



Northern Ireland  
Assembly

# Research and Information Service Bill Paper

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11<sup>th</sup> August 2021

**RaISe**

## Charities Bill

**NIAR 185-21**

This Bill Paper has been prepared to inform consideration of the Charities Bill. It provides background to the Bill's introduction and content, including comparison with current law in Great Britain and the Republic of Ireland, and highlights potential issues for consideration.

**Paper 55/21**

**11<sup>th</sup> August 2021**

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## Key Points

- On 21<sup>st</sup> June 2021, the Charities Bill was introduced to the Assembly. The Bill would amend the Charities (Northern Ireland) Act 2008 to make Charity Commission staff decisions lawful; establish a Commission ability to delegate to staff in future; and enable regulations creating a charity registration threshold. This paper aims to support the Assembly's consideration of the Bill.

### Background

- The Charities Act (Northern Ireland) 2008 ('the 2008 Act') deals broadly with charity regulation. It was intended to update Northern Ireland charity law, at a time when similar updates were ongoing in England & Wales, Scotland and the Republic of Ireland ('RoI').

The 2008 Act was subsequently amended by the Charities Act (Northern Ireland) 2013 ('the 2013 Act'), to correct technical issues with the public benefit test. Passage of the 2013 Act enabled the Commission to begin adding charities to the charity register.

- The 2008 Act contained a specific provision which permits the Charity Commission to employ staff. It did not, however, include an explicit provision allowing for Commission functions to be performed by those staff.

In this regard, Northern Ireland law is different than the law in England & Wales, Scotland and RoI. Each of those places has explicit provision in its legislation, allowing staff to deliver the functions of the charity regulator.

- On 16<sup>th</sup> May 2019, the High Court of Justice in Northern Ireland ruled on three appeals against actions of Charity Commission staff. The Court found that the Charity Commission had no express or implied power to delegate its functions to staff. The Court of Appeal upheld this decision in February 2020. The impact of those judgments was to make around 7,500 orders, directions and decisions taken by Commission staff unlawful and prevent Commission staff from performing functions under current legislation.

### Bill as introduced

- Clause 1 of the Charities Bill amends the 2008 Act to treat the actions of Commission staff, before the High Court judgment of May 2019, as actions of the Commission itself – thus making them lawful.

Where an action is a decision which can be appealed, affected parties have six weeks to appeal after the Bill receives Royal Assent. Where an action is the registration of a charity, that charity will only have to provide accounts and reports from April 2022, and not from the point of their initial registration.

Finally, there are several circumstances in which this will not apply. For example, staff decisions to publish inquiry reports will remain unlawful, and the

provision does not apply to any court or tribunal proceedings which are ongoing or complete before the Bill comes into operation.

- Clause 2 of the Bill explicitly allows for Commission functions to be performed by staff. Any delegation of functions to staff must operate within a Scheme of Delegation published by the Department for Communities (DfC).

There are several circumstances in which Clause 2 will not apply. The Bill establishes that certain actions can never be delegated to Commission staff. These include starting an inquiry into a charity, suspending or removing charity trustees or appointing interim managers.

- Clause 3 permits the DfC to create a registration threshold in Regulations, whereby charities below a given level of income and/or assets are exempt from registering with the Charity Commission. The clause specifies that Regulations may allow these exempt charities to be subject to less reporting and other requirements, than registered charities.

It further specifies that any Regulations would be subject to the affirmative resolution procedure in the Assembly. Any further Regulations introduced, purely to change the level of a registration threshold, would be subject only to negative resolution.

- As well as introducing the Charities Bill to address this specific issue of Commission staff actions, the Minister for Communities has commissioned an Independent Review of Charity Regulation. This review will consider the overall legal framework for charities in Northern Ireland, and is currently expected to report in autumn 2021. Several actions permitted by the Charities Bill – including any creation of a Scheme of Delegation, and a charity registration threshold – will be considered in greater detail by this review.

### **Financial implications**

- The Bill may have several financial implications.

The lawful delivery of Commission actions by staff may result in additional costs, including development of a Scheme of Delegation, subsequent creation and operation of Charity Commission procedures and training of Commission staff. On the other hand, staff delivery of functions may be more cost-efficient than the current situation, where actions and decisions can only be taken by the Commission and its committees.

Secondly, where the Bill makes a decision lawful and the affected party has a right of appeal, that party has six weeks from the Bill receiving Royal Assent to lodge this appeal. This may result in additional appeals to the Charity Tribunal, and associated costs of public administration, in the immediate wake of the Bill's enactment.

### Issues for consideration

- Throughout the paper, issues for consideration have been detailed. These aim to assist consideration, scrutiny and development of the Bill. These include:
  - When the 2008 Act was being developed and passed, legislation in England & Wales and Scotland explicitly permitted charity regulator staff to perform functions. Similar legislation was under development in the RoI. Given this, why was a similar provision not included in the 2008 Act for Northern Ireland?
  - Did the Department for Social Development consider this difference when developing the 2013 Act? If so, was the addition of an explicit provision for Northern Ireland, permitting staff performance of Commission functions, considered at that stage?
  - Clause 1 of the Bill makes the actions of Commission staff, prior to May 2019, lawful. However, certain staff actions are excluded from this provision. Why is this? Did the DfC consider excluding any other actions or decisions from being made lawful?
  - Where an appealable decision is made lawful, Clause 1 further allows affected parties to appeal for up to six weeks after Royal Assent. Is this sufficient for affected parties? Will the DfC or Commission contact affected parties, to notify them of this timeframe and right to appeal?
  - Clause 2 of the Bill explicitly allows for Commission functions to be delegated to staff. However, it further establishes that certain actions can never be delegated to staff. Why is this? What consideration was given to other functions being excluded from Commission staff?
  - Will staff be involved in supporting Commissioners to take decisions which are reserved to the Commission – for example, through providing advice and information? Would this be covered by a Scheme of Delegation?
  - Are Members content with the actions specified being reserved to the Commission in future? Do Members feel any of these actions should be left open to Commission staff? Do Members feel that any further actions should be reserved solely to the Commission?
  - Clause 3 would allow the DfC to change the level of any charity registration threshold under the negative resolution procedure. Are Members content with using this consent procedure for this change? Or would Members prefer use of the affirmative procedure, where the Assembly must actively approve any change?
  - Are the DfC and Members content that Clause 3 does everything required to ensure that a robust and functioning charity registration threshold, can be established in Regulations and practice?
  - As detailed, Clause 3 empowers the DfC to introduce a charity registration threshold by Regulations. What is the DfC's rationale for including this within a Bill, which otherwise exclusively addresses Commission staff actions? The Minister for Communities has stated that the Independent Review of Charity Regulation will consider the detail of any registration threshold. Would it be more prudent to include this clause in any future legislation which follows that Review?

