

# Charities Bill

[AS AMENDED AT CONSIDERATION STAGE]

## LEGISLATIVE COMPETENCE

At Introduction the Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Charities Bill would be within the legislative competence of the Northern Ireland Assembly.”*



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A

## BILL

TO

Make provision about the lawfulness of decisions taken or other things done by staff of the Charity Commission for Northern Ireland, and about exempting charities, by reference to conditions related to thresholds, from the duty to be registered in the register of charities.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### **Actions of Commission staff treated as Commission actions**

1.—(1) In this section “relevant action” means any decision made or purported to be made, or other thing done or purported to be done, by a member of the Commission’s staff before 16 May 2019 if—

- 5 (a) it was made or done, or purported to be made or done, in connection with the exercise or discharge of any of the Commission’s functions, and  
(b) the persons by whom it could lawfully be made or done did not include members of the Commission’s staff acting in their capacity as such.

10 (2) Every relevant action is to be treated as, and as always having been, a decision made or thing done by the Commission (subject to subsections (3) to (6)).

#### *Circumstances where deeming is restricted or excluded*

(3) Subsection (2) does not alter the outcome of court or tribunal proceedings finally decided before the end of the day on which this Act receives Royal Assent.

(4) If at the end of the day on which this Act receives Royal Assent—

- 15 (a) court or tribunal proceedings are pending, and  
(b) the validity of a relevant action is in issue in those proceeding—  
(i) on the ground that the persons by whom it could lawfully be made or done did not include members of the Commission’s staff acting in their capacity as such, or  
20 (ii) on grounds which include that ground,

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the proceedings are to be decided as if subsection (2) does not apply to that relevant action.

(5) Subsection (2) does not apply to a relevant action consisting of—

- (a) a decision, or purported decision, that an inquiry report be published,
- 5 (b) publishing an inquiry report or causing an inquiry report to be published,
- (c) the giving of a direction purporting to be under section 22(3) of the 2008 Act,
- (d) a decision, or purported decision, to give a direction under that provision,
- (e) administering an oath, or requiring the making and subscription of a  
10 declaration of truth, under section 22(4) of the 2008 Act,
- (f) the making, or purported making, of an order purporting to be under section 23(1) of the 2008 Act,
- (g) a decision, or purported decision, to make an order under that provision,
- (h) a disclosure of information under, or purporting to be under, section 24(1)  
15 of the 2008 Act,
- (i) a decision, or purported decision, to disclose information under that provision,
- (j) the making, or purported making, of an order purporting to be under any of sections 33 to 36 of the 2008 Act, or
- 20 (k) a decision, or purported decision, to make an order under any of those sections.

(6) Subsection (2) does not apply to a relevant action if in its place, and in the period beginning with the date of the relevant action and ending with the day on which this Act receives Royal Assent, a fresh decision or thing has been made or  
25 done by the Commission or by a committee established under paragraph 9 of Schedule 1 to the 2008 Act.

## *Refreshed appeal rights*

(7) Where—

- (a) subsection (2) applies to a relevant action, and
  - 30 (b) the relevant action is one mentioned in column 1 of the Table in Schedule 3 to the 2008 Act (actions where there is a right of appeal or review),
- the Charity Tribunal Rules (Northern Ireland) 2010 apply in relation to the decision or other thing treated as made or done by the Commission with the modifications mentioned in subsection (8) (and so apply whether or not an appeal  
35 or review was initiated in relation to the relevant action as made or done by a member of the Commission's staff).

(8) The modifications are—

- (a) that rule 17(2) (time limit for initiating appeal or review) is to be read as if  
40 it provided that an appeal notice under rule 17(1) must be filed within 91 days of the end of the day on which this Act receives Royal Assent, and
- (b) that rule 17(3)(i)(iii) and (iv) are to be read as referring instead to the fact that the appeal or application is brought by virtue of subsection (7).

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### *Disapplication of accounting and reporting requirements*

(9) Where, as a result of a relevant action, a charity was purportedly added to the register of charities kept under section 16 of the 2008 Act, requirements imposed under any of sections 64 to 70 of the 2008 Act (accounts, reports and returns) do not apply in relation to an exempt year; and here “exempt year”—

- (a) if the charity was lawfully added to that register in the period beginning with its purported registration and ending with the day on which this Act receives Royal Assent, means a financial year of the charity beginning before its lawful registration, but
- (b) otherwise means a financial year of the charity beginning before 1 April 2022.

