



Northern Ireland
Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Charities Bill: Committee Deliberations

11 November 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 Mark Durkan
Ms Ciara Ferguson
Mr Paul Frew
Ms Áine Murphy
Miss Aisling Reilly

Witnesses:

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

The Chairperson (Ms P Bradley): I welcome Sharron Russell and Martin Ireland from the Department. You are both very welcome. We will start, of course, at the beginning, at clause 1, "Actions of Commission staff treated as Commission actions"

After the meeting on 21 October, members were emailed a copy of my brief, which outlines the queries that we put to the Department on clause 1, and a copy of the deliberations table, which includes the queries and a summary of the relevant responses.

Sharron, please take us through the Department's responses to the Committee's queries.

Ms Sharron Russell (Department for Communities): Thank you, Madam Chair and members, for having us back again to help with your deliberations. If you will allow, I will quickly reiterate the Minister's apology, given at last week's meeting, for the one-week delay in providing these responses, although I hope that you will find these responses more fulsome.

We are mindful that we are before you with the Bill because there was flawed legislation previously. You understand that we are taking particular and extra care to get comprehensive legal advice and take it under consideration this time. We found it important to take the extra legal advice and consider it carefully. The Minister has now had the benefit of that comprehensive toing and froing. Not only that, we have been able, as you will see from the response, and from Martin [*Inaudible owing to poor sound quality.*] The Minister has agreed to amendments, which we have drafted with the Office of the Legislative Counsel (OLC). I just wanted to apologise and say that, essentially, this was about getting it right for you and for the Bill. We are in a much better position today to give you positive, fulsome responses.

If it is OK, Martin will be happy to walk you through the detail. He has done all the work.

The Chairperson (Ms P Bradley): That is grand. Go ahead, Martin.

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

Clause 1 is "Actions of Commission staff treated as Commission actions". The Committee queried why section 37 of the Charities Act (Northern Ireland) 2008 was not included in clause 1(5), thereby remaining unlawful. Section 37 allows the commission to direct a person to apply property in a specified manner. No section 37 order has been made by the commission prior to or since McBride. Therefore, there is no need to include it in clause 1(5).

With respect to sections 22(3) and 23(1) of the 2008 Act, during one of the evidence sessions, the issue was raised that if we were to make those lawful, there are no appeal rights in respect to 22(3) and limited appeal rights in respect to 23(1). That is, indeed, the case. We have determined, following consideration of the matter, that the validity does, potentially, remove a legality argument for third parties, which they could have utilised to argue that any processing of data was unlawful as it did not have a statutory footing. That could therefore hinder a third party's recourse to the Information Commissioner, which is the appropriate mechanism for challenging such decisions as opposed to the Charity Tribunal. Section 22(3) is about the gathering of information during a statutory inquiry, and 23(1) is about the gathering of information more generally in respect to the performance of the commission's functions.

The Minister has therefore determined that sections 22(3) and 23(1) should be added to clause 1(5), which is in keeping with her previously stated policy that the Bill should do nothing that could impinge on the rights of individuals under ECHR. In addition, and upon further reflection, the Minister has determined that the administering of an oath or the requirement to make and subscribe a declaration of truth under section 22(4) should also be included in clause 1(5). Those decisions and orders will therefore remain unlawful, and thus free to be challenged by way of the Information Commissioner or the Northern Ireland Public Services Ombudsman if a party remains aggrieved by a decision, or, indeed, the courts.

The Committee asked the Department whether it would be willing to extend the time frame for appeals. The Minister has concluded that there is justification for extending the time frame for appeals arising from the Bill and will amend it from 42 to 91 days. Although the evidence sessions indicated that the time frame for appeals generally was insufficient, any proposal to extend the time frame for appeals to the Charity Tribunal generally cannot be affected by the Bill as the Charity Tribunal rules are the responsibility of the Department of Justice. However, the Minister would be content for officials to consider the matter further and work with the Department of Justice with a view to a possible future amendment to the tribunal rules.