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# 1 Introduction

This Bill Paper aims to support consideration of the Charities Bill, as introduced to the Assembly on 21<sup>st</sup> June 2021. The Bill amends the Charities (Northern Ireland) Act 2008 to make Charity Commission staff actions lawful; establish the Commission's ability to delegate to staff in future; and enable regulations which would create a charity registration threshold.

The paper is structured as follows:

- Section 2 details the legislative background to the Charity Commission for Northern Ireland.
- Section 3 details the legislative and decision-making structures of charity regulators in England and Wales, Scotland and the Republic of Ireland.
- Section 4 details the judicial decisions of 2019 and 2020, which considered the lawfulness of decisions and actions taken by Charity Commission staff.
- Section 5 considers the implications of those judicial decisions.
- Section 6 details the content and effect of the Charities Bill, as introduced.
- Section 7 finally considers potential financial implications of the Bill, as introduced.

Throughout the paper, and particularly where discussing the content and effect of the Bill, 'issues for consideration' are detailed. These aim to assist consideration, scrutiny and development of the Bill.

## 2 Background to the Charity Commission

This section details the legislative background to the current structure of the Charity Commission for Northern Ireland.

Before 2008, charity law in Northern Ireland was contained largely in the Charities Act (Northern Ireland) 1964 ('the 1964 Act') and the Charities (Northern Ireland) Order 1987.<sup>1</sup> In the early 21<sup>st</sup> century, legislation was passed in Scotland<sup>2</sup> and England & Wales<sup>3</sup> which updated and centralised charity legislation in those countries. Fresh charity legislation was also under development in the RoI.<sup>4</sup> In this context, the Northern Ireland Assembly passed new charity legislation in 2008.<sup>5</sup>

The Charities Act (Northern Ireland) 2008 ('the 2008 Act') deals broadly with charity regulation, and was intended to update and eventually replace the 1964 Act. The main elements of the 2008 Act are as follows:

- Definition of 'charity' and 'charitable purpose', including a public benefit test;
- Creation of the Charity Commission and Charity Tribunal;
- Creation of a public charities register;
- Creation of a new form of charitable body, the Charitable Incorporated Organisation;
- Regulation of charities' assets and operations generally.<sup>6</sup>

The Charities Bill, as introduced, is primarily concerned with the decision-making structures of the Charity Commission.

Articles 8 and 9 of the 2008 Act detail the functions and duties of the Commission:

### ***The Commission's general functions***

*8—(1) The Commission has the general functions set out in subsection (2).*

*(2) The general functions are—*

- 1. Determining whether institutions are or are not charities.*
- 2. Encouraging and facilitating the better administration of charities.*
- 3. Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.*
- 4. Determining whether public collection certificates should be issued, and remain in force, in respect of public charitable collections.*
- 5. Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives.*

<sup>1</sup> The High Court of Justice in Northern Ireland, *NiCh 6* (2019) p11

<sup>2</sup> *Charities and Trustee Investment (Scotland) Act 2005*

<sup>3</sup> *Charities Act 2006*

<sup>4</sup> See <https://www.oireachtas.ie/en/bills/bill/2007/31/>, retrieved on 27<sup>th</sup> July 2021

<sup>5</sup> *Charities Act (Northern Ireland) 2008*

<sup>6</sup> As cited immediately above, Parts 1-4 & Part 11

6. *Giving information or advice, or making proposals, to the Department on matters relating to any of the Commission's functions or meeting any of its objectives.*

*(3) The Commission's fifth general function includes (among other things) the establishment and maintenance of an accurate and up-to-date register of charities under section 16.*

*(4) The Commission's sixth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by the Department for information or advice on any matter relating to any of the Commission's functions.<sup>7</sup>*

### **The Commission's general duties**

*9—(1) The Commission has the general duties set out in subsection (2).*

*(2) The general duties are—*

1. *So far as is reasonably practicable the Commission must, in performing its functions, act in a way—
  - a) which is compatible with its objectives, and
  - b) which it considers most appropriate for the purpose of meeting those objectives.*
2. *So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of—
  - a) all forms of charitable giving, and
  - b) voluntary participation in charity work.*
3. *In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.*
4. *In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).*
5. *In performing its functions the Commission must have regard to the desirability of facilitating innovation by or on behalf of charities.*
6. *In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.<sup>8</sup>*

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<sup>7</sup> Charities Act (Northern Ireland) 2008, art. 8

<sup>8</sup> As cited immediately above, art. 9



Schedule 1 further details the Commission's structure, including its staff and procedures:

### **Staff**

*4—(1) The Commission may with the approval of the Department and the Department of Finance and Personnel as to numbers and as to remuneration and other terms and conditions of employment—*

- (a) employ such staff as the Commission considers necessary;*
- (b) employ the services of such other persons as the Commission considers expedient for any particular purpose.*

*(2) The Commission may, in the case of such of its staff as may be determined by it with the approval of the Department and the Department of Finance and Personnel, pay such pensions, allowances or gratuities, or provide and maintain such pension schemes, as may be so determined.*

*(3) Payments made or expenses incurred under this paragraph shall be defrayed out of money appropriated by Act of the Assembly.*

*5—(1) The Commission may make arrangements with the Department for persons employed in the Northern Ireland civil service to be seconded to the Commission.*

*(2) Such arrangements require the consent of the Department of Finance and Personnel.*

*[. . .]*

### **Procedure**

*9—(1) In determining its own procedure the Commission may, in particular, make provision about—*

- (a) the discharge of its functions by committees (which may include persons who are not members of the Commission);*
- (b) a quorum for meetings of the Commission or a committee.*

*(2) The validity of any proceedings of the Commission or a committee shall not be affected by—*

- (a) a vacancy in the office of chair or deputy chair; or*
- (b) a defect in the appointment of a member.*

In 2010, legal counsel for the Charity Commission identified technical issues with an element of the 2008 Act, which meant that it could not lawfully register charities.<sup>9</sup> To remedy this, the Assembly enacted a further Charities Act in 2013 ('the 2013 Act').

The 2013 Act amended and clarified the public benefit test of the 2008 Act, by replacing the original test – which had been transposed from earlier Scottish legislation – with a definition specific to Northern Irish law.<sup>10</sup> The passage of the 2013 Act enabled the Charity Commission to begin processing charities' applications and add successful applicants to the charities register.

<sup>9</sup> Charities Act 2013 Consideration Stage Official Report, p60

<sup>10</sup> Specifically section 3 of that Act. See Department for Social Development, *Charities Act (Northern Ireland) Explanatory Notes* (2013) p1; see also *Charities and Trustee Investment (Scotland) Act 2005*, art. 8

### 3 Charity regulators in Great Britain and RoI

This section details the legislative and decision-making structures of charity regulators in England and Wales, Scotland and the RoI.

#### 3.1 England & Wales

The Charities Act 2011 is the current legislation establishing the Charity Commission of England & Wales ('CCEW'). It updated and harmonised the provisions of previous legislation with the aim of simplifying charity law, and making it more accessible to those in the sector.<sup>11</sup>

Schedule 1 of the 2011 Act establishes the status and structure of the CCEW.

Paragraphs 5 and 7 of Schedule 1 permit the CCEW to appoint staff and regulate its own procedure, in a way which is comparable to current Northern Ireland legislation. However, paragraph 8 retains provisions<sup>12</sup> which grant the CCEW additional and explicit power to delegate its functions to authorised staff:

***Performance of functions***

*8 Anything authorised or required to be done by the Commission may be done by—*

- (a) any member or member of staff of the Commission who is authorised for that purpose by the Commission, whether generally or specially;*
- (b) any committee of the Commission which has been so authorised.*

There is no comparable provision, explicitly delegating the performance of Charity Commission functions to staff, in current Northern Irish law.

#### CCEW decision-making structure

Within the 2011 Act's framework, the CCEW decision-making structure has three essential levels:<sup>13</sup>

- a) **The Commission** reserves certain matters to itself. These are:
  - *'ensuring that the Commission fulfils its statutory objectives, general functions and duties and appropriately exercises the legal powers vested in it, under the Act and other legislation*
  - *regulatory decisions, and decisions on policy guidance where these are considered to be high risk, high profile, or precedent setting*
  - *appointing, monitoring the performance and approving the remuneration of, the Chief Executive*
  - *establishing, and agreeing the procedure of, the Committee called the Board*

<sup>11</sup> See <https://www.gov.uk/government/news/charities-act-2011>, retrieved on 19<sup>th</sup> July 2021

<sup>12</sup> See *Charities Act 2006* (as passed), Sch.1 para. 8

<sup>13</sup> See <https://www.gov.uk/government/publications/charity-commission-governance-framework/governance-framework>, retrieved on 19<sup>th</sup> July 2021

- *approving the scheme of delegation (which sets out the division of responsibilities between the Commission, the Board and the Executive)*<sup>14</sup>
- b) **The ‘Board’ (which is the Commission, plus the Chief Executive)** delivers specific functions relating to strategic management of the Commission and its business. These include:
- *‘the performance of statutory functions, including decision-making in regard to the most high-risk cases, except those reserved to the Commission*
  - *vision, strategy (corporate and subject-matter, such as people and technology) and values*
  - *the annual business plan*
  - *financial management and key performance measurements*
  - *governance (except for those functions which are reserved to the Commission)*
  - *scrutiny of operational and financial plans and performance [. . .]*<sup>15</sup>

The Board maintains a clear distinction between carrying out functions itself, and ‘overseeing the conduct of functions delegated to the Chief Executive’.<sup>16</sup>

- c) Finally, **the Chief Executive and her staff** take the large majority of operational decisions and casework. These take place within clearly defined ‘levels of delegated authority’ for Commission staff.<sup>17</sup>

In practice, decisions and actions are carried out by any ‘Authorised Officer’ of the Commission.<sup>18</sup> In certain instances, an Authorised Officer must escalate a decision to more senior staff: for example, only a Commission Director can direct a charity to change its name, and relieving charity trustees from liability can only be done with written legal advice.<sup>19</sup> In addition to this, the Chief Executive must escalate any high-risk or high-impact cases to the Board.

### 3.2 Scotland

The Charities and Trustee Investment (Scotland) Act 2005 (‘the 2005 Act’) established a new regulatory system for charities in Scotland, including an updated definition of ‘charitable purposes’ and a new ‘public benefit’ test.<sup>20</sup> It further established the Office of the Scottish Charity Regulator (‘OSCR’).

<sup>14</sup> See <https://www.gov.uk/government/publications/charity-commission-governance-framework/governance-framework>, retrieved on 19<sup>th</sup> July 2021

<sup>15</sup> As cited immediately above

<sup>16</sup> As cited in footnote 14

<sup>17</sup> See <https://www.gov.uk/government/publications/charity-commission-governance-framework/appendix-3-levels-of-delegated-authority>, retrieved on 19<sup>th</sup> July 2021

<sup>18</sup> Charities Commission, *Operational Guidance 702: Authorised Officer powers* (2019)

<sup>19</sup> See <http://ogs.charitycommission.gov.uk/g702a001.aspx>, retrieved on 19<sup>th</sup> July 2021

<sup>20</sup> *Charities and Trustee Investment (Scotland) Act 2005*, arts. 7 & 8

Schedule 1 of the 2005 Act establishes the status and structure of the OSCR. Paragraphs 4 and 5 permit the OSCR to appoint staff and regulate its own procedure, in a way which is comparable to current Northern Ireland law. However, paragraph 6 gives the OSCR additional and explicit power to delegate its functions to authorised staff:

***Delegation of powers***

**6** (1) *Anything authorised or required under any enactment to be done by the Regulator, whether or not as the holder of the Office of the Scottish Charity Regulator, may be done by any member or employee of the Regulator who is authorised (whether generally or specifically) for the purpose by it.*

(2) *Nothing in sub-paragraph (1) prevents the Regulator from doing anything that any of its members or employees has been authorised or required to do.*

There is no comparable provision, explicitly delegating the performance of Charity Commission functions to staff, in current Northern Ireland law.

The OSCR has an overall Board,<sup>21</sup> which delegates functions to staff within a Schedule of Delegation. In developing this paper, RaISe requested a copy of the OSCR's Schedule of Delegation. The OSCR advised that it is currently under internal review.

OSCR staff further advised that in practice, almost all regulatory decision-making is carried out by employees. The OSCR Board has a Casework Committee which provides oversight an assurance to the Board on casework.<sup>22</sup>

### **3.3 RoI**

The Charities Act (Ireland) 2009 is the current legislation governing the charitable sector in the RoI. It states how a 'charitable organisation' is defined, and establishes the Charities Regulator.<sup>23</sup>

The Charities Regulator currently has twelve members.<sup>24</sup> The Regulator's members supervise the work of its staff by overseeing the work of the Regulator's senior management team: the Chief Executive, Director of Regulation and various heads of business units.<sup>25</sup>

The Act specifically provides for a Chief Executive and staff,<sup>26</sup> who are appointed by the Charities Regulator with the consent of RoI Government Ministers. In addition – and similarly to the law in England & Wales, and Scotland – Article 21 of the Act specifically and explicitly allows for the delegation of functions to the Regulator's staff:

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<sup>21</sup> See <https://www.oscr.org.uk/about-oscr/oscr-management/oscr-board/>, retrieved on 30<sup>th</sup> June 2021

