



HM TREASURY



Home Office

**REVIEW OF SAFEGUARDS
TO PROTECT THE
CHARITABLE SECTOR
(ENGLAND AND WALES)
FROM TERRORIST ABUSE**

SUMMARY OF
RESPONSES AND
NEXT STEPS

Home Office and HM Treasury:
December 2007

Contents

Executive Summary	2
Chapter One: Background	4
Chapter Two: Summary of Responses to the Consultation	6
Chapter Three: Government Response and Final Recommendations	16
Chapter Four: Conduct of the Consultation	21
Annex One: List of respondents	23
Annex Two: List of consultation questions	24

Executive Summary

The consultation paper ‘Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse’ was published in May 2007. It set out the findings of a review which identified strengths and vulnerabilities in the charitable sector and made a series of recommendations. The consultation paper also posed a number of questions, seeking views on the issues raised and on the recommendations proposed. This report summarises the responses received to that consultation paper and the Government’s response and final recommendations.

Most of those who responded to the consultation paper welcomed the exercise and supported the need for good governance and risk management in the sector, but they also emphasised the rarity of abuse of charities by terrorists. Many of the responses called for the recommendations to be proportionate and risk-based, avoiding a one size fits all approach.

Following careful consideration of the responses received, the Government recommends that a series of measures should be put in place to protect the charitable sector from terrorist abuse. The Government welcomes the Charity Commission’s commitment to implement these and to take into consideration the views expressed in response to the consultation paper.

In summary, the recommendations are that:

- **All those involved in the charitable sector should commit themselves to ensuring that charities do not provide an open mechanism for funds to be transmitted to terrorist networks. Both the Charity Commission and the sector have an important role to play in delivering proportionate and effective preventative safeguards to prevent this from happening.**
- **The Charity Commission should have public, strategic and operational objectives to identify and minimise the risk of terrorist exploitation of charities. It should have a business strategy that directs activities and resources to deliver these objectives. It should identify and put in place benchmark indicators of success, on which it reports regularly.**
- **In consultation and collaboration with other relevant bodies, the Charity Commission’s business strategy should include provisions which will encourage the following outcomes:**
 - (i) **Risk-based diligence and assurance**
 - **There should be a risk-based approach: Charities should assess their exposure to the risk of terrorist exploitation and, in response, take proportionate steps to ensure that funds are not passed, directly or indirectly, to partner organisations with terrorist connections.**
 - **The ‘know your beneficiary’ principle should extend to identifying and forestalling any funding connections either to designated terrorist organisations (such as those on the Government’s asset freeze or proscription lists) or to recipients whose activities may give support to terrorism.**
 - **This risk-based approach should be supported by the Government and the Charity Commission through:**
 - **Practical guidance on evaluating risk and taking appropriate and proportionate measures to forestall abuse;**

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

- Ongoing and informed feedback to the sector on charity-linked terrorist finance threats worldwide; and
- Risk based assurance work (including, where appropriate, on-site visits) to verify the proper end use of funds.

(ii) Proactive investigation and disruption

- The Charity Commission should develop its investigative capacity and appropriate co-ordination with counter-terrorist agencies to help ensure that instances of terrorist finance in the sector are identified and investigated proactively, in line with the Charity Commission's independent risk-assessment procedures.
 - Both the Charity Commission and the counter-terrorist agencies are operationally independent. Effective working relationships between them are therefore essential. Protocols to encourage co-ordination, and to measure their success, should be kept under review.
- The Charity Commission and other relevant bodies should proactively deploy the powers available to them, as an integral part of efforts in the UK to disrupt the flow of funds to terrorists.

Important issues have also been raised which were not addressed in the original review, for example the difficulties facing charities which operate in foreign jurisdictions. The Government has considered these issues carefully: this document sets out the Government's response.

Chapter One: Background

In February 2006, the Chancellor of the Exchequer announced that the Government would review how best to strengthen the safeguards to protect the charitable sector from terrorist abuse and protect donor confidence. The vast majority of charities in this country are legitimate, comply with existing regulatory requirements and have no involvement in terrorism. Nevertheless, the charitable sector is an attractive target to terrorists and some individual charities have been exploited to raise and move funds for terrorist groups. It is therefore right that the Government should take steps to ensure that the sector continues to be adequately protected in the face of this small, but genuine threat.

The review was also a consequence of the development, by the Financial Action Task Force, of an international best practice standard on the prevention of terrorist abuse of charities. It was in this context that the Government launched the review and consultation exercise to which this document refers.

THE CONSULTATION EXERCISE

The consultation paper and review of ‘Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse’ was published May 2007 by the Home Office and HM Treasury. The consultation paper set out the main findings of a review which looked at the regulatory environment for charities through the lens of terrorist finance risk in order to seek out strengths, gaps and vulnerabilities. It posed a number of specific questions and invited comments on a set of recommendations which were drawn up by the Government, in consultation with law enforcement, the Charity Commission and several sector umbrella organisations. This followed an assessment of existing safeguards within the charitable sector, and identified the key requirements for an effective, proportionate response to this evolving terrorist threat. The consultation paper was divided into four main sections covering: ways of tackling terrorist financing; the threat of terrorist financing to the charitable sector; current safeguards and recommendations; and consultation questions. A list of those questions can be found at Annex Two.

The consultation exercise ran for a period of 12 weeks and closed on 2nd August 2007. The consultation paper was placed on the Home Office website and copies were distributed to a number of key stakeholders inviting comments. The Home Office also met with a number of representatives from umbrella bodies, law enforcement agencies, the Charity Commission and other Government departments in order to take views and encourage further responses.

THE RESPONSES

In total 23 responses were received. The majority came from umbrella organisations within the charitable sector and professional associations with an interest in the sector. Given this, the Government feels the returns were sufficient to provide a reasonable cross section of views on the review and its recommendations.

