



Northern Ireland
Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Charities Bill: Ulster Society of Chartered
Accountants

30 September 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Paula Bradley (Chairperson)
Ms Kellie Armstrong (Deputy Chairperson)
Mr Andy Allen
Mr Stephen Dunne
Mr Mark Durkan
Ms Ciara Ferguson
Mr Paul Frew
Mr Fra McCann
Ms Áine Murphy

Witnesses:

Mr Niall Fitzgerald	Ulster Society of Chartered Accountants
Mr Gareth McGleenon	Ulster Society of Chartered Accountants
Mr Dee Moran	Ulster Society of Chartered Accountants
Ms Rosemary Peters Gallagher	Ulster Society of Chartered Accountants
Mr Sam Snodden	Ulster Society of Chartered Accountants

The Chairperson (Ms P Bradley): I welcome Rosemary Peters Gallagher, Niall Fitzgerald, Sam Snodden and Dee Moran. Rosemary, do you want to go ahead and start your presentation?

Ms Rosemary Peters Gallagher (Ulster Society of Chartered Accountants): Yes. Thank you, Chair. Shall I go through the paper briefly and then take any questions at the end? Is that how you would like me to proceed?

The Chairperson (Ms P Bradley): Yes, Rosemary, that is perfect.

Ms Peters Gallagher: I chair the charity and not-for-profit specialist group of the Ulster Society of Chartered Accountants, and I want to make it abundantly clear that we, as a group, are not representing the views of the full membership of the Ulster Society of Chartered Accountants or of Chartered Accountants Ireland but merely of the charity and not-for-profit specialist group. I just make that clear at the start, because it is very difficult to represent the views of 12,000 members.

Just a bit of background. Chartered Accountants Ireland is the leading professional accountancy body in Ireland. We represent approximately 30,000 members around the world and are educating 7,000 students throughout the world. Obviously, we want to be very much involved in this. We want to create opportunities for members and students to be involved in society and give something back, and we have a particular interest in the charity and not-for-profit sector. The body was founded in 1888, and we have members in over 90 countries. We also play a key role in the Global Accounting Alliance,

Accountancy Europe and the International Federation of Accountants. The Ulster Society of Chartered Accountants, which, obviously, speaks for members in the province of Ulster, is a district society of Chartered Accountants Ireland, and we represent about 5,000 members.

Our group, the charity and not-for-profit specialist group, was set up about three years ago to be a voice and influencer for the sector, to encourage membership involvement — many of our members are involved in the sector — to support and develop members, to lobby for change in the sector and to try to help, so we particularly welcome being asked to give evidence this morning. We very much welcome the chance to address the proposals, as obviously the current hiatus has caused a lot of uncertainty in the sector and for our members, clients and other stakeholders. We have read the Bill in some detail and will make the following high-level comments on a clause-by-clause basis, if that is OK.

Clause 1 is "Actions of Commission staff treated as Commission actions". In particular with subsection 1, we have a concern that there might be unintended consequences as a result of that broad provision, so we are wondering whether consideration could be given to making it more specific, perhaps by providing a schedule of appendices giving examples. We have a slight concern that there could be problems in introducing retrospective legislation that might have unintended consequences for individuals in respect of specific actions taken. I know that one of your previous witnesses referred to this, and we understand the rationale behind this proposal, but we just think that it needs a wee bit of careful thought. We have also spoken with the independent review commissioners, and I know that they will be looking at that as well.

Clause 1(5)(e) is about circumstances where deeming is restricted or excluded. We welcome this. They seem to be quite fundamental powers and decisions. We just query whether consideration has been given to extending those powers. For instance, section 34 of the Charities Act (Northern Ireland) 2008 should go further in empowering the commission. In addition to removing trustees and dealing with trustees, it could also cross-reference that with whether the person is the director of a company. It could enable or empower the commission to make an application to suspend a person's ability to be a director of any company for up to a specified number of years, as well as removing them as a trustee. It is our view that, if they are a trustee and they are not fit to be a trustee, they may not be fit to be a director of a limited company.