<sup>22</sup> Email correspondence between RaISe and the Scottish Charity Regulator, 14<sup>th</sup>-25<sup>th</sup> May 2021

<sup>23</sup> *Charities Act (Ireland) 2009*, Parts 1 & 2

<sup>24</sup> See <https://www.charitiesregulator.ie/en/who-we-are/authority-members>, retrieved on 30<sup>th</sup> June 2021

<sup>25</sup> See <https://www.charitiesregulator.ie/en/who-we-are/organisation>, retrieved on 30<sup>th</sup> June 2021; see also row 135

<sup>26</sup> As cited in footnote 23, arts. 19 & 24 respectively

**Delegation of functions of chief executive.**

21.—

(1) *The chief executive may, with the consent of the Authority in writing, delegate any of his or her functions to a specified member of staff of the Authority, and that member of staff shall be accountable to the chief executive for the performance of the functions so delegated.*

(2) *The chief executive shall be accountable to the Authority for the performance of functions delegated by him or her in accordance with subsection (1).*

(3) *The chief executive may, with the consent of the Authority in writing, revoke a delegation made in accordance with this section.*

(4) *In this section “functions” does not include a function delegated by the Authority to the chief executive subject to a condition that the function shall not be delegated by the chief executive to anyone else.<sup>27</sup>*

There is no comparable provision, explicitly delegating the performance of Charity Commission functions to staff, in current Northern Ireland law.

In practice in RoI, it appears that most operational actions and decisions are undertaken by Charities Regulator staff,<sup>28</sup> who are ultimately accountable to the members of the Charity Regulator itself.

**Issues for consideration**

- When the Charities Act (Northern Ireland) 2008 was being developed and passed by the Department for Social Development (‘DSD’) and the Assembly, legislation in England & Wales<sup>29</sup> and Scotland<sup>30</sup> explicitly permitted charity regulator staff to perform functions. In addition, draft RoI legislation was under Oireachtas consideration and included a similar provision.<sup>31</sup> Given this, why was a similar provision not included in the 2008 Act?
- Passage of the Charities Act (Northern Ireland) 2013 was in response to technical issues with the 2008 Act. Specifically, the ‘public benefit test’ provision had been transposed from existing Scottish charity legislation and caused legal uncertainty for the Charity Commission.<sup>32</sup> During development and passage of the 2013 Act, did the DSD consider the fact that Northern Ireland uniquely did not have a specific provision permitting staff to perform functions? If so, was addition of such a provision considered within the scope of the 2013 Act?

<sup>27</sup> *Charities (Ireland) Act 2009*, Art. 21

<sup>28</sup> Charities Regulator, *Annual Report (2019)* p33; see also <https://www.charitiesregulator.ie/en/who-we-are/organisation>, retrieved on 30<sup>th</sup> June 2021

<sup>29</sup> *Charities Act 2006* (as passed), Sch.1 para. 8; see also section 3.1 above

<sup>30</sup> *Charities and Trustee Investment (Scotland) Act 2005*, Sch.1 para. 6; see also section 3.2 above

<sup>31</sup> See Article 20 of *Charities Bill (Ireland) 2007* as introduced to Oireachtas in April 2007; <https://data.oireachtas.ie/ie/oireachtas/bill/2007/31/eng/initiated/b3107d.pdf>, retrieved 16<sup>th</sup> July 2021. See also section 3.3 above

<sup>32</sup> See footnote 9; see also section 2 above

## 4 High Court & Court of Appeal decisions

This section briefly details the rulings of the High Court of Justice and Court of Appeal in Northern Ireland, which informed DfC's drafting of the Bill, as introduced.

This section is not provided as legal opinion or advice, or an interpretation of the courts' rulings. It details the primary elements of the rulings themselves<sup>33</sup> as relevant to the Bill, drawing from the courts' summaries of these rulings.<sup>34</sup> It is provided with the aim of facilitating scrutiny of individual clauses, as the Bill passes through the Assembly.

### 4.1 High Court decision, May 2019

On 16<sup>th</sup> May 2019, the High Court of Justice in Northern Ireland delivered its ruling on three appeals brought against actions of Charity Commission staff.

Each of the three appeals raised the same 'key issue': specifically, whether the Charity Commission's functions under the 2008 Act can be lawfully discharged by Commission staff.<sup>35</sup> The Court found that 'determination of the key issue is first and foremost a question of statutory interpretation.'<sup>36</sup>

The Charity Commission argued that Section 19 of the Interpretation (Northern Ireland) Act 1954 explicitly empowers the Commission to regulate its own procedure and business, and gives it the power to employ staff as necessary for the performance of its functions. The Commission argued that these two powers, taken together, enable it to delegate decision-making functions to staff.<sup>37</sup>

The High Court rejected this. The Court considered Section 19 of the Interpretation Act, and found that there was no specific power to delegate to staff within the Act:

*[. . .] the powers given to the Commission by section 19(1)(a)(v) "to regulate" its own procedures do not give to the Commission an express power "to delegate" any of its decision making functions to its staff.*<sup>38</sup>

The Court further considered the 2008 Act itself, and found no specific provision in that legislation for staff to execute Commission functions.<sup>39</sup>

The Court then considered the charities legislation of England & Wales. The Charities Act 2011 is the current law governing the Charity Commission for England and Wales. While Northern Ireland legislation (i.e. the 2008 Act) has no specific

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<sup>33</sup> The High Court of Justice in Northern Ireland, *NiCh 6* (2019), available at <https://www.judiciaryni.uk/judicial-decisions/2019-nich-6>, retrieved on 3<sup>rd</sup> August 2021; and Northern Ireland Court of Appeal, *NiCA 13* (2020), available at <https://www.judiciaryni.uk/judicial-decisions/2020-nica-13>, retrieved on 3<sup>rd</sup> August 2021

<sup>34</sup> See <https://www.judiciaryni.uk/judicial-decisions/summary-judgment-court-decides-charity-commission-cannot-delegate-decision-making>, retrieved on 3<sup>rd</sup> August 2021

<sup>35</sup> The High Court of Justice in Northern Ireland, *NiCh 6* (2019) p2 para 1

<sup>36</sup> As cited immediately above, p23 para 76

<sup>37</sup> As cited in footnote 35, p22 para 72

<sup>38</sup> As cited in footnote 35, p26 para 89

<sup>39</sup> As cited in footnote 35, p30 para 103; see also Sch.1 para 9 of Charities Act 2008

provision on staff performance of functions, the England & Wales legislation has a specific provision allowing for this:

**Performance of functions**

8 Anything authorised or required to be done by the Commission may be done by—

(a) any member or member of staff of the Commission who is authorised for that purpose by the Commission, whether generally or specially;

(b) any committee of the Commission which has been so authorised.<sup>40</sup>

Finally, the Court referred to several other Northern Irish Acts which make specific provision for delegating to staff – in addition to powers within Section 19 of the Interpretation Act.<sup>41</sup> The Court judged that the existence of a specific delegation provision the England & Wales legislation, and in many other Northern Irish Acts, was itself evidence that Section 19 of the Interpretation Act alone did not give the Commission power to delegate to staff.<sup>42</sup>

Ultimately, the Court found that the Charity Commission had no express or implied power to delegate to staff,<sup>43</sup> and therefore found in favour of the three appellants.

