3 billion are exempt from registration with the Charity Commission. Furthermore, we estimate there are around 180,000 excepted charities with a combined annual income of £400 million that are not required to register with the Commission, meaning the total combined income of the unregistered charity sector is at least £57.7 billion.

The financial resilience of the charity sector

Income

1.19 There has been a rapid growth in charity income over the last 12 years, with larger charities increasing their overall share of the sector's total income. **Figure 6** on page 18 shows that total income of registered charities rose by 64 per cent between 1999 and 2011 (adjusted for inflation to 2011 prices). Large charities (those with an annual income of over £10 million) grew faster than the general population of charities. They saw their total share of income rise from £14.7 billion (43 per cent of the sector's income) to £31.8 billion (57 per cent of the total) over the same period. During this period the number of registered charities in England and Wales has remained fairly constant – between around 160,000 and 170,000.

4 This is the latest year for which detailed financial information is currently available, due to the time lag for filing accounts.

Figure 5
Estimated annual income of the charity sector

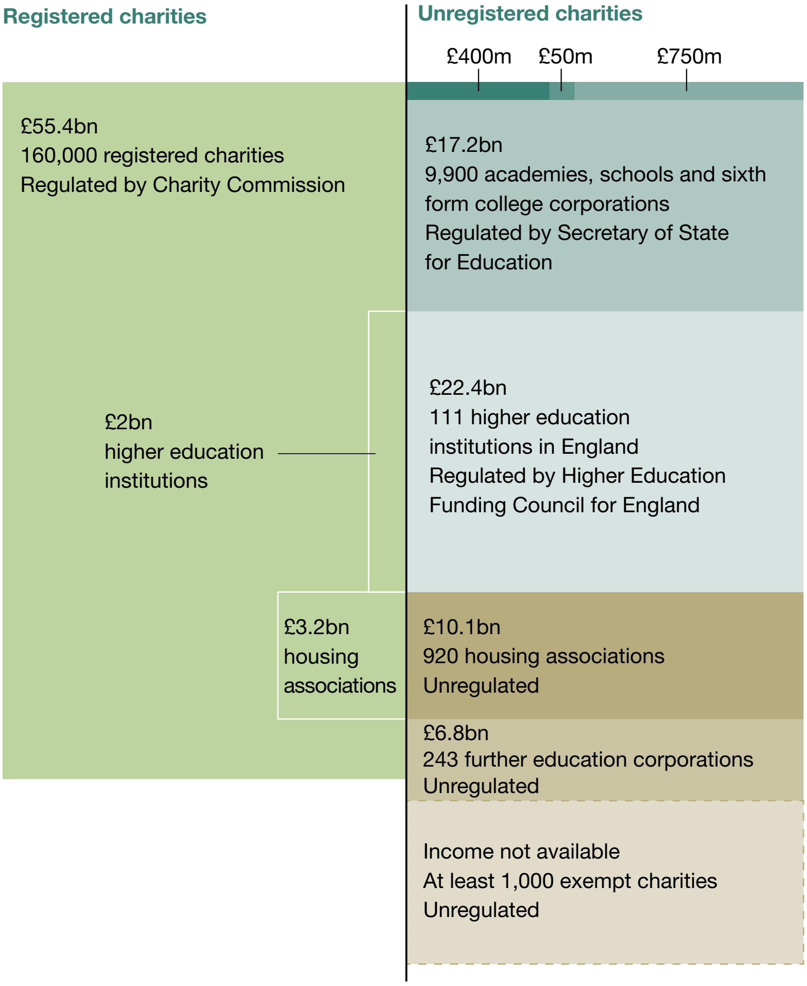


Figure 5 *continued*
Estimated annual income of the charity sector

- **Registered charities regulated by the Charity Commission**

- **Unregistered charities subjected to charity law regulation**
- 180,000 excepted charities regulated by the Charity Commission (income £400m)
- Royal Botanic Gardens, Kew regulated by Secretary of State for Environment, Food and Rural Affairs (income £50m)
- 13 museums and galleries regulated by the Secretary of State for Culture, Media and Sport (income £750m)
- 1,800 academies, 8,000 foundation schools and 94 sixth form college corporations in England regulated by Secretary of State for Education
- 111 higher education institutions in England regulated by the Higher Education Funding Council for England

- **Unregistered charities not subject to charity law regulation**
- 920 housing associations, set up as charitable and community benefit societies
- 243 further education corporations
- Other exempt charities, including: 1,000 charitable friendly societies; exempt and collective investment and deposit funds; other charitable and community benefit societies

NOTES

1 The sizes of the boxes in the graphic are scaled. The relative areas of the boxes reflect the estimated annual income of the organisations concerned.

2 There is no single source of data for the registered and unregistered charity sectors. We have used the latest available data for registered and unregistered charities. These data range from 2009 to 2012. The data for registered charities are adjusted for inflation to April 2010 prices.

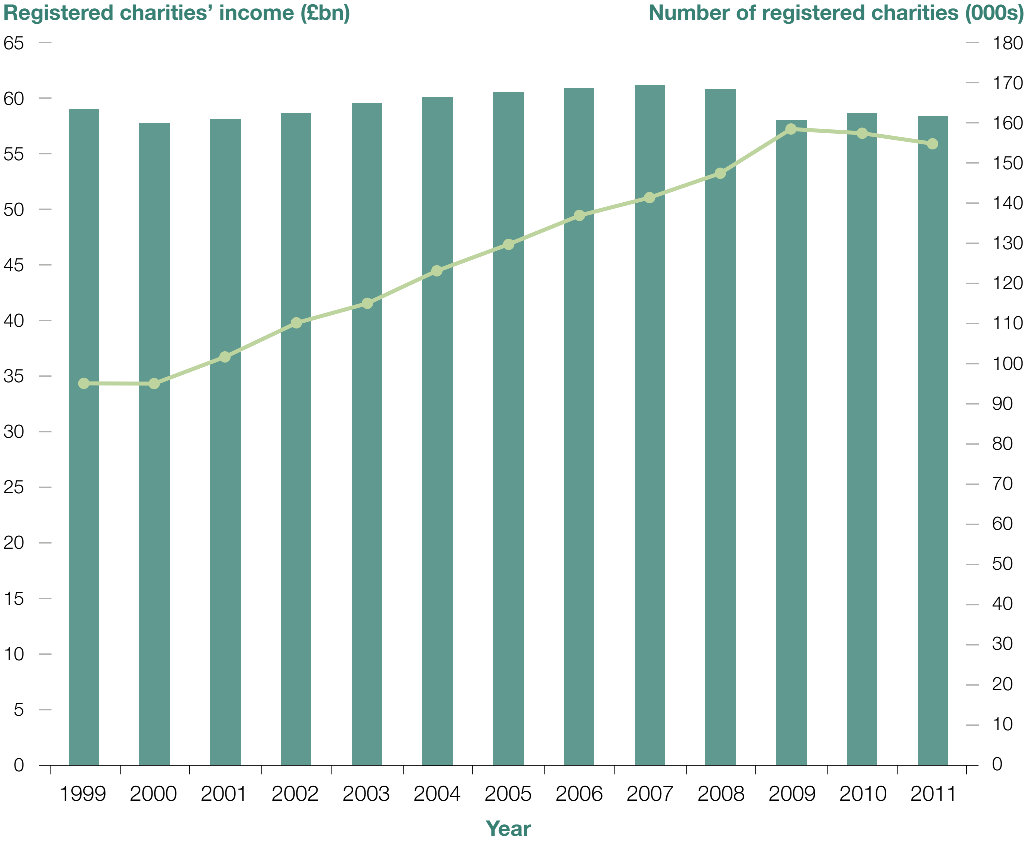
3 The registered charity sector includes 35 Welsh or non-exempt English higher education institutions. The majority of English higher education institutions are unregistered charities and are regulated by HEFCE. The registered charity sector includes 650 housing associations in England. A further 920 housing associations in England and Wales are unregistered charities and currently do not have a regulator for charity law.

