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8 November 2021

GM-1411-2021

Dear Janice

Charities Bill Deliberations from 14 October

Please find attached a table in response to queries raised by the Committee in its letter of 14 October 2021 and during the evidence session on the Charities Bill on 14 October 2021 showing details of:

- the number of previous decisions taken by the Commission by category and a list of the sections of the Bill that are not appealable, on which decisions were made in the past.
- those that will remain unlawful as a result of Clause 1(5); and
- the regulatory orders and directions required of the Commission should the whole of the Charities Act (Northern Ireland) 2008 be commenced and whether they are appealable.

The table shows that:

- (i) there are **107** categories of regulatory decision, order or direction required of the Commission by the Charities Act (Northern Ireland) 2008, **83** of which were commenced prior to the McBride Judgment¹;
- (ii) of these **107** categories, **40** are appealable to the Charity Tribunal and a further **7** are reviewable matters²;
- (iii) Commission staff took regulatory decisions, orders or directions under approximately **30**³ of the categories unlawfully prior to the McBride Judgment;
- (iv) of those **30** categories where regulatory decisions, orders or directions were taken unlawfully, **14** have no appeal rights and **1** is a reviewable matter⁴.

¹ No further parts of the Act have been commenced since McBride

² Some orders are reviewable matters under Schedule 3(3) and (4) and these are also shown in the attached table

³ Figures provided by CCNI on numbers of decisions taken were grouped across a number of sections

⁴ No appeal rights under the following: s22(3), s22(6), s24, s29, s47, s50, s54, s123(6)(7)(11), s129(6)(7)(10) & 175(5). S46 is a reviewable matter.

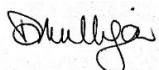
- (v) **81** orders made under s33-36 and **6** decisions under s22(6) will remain unlawful as a result of Clause 1(5).
- (vi) Decisions to share information under s24(1) will also remain unlawful as a result of Clause 1(5), however it is not possible to quantify this as it would include, for example, routine sharing of regulatory information between the Commission and the Department for Social Development and the Department for Communities which have been the Sponsor departments for the Commission throughout its existence.

Mr Frew, MLA also queried if it could be stipulated in the Bill that the Department would conduct a public consultation on any Scheme of Delegation. The Department has taken advice from the Office of the Legislative Counsel on this matter and is now considering the options for including such a commitment to consult on the face of the Bill.

Following the further briefing on 21 October, officials will seek Minister's view on all of the issues raised and would hope to report back at the next briefing on 4 November.

I hope this is helpful to the Members.

Yours sincerely



Diane Mulligan

Departmental Assembly Liaison Officer
Private Office

Annex B

TABLE OF ORDERS AND DIRECTIONS

DECISIONS, ORDERS & DIRECTIONS OF THE COMMISSION

Section	Decision (D), Order (O), Direction (DR) or Other (OR)	Appeal rights (A) or Review (R) or Not Appealable (NA)	Total number of decisions by category prior to McBride	Total of number of decisions taken prior to McBride to remain unlawful as a result of clause 1(5)	Number of ongoing cases before tribunal
1(4)	(DR) Direction that for all or any purposes of the Act an institution established for any special purposes of or in connection with a charity (being charitable purposes) shall be treated as forming part of that charity or as forming a distinct charity	A – decision not to give such a direction			
1(5)	(DR) Direction that two or more charities having the same trustees shall be treated as a single charity	A - decision not to give such a direction			
4	(OR) Must issue guidance in respect of public benefit, revise any such guidance, carry out consultation and publish any such guidance	NA			
10	(OR) The power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.	NA			

11(2) and (3))	(OR) Designation of Official Custodian and specification of duties by directions	NA			
11(9)	(OR) Publishing and laying before the Assembly of certified accounts of Official Custodian together with the report on them.	NA			
16	(D) to enter or not to enter an institution on the register or remove or not remove an institution from the register	A – decision to enter or not to enter an institution on the register or remove or not remove an institution from the register	6472	0	
16(9)	(D) To make or not to make a determination under s16(9) that certain information contained on the register as specified in the determination, shall not be open to public inspection (as s.16(7) will not apply to that information).	A – decision not to make a determination under section 16(9) in relation to particular information contained in the register			
20	(DR) requiring a name change of a charity	A – direction requiring the name of charity to be changed			
22(1)	(D) to institute a statutory inquiry	R – decision to institute a statutory inquiry			
22(2)	(D) to conduct such an inquiry or appoint a person to conduct it and make a report to the Commission	NA			