#### **4.2 Court of Appeal decision, 19<sup>th</sup> February 2020**

The Charity Commission appealed the High Court's decision, and the Court of Appeal ruled on this appeal in February 2020.

The Court of Appeal dismissed the Charity Commission's appeal and upheld the original decision. It concluded as follows:

***If the effect of our decision is to require some review and amendment of the 2008 Act, careful consideration should be given to the question of whether any of the powers and functions therein enshrined can properly be discharged by the staff of the Commission and, if appropriate, to reflect this in unambiguous language [emphasis added]. The business of administering and overseeing charities in Northern Ireland is a matter of significant public importance, engaging a public interest of some potency.***<sup>44</sup>

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<sup>40</sup> Charities Act 2011, Schedule 1

<sup>41</sup> The High Court of Justice in Northern Ireland, *NiCh 6* (2019) pp27-28 para 94

<sup>42</sup> As cited immediately above, p27 para 93

<sup>43</sup> As cited in footnote 41, p40 para 138

<sup>44</sup> Northern Ireland Court of Appeal, *NICA 13* (2020) p26

## 5 Implications of Court decisions

This section details the implications of the Court decisions detailed in section 4, and the responses of the Charity Commission and Department for Communities.

### 5.1 Charity Commission & DfC response

The Court of Appeal's 2020 judgment, in confirming the High Court's original finding of May 2019, rendered approximately 7,500 orders, directions and decisions taken by Commission staff unlawful.<sup>45</sup> It further prevented Commission staff from performing functions under the existing legislation.

Following the Court of Appeal judgment, the Charity Commission issued information to charities on its website.<sup>46</sup> The Commission welcomed the Court's clarification of the law, and stated it had adjusted its procedures to continue decision-making, albeit at a reduced volume and with some delay.<sup>47</sup> The Commission further stated:

*The Commission has a Board of seven Commissioners, who work on a part time basis, and whose primary role is setting strategic direction and overseeing governance of the organisation. To have a Board or committee of Commissioners making every decision of the Commission would involve a radical change to the Commission's structure, processes and budget.*<sup>48</sup>

The DfC issued the following response to the Court of Appeal's judgment:

*The Department accepts the Court of Appeal Judgment. The determination of the Court raises complex issues in respect to charity regulation in Northern Ireland from 2013 when the Charity Commission began registration and going forward. As such, the Minister will want to understand all of the potential impacts of the Judgment on past decisions to determine what is in the best interests of all stakeholders and to ensure that any future arrangements are fully considered as they will set the course for charity regulation in Northern Ireland and must be in the wider public interest.*

*The Department is assured that the Charity Commission has introduced interim procedures to ensure decisions can be taken in compliance with the Judgment. The Minister will shortly determine how the Department intends to respond to the issues raised by the Judgment. In the meantime the Department can give an assurance to those charities that were unlawfully registered that they remain charities in law and need do nothing differently in the interim.*<sup>49</sup>

Following engagement with the Executive<sup>50</sup> and the Committee for Communities,<sup>51</sup> the Charities Bill was first introduced to the Assembly on Monday 21<sup>st</sup> June 2021.

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<sup>45</sup> NIA OR 29 June 2021, p12

<sup>46</sup> See <https://www.charitycommissionni.org.uk/news/legal-update/>, retrieved on 30<sup>th</sup> June 2021

<sup>47</sup> As cited immediately above, paragraph 7

<sup>48</sup> As cited in footnote 52, 'The future of charity regulation', para 2

<sup>49</sup> See <https://www.charitycommissionni.org.uk/news/legal-update/>, retrieved on 30<sup>th</sup> June 2021

<sup>50</sup> See [communities-ni.gov.uk/topics/voluntary-and-community/regulation-charities](https://communities-ni.gov.uk/topics/voluntary-and-community/regulation-charities), retrieved 19<sup>th</sup> July 2021

<sup>51</sup> Committee for Communities, *Minutes of Proceedings: Thursday 6 May (2021)* p23



## 5.2 Independent Review of Charity Regulation

As well as introducing a Bill to resolve the specific issue of Charity Commission decision-making structures, the Minister for Communities commissioned an Independent Review of Charity Regulation. The Minister's stated intention was to 'restore the regulatory framework' with the Charities Bill, and then 'seek to improve [the framework] through recommendations that may arise as a result of the review.'<sup>52</sup> The review's scope is detailed on the DfC website:

*The review will consider the Charities Act (NI) 2008 (the Act) and the roles of the Charity Commission and the Department thereunder. In particular, it will examine whether the Commission's performance within the existing legal framework strikes the right balance, in light of best practice, between supporting charities to do the right thing and deterring, or dealing with, misconduct. It will make recommendations on changes that can be made to improve the delivery of services and the operation of the regulatory framework going forward.<sup>53</sup>*

Prior to the creation of this independent review, the Northern Ireland Council for Voluntary Action (NICVA) – an umbrella organisation for the voluntary and community sectors in Northern Ireland – surveyed its members on their views on charity regulation. The survey found support amongst respondents for:

- More proportional accounting and reporting requirements
- Establishment of Charitable Incorporated Organisations, as enabled by the Charities Act (Northern Ireland) 2008
- Creation of a registration threshold, so that very small charities would not be required to register with the Charity Commission<sup>54</sup>

The independent review formally commenced on 25<sup>th</sup> January 2021. DfC have stated that the Review panel will deliver the following:

- *An interim briefing to the Minister for Communities on the main regulatory themes emerging from public and stakeholder engagement – by 4 June.*
- *A report setting out an assessment of the delivery of the regulatory framework to date, including the effectiveness of the current regulator in delivering on its agreed objectives and statutory functions; options for optimal charity regulation in NI, including the configuration of a statutory regulatory body; and making final recommendations to be presented to the Minister for Communities - by 26 July 2021.<sup>55</sup>*

In her remarks at the Second Stage of the Charities Bill on 29<sup>th</sup> June 2021, the Minister stated that the final report of the Independent Review is now expected in 'autumn 2021'.<sup>56</sup>

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<sup>52</sup> NIA OR 29 June 2021, p13

<sup>53</sup> See [communities-ni.gov.uk/articles/independent-review-charity-regulation](https://communities-ni.gov.uk/articles/independent-review-charity-regulation), retrieved on 19<sup>th</sup> July 2021

<sup>54</sup> Northern Ireland Council for Voluntary Action, *Paper on Issues with Charity Regulation* (2020) pp1-2

<sup>55</sup> See [communities-ni.gov.uk/articles/independent-review-charity-regulation-terms-reference](https://communities-ni.gov.uk/articles/independent-review-charity-regulation-terms-reference), retrieved on 19<sup>th</sup> July 2021

<sup>56</sup> As cited in footnote 52

## 6 Content and effect of the Bill as introduced

Within the context detailed above, the Charities Bill was introduced to the Assembly on Monday 21<sup>st</sup> June 2021. This section details the content and effect of the Bill.

