



**NICVA Response**

**DETI Modernising Company Law Draft Companies (Audit,  
Investigations and Community Enterprise) (Northern Ireland) Order  
March 2005**

# **NICVA Response to DETI Modernising Company Law Draft Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order March 2005**

## **Introduction**

NICVA (Northern Ireland Council for Voluntary Action) welcomes the opportunity to respond to the DETI consultation on Modernising Company Law Draft Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order March 2005.

NICVA is the umbrella body for the voluntary and community sector in Northern Ireland. It provides almost 1,000 members with information, advice and training on a wide range of issues from management consultancy and finance, through policy development and lobbying. NICVA adopts a community development approach, attempting to empower local communities to pursue their own needs and agendas.

NICVA's response relates to the Part III of the Draft Order ie that concerned with the Community Interest Company. The response is based on NICVA's consultation work, and the papers it produced in 2004 in relation to DETI's consultation, 'Community Interest Company'. This response also reflects comments by members via its Charity Advice service.

## **Response**

### **General Comments**

NICVA is not in favour of the Community Interest Company (CIC) structure being promoted as a distinct brand for social enterprises as there is a danger that the CIC structure may then be perceived as the only legal form used by social enterprises. The CIC will not suit all organisations, for example, some charities will continue to run social enterprises. NICVA believes that social enterprise may be better promoted as an activity which may be run by either a CIC or a charity as opposed to a 'brand'.

### **Specific comments**

#### **Articles 25 to 28**

NICVA welcomes the introduction in legislation of the Community Interest Company (CIC) and the definitions of the type of company which may be formed as or become a CIC.

NICVA agrees that the Department must appoint a person to be the Regulator and that it is an Officer known as the 'Regulator of Community Interest Companies for Northern

Ireland'. As stated in NICVA's Response (June 2004) to DETI's consultation on Community Interest Company, it is more prudent to have a regulator in Northern Ireland as the regulator needs to understand the community here in order to effectively implement its functions. NICVA agrees that the Regulator should be responsible for issuing guidance relating to CICs and that it should be 'readily accessible to, and capable of being easily understood by, those at whom it is aimed'.

NICVA welcomes the provisions for the appointment of an Appeal Officer and Official Property Holder.

#### **Articles 29 to 34**

In relation to the distribution of assets on winding up, any residual assets (after creditors and investor shareholders have been paid) should be transferred to another CIC to ensure the assets are reinvested for the benefit of the community or the wider public good.

NICVA agrees that the memorandum of a CIC must state that the company is to be a CIC and with the provisions set out at section 4 and 5. Also Community Interest Reports must set out the actions the company is doing to pursue public or community benefit.

With regard to the Community Interest Test and excluded companies NICVA welcomes the inclusion of this test in legislation and agrees that regulations should be made describing those activities which are, or are not, to be considered as satisfying the community interest test.

DSD's consultation on Charity Legislation and Administration in Northern Ireland in 2005 introduces a proposal for a Public Benefit Charity Test for Northern Ireland which is relevant to the proposed Community Interest Test for CICs. (See Annex 1)

#### **Article 35**

NICVA agrees and welcomes the opportunity for appeal.

#### **Articles 36 to 38**

In relation to 'Existing Companies: Charities' NICVA agrees that a charitable company can not become a community interest company. Such charitable companies should be advised about the proposed new legal structure Community Interest Organisation under Charity Law.

#### **Articles 39 to 49**

NICVA welcomes the investigatory powers of the Regulator in relation to the company not satisfying the community interest test and complaints; the provision that the Regulator will cover the costs of a required audit.

#### **Other comments**

Further to the above and NICVA's response to the consultation on DETI's Community Interest Company (March 2004) please note the following point:

Political parties should not be able to become CICs or be permitted to establish CIC subsidiaries. However, NICVA is concerned that an organisation whose purposes are support for a political party or political campaigning may establish CIC subsidiaries. This type of structure may result in abuses of this structure here in Northern Ireland.

## ANNEX 1

### **Excerpt from NICVA's Response to DSD's consultation on Charities Administration and Legislation in Northern Ireland in 2005**

#### **Public Benefit Charity Test**

*Proposal: The Department further proposes that all charities should demonstrate public benefit and that no particular purpose should be presumed to be for the public benefit.*

1. It is proposed that a body meets the charity test if:

- (a) its purposes consist only of one or more of the charitable purposes as above; and
- (b) it provides (or, in the case of the applicant, provides or intends to provide) public benefit in Northern Ireland or elsewhere.

2. A body does not meet the charity test if:

- (a) its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not charitable; or
- (b) it is, or one of its purposes is, to advance a political party.

NICVA agrees with the type of public benefit test indicated in the Consultation Paper. NICVA believes that the public benefit test must be set out in legislation. NICVA agrees that no organisation should be presumed charitable without being tested.

In relation to 1(b) of the test the legislation should include a requirement that the proposed NI Charity Commission is obliged to provide guidance on the public benefit test as it will be applied in Northern Ireland. Furthermore NICVA recommends that the following questions should be an integral part of the deliberations:

1. Is the purpose intended to provide benefit (in the sense of common goal or social value) to the public at large or an appropriate section of it?
2. Any dis-benefit for the public should be weighed against the benefit likely to be gained by the public.
3. Is any private benefit incidental (ie indirect rather than direct)?