

Response ID ANON-Z2S2-SWYV-A

Submitted to Call for evidence and views on the Charities Bill
Submitted on 2021-08-24 11:58:00

Introduction

1 How would you like your response to be published?

I would like my response to be published.

2 What is your name?

Name:
Colin Jess

3 What is your email address?

Email:
colin@socialenterpriseni.org

4 What is your organisation?

Organisation:
Social Enterprise NI

Policy Objectives of the Bill

5 Do you think that the Bill will meet the policy objectives? If not, why not?

Yes

Please provide further comments:

Social Enterprise NI is comfortable that the Bill will meet the policy objectives.

6 Do you foresee any unintended consequences of any of the policy objectives of the Bill?

No

Please provide further comments:

Clause 1: Actions of Commission staff treated as Commission actions

7 Do you feel the retrospective effect to make the majority of decisions taken by Commission staff lawful is dealt with sufficiently in the Clause?

Yes

Please provide further comments:

It is absolutely imperative that decisions made by staff previously are considered lawful. Such staff were operating under good guidance and made decisions based upon governance and not aware that they did not have the authority to undertake and make such decisions delegated to them by the Commission.

We consider that this has been dealt with within the Clause

8 Do you believe that individuals' rights under the ECHR are protected by the fact that decisions still subject to ongoing legal proceedings will not be subject to the Clause?

Yes

Please provide further comments:

Social Enterprise NI agree that any decisions made and which are considered unlawful or contentious should not be subjected to this clause but should proceed to their natural conclusion. This may ultimately be through to the Courts to make a decision. It is important that those cases remain under scrutiny and should be the subject of further investigation to protect the integrity of the Commission and wider charity sector.

9 Do you feel that the Refreshed Appeal Rights in Clause 1 are sufficient?

Unsure

If not, what would you propose?:

Social Enterprise NI is pleased to see the Refreshed Appeals Process included within this Bill in that it will create a pathway for those who wish to challenge a decision deemed unlawful by the Bill.

The challenge comes around the timeframe and structure of such a challenge.

We believe that 42 days is insufficient time to allow for gathering evidence in support of an appeal. Social Enterprise NI would suggest an extended period of 3 months would be more appropriate.

Currently there are 2 routes open to a charity who are unhappy with a decision and who wish to make an appeal. An appeal can be made to the Charity Tribunal and there is also an offer from the Commission to also undertake and internal review. These presently run concurrently which means that should a decision be upheld by the Commission then the time limit to appeal to the Charity Tribunal may be passed. We believe that these should not be run concurrently but contacting the Charity Tribunal should be a follow on and final appeal following an decision being upheld by the Commission.

10 Please provide further comments in relation to Clause 1.

Do you have any other comments in relation to Clause 1?:

Important to confirm that charity registrations carried out in good faith and previously confirmed by the Charity Commission should stand and be confirmed as being on the register. To start the process again would be unworkable.

Clause 2: Power of Commission to delegate to staff

11 Do you feel the power of the Commission to delegate to staff certain functions that are listed in a Scheme of Delegation is sufficient?

Yes

12 Please provide further comments on the power to delegate, or the Scheme of Delegation, including: Will it allow Commission staff to operate effectively and efficiently?

Additional Comments on on Scheme of Delegation:

This process will enable Charity Commission staff to carry out their duties and make decisions which they know are legal and supported by the Bill. This will also enable charities to receive updates in a timely manner. There should however be a process for staff to "refer" decisions to another committee/board where they feel support is required in borderline cases. Staff should not be put in the position nor have the ability to make decisions which will impact upon the reputation or future of a trustee for example or indeed a charity.

The Bill makes this position clear

13 Please provide further comments on the fact that it is the Department for Communities who will make and publish the Scheme of Delegation (after consultation with the Commission)?

Any comments on DfC making and publishing the Scheme of Delegation?:

On the basis that the Department for Communities have responsibility for the charity sector it is appropriate for they should have oversight and publish the Scheme of Delegation.

We would however suggest that this should be done on a co-design basis, collaborating with the sector and in particular the Charity Commission and its staff. This will ensure that the Commission processes are considered and included as appropriate.

It is envisaged that this new decision making process may require additional work by staff to prepare reports and this should be taken into account.

14 Please provide any further comments in relation to Clause 2.

Do you have any other comments in relation to Clause 2?:

Whilst supporting this proposal, consideration should be given to how Commission staff will be impacted by any additional workload. It may mean that additional resources require to be provided to ensure that the process is seamless and meets the needs of the Bill.

Clause 3: Power to introduce a registration threshold via regulations

15 Do you feel it is appropriate to have this power in the Bill?

Yes

Please provide further comments:

Many smaller charities are managed on a day to day basis by volunteers who find it difficult to meet the current reporting requirements. There is evidence of many claiming that the requirements as currently set out are in some cases a deterrent to many to register. Social Enterprise NI would agree that it is appropriate that the Bill has the power to establish a minimum threshold for such charities in regards to the

level of information required and ultimately the requirement to register.

The level of threshold needs to be decided and should be decided in collaboration with the wider sector, taking into account the views of individual charities and also representative bodies.

A sufficiently low level should be established however the Bill needs to be clear on what information still needs to be provided to the Commission as the overseer of all matters concerning the sector and to remain in control of governance and reputation of the sector overall.

16 Please provide any further comments on the list of matters that the regulations will cover? Are there any matters missing from the list?

Any missing matters or other comments:

Social Enterprise NI welcome the introduction of plans to remove the need for smaller charities to not have to provide the same level of documentation as larger charities however believe that there stills needs to be a level of governance around this. Even with a threshold in place, there needs to be a set of criteria clearly set out to ensure that all those below the threshold still require to comply with certain, albeit not as stringent, criteria. Any assistance through the Bill to remove the stress and level of reporting for smaller charities is welcomed as many will still want to appear on the register however would be fearful of the level of paperwork needed to comply with regulations.

Will the Bill allow for registration of small charities that do not file annual accounts and reports?

The Bill would need to set out clearly and define what powers there would be under the term "dis-apply any provision of the Act" to both make the Bill workable and also protect staff in their daily duties.

In terms of charities removing themselves from the list, there would need to be an approval process in place whereby this could be confirmed by staff or a committee before ratifying the charities exit and demise.

17 Please provide any further comments on Clause 3.

Further comments:

Social Enterprise NI welcomes the introduction of Clause 3 and would encourage its introduction as soon as possible or at least having an appropriate timeline set out for everyone's information to ensure smaller organisations are aware of new requirements.

18 Please provide any further comments you wish to make on the Charities Bill.

Further comments on the Charities Bill: