Committee for Communities

OFFICIAL REPORT
(Hansard)

Charities Bill: Department for Communities

14 October 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
Ms Áine Murphy

Witnesses:

Mr Martin Ireland	Department for Communities
Ms Sharron Russell	Department for Communities

The Deputy Chairperson (Ms Armstrong): I welcome Sharron Russell and Martin Ireland. Thank you very much for coming along to see us today. I will hand over to you guys at this stage. If you want to take us through your previous replies before you talk to the briefing paper, we have a few new members, as you know, and it would be useful if they could be updated and catch up on the issues that have been raised so far.

Ms Sharron Russell (Department for Communities): Thank you, Chair. The Committee Clerk asked us to come along today to clarify some of the points in advance of your formal clause-by-clause deliberations. We are grateful for that opportunity, particularly as there are new members. We reiterate our offer of separate briefings to new members, because we know that some of this is complex.

My name is Sharron Russell. I have a wider responsibility in the community and voluntary sector division in the Department. Martin heads up the very small charities team within that division. We have set out in the briefing paper a quick reminder of the background and the drivers for the Bill. Martin has tried to pick up from the evidence sessions — obviously we just heard the tail end of the session with Social Enterprise Northern Ireland — some of the issues that you have written to us on. We can then see whether there are any gaps. Martin will walk through those details and responses.

By way of background, and as a reminder for you all, we updated the Committee on 6 May and again on 10 June. In those briefings, and in the accompanying papers, we stated that the main drivers for the Bill are to address the impact arising from the McBride and Court of Appeal judgements on past decisions taken by Charity Commission staff and the impact on charities due to the fact that those decisions were found to be unlawful. The second driver is to create an effective framework for how the Charity Commission discharges its functions. At one of the briefings, members teased out the

additional cost and, obviously, the reduction because we are seeing fewer registrations and decisions coming through as a result of the committees that have been set up since the judgement.

In addition — I know that this has been an issue for you and some of the people who have given evidence — the Bill, as drafted, provides a power to introduce a future registration threshold via regulations that would be subject to draft affirmative procedure. That would be a policy change, albeit one that the Minister was lobbied strongly on and I know that the Committee has had representation from some interested parties who have long sought a threshold. That is an additional clause in the Bill.

Essentially, as people have said to you, the Court of Appeal judgements had a significant impact on the framework here in Northern Ireland. They rendered the register unlawful, placing those charities that had gone through the process in a position where they were unsure about the impact that it would have in terms of previous funding, current funding relationships and applying for funding. The fact that the register was unlawful also removed the legal requirement for charities to register and to provide their annual reports and accounts to the commission. In doing that, it removed the public transparency that charities were afforded by that process. An important one in terms of representation to us and the Minister from representative bodies is that charities that have acted in consequence of orders or directions that they thought were lawful, permitting them to take certain actions, were then confused as to what the judgements might mean for them as trustees and as individuals.

There was a lot of public interest around how quickly the Minister should move to address this situation and the confusion that it left charities in, particularly — I think that we have been frank about this to the Committee — as it was as a result of a flaw or deficiency in legislation that was brought by the Department. You will have heard from a lot of respondents that research that the commission undertakes demonstrates that most charities understand and support the value of charity regulation. They take comfort in it and are able to comply with the requirements of the framework because of the public trust and confidence in the work that they do. I picked up the tail end of Colin Jess's evidence to you, which seemed to validate that. Evidence of that for us is the fact that 65% of charities continue to provide their annual report and accounts to the commission even though they are aware that they are no longer legally required to do so.

The issue of retrospective legislation has come up again and again. You will remember from the briefing sessions that we were very frank that the Minister for Communities has a very clear and publicly stated focus on rights and equality. Therefore, the idea of retrospective legislation certainly did not appeal to her. It would not appeal to any Minister, unless the legal advice was that there was no other plausible route open to address the issues that were presenting to her and which people were coming to her with. We did not — the Minister certainly would not have allowed us to — rush to make retrospective legislation without very strong, clear and carefully considered advice. Senior counsel, the previous Attorney General and the current one were consulted, and the determination was that retrospective legislation was required. Anything short of that would not have provided validation of previous decisions made by the commission staff, and charities in receipt of those decisions would remain in an uncertain position because of decisions that were made and things that they acted on. An administrative fix was not possible because fresh decisions would require proper scrutiny, not rubber-stamping as a job lot, and then they would only be applicable from the date of the fresh decision. We are happy to go into that a bit further, because it has been raised by a number of respondents.