The consultation paper was generally well received with respondents recognising the need to protect the charitable sector. Most respondents were also keen to emphasise that whilst this was an important issue, the scale of terrorist links to charitable activity is extremely small in comparison to the size of the sector.

The number of responses from each sector is given in the table below. A list of all those who responded can be found at Annex one.

**REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR
(ENGLAND AND WALES) FROM TERRORIST ABUSE**

SECTOR	NUMBER OF RESPONDENTS
NGO/charity/voluntary organisation	11
Professional associations	4
Government departments	1
Non-departmental public bodies	3
Local government	1
Individuals	3

Chapter Two: Summary of Responses to the Consultation Exercise

GENERAL POINTS

This chapter summarises the submissions received by the Government in response to the consultation paper, both to the specific questions raised by the Government and to the more general issues addressed by the review.

The majority of respondents recognised the need for good governance and risk management to be fully embedded and engendered within the sector. Most respondents also welcomed the Government's production of an assessment of the risk the charitable sector faces from terrorist financing and of the measures which are needed to address these vulnerabilities. Respondents urged the Government to recognise the efforts already being undertaken by the sector to maintain and improve transparency and accountability to tackle the risk of abuse, by terrorists or otherwise.

Many respondents called for the Government's response to the results of the review and consultation exercise to be proportionate and risk-based, avoiding a one-size fits all approach. The sector is large and diverse and this needs to be recognised by the Government. For the majority, the risk of abuse is low and so any additional requirements imposed on the sector should be evidence based. However many responses also recognised that even the lowest risk charities should have appropriate and proportionate safeguards in place.

Many respondents raised concerns about the imposition of further regulation to address these issues. It was felt by most that this was neither desirable nor necessary. There was however a clear consensus that the sector needed further guidance and support in this area. It was suggested that any additional assessments and controls should be built into existing risk management systems.

Nearly every response received during this consultation exercise emphasised the rarity of terrorist abuse of the charitable sector. Whilst there was support for undertaking a review such as this, it was argued that the Government should not overstate the risk to charities and that the credibility of the sector should not be undermined as a result. Currently the sector enjoys high levels of public trust and confidence and instances of abuse are rare. Overstating the risk of abuse may be counter productive and potentially decrease public confidence in the sector. Some respondents felt that there was a lack of examples and hard data about the actual number of substantiated incidents, as opposed to the numbers of allegations and investigations. There were also calls in many of the responses for the Government to recognise the valuable contribution which charities make to civil society as well as to humanitarian relief and development.

RESPONSE TO SPECIFIC QUESTIONS

- **Do you agree that a risk-based and proportionate approach involving all stakeholders is the best way to counter the threat of terrorist abuse of charities?**

It was clear from the replies received that most respondents believe, that regardless of the methods used to counter the threat of the terrorist abuse of charities, the solution needs the involvement and commitment of both the Charity Commission and the sector.

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

While respondents supported a risk-based approach, in which attention would be focused on the areas of highest risk, there was disagreement in the responses about how those high-risk areas should be identified. Some responses suggested that an evidence based approach would identify and address any risks to the sector in a manner that is targeted and proportionate. Using a set of blunt or abstract risk-factors such as the type of organisation to identify risk would be less effective in identifying genuine threats and so more burdensome to charities at low risk of abuse.

Regardless of how risks are identified, respondents felt that a risk-based and proportionate approach involving all stakeholders should be central to the Charity Commission approach to tackling this threat. The Charity Commission agreed. This would allow risk to be identified and proportionate risk mitigation systems to be put in place. It would avoid systems which increase the overall burden of regulation where risk is low. One respondent suggested that such a risk-based system would be consistent with the Government's overall approach in other areas of anti-money laundering and terrorist financing strategy.

A number of responses raised serious concerns about the underlying assumptions driving the risk model identified in the consultation paper, particularly the use of the phrase 'groups which are closely aligned to particular religious or cultural movements'. Many respondents felt that it was wrong to characterise such charities as being at greater risk and that this phrase should be removed as a criterion for risk assessment. There were fears that the application of such language could have a negative impact on the reputation and fundraising abilities of these charities and potentially lead to stigmatisation, alienation and discrimination.

A number of respondents felt that as a corollary to a risk-based system, the Charity Commission should produce guidance on how charities should respond to the results of a risk-assessment and where risk is identified, what are the most proportionate measures to take to mitigate this risk.

There was general agreement amongst the respondents that any approach should be proportionate to the threat and concentrate on specific risks and vulnerabilities. Some respondents called for the need to balance risk-based prevention with evidence based policing, also drawing attention to the problems with a one size fits all approach.

The Charity Commission suggested that more work needed to be done on the nature and scale of the risks, and an appropriate risk framework needs to be devised. The Charity Commission has undertaken to build a risk framework which is adaptable to different kinds of charities, working in different ways, in different situations.

- **Are there measures that the Government could take in addition to the recommendations presented here that would help to safeguard public and donor confidence in the integrity of the sector?**

TRANSPARENCY AND ACCOUNTABILITY

Some respondents argued that the Government should continue to promote principles of transparency and accountability in charities, whilst also placing a greater emphasis on the positive value of the voluntary sector and the role that charities play in working with individuals and sections of society that are key to the identification of the threat. The Government should also avoid casting suspicion on the sector as a whole and on certain groups. One respondent urged the Government not to single out Muslim charities, so as not to alienate them or inhibit them from developing transparency and other characteristics of good practice.

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

NEW GUIDANCE

A number of respondents felt that safeguarding the sector was a question for the Charity Commission, in collaboration with the sector, to address rather than the Government. One respondent urged that the Government ensure the Charity Commission is sufficiently well resourced to carry out its regulatory and advisory roles in this area effectively. Guidance and support from the Charity Commission could help charities to identify and counter the risk of abuse, thus helping to safeguard confidence in the sector.

