



NICVA Briefing Paper

The Charities (Northern Ireland) Order 2006

July 2006

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Background

The Department for Social Development (DSD) is the main charity authority in Northern Ireland and has responsibility for policy and most of the legislation relating to charities. The Department is currently reviewing the existing administrative system and legislation relevant to Northern Ireland. On 17 July 2006 DSD published its consultation paper setting out its proposal for an Order in Council entitled “The Charities (Northern Ireland) Order 2006”.

This paper provides a brief overview of the DSD consultation document on the above, its provisions and the potential implications for charities. The comments within this briefing paper have been discussed and developed both in response to the provisions laid out in the draft Order and last year’s consultation paper on the Review of Charities Administration and Legislation in Northern Ireland in 2005.

General Comments

The draft Order provides statutory definitions of charity and charitable purpose, establishes a Charity Commission for Northern Ireland and a Charity Tribunal, creates a Register of Charities for Northern Ireland, and provides for a Charitable Incorporated Organisation (a new form of charitable body). It also sets out new rules with regard to fundraising and collections and is proposing tight thresholds for auditing requirements.

DEFINITION OF CHARITY

The current four heads of charity, originating from 1891, will be replaced by 12 charitable purposes:

1. The prevention or relief of poverty;
2. The advancement of education;
3. The advancement of religion;
4. The advancement of health or the saving of lives;
5. The advancement of citizenship or community development;
6. The advancement of the arts, culture, heritage or science;
7. The advancement of amateur sport;
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
9. The advancement of environmental protection or improvement;
10. The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
11. The advancement of animal welfare;
12. Any other purposes includes any purpose recognised as charitable under existing charity law and any purposes which may reasonably be regarded as analogous to the listed purposes above as well as those by virtue of section one of the Recreational Charities Act (1958).

The advancement of religion includes the belief in more than one god and a religion which does not involve belief in a god.

The advancement of health includes the prevention or relief of sickness, diseases or human suffering.

The advancement of citizenship or community development includes rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities.

The advancement of sport means sport which involves physical skill and exertion.

The advancement of peace and good community relations shall be included under the advancement of human rights, conflict resolution or reconciliation.

The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage also includes the relief given by the provision of accommodation or care to these persons.

NICVA's Comments

The expansion of the definition of charity helps to reflect the wide range of charitable organisations and helps to modernise charity legislation. One such example is the expansion of the current charitable purpose of the relief of poverty to include the 'prevention' of poverty. The new additions should help to recognise and deem charitable the work of many Northern Ireland groups in the areas of peace and reconciliation and/or addressing sectarianism and racism.

The retention of the miscellaneous category provides for the ongoing development and flexibility of charity law.

The Charitable Purposes listed above reflect the definition within the Charities Bill for England and Wales thereby ensuring consistency with UK tax relief matters and that Northern Ireland charities receive comparable financial assistance.

THE PUBLIC BENEFIT TEST

The draft Order states that all charities will have to demonstrate public benefit and that no particular purpose should be presumed to be for the public benefit.

It is proposed that a body meets the public benefit test if:

- (1) Its purposes consist only of one or more of the charitable purposes as above; and
- (2) It provides (or intends to provide) public benefit in Northern Ireland or elsewhere.

The public benefit test will also take into account any benefit to individuals who are not legitimate beneficiaries and consider if their activities would be detrimental to the public. The test will also consider whether any conditions on obtaining that benefit are unduly restrictive – this includes any charge or fee for the benefit.

The draft Order also states that the new Charity Commission must issue guidance on the public benefit requirement and that it will consult on this before the relevant guidance is issued.

NICVA's Comments

There has been much debate and discussion about the public benefit test in England and Wales namely in relation to private schools. The debate is centred on the small minority of very wealthy private schools that charge high fees and at the same time enjoy the same tax benefits as other charities. Some believe that these schools are not engaged in enough charitable activity to be eligible for charitable status. Others would argue that the introduction of the public benefit test would ensure that every private school will have to prove that they actually do provide public benefit.

