



NICVA Response

Review of Charities Administration and Legislation in Northern Ireland in 2005

April 2005

INTRODUCTION

NICVA (Northern Ireland Council for Voluntary Action) welcomes the opportunity to respond to the Department for Social Development's (DSD) consultation paper on Review of Charities Administration and Legislation in Northern Ireland in 2005.

NICVA is the umbrella body for the voluntary and community sector in Northern Ireland. It provides its 1,000 members with information, advice and training on a wide range of issues from management consultancy and finance, through to 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 is based on its role as the representative body for the voluntary and community sector in Northern Ireland. This response is also informed by NICVA's work on the PIU and Strategy Unit reviews and consultations; DSD's initial Scoping Study and associated Advisory Panel work; the ongoing work of its Charity Advice section; and the consultation sessions held in conjunction with DSD's Charity Branch.

General Comments

The proposals set out within the DSD's consultation paper put forward practical steps in the establishment of a Charity Commission for Northern Ireland, a Register of Charities and regulation. The diversity of the modern charitable sector is reflected in the proposed new statutory definition of charity.

Given the range, scale and potential impact of the proposals, the consultation paper is somewhat light on detail. Therefore NICVA's first key proposal is to continue consultation through a series of focus groups which will allow for more detailed consideration of the proposals and which can be fed into the consultation on the draft legislation. It is also anticipated that DSD and any new commission body established here will keep a watchful eye on developments in England and Wales and other jurisdictions.

NICVA would ask DSD to ensure that other related matters, which cannot be legislated for within this proposed Act or NI Order, be taken into consideration at this time as they will impact on charities here, ie trading, lotteries, and advocacy and campaigning. In relation to the latter, NICVA believes that the right and duty of charities to carry out campaigning and advocacy work on behalf of their beneficiaries should be made clear and that any commission type body should be required to provide clear guidance on this issue to Northern Ireland charities.

The need for proportionality in areas such as regulation and accountability is also apparent, as is the increasing importance and awareness of governance issues. NICVA would urge DSD to take cognisance of other related government policy, in particular

recommendations and commitments from the Task Force on Resourcing the Voluntary and Community Sector.

THE PROPOSALS AND NICVA'S RESPONSE

CLARITY

Definition of Charity in Northern Ireland

Proposal: The Department proposes to bring in a new definition of 'charitable purpose' in Northern Ireland, as follows. This definition is based on that proposed for England and Wales, but with two specific Northern Ireland additions (which are underlined):

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, heritage, culture 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. the promotion of peace;
13. the promotion of good community relations;
14. 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.

[*Italic text*] We anticipate that these part definitions will be included in the final Northern Ireland legislation as they have recently been included in the Charities Bill for England and Wales.

NICVA recommends that the Northern Ireland Definition of 'charitable purpose' is the same as that set out in the English Bill.

In light of the changes to the English Bill and the further definition of purpose 8 ie '*or the promotion of religious or racial harmony or equality and diversity*', NICVA now questions the need for the two Northern Ireland specific definitions.

If purposes 12 and 13 are omitted we would propose that there is clarification that purpose 5 is interpreted to include 'the promotion of good community relations' and purpose 8 to include 'the promotion of peace'.

Furthermore ‘the promotion of peace’ must be interpreted as relating to conflict resolution rather than any political act.

Re purpose 3 above (the promotion of religion), NICVA would support a broad rather than narrow interpretation of purpose.

Re purpose 5 above (the advancement of citizenship or community development), the English Bill (3)(b) clarifies that the “advancement of citizenship or community development includes:

1. Rural or urban regeneration;
2. The promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities.”

NICVA expects this will encompass the work of support networks and infrastructure bodies within the sector.

Re purpose 7 above (the advancement of amateur sport), NICVA believes this should be interpreted as in the draft Scottish Bill, ie to include the broadest range of sports and not just those which involve physical skill and exertion, where such sports are used as community-based activity.

NICVA notes that the NI Charity Commission must provide guidance on the interpretation of all the purposes and NICVA believes there must be clarity (and as much alignment as is possible) in the language used in the definition of charitable purposes across the different jurisdictions including the Republic of Ireland. This will ensure consistency with UK tax relief matters and that life is not made more difficult for the significant number of bodies that organise on an all island basis. Northern Ireland registered charities should be treated as charitable for tax purposes by the Inland Revenue and rates authorities.