NEW LEGISLATION

A few of responses raised questions about new legislation in this area. All agreed that this was neither required nor justifiable. They also asked that no additional regulations, compliance requirements or sanctions should be introduced without adequate prior consultation with the sector.

JURISDICTION

The issue of jurisdiction was also raised in response to this question, in two different contexts. **Firstly** there was concern about a lack of a consistent approach to tackling terrorist financing throughout the UK. The timing of the establishment of the Charity Commission in Northern Ireland was raised as a risk. There were fears that charities could be established in Northern Ireland precisely to avoid the regulatory framework which exists elsewhere in the UK.

The Department for Social Development in Northern Ireland made clear however that changes were currently being made to legislation in Northern Ireland which would bring it more into line with other parts of the UK, in addition to creating its own regulatory framework. The Office of the Scottish Charity Regulator (OSCR) also noted that all charities in Scotland must be registered with OSCR and as such must operate under the OSCR's jurisdiction and scrutiny. The OSCR as regulator for charities in Scotland has responsibility for the investigation of apparent misconduct and the facilitation and compliance with the Charities and Trustees Investment (Scotland) Act 2005. In its response the OSCR welcomed the opportunity to respond to this consultation paper and agreed that the review contains important principles and recommendations which the OSCR will very seriously consider.

The **second** issue raised about jurisdiction concerned standards and regulations in other countries, and the requirement on charities based abroad but active in the UK to comply with UK requirements. One respondent called for guidance to be provided for those charities with a majority of overseas based trustees, which explained the requirements of UK law and the impact that failure to comply would have on the charity in question. Another suggested that the Government should review the legal framework for reciprocal exchanges of information with domestic and foreign governmental bodies with a view to facilitating both civil and criminal investigations of the overseas activities of charities and other persons. There was also concern that, whilst it is recognised that the UK regulatory regime for charities is a world leader, little or no attention is being devoted to safeguarding the rest of the unregulated sections of the voluntary sector as envisaged by FATF Recommendation VIII and the NPO code of conduct issued by the EU for implementation. A further respondent suggested that the Government should use the FATF Presidency to develop a more effective approach at an international level, ensuring that international efforts are directed at specific risks and vulnerabilities and not targeted at the sector as a whole.

The Charity Commission urged a cross Government approach encouraging the take-up of the principles of good regulation of charities internationally and promoting international minimum standards for charity regulation.

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

- **How should charities assess their exposure to the risk of terrorist exploitation?**

There was general agreement that when assessing their risk, charities should consider the political, social and economic contexts in which they operate and the risk these pose. Some felt that assessing this risk of terrorist exploitation could be encompassed in existing risk assessment processes already in place for assessing any other kind of potential major risk. A number of responses also highlighted useful Charity Commission guidance on risk assessment that already existed and that had been well received.

However, a number of respondents were keen that the Charity Commission should develop model risk assessment frameworks, identifying ways in which charities should assess their exposure to risk without creating any new legislation or regulatory burdens. It was also suggested that the Charity Commission could provide case studies where charities have strengthened their risk management procedures as a consequence of a real threat to help to demonstrate the risks facing the sector. Many of the responses highlighted that any form of risk assessment which was not developed with involvement from the sector or was inherently linked to the religious and cultural orientation of an organisation would be unacceptable. The Charity Commission have undertaken to work with the sector and other regulators to develop a proportionate risk assessment framework and to promote and encourage its use as good practice.

- **What information and tools would assist charities to do this?**

There was broad agreement in the responses that the Charity Commission should provide clear written guidance for charities on how to fulfil their legal and regulatory responsibilities and duties. There were suggestions that this should include an analysis of legislation and advice on conducting risk assessments. A number of respondents also felt that, in addition to guidance on legal obligations, examples of good practice and case studies would be useful, though a distinction should be made between the two. Such guidance and advice should draw on the experiences and the needs of a variety of diverse organisations. A number of responses also suggested that some umbrella organisations could be and were prepared to be involved in drawing up this guidance.

Other suggestions for information and tools which would assist charities included links from the Charity Commission's website to the Government's list of designated individuals on HM Treasury's website, a list of proscribed organisations on the Charity Commission's website and sector relevant-intelligence alerts communicated via the Charity Commission to enable charities to prepare for and fend off new threats.

- **Is there a need for a more explicit 'due diligence' obligation on the charity sector requiring appropriate controls to be put in place by charities for the purposes of detecting and forestalling abuse by terrorists? If so what is the best mechanism for delivering this change?**

There were mixed views from the respondents with regards to the need for more explicit 'due diligence' obligations. A number of respondents stated that due diligence would be appropriate and several suggested that guidance on this should be provided by the Charity Commission. A number of responses urged that the differences across the sector should be borne in mind, since specific due diligence obligations across the whole sector would not be appropriate and would go against the risk based model proposed in the review. A better approach might be to get charities to undertake a simple risk assessment, and only if a high level risk is identified, should decisions be taken as to whether additional controls were needed to mitigate this risk.

It was also suggested in one response that when considering this issue a distinction should be made between 'due diligence' as essentially a professional fact finding and verification process for validating assertions made between two contracting parties and 'due care' as a trust law obligation requiring charity trustees to take as much care as a prudent person would of business looking after their own affairs.

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

EXISTING MEASURES

Several respondents felt that, in this context, sufficient measures were already in place. A number of respondents pointed to the Charities Act, self regulation, Charity Commission guidance and other legal obligations which already exist for the purpose of protecting money given to charities from misappropriation. Many suggested that further legal obligations were not necessary and warned that further measures would be ‘gold plating’ existing adequate safeguards.

Several respondents stated that there is already an obligation on trustees to act at all times in the best interests of the charity and its beneficiaries; ensuring that funds are not misused or appropriated for terrorist purposes is implicit in these duties. They also suggested that as charities are already subject to the provisions of existing anti-terrorism legislation there was no need for more.