Clause 1(8)(a) covers refreshed appeal rights. Will the Charity Commission contact impacted parties to advise them of this fresh right of appeal? We read the Charity Commission's written submission to the Committee, and we hope that it intends to do that, but we would just like some comfort around that.

Clause 1(9)(a) and 1(9)(b) deal with the disapplication of accounting and recording requirements. We would be grateful for a little more clarification in respect of this. It implies that a charity does not have to comply with accounts regulations etc in any year before it was registered. Therefore, it does not have to comply in respect of any financial year beginning before 1 April 2022. The Charity Commission has also commented on that. It could impact on transparency and public confidence if a significant number of charities choose not to submit accounts and returns voluntarily during the hiatus period. Obviously, that applies particularly to unincorporated charities, as at least limited companies have to provide something for Companies House. We are as concerned about public confidence in the sector as the Committee and the commission are.

Clause 2 covers the power of the commission to delegate to staff and the performance of functions by staff. We note that some matters will be reserved for the board going forward, and we welcome that very much. We are sure that good governance practices will apply. We would like some clarity as to how the Department, in exercising its powers, can insist on delegating those powers to staff at a later date. Will parameters be set around those actions? That is very important.

Proposed section 16A relates to the power to set thresholds for exemption from registration in clause 2. Whilst we understand the thinking behind that, we are very much of the view that registration brings a degree of accountability and transparency to the sector, which, in turn, instils public confidence. We are also of the view that any organisation that wants to hold itself out as a charity should be registered. However, consideration could perhaps be given to different accounting and reporting tiers. We appreciate that there are already different accounting tiers and reporting requirements, but we are not keen on the idea of exemption from registration. We know that it applies in other jurisdictions, but we think that, for transparency and public confidence in Northern Ireland, some degree of registration should be required for an organisation that wants to call itself a charity. We would welcome a consultation process around that. We know that the independent reviewer is also looking at this, and we also agree with the proposal that perhaps assets could be looked at, not just income, when coming

up with the definition of the tiers. Obviously, as a professional accountancy body, we can contribute to any further discussions, and we would be very happy to participate and to involve our members in those.

In proposed section 16A(4), the word "certifying" appears. That always scares accountants and auditors. We seek further clarification about certification and who will certify the amounts. The term "certifies" implies a level of certainty and accuracy that would never be given in that context by an auditor or an accountant. It is not consistent with the wording of any auditing or assurance framework under which auditors and accountants conduct their work. Perhaps alternative wording could be used, or there could be a level of work undertaken that would meet the requirements of the regulator and enable the accountant, auditor or independent examiner to provide a report that is compliant with the relevant framework. We would obviously be very happy to provide input, if necessary.

My final comments are on proposed section 16C(2), "Charities exempted under section 16A: consequential provision". It would be helpful to have some clarity around the terms "charities", "exempt charities" and "registered charities" to avoid confusion amongst the public and the sector when it comes to determining compliance. We also have a concern around the potential removal of charities from a register if thresholds are changed. How would that work in practice, and how would that be dealt with?

That is our submission. It was a quick run-through, but we are very happy to take any questions or give clarification.

The Chairperson (Ms P Bradley): Rosemary, thank you for the briefing. I have a few questions. Can members indicate whether they want to ask questions? I will go back to clause 1 and the retrospective nature of the law. What consequences can you envisage for certain past decisions?

Ms Peters Gallagher: We do not know, as we are not sure what it will mean. We are always concerned about retrospective legislation, for obvious reasons. Niall may have a comment. I am not sure that he can hear me.

Mr Niall Fitzgerald (Ulster Society of Chartered Accountants): I can hear you. We do not know what the consequences of the retrospective legislation might be. For example, if an unlawful decision was taken in the past, which would be unlawful even if these regulations were to apply, will the Bill make that decision lawful? Further thought should be given to the consequences of retrospective legislation. The solution that we talked about as a group was to propose limited circumstances for decisions to be made by staff instead of the board of the commission. Perhaps those circumstances could be specified in an appendix. The retrospective legislation could then apply in the circumstances specified in the appendix. That could be a safety net to safeguard against any unintended consequences.

The Chairperson (Ms P Bradley): Thank you, Niall. Issues have been raised about the delegation of powers in clause 2 and the powers that the Department will have. Can you expand on your concerns about the delegation of powers?