4 The unregistered charity sector also includes voluntary and foundation schools in Wales regulated by Welsh Government. Data on the size of this sector are unavailable and so are not included in the figure.

Source: National Audit Office and National Council for Voluntary Organisations

Figure 6

Charity income and size of registered charity sector 1999-2011



NOTE

1 Income data are adjusted for inflation to 2011 prices.

Source: National Audit Office analysis of Charity Commission data

1.20 After a period of growth in income, the sector is now expecting a period of contraction. The National Council for Voluntary Organisations estimates that in 2015, the charity sector will receive around £1.2 billion less income than in 2010.[5] There is limited data on the effect of cuts on the sector so far. In May 2012, the Voluntary Sector Cuts website (a website run by 25 infrastructure bodies to which charities can report cuts) had identified £77.4 million of cuts.[6] However, the data are incomplete and self-reported. NAO analysis of these data suggests the impact is likely to vary. In some areas, entire programmes have been closed, while in others programmes have been top-sliced.

5 National Council for Voluntary Organisations, *The UK Civil Society Almanac 2012*, March 2012.

6 Voluntary Sector Cuts, available at www.voluntarysectorcuts.org.uk

1.21 The main sources of charity income can broadly be split into four categories:

- **Individual donations:**
  - Gifts have remained static over the last two years at £11 billion.[7] However, there is considerable variation within the sector. Giving to universities, for example, increased by 8.3 per cent between 2009-10 and 2010-11 to £560 million.[8]
  - The value of legacies left by individuals fell by 3.3 per cent in real terms between 2008 and 2010 to £1.8 billion in 2009-10.[9] Around 3,300 organisations in the sector receive legacy income.
- **Government income** Income from statutory sources supplies 38 per cent of the total income of the voluntary sector.[10] Over the last five years, the government has increasingly moved from giving grants to charities, to contracting with them.
- **Commercial income** This varies in line with the performance of the charity's particular sector within the wider economy and the evolving nature of customer demand.
- **Investment income** Charities hold investments in equities, property, investment funds and government securities. Data on the investment assets that charities hold are limited.

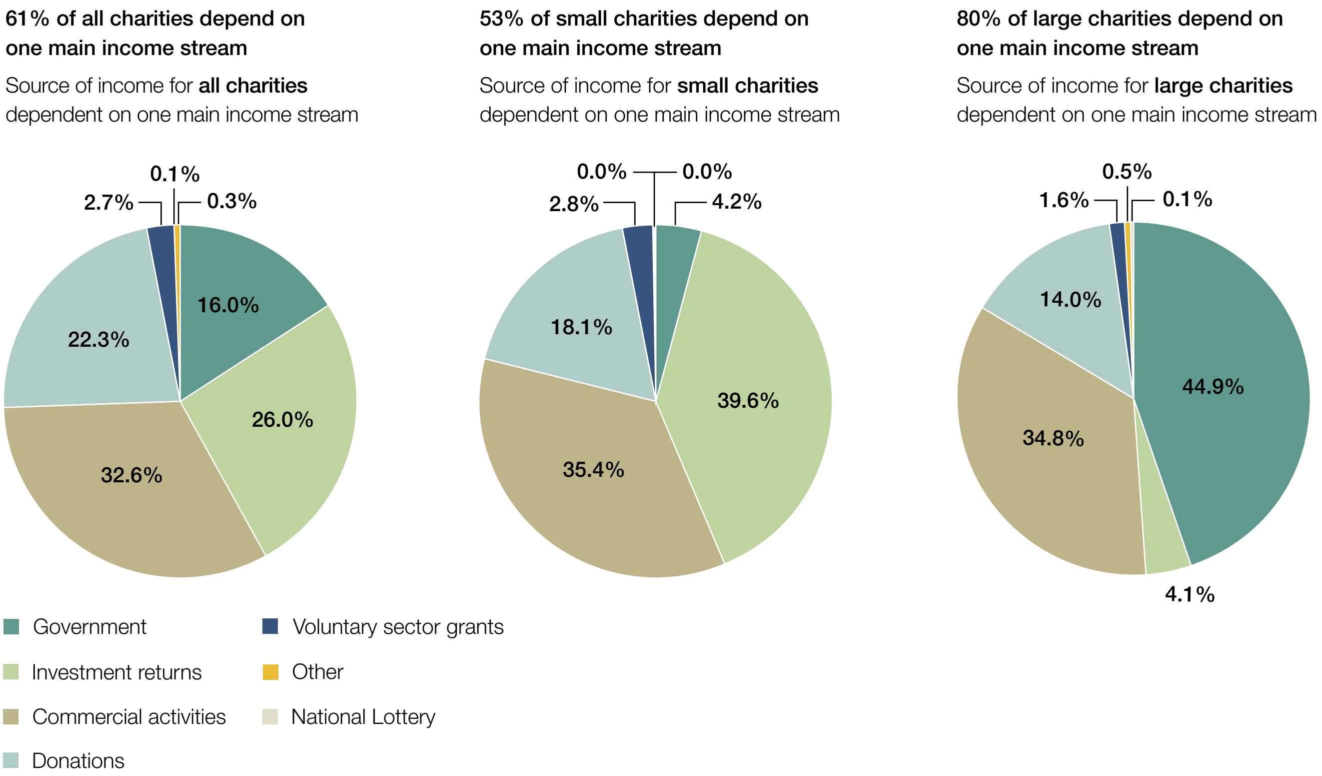
1.22 We analysed the charity sector to determine how many charities depend on one main income stream, and may therefore be at a higher financial risk because their income is not diversified. We found that 61 per cent of registered charities in 2009-10 received more than 75 per cent of their income from one source. Of the smallest charities (those with an income of less than £10,000), 53 per cent (approximately 45,600 charities) received at least 75 per cent of their income from just one source, compared with 80 per cent (approximately 4,800) of the largest charities (those with an income over £1 million).

1.23 Figure 7 overleaf shows that 16 per cent of registered charities are dependent on government for at least 75 per cent of their income. The proportion is much greater for large charities (45 per cent), compared to small charities (4 per cent).

7 National Council for Voluntary Organisations and Charities Aid Foundation, *UK Giving 2011*, 2011, pp. 4–8.
8 NatCen, the Ross Group and the Council for Advancement and Support of Education in Europe, *Giving to Excellence: generating philanthropic support for UK Higher Education 2010–11*, 2012, p. 5.
9 National Council for Voluntary Organisations, *The UK Civil Society Almanac 2012*, March 2012, p. 49.
10 National Council for Voluntary Organisations, *The UK Civil Society Almanac 2012*, March 2012, p. 42.