A number of respondents were concerned that there was little or no recognition in the review of the role of external audit. Auditors, accountants and lawyers working for charities are bound by anti money laundering/terrorist financing regulations and are aware of their duties in this respect. However it was also recognised that this would perhaps only apply to charities of a certain size.

GUIDANCE AND GOOD PRACTICE

There were nevertheless calls for the Charity Commission to produce and disseminate clearer and more explicit guidance for trustees about existing due diligence requirements, good practice and legal obligations and also for charities to implement procedures and controls that are proportionate to the level of risk they face in respect of the threat of terrorism.

COROLLARIES TO DUE DILIGENCE REQUIREMENTS

A number of respondents felt that due diligence requirements (existing or otherwise) should be accompanied by a number of corollaries. **Firstly** a good faith defence for trustees. It was suggested that if a trustee could demonstrate adherence to the due diligence requirements, in good faith, they should not be held responsible for any abuse of their funds that might subsequently occur. And that without such a defence, humanitarian work in certain parts of the world would be virtually criminalised. It was unacceptable for trustees to be exposed to a risk of prosecution merely as a result of operating in high-risk areas. The **second** corollary suggested by a number of respondents was that due diligence obligations should be imposed on the Charity Commission as regards initiating and conducting proportionate and evidence based investigations.

- **What form should ‘know your beneficiary’ checks take?**

Several of the respondents were of the view that charities should take responsibility for assessing their exposure to risk and take steps to ensure that funds are not passed onto terrorists. Some suggested that the ‘know your beneficiary’ principle was the same as the ‘know your customer’ principle applied in the financial sector and, with that in mind, charities should adopt this principle.

Several respondents felt that if ‘know your beneficiary’ checks were to be undertaken, they should be flexible and dependant on the size and nature of both the charity and their partner organisations. They should also be proportionate in terms of both finance and staffing available to charities.

A number of the respondents questioned the meaning of ‘know you beneficiary’, how the Government was defining this and how this definition might apply in different circumstances. One response suggested

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

that this should be more accurately referred to as ‘know your partner’ rather than ‘beneficiary’ since it is sometimes difficult to identify the individuals who are the ultimate beneficiaries of charitable donations.

Additionally it was felt that charities could not be held responsible for the past, present or future actions of individual beneficiaries. Most international charities work through partner organisations to deliver programmes of development and humanitarian assistance.

A number of responses suggested that ‘know your beneficiary’ checks could be done in the form of or in addition to compliance testing of partner organisations. Most large international charities have systems for selecting and assessing potential partner organisations, monitoring programme delivery, evaluating impact and internal audit systems. It was suggested that additional due diligence tests could be added to this process though there was no agreement amongst the responses on whether any additional checks were required.

It was also felt by many that the role of defining the checks and developing guidance on fulfilling legal obligations in this area should be for the Charity Commission, with the support of the sector and sector umbrella bodies. Several respondents suggested that in doing this the Charity Commission should work within existing charities procedures wherever possible to ensure they reach the standards required.

A number of respondents suggested that charities could assess their exposure to risk and take steps to ensure funds are not passed to terrorists by making checks against the lists of proscribed organisations and individuals, such as the Government’s asset freeze list on HM Treasury’s website. It was suggested that the Charity Commission could publish a comprehensive list on its website.

One respondent questioned whether charities should introduce ‘know your donor’ checks in addition to ‘know your beneficiary’ checks.

- **Should the proposals for ‘know your beneficiary’ checks be turned into a standardised requirement across the sector? If so, what is the best way to do this?**

The majority of respondents felt that a standardised approach would be inappropriate and, given the diversity of the sector, that it would be difficult to produce a standard approach which would meet the needs of each organisation. Most felt that a risk-based approach, with a standard minimum would be a more appropriate method of supporting charities to identify and eliminate vulnerabilities. Most respondents also agreed that any requirements should be proportionate, demonstrably effective, whilst also not being unduly onerous.

Several respondents emphasised the point, also raised in responses to the previous question, regarding the definition of ‘beneficiary’, suggesting that ‘partner’ would be more appropriate when considering these issues.

It was suggested by some that the Charity Commission would be best placed, along with appropriate sector partners, to work up a range of ‘know your beneficiary’ (or partner) checks which charities could use. It was suggested that these checks could include checking the organisation against lists of proscribed organisations, checks on the governance of partner organisations, checking the legal status of partners and assessments of its financial control systems.

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

- **Given the diversity of the sector, what is the best way to raise awareness of its obligations under the Terrorism Act 2000 and financial sanctions legislation?**

Most respondents suggested that guidance from the Charity Commission would provide the best way of raising awareness about the legal and regulatory obligations on charities. It was also suggested that the Charity Commission could go further than this, providing sub-sector specific guidance, to complement the standard guidance.

A number of respondents also felt that sector umbrella bodies, alongside the Charity Commission, could assist in the distribution and dissemination of such guidance. There were also a number of suggestions about the best ways to provide the guidance, such as case studies and seminars.

The Charity Commission, in their response to the consultation paper, agreed with many of the responses, suggesting that they, sector umbrella bodies and leaders have a key role to play in disseminating this information alongside guidance on good practice. The Charity Commission have committed to develop specific guidance on the relevant aspects of the legislation in consultation with the sector.

- **How can existing best practice in the sector be identified and promulgated in terms of a) risk assessment, and b) proportionate controls, systems and processes to reduce exposure to particular risks?**

The vast majority of respondents were in agreement that this task should fall to the Charity Commission and sector umbrella bodies to work together to identify and share best practice. There was however differences in emphasis amongst the responses as to who was best placed to identify and recommend the guidance. Some respondents felt that the sector themselves, through umbrella bodies should take the lead in identifying, developing and sharing best practice and that this should be done in collaboration with the Charity Commission. Several responses suggested that BOND ('British Overseas NGOs for Development') would be an appropriate organisation to do this and would be willing to undertake this task provided it has extra resources from the Charity Commission to do so. Others however felt that the Charity Commission was most appropriately placed to develop cost-effective risk management processes and to encourage the development of voluntary standards of best practice for high-risk charities.