22(3)	(DR) Direction to a) produce accounts/statements and verify by statutory declaration (b) produce copies of documents and verify by statutory declaration (c) attend to give evidence or produce documents	NA	95	0	
22(4)	(OR) For the purpose of an inquiry, may administer oaths, or require a person to make, and subscribe to, a declaration of truth of the matters about which the person has been examined.	NA			
22(6)	(D) To publish statutory inquiry report/statement of the results	NA	6	6	
23	(O) for production of information or documentation	A – Order requiring p to supply information or documents	44	0	
24	(D) Disclosure of information to any public body or office-holder	NA	unquantifiable	unquantifiable	
26(4)	(OR) make alterations to purposes etc. in apply property cy-pres so that it is applied most beneficially	NA			
27(4)	(O) to direct that certain property is to be treated as belonging to donors who cannot be identified	NA			

27(6)	(D) donors entitlement	NA			
27(8)	(OR) Making of regulations	NA			
29	(D) Making schemes to apply property cy-pres (D) Making schemes - Gifts for mixed purposes	NA	11	0	
31(1)	(D) Exercising powers as are exercisable by the High Court in respect of schemes of administration, removing, appointing etc. a trustee or employee, vesting or transferring property etc.	A – Order made under section 31	2	0	
32(1)	(D) Settling a scheme for the administration of a charity (altering a provision made by an Act of Parliament etc.)	NA			
32(8)	(O) to authorise trustees to apply accrued income at their discretion where the accrued income cannot be applied effectively for the purposes of the charity.	NA			
33(1)(i), (ii), (iv), (v), (vi) & (vii)	(O) suspend, appoint, vest property (not yet commenced), order not to part with property, order not to discharge a debt to a charity, restrict charity transactions and appoint an interim manager (in course of an inquiry under section 22)	A – Order made under section 33(1)	47 (section 33(1)(iii)) not commenced yet	47	2 (33(1)(vii))
33(2)	(O) remove for misconduct and establish a scheme	A – Order made under	16	16	

	for the administration of a charity (in course of an inquiry under section 22)	section 33(2)			
33(4)	(O) to remove a trustee (not in course of an inquiry under section 22)	A -Order made under section 33(4)			
33(5)	(O) to appoint a trustee (not in course of an inquiry under section 22)	A -Order made under section 33(5)	3	3	
33(6)	(O) powers under s.33 to remove or appoint charity trustees of its own motion shall include power to make any order with respect to vesting in or transfer of property as Commission could make on removal or appointment of trustees under s.31.	NA			
33(10)	(D) to discharge or not discharge an order made under 33	A – decision to discharge or not to discharge an order following a review under section 33(10)	4	4	
34(2)	(O) to suspend a person's membership of a charity	A – Order made under section 34(2)			
34(3)	(O) if the order removes the person in question from office or employment, terminating a person membership and prohibiting resumption of membership	NA			

	without approval 34(1(b))				
35	(D) the making of provisions regarding the functions of the IM (Where the Commission has instituted an inquiry under section 22,)	NA			
36(2)	(O) to direct a person to take a specified action (Where the Commission has instituted an inquiry under section 22,)	A – Order under section 36(2)	11	11	
37(2)	(O) to direct a person to apply property in a specified manner	A - Order under section 37(2)			
39(4)	(D) Make a determination that the publicity requirement in 39(2) does not to apply in relation to a scheme if compliance with the requirement is unnecessary	NA			
42(3)	(O) To make an order to authorise a transaction affecting land by charity trustees where land is vested in the official custodian by section 33.	NA	Not commenced		
43	(O) To make a common investment scheme	R – not to make such an Order	Not commenced		
44	(O) To make a common deposit scheme	R - not to make such an Order	Not commenced		
46	(O) To sanction action taken in the administration of a charity that is deemed to be in the interests of that	R – not to make such an Order	28	0	

	charity e.g. enter into a transaction, apply property etc.				
47	(O) To exercise the same power as the A.G. with regard to the application of charity property	NA	2	0	
48	(DR) – transfer of monies in respect of dormant charity bank accounts	A – Direction given under section 48			
49	(D) – provide advice or guidance to trustees	NA			
50	(D) – to determine the membership of a charity	NA	1	0	
51(1)	(OR)- to provide books in which any deed, will or other document relating to a charity may be enrolled	NA	Not Commenced		
51(2)	(OR) – to preserve charity documents	NA	Not Commenced		
52(1)	(OR) For the purpose of a section 22 inquiry, obtain a warrant from a lay magistrate to authorise staff member to: (a) enter and search premises; (b)to take on to the premises other persons (as Commission considers are needed) to assist ; (c)to take possession of documents relevant to the inquiry or to take any other steps to preserve/prevent interference with any such documents; (d)to take possession of computer electronic storage devices or to	NA			