### Clause 1: Actions of Commission staff treated as Commission actions

Clause 1 establishes that actions taken by Commission staff are to be treated as actions of the Commission itself, and makes consequential amendments to appeal rights and reporting requirements.

a) When staff actions are treated as Commission actions, and exceptions to this  
The High Court of Justice in Northern Ireland delivered its judgment, on the unlawful nature of actions by Commission staff, on 16<sup>th</sup> May 2019.

The Bill establishes that any action taken by a member of the Commission's staff, before 16<sup>th</sup> May 2019, is to be treated as being – and always having been – a decision or action of the Commission itself.<sup>57</sup> In effect, this would retrospectively make these staff actions lawful.

There are several circumstances in which this provision will not apply:

- Where any court/tribunal proceedings on a Commission staff action are decided before the Bill comes into operation, this provision does not apply.<sup>58</sup> Further to this, the provision would not be considered in court/tribunal proceedings which are ongoing when the Bill comes into operation, where those proceedings consider whether Commission staff could lawfully take a decision or action.<sup>59</sup>

In essence, any relevant court or tribunal proceedings, which are ongoing or complete by the time the Bill comes into operation, will be unaffected by this provision.

- The provision does not apply to:
  - A decision to publish an inquiry report, or publication of an inquiry report<sup>60</sup>
  - Any decision to disclose information under Charity Commission powers to do so within the 2008 Act<sup>61</sup>, or the actual disclosure of such information
  - Any decision to make an order under the 2008 Act to protect a charity; suspend or remove trustees, employees or other individuals; and appoint an interim manager; or the actual making of such an order.<sup>62,63</sup>

<sup>57</sup> *Charities Bill 2021*. clause 1(1) & (2)

<sup>58</sup> As cited immediately above, clause 1(3)

<sup>59</sup> As cited in footnote 57, clause 1(4)

<sup>60</sup> Specifically, 'inquiry report' refers to any report or statement within Article 22(6) of the 2008 Act.

<sup>61</sup> Specifically, art. 24(1) of that Act

<sup>62</sup> Specifically, art. 33 to 36 of that Act

<sup>63</sup> As cited in footnote 57, clause 1(5)

Where a member of Commission staff has taken a decision or action in the above three areas, those decisions would remain unlawful.

### Issue for consideration

Clause 1 of the Bill makes the actions of Commission staff, prior to May 2019, lawful. However, certain staff actions are excluded from this provision. Why is this? Did the DfC consider excluding any other actions or decisions from being made lawful?

- Finally, Clause 1(6) establishes that the provision does not apply where a staff action has been replaced by an action of the Commission itself, or a committee of the Commission, before the Bill comes into operation.

As detailed above, the Charity Commission appealed the May 2019 judgment, but lost that appeal in February 2020. Since then, the Commission has adjusted its procedures to comply with the judgments, meaning that it has been continuing to take actions at a reduced capacity.

In effect, Clause 1(6) ensures that any actions taken by the Commission itself, since the May 2019 judgment, will take precedence over any previous staff decisions/actions.<sup>64</sup>

#### b) Appeal rights

Clauses 1(7) and (8) address appeal rights, where a staff action has been treated as an action of the Commission itself – and thus made lawful – by this Bill.

Where a staff action is now treated as a Commission action, and there is a right of appeal, the Bill extends the timeframe for an appeal.

The Charity Tribunal Rules (Northern Ireland) 2010 state that when a decision is received or published, a person has 42 days to lodge an appeal.<sup>65</sup> The Bill refreshes this timeframe, to 42 days (or six weeks) from when the Bill comes into operation.<sup>66</sup>

### Issues for consideration

- Is the refreshed six week timeframe for appeals, starting from the date of Royal Assent – equivalent to the standard appeal timeframe – sufficient for affected persons or charities?
- Will the DfC or the Commission actively contact all charities and persons subject to appealable decisions, to notify them of this timeframe and their right to appeal?

<sup>64</sup> See <https://www.charitycommissionni.org.uk/news/legal-update/>, in which the Commission states it has 'adjusted its procedures to comply with the court judgment', meaning that 'some Commission decisions may be delayed and the volume of decisions made has been temporarily reduced'.

<sup>65</sup> Specifically, Rule 17(2)

<sup>66</sup> *Charities Bill 2021*. clause 1(8)

c) Disapplication of accounting and reporting requirements

Clause 1(9) addresses the accounting and reporting requirements for charities added to the register in various circumstances. In effect, charities added to the register will fall into one of four categories:<sup>67</sup>

1. **Charities unlawfully registered by Commission staff, who become lawfully registered as a result of the Bill.**  
These charities will only have to meet accounting and reporting requirements from April 2022 onwards.
2. **Charities unlawfully registered by Commission staff, who have since been lawfully registered by a Committee of the Commission,<sup>68</sup> at a point between the Court judgments<sup>69</sup> and the Bill receiving Royal Assent.**  
These charities will be subject to accounting and reporting requirements from the first full financial year, after their lawful registration by the Committee of the Commission.
3. **Charities that have never been registered by Commission staff, but have been lawfully registered by a Committee of the Commission before the Bill receives Royal Assent.**  
The Bill does nothing specific in relation to these charities. These charities will be subject to accounting and reporting requirements, from the first full financial year after their lawful registration by the Committee of the Commission.
4. **Charities that are registered after the Bill receives Royal Assent.**  
The Bill does nothing specific in relation to these charities. These charities will be subject to accounting and reporting requirements, from the first full financial year after their lawful registration by the Committee of the Commission.

**Clause 2: Ability of Commission to delegate to staff**

Clause 2 amends the 2008 Act to explicitly allow for Commission functions to be delegated to Commission staff. It further requires this delegation to operate within a Scheme of Delegation, as developed by the DfC.

a) Performance of Commission functions by staff, and exceptions to this

The Bill inserts a new section 9A to Schedule 1 of the 2008 Act. This permits the Commission's staff to do anything 'authorised or required to be done by the commission.'<sup>70</sup>

There are several actions that are excluded from this provision, and therefore can never be delegated to Commission staff. Specifically:

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<sup>67</sup> Email correspondence between RaiSe and DfC officials, June-July 2021

<sup>68</sup> See section 5.1 and footnote 52 above

<sup>69</sup> See section 4 above

<sup>70</sup> Art. 9A(1) of the 2008 Act, as drafted by clause 2 of the Charities Bill as introduced

- Starting an inquiry into a charity or group of charities,<sup>71</sup> and deciding that a report or statement on the inquiry be published<sup>72</sup>
- Deciding to make an order to protect a charity; suspending or removing charity trustees, employees or other individuals; and appointing an interim manager
- The making of Regulations by the Commission.