There was also a suggestion that besides drawing on charities own best practice experiences, best practice should also be drawn from others such as auditors, business and the banking sector, to ensure the charitable sector is up to date with 'all the new tricks'.

- **What form should feedback to the sector on relevant terrorist threats take?**

The majority of responses agreed that this should be tackled through and by the Charity Commission. Many of the respondents felt that an ongoing dialogue with the sector about evidence based terrorists threats is vital to improve practice to protect charities. It was suggested by some that doing this in a web based or electronic form would be the most effective way of disseminating the information. Suggestions also included updated Charity Commission guidance, regular email updates and special bulletins. One respondent also emphasised the need for there to be a clear indication from the Charity Commission about the status of the information. And others felt that further consultation was needed to identify the best ways of disseminating such information.

It was also felt by some of the respondents that as part of this ongoing dialogue, feedback should be provided when investigations have led to a clean bill of health for a charity. And that the Charity Commission should reconsider how it presents the outcome of its investigations. If all cases were to be

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

accompanied by a reason for their conclusion it would increase the likelihood of detecting suspicious behaviour in a timely manner.

Two respondents also called upon the Government and the Charity Commission to take steps to clear the names of charities, who are accused of terrorism in other countries but are registered and deemed legitimate in the UK.

There was also some support for an enhanced relationship between the counter terrorism community and the Charity Commission. It was felt that closer cooperation between them could contribute towards more effective measures to prevent terrorists from using charities for the purposes of terrorist financing. However there was concern that this should not in any way jeopardise the independence of either the sector or the Charity Commission.

Other Issues raised

There were a number of issues raised by respondents, in addition to the answers given to the specific questions posed by the Government in the consultation paper. A summary of these issues are set out below.

THE CHARITY COMMISSION

Many responses raised the issue of the independence and reputation of the Charity Commission. They felt it crucial for the Charity Commission to retain the trust and good will of the sector, and it should do this by maintaining independence from the Government and law enforcement agencies. Whilst some respondents recognised that a strengthened relationship could be beneficial, this should not ultimately compromise the Charity Commission's independence.

Some respondents felt that it was inappropriate for the Government to consult or take decisions surrounding the detailed implementation of the measures identified by the review and consultation paper. Others felt that further consultation with the sector, by the Charity Commission, on its plans for the development of new policies and procedures to safeguard the charitable sector from terrorist abuse is essential. A number of respondents suggested that the Government should conduct a Regulatory Impact Assessment on the proposals set out in the review and for an independent assessment of the impact on humanitarian relief and development work of all anti-terrorism measures affecting the sector before they are implemented.

A number of respondents raised the issue of Charity Commission resource and funding. It was argued that the Government must ensure that the Charity Commission is sufficiently well funded in order for it to be able to undertake counter terrorism work. This should include the provision of additional resources to accommodate any new burdens as a result of this review. Steps should also be taken to ensure that existing activities are not jeopardised as a result. It was also suggested that the focus on countering terrorist financing in this sector should not in anyway divert charities and the regulator from their wider duties to protect charitable resources and charity beneficiaries from the risk of maladministration and other kinds of abuse. It was felt that if this were to be the case it would be detrimental to the charities and their effectiveness. Some suggested that the Charity Commission's focus should be limited to high-risk charities and that proactive investigations are initiated only when there is reasonable cause.

GOOD FAITH DEFENCE

A number of respondents raised the issue of 'good faith' defence. This was raised under discussions of due diligence obligations in several responses and independently by others. It was felt that a good faith defence to accompany the widely drafted terrorism legislation was required to protect trustees in situations where delivering vital humanitarian aid inevitably involves incidental contact with proscribed organisations and was essential to protect charities that have taken reasonable steps to forestall any funding connections to terrorist organisations. It was felt by some that greater clarity and certainty is needed to ensure that legitimate humanitarian work is not criminalised by counter terrorist financing measures.

NON REGULATED VOLUNTARY SECTOR

Several respondents raised the issue of the non-regulated voluntary sector, both charitable and otherwise, being at risk of abuse by terrorists. It was felt by some that the review's focus on the regulated charitable

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

sector was disproportionate, buttressing the already well-regulated UK charitable sector. Some respondents questioned the assumption that the regulated charitable sector was more at risk than the unregulated parts of the voluntary sector, arguing that it is far easier for terrorists to use unregulated and informal groups as a vehicle for supporting terrorism. It was suggested that work should be carried out to assess whether there were similar problems with terrorists exploiting the unregulated voluntary sector.

FOREIGN JURISDICTIONS

A number of respondents asked for greater clarity on the position of the charitable sector vis a vis their obligations in relation to foreign legislation, foreign sanctions lists and foreign lists of proscribed organisation and individuals. There were particular concerns around the US OFAC (Office of Foreign Asset Control) lists and the implications this had for UK charities who may find themselves designated in the US as a supporter of terrorism. There were calls for the UK Government to take an active role in lobbying other Governments, particularly the US, to take action to remove UK organisations from such lists where there was no evidence to warrant their listing.

CHARITABLE WORK IN AREAS OF CONFLICT

It was suggested by several respondents that charities that work in certain parts of the world, for example Palestine and Sri Lanka, are in a difficult position given the complex political and operational circumstances. Some asked for greater dialogue between Government and the charitable sector on these issues and for better guidance for charities operating in these areas to enable them to protect themselves and their funds from abuse.

Chapter Three: Government Response and Final Recommendations

All the responses to the consultation paper have been carefully considered. On the basis of the responses and the findings of the review, the Government would like to address a number of issues.