We have taken the view that clause 1 simply returns charities to the position that they enjoyed prior to the judgements, with certain caveats and carve-outs, as you know. Clauses 2 and 3 provide for powers to introduce things at a later date that will be subject to full consultation. I know that consultation has been raised by the Committee as well. The Minister's view was that she was lobbied to move quickly to fix a situation that was not of the charities' making. The charities wanted certainty. Therefore, any specific policy changes will be subject to a full consultation before any determination will be made, and that is staff delegation, the limited power of delegation and any future thoughts about a threshold. That has not been determined; it is in there as something that has been lobbied for very hard, and the Minister thought that it would be good to take those powers now because, if it comes through in consultation that stakeholders want to see a regulatory framework, the Minister would have that power.

The Minister was really, really clear that the Bill will not impinge on the rights of any individual under the ECHR. The Minister could not have been clearer about that. Again, some people have raised issues about that. As we go through the clauses, we can pick up on some of them. There are one or two areas where we are taking further legal advice as a result of some things coming out of Committee Stage. Obviously, the value of Committee Stage has been proven by the fact that we have had to take further legal advice.

The protections in the Bill — clauses 1(3) to 1(5) — are the result of the carve-outs when we went through categories of decisions. Our advice was that it was neither realistic nor necessary to examine every single individual decision, but rather to look at the categories of decisions and the potential impact that those decisions could have on someone. We did that on the advice of the Attorney General, sharing that exercise with her office as we went. Martin will be happy to talk about that. Fresh appeal rights are included, but they are not afforded for decisions that remain unlawful. Because they are not affected by the Bill, they will proceed unhindered to their natural conclusion by way of the courts. For those decisions that remain unlawful, any charity challenged on its actions on foot of an unlawful order can seek to rely on section 175 of the Charities Act (Northern Ireland) 2008, as it believed the order was lawful when acted upon. I know that I am getting into complexities, but it is in the written brief, and the Committee might want to pick up on that as we go through the Bill. Issues do not arise for decisions in orders that are made lawful.

At this stage, I am happy to take any questions about the broad thrust or the Minister's intention to bring the Bill as drafted, or I can hand over to Martin, who will go through the clauses and the questions that you have raised about them, and allow for questions at the end of that. Are you happy for us to pass over, Chair?

The Deputy Chairperson (Ms Armstrong): Yes. That makes sense, because otherwise you will get lots of questions that you are already going to cover.

Mr Martin Ireland (Department for Communities): Thank you, Sharon. Thank you, Chair.

Despite our best efforts to make it as simple as possible, clause 1 is complicated. It deals with very complex issues. If you are content, I will go through it in a little bit more detail than the other clauses. It deals with making previous unlawful decisions lawful, except where to do so would likely impinge on the rights of individuals under the ECHR. It provides fresh appeal rights, in accordance with schedule 3 to the Charities Act (Northern Ireland) 2008, where such decisions are made lawful and disapplies accounting and reporting requirements for past periods, ensuring that charities are not overburdened in that regard where they have not continued to provide accounts and reports voluntarily to the commission. As Sharron said, it is very heartening that approximately 65% of charities have continued to provide those accounts.

Understanding clauses 1(1) and 1(2), and the limits placed upon them by clauses 1(3) to 1(5), is crucial to understanding the Bill. Clause 1(1) defines the relevant actions that are to be made lawful by clause 1(2). The clause picks up both the regulatory decision in respect of the function and the acts done, or other decisions taken, or alleged to be done, or taken by staff in the making of that regulatory decision. This is important, for example, in respect of the register, where a number of separate mini-type decisions or decision points are required under sections 1 to 3 of the Act, before the actual decision to register is made. The decision-maker must determine, for instance, that the body is independent, is governed by the law of Northern Ireland, is for exclusively charitable purposes and provides a public benefit before the final decision is taken that it is a charity and must be registered.