Some questions for consideration: Is there potential for some of those organisations which currently hold charitable status to lose it? If so, should such trustees be able to retain their assets and continue to run a not-for-profit organisation without charitable status but for its original purposes?

THE CHARITY COMMISSION FOR NORTHERN IRELAND

The draft Order provides for the establishment of the Charity Commission for Northern Ireland referred to as “the Commission” which is to be a non-departmental public body. The objectives of the Commission are: to increase public trust and confidence in charities; to promote awareness and understanding of the operation of the public benefit requirement; to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities; to promote the effective use of charitable resources and; to enhance the accountability of charities to donors, beneficiaries and the general public.

NICVA's Comments

In general the implications of the establishment of such a body are positive. A regulatory system would help ensure that charities are properly run and therefore deserving of support. It is viewed that any update and modernisation of legislation and administration of charities would in itself help to improve and enhance public support and confidence. It reflects the Charity Commission of England and Wales and the Office of the Scottish Regulator (OSCR). It provides the sector with an independent body which can assist in the development of future legislation suitable to local needs and is accountable in terms of its usage of public expenditure.

It has a wide remit and differing and potentially conflicting responsibilities — for example its dual regulatory and advisory functions. The Commission will have to communicate clearly whether the advice it is giving out is advice on best practice or instruction on mandatory requirements. The Commission will be accountable to the Department and the latter will be responsible for the review of the operation and structure of the Commission.

It is recognised that this Commission must build on and maintain strong links to other charity regulators in the UK and Ireland. The continuation and strengthening of existing relationships with such bodies will be essential for the development of future legislation and the provision and access of information on charities that operate across the different jurisdictions.

THE CHARITY TRIBUNAL FOR NORTHERN IRELAND

A Charity Tribunal for Northern Ireland will also be created so that decisions, orders or direction of the Commission can be questioned by a charity or body seeking charitable status. The Tribunal will be appointed by the Lord Chancellor and will be administered by the new Courts and Tribunal Service.

REGISTRATION OF CHARITIES

A comprehensive Register of Charities will be established and maintained by the Commission which will list all charities that are established or which operate in Northern Ireland. Charities which are registered in other jurisdictions will also have to register with the Charity Commission here if they wish to operate in Northern Ireland. The Register shall be open to public inspection at all reasonable times.

NICVA's Comments

At present, in the absence of a Charity Commission (or other body), charities in Northern Ireland apply to HM Revenue and Customs for formal recognition as a charity for tax purposes. The Revenue merely confirms whether or not it considers an organisation to be a charity for 'tax purposes'. This system of getting 'charitable status' does not vouch for the bona fides of any particular organisation. It does not confer status that would suggest that an organisation is competent, efficient, effective or worthy of support. The lack of a register has been the most striking difference between Northern Ireland and England and Wales. Such a register would promote transparency and public confidence as it provides accessible information on Northern Ireland charities which is currently not available. It should also help to reduce the instances of rogue charities collecting here.

The introduction of the register is to be phased in, checking the information provided for the register is to be on a risk assessment basis, and there is to be limited access to the details of certain groups. All of these points indicate that practical and realistic consideration has been taken in drawing up these proposals.

One of the main concerns which came out of last year's consultation was that the reporting of UK wide charities should not be too onerous. The Department has listened to these concerns and expects that the new Commission will work with other charity regulators such as OSCR and the Charity Commission of England and Wales so as to limit the reporting/accounting material that may have to be produced by such bodies.