Other than these actions, Commission staff can do anything that the Commission is authorised to do. For example, Commission staff could apply the ‘public benefit test’ to an applying charity, remove a charity from the register or give advice or guidance to charities and trustees.

In her remarks at the Bill’s Second Stage, the Minister advised that:

*The Court of Appeal judgement<sup>73</sup> stated that careful consideration should be given as to whether functions should be delegated to staff and that it should be reflected in unambiguous language if so determined [ . . . ] our particular experience leads me to conclude that some decisions here should never be taken by commission staff, as they have significant consequences for individuals.<sup>74</sup>*

This may explain the Bill’s approach of a limited and proscribed delegation of functions to staff, which differs from the broader delegation to staff in England & Wales, Scotland and the RoI.<sup>75</sup>

### Issues for consideration

- Clause 2 of the Bill explicitly allows for Commission functions to be delegated to staff. However, it further establishes that certain actions can never be delegated to staff. Why is this? What consideration was given to any other functions being excluded from being delegated to Commission staff?
- Will staff be involved in supporting Commissioners to take decisions in the areas which are reserved to the Commission: for example, through providing advice and information? If so, will this be included in a Scheme of Delegation?
- Are Members content with these specific actions being reserved to the Commission in future? Do Members feel that any of these actions should be left open to Commission staff to perform? Do Members feel that any further actions should be reserved solely to the Commission?

#### b) Staff must only exercise functions within a Scheme of Delegation

The Bill requires that any delegation of functions to Commission staff must take place within a Scheme of Delegation, as developed by the DfC.<sup>76</sup> A Scheme of Delegation may detail what functions can be delegated, and the specific staff to whom these may be delegated.<sup>77</sup> For example, a Scheme could say:

<sup>71</sup> As permitted by art. 22(1) of the 2008 Act

<sup>72</sup> As permitted by art. 22(6) of the 2008 Act

<sup>73</sup> As quoted on p14 above

<sup>74</sup> NIA OR 29 June 2021, pp13-14

<sup>75</sup> See section 3 above

<sup>76</sup> Art. 9A(3) and (7) of the 2008 Act, as drafted by clause 2 of the Charities Bill as introduced

<sup>77</sup> Art. 9A(3) and (4) of the 2008 Act, as drafted by clause 2 of the Charities Bill as introduced

*Managers at [Grade X] may take a decision as to whether an applying charity passes the 'public benefit' test*

or

*Officers at [Grade Y] may provide administrative support in processing applications, and offer initial information and support to applicants on their obligations.*

The Department must consult the Commission before making any Scheme of Delegation,<sup>78</sup> and must publish the Scheme once it is made.<sup>79</sup> In her remarks at the Bill's Second Stage, the Minister indicated that the Independent Review of charity regulation will help to shape any future Scheme of Delegation.<sup>80</sup>

### **Clause 3: Regulations exempting charities from registering by reference to thresholds**

Clause 3 permits DfC to make regulations which allow charities, below a certain threshold of income or assets, to be exempt from registering with the Commission.

#### **a) DfC power to set registration threshold in Regulations**

Clause 3 permits DfC to make Regulations which exempt charities from having to register with the Commission, provided they meet one or more 'threshold conditions'.<sup>81</sup> These conditions can relate to the charity's total income, or its total assets, as defined further in any Regulations.

Even if a charity is found to be exempt, it can still actively request to complete the registration process and be added to the register.<sup>82</sup>

The Bill specifies that these Regulations, when first made, will be subject to the affirmative resolution procedure.<sup>83</sup> This means that the Assembly must approve the draft Regulations before they are actually made and come into force. Once a registration threshold is in place, the DfC can change the level of that threshold by drafting further Regulations, which are only subject to the negative resolution procedure. This means that they come into force unless the Assembly actively votes to annul them.<sup>84</sup>

### **Issue for consideration**

Clause 3 would empower the DfC to change the level of any charity registration threshold under the negative resolution procedure. Are Members content with using this consent procedure for this change? Would Members prefer use of the affirmative procedure, where the Assembly must actively approve any change to the registration threshold before it comes into force?

<sup>78</sup> Art. 9A(5) of the 2008 Act, as drafted by clause 2 of the Charities Bill as introduced

<sup>79</sup> Art. 9A(6) of the 2008 Act, as drafted by clause 2 of the Charities Bill as introduced

<sup>80</sup> NIA OR 29 June 2021, p14

<sup>81</sup> Art. 16A(1) of 2008 Act, as drafted by clause 3 of the Charities Bill as introduced

<sup>82</sup> Art. 16(2B) of 2008 Act, as drafted by clause 3 of the Charities Bill as introduced

<sup>83</sup> Art. 16A(7) of 2008 Act, as drafted by clause 3 of the Charities Bill as introduced. See also [www.niassembly.gov.uk/assembly-business/covid-19-statutory-rules/faq/#Affirmative](http://www.niassembly.gov.uk/assembly-business/covid-19-statutory-rules/faq/#Affirmative), retrieved 19<sup>th</sup> July 2021

<sup>84</sup> See <http://www.niassembly.gov.uk/assembly-business/covid-19-statutory-rules/faq/#Neg-Res>, retrieved on 19<sup>th</sup> July 2021

b) Information required to determine a charity's status

Clause 3 permits the Regulations to require an unregistered charity, or a 'person connected'<sup>85</sup> with it, to provide timely evidence which allows the Commission to determine whether it is exempt.<sup>86</sup>

c) Lesser requirements on exempt charities

Clause 3 finally permits the Regulations to apply different legal requirements to registered charities and exempt charities. For example, Regulations could permit 'exempt charities' to be excluded from any financial reporting requirements.

The clause also ensures that any offences which exist in the context of registered charities can be replicated in the context of exempt charities. For example, under the 2008 Act, it is an offence to 'knowingly or recklessly' provide the Commission with false information.<sup>87</sup> The Bill permits Regulations to create 'similar or corresponding offence(s)' which would apply to exempt charities.

