

Committee for Social Development

Report on the Charities Bill (NIA 11/11-15)

**Together with the Minutes of Proceedings of the Committee
relating to the Report and the Minutes of Evidence**

**Ordered by the Committee for Social Development to be printed 23 October 2012
Report: NIA 68/11-15**

Membership and Powers

The Committee for Social Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant secondary legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on any matters brought to the Committee by the Minister for Social Development.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee since 23 May 2011 has been as follows:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley ¹
Ms Pam Brown
Mr Gregory Campbell ²
Ms Judith Cochrane
Mr Michael Copeland
Mr Mark H Durkan
Mr Fra McCann
Mr David McClarty
Mr Sammy Douglas ^{3 4}

1 With effect from 20 February 2012 Ms Paula Bradley replaced Mr Gregory Campbell

2 With effect from 1 October 2012 Mr Gregory Campbell replaced Mr Alex Easton

3 With effect from 26 March 2012 Mr Alastair Ross replaced Mr Sammy Douglas

4 With effect from 1 October 2012 Mr Sammy Douglas replaced Mr Alastair Ross

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List of Abbreviations

CCNI	Charity Commission for Northern Ireland
DSD	Department for Social Development
EQIA	Equality Impact Assessment
GB	Great Britain
HMRC	Her Majesty's Revenue and Customs
MLA	Member of Legislative Assembly
MP	Member of Parliament
NI	Northern Ireland
NICVA	Northern Ireland Council for Voluntary Action
NILGA	Northern Ireland Local Government Association
OLC	Office of the Legislative Council
SR	Statutory Rule
UK	United Kingdom

Executive Summary

The overall purpose of the Charities Bill is to amend the public benefit provision of the Charities Act (Northern Ireland) 2008 (“the 2008 Act”) to provide clarity on the requirement to be met in determining whether an institution is, or is not, a charity within the meaning of that Act.

The need for clarity on the public benefit provision was identified when the Charity Commission for Northern Ireland (CCNI) sought legal opinion on the draft benefit guidance which it is statutorily obliged to issue. Opinion was that the provision in section 3 of that Act (“the public benefit test”) created legal uncertainty arising from the inclusion of an element of the Scottish Charities and Trustee Investment (Scotland) Act 2008 (“the Scottish Act”).

The Bill introduces provision to:

- amend section 3 of the 2008 Act by removing the provision taken from the Scottish Act and making provision for the determination of the public benefit requirement to be based on the law relating to charities in Northern Ireland;
- provide a legislative vehicle for a number of other outstanding amendments to the 2008 Act;
- amend company law references to reflect changes made under the Companies Act 2006 since the 2008 Act was enacted;
- transfer functions which are of a regulatory nature, but which still remain within the Department’s jurisdiction, to that of the CCNI; and
- re-enact provision in the Charities Act (Northern Ireland) 1964 that was repealed by the 2008 Act but which on reconsideration is believed to be a worthwhile mechanism for saving a charitable gift that would otherwise fail.

The Committee agreed that it was content with Clauses 1-8, Clauses 10-11 and Schedules 1 and 2 as drafted.

Following advice from the Examiner of Statutory Rules, the Committee agreed to recommend to the Assembly that the following clause be amended as agreed between the Committee and the Department:

Clause 9, Page 4, Line 21

At end insert

‘(5) Any other order under this section is subject to negative resolution.’

This amendment is designed to ensure that orders under provision which do not amend, repeal or modify a statutory provision should be subject to negative resolution procedure.

Delegated Powers

The Committee noted that the Bill will introduce regulation making powers in relation to the clauses and schedules of the Bill. The Committee looks forward to receiving and scrutinising proposals for these regulations in due course.

Introduction

1. The Charities Bill was referred to the Committee for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 11 September 2012.
2. The Minister 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”
3. The Bill contains 3 parts, 11 Clauses and 2 Schedules.

Part 1: Amendments of 2008 Act

Clause 1: The public benefit requirement

Clause 1 substitutes a new public benefit provision for that in section 3 of the 2008 Charities Act (NI). The new public benefit provision applies retrospectively and will take NI charities legislation into line with that in England and Wales.

Clause 2: Gifts for mixed purposes

This clause restores a provision in place in previous NI charities legislation (Charities Act (NI) 1964). It has the effect of restoring the mechanism through which a gift which is both for charitable and other purposes may be regarded as exclusively charitable. It has the potential to safeguard charitable assets which may otherwise leave the charity sector.

Clause 3: Persons disqualified for being trustees of a charity

Clause 3 amends the existing legislation to extend the list of persons disqualified from being trustees of a charity.

Part 2: Transfer to Charity Commission of certain functions of Department

Clause 4: Educational endowments

Clause 4 transfers some of the Department’s functions in respect of charities to the Charity Commission for Northern Ireland (CCNI). These functions are no longer appropriate to the Department as they fall within the CCNI’s statutory role as Regulator of charities.

Clause 5: Miscellaneous functions

Clause 5 transfers certain other regulatory functions from the Department to the CCNI.

Clause 6: Supplementary provisions

Clause 6 provides the Department the power to make transitional provision and savings to facilitate the transfer of functions from the Department to the CCNI.

Part 3: Miscellaneous

Clause 7: Interpretation

Clause 7 provides a definition of the terms used in the Bill and provides for the Interpretation Act (NI) 1954 to apply to the Bill.

Clause 8: Minor and consequential amendments and repeals

Clause 8 introduces Schedules 1 and 2 which set out the provisions to be amended or repealed.

Clause 9: Power to make supplementary and transitional provision etc.

Clause 9 provides the Department the power to make supplementary and transitional provisions and savings as it considers appropriate.

Clause 10: Commencement

Clause 10 empowers the Department to make a commencement order naming the day or days when the Act will come into operation.

Clause 11: Short title

Clause 11 gives the Short Title of the Bill.

Schedule 1 Minor and consequential amendments

The amendments in Schedule 1 make no change to policy. Most are consequential amendments flowing from the implementation of the Companies Act 2006 and the Charities (Pre-consolidation Amendments) Order 2011.

Schedule 2 Repeals

Schedule 2 relates to changes to wording to reflect parts of the charity legislation in England and Wales.

4. The Committee wrote to key stakeholders on 9 July 2012. In July 2012 advertisements were inserted in the Belfast Telegraph, News Letter and Irish News seeking written evidence on the Bill.
5. During the period covered by this report, the Committee considered the Bill and related issues at its meetings – on 6, 13, 20 and 27 September and on 4, 11 and 18 October. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1.
6. The Committee had before it the Charities Bill (NIA 11/11-15); the Explanatory and Financial Memorandum and the Delegated Powers Memorandum that accompanied the Bill.
7. On the 27 September 2012, the Committee took oral evidence from Department officials on the purpose and main provisions of the Bill. The Committee also took oral evidence from the Charity Commission for Northern Ireland (CCNI) and the NI Council for Voluntary Action (NICVA) on 13 and 20 September respectively. The Minutes of Evidence for these meetings can be found in Appendix 2.
8. A total of 9 organisations responded to the request for written evidence and copies of the submissions received by the Committee are included at Appendix 3.
9. The Department has provided a number of written responses to Committee requests for further information. Correspondence between the Committee and the Department can be found in Appendix 4.

Report on the Charities Bill

10. At its meeting on 18 October 2012, the Committee agreed its report on the Bill and agreed that it should be printed.

Consideration of the Bill

11. On 2 February 2012, prior to the introduction of the Bill, the Committee took evidence from Department officials on the need for a Charities Bill to amend the Charities Act 2008.
12. Following the Second Stage of the Bill, the Committee took further evidence from the Department on 27 September 2012 on the purpose and main provisions of the Bill– see Appendix 2.
13. On the 13 September 2012, the Committee took oral evidence from the Charity Commission for Northern Ireland – see Appendix 2. The CCNI welcomed the introduction of the Bill and expressed its support for the amendment proposed in the Bill.

Evidence from the CCNI may be summarised as follows:

The CCNI welcomed the proposed amendment to Section 3 of the 2008 Act (the Public Benefit test) which would bring charities legislation in Northern Ireland into line with that of England and Wales. The CCNI briefed the Committee on the impact of the delay in registering charities in Northern Ireland as a result of the legal uncertainties arising from the 2008 Act.

The CCNI provided a detailed explanation of the impact the proposed amendment to the 2008 Act which will see the introduction of a public benefit requirement for all charities. Charities in Northern Ireland will now be required to prove that they meet one or more of the charitable purposes, are purely charitable and operate for the public benefit.

The CCNI outlined its timetable for registering all charities in Northern Ireland should the Bill receive Royal Assent.

The CCNI indicated that it was content with the remainder of the provisions in the Bill.

14. On the 20 September 2012, the Committee took oral evidence from NICVA – see Appendix 2.

Evidence from NICVA may be summarised as follows:

NICVA welcomed the proposed new wording on the public benefit requirement. The important issue for NICVA is the requirement that all charities must provide public benefit. NICVA strongly believes that all charities should be treated equally and for that reason it would not have supported the presumption of public benefit for any type of charity. NICVA considers that this view would be largely shared across the sector.

NICVA underlined the importance of the CCNI's public benefit guidance which should be able to explain to trustees what is meant by public benefit, explaining benefits and highlighting potential problem areas.

15. On the 18 October 2012, the Committee took oral evidence from Departmental officials. Officials advised the committee that Clause 3 may be subject to amendment due to issues raised in respect of insolvency. The officials further advised that any proposed amendment may be made at Consideration Stage. The Committee noted this advice given by officials.

Clause-by-Clause Scrutiny of Bill

16. The Committee undertook its formal clause-by-clause scrutiny of the Charities Bill on 4 and 11 October 2012.

Clause 1 The public benefit requirement

17. Question put and agreed:

“That the Committee is content with Clause 1 as drafted.”

Clause 2 Gifts for mixed purposes

18. Question put and agreed:

“That the Committee is content with Clause 2 as drafted.”

Clause 3 Persons disqualified for being trustees of a charity

19. Question put and agreed:

“That the Committee is content with Clause 3 as drafted.”

Clause 4 Educational endowments

20. Question put and agreed:

“That the Committee is content with Clause 4 as drafted.”

Clause 5 Miscellaneous functions

21. Question put and agreed:

“That the Committee is content with Clause 5 as drafted.”

Clause 6 Supplementary provisions

22. Question put and agreed:

“That the Committee is content with Clause 6 as drafted.”

Clause 7 Interpretation

23. Question put and agreed:

“That the Committee is content with Clause 7 as drafted.”

Clause 8 Minor and consequential amendments and repeals

24. Question put and agreed:

“That the Committee is content with Clause 8 as drafted.”

Clause 9 Power to make supplementary and transitional provision etc.

25. The Committee considered advice from the Examiner of Statutory Rules in respect of Clause 9 of the Bill. In his Report to the Committee, the Examiner of Statutory Rules advised that there was a strong case for amending clause 9 so that orders under that provision which do not amend, repeal or modify a statutory provision should be subject to negative resolution. The Committee indicated that it was to content to accept the advice of the Examiner of Statutory Rules. The Committee agreed to the text of the amendment as proposed by the Department:

Clause 9, Page 4, Line 21

At end insert

'(5) Any other order under this section is subject to negative resolution.'

26. The Committee agreed that it was content with Clause 9 as amended.

Clause 10 Commencement

27. Question put and agreed:

"That the Committee is content with Clause 10 as drafted."

Clause 11 Short Title

28. Question put and agreed:

"That the Committee is content with Clause 11 as drafted."

Schedule 1 – Minor and consequential amendments

29. Question put and agreed

"That the Committee is content with Schedule 1 as drafted."

Schedule 2 - Repeals

30. Question put and agreed:

"That the Committee is content with Schedule 2 as drafted."

Delegated Powers

31. The Committee considered the delegated powers associated with the Bill and noted the findings of the Examiner of Statutory Rules.

As indicated above, the Committee agreed that Clause 9 should be amended in line with the recommendations of the Examiner of Statutory Rules. Otherwise, the Committee was content with the delegated powers as set out in the Bill.

Report on Charities Bill

32. At its meeting of 18 October 2012, the Committee agreed its report on the Bill and agreed that it should be printed.



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings Relating to the Report

Thursday 2 February 2012

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Mr Michael Copeland MLA
Mr Sammy Douglas MLA
Mr Mark H Durkan MLA
Mr Alex Easton MLA
Ms Pam Lewis MLA
Mr Fra McCann MLA
Mr David McClarty MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Mr Gregory Campbell MLA
Ms Judith Cochrane MLA

10.07am The meeting opened in public session.

6. Charities Amendment Bill – Departmental Briefing

10.46am The following officials from the Voluntary and Community Unit joined the meeting:

Mr Russell McCaughey

Mr Roy McGivern

Ms Andrea Patterson

10.46am Mr Alex Easton left the meeting.

The officials briefed the Committee on the Charities Amendment Bill

The Chairperson thanked the officials for the briefing.

10.52am The officials left the meeting.

Members were content to wait for the legislation to undertake scrutiny during the Committee Consideration Stage.

[EXTRACT]

Thursday 5 July 2012

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Ms Paula Bradley MLA
Ms Pam Brown MLA
Ms Judith Cochrane MLA
Mr Michael Copeland MLA
Mr Mark H Durkan MLA
Mr Alex Easton MLA
Mr Alastair Ross MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Mr Mickey Brady MLA (Deputy Chairperson)
Mr Fra McCann MLA
Mr David McClarty MLA

10:04am The meeting began in public session.

5. Matters Arising

5.3 The Chairperson advised Members that the Minister has written to the Committee on the Charities Bill and that the Bill was introduced in the Assembly on 2 July 2012. The Chairperson suggested that even though the Bill has not yet reached Committee stage, the Committee should proceed with a call for evidence on this Bill over the summer recess period.

Agreed: Members agreed to proceed with a call for evidence and approved a draft public notice.

[EXTRACT]

Thursday 13 September 2012

Room 29, Parliament Buildings

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

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Assistant Assembly Clerk)
Ms Claire McCanny (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Mr Michael Copeland MLA

10:06am The meeting began in public session.

1. Apologies

Apologies were as indicated above.

2. Draft Minutes of Meeting 6 September 2012

Agreed: The minutes of the meeting held on Thursday 6 September 2012 were agreed.

3. Chairperson's Business

3.1 The Chairperson provided Members with an overview of the event organised by the Health Committee to mark World Suicide Day on 10 September 2012.

3.2 The Chairperson advised Members that the 2nd Stage of the Charities Bill was debated in the Assembly on 11 September 2012 and the Committee is now in the Committee Stage of the Bill.

3.3 The Chairperson asked Members to make sure they have checked the Members' attendance table which will be published on the Assembly website.

Noted: Members expressed concern about Members' attendance figures being misleading as Members may miss meetings if they are otherwise engaged in Assembly Business.

10.08am Mr Mark Durkan MLA joined the meeting.

5. Charities Bill – Briefing by the Charity Commission for Northern Ireland

10:18am The following representatives from the Charity Commission for Northern Ireland joined the meeting:

Ms Frances McCandless, Chief Executive; and

Mr Walter Watson, Member of the Board

The briefing was recorded by Hansard.

The representatives briefed the Committee on the Commission's support for the proposed Charities Bill.