With regard to creating appeal rights where none existed, clause 1(7) provides fresh appeal rights for decisions made lawful by the Bill where they are provided for in schedule 3 to the Act. The Bill is about returning charities to the position that they were in prior to the McBride judgement. Importantly, therefore, new appeal rights are not provided where they did not previously exist nor for decisions that are to remain unlawful. That means that a number of regulatory decisions, orders or directions, where decisions were taken prior to McBride, will be made lawful, with no obvious appeal rights. However, other protections are provided, and no adverse ECHR impacts are evident.

Creating appeal rights where none existed is complex. It would have to be determined what the appeal should be against, who could appeal it, and what the tribunal's powers should be. The issue concerning sections 22(3), 22(4) and 23(1) of the 2008 Act can be dealt with effectively by adding them to clause 1(5).

Providing new appeal rights where they did not previously exist for those decisions being validated by the Bill, but not providing the same appeal rights for all decisions arising from those provisions, would create a disparity in the way in which similar decisions are treated before and after Royal Assent. That could give rise to a legal challenge. If, however, new appeal rights were provided for all decisions arising from sections 22(3) or 23(1), that could hugely impact on the number of appeals to the Charity Tribunal and seriously affect the Charity Commission's ability to gather the evidence needed to deliver its statutory functions. Consequently, the Minister is not minded to do so.

The Committee raised the issue of charitable incorporated organisations (CIOs) and whether they are outside the scope of the Bill. CIOs are a charitable entity with their own legal personality, with the

ability to conduct business in their own name and limited liability so that their members and trustees will not have to contribute in the event of financial loss.

Part 11 of, and schedule 7 to, the Charities Act (Northern Ireland) 2008 introduced the concept of CIOs in Northern Ireland. The 2008 Act makes provision for the registration of CIOs, the conversion of charitable companies into CIOs, the amalgamation of CIOs, and allows the Department to make regulations to make further provision. There is therefore no requirement to include CIOs in the Charities Bill, as the powers are already contained in the 2008 Act but have not yet been commenced. However, a CIO must be registered in order to avail itself of the benefits, in that it is regulated by the Charity Commission only and not by Companies House. Therefore, the power to introduce a registration threshold is wide enough to disapply any registration threshold for CIOs.

As the Committee will know, the independent panel that conducted the review of charity regulation looked at the issue of CIOs in Northern Ireland, and the Minister will consider any recommendations in that regard.

The Chairperson (Ms P Bradley): OK. Are you finished, Martin?

Mr Ireland: I am, yes. That is clause 1.

The Chairperson (Ms P Bradley): That is grand, thank you. I am very grateful that a lot of the Committee's suggestions have been accepted, which is good news. I have no specific questions, so I am going to ask members if they have any.

Mr Frew: Thank you very much for your presentation, Martin, and for outlining the Minister's suggested amendments. It has been very helpful and constructive, and it shows that there is good working between the Committee and the Department.

I want to ask about the time frame for appeals. The Minister seems to be saying that 91 days is an appropriate time frame. However, you go on to talk about the tribunal rules. Does that mean that although you are going to amend the 2008 Act, another piece of work will have to be done on the tribunal rules? Does amending the 2008 Act do that for you?

Mr Ireland: No. The Bill will only amend the 2008 Act for appeals arising from decisions made lawful by the Bill. If it is felt that 42 days is not enough generally for any appeal arising, we would commit to working with the Department of Justice to change the tribunal rules in order to effect that. The Bill will only extend the time frame for appeals arising from decisions made lawful by the Bill.

Mr Frew: So, when you talk about tribunal rules and other tribunals, what other tribunals are you talking about specifically?

Mr Ireland: I am sorry; we are talking only about the Charity Tribunal rules. They are the responsibility of the Department of Justice, and they set the 42-day time frame for appeals generally. If an appeal arose, for instance, from a lawful decision after Royal Assent, the time frame for it would be 42 days, unless we change the tribunal rules. We can do that only by working in conjunction with DOJ.

Mr Frew: OK, thanks very much.

Ms Armstrong: Just following up on that, I thought that, in evidence sessions, the Department of Justice was happy enough to go with the additional days. Could that not be added as a consequential amendment at the end of the Bill?