CHARITY ACCOUNTS, REPORTS AND RETURNS

All charities will be required to keep proper accounting records although the draft Order sets out different requirements according to the size of the charity as follows:

- A charity with a gross income under £25,000 needs to prepare a receipts and payments account and a statement of assets and liabilities. This is instead of a statement of accounts. Charities in this category will not be required to carry out an audit but may instead choose to have the accounts examined by an independent examiner – an independent person who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts.
- A charity with a gross income of between £25,000 and £100,000 will be required to prepare a statement of accounts – complying with such requirements as may be prescribed by regulations made by the Department. Charities which fall into this category may elect to have the accounts either audited by an Auditor or examined by an independent examiner who must be of the following:
 - a member of a body for the time being specified in Article 257D(4) of the Companies (Northern Ireland) Order 1986 (reporting accountants);
 - a member of the Chartered Institute of Public Finance and Accountancy; or
 - a Fellow of the Association of Charity Independent Examiners.
- A charity with a gross income of £100,000 or a charity that's gross income exceeds the accounts threshold and at the end of the year the total value of its assets (before deduction of liabilities) exceeds £500,000 will be required to prepare a statement of accounts. Charities in this category will also be required to carry out a full audit on their accounts.

The accounts threshold means £25,000.

NICVA's Comments

Whilst the provisions of the draft Order indicate recognition that a commensurate effort should be employed in terms of the accounting procedures and audit requirements, the thresholds appear to be too low. There is a strong argument to ensure that accounting and audit requirements are aligned throughout the UK. Scotland has recently raised its accounting threshold from £25,000 to £100,000 to mirror that in the English Charities Bill.

The accounting and audit situation for charities in Scotland can be briefly summarised as follows: charities must carry out a full audit by a qualified auditor if they have an income

of over £500,000 or have gross assets greater than £2.8m; Charities with incomes between £100,000 and £500,000 or charities with an income of less than £100,000 but which produce fully accrued accounts must have an independent examination to be carried out by an independent examiner who is a member of a recognised professional body. All charities with an income of less than £100,000 which prepare accounts under a receipts and payments basis must have their accounts examined by an independent examiner who is reasonably believed by the charity trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts.

In England and Wales, Charities with incomes between £10,000 and £500,000 must have their accounts independently examined. Charities with incomes above £250,000 but below the new audit threshold requirement of £500,000, who decide not to opt for an audit and whose governing document does not require an audit, are required to have their accounts independently examined by a member of a recognised professional body.

The draft Order is also seeking to change the audit requirements for charitable companies by proposing to bring down the threshold for an accountant's report from £250,000 to £100,000. In other jurisdictions the accounting thresholds for audit are being increased not decreased. This would result in a new category being created whereby charitable companies that have a turnover of between £90,000 and £100,000 may submit an accountant's report instead of a full audit. Other jurisdictions are easing the audit burden by making it proportionate to a charity's income, whereas Northern Ireland appears to be heading in the opposite direction.

The proposal to make small charities (those that fall under the accounts threshold) carry out an independent examination reflects concerns which were raised in last year's consultation that small charities would benefit from having their accounts checked by an independent person. This may help not only to identify mismanagement of funds but also help small charities with identifying problem areas in financial record keeping or procedures.

CHARITY TRUSTEES

Not everyone will be eligible to act as a charity trustee, for example, undischarged bankrupts and people with unspent convictions for offences involving dishonesty; those that have been removed as a charity trustee by the Commission or by the court for any misconduct or mismanagement of the charity. The Commission will have the power to waive disqualification in exceptional cases, for example, charities who work with ex-prisoners would be considered.

Incorporation of Charity Trustees

It is proposed to introduce the 'incorporation of trustees' whereby the trustees of a charity may apply to the Commission for a certificate of incorporation of the trustees. After their incorporation the trustees may enter into contracts and sue and be sued in the name of the incorporated body.

NICVA's Comments

The incorporation of trustees is not to be confused with incorporating the whole charitable body by, for example, becoming a company limited by guarantee. Incorporating charity trustees does not offer the limited liability to trustees that incorporating the whole body would bring.

The main advantage of the incorporation of charity trustees is that the charity itself can have property in its own name, whereas, under the current rules, it would need a holding trustee to hold property on its behalf. Taking away the need for a holding trustee avoids the need for the execution of deeds, transferring land and/or investments, which costs money and can be quite time consuming.