The Chairperson thanked the representatives for their attendance.

10:25am The representatives left the meeting.

[EXTRACT]

Thursday 20 September 2012

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Ms Pam Brown MLA
Mr Michael Copeland MLA
Mr Mark H Durkan MLA
Mr Alex Easton MLA
Mr Fra McCann MLA
Mr David McClarty MLA
Mr Alastair Ross MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Ms Judith Cochrane MLA

10:02am The meeting began in public session.

5. Charities Bill – Briefing by Northern Ireland Council for Voluntary Action (NICVA)

10:08am The following representatives from NICVA joined the meeting:

Ms Una McKernan, Deputy Chief Executive Officer; and

Ms Denise Copeland, Governance & Charity Advice Manager

The representatives briefed the Committee on NICVA's support for the proposed Charities Bill.

10.08am Ms Pam Brown joined the meeting

The briefing was recorded by Hansard.

The Chairperson thanked the representatives for their attendance.

10:13am The representatives left the meeting.

[EXTRACT]

Thursday 27 September 2012

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Ms Pam Brown MLA
Ms Judith Cochrane MLA
Mr Michael Copeland MLA
Mr Mark H Durkan MLA
Mr Alex Easton MLA
Mr Fra McCann MLA
Mr David McClarty MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Assistant Assembly Clerk)
Ms Claire McCanny (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: None

10:03am The meeting began in public session.

7. **Charities Bill – Departmental Briefing**

11:51am The following Departmental officials joined the meeting:

Mr Roy McGivern, DSD; and

Mr Kieran Doyle, DSD;

The officials briefed the Committee on the Charities Bill.

The briefing was recorded by Hansard.

The Deputy Chairperson thanked the officials for their attendance.

11:55am The officials left the meeting.

[EXTRACT]

Thursday 4 October 2012

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Ms Pam Brown MLA
Mr Gregory Campbell MLA
Ms Judith Cochrane MLA
Mr Michael Copeland MLA
Mr Mark H Durkan MLA
Mr Fra McCann MLA
Mr David McClarty MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Assistant Assembly Clerk)
Ms Claire McCanny (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Mr Sammy Douglas MLA

10:09am The meeting began in public session.

11. Charities Bill – Clause-by-clause scrutiny

12.35pm The following officials from the Department joined the meeting

Mr Roy McGivern; and

Mr Kieran Doyle

The Committee considered the delegated powers memorandum associated with the Bill and noted the findings of the Examiner of Statutory Rules.

The Committee undertook its formal clause-by-clause scrutiny of the Bill.

Clause 1 The public benefit requirement

Question put and agreed:

“That the Committee is content with Clause 1 as drafted.”

Clause 2 Gifts for mixed purposes

Question put and agreed:

“That the Committee is content with Clause 2 as drafted.”

Clause 3 Persons disqualified for being trustees of a charity

Question put and agreed:

“That the Committee is content with Clause 3 as drafted.”

Clause 4 Educational endowments

Question put and agreed:

“That the Committee is content with Clause 4 as drafted.”

Clause 5 Miscellaneous functions

Question put and agreed:

“That the Committee is content with Clause 5 as drafted.”

Clause 6 Supplementary provisions

Question put and agreed:

“That the Committee is content with Clause 6 as drafted.”

Clause 7 Interpretation

Question put and agreed:

“That the Committee is content with Clause 7 as drafted.”

Clause 8 Minor and consequential amendments and repeals

Question put and agreed:

“That the Committee is content with Clause 8 as drafted.”

Clause 9 Power to make supplementary and transitional provision etc.

The Committee considered advice from the Examiner of Statutory Rules in respect of Clause 9 of the Bill. The Examiner of Statutory Rules advised that there was a strong case for amending clause 9 so that orders under that provision which do not amend, repeal or modify a statutory provision should be subject to negative resolution. The Committee indicated that it was to content to accept the advice of the Examiner of Statutory Rules.

The Committee asked the Department to provide text for a proposed amendment to Clause 9 at next week’s meeting.

Clause 10 Commencement

Question put and agreed:

“That the Committee is content with Clause 10 as drafted.”

Clause 11 Short Title

Question put and agreed:

“That the Committee is content with Clause 11 as drafted.”

Schedule 1 – Minor and consequential amendments

Question put and agreed

“That the Committee is content with Schedule 1 as drafted.”

Schedule 2 - Repeals

Question put and agreed:

“That the Committee is content with Schedule 2 as drafted.”

This session was recorded by Hansard

The Chairperson thanked the officials for their attendance.

12:40pm The officials left the meeting.

12:40pm Ms Pam Brown left the meeting

12:40pm the Chairperson suspended the meeting.

[EXTRACT]

Thursday 11 October 2012

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Ms Pam Brown MLA
Mr Gregory Campbell MLA
Ms Judith Cochrane MLA
Mr Michael Copeland MLA
Mr Sammy Douglas MLA
Mr Mark H Durkan MLA
Mr Fra McCann MLA
Mr David McClarty MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Assistant Assembly Clerk)
Ms Claire McCanny (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: None

10:07am The meeting began in public session.

3. Charities Bill

The Committee considered the Department's proposed amendment to Clause 9 of the Charities Bill.

The Chairperson read the following proposed amendment:

"Clause 9, Page 4, Line 21

At end insert

'(5) Any other order under this section is subject to negative resolution'."

The Committee supported the amendment.

Question put and agreed:

"That the Committee for Social Development is content with Clause 9 as amended."

The Chairperson advised Members that the Committee had completed its clause-by-clause scrutiny of the Charities Bill and the report on the Bill will be agreed at next week's meeting.

This session was recorded by Hansard

[EXTRACT]

Thursday 18 October 2012

Room 29, Parliament Buildings

Present: Mr Alex Maskey MLA (Chairperson)
Mr Mickey Brady MLA (Deputy Chairperson)
Ms Paula Bradley MLA
Mr Gregory Campbell MLA
Ms Judith Cochrane MLA
Mr Michael Copeland MLA
Mr Sammy Douglas MLA
Mr Mark H Durkan MLA
Mr Fra McCann MLA
Mr David McClarty MLA

In Attendance: Dr Kevin Pelan (Assembly Clerk)
Mr Stewart Kennedy (Assistant Assembly Clerk)
Mr Neil Sedgewick (Clerical Supervisor)
Ms Allison Ferguson (Clerical Officer)

Apologies: Ms Pam Brown MLA

10:46am The meeting opened in public session.

Charities Bill Report

The following Departmental officials joined the meeting at 10.50am

- Ms Andrea Watson, DSD; and
- Ms Vera McCann, DSD

The officials advised the Committee that the Department are minded to make an amendment to Clause 3 of the Charities Bill which relates to insolvency matters. The officials advised that any proposed amendment may be made at Consideration Stage.

This was recorded by Hansard.

10.54am Ms Paula Bradley re-joined the meeting

The Chairperson thanked the officials for their attendance.

10.55am The officials left the meeting.

The Committee considered a draft Report on the Committee Stage of the Charities Bill.

Agreed: The Committee read and agreed the introduction to the Bill on pages 2 to 3.

Agreed: The Committee read and agreed the Consideration of the Bill on page 4.

Agreed: The Committee read and agreed the Clause-by-Clause Scrutiny of the Bill on pages 5 and 6.

Agreed: The Committee read and agreed the Executive Summary of the Bill on page 1.

Agreed: The Committee agreed that it was content for the Report to be printed.

Agreed: The Committee agreed that the relevant extract from the draft minutes of the proceedings of 18 October 2012 be included in the Committee's Report.

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

13 September 2012

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*
 Mr Walter Rader *for Northern Ireland*

1. **The Chairperson:** We have Frances McCandless, the chief executive of the board of the Charity Commission, and Walter Rader, 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.
2. **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.
3. 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.

4. 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.
5. **Mr Walter Rader (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.

6. 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.

7. **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?

8. **Ms McCandless:** We are satisfied that the definition of “charity” in the Bill is operable; absolutely.

9. **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.”

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

11. **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.

12. 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?

13. **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.
14. 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?
15. **Ms McCandless:** Had there been anything contentious, we would have raised it with you.
16. **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.
17. **Mr Rader:** Chairman, we welcome getting on with the job of registering.
18. **The Chairperson:** Thank you, and good luck with that.

20 September 2012

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Ms Paula Bradley
 Ms Pam Brown
 Mr Michael Copeland
 Mr Mark Durkan
 Mr Fra McCann
 Mr David McClarty
 Mr Alastair Ross

Witnesses:

Ms Denise Copeland *Northern Ireland Council*
 Ms Una McKernan *for Voluntary Action*

19. **The Chairperson:** I welcome to the Committee Una McKernan, deputy CEO of NICVA — Northern Ireland Council for Voluntary Action — and Denise Copeland, governance and charity advice manager. Members have the relevant papers in their folders.
20. Before you start, I want to ask a particular question. The focus of your submission has been on the public benefit issue and the new proposed wording for section 3 of the Charities Act 2008 to rectify what is regarded as an ambiguous and unworkable public benefit test. Can you clarify whether you think that the new section is clear and workable?
21. **Ms Una McKernan (Northern Ireland Council for Voluntary Action):** Thanks for asking us to submit evidence. Hopefully, we will be able to clarify some of that. Denise will outline some of it, and we will take any questions you may have. It is a very complex area.
22. **Ms Denise Copeland (Northern Ireland Council for Voluntary Action):** First, the Northern Ireland Council for Voluntary Action welcomes the publication of the Charities Bill and commends the Assembly's commitment to taking forward the necessary amendments to ensure that the issue with the wording on public benefit in section 3 of the Charities Act (Northern Ireland) 2008 is rectified. At the time of the consultation on the provisions of the 2008 Act, NICVA supported the inclusion of the public benefit test but had not appreciated that there would be legal problems with this application as it is not obvious to the layperson. NICVA appreciates that the determination of public benefit is a highly complex area of charity law and, as such, respects the legal opinion that has identified the technical issue with the section on public benefit in the 2008 Act. Therefore, we welcome the proposed new wording on the public benefit requirement as opposed to the inclusion of the public benefit test.
23. The important thing for NICVA is that the requirement that all the charities must provide public benefit has not changed, as public benefit has always been central to the nature of charity. The introduction of the presumption of public benefit for certain types of charity was something that was being considered at one stage during this process last year. NICVA would not have supported the presumption of public benefit for any type of charity and believes that that view would be largely shared across the sector. During the consultations carried out at various stages of charity law reform, culminating in the introduction of the 2008 Act, it was widely agreed that any organisation wishing to establish as a charity in Northern Ireland should have to demonstrate that it is for the public benefit. NICVA strongly believes that all charities should be treated equally and that no one type of charity should be presumed to be for the public benefit, so it welcomes the retention of the public benefit requirement for all charities.
24. In the absence of a prescribed public benefit test written in legislation, it will be up to the Charity Commission to promote awareness and understanding of the public benefit requirement, as

that is one of its objectives. Charity trustees will look to the Charity Commission's public benefit guidance for direction. Once published, that guidance should be able to explain to trustees what is meant by public benefit, explaining benefits and highlighting potential problem areas. NICVA looks forward to the Charity Commission's consultation on its public benefit guidance. Hopefully, that will take place early next year.

25. Finally, NICVA looks forward to the enactment of the Bill so that the Charity Commission may proceed with establishing the register of charities for Northern Ireland.
26. **The Chairperson:** Thank you for that, Denise. Do members have any questions? We are very conscious that this came forward in 2008. One would have thought that all the work would have been done and that all the t's would have been crossed and the i's dotted. Obviously, that is not the case. I am anxious to be sure that this meets the benefit test. You are satisfied that it does.
27. No other member wishes to ask a question, but do not take that as disinterest.
28. **Mr F McCann:** I was on the Committee in 2008, and there was a long drawn-out process in trying to get to where we were going. I think that the public benefit requirement was one of the issues that we looked at seriously. I was surprised to see the whole thing coming back again because I thought that we had gone through everything. Like Alex, I thought that we had dotted the i's and crossed the t's.
29. **The Chairperson:** I knew that I would embarrass you into asking a question.
30. No other member wishes to ask a question. Obviously, we have to go into clause-by-clause scrutiny. Your presentation has been very helpful. I appreciate that you have made time available to present to us orally and by way of a written submission. Denise and Una, thank you.

27 September 2012

Members present for all or part of the proceedings:

Mr Mickey Brady (Deputy Chairperson)
 Ms Paula Bradley
 Ms Pam Brown
 Mr Mark Durkan
 Mr Alex Easton

Witnesses:

Mr Kieran Doyle	<i>Department for</i>
Mr Roy McGivern	<i>Social Development</i>

31. **The Deputy Chairperson:** I welcome Mr Roy McGivern and Mr Kieran Doyle from the Department. They are here to brief the Committee on the Charities Bill and give members the opportunity to ask questions and seek clarity on any issues. I remind members that this is not the formal clause-by-clause scrutiny of the Bill.
32. **Mr Roy McGivern (Department for Social Development):** Thank you, Deputy Chair. We welcome the opportunity to brief the Committee on the Charities Bill. We have provided members with a comprehensive background paper on the Bill, but we thought it would be useful to give the Committee a brief overview in advance of the clause-by-clause scrutiny next week.
33. Members will be aware that the primary focus of the Bill is to amend the public benefit provisions in section 3 of the Charities Act (Northern Ireland) 2008. It is very much a technical amendment, which will bring those public benefit requirements in Northern Ireland into line with those already in place in England and Wales. It will also remove the current uncertainty around the requirement to be met in determining whether a charity or institution is actually a charity. This issue was first raised with us by legal counsel representing the Charity Commission back in June 2010. It has taken some considerable time to resolve the matter.
34. Although the Department has received different legal advice and opinion, we are now clear that the proposed amendment in the Charities Bill will achieve legal certainty and has the support of the regulator, the Charity Commission and the wider charitable sector in Northern Ireland.
35. The Bill will enable the Charity Commission to consult on its draft public benefit guidance and put in place for the first time a Northern Ireland register of charities. That will be a very important step forward for local charities. It will not only improve accountability for them, but will improve public confidence in charitable giving.
36. We have also taken the opportunity in the Bill to make a number of other amendments to the Charities Act (Northern Ireland) 2008, including updates to company law references and other changes arising from charity law in England and Wales. It also transfers some regulatory functions from the Department to the Charity Commission. These are non-contentious amendments, the detail of which I will be pleased to explain during clause-by-clause scrutiny next week.
37. We welcome the submissions that have already been made to the Committee by the Charity Commission and the Northern Ireland Council for Voluntary Action. Both were supportive of the Bill's principles, and we worked particularly closely with the Charity Commission while it was being drafted.
38. Last week, the Minister for Social Development met representatives of the main Churches in Northern Ireland to explain the background to the Bill and provide assurances to them about the impact of the new framework and regulations, and how they will be applied across the charity sector.

39. In closing, we believe that there is overwhelming support for the Bill. We are happy to take questions from members before we move into the clause-by-clause scrutiny next week.
40. **The Deputy Chairperson:** Thank you very much, Roy. Do members have any questions for the officials? Any suggested amendments should be raised now because the clause-by-clause scrutiny of the Bill will take place during next week's meeting. Members have no points to raise. That was relatively painless.
41. **Mr McGivern:** It has been so far.
42. **The Deputy Chairperson:** Thank you, Roy.