Ms Peters Gallagher: We welcome the delegation of powers. We need to get some clarity about who is responsible for what. What are the staff responsible for? What are the commissioners responsible for? What is the Department responsible for? The responsibilities are not altogether clear in section 9A(2). Obviously, there will be more information. However, we are a bit concerned about the standing of past decisions. Are we happy for staff to have certain powers and not others? Will the powers change? How will they be changed? What is the process? What is the process for the Department to step in? There needs to be some clarity on those matters. I am sure there will be guidance and consultation on that before it becomes law.

The Chairperson (Ms P Bradley): Thank you, Rosemary. Can you give the Committee any information or concerns that you may have? There is plenty in your brief, and that will go some way to help the Committee to form amendments and a final report of recommendations.

My final question is on your last point about the clarity needed for the terms "charity", "exempt charity" and "registered charity". What do you suggest the wording should be?

Ms Peters Gallagher: There should be some clarity and a definition because the terms are used throughout the Bill and the guidance. The general public will need clarity on the definition of an exempt

charity, a charity and a registered charity. A lot will depend on what happens with the threshold for registration, and that could have an impact.

The Chairperson (Ms P Bradley): Thank you, Rosemary. Do members have any questions?

Ms Armstrong: Thank you, Rosemary and Niall. The last answer feeds nicely onto my question on thresholds. We have heard evidence that all charities should be registered. However, as you have said, the level of accountability or disapplication of accounts could be a variable. What is a reasonable threshold amount — £5,000, £25,000 — for a registered charity? Is it the levels that we currently have, or is there anything that you guys, as accountants, would suggest?

Ms Peters Gallagher: I thought that you might ask that. That is a very difficult one to answer. As I said earlier, we think that all organisations setting themselves out to be charities should be registered. I know that a great number of bodies are vocal about the fact that there should be de minimis limits, as there are in other jurisdictions. We take the view that they should all be registered but that there should be a lighter touch with some of them. Again, that is to instil public confidence. We just go by income levels, but there are a number of charities with very little income and huge assets, and vice versa. That is important.

If you leave out the exemption piece, other jurisdictions have a lighter touch when it comes to reporting. The potential that there is at the moment around receipts and payments accounts, accruals accounts, audit and independent examination is not too bad. There are some very small charitable organisations out there, with incomes of maybe £10,000, £15,000 or £20,000, that struggle to have a full trustees report or to go through the whole gamut of reporting. Perhaps something with a lighter touch could be involved there. I would be very happy to put something to you or to be involved in consultation on that. You cannot have a broad-brush approach to that. We would be game to do that.

We looked at thresholds in other jurisdictions. Although £500,000 sounds like a lot of money, we have come across organisations — a charity that is in receipt of donations or bequests, for instance — that get one huge donation in one year, which puts them right over the limit and into the audit threshold so that they have all the expense of having an audit in which they will have their comparative figures audited and their next year audited. All of that happens because they got lucky one year by getting a big donation, a big bequest or a big gift. Obviously bequests are not included, but big gifts or donations are. That causes difficulty.

The Charity Commission has the authority — or it did have the authority — to use its discretion. The experience that we have had is that, if an organisation exceeds the limit, it exceeds the limit. It must then have an audit or whatever. That is the sort of thing that we are thinking about.

Ms Armstrong: I worked with charities that had huge assets. For instance, there could be social housing charities with the value of homes or transport companies with the value of their buses or whatever it may be. How do we protect those organisation through accountancy to make sure that a funder does not say, "Their reserve level must be £1 million". However, that £1 million is not cash and they cannot get their hands on the cash easily because the £1 million is there because they have a building or a huge asset that happens to have value attached to it. What would you say to that?

Ms Peters Gallagher: How are you going to protect them? From registration, or —.

Ms Armstrong: It is part of the threshold for accountancy. Say everybody is registered and a threshold is applied for the lighter touch, but their assets are worth a clean fortune, but their assets are not cash assets. That is a known liability that is on their books. Would that be treated separately?