### *Interpretation etc*

(10) For the purposes of this section, members of the Commission’s staff are not acting in their capacity as such when they are acting as members of a committee established under paragraph 9 of Schedule 1 to the 2008 Act.

(11) In this section—

- “the 2008 Act” means the Charities Act (Northern Ireland) 2008;
- “the Commission” means the Charity Commission for Northern Ireland;
- “financial year”, in relation to a charity, has the same meaning as in the 2008 Act (see section 180(1) of the 2008 Act);
- “inquiry report” means any such report or statement as is mentioned in section 22(6) of the 2008 Act;
- “member of the Commission’s staff” includes any person working for the Commission under paragraph 4(1)(a) or (b) or 5(1) of Schedule 1 to the 2008 Act (employees, service-providers and secondees).

(12) This section is to be treated as having come into operation on 27 March 2009.

### **Power of Commission to delegate to staff**

2. In Schedule 1 to the Charities Act (Northern Ireland) 2008 (provision about the Charity Commission), after paragraph 9 insert—

#### **“Performance of functions by staff**

9A.—(1) Anything authorised or required to be done by the Commission may be done by any member of the Commission’s staff who is authorised for that purpose by the Commission, whether generally or specially (but this is subject to sub-paragraphs (2) and (7)).

(2) The following may not be delegated under sub-paragraph (1)—

- (a) the instituting of an inquiry under section 22(1);
- (b) the making of a decision that a report or statement be published under section 22(6)(a) or (b);
- (c) the making of an order under any of sections 33 to 37;
- (d) the making of regulations in exercise of power conferred by a statutory provision.

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(3) The Department may make a scheme describing—

(a) things that may, consistently with sub-paragraph (2), be delegated under sub-paragraph (1), and

5 (b) in relation to anything which may be delegated under sub-paragraph (1), the member or members of the Commission's staff to whom it may be delegated.

(4) The delegation which may be allowed by a scheme under sub-paragraph (3) includes (in addition to delegation of described things or to described staff)—

10 (a) delegation of all things authorised or required to be done by the Commission and not excepted by sub-paragraph (2), or delegation of all such things with additional exceptions described by the scheme;

15 (b) delegation to all staff, or delegation to all staff other than those described by the scheme.

(5) Before making a scheme under sub-paragraph (3), the Department must consult the Commission; and before making the first scheme under sub-paragraph (3), the Department must carry out a public consultation.

20 (6) The Department must publish a scheme made by it under sub-paragraph (3).

(7) A delegation under sub-paragraph (1) is effective only so far as it is in accordance with a scheme under sub-paragraph (3).

(8) Sub-paragraph (1) is additional to paragraph 9(1)(a) (delegation to committees).

25 (9) In this paragraph—

“the Department” means the Department for Communities;

“member of the Commission's staff” includes any person working for the Commission under paragraph 4(1)(a) or (b) or 5(1) (employees, service-providers and secondees).”.

### 30 **Regulations exempting charities from registering by reference to thresholds**

**3.**—(1) The Charities Act (Northern Ireland) 2008 is amended as follows.

(2) In section 16, after subsection (2) (all charities must be registered) insert—

“(2A) Subsection (2) does not apply to a charity exempted under section 16A.

35 (2B) A charity exempted under section 16A must, if it so requests, be registered in the register.”.

(3) In section 16(4), after “The register shall contain” insert “for each charity registered in it”.

(4) In section 16, after subsection (5) insert—

40 “(5A) A registered charity which is exempted under section 16A must be removed from the register if it so requests.”.

(5) After section 16 insert—



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### **“Power to set thresholds for exemption from registration**

16A.—(1) The Department for Communities may by regulations provide that a charity is exempt from being registered in the register if it meets one or more specified threshold conditions.

- 5 (2) A “threshold condition”, in relation to a charity, is—
- (a) a condition that the charity’s income does not exceed a specified amount, or
  - (b) a condition that the value of the charity’s assets does not exceed a specified amount.
- 10 (3) The regulations may make provision about—
- (a) what counts, or does not count, as income of a charity for the purposes of a threshold condition;
  - (b) what count, or do not count, as assets of a charity for the purposes of a threshold condition;
  - 15 (c) quantifying income or values for the purposes of a threshold condition.
- (4) Provision under subsection (3)(c) may (in particular) be about—
- (a) the method, principles or basis for calculating, or estimating, income or values;
  - 20 (b) certifying, or providing other evidence of, amounts calculated or estimated;
  - (c) the persons by whom any calculating, or estimating or certifying, is to be or may be done.
- (5) Sections 16B and 16C make further provision about what may be done by regulations under this section.
- 25 (6) Regulations under this section may amend, repeal, revoke or otherwise modify any statutory provision.
- (7) Regulations under this section may not be made unless a draft of the regulations has been laid before, and approved by, a resolution of the Assembly.
- 30 (8) Subsection (7) does not apply to regulations that do nothing more than alter an amount specified under subsection (2)(a) or (b).
- (9) In this section “specified” means specified in regulations under this section.