4 October 2012

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 Fra McCann

Witnesses:

Mr Kieran Doyle *Department for*
 Mr Roy McGivern *Social Development*

43. **The Chairperson:** We are going through the Bill clause by clause. It may not take as long as you might think. Members have the Bill folder before them. Bear in mind that we have a 1.00 pm welfare reform briefing. I remind members that we do have the Bill folder. It will be helpful also to bring out the explanatory memo, the delegated powers memorandum and report of the Examiner of Statutory Rules, and the clause-by-clause table.
44. From the Department, we have two officials, Roy McGivern and Kieran Doyle, to advise us and take us through the Bill. You are both very welcome. Obviously the proceedings are being recorded by Hansard. As we work through the clauses of the Bill, the officials will guide us. Is there anything that you want to address members on before we start, Roy or Kieran, or are you happy enough?
45. **Mr Roy McGivern (Department for Social Development):** Not particularly. We spoke to the Committee last week on the general principles of the Bill. We are happy to offer any advice that we can during the clause-by-clause scrutiny.
46. **The Chairperson:** There is an issue of delegated powers in the memorandum. It is about the position of the Examiner of Statutory Rules that orders under clause 9 do not amend. That is the advice from the Examiner of Statutory Rules, and we need to take that into consideration. Do you have a view on that?
47. **Mr McGivern:** Yes. We were made aware of that issue. You will see that, in clause 9, there are different delegated powers, and that is set out in the memorandum. Clauses 9(1) and 9(2) are not subject to Assembly control, as the Bill is set out, because they provide for the making of minor and technical provision only to allow for implementation of the Bill. That is consistent with current practice that allows the parent Department, the Department for Social Development, to commence various provisions of the Act. Clause 3 is different in that it enables the Department to amend, modify or repeal statutory provisions to give full effect to the Bill. That is subject to Assembly control through draft affirmative resolution. We have looked at that and sought advice from the Office of the Legislative Counsel, and the Department is willing to consider an amendment to clause 9 to make clauses 9(1) and 9(2) subject to Assembly control through negative resolution, if the Committee agrees.
48. **The Chairperson:** That seemed to be the concern of the Examiner of Statutory Rules. Thanks for that, Roy.
49. Before we go through the clauses, I remind members that all the organisations that responded to the call for evidence were in favour of the Bill, and there were no other suggested amendments from any member or organisation. I am just making people aware of that. None of the stakeholders has said that the Bill needs to be changed. They all welcomed the Bill. That is helpful. We will go through this today, and if we have a consensus, that is good. If we do not, we will have to divide the Committee.

Clause 1 (The public benefit requirement)

50. **The Chairperson:** I want to gallop through this quickly, and, hopefully, we will not have any major issues. It is up to members. Clause 1 is about the new public benefit provision. Are members content that they have read the Bill and had the discussion? There are no suggested amendments.

Question, That the Committee is content with the clause, put and agreed to.

Clause 1 agreed to.

Clause 2 (Gifts for mixed purposes)

51. **The Chairperson:** This clause re-enacts section 24 of the Charities Act 1964. I do not want to go through any of this if it is not necessary.

Question, That the Committee is content with the clause, put and agreed to.

Clause 2 agreed to.

Clause 3 (Persons disqualified for being trustees of a charity)

52. **The Chairperson:** There are no suggested amendments.

Question, That the Committee is content with the clause, put and agreed to.

Clause 3 agreed to.

Clauses 4 to 8 agreed to.

Clause 9 (Power to make supplementary and transitional provision etc.)

53. **The Chairperson:** This is the one that we spoke about earlier. The Department has indicated that it is content to [Inaudible.] on this. Does anyone want to propose the amendment? We could propose the amendment as per the recommendation of the Examiner of Statutory Rules. Can that be written in? Are members content with that amendment?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 9 agreed to.

Clauses 10 and 11 agreed to.

Schedules 1 to 2 agreed to.

Long title agreed to.

54. **The Chairperson:** Next week, we will go through this, just for the formalities, having taken account of the report of today's meeting. Can the Department bring forward that amendment next week?

55. **Mr McGivern:** We should be able to do that. We will get advice on the exact wording of the amendment, but I think that that will be possible.

56. **The Chairperson:** Thanks very much for that. That concludes the formal clause-by-clause scrutiny of the Bill for today. Next week, we will consider a draft Committee report based on what we have dealt with today. Roy and Kieran, thank you for your support this morning. See you next week.

11 October 2012

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mr Michael Copeland
Mr Sammy Douglas
Mr David McClarty

57. **The Chairperson:** I remind members that we have a proposed amendment to clause 9 of the Charities Bill. You will also find a draft Committee report at tab 2 of your papers. This session will be recorded by Hansard. Last week, as you know, we had the clause-by-clause scrutiny of the Charities Bill, and the Committee was content to accept the advice of the Examiner of Statutory Rules on clause 9. The Committee asked the Department to provide text for a proposed amendment to clause 9. The Department has proposed the following amendment:

"Clause 9, Page 4, Line 21

At end insert

'(5) Any other order under this section is subject to negative resolution.'"

58. Are members content to support that amendment?

Members indicated assent.

59. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.
60. Clause 9 agreed to.
61. **The Chairperson:** That completes the Committee's formal clause-by-clause scrutiny. At next week's meeting, the Committee will be asked to agree its report on the Bill. As I said earlier, a copy of the draft report, which will be updated to reflect the last amendment, is in tab 2 of your packs.

18 October 2012

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
 Mr Mickey Brady (Deputy Chairperson)
 Ms Paula Bradley
 Mr Gregory Campbell
 Mrs Judith Cochrane
 Mr Sammy Douglas
 Mr Mark Durkan
 Mr Fra McCann
 Mr David McClarty

Witnesses:

Ms Vera McCann *Department for Social*
 Ms Andrea Watson *Development*

62. **The Chairperson:** We will now move to the Charities Bill report. The Department advised us yesterday that it is minded to propose an amendment to clause 3, which relates to insolvency. It is considering doing that at Consideration Stage. Andrea Watson from the Department is here. I will set the scene. The Committee agreed its report last week and is here to sign off on it this morning. We were then advised that the Department identified a potential difficulty and may propose an amendment at a later stage. As a Committee, we cannot reopen this now, because we have nothing to reopen it with. We are not aware of the issue and we are not aware of the amendment the Department is likely to propose, but we look forward to hearing from Andrea. Good morning.

63. **Ms Andrea Watson (Department for Social Development):** Good morning. Thank you, Chair and Committee members for the opportunity to bring to your attention to a possible amendment to the Charities Bill in addition to the amendment to clause 9, which was agreed to last week by the Committee.

It is not unusual for the need for an amendment to arise following the introduction of a Bill, or indeed, after Committee Stage. Given that the

Committee is about to publish its report on the Charities Bill and Committee Stage is due to finish next Tuesday, we thought it important to give you early notice of the potential amendment.

There are no implications for the public benefit provisions, which are the primary focus of the Bill. We previously made you aware that the Bill carried a number of other amendments, for example, to update company law references and other changes to charity law that have taken place in England and Wales. This potential amendment would be a similar non-contentious one.

I refer the Committee to clause 3, which the potential amendment relates to. Clause 3 amends section 86 of the Charities Act (Northern Ireland) 2008. Section 86 is already in operation. Clause 3 extends the lists of persons disqualified from being trustees of a charity to include a person who is the subject of a bankruptcy restrictions order or an interim order. The inclusion of that provision in clause 3 updates the 2008 Act to mirror the relevant section of the Charities Act 2011, which is the law in England and Wales. As you know, the 2008 Act follows very closely the charity legislation of England and Wales.

Late last Thursday, on our return from Committee, we received notice from the insolvency branch of the Department of Enterprise, Trade and Investment (DETI) that an amendment had been made to the Charities Act 2011. For the record, the amendment was made by the Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012, which I will refer to as the 2012 order.

This came into force very recently — 1 October 2012. The 2012 order relates to insolvency law, which the Chair referred to, and, in particular, debt relief orders. In short, the change to the Charities Act 2011 further extends the

list of persons disqualified from being trustees of a charity in addition to those picked up by clause 3 of our Bill to include persons subject to a moratorium period under a debt relief order, or a debt relief restrictions order or interim order under the Insolvency Act 1986.

DETI also advised us that the words “interim order” in clause 3 are not appropriate to the equivalent Northern Ireland legislation. It has, therefore, asked us to consider dropping those words from the Bill.

We have spent the past three days corresponding with DETI to investigate the effect of the amendment on the 2011 Act and its implications for the 2008 Act. We need just a couple more days to complete this exercise.

If it is confirmed that the amendment is required — we think it will be — our initial assessment is that the best course of action would be to table a departmental amendment to clause 3 at Consideration Stage. If it is not possible to carry the amendment with the Charities Bill, we would propose to work with our DETI colleagues to ensure that the amendment is carried when DETI replicates the 2012 order for Northern Ireland. However, it could take up to one year before DETI is in a position to bring forward the statutory rule to make the amendment, and the amendment would end up sitting in a piece of insolvency legislation rather than in the Charities Act.

I appreciate the fact that I referred to lots of legislation this morning. It is, therefore, our intention to write to the Committee formally to clarify the issue in detail and confirm the Department’s preferred handling as a matter of urgency. We will keep the Committee fully informed about the scheduling of Consideration Stage in that written submission.

Thank you again for giving us the time to bring this matter to your attention. If you have any questions, Vera and I will attempt to respond.

64. **The Chairperson:** OK, Andrea, thank you for that. Does anybody need to ask anything on that? If not, are members content?

Members indicated assent.

65. **The Chairperson:** Andrea, thank you.

66. **Ms Watson:** Thank you.



Northern Ireland
Assembly

Appendix 3

Written Submissions

The Charities Commission for Northern Ireland

Background

- i. The Charity Commission for Northern Ireland (the “Commission”) was established in 2009 to ensure Northern Ireland has a dynamic and well-governed charities sector, in which the public can have confidence.
- ii. The Charities Act (Northern Ireland) 2008 (the “Act”) introduced a new regulatory framework for the charitable sector in Northern Ireland. The previous framework, administered in Northern Ireland by central government, did not provide for any form of registration and only made limited provision for enforcement generally. The main objectives of the Act were to introduce:
 - an integrated system of registration and regulation;
 - supervision and support of registered charities.
- iii. The aim of these changes was to provide a structure and process through which:
 - charities can demonstrate their contribution to society;
 - the public can be assured regarding how charities are spending any donations;
 - Government can assist in the better governance of the charity sector.
- iv. Unfortunately, legal advice taken by the Commission in 2010 highlighted that the section of the Act relating to the public benefit requirement was not workable in practice. The Commission referred this matter back to the Department for Social Development (“DSD”) and the Bill currently under consideration is the proposed solution to the problem identified.
- v. Thus, the Commission supports this amendment Bill and in particular the amendment to the drafting of the public benefit requirement. Schedule 1 (Minor and Consequential Amendments) and Schedule 2 (Repeals) relate to changes to wording to reflect parts of the consolidated charity legislation in England and Wales or arise from changes to other pieces of legislation. We will not comment on these specifically.

1. Clause 1 - The public benefit requirement

- 1.1 The Commission supports the substitution of section 3 of the Act with the text in the Charities Bill.
- 1.2 The drafting contained in section 3 of the Act which is being replaced, is not workable on a technical, legal or practical level. It represents a hybrid/mixture of the drafting on public benefit found in both the English and Welsh and Scottish charities legislation which is problematic because each contains a different public benefit requirement. As a result, neither set of requirements can be fully complied with by charities in Northern Ireland. The new drafting in the Charities Bill reflects the position in England and Wales, which is appropriate given that the Act is heavily based on the drafting in the Charities Act (2006) in England and Wales.
- 1.3 The changes to section 3 of the Act are necessary so that the Commission can begin the process of preparing to implement the registration of charities in Northern Ireland. To date, the problems with the legislation have rendered it unworkable; this has led to a considerable delay to registration. This continues to be a frustrating situation, both for the Commission and for charities and members of the general public. In the past 6 months, more than 40% of all enquiries received by the Commission have been to do with charity registration.
- 1.4 The Commission have put in place internal procedures to establish a workable system of recognising and dealing with charities despite not having a registered list of organisations which have fulfilled the public benefit requirement (a legislative pre-requisite to registration).

In its day to day operations, the Commission has had to develop two sets of procedures, one for those organisations the Commission can deal with in the interim period, and another for how we will deal with organisations once registration begins. Much of the guidance we are producing currently, will need to be revised once registration has commenced.

1.5 We have also worked closely with DSD to explain the practical problems with parts of the Act to allow them to put in place complex interim statutory measures so that the Commission has the requisite legal authority to carry out work regulating and investigating charities. This has been challenging and resource intensive and has inevitably resulted in gaps not only in the numbers and types of organisations the Commission can regulate, assist, investigate and advise but also in the way in which the Commission can carry out these statutory functions. However, the Commission has navigated our way around these obstacles and has found solutions and the public can be confident in our role as charity regulator promoting the effective use of charitable resources and accountability of charities to their beneficiaries and the general public through the work done to date.

1.6 If this amendment is supported at Committee Stage and Royal Assent is obtained by the end of 2012, The Commission would hope to begin registering organisations by late summer 2013. This is the earliest possible date for registration now, as the Commission must draft its public benefit guidance, consult on that guidance, take into account the comments received, revise guidance and then test its registration process (including applying the public benefit requirement and the final guidance). It is therefore imperative for the work of the Commission and the effective regulation of the charity sector in Northern Ireland that this legislation is taken forward as quickly as possible.

1.7 The Commission requested that clause 1 (2) is included so that a clear definition of charity will have been in place since the commencement of the Act. In practice, this means that there will be no legal ambiguity surrounding the charitable status of any organisation during the period prior to the amendment coming into force.

2. Clause 2 - Gifts for mixed purposes

This clause restores a provision previously in place in Northern Ireland. The provision is useful as it has the potential to safeguard charitable assets which may otherwise leave the charity sector because they are imperfect gifts. If an intention to give to charity can be shown, the Court or the Commission may prevent that gift from failing.

3. Clause 3 - Persons disqualified for being trustees of a charity

The Commission has no specific comment on this clause.

4. Clause 4 – Educational Endowments (Transfer to Commission of certain functions of Department)

DSD wishes to transfer some of its functions relating to charities to the Commission. The Commission has no specific comment.

5. Clause 5 – Miscellaneous functions

DSD wishes to transfer some of its functions relating to charities to the Commission. The Commission has no specific comment on this clause.

6. Clause 6 – Supplementary provisions

The Commission has no specific comment.

7. Clause 7 – Interpretation

The Commission has no specific comment.

8. Clause 8 – Minor and consequential amendments and repeals

The Commission has no specific comment.

9. Clause 9 – Power to make supplementary and transitional provision etc.

The Commission has no specific comment.

10. Clause 10 – Commencement

The Commission has no specific comment.

11. Clause 11 – Short title

The Commission has no specific comment.

12. Schedule 1 – MINOR AND CONSEQUENTIAL AMENDMENTS

The Commission has no specific comment.

