



NICVA Briefing Paper

Charities Bill

Jan 2008

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INTRODUCTION

This briefing explains some of the main provisions of the Charities Bill currently progressing through the Assembly. NICVA welcomes the provisions of the Charities Bill which provides statutory definitions of charity and charitable purpose; establishes a Charity Commission for Northern Ireland and a Charity Tribunal; creates a Register of Charities for Northern Ireland; and introduces the Charitable Incorporated Organisation (a new form of charitable body); sets out new rules with regard to fundraising and collections. NICVA has reservations about charities outside of Northern Ireland not having to register in the same way as charities established in Northern Ireland. NICVA welcomes the accounting thresholds and auditing requirements and the provisions for the use of independent examinations but questions what the requirements are for small charitable companies.

MEANING OF CHARITABLE PURPOSE

The current four heads of charity, originating from 1891, will be replaced by 12 charitable purposes:

1. The prevention or relief of poverty.
2. The advancement of education.
3. The advancement of religion.
4. The advancement of health or the saving of lives.
5. The advancement of citizenship or community development.
6. The advancement of the arts, culture, heritage or science.
7. The advancement of amateur sport.
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity.
9. The advancement of environmental protection or improvement.
10. The relief of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage.
11. The advancement of animal welfare.
12. Any other purposes includes any purpose recognised as charitable under existing charity law and any purposes which may reasonably be regarded as analogous to the listed purposes above as well as those by virtue of section one of the Recreational Charities Act (1958).

NICVA's Comments

The expansion of the definition of charity helps to reflect the wide range of charitable organisations and helps to modernise charity legislation. The new additions should help to recognise and deem charitable the work of many

Northern Ireland groups in the areas of peace and reconciliation and/or addressing sectarianism and racism.

We support the broad interpretation of the advancement of religion which will include the belief in more than one god and any analogous philosophical belief which does not have to involve belief in a god.

NICVA expects that Purpose 5, which also includes rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities, will make it easier for support networks and infrastructure bodies within the sector to achieve charitable status.

We also note that the advancement of amateur sport now includes games which promote health by *involving mental skill or exertion*. In the draft Order which was consulted on, it was games which promote health by involving physical skill only.

We also welcome the twelfth purpose which provides for the ongoing development and flexibility of charitable purpose over time.

The Charitable Purposes listed above reflect the definition within the Charities Bill for England and Wales thereby ensuring consistency with UK tax relief matters and that Northern Ireland charities receive comparable financial assistance.

THE PUBLIC BENEFIT TEST

The Bill states that all charities will have to demonstrate public benefit and that no particular purpose should be presumed to be for the public benefit.

NICVA agrees that in order to register as a charity in Northern Ireland, an organisation must have one or more of the charitable purposes as listed in the Order and it must provide public benefit in Northern Ireland or elsewhere. NICVA agrees that the public benefit test should be set out in legislation and supports the public benefit test which is outlined in the Bill. NICVA agrees that the public benefit test will take into account any benefit to individuals who are not legitimate beneficiaries and consider if their activities would be detrimental to the public. The test will also consider whether any conditions on obtaining that benefit are unduly restrictive such as any charge or fee for the benefit. NICVA believes that this will help ensure that charities which levy a high charge or fee, such as a private school, will have to *demonstrate* charitable activity.

NICVA welcomes the provision that the Commission must issue guidance on the public benefit requirement and consult on this before the relevant guidance is issued. However NICVA is concerned at the inclusion of the clause in Section 4(4)(b) which permits the Commission not to consult before revising any such guidance if it considers that it is unnecessary to do so. As the public benefit test will be applied in line with the guidance, it is extremely important that the

Commission be required to consult on this guidance. The latter is essential as some of our members are concerned about the application of this test and the implications that it may have on their future work. It would be in the interests of the charity sector to have assurances from the new Commission, for example, that charities which are pursuing their charitable purposes have the right to advocate on behalf of their beneficiaries.

Perhaps the wording in the Scottish Bill would make this much clearer which states that “OSCR must, after consulting representatives of the charitable sector and such other persons as it thinks fit, issue guidance on how it determines whether a body meets the charity test.”

THE CHARITY COMMISSION FOR NORTHERN IRELAND

There shall be a body corporate to be known as the Charity Commission for Northern Ireland.

NICVA believes that there is overwhelming support for the establishment of the Charity Commission for Northern Ireland both from within the voluntary and community sector and from the wider public.

NICVA welcomes this new regulator of charities which will have powers of investigation and enforcement. Effective regulation of all charities operating in Northern Ireland should enhance public trust and confidence in charities.