Clause 1(2), therefore, means that the relevant action, as defined in clause 1(1), will be treated as if it had always been made by the commission, and therefore always lawful, except where it is unlawful on grounds other than delegation. That is the retrospective issue that we are talking about. In this way, we make approximately 7,000 regulatory decisions, orders and directions lawful, treating them as if they were always lawful and thereby restoring the regulatory framework and providing the certainty needed by the affected charities.

However, as Sharron explained, from the very outset the Minister was clear that the Bill should not impinge on the rights of individuals under ECHR. That is addressed by the protections afforded in clauses 1(3) to 1(5). Clause 1(3) makes it clear that it is not the intention to revisit or overturn the findings of any tribunal or court up to the date of Royal Assent. Clause 1(4) carves out decisions that are the subject of ongoing litigation where the lawfulness of the relevant action is one of the grounds. Clause 1(5) provides that certain decisions, which, in the main, were taken during the course of a statutory inquiry, such as the suspension or removal of trustees, and which have proved most controversial in some cases, will be unaffected by the Bill. These decisions will remain unlawful and therefore be allowed to proceed to their natural conclusion. To this end, clause 1(5) carves out decisions that were made in accordance with section 22(6), the decision to publish a statutory inquiry; section 24(1), which is the sharing of information by the commission to other public bodies and officeholders; or sections 33 to 36, which are probably the most contentious and provide the power for the commission to act for the protection of charities by taking action such as the suspension or removal of a trustee or the appointment of an interim manager. An exercise was undertaken, on the

advice of the Attorney General, with both the commission and the Departmental Solicitor's Office, to identify the appropriate category of order to include in this clause. These orders, or decisions, had led to the majority of appeals to the Charity Tribunal and can have major consequences for individuals. Interestingly, around 80 appeals have been made to the Charity Tribunal, and all but 26 of those relate to this type of order in clause 1(5).

Statutory inquiries were opened by commissioners and, therefore, will not be made lawful by this Bill, as there is no need to do so. Where a court or tribunal has found that it has not been opened lawfully, the Bill will not overturn that. However, the decision to publish the resultant report under section 22(6) was taken by staff prior to McBride and could impinge on a person's rights under article 8 of the ECHR. Consequently, that is covered in the clause.

During the evidence session on 7 October, one of the respondents stated that clause 1(5) should be extended to cover section 174 of the Act, which allows the commission to make an application to the High Court where a person is guilty of disobedience to an order of the commission. However, we checked with the commission when drafting the Bill and found that no such application was made prior to McBride.

Clause 1(6) ensures that a decision unlawfully taken prior to McBride is not made lawful where a corresponding fresh decision has been taken lawfully since McBride. Since McBride, the commission has established a schedule 1 committee to take decisions. Some charities that wanted to ensure that they were acting lawfully going forward asked for a fresh decision, and that was given lawfully by the committee. There was the potential for two lawful decisions to be out there, which would have lead to legal uncertainty. Clause 1(6) ensures that that will not happen.

The fresh appeal rights that have been widely talked about are provided for in clause 1(7) and 1(8). They are in accordance with the appeal rights in schedule 3 to the Act. Fresh appeal rights are not provided where they did not previously exist on decisions that are to remain unlawful. We do not believe that there will be many such appeals. The evidence for that is that there were very few when the decisions were first taken and, when Royal Assent is achieved, the decisions will be between three and eight years old, so charities will have acted on those decisions and moved on. Therefore, we believe that it is unlikely that there will be fresh appeals, but the rights are there anyway. Such appeal rights are to be subject to the standard appeal time frame. Our thinking on that is that there is no difference between appeals arising from the Bill and those that are the subject of ordinary day-to-day appeals on decisions made.