Ms Peters Gallagher: It is based on income at the minute. If their income is below £500,000, they do not need an audit, but they could have a lot of assets. It depends on the level of assets stipulated. That is why a lot of consultation will be required on section 16A(1). It is very difficult to set a threshold, because it will impact on organisations that you did not mean it to impact on. Unfortunately, that is the way that it is. I think that you need a balance between income and assets. If funds are involved and the assets are not in cash, it is still important for the public's confidence that those assets are used for charitable purposes and that they were purchased for charitable purposes.

Ms Armstrong: I absolutely agree with that.

Ms Peters Gallagher: I see Niall nodding his head there. I do not know whether he wants to add to that.

Mr Fitzgerald: It is a very good question regarding what thresholds you define to decide whether a company or a charity does or does not have an audit, whether it prepares accounts or does not prepare accounts, whether it does receipts and payments or whether it does accruals and all of that. We have to remember what the purpose of the charity is. There are a lot of different charities. You used the example of social housing. I would ask what the benefit is of a charity with social housing having £1 million sitting in reserve. It has bricks-and-mortar assets. However, selling those assets and realising the funds would dissolve the purpose of the charity because, having sold its assets, it can no longer provide social housing.

What is the purpose of the reserve policy? It is to help a charity as a going concern and that if funding dried up, it would be able to survive for two or three months, or more, so that it can pay salaries and overheads. That is what the reserve policy would be for — to help it as a going concern. Do you want a kind of sinking fund reserve policy for maintaining the houses? You have to think that, rather than a broad threshold set in law that everybody has to comply with, it is better to have something flexible. There are a number of criteria that charities have to comply with, and they can pick the most relevant criteria and apply them for determining reserve policies, accounts etc.

Ms Armstrong: Be still my heart, Niall; you are a man after my own. For years, I have worked on reserve policies, known liabilities and unknown liabilities, what you should consider as surplus and what is not surplus. Thank you very much for that. It is an interesting part of this legislation, and we will have to make sure that we get it right for charities.

Mr Fitzgerald: A lot of charities need to access their reserves in times of hardship, such as COVID-19 that we have just been through. Maintaining the reserve policy becomes more difficult in times of hardship, and that is when they need the reserves most. There needs to be flexibility with it.

Ms Peters Gallagher: Niall is right; we come across this all the time. Funders expect to see reserves, but it is about getting a balance. If they see too much, they say that the charity does not need the funding. It is about getting a balance and educating the funders and, hopefully, getting some protections through the Bill to do that.

Mr Frew: Thank you very much for your presentation. Please treat me like the idiot that I am.

Mr McCann: We would not say that, Paul.

Mr Frew: I have only been on the Committee for two sessions, so please treat me as an idiot as regards my knowledge of these matters. Hence my next question: what is your understanding of clause 1(5)? What does it do?

Ms Peters Gallagher: Our understanding of clause 1(5) is really what I said at the start: it will ratify anything that happened before 16 May. That is why we said that we need to be careful that anything that was unlawful then could now be deemed to be lawful because it is retrospective. That was our concern. We are not legal experts, but that is our reading of it.

Mr Frew: We have heard evidence today that there are questions as to whether clause 1(5) should be there at all. To put that question on its head, if that subsection was omitted, what impact does that have?

Ms Peters Gallagher: *[Long Pause.]* I need to think about that.

Mr Frew: I suspect that it all hinges on clause 1(2).

Ms Peters Gallagher: It does.

Mr Frew: I am trying to work out in my primitive head what it means for that to stay in or be omitted. I ask that because most of my other questions are on clause 1. Clause 1(5)(e) is:

"the making, or purported making, of an order purporting to be under any of sections 33 to 36 of the 2008 Act".

When I look at the 2008 Act, it has a wide range of powers. My question is: why does clause 1(5)(e) specify only sections 33 to 36 of the 2008 Act? Section 37 of the 2008 Act is "Power to direct application of charity property". If we are going to lump sections 33 to 36 into the Bill, do you have any idea why we would not also include section 37?

Mr Fitzgerald: I will offer an insight: always beware of the person who says that they do not have a clue, because they always ask the most interesting questions.

Ms Peters Gallagher: Absolutely.