Mr Ireland: The Department is happy to go with the extension of the time frame for the appeals arising from the Bill. We have not sought its views on extending the time frame generally. That would be a separate piece of work.

Ms Armstrong: So it could not be added on as a consequential amendment?

Mr Ireland: I can check that for you.

Ms Armstrong: Thank you.

The Chairperson (Ms P Bradley): As no other members want to ask about clause 1, we will move on to clause 2, which is "Power of Commission to delegate to staff". Again, members, you have a copy of my brief and the deliberation tables, which are really helpful. Sharron or Martin, go ahead.

Mr Ireland: The Committee queried why, when sections 33 to 36 of the 2008 Act have been included in proposed new paragraph 9A(2), which is created by clause 2, as powers that can never be delegated to staff, section 37 is not included. Section 37, as I said previously, is about the power of the commission to direct a person to apply property in a specified manner. The Minister recognised that statutory inquiries and the resultant orders taken under sections 33 to 36 can have a huge impact on individuals' reputation and their ability to continue within the charities sector. The section 37 power, whilst important, does not appear to the Department to have those same impacts on individuals. The fact that section 37 is not included in proposed new paragraph 9A(2) does not make it inevitable that it will be delegated to staff, as it would have to be decided in a scheme of delegation, which would be consulted on.

However, in the interests of addressing the Committee's concerns, we believe that there would be some justification in including it in proposed new paragraph 9A(2), as section 37 decisions could have major implications for a charity and its trustees. That is reflected in the fact that section 38 of the Act treats section 37 orders in the same way as those for sections 33 to 36 in terms of notification of the commission's decision and a statement of the commission's reasons for making it. The Minister therefore agrees that the Bill could be amended so that section 37 is included in proposed new paragraph 9A(2), meaning that the powers can never be delegated to staff. As I stated previously, the commission has, to date, never used that power, so it is not a big thing to include it in proposed new paragraph 9A(2).

The Committee was also concerned that, by stipulating that powers under sections 33 to 36 could never be delegated to staff, whether that would allow the commission the flexibility to respond in cases of urgency. However, those powers are rarely used, and it is the Department's view that the decision-making committee of the commission could have emergency procedures in place to deal with matters of urgency. Indeed, that has been the case since the McBride judgement. The Minister believes that such powers should not be delegated to commission staff, given the issues that have previously arisen in Northern Ireland.

It was also queried whether the Bill could stipulate that a public consultation would be undertaken on any scheme of delegation. The Minister is determined that the Bill will be amended to state that such a consultation will be undertaken on the first scheme. That will allow future Ministers the flexibility to determine whether any subsequent change is of such significance that it requires further consultation but would not tie a Minister to consulting on every change.

That is everything on clause 2, Chair. I am happy to take any questions.

The Chairperson (Ms P Bradley): Again, thank you, Martin, for that. Do members have any questions for Martin on clause 2, or are we happy enough with what we have in front of us?

Ms Armstrong: That sounds good.

The Chairperson (Ms P Bradley): Again, those queries have been well answered.

Martin, can we move on to clause 3?

Mr Ireland: Certainly, Chair. The Committee wished to be content that the drafting of the power to make the regulations was wide enough so that it could stipulate that a threshold would be income, or income plus assets, and also by considering the option of a choice to register either because a charity falls below the threshold or because it does not choose to register for a legitimate reason. I can confirm that the power is wide enough to include a threshold of income only or income plus assets. It will also be capable of allowing an organisation that falls below the threshold to register voluntarily and therefore get the benefits of that registration. However, it could not allow a charity that is above the threshold to choose not to register, as the Charities Act does not provide for a legitimate reason not to register, and the policy intent in respect of the power relates solely to a registration threshold based on income or income plus assets.

The Committee further queried whether the Minister would be open to specifying a time frame in the Bill for the introduction of any regulations that introduce a threshold, should the Committee support

clause 3. The Minister is not minded to do that. It is her belief that such an amendment, if accepted, would statutorily commit the Minister for Communities, or a future Minister, to introduce a registration threshold even if they did not wish to do so at the time and the evidence did not warrant it.

That is clause 3.

