

# **charities administration and legislation in Northern Ireland**

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# 1 Introduction

- 1.1 Unlike England and Wales and, separately, Scotland, the legislative framework for the supervision and administration of charities in Northern Ireland has been unchanged for around 40 years.
- 1.2 In response to the need to bring charity law and practice more into line with the model established in the rest of the United Kingdom and also to meet the changing demands of society, the Charities Branch, Voluntary and Community Unit of the NI Department for Social Development has issued a consultation document entitled "Review of Charities Administration and Legislation in Northern Ireland in 2005". This Briefing Paper summarises the proposals contained in that document in so far as they are relevant to churches and Christian charities.

## 2 Overview

- 2.1 On the whole, the proposals are relatively uncontroversial and reflect the broad thrust of proposals contained in the Charities Bill 2005 (England and Wales) and the Charities & Trustee Investment (Scotland) Bill 2005. There are differences at the detailed level, primarily designed to meet the particular needs of Northern Ireland.
- 2.2 The policy aims of these proposals are:
- "To introduce an integrated system of charity registration and regulation (including control of charitable fundraising) as well as supervision and support of registered charities".
- This is to be achieved primarily by draft legislation which provides:
- Clarity on the meaning of "charity"
  - Transparency and public confidence in charities
  - Accountability
  - Proportionality and simplicity
  - Support for charities and promotion of best practice
- 2.3 The document is deliberately vague in order to generate a wide range of views. Responses will be used to inform Government in their preparation of a detailed draft Bill which will itself be opened to public consultation.

## 3 Detailed Proposals

### 3.1 Clarity

The meaning of "charity"

- 3.1.1 A new statutory definition is proposed reflecting the 12 purposes that are charitable as proposed for England and Wales in the Charities Bill 2005 but with two additional heads specific to Northern Ireland. These are:
- The promotion of peace
  - The promotion of good community relations
- The other 12 proposed purposes are:
- The prevention or relief of poverty

- The advancement of education
- The advancement of religion
- The advancement of health
- The advancement of citizenship or community development
- The advancement of the arts, heritage, culture or science
- The advancement of amateur sport
- The advancement of human rights, conflict resolution or reconciliation
- The advancement of environmental protection or improvement
- The relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- The advancement of animal welfare
- Any other purpose recognised as charitable under existing charity law and any purposes which may reasonably be regarded as analogous to such purposes and the purposes above

#### Public Benefit Test

- 3.1.2 It would not be presumed that any of the purposes in 3.1.1 above are for the public benefit.
- 3.1.3 To meet the public benefit test, the organisation must:
- Have only purposes which are charitable (3.1.1), and
  - Provide (or intend to provide) public benefit (in Northern Ireland or elsewhere)
- 3.1.4 An organisation will not meet its test if:
- Its constitution allows it to distribute or transfer property for a purpose which is not charitable, or
  - It is, or one of its purposes is, to advance a political party.

## **3.2 Transparency**

#### Registration of Charities

- 3.2.1 To promote transparency, public confidence and accountability, a Register of Charities for Northern Ireland is proposed with the following features.
- 3.2.2 Compulsory registration of all charities.
- 3.2.3 Churches/religious charities will not have an automatic assumption of charitable status or exemption from registration.
- 3.2.4 Controversially, it is proposed that charities based outside of Northern Ireland but 'operating' in Northern Ireland should have to register and have at least one trustee resident in Northern Ireland. 'Operating' should be taken to mean the delivery of services, or fundraising, but not include the provision of grant aid to existing Northern Ireland charities.

- 3.2.5 The registration proposal is similar to a proposal for Scotland, which has itself caused concern within the charitable sector. Aside from the administrative burden for charities operating throughout the UK having to comply with multiple sets of regulations that differ at the margins, the requirement for an NI resident trustee is likely to cause practical difficulties. It is difficult to see the need for this requirement. There has been considerable opposition to it and our expectation is that this will not be included in the draft Bill.
- 3.2.6 Annual accounts and an annual report should be made available to the Department for Social Development or to the public on request. Note: these documents are also to be submitted to a new NI Charity Commission each year – see 3.3.2 below.
- 3.2.7 Initial registration is to be on a phased approach starting with the largest charities first.

### **3.3 Accountability**

#### Charity Commission

- 3.3.1 A Northern Ireland charity commission is proposed. The Commission would operate the Register of Charities and act as Charities Regulator. It would be established as an Independent Non-Departmental Public Body, at arm's length from Government.
- 3.3.2 Responsibilities will include:
- Registration of new charities
  - Maintenance of the register including keeping it up to date and accurate
  - Compliance (eg ensuring submission of annual accounts and returns by registered charities)
  - Investigation and enforcement
  - Advice and guidance
  - Making of "Cy Pres" schemes
  - Legal and administrative support for all other functions
- 3.3.3 These proposed responsibilities also give rise to the concern expressed in England and Wales that it would be difficult for a single body to provide advice and guidance and at the same time perform the role of regulator and investigator.
- 3.3.4 The Consultation Document seeks views on how a Northern Ireland appeals process might operate.

### **3.4 Compliance**

#### Regulation of NI Charities

- 3.4.1 The Charity Commission would have the power to:
- Institute enquiries into charities
  - Deregister them
  - Suspend or appoint trustees
  - Freeze charities' assets
  - Appoint receivers
  - Recover misapplied assets from trustees

- 3.4.2 Trustees are to be subject to appropriate checks on suitability on appointment for (eg) unspent convictions involving dishonesty, bankruptcy etc.  
Accounts, audits and annual reports
- 3.4.3 A stepped approach for annual accounts and external scrutiny based on income level is proposed as follows:
- Below £25,000 Accruals **or** receipts and payments accounts **and** independent examination
  - £25,000 to £100,000 Accruals accounts and independent examination
  - Over £100,000 Accruals accounts and a full independent audit by a qualified accountant
- 3.4.4 The thresholds are initial proposals only. Sector comment is proposing alignment with the rest of the UK and Eire, including alignment with company law requirements. The proposed thresholds are therefore likely to be revised in the draft Bill.
- 3.4.5 The terminology used suggests that the full audit does not have to be carried out by a 'Registered Auditor' but this is not wholly clear.
- 3.4.6 The independent examination process appears similar to that used in England, Wales and Scotland.
- 3.4.7 The form and context of charity accounts would be specified in regulations. Requirements would vary according to size.

### **3.5 Governance**

Charitable Incorporated Organisation (CIO)

- 3.5.1 A new type of organisation, the CIO, is proposed along much the same lines as the proposals in England and Wales, and Scotland.
- 3.5.2 This is an organisation that has limited liability but would be regulated solely under charity law rather than having dual regulation under charity and company law, as is the current position for charities with limited liability status.

### **3.6 Administration**

General

- 3.6.1 A number of relaxations to administrative provision in existing charity law are proposed to make the law more flexible.

Property Disposal

- 3.6.2 In particular, it is proposed that charities should be permitted to dispose of charity property without the consent of the Charity Commission or the court if they meet certain requirements such as obtaining professional valuations, advertising the sale, and ensuring that the terms of the sale are the best obtainable. Certain disposals (eg to a 'connected' purchaser) will still require consent.
- 3.6.3 There is no explicit mention of power for a charity to dispose of property to another charity at an undervalue, where this is in the interests of the transferor. It is hoped that draft legislation would incorporate such a provision.

## Fundraising

- 3.6.4 The proposals include revised regulation of charitable fundraising by professional fundraisers and also for public charitable collections.
- 3.6.5 The proposals are similar to those in the respective Bills in Scotland and England and Wales.

## Exchange of Information

- 3.6.6 A power for the Charity Commission to share and exchange information about charities with other government bodies (such as HM Revenue and Customs) is proposed.

## **3.7 Consultative Document Responses**

- 3.7.1 Responses to the document are requested by 20 May 2005
- 3.7.2 Copies of the Document and response mechanisms can be accessed via the internet at [http://www.dsdni.gov.uk/index/current\\_consultations.htm](http://www.dsdni.gov.uk/index/current_consultations.htm)