13. Schedule 2 – REPEALS

The Commission has no specific comment.

14. Conclusion

The Commission looks forward to the amendment to the 2008 Act coming into operation as soon as possible so that we can begin to register charities and provide the public in Northern Ireland with the first comprehensive list of all the charities operating here. We look forward to further engagement with the Committee as our work progresses.

End

Edwards & Co Solicitors



Our Ref: JE/JKM
E-mail: jenny.ebbage@edwardsandcompany.co.uk
Your Ref:

13 September 2012

Dr Kevin Pelan
Clerk, Committee for Social Development
Northern Ireland Assembly
Room 412
Parliament Buildings
Belfast BT4 3XX

Dear Kevin

Charities Bill

Thank you for your letter dated 9 July 2012 in relation to the Charities Bill. I have no alternative wording to suggest and this aspect is best left to the skills of the legislative draftsman.

I have no suggested amendments to the Bill but I very much welcome the approach taken to the determination of public benefit by adoption of similar wording to that in the Charities legislation in England and Wales. However, it will be the laws of Northern Ireland that will determine the meaning since clause 1(1) of the Bill refers to s.3 of the 2008 Act sub-section (3) as being "... a reference to the public benefit as that term is understood for the purposes of the law relating to charities in Northern Ireland". This means that any case law relating to public benefit in this legal jurisdiction will remain relevant albeit that the removal of the presumption may impact upon its interpretation.

I welcome the inclusion in s.2 of the Bill of the gifts for mixed purposes formerly stated in s.24 of the Charities Act (NI) 1964.

Otherwise I have no comments on the Charities Bill.

Yours sincerely

EDWARDS & CO



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NILGA



Dr. Kevin Pelan

Clerk, Committee for Social Development
Room 412
Parliament Buildings
Ballymiscaw
Stormont
Belfast.
BT4 3XX

12th September 2012

Dear Dr Pelan

Charities Bill

Thank you for your letter of 9 July 2012 inviting the Northern Ireland Local Government Association to make a written submission on the Charities Bill.

Having noted the particulars, the reasons for not going to a full public consultation and the rationale for drafting the legislation, it is considered unnecessary to make a submission to the Committee on this occasion.

NILGA appreciates the invitation and looks forward to engagement with the Committee at a later stage, when new rules under the Charities Act are developed and being consulted on.

The Committee may wish to note that NILGA has been liaising closely with the Charity Commission for Northern Ireland, and will soon be meeting with Frances McCandless, their Chief Executive, to more fully discuss issues for councils and elected members in relation to charities in Northern Ireland.

Should you wish to discuss any of the content of this response, please do not hesitate to contact either myself or Peter Aiken at the NILGA Offices.

Yours sincerely

A handwritten signature in black ink that reads 'K Smyth'.

Karen Smyth

Head of Policy

NICVA



Memorandum from NICVA (Northern Ireland Council for Voluntary Action) to the Committee for Social Development on the Charities Bill

1.0 Introduction

- 1.1 NICVA (Northern Ireland Council for Voluntary Action) is the umbrella body for the voluntary and community sector in Northern Ireland. It provides over 1,000 members with information, advice, training and support services on a wide range of issues, together with representation for the sector as a whole. NICVA works to achieve progressive social change, based on equality and equity, working through a community development approach, to empower local communities to pursue their own needs and agendas.
- 1.2 NICVA has long recognised the need for the modernisation of charity law and as such has been working continuously to represent the views and concerns of the sector to government.
- 1.3 NICVA welcomes the publication of the Charities Bill and commends the Assembly's commitment to taking forward the necessary amendments to ensure that the new register of charities can be established thus enabling the Charity Commission to begin its work of registering charities in Northern Ireland.

2.0 Specific comments on the Charities Bill

Amendments of 2008 Act

The public benefit requirement

- 2.1 NICVA appreciates that 'public benefit' is a highly complex area of charity law which is dependent on case law. The recent rulings of the Upper Tribunal in England and Wales, in relation to the public benefit requirement of private schools and benevolent societies, demonstrate just how intricate and technical this area of the law is. With this in mind NICVA values the legal opinion that has identified the technical issue with the section on public benefit in the 2008 Act, which would not have been obvious to a lay person.
- 2.2 NICVA welcomes the proposed new wording on public benefit which is intended to rectify Section 3 of the Charities Act 2008. The amendment concentrates on the public benefit requirement as opposed to the public benefit test, which would see the removal of the wording concerning the determination of potential benefits and likely detriment as outlined in the table below. The proposed new wording is the same as that found in charity legislation in England and Wales, which places the principal emphasis on the public benefit requirement under charitable purpose as opposed to including a prescribed charity test in legislation which is found in Scottish charity legislation.

Current wording in Section 3 Charities Act (NI) 2008	Proposed wording in Section 3 Charities Bill (NI) 2012
<p>The “public benefit” test</p> <p>3.(1) This section applies in connection with the requirement in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.</p> <p>(2) In determining whether that requirement is satisfied in relation to any such purpose, it is not to be presumed that a purpose of a particular description is for the public benefit.</p> <p>(3) In determining whether an institution provides or intends to provide public benefit, regard must be had to</p> <p>(a) how any</p> <p>(i) benefit gained or likely to be gained by members of the institution or any other persons (other than as members of the public), and</p> <p>(ii) detriment incurred or likely to be incurred by the public, in consequence of the institution exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and</p> <p>(b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.</p>	<p>The public benefit requirement</p> <p>1.(1) For section 3 of the 2008 Act (the “public benefit” test) there shall be substituted the following section</p> <p>“The public benefit requirement</p> <p>3.(1) In this Act “the public benefit requirement” means the requirement in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.</p> <p>(2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 2(2), it is not to be presumed that a purpose of a particular description is for the public benefit.</p> <p>(3) In this Act any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in Northern Ireland.</p> <p>(4) Subsection (3) is subject to subsection (2).”.</p> <p>(2) This section shall be deemed always to have had effect.</p>

- 2.3 NICVA understands that it is necessary for Section 3 to be amended as it may potentially create problems in its current form, as highlighted by senior counsel’s opinion sought by the Charity Commission. NICVA has been in support of the Department’s course of action to obtain accelerated passage for the rewording of this section of the 2008 Act from the outset.
- 2.4 The new wording does not change either the definition of charitable purpose or the requirement that all charities must provide public benefit in Northern Ireland or elsewhere. This is very positive as the introduction of the presumption of public benefit for certain types of charity was something which was being considered at one stage during this process.
- 2.5 NICVA would not have supported the presumption of public benefit for any type of charity and in March 2011, wrote to the Minister for Social Development to outline its strong objection to such a move. NICVA strongly believes that all charities should be treated equally and that no one type of charity should be presumed to be for the public benefit, so welcomes the retention of the public benefit requirement for all charities.
- 2.6 NICVA believes that this view would be largely shared across the sector. During the consultations carried out at various stages of charity law reform, culminating in the introduction of the Charities Act 2008, it was widely agreed that any organisation wishing to establish as a charity in Northern Ireland should have to demonstrate that it is for the benefit of the public.

- 2.7 In the absence of a prescribed public benefit test written in legislation, it will be up to the Charity Commission to promote awareness and understanding of the public benefit requirement, as is one of its objectives. Charity trustees will look to the Charity Commission's public benefit guidance for direction. Once published, this guidance should be able to explain to trustees what is meant by public benefit, explaining benefits and highlighting potential problem areas. NICVA looks forward to the Charity Commission's consultation on its public benefit guidance, hopefully early next year.

Other amendments to 2008 Act

- 2.8 NICVA commends the Department for taking this opportunity to amend other sections of the Act which it deemed necessary. The re-enactment of the gifts for mixed purposes clause from the 1964 Act should help safeguard charitable gifts under cy-près schemes in the future. It is also proposed that the list of persons who shall be disqualified from being a trustee is to include someone who is subject to a bankruptcy restrictions order or an interim order, in line with other relevant legislation.

Transfer to Commission of certain functions of Department

- 2.9 NICVA welcomes the transfer of various regulatory functions from the Department to the Charity Commission, which should help the Commission to fulfil its regulatory role.

Minor and consequential amendments

Annual audit or examination of charity accounts

- 2.10 Finally, NICVA welcomes the inclusion of the proposed amendment to Section 65(4) of the Act which concerns who is qualified to carry out an independent examination of accounts over £100,000. There was an error in the drafting of the 2008 Act, which required a Fellow instead of a Full Member of the Association of Charity Independent Examiners (ACIE) to be eligible to carry out a prescribed independent examination. NICVA looks forward to working with ACIE and others in facilitating and encouraging membership of ACIE, as it is the only professional body whose sole focus is independent examination.

Volunteer Now



Volunteer Now's response to the Consultation on Charities Bill

Contact Details

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Information and Assessment Officer

Volunteer Now

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A Charity (Inland Revenue) No. XT22896 Company Limited by Guarantee No. NI602399
Registered in Northern Ireland

Volunteer Now welcomes the opportunity to comment on the Charities Bill consultation.

Volunteer Now works to promote, enhance and support volunteering across Northern Ireland. Volunteer Now is about **connecting** with individuals and organisations to **build** healthy communities and create positive **change**. **Volunteer Now** enhances recognition for the contribution volunteers make, provides access to opportunities and encourages people to volunteer. We provide training, information, guidance and support to volunteer-involving organisations on issues of good practice and policy regarding volunteering, volunteer management, child protection, safeguarding vulnerable adults and governance.

Volunteers play a vital role in governance as part of Management Committees/ Boards in charities across Northern Ireland. They are responsible for overseeing a charities work by ensuring the proper procedures and policies are in place to manage it effectively. It is estimated that over 27,000¹ volunteers are involved in governance roles. The State of the Sector VI² found that 86% of organisations currently involved volunteers in running their organisations. Being involved in governance (Board/ executive committee) was the most popular type of volunteer activity for 58% of the organisations who responded to Mapping Volunteer Involving Organisations in Northern Ireland: Phase 2 research³.

1 Its All about time 2007 Volunteer Development Agency
2 The State of the Sector VI, 2012, NICVA
3 Mapping Volunteer Involving Organisations in Northern Ireland: Phase 2: 2010, Volunteer Now.

Volunteer Directors/Trustees are responsible for complying with Charity Law and following the requirements set out by the Charity Commission.

- Volunteer Now welcomes the amendments to the Charities Bill and specifically the public benefit provision. We support the move for all Charities to demonstrate their public benefit and believe this will help to ensure a transparent, equal and fair process.
- We look forward to the future consultations regarding accounting and auditing requirements and feel this will be an opportunity to provide feedback to ensure the process is suitable and appropriate for organisations of all sizes.
- Volunteer Now look forward to the Charity Commission's consultation on its public benefit guidance. This guidance is vital in order to enable all charities to fully understand what it means by 'public benefit'. The consultation will provide an opportunity for the Sector to offer comments on the clarity of the draft guidance.

Volunteer Now would be pleased to discuss any of the points raised above.

Fundraising Standards Board

Dr Kevin Phelan
Clerk, Committee for Social Development
Room 412,
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

27 September 2012

Dear Dr Phelan

The Fundraising Standards Board (FRSB) is grateful for the opportunity to respond to the Northern Ireland Charities Bill prior to it being referred to the Committee for Social Development for the Committee Stage of the Bill.

Having considered the proposed amendments, we support the suggested changes to the public benefit provision of the Charity Act (Northern Ireland) 2008 and to the transfer of the proposed functions to that of the Charity Commission for Northern Ireland.

We would, however, also ask the Committee to consider promoting the role of the existing self-regulator of fundraising across the UK, the FRSB. The FRSB exists to ensure adherence to best practice in fundraising and help maintain public trust and confidence. This is particularly relevant when considering the Charity Commission for Northern Ireland's recent report (Concerns received about charity fundraising, September 2012) on public concerns about charity fundraising.

You may or may not be aware that the Charities Act (England & Wales) 2006, as required by the Act itself, was reviewed in its entirety by Lord Hodgson earlier this year. The resulting report (Trusted and Independent: Giving Charity Back to Charities) was presented to Government in July of this year and can be found at www.cabinetoffice.gov.uk/resource-library/trusted-and-independent-giving-charity-back-charities-review-charities-act-2006.

In that report, Lord Hodgson considered at great length the self-regulation of fundraising, as delivered by the FRSB, and which the Scottish, Welsh and Westminster Governments all support. He went on to make several recommendations to strengthen the existing scheme (Pages 103-105).

In order to continue to safeguard public trust, we are now working to strengthen the existing scheme with further incentives to join and firmer sanctions for those that contravene the standards. As such, the FRSB has proposed Self-Regulation Plus – a series of initiatives designed to build membership and strengthen sanctions against those that breach standards. Such initiatives include:

- Public fundraising licences should be restricted to FRSB member charities, acting as a safeguard to protect public trust and ensure fundraisers are committed to high standards.
- The FRSB driving closer collaboration with key strategic partners, particularly the Charity Commission, encouraging fundraising charities to join the scheme.
- Although the FRSB does not believe that self-regulation should be obligatory, fundraising organisations above an agreed minimum of voluntary income would be expected to become members of the scheme.
- Furthermore, the FRSB believe that a more comprehensive auditing programme should be developed, monitoring compliance with fundraising standards and the internal complaints procedures of member charities.

- With 37% of complaints reported directly to the FRSB concerning non-members' fundraising practice, the FRSB must continue to investigate complaints beyond our membership, seeking commit such organisations to best practice, transparency and accountability.

In summary, we believe that the self-regulation of fundraising has been a success and we are committed to building on the existing self-regulatory model to grow the charity sector's commitment to fundraising best practice and to regulation through the FRSB.

If the Committee requires further information we would welcome the opportunity to discuss the FRSBs work and plans in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A McLean', with a stylized flourish at the end.

Alistair McLean
Chief Executive, Fundraising Standards Board

About the Fundraising Standards Board

1. The Fundraising Standards Board (FRSB) is the independent, self-regulatory body for charity fundraising in the UK, working to ensure that charity fundraising is always honest, legal, open, respectful and accountable.
2. Independently structured – The FRSB Board has 12 members. 6 sector members and 6 lay members, one of whom is the independent chair. The 6 sector members include the National Council of Voluntary Organisations (NCVO), the Welsh Council of Voluntary Associations (WCVA), the Scottish Council for Voluntary Organisations (SCVO), the Northern Ireland Council of Voluntary Associations (NICVA), the Institute of Fundraising (IOF), the Public Fundraising Regulatory Association (PFRA), the Charity Law Association (CLA) and Which? (the consumer rights organisation). Along with the lay members, this structure ensures that the self regulation of fundraising is run independently and transparently. The casting vote on any policy is with the independent lay chair who must favour the public interest.
3. Engaging the charity sector – Launched to the public in 2007, the FRSB now represents approximately 50% of all voluntary income raised in the UK, with over 1,450 members (comprising both charities and sector suppliers). Membership is wide-ranging and representative. While 70% of members have a voluntary income below £1m per annum, 81% of the top 100 charities in the country are members signed up to self-regulation. The FRSB Board membership includes representation from the 4 largest voluntary organisations in Britain and along with the IoF, represent well over 14,000 charitable organisations and tens of thousands of individual fundraisers. As well as working in partnership with other sector and public bodies, we run an Advisory Forum where we actively engage with the membership to seek their views on key issues.
4. Commitment to standards – Our members make a commitment to adhere to the highest standards of fundraising practice through the principles of the Fundraising Promise and compliance with the IoF Codes. Members display the FRSB's distinctive tick logo on fundraising materials and appeals, encouraging the UK public to give with confidence.
5. Accessible and public focussed – The FRSB scheme requires members to clearly identify their complaints process to the public, who also have access to independent adjudication by the FRSB if their concerns cannot be addressed by the charity directly. We also have a public facing website, Give with confidence.

Evangelical Alliance

Consultation Response Charities Bill, Northern Ireland 2012

Introduction

- 1.1 Our short response will primarily focus on the potential impact of this Bill on churches and faith based organisations (FBO's).
- 1.2 The Evangelical Alliance has worked closely and effectively with both the Government and the Charity Commission for England and Wales regarding the introduction and subsequent implementation of the Charities Act 2006. The Evangelical Alliance Northern Ireland (EANI) also submitted a substantive response to the Charity Act consultation here in 2008 (a copy of which can be provided).
- 1.3 We welcome this opportunity to submit written evidence again to the Social Development Committee. Should any of the Committee require further clarification on the issues raised within the submission we would be willing to meet or indeed present further evidence if necessary.

General comments

- 2.1 We welcome the sensible regulation of charities in Northern Ireland through legislation and the Charities Commission. We welcome a new transparency and practical framework to promote and maintain a healthy charity sector.
- 2.2 Religion does not claim exclusivity in positive contribution to society, but it does claim to make a disproportionate contribution. Indeed, most major charitable institutions owe their origins to a Christian motivation. For a Christian their faith and 'charitable works' are mutually non-exclusive.
- 2.3 Our conservative estimate (from researching the list of charities on the Charity Commission website) is that around 1 in 3 charities in Northern Ireland are Churches, or are organisations explicitly involved in Christian ministry, or have a Christian ethos. Other research demonstrates the breadth of contribution from Christian organisations to the registered youth sector in Northern Ireland¹. This research has evidenced that more than two-thirds of groups and almost three-quarters of youth work leaders registered in Northern Ireland are faith/church based.

Meaning of charitable purpose

- 3.1 Given the clear contribution that faith groups make to society in Northern Ireland today we are pleased to see that this Bill retains 'advancement of religion' as a charitable purpose.
- 3.2 We urge the importance of recognising and protecting evangelism (the un-coercive communication of the Christian faith to those not yet committed to the gospel of Christ) as central to the advancement of religion. We would like to see wording to the effect of "missionary/evangelistic work at home or overseas" specifically included within the purpose the advancement of religion.

1 Faith Based Youth Work in Northern Ireland: Youthnet Faith Based Interest Group, (Macaulay Associates, June 2006) <http://www.youthnetni.org.uk/Site/29/Documents/Faith%20brochure.pdf>

The public benefit requirement

- 4.1 We broadly welcome the amendments to the public benefit requirement which this Bill proposes. The 2008 Act removed any presumption of public benefit under the purpose of 'the advancement of religion.' We note that the new wording replicates that found in the Charities Act in England and Wales and removes section 3 (3) taken from the Scottish Act. We appreciate the clarity and consistency with similar legislation in England and Wales.
- 4.2 Removal of the presumption of public benefit - EANI supports in principle the concept of a universal public benefit test and does not believe there should be special exemption for religious organisations. While many organisations will do good work those receiving public money should be providing public benefit.
- 4.3 The question then becomes how this public benefit is defined and what conditions are attached to receiving charitable status. This is where many churches and Christian organisations have some concerns. The Bill proposes that the new Section 3(3) will read, 'In this Act any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in Northern Ireland.' We need clarification as to how exactly public benefit is defined and where this definition is found in Northern Ireland. We understand that it is not prescriptive and examples are found in case-law however we would welcome certain safeguards for churches and FBO's especially now that a presumption of benefit has been removed.

Our concern is that without proper safeguards in place there is a danger that 'public benefit' could be reframed in such a way as to leave its definition prey to political control or manipulation. There is a concern that churches may lose their charitable status for holding to, or teaching beliefs that are unpopular with current trends. For example could a church lose its charitable status for teaching that sex outside of heterosexual marriage is wrong? Or that membership is dependant on specific religious belief and practice?

We strongly recommend a legislative framework stating that the Charity Commission be under obligation to consult publicly on any proposed revision to the public benefit requirement.

- 4.4 The concept and reality of spiritual benefit must be acknowledged and maintained. There is a concern that unless Churches or FBO's can show their benefit in numbers and figures then their charitable status could be lost. Churches and charities are not businesses or Government Departments and cannot be subjected to the same assessment procedures.

We've said that Christian belief and practice are inextricably linked. Sometimes Christian practice can be seen and measured in terms of provision for the poor and social engagement programmes. However it would be very dangerous to judge the public benefit of Christianity, churches or charities solely on their 'output' and 'outcomes' that are statistically measurable. Christian belief and teaching provides a crucial role in promoting spiritual wellbeing, responsibility, mutual respect and sacrificial care in society, whilst helping to restrain darker aspects of human nature. Faith provides, often imperceptibly, a vital communal glue in holding together our increasingly fragmented society. The Bamford Review of Mental Health recognised that spiritual well-being is an important factor in Mental Health. The challenge of understanding and recognising the validity, nature and language of religion and belief in terms of its particular character relating to public benefits must be taken on board.

- 4.5 Evangelistic and missionary activity. The wider question remains whether evangelistic and missionary activity solely aimed at presenting and seeing responses to the Gospel will be regarded as meeting the public benefit test. We urge the importance of the recognition of evangelism (the un-coercive communication of the Christian faith to those not yet committed to the gospel of Christ). There has been a trend in other parts of Europe in recent times to penalise evangelical groups by unfairly bracketing them with religious cults. It is vital that legitimate, non-coercive, evangelical Christian groups and movements are not brought into the same category and such an approach should not be repeated in the UK. We think a legislative framework is required to ensure that the views of representative bodies, like the Evangelical

- Alliance and mainstream religious organisations, be sought whenever issues of this kind arise in practice.
- 4.6 Intercessory prayer and healing ministry – The case of *Gilmour v Coats* (1949) established that the offering of intercessory prayers by cloistered nuns was not a charitable purpose. EANI believes that prayer gives rise to a public benefit and that spiritual benefit must again be given a wide interpretation. Similarly there are ministries such as Healing on the Streets which offer (free and unconditional) prayers for healing to the public. EANI considers that these organisations should be considered charitable.
- 4.7 Is holding a regular act of public worship enough to achieve charitable status? In *Neville Estates v Madden* (1962) It was said that the Court was entitled to assume that some benefit arose from attendance at a place of worship. How regular is regular? What about the recent case of the Plymouth Brethren who are the first religious group to be refused charitable status by the Charity Commission in England and Wales for failing to meet the public benefit test? This ruling is of particular concern to the many small brethren and independent churches across Northern Ireland. We would ask for clarification of the safeguards that are being put into the Northern Ireland legislation in light of these recent developments.
- 4.8 All-Ireland bodies –The Church of Ireland, Presbyterian, Methodist and Catholic churches as well as many smaller churches and charities operate on an all island basis. Others operate across the UK and further afield. Aside from registration of charities which the Commission will deal with, how will the definition of public benefit be reconciled when it differs between jurisdictions?
- 4.9 Do you have to positively prove your public benefit? As we understand it, in England and Wales a charity has to prove its public benefit each year to the charity commission. Until the NI charity commission is fully operational it is impossible to know how many of the charities in Northern Ireland are small – with turn over of less than say £10,000 pa. These charities would find the obligation to prove their public benefit each year very onerous. EANI would suggest a much less onerous system for smaller charities, including perhaps a longer period between each review of public benefit.
- 4.10 Transition period - Given the retrospective nature of the legislation, some older charities may lose their charitable status unless they change their founding documents. EANI would have concerns that measures are put in place to enable older charities, who do not meet the new criteria, to change their charitable purposes in line with the new legislation. Will there be a specific appeals process for those who lose their status?

Conclusion

It is essential that the Department for Social Development and the Charity Commission continues to work closely with Churches and FBO's, particularly those smaller congregations and organisations at the margins.

The concept of spiritual benefit must be protected even when some aspects of religious belief conflicts with societal trends, norms and values.

Finally we urge that clarity and detail around public benefit be provided in any legislation or final guidance coming from the Charity Commission. The legislation obviously foresees a role for the Charities Commission in regulating, determining and monitoring the process relating to ratification of public benefit. In this regard, it is vital that such wide-ranging powers are transparently neutral and independent from government influence or control. How will this be established in practice and if there is not to be a specific ombudsman's role? Will the independent complaints reviewer's powers extend to adjudication in cases of alleged political or other interference?

Northern Ireland Council for Ethnic Minorities



Company Registration No: NI. 36868
Inland Revenue Charity No: XR 11970

Dr Kevin Pelan
Clerk for Committee for Social Development,
Room 412,
Parliament Buildings,
Belfast BT4 3XX.

September 2012

RE: Charities Bill

Dear Dr. Pelan,

Many thanks for your letter of 9 July 2012 inviting NICEM to make a submission in relation to the Charities Bill.

Having considered the Bill, we welcome the amendments in relation to the public benefit requirement. In that regard, we also would like to echo the points raised in NICVA's submission. We hope these amendments will facilitate the operation of the Charity Commission for Northern Ireland as we are keen to see robust governance structures being put in place for the voluntary and community sector in Northern Ireland.

We wish you and the Committee every success in your deliberations in relation to the Bill.

Please do not hesitate to contact me if you have any further questions.

Kind regards,

Karen McLaughlin
Legal Policy Officer

Joint Church response

A Joint Response to the Consultation on the Charities Bill 2012 by the Methodist Church in Ireland Presbyterian Church in Ireland and Church of Ireland

1 October 2012

Dr Kevin Pelan.
Clerk, Committee for Social Development
Room 412, Parliament Buildings,
Ballymiscaw, Stormont,
Belfast, BT4 3XX

Dear Dr Pelan

Consultation on Charities Bill 2012

Thank you for the opportunity to participate in this consultation and also for receiving this response after the consultation deadline. As explained to you we had to opportunity to meet with the Minister and Mr McGivern and Ms Watson. The written responses to issues raised at that meeting form the essence of this response.

Clause 1- Public Benefit Requirement

We recognise the need for clarity in respect of S3 of the 2008 Act in light of legal opinion obtained specifically in respect of S3(3) and the consequential wisdom of removing this provision. We still take the view that there is a case for the presumption of charitable status vis-a-vis Churches and other faith based organisations as provided for in RoI Charities Act 2009. We recognise however, in light of advice obtained from HMRC, that such presumption cannot be granted.

The removal of S3(3) from the 2008 Act is not considered to be of significance for the Churches. We understand the essence of this provision will be incorporated in CCNI guidelines and we note that these will be offered for public consultation during the period April – June 2013. As Churches we intend to participate fully in this public consultation.

Clause 2 – Gifts for mixed purposes

We welcome this provision.

Schedule 1 – Minor and consequential Amendments - (Page 9) re S166

We note that the essence of S 165, and S 166 remains intact and we welcome the insertion following S 166(5). This will potentially be of benefit to smaller Churches and other faith based organisations. We note the E-W harmonisation which this provision entails

Other observations

Audit thresholds

These were set in the 2008 Act and provision was made for these to be varied from time to time (S 65(10)(a)). We note that this has not as yet taken place and we would suggest that with passage of some 4 years since the enactment of 2008 Act it would be timely to adjust these limits. We note that this order to amend would be subject to negative resolution.

We would wish to thank you again for the opportunity to participate in this consultation. As Churches we recognise the need for robust Charity legislation and we support the essence of the provisions of the 2012 Bill the above comments notwithstanding.

Yours sincerely

Representing the Methodist Church in Ireland

Rev Dr Wesley Blair, Chair, Council on Social Responsibility

Representing the Presbyterian Church in Ireland

Mr Clive Knox, Financial Secretary

Representing the Church of Ireland

Ms Janet Maxwell, Head of Synod Services



Northern Ireland
Assembly

Appendix 4

Departmental Submissions

Charities Bill - Departmental Briefing to Social Development Committee 13 and 20 September 2012

Voluntary and Community Unit
Lighthouse Building
1 Cromac Place
Gasworks Business Park
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Belfast
BT7 2JB

Room 412
Parliament Buildings
Belfast
BT4 3XX
Email: kevin.pelan@niassembly.gov.uk

12 September 2012

Our Ref: SUB/931/2012

Dear Kevin

Charities Bill

I write in reply to the Committee's request for a briefing on the Charities Bill.

I attach a briefing paper (**Annex A**) and a summary of the key clauses of the Bill (**TAB A**).

I can confirm that Bill officials will attend the public evidence sessions of the Bill on 13 and 20 September 2012 and will be available to give evidence and assist clause by clause scrutiny on 27 September and 4 October 2012.

Yours sincerely



Roy McGivern
Head of Policy, Innovation & Charities

From: Roy McGivern

Date: 12 September 2012

To: Social Development Committee

Charities Bill

Introduction

1. The Charities Act (Northern Ireland) 2008 (“the 2008 Act”) provides for a new regulatory framework for the charitable sector in Northern Ireland. It is the first major piece of charities legislation in Northern Ireland in over 40 years and part of a major programme of UK charity law reform.
2. The 2008 Act introduces a comprehensive definition of “charity”. Section 2 of the Act lists which purposes constituted “charitable purposes” while section 3 specifies the elements of the “public benefit” test to be met if an institution established exclusively for “charitable purposes” is to constitute a charity.

The Charities Bill

3. The primary reason for the Charities Bill is to amend section 3 (“the “public benefit” test”) of the 2008 Act. The issue with the construction of that section came to light following consultation on the “Draft Public Benefit Guidance” document in 2010. This prompted the Charity Commission to seek legal advice and that advice was shared with the Department.

Consideration of alternative legal opinions on the amendment of the public benefit provision

4. It would be inappropriate for the Department to disclose the author of any piece of legal advice considered in the decision-making process. However, the Department appreciates that it would be useful for the Committee to be aware of the different legal views put forward in relation to the “public benefit” issue and therefore an outline of these is given below:
 - The initial legal opinion shared with the Department by the Charity Commission in June 2010 was to the effect that a technical error in section 3(3) of the 2008 Act (methodology for determining satisfaction of the “public benefit” test) created uncertainty as to the requirement to be met in determining whether an institution is, or is not a charity. It could not be applied and therefore needed to be amended.
 - Counter opinion argued that section 3(3) was not part of the definition of “charity”, was purely a methodology for applying the “public benefit” test, posed no impediment to the application of the “charity defining” provisions of the 2008 Act and therefore no amendment was required.
 - After much deliberation the Department decided to follow the initial advice shared by the Charity Commission. A Bill was drafted to amend section 3 by removing the contentious provision which provided a methodology for determining “public benefit”, and to replace it with provision similar to that used in the legislation for England and Wales, on which the 2008 Act is based.
 - Those proposals were approved by the Executive, under the previous mandate, but this approval was subject to restoration of presumption of “public benefit”. The degree to which “presumption” was to be restored was not clear but there was insufficient time to determine the Executive’s intentions and introduce a Bill to the Assembly before dissolution in March 2011.