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)?

In considering the above we would clarify by taking the example of the ‘advancement of religion’ as a purpose. Concerns over the inclusion of this purpose were voiced during the consultation workshops insofar as people felt there was potential for some religious organisations to harass other denominations or good causes, or be associated with political parties whilst enjoying the privileges of charitable status. NICVA would offer that through the employment of the public benefit test, as set out above, any organisation – religious or otherwise – would have its activities scrutinised in such a way that this type of activity would be recognised as a dis-benefit and hence charitable status would be refused or revoked.

TRANSPARENCY

Registration of Charities

Proposal: There should be a Northern Ireland Register of Charities and all Northern Ireland charities should be registered with no assumptions of charitable status.

NICVA agrees with all of the features described in this section of the consultation paper setting out a comprehensive Northern Ireland Register which provides accessible information on charitable activity, thus promoting transparency, public confidence and accountability. Such a register should be underpinned by a framework of support, guidance and education. This would promote higher standards of accountability and governance across the charitable sector.

There should be a vigorous public information campaign by the Northern Ireland Charity Commission to inform charities of their duty to register and any associated requirements. NICVA believes that it could have a key role in assisting with this as well as other regional, sub-regional bodies and networks. NICVA also believes that the Inland Revenue should write to all organisations that are currently registered with them as

charities for tax purposes to ensure that all organisations are made aware of the new procedures.

NICVA agrees that the proposal that charities based outside but operating in Northern Ireland (apart from solely grant-making organisations) must register is a safeguard against fraudulent activity.

The proposed requirement that such charities must have one trustee resident in Northern Ireland (except for solely grant-making organisations) could safeguard our sector and allows such charities to have a better grassroots understanding of the local situation. However this may be too restrictive and therefore NICVA calls for the NI Charity Commission to have the discretionary power to waive such a requirement where transnational organisations can demonstrate a satisfactory system of internal and external accountability in place of a resident trustee.

NICVA agrees with the proposal on the preparation of submissions to the register (annual reports and accounts, etc) insofar as the information required by the register should not prove too onerous to produce (new groups, for example, should be permitted to submit to the register minutes of management committee meetings as opposed to annual reports, and bank statements as opposed to audited accounts, in their first year). NICVA would expect that all forms relating to registration are in plain English and not unduly lengthy.

NICVA proposes that the requirements of other regulators (housing association regulatory bodies, social services, funders, etc) should be taken into account when setting requirements so as to avoid duplication of regulation. Regulators should passport information between each other. Also we would reiterate that DSD should take cognisance of the recommendations, commitments and outcomes of the Task Force on Resourcing the Voluntary and Community Sector.

ACCOUNTABILITY

Charity Commission

Proposal: There should be a Northern Ireland Charity Commission.

NICVA agrees that a Northern Ireland Charity Commission should be established. The Commission should operate a Northern Ireland Register of Charities and act as a regulator for all charities operating in Northern Ireland. It should be independent of government and should be broadly representative. A non-departmental public body would be suitable for these purposes.

The new body must liaise with the Charity Commission of England and Wales and the Office of the Scottish Regulator and the Republic of Ireland Regulator as many charities' activities will transcend these boundaries.

NICVA believes that this body needs to be properly resourced. It must have a wide remit and differing and potentially conflicting responsibilities, for example its dual regulatory and advisory functions. NICVA believes that the Commission will have to communicate clearly whether the advice it is giving out is advice on best practice or instruction on mandatory requirements. Furthermore the work of the Commission should recognise and assist with the support, guidance and advisory functions currently carried out by NICVA, other regional, sub-regional, network and local bodies.

There is general consensus that such a body should have effective investigation and enforcement powers and the necessary resources to operate these.

NICVA notes that the need for an appeals procedure (against decisions of the Commission) has not been addressed within the consultation paper and this is a concern. An appeals process must be agreed to enable charities to question the decisions of the Commission. It is important that such an appeals process is accessible (ie free or subsidised and not overly bureaucratic) to groups appealing against decisions of the proposed NI Charity Commissioners. NICVA favours the model in the Scottish Bill which sets out clearly the issues which can be internally reviewed and then appealed, and the procedures for taking an appeal on to an independent panel. It includes a potential for third party appeals.

Although it cannot be legislated for, 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. NICVA recommends that if there are legal impediments such as restrictions on the sharing of information between such bodies, then this should be rectified by the respective governments.