The Government welcomes the positive response from the sector to this review and consultation exercise. The Government is also pleased to note the good governance, transparency and financial management and responsibility which already exists within the sector to prevent and tackle abuse, terrorist or otherwise. The Government recognises the value of the sector's expertise in tackling terrorist abuse and in implementing ways of preventing it. The Government is committed to continued involvement of the sector in work to tackle terrorist abuse and welcomes the Commissions intentions of consultation, collaboration and partnership with the sector in taking forward the implementation of its terrorist financing strategy.

THE THREAT

The Government recognises that the number of charities with links to terrorism is small in proportion to the total number of charities in the sector. However, as part of an overall approach to tackling terrorist financing, the Government has identified areas that are relatively more vulnerable to exploitation and is working to mitigate those risks. The charitable sector is one such area. The Government is also working with other sectors and regulators to take action to mitigate the risks elsewhere. For example, work is currently underway to tackle the risk of abuse in the Money Service Business sector.

It is the Government, law enforcement and intelligence agencies assessment that while the scale of terrorist links to the charitable sector is extremely small in comparison to the size of the charitable sector, the risk of exploitation of charities is a significant aspect of the terrorist finance threat.

Charities can be abused by terrorists to provide a veil of legitimacy for their activities and acting as a recruitment and propaganda tool. Charities often have complex global financial operations dealing with multiple donors and currencies. They often operate in areas of conflict, with little infrastructure and frequently move goods, money and people to these areas. As with any sector which raises, moves and uses funds through the formal banking sector or through alternative remittance systems where no formal banking structure exists, they are subject to the risk of exploitation by terrorists. Such exploitation is unacceptable, and the impact of even one proven case involving a charity is potentially significant for public trust and confidence in charity. The Government is of the view that safeguards to protect the charitable sector are essential and can play an important role in maintaining the high levels of public trust currently enjoyed by the charitable sector.

The Government recognises that the charitable sector plays a significant and vital role not only in society generally but also in the solution to the development of extremism and terrorism. The contribution that charities make to society and the national economy, as well as their wider impact around the world is invaluable. Charities make a vital and positive contribution to securing an active and vibrant civil society. They often address many of the underlying causes of disaffection that may lead people to turn to extremism or terrorism.

The Government wishes to encourage a flexible and vibrant charitable sector that is sufficiently protected from terrorist abuse to prevent exploitation and to protect donor confidence. It is the Government's view that the safeguards it is proposing in this document will play a significant role in mitigating the threat, whilst not damaging public trust and confidence in the sector, and without placing additional burdens on charities.

THE CHARITY COMMISSION

The Charity Commission is a non-Ministerial government department that operates as the independent regulator of charities in England and Wales. The Charities Act 2006 specifically prohibits the exercise of any Charity Commission function being subject to the direction or control of any Minister or any other Government department. In undertaking this review and making recommendations, the Government is not seeking to infringe on the operational independence of the Charity Commission. The Government agrees with the sector and the Charity Commission that independent external regulation of charities safeguards public trust and confidence in the sector.

The Government has undertaken this review in collaboration with the sector, the Charity Commission, law enforcement and intelligence agencies. Together work was undertaken to identify the most appropriate ways of mitigating the threat of terrorist abuse of charities. As a result the Government has made a series of recommendations which it believes to be the most effective way to tackle terrorist abuse of charities.

The Government is of the firm view that the Charity Commission is uniquely placed to deal with abuse where it does occur in charities. The Charity Commission has stated that tackling the risk of terrorist abuse falls squarely within its existing approach to regulation and its statutory functions to identify and investigate apparent misconduct and mismanagement in the administration of charities, and to take appropriate action to tackle this. Indeed, the Charity Commission has always been vigilant about the risks to charities and its investigative and compliance work has been effective where instances have arisen. In its response to this consultation paper the Charity Commission outlined its current approach and future plans for tackling terrorist abuse in charities and will shortly publish a strategy for public discussion. The Government welcomes the Charity Commissions commitment to take forward the findings of this consultation paper and the recommendations.

In order to support the Charity Commission to do this, HM Treasury has provided an addition £1 million for 2007-2008 to tackle this threat, this will be added to the Charity Commission's baseline funding, and will therefore continue throughout the Comprehensive Spending Review period to 2010-11. The Charity Commission have also committed to redirect a significant level of existing resources to supplement awareness and outreach work, as well as developing its compliance function and the specialised staff and infrastructure that is required for casework involving possible or alleged links to terrorism in charities.

APPROACH

It is the Government's firm view that any approach to tackle the threat of terrorist abuse should be risk based and proportionate. The Government does not believe that a one size fits all approach would be either desirable or practical, particularly given the diverse range of charities and varied nature of the activities they undertake. The Government is also clear that it is largely the role and responsibility of the Charity Commission, in partnership with the sector itself, to undertake work to safeguard the charitable sector from the threat of abuse. The Charity Commission and the sector are in the best position to identify the most appropriate ways to implement safeguards to protect the sector.

In its response to this consultation paper the Charity Commission has stated that any regulatory action taken will be evidence based and proportionate, fair and reasonable, will take account of the issues, the risk involved to the charity and its beneficiaries, and the capacity of the charity to comply. The Charity Commission has stated that where there is evidence of terrorist abuse it will act swiftly, decisively and robustly, based on the evidence and targeting the core of the abuse. The Government is pleased to note the Charity Commission approach of minimising the sector's exposure to the risk of terrorist abuse by

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

encouraging and supporting the development in charities of robust, accountable and transparent governance, strong financial management and good general risk management policies and procedures. The Charity Commission response to the consultation paper can be found on its website (www.charitycommission.gov.uk)

Specific Policy issues

GOOD FAITH DEFENCE AND CHARITABLE WORK IN AREAS OF CONFLICT

There were a number of respondents who suggested that a good faith defence was required by charities to protect trustees in situations where delivering vital humanitarian aid involves incidental contact with proscribed organisations, and was essential to protect charities that have taken responsible steps to forestall any funding connections to or incidental contact with terrorist organisations. The Government does not believe that such a defence is necessary or indeed justifiable.