- It later became evident that the Executive's endorsement of the restoration of "presumption" reflected the legal view that presumption should be restored for the advancement of education, the advancement of religion and the relief of poverty, the three original heads of charity.
 - On taking up office in May 2011, Minister McCausland undertook extensive exploration of the implications of restoring "presumption". This involved meeting and corresponding with local faith-based groups and other stakeholders who had concerns about the potential effect of such a change. It also required investigation of the possibility of "presumed" charities having to demonstrate "public benefit" in order to gain eligibility for tax exemptions. Legal opinion supporting "presumption" argued that the relevant law imposed no such requirement.
 - Correspondence between Minister McCausland and HM Treasury, including legal input from HMRC, later confirmed that the restoration of "presumption" would in fact lead to extra regulatory burden for such charities. They would not only have to undergo determination by the Charity Commission but would also have to meet HMRC's public benefit requirement.
5. Having considered all aspects of the "public benefit" question, the Minister concluded that the current section 3, which comprises elements of the public benefit provisions in the Charities Trustee and Investment (Scotland) Act 2005 and the Charities Act 2006 (in England & Wales) produced a hybrid "public benefit" test that is not legislatively compatible with section 2 which makes provision about what constitutes "charitable purposes". The Minister decided that inclusion of the Scottish provision did not provide a more rigorous public benefit test as had been anticipated in the policy proposals leading the 2008 Act and that section 3 should reflect the corresponding provision applicable in England and Wales (currently section 4 of the Charities Act 2011(the public benefit requirement)).

Conclusion

6. The amendment of the public benefit provision to follow the English and Welsh legislation is supported by the Charity Commission and will be welcomed, in principle, by the charity sector. It gained the support of the Executive on 21 June 2012.
7. The Charities Bill comprises 11 clauses and two Schedules. An explanation of the key clauses is appended at **TAB A**.

Key clauses of the Charities Bill

Clause 1: The public benefit requirement

Clause 1 substitutes a new public benefit provision for that in section 3 of the 2008 Act.

The new section 3 is based exclusively on the charity legislation of England and Wales as are all other provisions of the 2008 Act. Provision is made for determination of the public benefit requirement by reference to the law relating to charities in Northern Ireland.

Clause 1(2) applies the new public benefit provision retrospectively.

Clause 2: Gifts for mixed purposes

Clause 2 re-enacts section 24 of the Charities Act (Northern Ireland) 1964 (gifts for mixed purposes). Re-enactment has the effect of restoring the mechanism through which a gift which is for both charitable and other purposes may be regarded as exclusively charitable.

Clause 3: Persons disqualified for being trustees of a charity

Clause 3 amends section 86 of the 2008 Act to extend the list of persons disqualified from being trustees of a charity to include persons who are subject to a bankruptcy restrictions order or an interim order. The amendment is consequential to provision made by the Enterprise Act 2002 (Disqualification from Office: General) Order 2006.

Clause 4: Educational endowments

Clause 4 transfers the Department's functions under the Educational Endowments

(Ireland) Act 1885, and other related Acts, to the CCNI. These functions are no longer appropriate to the Department as they fall within the CCNI's statutory role as Regulator of charities.

Clause 5: Miscellaneous functions

Clause 5 transfers certain other regulatory functions from the Department to the CCNI.

Clause 5(1) transfers relevant functions under the Education and Libraries (Northern Ireland) Order 1986 while clause 5(2) transfers those under the Companies Act 2006.

Clause 6: Supplementary provisions

Clause 6 makes transitional provision and savings to facilitate the transfer of functions from the Department to the CCNI.

Clauses 7: Interpretation and 8: Minor and consequential amendments and repeals) are self-explanatory.

Clause 9: Power to make supplementary and transitional provision

Clause 9 confers powers on the Department to make any further provision necessary to give full effect to the Act. It also specifies that an order made under Clause 9(3) (power to amend, modify or repeal any statutory provision) shall not be made unless a draft of the order has been approved by the Assembly.

Clause 10: Commencement

Clause 10(1) provides that with the exception of Clauses 4 and 5(1) all provisions of the Act shall come into operation on the day following that on which the Bill is enacted.

Clause 10(2) enables the Department to bring Clauses 4 and 5(1) into operation by order.

Clause 11: Short title is self-explanatory.**Schedule 1: Minor and consequential amendments**

The amendments in Schedule 1 make no change to policy. Most are consequential to the implementation of the Companies Act 2006 and amendments made by the Charities (Pre-consolidation Amendments) Order 2011. A few correct textual inaccuracies.

Schedule 2: Repeals

Schedule 2 lists repeals to the 2008 Act consequential to amendments made by Schedule 1.

Letter from Minister to Chair of Committee 12 June 2012



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Mr Alex Maskey
Chair
Committee for Social Development
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Our ref: SUB/646/2012

12 June 2012

Dear Alex

CHARITIES BILL

I enclose copies of the Charities Bill and accompanying Explanatory and Financial Memorandum on an "in confidence" basis pending approval by the Executive Committee to introduce the Bill into the Assembly.

At the Social Development Committee meeting of 2 February 2012, officials advised members of my decision to take forward a Bill which would make a technical amendment to the "public benefit" provision of the Charities Act (Northern Ireland) 2008 ("the 2008 Act") and which would also include a number of other provisions.

The Bill reflects that decision. The "public benefit" provision is amended to remove the Scottish methodology for applying the "public benefit" test and is replaced with provision which requires "public benefit" to be construed in accordance with the law relating to charities in Northern Ireland. This amendment brings our public benefit provision into line with that in England and Wales, removes the technical difficulty in applying the new definition of "charity" under the 2008 Act and paves the way for commencement of determinations and registration by the Charity Commission for Northern Ireland (CCNI).

As previously indicated, I took the opportunity to use the Bill to best effect by including a number of other provisions which would otherwise have required a significant amount of further legislation. The Bill therefore carries a number of technical amendments to the



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2008 Act which are consequential to legislation made since its enactment. It also makes some new provision to both transfer certain functions still remaining with my Department to the CCNI and to re-enact provision from the Charities Act (Northern Ireland) 1964.

My intention is to have the Bill before the Executive for consideration at its meeting of 14 June 2012. If agreed by the Executive the Bill can then be introduced into the Assembly before the summer recess.

Yours sincerely

Nelson M'Cauleand

NELSON McCAUSLAND MLA
Minister for Social Development

Charities Act (Northern Ireland) 2008 - Departmental briefing to Social Development Committee 2 February 2012

Charities Act (Northern Ireland) 2008 Briefing Paper For Social Development Committee For

2 February 2012

From: Russell McCaughey
Voluntary & Community Unit, Dsd

Date: 31 January 2011

To: Social Development Committee

Introduction

1. The purpose of this paper is to update the Committee on the progress made towards amendment of the Charities Act (Northern Ireland) 2008 ("the 2008 Act"). The 2008 Act makes provision for the creation of a modern and effective regulatory framework for charities which will promote transparency and accountability and thereby foster the trust, confidence and widespread support of the public, on which the charity sector depends.
2. Officials last provided an update to Committee at its meeting on 20 October 2011. The Committee received a paper for that meeting that outlined the background to the 2008 Act, explained the legal issue with the "public benefit" test and detailed the subordinate legislation made to date under the 2008 Act.

The "public benefit" issue

3. The Committee will be aware that Senior Counsel acting for the Charity Commission for Northern Ireland (CCNI) identified a technical difficulty with the "public benefit" test provision of the 2008 Act in June 2010. In short, this arises out of the inclusion in section 3 of the 2008 Act of a combination of unrelated provisions on the "public benefit" test from both the Charities Act 2006 (which applies in England and Wales) and the Scottish Charities and Trustee Investment (Scotland) Act 2005. The "public benefit" test issue has prevented the CCNI from being able to make a determination as to whether an institution is a charity within the meaning of the 2008 Act and therefore registration cannot commence.
4. The Minister has been carefully considering options for the best remedy to this issue and in support of this has been corresponding with HM Treasury and HM Revenue & Customs (HMRC). The options are:
 - Option 1 – a 'technical' amendment to bring the "public benefit" test in the 2008 Act into line with that in place in England and Wales
 - Option 2 – a 'technical' amendment to the "public benefit" test and the restoration of the presumption of public benefit for charities for the relief of poverty, the advancement of education and the advancement of religion
 - Option 3 – a 'technical' amendment to the "public benefit" test and the restoration of the presumption of public benefit for charities for the advancement of religion.
5. Since the last briefing to the Committee the Minister has sought a formal view from HM Treasury on the potential impact of any restoration of a presumption of public benefit on the claiming of UK charity tax reliefs. HM Treasury has advised that any restoration of

“presumption” in Northern Ireland would require HMRC to apply its own public benefit test to determine eligibility for UK tax reliefs. This is due to a requirement for charities to meet the public benefit test under existing charity law in England and Wales.

6. The Minister has weighed up the all the advice received to date and has decided to proceed with Option 1, a ‘technical’ amendment that will bring the “public benefit” test in the 2008 Act into line with that in place in England and Wales. Presumption of public benefit will not be restored for any category of charitable purpose. This amendment will involve minimal change to the 2008 Act and will retain a level playing field for all local charities in terms of demonstrating public benefit.
7. The Minister is satisfied that this course of action will maintain the core policy intention underlying the 2008 Act originally endorsed by the Executive and Assembly. The amendment will merely alter the methodology for applying the public benefit test and not the test itself. The “public benefit” test of the 2008 Act will be brought fully into line with that in the Charities Act 2006 and, as a consequence, no issues will arise about satisfaction of the tax law condition in respect of “charitable purposes”. This will also avoid a potential dual regulatory system where ‘presumed’ charities in Northern Ireland would be required to meet the “public benefit” test as applied by the CCNI and also demonstrate public benefit to HMRC.

The Charity Commission for Northern Ireland

8. As a result of the three Commencement Orders made to date and the Charities Act 2008 (Transitional Provision) Order 2011 (S.R. 2011 No. 12) (“the Transitional Provision Order”), the CCNI is empowered to undertake investigations where there are public concerns about misconduct or mismanagement in the administration of local charities. Such investigations are limited to institutions ‘deemed’ to be charities under the 2008 Act by virtue of the Transitional Provision Order, hence, those Northern Ireland institutions which have been recognised as eligible for tax benefits under the Finance Act 2010 (c. 13), i.e. institutions granted charitable status by HMRC. Therefore, despite the protracted legal issue with the “public benefit” test, the CCNI has been working as an effective, albeit limited, regulator of Northern Ireland charities.

Other amendments to be carried with the Bill

9. In addition to the amendment to the “public benefit” test in section 3 of the 2008 Act, the Bill will serve as a vehicle for other necessary amendments. These will include amendments to update company law references within the 2008 Act to take account of provisions of the Companies Act 2006 which were commenced following the enactment of the 2008 Act. One will make provision to enable Northern Ireland charities to become Community Interest Companies by removing a company law restriction which is no longer required. The remaining amendments will correct typographical errors and inaccurate legislative references and, in line with the Charities Act 2011 (which consolidates the England and Wales charity legislation) will modernise some of the expression used in the 2008 Act.

Future implementation of the 2008 Act pending resolution of “public benefit” issue

10. Subject to Committee approval, a Commencement No. 4 Order which will bring into operation provisions transferring responsibility for charity law with respect to Cy Pres schemes from the Department to the CCNI, is scheduled for later this year.
11. Scoping is currently underway for the making of Accounts and Reporting Regulations, a provision pivotal to sustaining the regulatory framework. These Regulations will inform local charities of the precise requirements under the 2008 Act in terms of preparing proper accounts and an Annual Report. This will be a major exercise and Committee will be kept informed of developments and its approval sought as appropriate.

Next Steps & Timing Issues

12. Officials will work with the Office of the Legislative Counsel (OLC) to bring forward a draft Charities (Amendment) Bill for Executive consideration.
13. At present, the aim is to have a Bill endorsed by the Executive by April 2012 and a Bill introduced in the Assembly before the summer Recess. It is expected that the Bill will proceed under normal passage. The Department will keep the Committee fully updated on any developments. A copy of the Bill and Explanatory and Financial Memorandum will be forwarded to the Committee. Further Departmental briefing can be arranged at the Committee's request before the Bill goes to the Executive for agreement and introduction to the Assembly.

Recommendation

14. The Committee is asked to note the content of the briefing.

Russell McCaughey

Acting Director

Voluntary & Community Unit

Charities Act (Northern Ireland) 2008

Charities Act (Northern Ireland) 2008 Briefing Paper For Social Development Committee

From: Maeve Walls
Voluntary & Community Unit, Dsd

Date: 18 October 2011

To: Social Development Committee

Introduction

1. The purpose of this paper is to inform the Committee of the background to the Charities Act (Northern Ireland) 2008 (“the 2008 Act”). The paper also raises the current issue with the “public benefit” test and details the subordinate legislation falling out of the 2008 Act made to date.

Review of charity law leading to the Charities Act (Northern Ireland) 2008

2. In 2004, in keeping with developments in the other UK jurisdictions, a review of charity law in Northern Ireland was undertaken by a specially convened Charities Advisory Panel. That review culminated in the enactment of the 2008 Act, Northern Ireland’s first major charity law reform in over 40 years. The 2008 Act makes provision for the creation of a modern and effective regulatory framework for charities which will promote transparency and accountability and thereby foster the trust, confidence and widespread support of the public, on which the charity sector depends.

The 2008 Act in operation and the “public benefit” issue

3. Enactment of the 2008 Act in September 2008 was followed in June 2009 by the establishment of the Charity Commission for Northern Ireland (“CCNI”) as Northern Ireland’s first regulator and registrar of charities. In April 2010 the Charities Tribunal became operational and the expectation was that the CCNI would assume its registration and regulatory roles soon after. However, in June 2010, Senior Counsel acting for the CCNI identified a technical difficulty with the “public benefit” test provision of the 2008 Act. In short, this arises out of the inclusion in Section 3 of the 2008 Act of a combination of unrelated provisions on the “public benefit” test from both the Charities Act 2006 (which applies in England and Wales) and the Scottish Charities and Trustee Investment (Scotland) Act 2005.
4. In the previous mandate, the matter was brought to the Executive for consideration on three occasions. No agreed resolution was found prior to dissolution. The Minister is presently considering options for the best remedy to this issue and in support of this is in discussion with the Attorney General for Northern Ireland.
5. Several options are being carefully considered:
 - Option 1 – seek Executive approval to amend by rewording section 3 of the 2008 Act by removing the Scottish public benefit provisions and replacing them with provisions equivalent to section 3 (3) and (4) of the Charities Act 2006 Act (England & Wales). The effect would be to create a technical amendment to the 2008 Act to produce a “public benefit” test that achieves parity with the legislative position in England and Wales and that CCNI could apply to make determinations and commence registration.