Figure 7

Registered charities dependent on one main income stream (2009-10)



NOTES

1 We have defined charities dependent on one main income stream as those which receive at least 75 per cent of their income from one source.

2 Small charities are those with an annual income of less than £10,000. Large charities are those with an annual income over £1 million.

Source: National Audit Office and National Council for Voluntary Organisations

Assets

1.24 In 2009-10 registered charities held around £157 billion of assets (for example land and buildings). Assets may be used by charities as a buffer should their income fall, or as collateral to secure finance. However, in many cases these assets are essential to the charity's operations, or were given on the condition that they would be used exclusively for a charitable purpose. This means that charities cannot use all their assets to finance their activities. Of the total reserves available to charities, we estimate that only £54 billion are free from covenants so that charities can use them as they choose.

1.25 We consider that larger charities may be comparatively better able to take on financial risk than smaller ones because they have proportionally more assets to absorb any losses. In 2009-10, charities with an income less than £10,000 held on average only £48,000 worth of assets, broadly a 5:1 ratio. However, charities with a turnover over £1 million held over £20 million of assets, broadly a 20:1 ratio.[11]

11 National Audit Office analysis, using data from the National Council for Voluntary Organisations.

Regulating the charity sector

Public trust and confidence in charities

1.26 Charities rely on the public donating time and money, which is given altruistically as a result of public trust in the sector and its aims. However, there is usually no direct link between the funder and the recipient of goods and services in the charity sector in the same way that exists with private suppliers and consumers. The public cannot usually directly observe how their donations are used or the outcomes achieved. Regulation and oversight is therefore aimed at supporting public trust in charities' use of their own, and public, resources.

1.27 The Charity Commission's 2012 survey of trust and confidence in charities found that the factor the public said most affected their level of trust in charities was that a reasonable proportion of donations make it to the end cause (43 per cent of those surveyed).[12]

The sector regulators

1.28 The Charity Commission is the independent regulator for charities, responsible for registering charities in England and Wales. The Commission has existed in some form since 1853; the register of charities dates from the 1960s and its modern structure from the Charities Act 2006. We discuss the role of the Charity Commission in Part Two. There are many other bodies with a role in the charity sector, for example HM Revenue & Customs, and the principal regulators. We discuss these in Part Three.

1.29 The Office of the Scottish Charity Regulator (OSCR) is responsible for regulating charities in Scotland. The Charity Commission Northern Ireland (CCNI) is responsible for regulating charities in Northern Ireland and will start registering charities in Northern Ireland at a date to be announced. We do not cover these bodies in detail in this briefing.

Policy and advocacy

1.30 The advocacy role for the charity sector is fulfilled by organisations within the sector such as: the National Council for Voluntary Organisations; the Association of Chief Executives of Voluntary Organisations; the National Association for Voluntary and Community Action; and the Small Charities Coalition.

1.31 The Office for Civil Society in the Cabinet Office is responsible for policy for civil society, including charities. In June 2012, the Minister for the Cabinet Office appointed a Crown Representative for the voluntary, community and social enterprise sector. The Crown Representative will focus on improving the government's business relationship with the sector, and is intending to make it easier for these organisations to tender for public contracts.

12 *Public trust and confidence in charities*, research conducted by Ipsos MORI on behalf of the Charity Commission, June 2012.

Part Two

The role of the Charity Commission

2.1 This part examines how the Charity Commission regulates charities. It considers the Commission's regulatory approach, how it uses its resources to meet its statutory objectives, how it measures its impact, and whether it complies with good regulatory practice. The key points are as follows:

- The Commission focuses its declining resources on where it considers it can have greatest impact. Most of its activity and resources are directed towards compliance, and it is increasingly relying on self-help tools for trustees and other stakeholders to meet its statutory objectives.
- The Commission relies heavily on external parties to report concerns or potential breaches of charity law. In 2010-11 the Commission assessed 17 per cent of the sector by income for issues of concern, but the level of fraud and financial mismanagement in charities appears to be heavily under-reported.
- The Commission measures its performance against its statutory objectives, and reports much of this in terms of outcomes achieved. The Commission's measures for its compliance work are largely based on the resources used, rather than the impact of the work.

The Charity Commission's role and regulatory approach

Role of the Commission

2.2 The Commission's current corporate structure was brought in by the Charities Act 2006. It is an independent, non-ministerial department with quasi-judicial powers, whose legal decisions may be appealed to the First-tier Tribunal (Charity) and the High Court. It is audited by the National Audit Office and lays its annual report and accounts before Parliament. The Commission works across the sector with other regulators on issues including protecting vulnerable individuals, counterterrorism and financial crime.

2.3 The Commission estimates that it currently regulates around 162,000 registered main charities. Furthermore, it estimates that across the registered charity sector, there are around: 940,000 trustees; 820,000 employees; and 2.9 million volunteers. The Commission also covers subsidiary charities of main charities (around 20,000), unregistered excepted charities (around 180,000) and, to a limited extent, exempt charities (at least 11,000).

2.4 The Commission has five statutory objectives, which are set out in the Charities Act. These are:

a public trust and confidence;

b public benefit requirement;

c compliance with charity law;

d effective use of charity resources; and

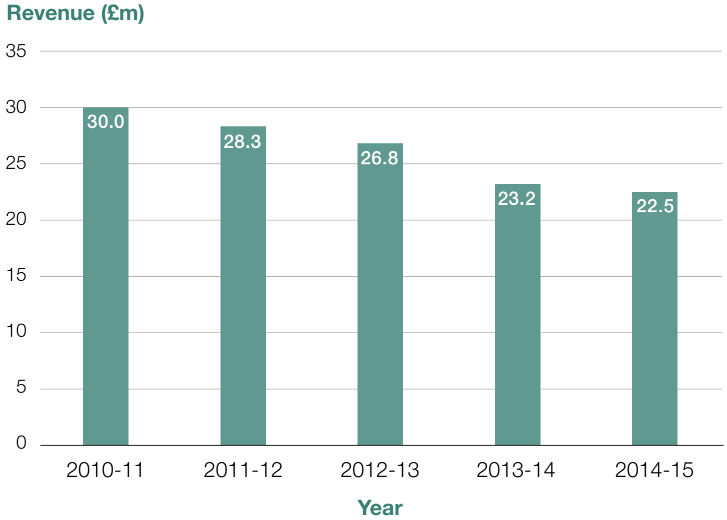
e accountability of charities.

We cover the Commission's approach to each of its statutory objectives in paragraphs 2.8 to 2.25.

Regulatory approach

2.5 The Commission's resources are not sufficient for it to directly oversee each registered charity, or to resolve every area of concern. Furthermore, its income is projected to fall from £30 million in 2010-11 to £22.5 million in 2014-15, a drop of 25 per cent before allowing for inflation (**Figure 8**).[13] In 2008-09 the Commission had a budget of £32.3 million.

Figure 8
Charity Commission funding



NOTE
1 This chart shows the 2010–2015 public spending settlement from HM Treasury.

Source: HM Treasury Spending Review 2010, p. 88

13 These estimates differ to those given in the spending review document as the 2010-11 to 2014-15 figures include depreciation, which the Treasury does not include. A reconciliation is available within the *Charity Commission Annual Report and Accounts 2010-11*, 2011, p. 36.

2.6 To use its resources most effectively the Commission attempts to regulate according to the level of risk presented to meeting its statutory objectives. It has split its regulatory approach into two areas of activity:

- Developing the compliance and accountability of the sector, where the Commission is proactive and uses most of its resources.
- Developing the self-reliance of the sector.

The Commission directs most of its resources and attention to meeting its compliance and accountability statutory objectives. It seeks to address the public benefit requirement mainly through providing guidance, the registration process and reporting, and the charitable resources objective through transparency and providing information online. Underpinning this approach is a varying level of financial monitoring and oversight or engagement, or both, depending on the income of the charity being regulated (**Figure 9**).

Figure 9

Different levels of monitoring and oversight for registered charities

	Charity income				
Charity Commission requirements	**From £0,000 to £10,000**	**Over £10,000 to £25,000**	**Over £25,000 to £500,000**	**Over £500,000 to £1m**	**Over £1m**
Charity and trustee details	✔	✔	✔	✔	✔
Income and expenditure	✔	✔	✔	✔	✔
Area of operation	✔	✔	✔	✔	✔
Annual declaration of required data	–	✔	✔	✔	✔
Fuller declaration of charity information	–	–	✔	✔	✔
Declaration when no serious incidents reported	–	–	✔	✔	✔
Annual reports and accounts	–	–	✔	–	–
Audited annual reports and accounts	–	–	–	✔	✔
Detailed financial information	–	–	–	✔	✔
Summary of charity's activities during the year	–	–	–	–	✔

NOTES

1 Charitable incorporated organisations will be subject to some additional requirements.

2 Charities with an annual income less than £5,000 are not required to register with the Charity Commission. Although some do choose to register and so must meet the requirements of charities with an income from £0,000 to £10,000.

Source: Charity Commission

2.7 We estimate that around 6,000 charities (4 per cent of all registered charities) have an annual income of over £1 million and therefore receive the highest level of oversight by the Charity Commission. Conversely, around 85,000 charities (53 per cent of all registered charities) have an income below £10,000 and receive the least amount of regulatory oversight (**Figure 10**). Figure 10 shows the size of the registered charity sector for each of the Commission's categories of oversight. The largest charities, in terms of income, make up the smallest proportion of registered charities, but receive the highest levels of regulation.

How the Commission meets its statutory objectives

a) Public trust and confidence

2.8 The duty to maintain public trust and confidence essentially follows from the Commission's overall approach and its work to support its other statutory objectives. The Commission has carried out various public consultations and research, to help it define its role in supporting public trust and confidence. The Charity Commission's public trust and confidence survey[14] shows that the public consider that the Commission should primarily act for the public, including donors, grant makers and beneficiaries, rather than charities themselves. Once explained, people appreciate the Commission's role highly, with 98 per cent believing its role is essential, very or fairly important. However, awareness of the Commission is lower, with only 55 per cent of respondents being aware of the Commission.

Figure 10

The size of the registered charity sector by the level of oversight by the Charity Commission

	From £0 to £10,000	Over £10,000 to £25,000	Over £25,000 to £500,000	Over £500,000 to £1 million	Over £1 million	All charities
Number of charities	84,950	23,245	42,671	3,512	6,001	160,379
Proportion of charities (%)	**53**	**14**	**27**	**2**	**4**	**100**
Income of charities (£bn)	0.2	0.4	5.1	2.5	47.2	55.4
Proportion of income (%)	**0.4**	**1**	**9**	**4**	**85**	**100**

NOTES

1 The estimates for registered charities with incomes under £25,000 should be treated with caution. These charities are not required to submit a trustees' annual return to the Commission, but instead only complete an annual return of income and expenditure. Charities with income under £10,000 are only required to submit this information when their details change; many provide this information as an annual update.

2 Totals may not sum due to rounding.

Source: National Audit Office and National Council for Voluntary Organisations

14 *Public trust and confidence in charities*, Research conducted by Ipsos MORI on behalf of the Charity Commission, June 2012.

2.9 Generally, public trust and confidence in charities is high. The public trust and confidence survey shows that charities are the third most trusted sector, when compared with other sectors, such as doctors, the police, and social services. The most frequently cited reasons for not trusting particular charities included not knowing how charities spend their money (36 per cent); hearing bad stories about charities (21 per cent); disliking fundraising methods (14 per cent); and perceiving that money is lost through corruption or not getting to the end cause (11 per cent).

b) Public benefit requirement

2.10 The Commission is responsible for ensuring that charities comply with their reporting duties, which includes the public benefit reporting requirement. However, recent research[15] (2011) found that most charities find this problematic. The research found that larger charities, with an income greater than £500,000, were better able to show that they had clearly understood the intended beneficiaries of the charity (74 per cent met the reporting requirements) compared with smaller charities (22 per cent). All charities had difficulty in explaining how the intended beneficiaries had benefited from the charity's work. Of the larger charities, with an income greater than £500,000, 64 per cent could not clearly explain how the intended beneficiaries had benefited.

2.11 The Commission's guidance on how to report public benefit is not well used by the charity sector. The number of charities that stated in their Trustee Annual Report that they 'had regard' to the Commission's guidance on the public benefit requirement was 72 per cent for larger charities with an income over £500,000. For charities with an income between £100,000 and £500,000, it was 42 per cent. For charities with an income between £25,000 and £100,000, it was 22 per cent. And, for the smaller charities, those with an income less than £25,000, it was 11 per cent.