COMPLIANCE

Regulation of the Northern Ireland Registered Charities

Proposals: All Northern Ireland registered charities should be regulated to seek to ensure that they are well run and deserving of public support.

Certain persons should be disqualified from being charity trustees.

Charities should be required to produce accounts in specified forms, supply them to the Department, and make them available to the public on request.

NICVA agrees that 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.

NICVA agrees that the NI Charity Commission should have the powers to institute inquiries; deregister charities; suspend or appoint trustees; freeze charities' assets; appoint receivers; and recover misapplied assets from trustees.

NICVA agrees that trustees should be subject to checks on suitability on their appointment and during their tenure. This should also be applicable to trustees who have been removed from charities in other jurisdictions. However NICVA seeks clarification as to how these checks will be carried out in practice.

NICVA agrees with the proposal that not everyone shall be eligible to act as a charity trustee, for example, undischarged bankrupts and people with unspent convictions for offences involving dishonesty. Whilst this may be of concern to some organisations (eg those which work with ex-prisoners), it is proposed that the Northern Ireland Charity Commission will have the power to waive disqualification in exceptional cases. Organisations may provide a good reason why they should be treated as a special case.

NICVA agrees with the power to control abuses as set out in the consultation document.

In setting thresholds for accounting, consideration should be taken of the requirements set by other relevant regulators, for example, in company law charitable companies with an income of under £90,000 are eligible for audit exemption and those under £250,000 are eligible for partial exemption. NICVA believes that the Commission should ensure that an independent examination (to a specified standard) is carried out by charities that do not have to carry out an audit. Any regulatory body should encourage all charities to have appropriate and good systems of governance. NICVA also believes that the new Charity Commission should require charities to comply with SORP and that all accounting requirements should be fair, reasonable and proportionate to the size of the charity in order to avoid unnecessary regulatory burdens.

GOVERNANCE

Charitable Incorporated Organisations (CIO)

Proposal: A new type of organisation be introduced — the Charitable Incorporated Organisation.

NICVA welcomes the proposed introduction of the CIO as a specific legal structure for charities similar in some ways to a limited company offering protection of trustees from personal liability without the need for dual registration with company and charity law. However the CIO structure would be regulated by the NI Charity Commission although no reference to this work has been made in the draft.

THE ADMINISTRATION OF CHARITIES

Small Charities

Proposal: The limits within which small charities can wind up, alter their purposes, amalgamate, or expend their capital under Articles 3,4 and 5 of the Charities (NI) Order 1987 without undue formality (ie with the Department's assistance and without going to court) should be relaxed.

NICVA understands that the 1987 Order is geared toward charities which lack modern governing documents containing a wide range of powers and concurs that these proposals would help to encourage such charities to alter their purposes, transfer assets to another charity (charities with less than £5,000 income per annum) or expend their capital (charities with less than £1,000 income per annum) and may lead to a more efficient and effective sector and a potential decrease in duplication.

Disposal of Charity Property

Proposal: In most cases, charities should be allowed to dispose of property without applying to the Department for a power to do so.

The asset lock (prohibiting the diversion of charitable assets toward non-charitable purposes) is still to be retained, ie money made from the disposal of property has to be used for charitable purposes. NICVA notes that in the past, investigation of and enforcement of breaches of this prohibition was ineffective in some cases. It is hoped that the necessity of registration and its attendant requirement for greater public accountability will help enforce this in future.

Public Notice

Proposal: Only one statutory notice should be required in connection with schemes made by the Department, and it may be dispensed with in certain cases.

NICVA notes the positive implication for groups which previously had to bear the costs of these notices and to which there was very little response.

Scrutiny of Wills

Proposal: To abolish the existing requirement that the Probate Registry send copies of all wills containing charitable bequests to the Department while retaining the NICC's right to ask for copies of all or any wills containing charitable bequests if necessary.

NICVA accepts that the automatic function of examining wills containing charitable bequests be replaced by a system whereby spot checks can be carried out by the NICC at its discretion.

Revision of Monetary Limits

Proposal: The Department can currently assist charities by making Cy-Pres Schemes (for charities with income up to £50,000 per annum), using its power to apply mis-described charitable bequests (current limit £2,500) and using its power to make schemes to apply property given for mixed purposes to charity (current limit £50,000). The Department proposes that the limits on its powers be abolished giving the NICC unlimited jurisdiction (but still subject to the Attorney General's consent in relation to

mis-described charitable bequests). A charity would still have the right to apply to the Court for such schemes if preferred.