CHARITABLE INCORPORATED ORGANISATIONS (CIO)

A new type of legal entity is to be introduced, which has been specifically designed for charities – the Charitable Incorporated Organisation, referred to as a CIO. The CIO will be registered and regulated by the Commission.

NICVA's Comments

The CIO is proposed as a specific legal structure for charities, similar in some ways to a limited company in offering protection of trustees from personal liability without the need for dual registration with company and charity law. The organisation would always have to be charitable and the CIO would be entitled to the same tax benefits as any other charity.

The draft Order provides some clarity around the characteristics of this legal entity. This is a positive development for charities.

PUBLIC CHARITABLE COLLECTIONS

The present system for licensing street and house to house collections is to be replaced with new legislation covering all public charitable, philanthropic and benevolent collections. The draft Order defines two types of public charitable collection: collections in a public place and door to door collections. What does and does not constitute a public place is specifically defined in the draft Order. A charitable appeal is defined as an appeal to members of the public to give money or property by whatever means, which would include direct debit.

In order for a charity to carry out a collection in a public place it will need a public collections certificate and a permit, both of which shall be issued by the Commission. In order to carry out a door to door collection, the promoter of the collection must also hold a public collections certificate and notify the Commission of the collection.

The new legislation provides for local short-term collections which will be considered exempt from the requirement to obtain a public collections certificate and a permit to

collect. A collection is a local, short-term collection if the appeal is local in character and does not exceed the prescribed period.

NICVA's Comments

NICVA held a focus group at the end of last year on the proposals for fundraising and charitable collections. It was agreed that a two tier approach was needed for the issue of public collection certificates and the issuing of permits. Our members agreed that it should be the new Commission which grants the public collection certificates but there was a difference of opinion on who should issue the permit to collect in a public place. About half the participants agreed that it should be the PSNI who issue the permit; while the other half thought it best that the new local authorities issue the permit, as is the case in England and Wales.

Control of Fundraising

New legislation is also to be introduced which will bring in new controls of fundraising for charities that use professional fund-raisers and commercial participators. The draft Order states that there must be agreements in place with prescribed requirements. Professional fund-raisers will be required to indicate which institutions will benefit, how the fund-raiser's remuneration in connection with the appeal is to be determined and the amount of that remuneration. Commercial participators will also have to indicate the institution(s) to benefit as well as the notifiable amount that will be given to the institution(s).

NICVA's Comments

The requirement that charities must draw up written contracts or agreements with professional fundraisers and commercial participators is good practice and would assist charities to better plan and monitor their interaction with such bodies or individuals. The existence of a written agreement may protect a charity or allow redress in rare cases where a professional fundraiser or commercial participator seeks to exploit a charity or charitable beneficiaries.

NICVA Consultation Sessions

NICVA, in conjunction with DSD Charities Branch, is to hold four consultation sessions across Northern Ireland. Each session will start with registration at 9.45am and will finish at 1.30pm. A light lunch will be included.

Dates

Venues

Wed 6 September 2006	➔	NICVA, 61 Duncairn Gardens, Belfast
Mon 11 September 2006	➔	The Junction, Bishop Street, Derry
Tues 12 September 2006	➔	Ballybot House, Newry
Wed 13 September 2006	➔	Community House, Drumragh Avenue, Omagh


If you would like to attend, please contact Georgie Finlay at NICVA:

 georgie.finlay@nicva.org  028 9087 7777

If you require any further information, please contact Denise McCann:

 denise.mccann@nicva.org  028 9087 7777

To contribute to our response, please send your comments to denise.mccann@nicva.org by **Friday 29 September 2006**.

Copies of the consultation document can be accessed from: 

www.dsdni.gov.uk/dsd_charities_review.pdf

or please contact Kieran Doyle at:  kieran.doyle@dsdni.gov.uk  028 9082 9427.

The responses to the DSD consultation are required no later than **13 October 2006**