c) Compliance with charity law

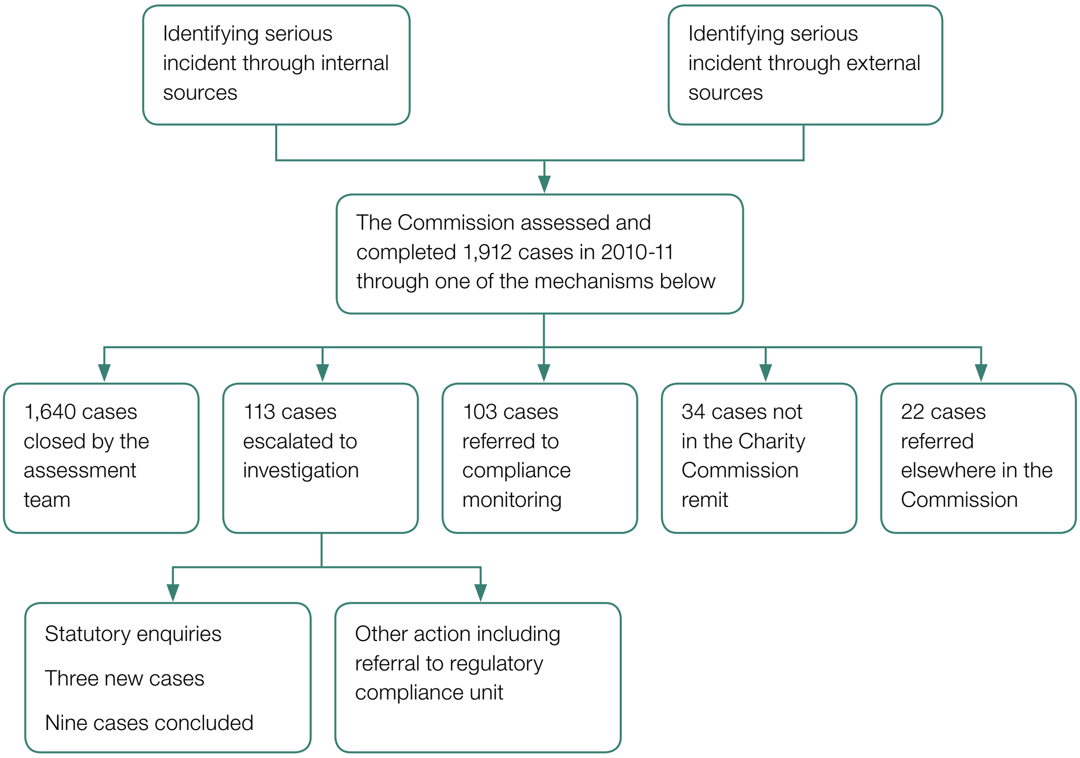
Identifying and addressing concerns

2.12 Figure 11 illustrates how the Charity Commission identified, assessed and investigated incidents in 2010-11.

2.13 The Commission mainly relies on external parties, and in particular trustees, to identify serious concerns about complying with charity law. Trustees of charities with an annual income over £25,000 must declare in their annual return that they have reported serious incidents, such as theft or fraud, or harm to vulnerable beneficiaries, to the Commission.

15 Morgan and Fletcher, *Public benefit reporting by charities*, Charity Commission, 2011.

Figure 11
Process of identifying, assessing and investigating incidents



Source: National Audit Office analysis of the Charity Commission data from the Charity Commission report, Charities Back on Track: Themes and lessons from the Charity Commission's investigations and regulatory casework 2010-11, 2011, p. 7

2.14 The Commission has been increasingly active in raising awareness of trustees' duty to report serious incidents and recently consulted with the sector and published new guidance, in particular allowing more proportionate discretion in reporting lower-value fraud and theft. There were 451 serious incident reports in 2009-10, but this number rose to 1,027 in 2011-12.[16]

2.15 The Commission itself also identifies serious concerns through proactive monitoring. For example, it checks trustees' eligibility, and monitors annual returns and accounts. In 2010-11, the Commission identified 23 per cent of concerns in this way, with the other 77 per cent being raised by external sources including charity trustees, other law enforcement or government agencies, auditors, or the public.

16 Examples of a serious incident include theft, fraud or significant financial loss; harm to vulnerable beneficiaries; significant donation from an unknown or verified source; and alleged links to terrorism or other illegal activity.

2.16 Once the Commission has identified a serious concern it carries out an assessment. It completed 1,912 assessments during 2010-11, representing charities with a total income of £9.1 billion, around 17 per cent of the sector by income. In 2010-11, the Commission took forward 9 per cent of assessments as investigations, representing around £900 million, just under 2 per cent, of the charity sector by income.

2.17 Examples of the most recent statutory inquiries are given in **Figure 12**.

Key areas of focus for compliance work

2.18 The Commission focuses its compliance work on the issues that present the greatest risks to the integrity of charities, public trust and confidence in charities, and to charity assets and services. In 2010-11, the four key issues that were apparent in the investigations undertaken by the Commission were:

- financial mismanagement;
- problems in safeguarding beneficiaries;
- serious failings in trustee duties and responsibilities; and
- counterterrorism concerns.

Figure 12
Statutory inquiries in 2012

Charity name	Case description	Date
Brotherhood of the Cross and Star Limited	The inquiry sought to protect £750,000 of charity funds, access to which was affected by a dispute in the charity, and examined the impact of a winding-up petition. It resolved governance issues at the charity and appointed an interim manager.	20 March 2012
National Bullying Helpline Limited	The inquiry was to ensure the trustees continued to safeguard information about the charity's beneficiaries. It examined whether public statements made by the charity's CEO were in line with the charities procedures on confidentiality and privacy, the conduct of trustees and the CEO and other circumstances in addition to managing conflicts of interest and the general governance of the charity.	31 May 2012
The Needy Children International Foundation	The inquiry examined the charity's fundraising methods and activities and how it used funds, the publicity around its activities and trustees' general administration and governance.	12 January 2012
Palestinians Relief and Development Fund	The Charity Commission followed up and reported on action required from the charity following an inquiry completed in 2009.	1 June 2012

Source: Charity Commission data, available at www.charity-commission.gov.uk/Our_regulatory_activity/Compliance_reports/inquiry_reports/default.aspx

Financial mismanagement, fraud, and safeguarding

2.19 Fraud and theft featured in 44 per cent of all serious incident reports, and 43 per cent of whistleblowing reports submitted during 2010-11. However, the total value of fraud and theft that was reported to the Commission in 2010-11 was £6 million, around 0.01 per cent of the sector's total income.[17] This estimate is significantly less than the National Fraud Authority's estimate of £1.1 billion of potential fraud in the sector.[18] The Commission concurs with the National Fraud Authority's view that there is significant under-reporting of fraud in the charity sector.

2.20 The Commission's analysis of its own assessments has also identified financial mismanagement as a serious concern, alongside fraud. Of the Commission's assessment cases, 13 per cent included allegations of misapplication of funds, accounting and financial issues, and fundraising problems. In 2010-11, the Commission's investigative work protected £8 million of charity assets, although this estimate is fairly volatile from year to year (**Figure 13**). The average protected over the last four-year period is £25 million.

2.21 The Commission's 2010 survey[19] asked the public which factor is most important to their trust and confidence in charities. The most frequently reported factor (43 per cent) was ensuring that a reasonable proportion of donations make it to the end cause.

d) Effective use of charity resources

2.22 The Commission is increasingly relying on disclosure and transparency to increase the efficient and effective use of charity resources. To this end the Commission provides a lot of data and information on its website, including the accounts of all registered charities with an annual income in excess of £25,000 (**Figure 14** overleaf). The Commission increasingly relies on donors and stakeholders assessing whether charitable resources are being used effectively, rather than the Commission having to examine this.

Figure 13
Charity assets directly protected through the Commission's investigative work

	2011-10 (£m)	2010-09 (£m)	2009-08 (£m)	2008-07 (£m)
Charity assets directly protected	8	29	47	16

Source: Charity Commission

17 Charity Commission, *Charities Back on Track: Themes and lessons from the Charity Commission's investigations and regulatory casework 2010-11*, 2011, p. 7.
18 National Fraud Authority, *Annual Fraud Indicator*, 2012, p. 19.
19 *Public trust and confidence in charities*, research conducted by Ipsos MORI on behalf of the Charity Commission, June 2012.

Figure 14

Required disclosures in charity accounts

Charity income	Format of account	What charities have to say about spending in their accounts
£0 to £250,000	Receipts and Payments, or Statement of Recommended Practice (SORP).	Accounts of cash spending only.
From £250,000 to £500,000	Receipts and Payments, or Statement of Recommended Practice (SORP).	No standard divisions of spending are required.
Over £500,000	Statement of Recommended Practice (SORP).	Expenditure is split between: • charitable activity; • costs of generating voluntary income; • fundraising costs; • governance costs; • investment management expenses; and • other costs.