	take any other steps to preserve/prevent interference with any such information; (e)to take copies of anything which appears to be necessary to the proper conduct of the inquiry, (f)to require any person on the premises to provide an explanation of any document/information or to state where they may be found and (g)require any such person to give reasonable assistance in taking of copies/extracts.				
53	(OR) – decision to take proceedings in respect of charities or the compromise of claims with a view to avoiding or ending such proceedings.	NA			
54	(O) – authorising the taking of charity proceedings	NA	1	0	
55	(OR) – issue a certificate to prove that a copy of a section 22 report is a true copy for admittance in court	NA			
56	(OR) – application to the court in respect of moveable property relating to a charity registered in England, Wales or Scotland	NA			
57(1)	(O) - to dispose of land held by or in trust for a charity	R – not to make such an Order	Not commenced		
57(9)	(DR) -To direct that the publicity requirement is not to	NA	Not commenced		

	apply in relation to a an order for the disposition of land				
60(1)	(O) - granting a mortgage of land held by or in trust for a charity	R – not to make such an Order	Not commenced		
63(4)	(D) – consenting to the destruction of accounting records	NA			
65(6)	(O) requiring the accounts of a charity to be audited	A – Order made under section 65(6)	2	0	
65(9)	OR) -give guidance to trustees in connection with the selection of independent examiner or (DR) - give directions relating to an independent examination.	NA			
66(2)	(O) – giving directions to the facilities to be provided to an auditor or independent examiner	A – the making of an order or not making the order	2	0	
69(2)	(DR) – in relation to the public inspection or not of an annual report and accompanying documents	NA			
70(1)(3)	(OR) – make regulations in respect of annual returns by charities & dispense with the requirements of annual reporting for a charity or class of charities	A – 70(3) Decision not to dispense			
73(1)	(D) to grant a certificate of incorporation or not to	A - decision to grant or not	Not commenced		

	grant such a certificate	to grant a certificate of incorporation			
79(4)	(O) or (D) to amend a certificate of incorporation either – (a) by making an order specifying the amendment; or (b) by issuing a new certificate of incorporation taking account of the amendment	A – decision to amend or not to amend a certificate of incorporation	Not commenced		
84(1) or (2)	(O) to dissolve an incorporated body	A – making of an order dissolving an incorporated body	Not commenced		
86(4)	(D) to waive or not waive a person's disqualification	A – decision to waive or not to waive, a person's disqualification			
87(4)	(O) to repay any expenses or remuneration received when automatically disqualified under section 86	A – making of an order to repay remuneration received			
90(5) or (6)	(O) requiring a trustee or connected person to repay or not receive remuneration	A – making of an order requiring a trustee or connected person to repay, or not to receive remuneration			
91(2)	(O) to relieve trustees, auditors, reporting accountant or independent examiners from	NA			

	liability for breach of trust or duty				
95(2)	(OR) petition to the High Court to wind up a charity for insolvency	NA	Not commenced		
96(2)	(D) – provide prior written consent for any regulated alteration by a charitable company	A – decision to give or withhold consent	481	0	2
98(1)	(D) - provide prior written consent required for approval etc. by members of charitable companies	A – decision to give or withhold consent	12	0	
99	(D) - provide prior written consent for specified acts of a charitable company	NA			
104(1)	(O) – investigation and audit of accounts of a charitable company	R - making of order under s104(1)			
104(5)	(O) – requiring facilities for an auditor	NA			
110	(D) to grant or not to grant an application for the constitution of a CIO and its registration as a charity	A – decision to grant or not to grant an application for the constitution of a CIO and its registration as a charity	Not commenced		
113	(D) to refuse the conversion of a charitable company or registered society into a CIO and its registration	A – decision not to grant application for the conversion and the CIO's registration as a charity.	Not commenced		
116	(D) to grant or refuse the amalgamation of	A – decision to grant or	Not commenced		

	two or more CIOs and the incorporation and registration of the successor CIO	not to grant an application for the amalgamation of two or more CIOs and the incorporation and registration as a charity of a new CIO			
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118	(D) to confirm or refuse a resolution passed by a CIO	A - decision to confirm or not to confirm a resolution passed by a CIO	Not commenced		
123(6)	(DR) – to give public notice of a trustee resolution	NA	32 (for s123 – 129) ⁵	0	
123(7)	(DR) – for more information in respect of a trustee resolution	NA			
123(11)	(O) – to vest property of the transferor charity in the transferee charity, in its charity trustees or in any trustee for that charity, or in any other person nominated by charity trustees to hold property in trust for that charity at the request of the trustees	NA			
124(2)	(D) objecting to a resolution made by charity trustees	A – decision to notify			