- Option 2 – Amend to remove the hybrid approach as per Option 1 and also “presume” certain groups of charities to be for the public benefit in Northern Ireland. Under this Option, presumption of public benefit would be restored for charities for the relief of poverty, the advancement of education and the advancement of religion. This would move Northern Ireland away from the legislative position in Scotland, England and Wales. This may have tax implications as HM Revenue & Customs has advised that it will still require the “presumed” charities to demonstrate their public benefit. Further work is being undertaken by the Department to clarify this position.
 - Option 3 – A variation of Option 2, amend to remove the hybrid approach as per Option 1 and restore presumption of public benefit for one group of charities (those for the advancement of religion) as opposed to several groups. This is the approach adopted in the Republic of Ireland. As before in Option 2, the tax implications of this Option need to be clarified.
6. Before coming to a final decision, the Minister has requested further information in respect of the potential tax issue and the Attorney General has been asked to provide a formal view. This will be shared with HM Revenue and Customs. Once The Minister has decided the best way to resolve the “public benefit” test issue, proposals will be brought to the Committee for discussion and endorsement.

Effect of the “public benefit” issue on implementation of the 2008 Act and legislation to bring existing Northern Ireland charities within jurisdiction of CCNI

7. The unexpected emergence of the “public benefit” test as a major issue has had significant implications for the implementation of the 2008 Act. Sections 1, 2 and 3 (“the defining provisions”) which define the meaning of “charity” for the purposes of the 2008 Act could not be applied while the “public benefit” issue remained unresolved. Accordingly, the CCNI could not make determinations as to whether an institution was, or was not, a charity within the meaning of the 2008 Act and consequently, could not begin registration of charities. This situation meant that the CCNI had no jurisdiction over existing Northern Ireland charities, i.e., those organisations which had been granted charitable status for tax purposes by HMRC. Without an alternative mechanism to bring existing charities within the law of the 2008 Act, the CCNI did not have the statutory authority to carry out its registration and regulatory functions. The setting up of a register of Northern Ireland charities under the 2008 Act is not practicable until the “public benefit” issue has been resolved and the CCNI is thereby enabled to make determinations under the defining provisions.
8. As an interim measure and to empower the CCNI to actively assume its regulatory role to the fullest extent possible, the Department made the Charities Act 2008 (Transitional Provision) Order 2011 (S.R. 2011 No. 12) which came into operation on 18 February 2011. The effect of the Order was to deem all existing Northern Ireland institutions which had been recognised as eligible for tax benefits under the Finance Act 2010 (c. 13), i.e. institutions granted charitable status by HMRC, to be charities under the 2008 Act for the purposes of the provisions commenced by the Charities (2008 Act) (Commencement No. 3) Order (Northern Ireland) 2011 (S.R. 2011 No. 11 (C. 1)). As a result, the Commission is now able to undertake investigations where there are public concerns about misconduct or mismanagement in the administration of local charities.
9. The No. 3 Order, also operative from 18 February 2011, commenced a wide range of regulatory powers conferred on the CCNI by the 2008 Act and, combined with the effect of the Transitional Provision Order, brought existing Northern Ireland charities within the jurisdiction of the CCNI for the purposes of the provisions commenced. Together, these Orders equipped the CCNI to act as an effective, albeit limited, regulator of Northern Ireland charities.

Future implementation of the 2008 Act pending resolution of “public benefit” issue

10. Until the “public benefit” issue has been resolved, the Department intends to continue implementation of the 2008 Act using the transitional provision mechanism referred to above, to bring existing charities within the jurisdiction of the CCNI for the purposes of all further provisions commenced. Subject to Committee approval, a Commencement No. 4 Order which will bring into operation provisions transferring responsibility for charity law with respect to, among other things, Cy Pres schemes and disposition of charity land, from the Department to the CCNI, is scheduled for later this year.
11. The Department also plans to proceed with the making of subordinate legislation required under the provisions of the 2008 Act commenced thus far. Committee has already approved the Charities (Interim Manager) Regulations 2011 (S.R. 2011 No. 264) which came into operation on 10 August 2011 of this year. These Regulations enhance the CCNI’s powers to follow through an investigation where it is satisfied that there has been misconduct or mismanagement by enabling the CCNI to appoint an interim manager to protect the property and affairs of the charity until investigations are finalised. Scoping is currently underway for the making of Accounts and Reporting Regulations, a provision pivotal to sustaining the regulatory framework. This will be a major exercise and Committee will be kept informed of developments and its approval sought as appropriate.

Timing Issues

12. The aim is to have an amendment approved by the Executive by the end of the year and a Bill introduced in the Assembly in early 2012. It is not possible to say whether consultation will be required or what the most appropriate passage for a future Bill will be until the content of the Bill is known. The Department will commit to keeping the Committee fully updated on any developments. A further Departmental or Ministerial briefing to the Committee will be scheduled before a policy paper goes to the Executive.

Recommendation

13. The Committee is asked to note the content of the briefing.

Maeve Walls

Director

Voluntary & Community Unit



Northern Ireland
Assembly

Appendix 5

Other Papers



Northern Ireland
Assembly

Research and Information Service Bill Paper

Paper 124/12

3 September 2012

NIAR 529-12

Eleanor Murphy

Charities Bill

This paper provides an overview of the Charities Bill introduced to the Assembly on 2 July 2012. The primary purpose of the Bill is to amend the 'public benefit' provision set out in section 3 of the Charities Act (Northern Ireland) 2008. This paper briefly explores the 'public benefit' test issue and the rationale behind the amendment. The paper also outlines key developments in charity law in Northern Ireland and examines the remit and activities of the Charity Commission for Northern Ireland.

Key Points

- In June 2010, Senior Counsel acting for the Charity Commission for Northern Ireland identified a technical difficulty with the ‘public benefit’ test provision of the Charities Act (Northern Ireland) 2008. The difficulty arose out of the inclusion in section 3 of the 2008 Act, of a hybrid of unrelated provisions on the “public benefit test’ from both the Charities Act 2006 (which applied in England and Wales) and the Scottish Charities and Trustee Investment (Scotland) Act 2005.
- The primary purpose of the Charities Bill, as introduced to the Assembly on 2 July 2012, is to amend the ‘public benefit’ provision set out in section 3 of the Charities Act (Northern Ireland) 2008. This is deemed necessary in order to provide clarity on the requirements to be met in determining whether an institution is, or is not, a charity within the meaning of that Act. It is believed that if the amendment is not passed by the Assembly, the Charity Commission for Northern Ireland (CCNI) will be unable to commence the formal registration process for charities as set out in the 2008 Act.
- It was originally intended that the registration of charities would begin at the end of June 2010 but legal uncertainties around the “public benefit” test delayed this process. If the Charities Bill, and thus the amendment, is passed by the Assembly and receives Royal Assent, it is anticipated that the Charity Commission for Northern Ireland could conduct its public benefit test guidance consultation in Spring 2013, with charities registered on a phased basis from late 2013.
- Despite the fact that the Charity Commission for Northern Ireland has been unable to fulfil its obligation under the 2008 Act in relation to the registration of charities due to the legal technicalities, it has however been engaged in a range of other duties and activities. As an interim measure the Commission has established a “deemed list of charities” (i.e. organisations that have registered with Her Majesty’s Revenue and Customs for charitable purposes) and the powers of the Commission (including the power of investigation) are exercisable in relation to these organisations.
- Some of the other activities the Commission has been engaged in include, the development of an online system in preparation for the register of charities going live; investigation of charities in response to concerns raised by the public and by government departments and other agencies; the organisation of information events and engagement with charity sector and other stakeholders; engagement with charity regulatory bodies in other jurisdictions; and the drafting and publication of guidance and advice for the charity sector.

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The Charities Act (Northern Ireland) 2008

What are Charities?

The Remit and Activities of the Charity Commission for Northern Ireland (CCNI)

In Summary – Timeline of Some Key Developments

The Charities Bill and the ‘Public Benefit’ Requirement Issue

Amendment Options

Other provisions in the Charities Bill

1 Introduction

The primary purpose of the **Charities Bill**, as introduced to the Assembly on 2 July 2012, is to amend the ‘public benefit’ provision set out in section 3 of the **Charities Act (Northern Ireland) Act 2008**. The Bill’s **Explanatory and Financial Memorandum** states that this is deemed necessary in order to provide clarity on the requirement to be met in determining whether an institution is, or is not, a charity within the meaning of that Act.

In answer to an Assembly Question tabled in October 2011, the Minister for Social Development outlined the context of the ‘public benefit’ issue and the the rationale for the amendment,

In June 2010, Senior Counsel acting for the Charity Commission for Northern Ireland identified a technical difficulty with the “public benefit” test provision of the Charities Act (NI) 2008. In short, this arises out of the inclusion in Section 3 of the 2008 Act of a combination of unrelated provisions on the “public benefit test” from both the Charities Act 2006 (which applies in England and Wales) and the Scottish Charities and Trustee Investment (Scotland) Act 2005. No resolution was reached during the previous mandate and I am now considering afresh the options available to resolve this legal issue. I have received advice from the Attorney General and officials from my Department briefed the Social Development Committee on 20 October. I have also written to the Treasury Minister with responsibility for charity tax matters to establish if changes to the public benefit provisions will have any implications for HM Revenue and Customs. Once a response is received, I will make a decision and bring forward a Charities Amendment Bill to the Executive for consideration.”¹

The Minister for Social Development considered a number of options for amending section 3 of the 2008 Act, the preferred option is contained with the Charities Bill. If the amendment relating to the ‘public benefit’ provision is not passed by the Assembly, the Charity Commission for Northern Ireland (CCNI) is reported to be unable to commence the formal registration process for charities in Northern Ireland as set out under the Charities Act (Northern Ireland) 2008. It was originally intended that charity registration would begin at the end of June 2010 but legal uncertainties around the ‘public benefit’ provisions delayed this process.

1 Assembly Question for Oral Answer, AQO 751/11-15 (tabled 27/10/11).

2 Background

The Reform of Charity Law in Northern Ireland

In March 2004, the Department for Social Development established an Advisory Panel to review the existing system of charity legislation and administration in Northern Ireland and to make recommendations for the future regulation of charities here. This review coincided with similar reviews which led to the modernisation of charity law in England and Wales, Scotland and the Republic of Ireland.

The Advisory Panel recommended that a system similar to that proposed for England and Wales should be adopted for Northern Ireland but with three significant differences, i.e.²:

- The introduction of a rigorous public benefit test to determine whether technically a charitable purpose actually produces a benefit to the public.
- All charities operating in Northern Ireland should be registered with no exemptions of certain types of charity.
- The application of different financial thresholds in terms of the accounting procedures and audit requirements placed on charities operating in Northern Ireland.

The outcome of the review was the **Charities Act (Northern Ireland) 2008**, which represented the most significant overhaul of charity law in Northern Ireland for over 40 years. The Department for Social Development felt that the modernisation of charity law in Northern Ireland was necessary given that charities were becoming increasingly involved in the delivery of public services and because a significant proportion of charitable work was supported by public donations.

The overall aim of the legislative changes was to:

“...provide a structure and process through which charities can demonstrate their contribution to society, the public can be assured regarding how charities are spending donations and government can assist in the better governance of the charity sector.”³

The Charities Act (Northern Ireland) 2008

The Charities Act (Northern Ireland) 2008 received Royal Assent on 9 September 2008. In summary, the Act made provisions for:

- The establishment of the Charity Commission for Northern Ireland (CCNI) and the Charity Tribunal for Northern Ireland;
- A definition of “charity” and “charitable purpose”;
- The creation of a register for charities;
- The establishment of a new form of charitable legal body (i.e. a charitable incorporated organisation); and provisions to
- Deal with the regulation of charities, their assets and public charitable collections.

2 Department for Social Development (2006) Consultation on Draft Primary Legislation. Proposal for an Order in Council: The Charities (Northern Ireland) Order 2006, p14. www.dsdni.gov.uk/dsd_charities_review.pdf

3 Department for Social Development (2006) Consultation on Draft Primary Legislation. Proposal for an Order in Council: The Charities (Northern Ireland) Order 2006, p4.

Further information on the Charities Act (Northern Ireland) 2008:

The Charities Act (NI) 2008 – Explanatory Notes
www.legislation.gov.uk/nia/2008/12/notes/contents

Committee for Social Development Report on the Charities Bill (1 May 2008)
http://archive.niassembly.gov.uk/social/2007mandate/reports/report30_07_08.htm

Northern Ireland Assembly Research Paper – The Charities Bill (January 2008)
<http://archive.niassembly.gov.uk/io/research/2008/13108.pdf>

What are Charities?

The definition of “charity” and “charitable purpose” are set out in sections 1 and 2 of the 2008 Act. Put simply, a charity is an institution which is established for charitable purposes. A “charitable purpose” is one which is for the “public benefit” and the 2008 Act identifies 12 types of activities that are considered to be charitable purposes, i.e.⁴.

- The prevention or relief of poverty.
- The advancement of education.
- The advancement of religion.
- The advancement of health or the saving of lives.
- The advancement of citizenship or community development.
- The advancement of the arts, culture, heritage or science.
- The advancement of amateur sport.
- The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity.
- The advancement of environmental protection or improvement.
- The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage.
- The advancement of animal welfare.
- Any other purposes recognised under existing charity law or section 1 of the Recreational Charities Act (NI) 1958.

The Remit and Activities of the Charity Commission for Northern Ireland (CCNI)

The **Charity Commission for Northern Ireland** was established in March 2009. It is a non-departmental public body and the independent regulator for charities in Northern Ireland. CCNI is governed by a **Board** consisting of the Chief Charity Commissioner, a Deputy Chief Charity Commissioner and up to five Charity Commissioners (one of which is legally qualified). The Board has responsibility for overall strategic direction of CCNI. The **Senior Management Team** of CCNI is led by a Chief Executive and is responsible for the day-to-day operational activities of the Commission and implements the programmes and policies arising from the Board’s decisions⁵.

The Commission has six mission objectives, i.e.

4 See Charity Commission website - www.charitycommissionni.org.uk/About_us/Contacting_us/FAQs.aspx

5 CCNI website - www.charitycommissionni.org.uk/About_us/About_the_Commission/board_members_directors.aspx#CCNISeniorManagement

- **Public Confidence:** to increase public trust and confidence in charities.
- **Public Benefit:** to promote awareness and understanding of the operation of the public benefit requirement.
- **Compliance:** to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
- **Charitable Resources:** to promote the effective use of charitable resources.
- **Accountability:** to enhance the accountability of charities to donors, beneficiaries and the public.
- **Delivery:** to manage the CCNI as an effective and efficient non-departmental public body.

The Commission's values are – independent, accountable, proportionate, fair, transparent and consistent.

One of the main elements of the Commission's remit is to establish and manage a register of charities. The 2008 Act requires all organisations in Northern Ireland that operate for a charitable purpose to apply for registration with the Commission. The Act does not provide for any exemptions from the requirement to register. It was originally intended that the registration process would begin at the end of June 2010. However, the register of charities has not yet been established due to legal issues around the definition of 'public benefit'. It is this issue which has primarily the rationale behind the Charities Bill 2012. The public benefit issue is explored further in another section of this paper.