Source: Charity Commission

2.23 We examined 15 charity accounts to determine how far a lay reader might be able to determine whether a charity had used its resources effectively. Five of those accounts did not apply the standard accounting methodology (charity 'Statement of Recommended Practice'). Of the ten accounts we analysed that did apply the standard accounting methodology, we found that they varied in how they classified their expenditure. The differences between accounts mean that a lay reader would not be able to use the accounts to compare how charities spend their money. Charities may also, however, use their annual reports to disclose information on how they have used their resources.

e) Accountability of charities

2.24 The Commission places a high emphasis on transparency and disclosure. In its 2012 public confidence and trust survey the Commission found that 96 per cent of the public say it is important to them that charities provide information about how they spend their money.[20]

2.25 The Commission can take enforcement action on charities that either do not submit, or submit late, their annual accounts, annual returns, or updates. Currently 96 per cent of charities by income have submitted the key documents within the ten-month deadline. The Commission took enforcement action on 108 charities for not submitting their accounts in 2010-11, of which five were referred for investigation, with the remainder either submitting their accounts or being deregistered.

20 *Public trust and confidence in charities*, research conducted by Ipsos MORI on behalf of the Charity Commission, June 2012.

How the Commission measures its performance and impact

2.26 The Commission reports its performance directly to Parliament by laying its report and accounts. How it measures and reports performance is therefore key to its accountability. The Commission has a performance measurement system that broadly evaluates success in meeting the Commission's statutory objectives. The indicators used are a mix of outcome, output and input indicators (**Figure 15**). The Commission surveys the public and other key stakeholders to assess their overall trust and confidence in charities, and level of satisfaction with the Commission.

Figure 15
Performance measurement

Key performance indicator	Measures
Overall service delivery	Percentage of emails answered in 10 and 15 working days
	Percentage of calls answered within 30 seconds
	Percentage of calls abandoned
	Percentage of letters answered in 5, 10 or 15 working days
	Average time to deal substantively with letters
Registration	Average time taken to register a charity
	Average time taken to process a fast-track registration
	Average time to process complex or novel or high-risk applications
	Percentage of registrations received online
Investigation and enforcement	Percentage of investigations achieving one specified beneficial impact
	Percentage of investigation reports published in three months
	Publish 'Charities Back on Track' by end of quarter three
	Sector alerts highlighting key risks and trends
Charity information	Percentage of charities for which the most recent due accounts and annual reports are held
	Proportion of the sector's income for which the most recent due annual reports and accounts are held
	Proportion of charities filing accounts and annual reports within the ten-month deadline
	Proportion of the sector's total income for which accounts and annual reports have been submitted within the ten-month deadline
Public trust and confidence	Improvement over 2005 baseline

Source: Charity Commission Annual Report and Accounts 2011-12, 28 June 2011

2.27 While many of the Commission's measures are output or outcome focused, the indicators for the Commission's investigative work are largely input based and do not give an overall measure of the impact of this work (**Figure 16**). Although the impact of individual cases is recorded, the wider impact of investigation and enforcement work, for example any deterrence effect, is not calculated. For example, the Commission has committed to a minimum of 20 compliance visits annually to charities that are identified as risky. However, there is no measure of whether 20 is the right number, or whether there is any outcome from these visits. The number reflects the Commission's assessment of what it can afford to spend on investigations, considering its resources.

Figure 16

The Commission's indicators (2010-11) for the effectiveness of investigations and related regulatory work

	Target	Achievement
Detection		
Complete 90 per cent of compliance assessments correctly in 30 working days.	90 per cent	86 per cent
Carry out a minimum of 20 compliance visits annually to charities that are subject to monitoring and identified following a risk assessment.	20	21
Investigation, sanction and redress		
Complete all regulatory compliance cases (excluding statutory inquiries) within an average of six months.	183 days	172 days
Ensure 90 per cent of all investigations result in at least one of the specified beneficial impacts that protect charities from mismanagement, misconduct or abuse.	90 per cent	94 per cent
Prevention and deterrence		
Publish 90 per cent of reports on the results of investigations within three months of the end of the substantive investigation process.	90 per cent	81 per cent
Publish an annual report on the *themes and lessons from the Charity Commission's compliance work* which includes the duration of each statutory inquiry, the impact of investigations, the use of sanctions (including legal powers of remedy and protection), and the operation of our compliance work.	Publish report before end of third quarter of financial year	Published 22 September

Source: Charity Commission

2.28 The Commission is currently considering changing how it measures and reports its performance at the top level, and is planning to report under three headings:

- Relative cost of the Commission;
- Quality of work; and
- Public trust and confidence.

How the Commission seeks to minimise the burden of regulation

2.29 The Better Regulation Executive, part of the Department for Business Innovation and Skills, reviewed the Commission in 2010, for compliance with the principles of better regulation. This review found that the Commission is "proportionate in the way it acts with charities, considering financial costs/benefits alongside the impacts on perceptions and public confidence". Furthermore, it "makes an impressive and innovative use of technology to minimise burdens when collecting data and communicating this information and compliance performance to the public to deliver its outcomes".[21]

2.30 The Commission's published risk framework states its aim of avoiding dual regulation, by working with other agencies, regulators and government departments to pursue its objectives.

21 Better Regulation Executive, *Charity Commission: A Hampton Implementation Review Report*, March 2010, p. 3.

Part Three

Wider oversight of the charity sector

3.1 This part describes the role of other bodies in overseeing the charity sector. It covers the role of principal regulators, HM Revenue & Customs, and other oversight bodies. The key points are as follows:

- Government appoints principal regulators to oversee those charities that are exempt from registration with the Charity Commission, but there are still a number of exempt charities which have no principal regulator.
- Many fundraising and commercial activities are self-regulated, although there are a number of bodies that cover different types of fundraising.

The regulatory oversight of unregistered charities

Exempt charities and principal regulators

3.2 Exempt charities are not permitted to register with the Commission because they are overseen by another regulatory body or government department, which has been deemed sufficient also for their regulation as charities. The Charities Act designated some of these oversight bodies or government ministers as a 'principal regulator'. The principal regulator model is designed to address inadequate or no regulation in exempt charities. Unlike the Charity Commission, principal regulators are not independent of government. They must regulate for charitable purpose alongside their departmental relationship with charities, which means there is a potential risk of conflict of interest. This risk is partly mitigated by a provision in the Act to limit how far ministers may act, other than as principal regulator on information disclosed for charity regulation purposes.

3.3 Each principal regulator has a memorandum of understanding with the Charity Commission. This document describes how the Charity Commission and respective principal regulator will work together. A principal regulator has the power to request any necessary information that helps it to meet its objective of complying with charity law. However, it has no powers of inquiry, enforcement or protection. Exempt charities are subject to the inquiry and enforcement powers of the Charity Commission, although the Commission may only exercise those powers after consultation with the principal regulator.