The Department was intending to contact the Charity Tribunal to apprise it of that issue and work with the commission and sectoral representatives to ensure that the message was spread as widely as possible. However, the commission, during its briefing to the Committee on 16 September, advised that, whilst it has the facility to contact individual charities, it may not be able to directly contact other parties that might be affected. There could therefore be a justification for allowing extra time for appeals arising from the Bill. However, any proposal to extend the time frame for appeals in general is outside the scope of the Bill. The Charity Tribunal rules are the responsibility of the Department of Justice, and, going forward, we can certainly talk to it, but any change to that 40-day limit generally cannot be done through the Bill. Some of the respondents talked about extending the time frame to three months for appeals arising from the Bill. The time frame for appeals is normally 42 days. Given that the time frame is usually set in days, we thought that, rather than setting it at three calendar months, perhaps the additional time for those appeals should be set at 91 days from the date of Royal Assent. It must be remembered that the Charity Tribunal rules allow the tribunal to consider appeals that are out of time. It considers a number of factors, one of which is how and when the potential appellant was made aware of the decision and their right of appeal.

At the evidence session on 7 October, the respondents raised issues about section 22(3) and section 23 .Those are about collecting data that might include personal data. The Department has reflected on that, and, as a result, we have decided to take legal advice. We will come back and update the Committee as soon as we have that and have had time to consider it fully.

Clause 1(9) addresses a concern about whether, if you treat a registration decision as always being lawful, charities that had not provided their accounts voluntarily would be under a statutory obligation to account for prior periods before Royal Assent. Clause 1(9) addresses that, ensuring that the annual accounting and reporting requirements that are contained in Part 8 of the 2008 Act would not be imposed for past periods on charities whose registration is made lawful. The outworkings of the McBride judgement and subsequent registrations made by the decision-making committee will determine the course of action that is required by an affected charity. However, the fact that we are

putting the date of 1 April 2022 in the Bill, as opposed to leaving it for the date of Royal Assent, will give clarity and allow them to plan ahead as necessary.

Clause 1 will, inevitably, lead to an accountability gap, as explained by the commission and as evidenced in one of the other sessions. However, the Department feels that that is low-risk, and that any risks are outweighed by the benefits that are provided to charities. Again, 65% are complying voluntarily and they can continue to do so.

Clause 2 also addresses an issue that arose out of the McBride judgement, which is how the commission functions effectively going forward. It, therefore, introduces a limited power of delegation to staff, provided that the decisions that are to be delegated are set out in a scheme of delegation that is made by the Department. Clause 2(2), however, also stipulates that certain decisions, which are mostly around the opening of a statutory inquiry and the powers of protection that are available to the commission within that, should never be delegated.

Although such orders can be made by staff in other jurisdictions throughout the UK and in Ireland, the Minister has taken the view that in order to restore confidence in the process here, such decisions are better taken by the commission or a committee. This Committee may determine that the exclusion of these particular functions should be left to the proposed scheme of delegation; that is stipulated in the Bill. However, the Department reflected on the obiter comments made in the Court of Appeal judgement, that "careful consideration" should be given as to whether any powers should be delegated to staff. It was felt that such legislative provision should help restore that trust and confidence in the system.

That, however, does not mean that every other decision would, inevitably, be delegated to staff in a scheme of delegation. The Department will consult before it brings a scheme of delegation in, and it can be changed should more parts of the Act be commenced and should the commission take on additional powers or where the Department decides to review it for any other reason. It should, perhaps, be noted that the commission currently makes approximately 30 regulatory categories of decisions. If the whole Act were commenced, that number would rise to around 80 regulatory categories of decision.

Turning to clause 3, "Regulations exempting charities from registering by reference to thresholds", the most important thing to note is that this does not introduce a registration threshold. It introduces the power to introduce one through regulations at a further date. I caught what Mr Jess said, and I know that others have expressed the view that charities that fall below the threshold should be able to register if they want to. The regulations are wide enough to allow that. Similarly, if a charity is currently on the register and falls below the threshold, it can request that it be removed from the register.