Despite the fact that the Commission has been unable to fulfil its obligation under the 2008 Act in relation to the registration of charities due to the legal technicalities, it has, however been engaged a wide range of other duties and activities. Even though the formal registration process for charities cannot yet begin, as an **interim measure** the Commission has established a "**deemed list**" of charities. The Commission deems charities to be organisations that have registered with Her Majesty's Revenue and Customs (HMRC) for charitable purposes and the powers of the Commission apply to these organisations. A publicly accessible list of these organisations is available from the Commission's **website**⁶. There is currently around 6,700 organisations on the deemed list. However, many charities do not apply for charitable tax exemption and therefore this is not a complete picture of the charitable landscape in Northern Ireland⁷. The Commission estimates that there is between 7,000-10,000 charities in Northern Ireland.

Some of the other activities the Commission is engaged include:

- **Preparation for the register of charities** – the development of an online system of charity registration is reported to be at an advanced stage and has been subject to testing. The Commission believes that the system is fit for purpose and responsive to the needs of users. The Commission has enlisted 20 local charities to 'test drive' the new system before the registration process commences⁸.
- **Powers of Investigation:** In February 2011, the Commission gained its powers to investigate charities in Northern Ireland. In January 2012, the Commission had received its 100th concern about a charity (concerns can be raised e.g. by members of the public, government departments and other agencies etc.). This led to the publication of the Commission's report "**100 lessons learned**" which explores the Commission's regulatory activities and approaches to investigations. Many of the concerns expressed related to issues around poor governance, poor financial control, the lack of transparency and the damage caused by disputes within organisations. The report was intended to highlight

6 Deemed List - www.charitycommissionni.org.uk/Our_regulatory_activity/List_of_deemed_charities.aspx

7 Charity Commission for Northern Ireland Annual Report and Accounts 2011-12, p10. www.charitycommissionni.org.uk/Library/pdf_documents/annualreport1112.pdf

8 Charity Commission for Northern Ireland Annual Report and Accounts 2011-12, p13.

commons problems which lead to complaints against charities and offers advice on how to get the basics right. Between April 2011 and April 2012, the Commission had received 106 concerns about charities⁹.

- **Events and Engagement** – engagement with key stakeholders including charitable trustees, general public, media, politicians etc. ‘Meet the Commissioners’ sessions which are intended to offer dialogue between the Commission and local organisations.
- **Memoranda of Understanding** - on a more formal basis, the Commission has entered into a number of Memoranda of Understanding with statutory agencies including the PSNI, HMRC the Independent Safeguarding Authority (ISA) and Trading Standards.
- **Engagement with other Commissioning Bodies** – the Commission also engages with charity regulators in other jurisdictions in order to develop skills and knowledge in charity regulation and the sharing of best practice.
- **Drafting and publishing guidance:** the Commission has issued a range of guidance and resources for charities in matters such as registering a new charity; charity governance; campaigning and political activities; clothing collections etc. The Commission is obliged, under 4 of the 2008 Act, to issue guidance with regard to the public benefit requirement and to carry out (where it feels appropriate) public or other consultation before issuing or revising this guidance. It was during the course of the draft consultation stage of the public benefit requirement that the legal uncertainties around the public benefit requirement were brought to the attention of the Commission who then referred the matter back to the Department for Social Development (in June 2010).

Further information on the work of the Charity Commission for Northern Ireland is available on the Commission’s website - www.charitycommissionni.org.uk/

In Summary – Timeline of Some Key Developments

For ease of reference the table below provides chronology of some of the main events in relation to charity regulation in Northern Ireland.

Some Key Developments in Charity Regulation in Northern Ireland

10 December 2007	<p>The Charities Bill for Northern Ireland is introduced to the Assembly. The objective of the Bill is to:</p> <ul style="list-style-type: none"> • Provide a definition of “charity” and “charitable purpose”. • Establish the Charity Commission for Northern Ireland (CCNI) and the Charity Tribunal for Northern Ireland. • Create a register for charities. • Provide for a new form of charitable body – a charitable incorporated organisation. • To set out in legislation mechanisms for the regulation of charities, their assets and public charitable collections.
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1 May 2008	The Charities Bill was referred to the Committee for Social Development on completion of the Second Stage of the Bill on 15 January 2008. The Committee for Social Development publishes its report on the Charities Bill on 1 May 2008. 53 organisations responded to the Committee's call for written evidence. The report highlighted the perceived misunderstanding around the designation of religious charities and welcomed the introduction of "designated religious charities" as it was believed that such charities would already have sufficient internal governance structures in place to deal with investigations, maladministration and misconduct. The Committee expressed sympathy with those bodies that felt that the advancement of religion should be presumed to be of public benefit but agreed that there should be no exemptions.
9 September 2008	The Charities Bill receives Royal Assent and becomes the Charities Act (Northern Ireland) 2008 .
27 March 2009	The Charity Commission for Northern Ireland (CCNI) , an Non-Departmental Public Body, becomes operational. CCNI held its first Board meeting on 15 June 2009 in which it set out its programme of work.
3 September 2009	The Charity Commission for Northern Ireland launches its public benefit test guidance for consultation. Due to the technical issue arising out of section 3 of the 2008 Act, it is anticipated that CCNI will conduct a new public consultation on the Public Benefit Guidance in the spring of 2013.
4 November 2009	The Minister for Social Development announces the appointment of a 'legally qualified' Charity Commissioner as set out in legislation. The Board of the Charity Commission is consists of a Chief Charity Commissioner, Deputy Chief Charity Commissioner and up to five Charity Commissioners (including the Legally Qualified Commissioner).
1 April 2010	The Charity Tribunal is established to hear appeals from decisions made by the Charity Commission for Northern Ireland. The types of decisions that can be appealed and who may bring an appeal to the tribunal are set out in Schedule 3 of the Charities Act NI 2008.
8 April 2010	The new Chief Executive of the Charity Commission for Northern Ireland, Frances McCandless, takes up her post.
June 2010	Following legal advice in relation to its Draft Public Benefit Guidance, CCNI refer a technical problem with the wording of section 3 of the Charities Act (NI) 2008 (i.e. the public benefit test) back to the Department for consideration. This meant that the registration process for charities would not commence at the end of June 2010 as was originally planned. In the interim period before registration can begin, CCNI have compiled a publicly accessible "deemed list", i.e. a list of bodies registered with HMRC for charitable tax purposes.
November 2010	Department for Social Development confirms its intention to amend the Charities Act (NI) 2008 in order to clarify the law on the public benefit test.
Feb/March 2011	In February 2011, CCNI gains its powers under the 2008 Act to investigate organisations registered as charities with HMRC . This measure allows CCNI to begin its investigatory, compliance, enforcement and regulatory scrutiny of all charities currently registered with HM Revenue & Customs (HMRC) for tax purposes (more than 6,000 organisations).
20 October 2011	Officials from the Department for Social Development brief the Committee for Social Development highlighting that no agreed resolution to the public benefit test had been reached and that the Minister for Social Development was considering three options for resolution of the public benefit issue.

<p>January 2012</p>	<p>Concerns submitted to the Charity Commission regarding charities in Northern Ireland hits the 100 mark. CCNI subsequently publish a report on its investigations which also provides advice to charities to enable them to effectively address some of the most common complaints made against charities.</p>
<p>2 July 2012</p>	<p>The Charities Bill 2012 is introduced to the Northern Ireland Assembly, the Bill will amongst other provisions, amend section 3 of the 2008 Act (i.e. the public benefit test). The Committee for Social Development has begun its call for evidence, the closing date for submissions is the 28 September 2012.</p>
<p>Spring 2013</p>	<p>Once the legislative amendment contained within the Charities Bill 2012 is passed by the Assembly and receives Royal Assent, CCNI hopes to consult on public benefit guidance in Spring 2013, with registration of the first 20 test charities likely to begin in late 2013 with the main registration likely to open shortly after this.</p>

3 The Charities Bill and the ‘Public Benefit’ Requirement

The need for clarity on the public benefit provision was identified by the Charity Commission (on advice from Senior Counsel) when it sought legal opinion on its draft public benefit guidance. The Commission referred the issue to the Department for Social Development in June 2010. Opinion was that the provision in section 3 of the 2008 Act (i.e. the ‘public benefit’ test) created legal uncertainty arising from the inclusion of an element of the public benefit provision contained within the Scottish Charities and Trustees Investment (Scotland) Act 2005¹¹. As a result of this legal uncertainty it was reported that the Commission could not make determinations as to whether an institution was, or was not, a charity within the meaning of the 2008 Act, and as a consequence the registration of charities could not commence.

The matter of the legal difficulty around the public benefit test was said to have been brought the Executive for consideration on three occasions in the last mandate but no agreed resolution was found prior to dissolution¹².

Amendment Options

The Minister for Social Development, Nelson McCausland, considered **three options** to address the public benefit test issue¹³:

- Option 1:** All charities in Northern Ireland would be required to demonstrate how they benefit the public, as provided for in the 2008 Act, however, it would be left for the Charity Commission for Northern Ireland to determine whether or not a charity is set up for the benefit of the public (as is the case in for the Charity Commission for England and Wales) rather than having a prescribed test enshrined in legislation.
- Option 2:** Amend as per Option 1, however, but “presume” certain groups of charities to be for the public benefit i.e. charities working for the relief of poverty, the advancement of education and the advancement of religion.
- Option 3:** A variation on Option 2, but “presume” that only charities engaged in the advancement of religion are of public benefit.

Clause 1 of the Charities Bill reflects Option 1 and substitutes a new public benefit provision for that in section 3 of the 2008 Act. The tables below outline the difference between section 3 of the 2008 Act and the proposed amendments in the Charities Bill.

11 Charities Bill Explanatory and Financial Memorandum, p1.

12 Committee for Social Development, Oral Evidence on the Charities Act (NI) 2008. 20 October 2011.

13 NICVA News Release. “Charities (Amendment) Bill – no progress expected until next year”.

Charities Act Northern Ireland 2008 – section 3 “The Public Benefit Test”

3.

- (1) This section applies in connection with the requirement in section (2)(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.
- (2) In determining whether that requirement is satisfied in relation to any such purpose, it is not to be presumed that a purpose of a particular description is for the public benefit.
- (3) In determining whether an institution provides or intends to provide public benefit, regard must be had to:
 - (a) How any
 - (i) benefit gained or likely to be gained by members of the institution or any other persons (other than members of the public) and,
 - (ii) detriment incurred or likely to be incurred by the public,
 in consequence of the institution exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and
 - (b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.

Charities Bill (NI) 2012 – section 3 – “The public benefit requirement”

The public benefit requirement

1. -(1) For section 3 of the 2008 Act (the “public benefit” test) there shall be substituted the following section -
 “The public benefit requirement
3. -(1) In this Act “the public benefit requirement” means the requirement in section 2(1)(b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.
- (2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 2(2), it is not to be presumed that a purpose of a particular description is for the public benefit.
- (3) In this Act any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in Northern Ireland.
- (4) Subsection (3) is subject to subsection (2).”.
- (2) This section shall be deemed always to have had effect.

The approach taken in to the public benefit requirement as set out in the Charities Bill was the preferred solution of the Charity Commission for Northern Ireland¹⁴. The Northern Ireland Council for Voluntary Action (NICVA) expressed its concern regarding options 2 and 3 and stated that:

“a 19th century presumption that certain types of charity are established for the benefit of the public is not a prudent strategy for the 21st century and NICVA believes that all charities should be required to demonstrate how they benefit the public.

The third option, to reintroduce the presumption of public benefit for religious charities only, could serve to create an unequal and unfair charity sector in which these types of charities would be treated more favourably than others.”¹⁵

The Committee for Social Development considered the public benefit test issue and the three options at its **meeting** of the 20 October 2011¹⁶. Members expressed particular concern around how the test related to faith-based charities and also raised concerns about the potential demands on small religious groups in respect of the accounting and reporting requirements. In response to the concerns of religious organisations and the ability to meet

14 Charity Commission for Northern Ireland. News Release. “Commission welcomes Charities Bill” first legislative step”. 2 July 2012. www.charitycommissionni.org.uk/RSS/Updates/CCNIwelcomesCharitiesBillfirstlegislativestep.aspx

15 NICVA News Release. “Charities (Amendment) Bill – no progress expected until next year”.

16 Committee for Social Development Minutes of Meeting - www.niassembly.gov.uk/Assembly-Business/Committees/Social-Development/Minutes/20-October-2011/

the public benefit test, an official from the Department for Social Development indicated to the Committee that holding an act of worship once per week, for example, would be sufficient to satisfy the public benefit test. The Department also highlighted that the ability of religious organisations to meet the public benefit test had not arisen as a difficulty in other jurisdictions¹⁷.

The Chief Charity Commission, Tom McGrath, has welcomed the introduction of the Charities Bill to the Assembly stating,

"I am pleased that the Charity Commission can now get on with the registration of Northern Ireland charities. This process will not happen overnight, but after almost two years of enforced delay, the Commission can finally get the registration ball rolling.

I can say with great certainty that the Commissioners are looking forward to this new phase of our work. All of our other work has been made much more complex by the absence of registration.

The Commission has always had a steady workload despite the registration complexities.... On the registration front, however, we are satisfied that a decision on the amendment has finally been made, and is in keeping with our preferred solution since we referred the problem with the legislation back to DSD in June 2010"¹⁸

If the agreed amendment is passed by the Assembly, the Commission can publish its Public Benefit Guidance and registration can begin. The Commission anticipates that this consultation could take place in Spring 2013, with charities registered on a phased basis from late 2013¹⁹.

Other provisions in the Charities Bill

Although the primary purpose of the Charities Bill is to amend the public benefit requirement in the 2008 Act, the Department are utilising the Bill as a vehicle for the introduction of a number of other outstanding amendments to the 2008 Act. These provisions are as follows:

- **Gifts for mixed purposes:** re-enactment of section 24 of the Charities Act (Northern Ireland) 1964 (i.e. gifts for mixed purposes) in order to restore the mechanism through which a gift which is for both charitable and other purposes may be regarded as exclusively charitable.
- **Persons disqualified from being trustees of a charity:** to extend the list of persons disqualified from being trustees of a charity to include persons who are subject to a bankruptcy restrictions order or an interim order. This amendment is consequential to corresponding provision made by the Enterprise Act 2002 (Disqualification from Office: General) 2006.
- **Educational Endowments:** transfer of the Department for Social Development's functions under the Educational Endowments (Ireland) Act 1885, and other related Acts, to the Charity Commission for Northern Ireland. These functions now fall within the Commission's statutory role as the regulator for charities. The Charities Bill also involves the transfer of other functions from the Department to the Commission i.e. functions under the Education and Libraries (NI) Order 1986 and the Companies Act 2006.

17 Committee for Social Development. Oral Briefing on the Charities Act (NI) 2008. 20 October 2011.

18 Charity Commission for Northern Ireland. New Release. "Charity registration decision welcomed".

19 Information extracted from the Charity Commission website - www.charitycommissionni.org.uk/About_us/Contacting_us/FAQs.aspx



Northern Ireland
Assembly

Appendix 6

List of Witnesses

List of Witnesses

Ms Frances McCandless	CCNI
Mr Walter Raider	CCNI
Ms Una McKernan	NICVA
Ms Denise Copeland	NICVA
Mr Roy McGivern	Department for Social Development
Ms Andrea Watson	Department for Social Development
Mr Kieran Doyle	Department for Social Development
Mr Russell McCaughey	Department for Social Development
Ms Vera McCann	Department for Social Development



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