3.4 Principal regulators must promote compliance by charity trustees with their legal obligations in controlling and managing the administration of the charity. This requires regular monitoring and occasional more detailed work, including liaising with the Charity Commission on complex issues that might need its powers. The principal regulator may have concerns arising from its interaction with charities, from reports to the principal regulator by the auditors of charities, or in other ways. In practice, a principal regulator builds on the existing and usually longstanding oversight relationship it has with its charities, to monitor compliance with charity law.

3.5 The charities listed in **Figure 17** overleaf are exempt charities. Most are regulated by a principal regulator, but the process of appointing principal regulators is not complete, so there are still sectors where there is no identified principal regulator. This means some charities are currently not regulated for charity law.

3.6 The principal regulators oversee varying numbers of charities (Figure 17). The Secretary of State for Environment, Food and Rural Affairs oversees just one charity, while the Secretary of State for Education (the DfE) oversees around 11,000 charities. Most principal regulators have an established relationship with their charities. The DfE, assisted by the Education Funding Agency, is developing new relationships with academies. Before 2011, academies were registered with the Charity Commission. As of 1 June 2012, there were 1,877 academies open in England. This number has grown dramatically under the coalition government, from 203 in May 2010.

3.7 We estimate that the combined income of exempt charities (at least £57.3 billion) exceeds the combined income of the registered charity sector (£55.4 billion).

Excepted charities and HM Revenue & Customs

3.8 Excepted charities are not required to register with the Commission. These charities are below the registration threshold, or are charities that have previously been excepted by regulation or order, with an income of £100,000 or less. We estimate there are around 180,000 charities that fall into this category with a combined income of approximately £400 million.

3.9 Although excepted charities do not need to be registered with the Commission, they may be recognised as a charity by HM Revenue & Customs for tax purposes. Usually, excepted charities have not been through the registration process of the Charity Commission, which ensures a charity meets the requirement of the Charities Act. As a result, HM Revenue & Customs has to use a different approach to assessing whether excepted charities are eligible for tax relief, compared with the approach used to assess registered charities. HM Revenue & Customs applies the legal test of a charity, which considers charitable purpose and public benefit. HM Revenue & Customs also tests for its own additional requirements, which includes the fit and proper person test (see Part One).

Figure 17
Exempt charities

Charity	Principal regulator	Number of charities regulated	Size of the sector regulated
Sponsored national museums and galleries.	Secretary of State for Culture Media and Sport	13	£750 million
Academy proprietors (trusts or companies).	Secretary of State for Education	1,800	£5.3 billion
Sixth form college corporations.	Secretary of State for Education	94	No data available
Governing bodies of foundation, voluntary aided, voluntary controlled and foundation special schools (in England).	Secretary of State for Education	8,000	£11.9 billion
Governing bodies of foundation, voluntary aided, voluntary controlled and foundation special schools (in Wales).	Welsh Government	No data available	No data available
Most higher education institutions in England.	Higher Education Funding Council for England	111	£22.4 billion
Royal Botanic Gardens, Kew.	Secretary of State for Environment, Food and Rural Affairs	1	£50 million
Further education corporations.	None appointed	243	£6.8 billion
Housing associations, set up as charitable and community benefit societies.	None appointed	920	£10.1 billion
Other charitable community benefit societies and registered friendly societies.	None appointed	1,000	No data available
Exempt collective investment and deposit funds.	None appointed	No data available	No data available

NOTE
1 There is no single source of data for exempt charities and so we have used the latest available data for each group of exempt charities. This data ranges from 2010 to 2012.

Source: National Audit Office, Charity Commission and National Council for Voluntary Organisations

Other regulatory activities for charities

Fundraising is self-regulated

3.10 Charity fundraising does not fall under the Commission's remit, although it still receives complaints about fundraising.[22] Fundraising activities are self-regulated and the Commission has no legal power to tell charities to stop using a legal method of fundraising.

3.11 Self-regulation is guided by the *Codes of Fundraising Practice and the Code of Conduct* provided by the Institute of Fundraising.[23] There are 27 codes of fundraising practice applicable to charities in England and Wales (**Figure 18**).

Figure 18
Codes of Fundraising Practice

1 Acceptance and refusal of donations
2 Accountability and transparency
3 Best practice for fundraising consultants
4 Best practice for fundraising contracts
5 Best practice for major donor fundraising
6 Charities working with business
7 Charity challenge events
8 Committed giving in the workplace
9 Data protection
10 Direct mail
11 Event fundraising
12 Face-to-face activity
13 Fundraising in schools
14 Fundraising through electronic media
15 Grant making trusts
16 Handling of cash and other financial donations
17 House-to-house collections
18 Legacy fundraising
19 Management of static collection points
20 Outdoor UK challenge events
21 Payment of fundraisers
22 Raffles and lotteries
23 Reciprocal charity mailings
24 Telephone fundraising
25 Telephone recruitment of collectors
26 Use of chain letters as a fundraising technique
27 Volunteer fundraising

Source: Institute of Fundraising

22 Charity Commission, *Memorandum of understanding between the Charity Commission and the Fundraising Standards Board*, March 2007, pp. 3–4 .
23 Institute of Fundraising Guidance, *Codes of Fundraising Practice and Codes of Conduct*, available at www.institute-of-fundraising.org.uk/guidance/codes-of-fundraising-practice

3.12 The FundRaising Standards Board (FRSB) acts as an independent public complaints system for the self-regulatory scheme. Members of the FRSB are required to adhere to the *Codes of Fundraising Practice* and a *Fundraising Promise*.[24] Members can use the FRSB 'give with confidence' logo on their fundraising material. A count in May 2012 published on the FRSB website, showed that around 1,400 charities use this logo.

3.13 The Public Fundraising Regulatory Association is the charity-led membership body that self-regulates all forms of face-to-face fundraising. Face-to-face fundraising is personally soliciting a regular charity donation via a direct debit.

Charitable collections are licensed

3.14 Fundraising collections are a common method of raising money for charity, particularly among volunteers. Charities who wish to hold a collection in the street, must obtain a licence from the local authority or the police. The licensing process for public collections will change following the implementation of the Charities Act 2006. Currently, there is no plan to implement these changes.

Commercial activities are self-regulated

3.15 Charities enter commercial partnerships with companies both to fundraise and to raise their profile in the corporate sector. The Charity Commission issues guidance on trading and on working with commercial partners, but has no other regulatory responsibility for commercial or fundraising activities. The Charity Retail Association has a voluntary *Code of Charity Retail*,[25] developed in 2005 in response to the then government's promotion of self-regulation in the charity sector.

Regulation that is not charity specific

3.16 Many charities are regulated by more than one body. For example, charities that work with children may be regulated by Ofsted or the Criminal Records Bureau. Some health charities may be regulated by the Care Quality Commission.

24 Fundraising Standards Board, Fundraising Promise, available at www.frsb.org.uk/english/give-with-confidence/how-we-can-help/fundraising-promise
25 Charity Retail Association, *Code of Charity Retail*, available at www.charityretail.org.uk/ccr2012.pdf

Appendix One

Our review

1 This review drew together evidence on the current landscape of charity regulation and the charity sector more generally. We explored how government seeks to regulate the sector through the Charity Commission and other public bodies.