The Commission will have both a regulatory and an advisory function. There were strong feelings in our consultation seminars (held on the draft Order in 2006) that there needs to be a clear distinction between regulation and more general guidance. It was agreed that the Commission should give clear focus on regulatory advice and the more general advice giving should be delivered by independent umbrella bodies in the sector. NICVA believes that if the Commission is going to give out advice on best practice and regulation, then it should communicate clearly that the advice is on best practice and not instruction on mandatory requirements. It is envisaged that the capacity of those organisations with an advice role on charity and governance matters will be stretched when the new Commission comes into being and the Department needs to resource these organisations accordingly.

The members of the Commission are to be appointed by the Department however the Bill does not provide detail about how the board members are to be appointed and what type of person is not eligible to be appointed, namely elected representatives. NICVA suggests that these details should be incorporated into Schedule 1 of the Bill to ensure the independence of the new Commission. We also urge the Committee to recommend that the appointments to the board of the Commission should be overseen by the Office of the Commissioner for Public Appointments (OCPA) to ensure that the appointments are made on merit and in

a fair and open way. The Bill states that at least one member of the Commission is to be a barrister or solicitor of seven years standing. NICVA would question whether this requirement for at least one member to be legally qualified is sufficient or would it not be more prudent to require at least two members of the Commission to be legally qualified?

NICVA has reservations about the independence of the new Commission. NICVA would question if the new Commission would be able to make truly impartial decisions as the provisions in the Bill with regard to staffing, for example, require the Commission to get approval from the Department. Schedule 1 of the Bill provides that the Commission may make arrangements for secondments from the civil service. Whilst NICVA does not disagree that this should be possible, we are concerned that the staff of the new Commission should not be made up entirely of people seconded from government departments.

The Commission is going to have a huge task of carrying out its everyday functions such as registering charities, maintaining the register, applying the public benefit test, drawing up guidance, carrying out investigations, issuing public collection certificates and permits. NICVA stresses the need for the Commission to be adequately resourced in order to fulfil all of these functions otherwise the Commission could end up hindering the good administration of charities rather than helping them.

It is recognised that this Commission must build on and maintain strong links to other charity regulators in the UK and the Republic of Ireland. The continuation and strengthening of existing relationships with such bodies will be essential for the provision of and access to information for charities that operate across the different jurisdictions, especially with regard to registration and reporting.

CHARITY TRIBUNAL

NICVA welcomes the creation of a Charity Tribunal to allow for charities, or a body seeking charitable status, to question and appeal decisions, orders or directions of the Commission.

REGISTRATION OF CHARITIES

NICVA welcomes the establishment of a Register of Charities which is to be maintained by the Commission. NICVA questions, however, the change of wording from the draft Order which was consulted on. The draft Order stated that:

“Every charity which is established or operates in Northern Ireland must be registered in the register of charities.”

but the wording in the Bill states that:

“Every institution which is a charity under the law of Northern Ireland must be registered in the register of charities.”

NICVA questions if this new form of words is sufficient to ensure that every charity which operates in Northern Ireland will be required to go on the register. At the time of the consultation on the draft Order, there were concerns from UK wide and all Ireland bodies about the accounting and reporting requirements of all the regulators in different jurisdictions, however there was an understanding of the need for all charities which operate in Northern Ireland to be on the register. Article 167 of the Bill is concerned with institutions which are not charities under the law of Northern Ireland. NICVA questions whether this article creates a separate non-compulsory register for those charities that fall under this category. Whilst NICVA agrees that the reporting requirements for UK wide and all-Ireland charities should not be too onerous, NICVA has reservations about the registration process of these institutions. There is no cross reference to Article 167 at Article 16 under the Register of Charities. Also under Article 16(4) there is no requirement to indicate if the charity is a designated religious charity.

NICVA welcomes the positive outcomes that will arise from having a register that is open to public inspection which should help promote transparency and public confidence. When the register is fully up and running, the public will be able to check the legitimacy of a charity which should help to increase public confidence in charities. For example, if a member of the public had concerns about door to door collections they could contact the Commission and find out whether the organisation is a legitimate charity or not.

NICVA looks forward to the publication of a schedule setting out a timetable for the registration process of charities as currently it is unclear what the process will look like and when this is going to happen. This should help to alleviate the concerns of charities about the registration process.

CHARITY ACCOUNTS, REPORTS AND RETURNS

All charities will be required to keep proper accounting records. The Department has attempted (as far as is possible) to bring the accounting thresholds and audit requirements in line with the rest of the UK which is a considerable change from the draft Order which was consulted on.

Unincorporated charities with an income of under £100,000 must get an independent examination to be carried out by an independent examiner who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts. Alternatively they can choose to have an audit.