Mr Fitzgerald: We had a look at that. I totally concur with you. We looked at sections 33 to 36. They are:

"Power to act for protection of charities ...

Power to suspend or remove trustees, etc. from membership of charity...

Supplementary provisions"

etc.

They are pretty fundamental powers or decisions. The question that we raise is: are those no longer to be considered lawful as a consequence of the proposal? We are not lawyers, so it can be difficult to interpret legislation. We do not always get it right. That is why, in this situation, we consult lawyers. Does clause 1(2) say that every decision made by the commission is to be seen as lawful, with the exception of those exclusions, which will be determined in some other way? For example, I presume that there have been court cases in which decisions have been made in relation to those other powers, and those decisions will stand. That is my innocent interpretation, like yours, of what that subsection might be saying.

Mr Frew: If your interpretation is correct — we are probably on the same page — is there a need to cite those exclusions in the Bill? The court will develop the caseload and the law. If they should not be cited in the Bill, does including them cause unintended consequences?

In your evidence, you question section 34 of the 2008 Act, which concerns excluding trustees. If I am reading your presentation correctly, you are saying that that section should be extended to cover directorships. You are going one step ahead and saying that section 34 should be enhanced in this piece.

Ms Peters Gallagher: Yes.

Mr Frew: I get where you are coming from, but if I do not have the basic understanding of why clause 1(5) is there in the first place, I do not know what enhancing section 34 of the Act, to cover directorships, actually does. Do we need a separate clause altogether to strengthen section 34 of the 2008 Act? Do you see what I am getting at? We might need a stand-alone clause that strengthens, renews, or enhances section 34 to include directorships as opposed to just trustees.

Ms Peters Gallagher: We, too, struggled with that section, because there are a lot of negatives and double negatives. We were just trying to say, "If that is going to be included, here is what we think". We would certainly welcome clarity, too. As Niall says, the person who says that they do not understand usually does understand.

Mr Frew: In relation to fresh appeal rights and the time limit for appeals, the Bill says 42 days. Most of the evidence that we have seen says that that period is too short. Do you have an opinion on that? I must not have caught it.

Ms Peters Gallagher: If people want to appeal a decision, the current appeal rights give them 42 days in which to do so. The Bill just refreshes that, and we were querying whether the affected parties would be informed.

Mr Frew: Are you saying that your concern is all about notification? Do you have a concern about the time duration? Do you think that the 42 days should be extended?

Ms Peters Gallagher: Again, we are speaking only for our group and not for the whole institute, but, yes, it would probably help if it were extended. It is 42 days under the current Act and regulations, and people seem to have managed with that, but if it could be a bit longer, yes. It is more the fact that everyone should be made aware. We want to make sure that everybody in the charity sector is aware of what is happening and knows that they are impacted. They should be informed directly, and not left to find out for themselves.

Mr Frew: If I am right, you are saying that, as long as people are notified in good time, 42 days has been sufficient up to now.

Ms Peters Gallagher: As far as we know.

Mr Frew: As far as you know, of course. Do you know, by extending that to, say, three calendar months, the ramifications that that could have for working practices, both in the commission and in charities? Is that something that keeps you up at night or is it moot?

Ms Peters Gallagher: Sorry, I missed that last wee bit.

Mr Frew: If we were to extend the 42-day period to three months, do you know, off the top of your head, whether that would have any ramifications for work processes, either in the commission or in charities?

Ms Peters Gallagher: I cannot speak for the commission, but it is always saying that it is under-resourced and short-staffed. With charities, a little bit longer might help, but I am not aware that it has been an issue in the past. Our concern was more about notification and keeping everybody informed as to what is happening.

Mr Frew: OK. Thank you very much. Thanks for your time.

Ms Peters Gallagher: No problem.

Mr McCann: Chair, Paul said exactly what I was going to say. *[Laughter.]* I am only keeping you going.

There are two points that I would like to address. One is reserves, and the debate on that has gone on for quite a while. Even in social housing, there are many reasons why some housing associations have to have sizeable reserves. For example, they may want to develop a 10- or 25-year strategy, and that has to do with the condition of their stock. It is crucial that that be recognised. I suppose that we are trying to find a happy medium that allows us to deal with that question. You have groups that are accused of storing up their reserves, without investing money in the targets of the charity.

