



Committee for Social Development

OFFICIAL REPORT (Hansard)

Charities Bill: Charity Commission for
Northern Ireland Briefing

13 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mrs Judith Cochrane
Mr Mark Durkan
Mr Alex Easton
Mr Fra McCann
Mr David McClarty

Witnesses:

Ms Frances McCandless	Charity Commission for Northern Ireland
Mr Walter Raider	Charity Commission for Northern Ireland

The Chairperson: We have Frances McCandless, the chief executive of the board of the Charity Commission, and Walter Raider, a member of the board. You are both very welcome. Without any further ado, Frances and Walter, I invite you to give us the benefit of your wisdom on the Charities Bill.

Ms Frances McCandless (Charity Commission for Northern Ireland): Thank you, Chair. We are delighted to be here this morning. We have been trying to keep the Committee up to speed with progress we have made since we started. You will all be aware that we have been a little frustrated, as have charities, with the process of amending the Bill, as that has meant that we could not begin the registration of charities in Northern Ireland, which is a core part of our function. We have been getting on with the other functions, but it is complex to have workarounds in place, so we are very pleased to be here this morning to talk to you about the Bill, which would amend the Act.

We are in favour of the amendment, and we signalled our approval in the past, both publicly and in correspondence with the Committee. The amendment will take our legislation into line with that in England and Wales. Over 90% of our legislation is already identical to that in England and Wales, so the amendment makes absolute sense to the commission. It would just mean that we could rely on case law in other jurisdictions, making our job an awful lot easier.

We set out in our written submission what the time frame will now look like. Once the amendment is enacted and the Bill given Royal Assent, we must then have a three-month statutory consultation. The amendment relates to a technical part of the 2008 Act called the "public benefit". A charity must meet one or more of the charitable purposes set out in the Act, it must be purely charitable and it must also be for the public benefit. We will be testing those three things, but the law says that we must publicly set out how we will interpret them, particularly the public benefit requirement, because it is

quite complicated. So, we have to have a three-month statutory consultation period once the new legislation is in place. After that, we will obviously make any amendments or responses, depending on what we get back on the consultation. We will then have a test phase with 20 organisations, and we will take them through as the first registrations. We hope to open registration for all organisations in Northern Ireland on a phased basis in autumn next year. That is our time frame. I suppose that, at the moment, we would like the amendment to go through as quickly as possible so that we can get on with doing the work that we were set up to do.

Mr Walter Raider (Charity Commission for Northern Ireland): One of the things that is very encouraging, from the commission's point of view, is that the charity sector welcomed the original Bill. In all the consultation events that we have had with groups across the North in the past couple of years, there is still a warm welcome and recognition by the charity and voluntary sector that the Bill is a good thing, that registration is necessary and that it is a positive aspect of assuring everybody, particularly the public, that charities are fit for purpose, doing a good job and doing it properly. So, as commissioners, we strongly welcome the amendment that you are considering and hope that it will proceed as promptly as possible so that we can fulfil the terms of our remit and get on with starting a list.

Members will be aware that, in the short term, we already have some 6,700 charities registered on our website on a publicly available list. We have done that on the basis of something called a deemed list, which we have worked on very closely with departmental colleagues and Her Majesty's Revenue and Customs (HMRC). However, we are very aware that there are more organisations across Northern Ireland that consider themselves charities but that do not show up under that HMRC registration. In a sense, that is the unknown quantity. It is very difficult to know how many groups are out there. We are encouraged by the fact that we have now been in contact with those 6,700 charities. We know that they exist and have up-to-date details of who they are and where they are, as well as an overview of what they do. However, the imponderable bit of it all is that, until we get the new legislation, we cannot call forward all the other groups that would probably need to register. We estimate — I emphasise that this is an estimate — that there could be between a total of 7,000 and 10,000 groups in existence in Northern Ireland that would be deemed as charities. That is the exciting next phase. Once the legislation goes through, we will then be able to engage with those groups and the public, and elected members will be much better informed about the groups out there in Northern Ireland that are charities.

The Chairperson: Thank you very much, Walter and Frances. Before I open the session to members, I want to ask two questions. One is obvious. You said that the 2008 Bill was an important one but that it took the Charity Commission to work out, through legal advice, that it was flawed and inoperable or impractical. Given that, on your reading of the intended amendment, are you satisfied that this is actually operable?

Ms McCandless: We are satisfied that the definition of "charity" in the Bill is operable; absolutely.

The Chairperson: Will you shed a wee bit of light for me on public benefit? As I read them, some of the clauses can be a little bit contradictory. I know that it is not for you to say, but I want your opinion on it, because, obviously, you are a key stakeholder. Clause 1, for example, states:

"it is not to be presumed that a purpose of a particular description is for the public benefit."

but that things are to be referred to as for public benefit. Do you have any sense of that?

Ms McCandless: There are hundreds of years of charity case law. Charity has been a concept throughout the history of these islands for generations. The original things that were charitable were the provision of education, the prevention or relief of poverty and the promotion of religion. Those were the original Elizabethan heads of charity. They were presumed to be for the public benefit, so the two things always went hand in hand. If you were charitable, it was presumed that you were for the public benefit. They were always separate legal concepts, but it was just that one was presumed to exist within the other. It was not until the change of the law in England and Wales in 2006 that the presumption of public benefit was removed and separated from the charitable purpose.

I will give you an example that I sometimes use, because this is a difficult concept for anyone to get their head around, which is why the law says that we must put out clear consultation and guidance on how we are going to operate it. Education is a charitable purpose and has been for hundreds of years, but you may be providing education in the setting of, for example, a private school — you will

not be unaware that this has been a big debate in England — where the purpose is clearly charitable but, perhaps, the provision is restricted by charging fees or setting entrance requirements. That means that only a restricted proportion of the public can actually benefit. The idea of removing the presumption is so that you can say that that institution is not necessarily automatically charitable. There has to be a test of whether the charitable purpose is available to a sufficient section of the population for the taxpayer to subsidise it as a charity. That is because being a charity is a privilege, not a right, and there are many very beneficial aspects that come with being a charity, hence the strictures that are attached to charitable status. So, you have to prove both that you meet one or more of the charitable purposes and are purely charitable and that you are for the public benefit. So, those two things are no longer presumed to automatically go hand in hand; we will be testing both. Is that clear enough, Chair?

The Chairperson: I think so; it is just the way that it reads. Without that type of explanation, you would be wondering what it means. You have explained it well, certainly to my mind. Thank you for that.

My last point is that your submission has virtually no comment on most of the Bill's other provisions. Are you content? Is that on the basis that there is nothing contentious or you are not concerned about any of those provisions?

Ms McCandless: Had there been anything contentious, we would have raised it with you.

The Chairperson: OK. Thanks very much. Do members want to raise any other questions? Most people have indicated that they are satisfied to support this so that it can be agreed as quickly as possible. We have indicated that we do not want to delay the Bill unduly. Frances and Walter, thank you very much.

Mr Raider: Chairman, we welcome getting on with the job of registering.

The Chairperson: Thank you, and good luck with that.