To summarise briefly what the regulation power would do, it would allow you to set the level of the threshold and whether it includes a consideration of a charity's assets; any mechanics that are required around the operation of the threshold, such as the calculation of it; any evidence requirements; the ability of a charity to be removed from it, as I said, or for one to be voluntarily registered; the need to amend other legislation as a result of, essentially, creating a new category of charity; and the ability to modify any existing offences in the 2008 Act to account for this new category of charity.

That is all that I have to say. I hope that, in going through that, I have answered a number of queries that have been raised. I know that Sharron answered a number of them in her opening comments. We are happy to take any questions if you have them.

The Deputy Chairperson (Ms Armstrong): Thank you so much to both of you for that. I will start the questions.

Evidence that we received from the Northern Ireland Council for Voluntary Action (NICVA) questioned whether the sponsoring Department or the non-departmental public body (NDPB) should be responsible for writing a scheme of delegation. What do you think about that?

Mr Ireland: The reason why we put the Department in is that the Minister can ultimately determine how the commission delegates its functions, but, in practice, we would have to work very closely with the commission in designing it. The legislation also states that we would consult the commission and consult wider, publicly, to ensure that there is proper accountability and transparency. The legislation will also require that scheme to be published so that there is full transparency about how the

commission delivers going forward, but it allows the Minister to have a certain amount of control over how that delegation is delivered.

The Deputy Chairperson (Ms Armstrong): Thank you. Does clause 1(5)(d) also allow the removal of money or items of value, and what happens with them when they are removed? This is the part where it talks about the exclusion of trustees. Does that include the ability to remove money or items of value?

Mr Ireland: Sorry, which clause?

The Deputy Chairperson (Ms Armstrong): Clause 1(5)(d).

Mr Ireland: Clause 1(5)(d) states:

" a decision, or purported decision, to disclose information".

The Deputy Chairperson (Ms Armstrong): No, sorry. I maybe wrote that down wrong. The commission will have the power to remove a trustee. Does that extend, in the original 2008 Act, to the removal of cash, assets and items of value, and what happens with those amounts?

Mr Ireland: Sorry, is this for the scheme of delegation going forward?

The Deputy Chairperson (Ms Armstrong): It is for clause 1, the actions of the staff.

Mr Ireland: Sorry, Chair, I am not exactly sure. Could we come back to you on that?

The Deputy Chairperson (Ms Armstrong): Yes, that would be good. I just want to know what that includes.

This is my final question, and then I will pass over to Paul. There has been discussion about the 91 days for appeals. Has the Department proactively taken that forward with Justice to look at the Charity Tribunal rules to see whether that can be done, or will it have to be a decision that is taken for each one that goes beyond the 42 days? Is that an amendment that you guys are thinking about?

Mr Ireland: We could, possibly, if the Committee wants, amend our Bill for appeals that arise out of our Bill. We could do that. We would obviously advise the Department of Justice that that is our intention. If we were to extend the 42-day appeal limit generally for all appeals to the Charity Tribunal, we would need to contact the Department of Justice and seek its views, because it is the owner of the tribunal rules, and we would need to get its views on any unintended consequences or the impacts that that might have.

The Deputy Chairperson (Ms Armstrong): That would be very helpful.

Mr Frew: First of all, thanks very much, because you have already answered a lot of my questions in your briefing. I also compliment you on your submission, which goes through each clause very well. Thank you for that, because it has certainly helped me immensely in understanding the Bill, and, through that submission, you have answered some of the queries and questions that I had previously. I commend the Department for providing that detail.

I will keep to clause 2, which is about the power of the commission to delegate the staff and the scheme. Proposed new paragraph 9A(3) says:

"the Department may make a scheme describing—

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

(b) in relation to anything which may be delegated under sub-paragraph (1)".

However, over the page, proposed new paragraph 9A(6) states:

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

What is your interpretation of that? Is sub-paragraph 6 saying that the Department must make a scheme and then publish it, or is it saying that, if the Department —?

Ms Russell: If we make a scheme, it would, for transparency, have to be published, yes.

Mr Frew: That is OK. I get that. I get that it must publish a scheme if it is in existence.