The Government recognised that there are many complexities and difficulties facing charities which operate for legitimate humanitarian purposes in areas of conflict or areas where terrorists operate. The Government also recognises that many organisations have anxieties about providing vital humanitarian aid or promoting social justice in certain parts of the world where they risk being criminalised, despite having taken reasonable steps to ensure that they are not inadvertently supporting terrorism. The Government is also of the view that it would be an undesirable consequence of any measures which are put in place to protect charities to make it impossible for certain legitimate overseas charities to be involved in providing aid, or to make it impossible for any charity to provide aid in particular parts of the world.

However, any level of funding provided or support given to terrorists is unacceptable. The breadth of the UK terrorism legislation, with respect to terrorist financing, reflects the importance of denying terrorists financial support. The legislation is in place to enable law enforcement to tackle abuse and negligence where it exists and where charities or individuals have acted intentionally or irresponsibly.

Financial infrastructure is required to sustain international terrorist networks and promote their goals. The charitable sector cannot and should not be complicit, incidentally or otherwise, in supporting such ideology and networks. The Government believes that money or support given to terrorist organisations, even indirectly, will only increase the long-term suffering of people in those areas which charitable action tries to alleviate.

The Charity Commission has stated that the most effective way for the sector to minimise its exposure to the risk of terrorist abuse is through implementing strong governance arrangements, financial management and partner management. Charities which implement good general risk management policies and procedures will be better safeguarded against abuse. Furthermore the Charity Commission has committed to working with the sector and other regulators to develop and disseminate amongst charities an appropriate and proportionate risk assessment framework, based on and linking with existing good practice.

Work will need to be undertaken by the Government, the Charity Commission and the sector to develop the most appropriate ways of mitigating the risk of abuse, to protect both the charities and those whom they seek to help. The Government hopes the recommendations outlined below will act as a catalyst for this process.

NON-REGULATED VOLUNTARY SECTOR

A number of respondents raised questions around the targeting of the Government review, questioning the rationale for focussing on the regulated charitable sector.

The decision to conduct a review and make recommendations to safeguard the regulated charitable sector from risk of terrorist abuse was made in light of a number of factors. **First**, the Financial Action Task Force (FATF), Special Recommendation VIII, requires that all countries should review the adequacy of laws and regulations that relate to charitable entities which can be abused for the financing of terrorism. **Second**, charities benefit from a particular status under UK laws. This status affords them a number of privileges, most notably in this context generous tax relief and legitimacy. As a result charities are vulnerable in particular ways. It is the Government's aim to address these vulnerabilities in this review and the recommendations aim to put safeguards in place to prevent abuse.

The Government also notes that measures in the Charities Act 2006 have brought an increasing number of charities under the jurisdiction of the Charity Commission and as such subject to the same obligations and oversight. In particular many charities that are currently 'exempt' or 'excepted' will be required to register with the Charity Commission or be monitored for their charity law compliance by an existing 'principal' regulator.

Furthermore, private, informal, voluntary and community organisations are not afforded the same legal status as the regulated charitable sector and do not enjoy the same benefits that result from this status. The scope of this review was to tackle those particular vulnerabilities. The Government will continue to work closely with law enforcement, intelligence agencies and all those with an interest to address any vulnerabilities or issues which the non regulated sector may be facing.

FOREIGN JURISDICTIONS

A number of respondents raised some issues around the difficulties of operating in foreign jurisdictions and the implications of foreign sanction lists. The Government is aware that this is a significant difficulty for some charities and that guidance on overcoming the practical and legal difficulties of operating in foreign jurisdictions is required, to ensure they are complying with the law and do not support terrorism directly or indirectly.

The Government is of the view that the Charity Commission is best placed to provide advice on this matter as it affects charities. The Government will work closely with the Charity Commission to ensure that advice will reflect the Government position on proscription, designation and sanctions and that it is communicated clearly to the sector. Advice should reflect the differing stances taken by members of the international community to certain organisations and the risks and consequences associated with working abroad and under foreign jurisdictions. The Charity Commission has committed to develop the good partnerships which already exist with charities operating overseas, to build on existing safeguards and facilitate the identification and sharing of existing best practice.

RECOMMENDATIONS

Following careful consideration of the responses received to the questions posed by the consultation paper and of the other issues raised in the responses, the Government recommends that a series of measures should be put in place in order protect the charitable sector from terrorist abuse. The Government welcomes the Charity Commission's commitment to implement these recommendations and to take into consideration the views expressed in response to the consultation paper.

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

THE RECOMMENDATIONS ARE THAT:

- All those involved in the charitable sector should commit themselves to ensuring that charities do not provide an open mechanism for funds to be transmitted to terrorist networks. Both the Charity Commission and the sector have an important role to play in delivering proportionate and effective preventative safeguards to prevent this from happening.
- The Charity Commission should have public, strategic and operational objectives to identify and minimise the risk of terrorist exploitation of charities. It should have a business strategy that directs activities and resources to deliver these objectives. It should identify and put in place benchmark indicators of success, on which it reports regularly.
- In consultation and collaboration with other relevant bodies, the Charity Commission's business strategy should include provisions which will encourage the following outcomes:
 - (i) Risk-based diligence and assurance
 - There should be a risk-based approach: Charities should assess their exposure to the risk of terrorist exploitation and, in response, take proportionate steps to ensure that funds are not passed, directly or indirectly, to partner organisations with terrorist connections.
 - The 'know your beneficiary' principle should extend to identifying and forestalling any funding connections either to designated terrorist organisations (such as those on the Government's asset freeze or proscription lists) or to recipients whose activities may give support to terrorism.
 - This risk-based approach should be supported by the Government and the Charity Commission through:
 - Practical guidance on evaluating risk and taking appropriate and proportionate measures to forestall abuse;
 - Ongoing and informed feedback to the sector on charity-linked terrorist finance threats worldwide; and
 - Risk based assurance work (including, where appropriate, on-site visits) to verify the proper end use of funds.
 - (ii) Proactive investigation and disruption
 - The Charity Commission should develop its investigative capacity and appropriate co-ordination with counter-terrorist agencies to help ensure that instances of terrorist finance in the sector are identified and investigated proactively, in line with the Charity Commission's independent risk-assessment procedures.
 - Both the Charity Commission and the counter-terrorist agencies are operationally independent. Effective working relationships between them are therefore essential. Protocols to encourage co-ordination, and to measure their success, should be kept under review.
- The Charity Commission and other relevant bodies should proactively deploy the powers available to them, as an integral part of efforts in the UK to disrupt the flow of funds to terrorists.