NICVA agrees with the Department's proposals as any potential reduction in bureaucracy and cost will be of benefit to the sector.

Fundraising

Proposal: Controls should be introduced to make professional fundraisers more accountable to charities. Professional fundraisers could only collect on behalf of a charity if s/he has a formal agreement with the charity.

Proposal: Professional fundraisers must indicate which charity he is collecting for and how his remuneration is to be calculated.

NICVA believes the requirement that charities must draw up written contracts or agreements with professional fundraisers is good practice and would assist charities to better plan and monitor their interaction with professional fundraisers. In rare cases where a professional fundraiser may seek to exploit a charity or charitable beneficiaries, the existence of a written agreement would enable a charity to seek redress.

NICVA suggests that a clear definition of the terms 'professional fundraiser' and 'commercial participator' will be required and should be subject to consultation by the Department in advance of legislation being put in place.

NICVA hopes that controls would include the requirement for written agreements between charities and commercial participators. The latter have not been considered within the consultation document. NICVA would further suggest that written agreements between charities and professional fundraisers or commercial participators could be scrutinised by the Commission if necessary. NICVA understands that the contents of written agreements will be at the discretion of a charity and will not be proscribed.

In addition NICVA suggests that professional fundraisers and commercial participators should be required by regulation to make a statement to potential donors about the amount that will go to charity or a good cause. Professional fundraisers and commercial participators who do not meet this requirement will be committing an offence. NICVA is aware that placing extra administrative burdens on charities and on professional fundraisers is regrettable, but it is NICVA's belief that these provisions would make it more difficult for an unscrupulous individual to exploit the current lack of regulation in this area and even a rare case of exploitation could damage public support for legitimate and vital fundraising activities.

Proposal: A charity could apply to the courts to issue an injunction preventing unauthorised fundraising on its behalf.

NICVA welcomes such a step and hopes that the financial burden of such an action should not be incurred by the charity, for instance the Commission could be empowered

to take out such an injunction on behalf of a registered charity. This should not affect the charity's right to apply directly to the court for such an injunction.

Charitable Collections

Proposal: The present systems for licensing street and house-to-house collections should be replaced with a new system covering all public charitable collections.

NICVA accepts that a new system for regulating collections and their timing and frequency is needed. The new Charity Commission should be the lead authority on charitable collections in terms of providing information and advice to collectors and the general public and developing policy in this area. The Commission should issue certificates which indicate that the charity is bona fide and which can be brought to the PSNI (Police Service of Northern Ireland) which will co-ordinate the collections on the ground. There is also a need for complaints regarding collections to be handled efficiently and with maximum co-operation between the relevant authorities. The role of the PSNI should be to investigate where complaints of unlawful actions are received, and to co-ordinate with other statutory bodies in doing so.

NICVA suggests that the granting of permission to collect should include any collections for good causes, not just collections by registered charities.

Furthermore NICVA has observed the controversies which have developed in recent years around house to house property collections (ie plastic bag collections) where it has been implied that the collection is for a good or charitable cause and they are not. Although NICVA has no objection to commercial property collections (for recycling purposes or for profit), it would recommend that it is made explicitly clear when these collections are being made for charitable causes.

NICVA believes that information in the hands of the Commission should be shared with the PSNI when necessary, eg to help make decisions around charitable collections.

The legislation on public collections, and the procedures for seeking permits and accounting after collections should be in plain English and should be easy to understand by collectors and the general public alike.

NICVA has no objection to the following proposals:

The Roles of the Attorney-General and the Court – *Proposal: The Attorney-General's role in relation to charities should not be altered.*

Educational Endowments Schemes – *Proposal: The Department should have the power to wind up charities established under the Educational Endowments (Ireland) 1885.*

Minor Amendments

Proposal: To make a number of minor amendments in relation to ensuring that charitable companies cannot amend their constitutions so as to allow charitable funds to be used for

non-charitable purposes; to transfer the Department of Finance and Personnel's charities functions to the NICC; to allow the NICC to share and exchange information about charities with other government bodies including the Inland Revenue.

Charities with individual legislation – *Proposal: The need for four specific charities to operate under legislation should be removed.*

NICVA
61 Duncairn Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
www.nicva.org