⁵ CCNI advise their automated system cannot break these categories down any further. Should the committee require further breakdown it will require a manual exercise which may take some time.

	under sections 123(2) or 126(2)	charity trustees that it objects to the resolution under sections 123(2) or 126(2)			
129	(D) not to concur with a trustee resolution made under sections 129(3) or 130(2)	A – decision not to concur with a resolution of charity trustees under sections 129(3) or 130(2)			
129(6)	(DR) to give public notice of the resolution	NA			
129(7)	(DR) – charity trustees to provide more information in respect of larger incorporated charities spending capital given for a particular purpose	NA			
129(10)	(D) to concur or not concur with a resolution	NA			
138(2)	(D) After making inquiries as it thinks fit, determining the application for a public collections certificate by either: (a) issuing a public collections certificate or refusing the application or to attach any condition to such a certificate as it thinks fit	A – decision to refuse to issue a public collections certificate or to attach any condition to such a certificate	Not commenced		

138(4)	(D) – to attach to a public collection certificate such conditions as it thinks fit.	A – decision to attach any condition to such a certificate	Not commenced		
141(3)	(DR) – to direct transfer of certificate between trustees of unincorporated charity	NA	Not commenced		
141(4)	(D) not to direct that a public collections certificate be transferred	A – decision not to direct that a public collections certificate be transferred	Not commenced		
142(1)	(D) to withdraw or suspend a public collections certificate, attach a condition to a certificate or vary an existing one	A – decision to withdraw or suspend a public collections certificate, attach a condition to a certificate or vary an existing one	Not commenced		
166(1)	(D) to make/refuse designation as a religious charity	A – decision to refuse designation as a religious charity	1	0	
166(4)	(D) to determine that the condition in section 166(3)(c) (<i>has been established in NI for at least 5 years</i>) need not be satisfied	NA			
166(5)	(D) to withdraw designated religious charity status	A – decision to withdraw the designation of a charity as a			

		designated religious charity			
172(4)	(OR) - impose charges of such amounts as it considers reasonable in respect of the supply of any publications produced by it	NA			
173(1)	(O) - to give directions to a person who has failed to comply with any requirement imposed by or under the Act, such directions being designed to make good the default.	NA			
174	(OR) –where a person guilty of disobedience of orders of the Commission, may by application to the High Court by the Commission be dealt with as for disobedience to an order of the High Court.	NA			
175(3)	(OR) -The Commission within 12 months of an order under any provision of the Act (other than under section 84), where satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with the Act, may with or without any application or reference to it,	NA			

	discharge the order in whole or in part.				
175(5)	(O) – Any order made by the Commission may be varied or revoked	NA	8	0	
176(1)	(DR) - Any direction given by the Commission under any provision contained in this Act may be varied or revoked by a further direction given under that provision.	NA			
Sch 1 para 4(1)	(OR) -The Commission may with the approval of the DfC and the DFP as to numbers and as to remuneration and other terms and conditions of employment (a) employ such staff as the Commission considers necessary (b) employ the services of such other person as the Commission considers expedient for any particular person	NA			
Sch 1 para 4(2)	(OR) -The Commission may, in the case of such of its staff as may be determined by it with the approval of the DSD and the DFP , pay such pensions, allowances or gratuities, or provide and maintain such pension schemes, as may be so determined.	NA			

Sch 1 para 5(2)	(OR) The Commission may make arrangements with the DfC for persons employed in the Northern Ireland civil service to be seconded to the Commission.	NA			
Sch 1 para 9	(OR) - In determining its own procedure the Commission may, in particular, make provision about— (a) the discharge of its functions by committees (which may include persons who are not members of the Commission); (b) a quorum for meetings of the Commission or a committee.	NA			
Sch 4 para 1(2)	(OR) - The Commission may make reference to the Charity Tribunal only with the consent of the Attorney General	NA			
Sch 4 para 5(2)	(OR) - The Commission may take those steps despite the suspension in accordance with paragraph 4(2) of any period during which it would otherwise be permitted or required to take them.	NA			
Sch 6 para 6(5)	(O) -To make an order requiring group accounts to be	NA			

	audited if they have not been audited within ten months from the end of the financial year.				
Sch7 para 15	(D) to refuse to register an amendment to the constitution of a CIO	A – decision to refuse to register an amendment to the constitution of a CIO	Not commenced		