Ms Russell: It is about transparency, yes.

Mr Frew: I get that, and I support that. Why, then, is clause 2(3) not stronger? Why does it not state that the Department "must" make a scheme?

Mr Ireland: It will be up to a Minister, at a future date, to determine whether in fact they want to delegate anything via a scheme. This does not make delegation inevitable.

Mr Frew: OK, thank you for that. Clause 2(5) states:

> *"Before making a scheme under sub-paragraph (3), the Department must consult the Commission."*

Why just the commission and not the public?

Mr Ireland: It is standard to consult the arm's-length body on a scheme. However, the Minister has determined that, before such a scheme would be brought in, it would be consulted on. We did not feel that it was necessary to put that in the Bill because doing so would mean that any amendment to the scheme, even a minor one, would require full public consultation again.

If the commission were to take on major new powers that required a total rewrite of the scheme, the Department would undoubtedly fully consult at that time. However, we did not want to make it a statutory requirement to go out to full public consultation on every minor amendment.

Mr Frew: If I have got that right, the Department intends that, if a scheme were to be required, there would be a public consultation.

Ms Russell: Yes.

Mr Frew: Is there no wording in legislation that could secure that and also safeguard you when it came to any future amendments?

Mr Ireland: We can certainly look at that.

Mr Frew: OK, thank you. On clauses 1 and 2, which cover the delegation of powers and powers that are not retrospective, we keep looking at sections 33 to 36 of the 2008 Act. You helpfully gave us a list of decisions that will be made lawful through the Bill, and they total 7,150.

I am new to the Committee, so this may have been produced earlier, but I do not have a breakdown or the total of all decisions made, which is different from the decisions that are to be made lawful. That brings me to my point about sections 33 to 36. I cannot grasp how significant those sections are. When I go down the list of decisions to be made lawful, sections 33 to 36, because they will not be made lawful, are, of course, missing. In the past, how many decisions were taken that relate to sections 33 to 36? Also, the list of decisions to be made lawful does not include sections 37, 38, 39, whatever they are. In fact, there is a gap between section 31(1) and section 46. Sections 33 to 36 are referenced in the Bill. Are we sure that we are not missing a trick with the sections before section 33 and after section 36, especially section 37?

In your opening gambit, you mentioned the power to direct application of charity property. I am trying to find out the number of decisions taken that incorporated sections 33 to 36, the sections before section 33 and sections 37 to 46, and how important they are.

Mr Ireland: As explained in the brief, we undertook an exercise with the Charity Commission and the Departmental Solicitor's Office, and that identified decisions that the commission had taken prior to

McBride. There may be sections in the Act that the commission never made an order on or took a decision on, so they are not included. We have the number of decisions taken under sections 33 to 36, and we can certainly provide that to you. We have a table of decisions that were taken, by category, by the commission, and we can provide that for completeness, if that would be helpful.

Mr Frew: That would be very helpful in quantifying those decisions. You pre-empted one of my questions on section 174 of the 2008 Act, and I totally get your point: that power does not need to be carved out if it was never used or a decision was never taken. It would be helpful if you could produce that table of all the decisions made, not just the decisions that are to be made lawful.

The Deputy Chair mentioned the 42-day issue. We are all concerned about that, so there is no need to dwell on it.

I will take you to the point about the retrospective nature of the Bill and the nervousness that we should all have about allowing legislation of this nature to go through, technical as it is and knowing the rationale for it. Has the Department explored any other way of producing a Bill that could satisfy the aims of this Bill without creating that retrospectivity? For instance, last week, the issue of putting in the Bill a schedule that lists all charities was raised with us. According to your list, 6,396 decisions were taken to enter an institution on the register. I know the answer to this question, but I will ask it anyway: is it conceivable that you might have a schedule that lists the names of 6,396 charities?

Mr Ireland: The retrospection is needed to provide certainty to charities. For instance, they will have been given consents by the commission to change their articles of association or whatever or to extend the scope of what they did. Those consents are unlawful, so there is great uncertainty about the effect of that. Also, it is important that registration is made lawful retrospectively because many of these charities will have acted on the basis that they were registered charities. Some funding is available only to registered charities, so they will have made funding applications on the basis of that registration. There are also potential issues around tax exemptions that were claimed due to their registration.