Charities with an income falling between £100,000 and £500,000 can have an independent examination carried out by a reporting accountant, a member of the Chartered Institute of Public Finance and Accounting or a Full Member of the Association of Charity Independent Examiners if they choose not to have a full audit.

Charities which have an annual income of £500,000 or more will be required to carry out a full audit.

The asset test which was included in the draft Order 2007 Article 68(1)(b) has not been included in the Bill. This would have required a charity to carry out a full audit if their gross income in that year exceeded £100,000 and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeded £2.8 million.

Article 66(10) in the Bill (as well as in other parts) states that “Nothing in this section applies to a charity which is a company”. Article 104 under the Charitable Companies part of the Bill outlines the new upper accounting thresholds but there is no mention of those charitable companies that fall under the £90,000 threshold. This indicates that charitable companies with an income under £90,000 are neither required to have an audit nor an independent examination but unincorporated organisations with the same income are required to carry out an independent examination. NICVA is under the understanding that the new Companies Act 2006 (UK-wide legislation) will permit charitable companies which qualify as small under company law to be scrutinised under the provisions of charity law but there is no reference to this in the Bill.

At the time of the consultation on the draft Order in 2006, UK wide charities and those that operate throughout the island of Ireland were concerned that they may be required to draw up Northern Ireland specific accounts and believed that this would result in an unnecessary expense for them. Article 167(3)(a) requires a charity established outside the jurisdiction of Northern Ireland to prepare a financial statement along with a statement of activities relating to its operations for charitable purposes in or from Northern Ireland.

CHARITY TRUSTEES

The Bill defines a charity trustee at Article 180 as:

“the persons having the general control and management of the administration of a charity”

it does not define what the general duties of charity trustees are to be although it defines the duties of a trustee of a Charitable Incorporated Organisation in Schedule 7.

CHARITABLE INCORPORATED ORGANISATIONS (CIO)

A new type of legal entity is to be introduced, which has been specifically designed for charities – the Charitable Incorporated Organisation, referred to as a CIO. The CIO will be registered and regulated by the Commission. The CIO will be similar in some ways to a limited company in offering protection of trustees from personal liability. The main benefit is that those charities opting for this type of legal form will not have the burden of dual registration or reporting with company and charity law as the CIO will be regulated by the new Commission. The organisation would always have to be charitable and the CIO would be entitled to the same tax benefits as any other charity. The Bill provides some clarity around the characteristics of this legal entity. This is a positive development for charities.

PUBLIC CHARITABLE COLLECTIONS

The present system for licensing street and house to house collections is to be replaced with new legislation covering all public charitable, philanthropic and benevolent collections. The Bill defines two types of public charitable collection: collections in a public place and door to door collections. What does and does not constitute a public place is specifically defined in the Bill. A charitable appeal is defined as an appeal to members of the public to give money or property by whatever means, which would include direct debit.

An organisation must have a public collections certificate and a permit to carry out a collection in a public place and a door to door collection. A permit for a door to door collection was not required in the initial draft Order. Both the certificate and the permit shall be issued by the Commission.

The new legislation provides for local short-term collections which will be considered exempt from the requirement to obtain a public collections certificate and a permit to collect. A collection is a local, short-term collection if the appeal is local in character and does not exceed the prescribed period.

NICVA understands that the provisions laid out in the draft Order do not cover lotteries or internet fundraising.

CONTROL OF FUNDRAISING

The Bill will bring in new controls of fundraising for charities that use professional fundraisers and commercial participators. The Bill states that there must be agreements in place with prescribed requirements. The existence of a written agreement may protect a charity or allow redress in rare cases where a professional fundraiser or commercial participator seeks to exploit a charity or charitable beneficiaries.

Professional fundraisers will be required to indicate which institutions will benefit, how the fundraiser's remuneration in connection with the appeal is to be determined and the amount of that remuneration. Commercial participators will also have to indicate the institution(s) to benefit as well as the notifiable amount that will be given to the institution(s). This will be of great benefit to the public, enabling them to be more discerning about where and to whom they make donations.


PUBLIC CONSULTATION

The Northern Ireland Assembly Committee for Social Development has commenced the Committee Stage of the Charities Bill. Copies of the Bill can be accessed from:

www.niassembly.gov.uk/legislation/primary/2007/nia9_07.htm

Any organisation or individual with an interest is invited to submit written evidence to the Committee by email (in the format MS Word). Written submissions should be structured to address specific clauses of the Bill.

committee.socialdevelopment@niassembly.gov.uk

If you do not have access to the internet or email facilities or you have any other enquiries, please contact the Committee Clerk  028 9052 1864.

The closing date for submissions is Tuesday 5 February 2008

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