### **Charities exempted under section 16A: information**

16B.—(1) Regulations under section 16A may make provision requiring, or authorising the Commission to require, any—

- (a) relevant institution, or
  - (b) person connected with a relevant institution,
- 40 to provide the Commission with information or evidence for the purpose of enabling the Commission to determine whether the institution is, or is still, a charity exempted under section 16A.

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(2) Requirements under subsection (1) may set deadlines for the provision of the information or evidence.

(3) Information or evidence provided in response to a requirement under subsection (1) may be used also for the purposes of the exercise, in relation to the relevant institution or a person connected with it, of any function of the Commission.

(4) In this section “relevant institution” means—

(a) any institution if—

(i) it is not a registered charity, and

(ii) a representation that it is a charity, or that it is a charity of a particular description, is made by a person connected with it, or

(b) any purported institution if a representation that it is a charity, or that it is a charity of a particular description, is made by a person connected with it.

(5) For the purposes of this section, a person is connected with an institution if—

(a) the institution is a charity and the person is a charity trustee of the charity, or

(b) the person—

(i) is a trustee, officer, agent or employee of the institution,

(ii) holds property on behalf of the institution or of any trustee of it, or

(iii) engages in appeals to the public to give money or other property, or in other fund-raising activities, for the benefit of the institution.

(6) For the purposes of this section, a person is connected with a purported institution if the person—

(a) makes a representation that the person is a trustee, officer, agent or employee of it or that the person holds property on behalf of it or of any trustee of it, or

(b) engages in appeals to the public to give money or other property, or in other fund-raising activities, for its benefit.

### **Charities exempted under section 16A: consequential provision**

16C.—(1) Regulations under section 16A may make provision consequential on, or supplemental or incidental to, the possibility of there being—

(a) not only charities that are registered (or required to be registered), but

(b) also charities that are not required to be registered.

(2) Provision included in regulations by virtue of subsection (1) may (in particular)—

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- (a) provide for a statutory provision that applies in relation to charities whether registered or not to apply only in relation to registered charities;
- 5 (b) provide for a statutory provision that applies in relation to charities whether registered or not to apply with modifications in relation to exempt charities;
- (c) where a statutory provision is expressed to apply only in relation to, or by reference to, registered charities—
- 10 (i) provide for the statutory provision to apply, with or without modifications, also in relation to exempt charities or (as the case may be) also by reference to exempt charities;
- (ii) make similar or corresponding provision applying in relation to, or by reference to, exempt charities.
- (3) Provision under subsection (2)(b) or (c) may widen the circumstances in which an existing offence may be committed or (as the case may be) create a similar or corresponding offence for additional circumstances, but the penalties or maximum penalties for the widened or new offence may not be higher than those for the existing offence.
- (4) In subsection (2) “exempt charities” means—
- 20 (a) charities exempted under section 16A,
- (b) charities exempted under section 16A that are registered, or
- (c) charities exempted under section 16A that are not registered.
- (5) Subsections (1) to (4) are additional to, and do not limit the generality of, section 179(5) (power to include supplemental, incidental, consequential etc provision).”.
- 25 (6) In section 179(2)(c) (regulations which must be approved in draft are not subject to negative procedure), after “section” insert “16A(7) or”.

### **Short title and commencement**

- 4.—(1) This Act may be cited as the Charities Act (Northern Ireland) 2021.
- 30 (2) This Act comes into operation at the end of the day on which it receives Royal Assent.

# Charities Bill

[AS AMENDED AT CONSIDERATION STAGE]

A Bill to make provision about the lawfulness of decisions taken or other things done by staff of the Charity Commission for Northern Ireland, and about exempting charities, by reference to conditions related to thresholds, from the duty to be registered in the register of charities.

Introduced by: Ms Deirdre Hargey, Minister for Communities

On: 21 June 2021

As amended at  
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Bill Type: Executive Bill

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