Chapter Four: Conduct of the Consultation Exercise

This chapter explains how the consultation exercise on the ‘Review of Safeguards to Protect the Charitable Sector (England and Wales) from Terrorist Abuse’ has been conducted in accordance with the six criteria set out in the Cabinet Office Code of Practice on consultation exercises.

Criterion 1 – Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation exercises at least once during the development of the policy.

The consultation exercise was launched on 10th May and ran until 2nd August, although responses received shortly after that date were also accepted and included in the analysis.

The consultation paper was jointly published by the Home Office and HM Treasury. The Home Office has worked closely with HM Treasury, Office of the Third Sector, law enforcement agencies and the Charity Commission throughout the consultation exercise. The Home Office also met with a number of interested groups to discuss the issues in greater detail.

Criterion 2 – Be clear about what your proposals are, who may be affected, what questions are being asked and the timescales for responses.

The recommendations were set out in the executive summary. The questions posed and recommendations were set out in the relevant chapter of the consultation paper. The consultation paper was published on the Home Office website and was sent to a wide range of organisations and interest groups.

The consultation paper, and the Home Office website, included the closing date for responses and this was repeated in all correspondence. All requests for extensions were granted.

Criterion 3 – Ensure that your consultation is clear, concise and widely accessible.

The consultation paper included an executive summary of the recommendations and a separate list of the questions was provided.

The consultation paper was provided free of charge to anyone who requested a copy. On publication, it was circulated to approximately 36 organisations and individuals. The consultation paper contained details of how to respond. These details were also placed on the Home Office website.

Criterion 4 – Give feedback regarding the responses received and how the consultation process influenced the policy.

The consultation paper received 23 responses from individuals and organisations. All responses were recorded and analysed carefully. A summary of the responses is included at Chapter 2 of this document.

As a result of the consultation exercise a number of changes have been made to the recommendations to reflect the responses received during the consultation exercise.

The Government has taken account and sought to clarify in this document, its position on a number of issues not addressed in the original review and consultation paper, but which were raised in a number of the responses.

REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR (ENGLAND AND WALES) FROM TERRORIST ABUSE

Criterion 5 – Monitor your department’s effectiveness at consultation including through the use of a designated consultation co-ordinator.

Details of a designated consultation co-ordinator were not included in the consultation process. It is acknowledged that this was an oversight in the drafting of the consultation paper. However, should any comments or complaints have been received in the course of this consultation exercise, they would have been directed to the departmental consultation coordinator so that they could have been dealt with thoroughly and fairly. The Home Office did not receive any complaints.

Criterion 6 – Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The Home Office did not conduct a Regulatory Impact Assessment (RIA). The consultation paper made no recommendations for new regulations or legislation and the Home Office agreed with the Better Regulation Executive that an RIA was not required.

Annex One: List of respondents

- Association of Charitable Foundations
- Association of Chief Executives of Voluntary Organisations
- British Bankers Association
- British Overseas Agency Group
- British Overseas NGOs for Development
- Charities Aid Foundation
- Charity Commission
- Charity Finance Directors Group
- Charity Law Association
- Department for Social Development, Northern Ireland
- Financial Services Authority
- Greater London Authority
- Horwath Clark Whitehill
- Institute of Chartered Accountants
- Institute of Fundraising
- Institute of Chartered Secretaries and Administrators
- Islamic Relief
- Muslim Charities Forum
- National Council for Voluntary Organisations
- OCSR
- Wales Council for Voluntary Action
- 2 individuals

Annex Two: List of consultation questions

OVERALL POLICY

- Do you agree that a risk-based and proportionate approach involving all stakeholders is the best way to counter the threat of terrorist abuse of charities?
- Are there measures that the Government could take in addition to the recommendations presented here that would help to safeguard public and donor confidence in the integrity of the sector?

POLICY RECOMMENDATIONS

- How should charities assess their exposure to the risk of terrorist exploitation?
- What information and tools would assist charities to do this?
- Is there a need for a more explicit ‘due diligence’ obligation on the charity sector requiring appropriate controls to be put in place by charities for the purposes of detecting and forestalling abuse by terrorists? If so, what is the best mechanism for delivering this change?
- What form should ‘know your beneficiary’ checks take?
- Should the proposals for ‘know your beneficiary’ checks be turned into a standardised requirement across the sector? If so, what is the best way to do this?
- Given the diversity of the sector, what is the best way to raise awareness of its obligations under the Terrorism Act 2000 and financial sanctions legislation?
- How can existing best practice in the sector be identified and promulgated in terms of a) risk assessment, and b) proportionate controls, systems and processes to reduce exposure to particular risks?
- What form should feedback to the sector on relevant terrorist threats take?

**REVIEW OF SAFEGUARDS TO PROTECT THE CHARITABLE SECTOR
(ENGLAND AND WALES) FROM TERRORIST ABUSE**