2 Our approach to the review is summarised in **Figure 19** overleaf. Our evidence base is described in Appendix Two.

Figure 19
Our review of the regulation of charities

Objective of Government

The government's *Giving White Paper* (May 2011) recognises the value that charities play in society today and sets out the government's agenda to make it easier and more compelling for people to give time and money. The government aims to give better support to those that provide and manage opportunities to give.

How this will be achieved

The government has put in place a variety of regulations and regulators to give confidence to the public that charities are legitimate and operate well.

Our review

We provide insight into the complex landscape of charity regulation. We consider the nature of the charity sector and its relationship with government, the role of the Charity Commission and other public bodies with oversight of the charity sector.

Our key questions

What is the profile of the charity sector and its relationship with government?

What is the regulatory approach of the Charity Commission?

What is the role of other bodies with oversight of the charity sector?

Our evidence

(see Appendix Two for detail)

We **reviewed legislation** relating to charities.

We analysed financial data to **estimate tax relief for charities.**

With the National Council for Voluntary Organisations, we analysed financial data to **estimate the size of the charity sector.**

We **analysed financial data** to understand the financial resilience of the charity sector.

We **analysed survey data** to explore the main roles of charities.

We **carried out unstructured interviews** with officials from the Charity Commission.

We **examined the Charity Commission's reports and documents** to understand its regulatory approach and process.

We **reviewed survey findings.**

We **examined the Charity Commission's reports and documents** to describe progress towards meeting its statutory objectives.

We **reviewed published material** from other organisations.

We **analysed financial data** to map the sub-sectors of the charity sector against the different levels of regulatory oversight.

We **carried out unstructured interviews** with key officials.

We **reviewed published and unpublished documents** related to the role of principal regulators.

With the National Council for Voluntary Organisations we **estimated the size of the unregistered charity sector,** including regulated and unregulated charities.

Appendix Two

Our evidence base

1 Our independent review on the regulation of charities was completed following our analysis of evidence collected between April and July 2012.

2 We applied a review framework with key questions to consider the relationship of the charity sector and government, the role of the Charity Commission as the independent regulator for charities in England and Wales, and the role of other bodies with oversight of the charity sector. Our review of the regulation of charities is outlined in Appendix One.

3 **We examined the profile of the charity sector and its relationship with government.**

- We **reviewed legislation** relating to charities, including: the Charities Act 2006; the Charities Act 2011; the Charities (Accounts and Reports) Regulations 2008; and the Finance Act 2010.
- We analysed financial data published by HM Revenue & Customs to **estimate the tax reliefs for charities** and for donors to charities.
- We commissioned the National Council for Voluntary Organisations to analyse financial data to **estimate the size of the registered and unregistered charity sectors**. The data used in the analysis was developed by the National Council of Voluntary Organisations in partnership with the Third Sector Research Centre. The financial analysis was based on the analysis for the UK Civil Society Almanac 2012[26] with some variations so that the analysis related to all registered charities in England and Wales. Our analysis related to charities with financial year ends in the 2009-10 financial year, due to the time lag between filing accounts and preparing data for analysis. The financial data for charities are based on annual accounts submitted to the Charity Commission. The data were cleaned and checked for consistency before being converted to April 2010 prices.

26 National Council for Voluntary Organisations, *The UK Civil Society Almanac 2012*, March 2012.

- We **analysed financial data** from 2009-10, provided by the National Council of Voluntary Organisations, to understand the financial resilience of the charity sector.

- We **analysed survey data** from the National Survey of Charities and Social Enterprises 2010. From the total sample of charities and social enterprises, we selected those organisations who self-reported being a charity rather than a social enterprise (41,850 organisations). We examined responses to a question which asked organisations to select the activity, from a predefined list, which reflected their main role.

4 We explored the approach taken by the Charity Commission to regulate registered charities.

- We **carried out unstructured interviews** with staff of the Charity Commission. The topics covered in interviews included: the Commission's role as the independent regulator for charities in England and Wales; the performance of the Commission against its statutory objectives; the approach taken by the Commission to enforce charity law among registered charities.

- We **examined the Charity Commission's reports and documents** to understand its approach to regulation and to identify performance against the Commission's statutory objectives.

- We **reviewed survey findings** from the Charity Commission's survey on public trust and confidence to examine public perceptions of the Commission.[27]

- We **reviewed published material** from other organisations. In particular we drew on the Better Regulation Executive's report on the Charity Commission.[28]

- We **analysed financial data**, provided by the National Council for Voluntary Organisations, to map the sub-sectors of the charity sector against the different levels of regulatory oversight.

27 *Public trust and confidence in charities*, research conducted by Ipsos MORI on behalf of the Charity Commission, June 2012.
28 Better Regulation Executive, *Charity Commission: A Hampton Implementation Review Report,* March 2010, p. 3.

5 **We explored the role of other bodies with oversight of the charity sector.**

- We **carried out unstructured interviews** with key officials from the principal regulator departments and bodies.[29] The topics covered in interviews, included: the size of the sector regulated; the role of the principal regulator in regulating its charities; the relationship the principal regulator had with the Charity Commission; and the approach taken by the principal regulator to regulate for charity law. We interviewed officials from HM Revenue & Customs to understand the Department's role in assessing eligibility for tax relief. We interviewed officials from the Charity Commission to understand the roles of other bodies with oversight of the charity sector, and the Commission's relationship with these bodies.
- We **reviewed the published and unpublished documents** related to the role of the principal regulators, including the memorandums of understanding between principal regulators and the Charity Commission.
- We commissioned the National Council for Voluntary Organisations to analyse financial data to **estimate the size of the charity sectors** overseen by principal regulators.

29 We interviewed officials from the Department for Culture, Media and Sport; the Department for Education; the Department for Environment, Food and Rural Affairs; and the Higher Education Funding Council for England.

Appendix Three

Other types of organisation working in the public interest

Descriptions of organisations, not legally recognised as charities, which may choose to prioritise society before profit

Organisation	Definition
Community Interest Company (CIC)	A Community Interest Company (CIC) is a limited company created by individuals who wish to conduct a business or other activity for community benefit and not purely private advantage. The company has to meet a community interest test and there is an asset lock which means that assets and profits must be used for that purpose. The Community Interest Companies are regulated by the Office of the Regulator of Community Interest Companies.[1]
Social Enterprise	A social enterprise has a clear social or environmental mission, generates the majority of its income through trade, reinvests the majority of its profits, is autonomous of the state, majority controlled in the interests of the social mission and is accountable and transparent.[2]
Cooperative/Mutual	Cooperative businesses are owned and run by and for their members, whether they are customers, employees or residents. Cooperatives share their profits between their members and allow their members to shape their decisions.
Community Amateur Sports Clubs	Community Amateur Sports Clubs are membership organisations which promote amateur sports, reinvest any profits in the club and when wound-up their assets either stay in amateur sport or are transferred to charity.[3]

NOTES

1 Department for Business, Innovation and Skills, *Community Interest Companies,* available at www.bis.gov.uk/cicregulator

2 Social Enterprise UK, About Social Enterprise, available at www.socialenterprise.org.uk/about/about-social-enterprise

3 Sport England, *Community Amateur Sports Clubs,* available at www.sportengland.org/support_advice/cascs.aspx

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