The other point is that, for many people, and especially many small groups, some of them may be only £5,000 or £10,000, but the charity status number is everything to them, and it opens up doors that may not otherwise open.

I would be careful about even categorising them as different because, unless you have it built in that it cannot be touched, they could fall prey to bigger organisations or to the Charity Commission itself.

The Chairperson (Ms P Bradley): Thanks, Fra. Do members want to ask anything else at this stage? No, there is no one.

Mr Frew: I would like to come in. One more.

The Chairperson (Ms P Bradley): Sorry. Oh dear. Oh no. Paul is coming back in again.

Mr Frew: It is just a very quick one.

Mr McCann: You were going to say what I was going to say?

Mr Frew: I was going to echo what Fra said. *[Laughter.]* I want to ask about clause 2. I will throw you this one, but I do not know whether you have an answer. Clause 2(3) reads:

"The Department may make a scheme describing —"

and it goes on to (a) and (b), with regard to delegations under subsections. However, today, it was said that that should read:

"The commission may make a scheme describing —"

as opposed to the Department having that power. Do you have a view on that?

Ms Peters Gallagher: We have not included it in our brief or submission. You ask why it is the Department and not the commission. In anything that you read from the Department, it always says that it will basically act upon what it is told. The Act is there, and it carries out its instructions under the auspices of the Act and the sponsoring Department.

From my knowledge of the public sector, and working with the charity sector, it is usually the sponsoring Department that sets up a scheme, which the body then follows. However, I take your point, although we do not have strong views. I do not think that any of the other members here have strong views on that. We are used to seeing schemes set up by sponsoring Departments, and then the bodies implement them.

Mr Frew: And then of course —.

Mr Sam Snodden (Ulster Society of Chartered Accountants): May I come in?

The Chairperson (Ms P Bradley): Go ahead, Sam.

Mr Snodden: Schemes of delegation are useful to stop a board delegating something to its staff that the Department would not be happy with. However, the Department should set the powers as to who can produce the scheme and what parameters it will be limited to.

Mr Frew: That leads me to my next question about new paragraph 9A(2), which states:

"The following may not be delegated under sub-paragraph (1)".

That includes sections 33 to 36, which goes back to my previous question. What is your understanding of that? Why should the commission not have those delegated powers?

Ms Peters Gallagher: Sorry, I could not quite hear that. Are you asking why the commission should not have delegated powers?

Mr Frew: Clause 2 is "Power of Commission to delegate to staff", and new paragraph 9A(2) states:

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

(a) the instituting of an inquiry under section 22(1);

(b) the making of a decision that a report or statement be published under section 22(6)(a) or (b);

(c) the making of an order under any of sections 33 to 36" —

of the 2008 Act, which we have already talked about —

"(d) the making of regulations in exercise of power conferred by a statutory provision."

Maybe you do not have a view on this, and that is fine, but I am just asking: why should the commission not have those powers to delegate to staff?

Ms Peters Gallagher: Sorry, why should it or why should it not?

Mr Frew: Why should it not?

Ms Peters Gallagher: Yes, we do have a view on that, and we talked about it. Our view is that there are some matters, such as instituting inquiries and so on, that could have huge ramifications for charities, their reputation and so on, and perhaps delegating those powers to staff is not appropriate. I think that we agreed with that. I do not know whether colleagues want to disagree with me, but we thought that there are some matters that should be decided by the commissioners rather than by members of staff.

Mr Frew: OK. That is perfect. Does anybody else want to come in on that, or are you all fine with it?

The Chairperson (Ms P Bradley): I think that we are fine with that. Do you want to ask anything else?
[Laughter.]

Mr Frew: That is me finished. Thank you.

The Chairperson (Ms P Bradley): No other member wants to ask a question, so Rosemary, Niall, Sam, Dee and Gareth — I forgot to mention him earlier — thank you for your time today. It will certainly help us when we are forming any amendments or drafting our final report. Thanks for being with us.

Ms Peters Gallagher: Thank you. It has been a pleasure.

The Chairperson (Ms P Bradley): Bye-bye.