We looked at this, because we saw the evidence session last week. Apart from not addressing the retrospective nature, if you were to put 6,500 organisations in the schedule, despite how many times you checked it, there would be the chance that you could miss one or add one that should not be there. Apparently, this has happened in legislation across the water, so it is not recommended as a practice. You talked about the possibility of a clause that would time-limit the effect of that schedule, but, once that time limit ran out, you would be back in the position of having unregistered charities.

A potential solution was raised: create a hybrid Bill that would be subject to Standing Orders 100 to 109, although that would have to be the subject of debate. There is a whole different procedure for that, and it would most likely mean that the Bill would not go through in this mandate. The charity sector wants it to go through in this mandate. You could, perhaps, validate the existing list that is on the register, but, as the Bill is currently constructed, other grounds of challenge are protected. Therefore, that would mean having to put in some sort of clause to protect those other grounds. You would really be doing what the Bill does minus the retrospection.

Ms Russell: All of the legal advice that we have, right up to, as I said, the advice from the previous and current Attorney Generals, is that there is no other route.

Mr Frew: The last theme in my questioning comes from clause 1(7), which is on refreshed appeal rights. Clause 1(7)(b) states:

> *"the relevant action is one mentioned in column 1 of the Table in Schedule 3 to the 2008 Act".*

I have looked at that column, and, to be honest with you, it is quite wide-ranging. However, some of those who gave evidence suggested that it is limited with regard to appeal rights. They also raise the issue around section 22(3), which you said that you would look at. When I look at that column, I see section 22 mentioned, but does that mean that it covers only certain aspects of section 22 and not section 22(3)? Should it cover all aspects?

Mr Ireland: No, it stipulates in that schedule the people who can appeal and the grounds for appeal. It states:

> *"Decision of the Commission to institute an inquiry under section 22".*

That is the opening of the inquiry, and the persons who can make that appeal are:

"a)the persons who have control or management of the institution, and

(b)(if a body corporate) the institution itself."

The issues raised about sections 22(3) and 23 are complex, which is why we have sought further advice. We will come back on that as soon as we can.

Mr Frew: When I read column 1 of the table in schedule 3 to the 2008 Act, I thought, "How many other columns are there?", but when you look at it, it is clear that column 1 is the decision, column 2 is the people and column 3 is the power. Does anywhere else in the 2008 Act list directions or decisions that are not allowed an appeal?

Mr Ireland: No. Only the ones that can be appealed are set out in schedule 3.

Mr Frew: Are there many sections in the 2008 Act that cannot be appealed?

Mr Ireland: That, I cannot not tell you. I do not think that it arises for what we are doing, but I would need to check on that.

Mr Frew: I do not want you to go into too much detail or do too much work on that. I understand that, if there was no decision or direction relevant to a section, there would be no point in naming or listing that section for us to see. I get that, and I do not want to burden you or add to your workload. I would like a list of sections that cannot be appealed but on which decisions were made. If we can get a list of all the sections on which decisions were made, it is proper that we get a list of the sections that cannot be appealed and on which decisions were made.

Mr Ireland: We could, I think, do that reasonably quickly, but I will check.

Mr Frew: Thank you for that and for your time. Let me compliment you again on the level of detail in your submission: it is very, very good.

The Deputy Chairperson (Ms Armstrong): It is testament to the detail that we have received that no one else has raised their hand to ask a question. We will talk again, Sharron, and very soon, I would say.

Ms Russell: This has been useful for us, too. When we do the clause-by-clause scrutiny, we will have even more detail to bring with us.

The Deputy Chairperson (Ms Armstrong): It is right and proper that we do that, given the amount of work that you guys are putting in and the evidence that we are hearing from people, so that we can make sure that the Bill helps to resolve the issue once and for all. For now, thank you very much, Sharron and Martin.

Ms Russell: Thank you, Deputy Chair and members.