The Chairperson (Ms P Bradley): Thanks again, Martin. Do members want to put any questions or points of clarification to Martin? Go ahead, Kellie.

Ms Armstrong: Martin, you said that a charity that is above the threshold for income or assets — whatever that may be — does not have the choice not to register. A charity is a charity by its aims and objectives, not by the amount of money that it has. If a charity does not meet its aims and objectives, can it then not be registered? I am thinking of community interest companies or other organisations that may have philanthropic objectives but which are not charities.

Mr Ireland: The Charities Act would apply to them as it does now. If the registration threshold does not apply to them, the commission would apply the charity test in the Act. If it is a charity, it will be registered; if it is not a charity, it will not be registered.

Ms Armstrong: That means that the Charity Commission will not go through all the companies that are currently listed at Companies House in Northern Ireland and say, "That one should really be on the charities list, and that one should not", and, where HMRC is in negotiations with an organisation to say that it is deregistering it as a charity, it would not then be added to the charities list automatically.

Mr Ireland: I am not sure that I fully understand what —

Ms Armstrong: I am thinking of evidence that we have heard about the Charity Commission's having added companies to the charities list automatically when those charities were in negotiations with HMRC to actually come away from being charities. I am wondering about that list. Will that still mean that, even though a company's objectives are not charitable purposes —

Mr Ireland: If it is not exclusively charitable, it is not a charity and will not be registered.

Ms Armstrong: OK. Thank you.

The Chairperson (Ms P Bradley): Thank you, Kellie. Does anybody else want to ask anything on clause 3? No. OK. You have got off lightly. I think that that is because you have come back with lots of answers. I am glad that we took the extra week, because actions have been taken on many of the Committee's concerns. We welcome that.

I do not think that we want anything else from you today, Martin. Sharron has gone already. No, she is in the audience. *[Laughter.]* Sharron has left you, so she has. She is in the audience. She must have dropped out at some stage. Is there anything further — there is Sharron back in again — that either you or Sharron want to add at this stage before we say cheerio to you?

Mr Ireland: Not from my point of view, unless Sharron has something to say.

Ms Russell: Am I still on?

The Chairperson (Ms P Bradley): You are. You are back on, Sharron.

Ms Russell: I am so sorry. I am in the Building, so I am on your dodgy, precarious Wi-Fi. *[Laughter.]* I have been thrown in and out. You definitely need something done there.

May I be permitted, Chair? Kellie raised the issue of choice and the charity register previously. Although you have been clear, Chair, that you have heard from *[Inaudible owing to poor sound quality]* now briefed the Minister, and I would like to give Kellie some assurance. There are *[Inaudible owing to poor sound quality]* recommendations on the choices that non-profit organisations have in Northern Ireland and a need for us to communicate and educate people on those choices. Not everybody needs to be a charity.

Ms Armstrong: That was one of the things that the Committee was asked to look at. That is helpful, and, hopefully, it will be communicated. It is not retrospective, sure it is not? It just applies going forward.

Ms Russell: It is about charities understanding that they have choices in their governing documents and about whether they meet the charities' test. Charities are, if you like, a subsection in Northern Ireland of a wider non-profit community and voluntary sector. We would love to have a session with you to tease all that out. I wanted to let you know that the panel has now briefed the Minister, so we are on the road to publishing the report. I know that the Committee is keen to use the evidence that it heard.

Ms Armstrong: Yes, please.

The Chairperson (Ms P Bradley): OK, folks. Is there anything else? No, I do not think that there is. Sharron, are we likely to see the text of the amendments from the Minister next week?

Ms Russell: We shared those.

Mr Ireland: The amendments are attached to our letter of 8 November.

The Chairperson (Ms P Bradley): There you go. Sorry about that.

Ms Russell: I thought that they were *[Inaudible owing to poor sound quality.]*

Mr Ireland: They are at annex A.

The Chairperson (Ms P Bradley): Grand. No problem. That is an oversight on my part. Thank you so much for being with the Committee today. I appreciate it.

Mr Ireland: Thank you.

Ms Russell: Great.

The Chairperson (Ms P Bradley): Dead on. Bye.