### Issues for consideration

The primary reason for this Bill as a whole is the drafting of the 2008 Act, where the absence of a specific power to delegate to staff resulted in the judicial decisions outline in section 4. Given this:

- Are the DfC and Members content that Clause 3 – establishing the framework for a registration threshold and associated measures – does everything required, at the level of primary legislation, to ensure a robust and functioning threshold can be established in Regulations and in practice?
- What is the DfC's rationale for adding Clause 3 to this Bill, which otherwise exclusively responds to issues raised by the High Court and Court of Appeal decisions?<sup>88</sup> The Minister for Communities has advised that the existence and level of any threshold will be considered as part of the broader Review of Charity Regulation.<sup>89</sup> Given this, would it be more prudent to include this sort of clause in any future legislation which follows that Review?

### Clause 4: Short title and commencement

Clause 4 establishes that when enacted, the legislation may be cited as the Charities Act (Northern Ireland) 2021.

It further provides that the legislation will come into operation at the end of the day on which it receives Royal Assent.

<sup>85</sup> The Bill defines a 'person connected' with a charity as a trustee, officer, agent or employee of the organisation; someone who holds property on behalf of the organisation, or its trustees; or someone who engages in fund-raising activities for the organisation's benefit. See art. 16B(5) of 2008 Act, as drafted by clause 3 of the Charities Bill as introduced.

<sup>86</sup> *Charities Bill 2021*, clause 3

<sup>87</sup> *Charities (Northern Ireland) Act 2008*, art. 25

<sup>88</sup> See section 4 above

<sup>89</sup> NIA OR 29 June 2021, p14

## 7 Financial implications of the Bill as introduced

Throughout the paper, ‘issues for consideration’ have been detailed. To supplement these, this section addresses potential financial implications arising from the Bill. It considers one-off and recurrent costs and savings which may arise from the Bill’s provisions.

### a) Scheme of Delegation

The primary operational change made by the Bill is giving Commission staff explicit authority to take decisions and actions, within a Scheme of Delegation developed by the DfC. This may result in the following:

#### Costs

- **Development.** DfC drafting of a Scheme, statutory consultation with the Charity Commission and any further consultations with the charity sector could result in associated one-off costs.
- **Procedures.** As and when a Scheme is published, the Charity Commission will need to develop or adapt policies and procedures, to ensure the Scheme is delivered effectively in practice. This may result in initial one-off costs, and potentially some recurrent costs.<sup>90</sup>
- **Training.** As and when a Scheme is published, Charity Commission staff will need to be trained on Scheme implementation, including the roles of various staff grades. This will result in an initial cost, and potentially some smaller recurrent costs as new staff are trained and/or existing staff receive refresher training.
- **Information technology (IT).** The Charity Commission has advised that pending an agreed Scheme, the IT underpinning the Commission systems will have to be redesigned.<sup>91</sup>
- **Decisions reserved to the Commission.** Commissioners making decisions in specific reserved areas will result in increased cost, compared to the pre-2019 environment, of Commissioners’ time.<sup>92</sup>

In developing this paper, RaISe sought information on costs of managing staff decision-making structures from regulators in England & Wales, Scotland and RoI. The OSCR advised that in Scotland:

*Given that almost all decisions are made by staff, it’s hard to separate specific costs relating to the administration of staff decision-making powers from the rest of the running costs of the organisation.*<sup>93</sup>

The CCEW similarly advised that in England & Wales, the Commission does not ‘retain information of specific costs associated with administering staff decision-making powers.’<sup>94</sup>

<sup>90</sup> Email correspondence between RaISe and the Charity Commission for Northern Ireland, 19<sup>th</sup>-22<sup>nd</sup> July 2021

<sup>91</sup> As cited immediately above

<sup>92</sup> As cited in footnote 97

<sup>93</sup> Email correspondence between RaISe and the Scottish Charity Regulator, 14<sup>th</sup>-25<sup>th</sup> May 2021

<sup>94</sup> Email correspondence between RaISe and the Charity Commission for England & Wales, 25<sup>th</sup>-28<sup>th</sup> June 2021



At the time of publication, the RoI Charity Regulator had not responded to a RaISe request for information.

Finally, the Charity Commission for Northern Ireland has advised that it cannot specify costs until the details of a Scheme of Delegation are finalised, so it is not possible to attach precise figures or robust estimates to these costs.<sup>95</sup>

### Savings

- **Efficiency.** Currently, in the context of the Court judgments detailed in section 4, the Commission is delivering decisions at a reduced capacity via decision-making committees.

If a Scheme of Delegation enables staff to take many of the actions they were taking prior to those Court judgments, costs associated with operation of the Commission and its decision-making committees could be reduced.

#### b) Refreshed appeal rights

As detailed in section 6 above, where the Bill makes a decision lawful and the affected party has the right to appeal, these appeal rights are refreshed.<sup>96</sup> An appellant is granted six weeks, from the date the Bill receives Royal Assent, to lodge an appeal.

This may result in the lodging of a number of additional appeals with the Charity Tribunal of Northern Ireland, in the immediate wake of the Bill's enactment. These would carry associated one-off costs of public administration.

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<sup>95</sup> Email correspondence between RaISe and the Charity Commission for Northern Ireland, 19<sup>th</sup>-22<sup>nd</sup> July 2021

<sup>96</sup> See p18, specifically section (b)

## 8 Concluding remarks

The Charities Bill is primarily a technical piece of legislation, which responds to the High Court judgment of May 2019. It aims to retrospectively make most Charity Commission staff decisions lawful. It further aims to restore the legislation which underpins the Commission, permitting it to operate in a manner which includes limited performance of Commission functions by staff.

After the 2008 and 2013 Acts, this Bill is in effect the Executive and Assembly's third attempt at ensuring functioning legislation to permit effective regulation of the charity sector. Given this, Members may wish to consider several issues raised in the paper above. In summary:

- Why did Northern Ireland legislation – either in the original 2008 Act, or in the 2013 Act which sought to correct flaws in the 2008 Act – not include a provision permitting Commission staff to perform Commission functions? Why did it differ from prevailing legislation across Great Britain and the RoI in this regard?
- Are Members content with the way in which the Bill makes most Commission staff decisions lawful in retrospect – whilst excluding certain actions from this provision – and extending appeal rights where applicable?
- Are Members content with the way in which the Bill allows for delegation of functions to Commission staff – that is, within DfC direction, and with certain functions reserved to the Commission alone?

In addition to this primary aim of restoring the legislation, the Bill also empowers the DfC to create a charity registration threshold by Regulations. If created, this would exempt certain charities from registration, and enable these charities to be subject to lesser accounting and reporting requirements.

This provision appears unrelated to the Bill's primary aim. If the Bill is passed, this power to create a threshold would be granted to the DfC in advance of any decision by the Minister as to whether a threshold should exist, or what form it should take.<sup>97</sup> Detailed consideration of the existence and nature of any registration threshold is currently under consideration by the Independent Review of Charity Regulation.<sup>98</sup>

If the registration threshold is retained in this Bill and enacted, it is possible that further amendment may be required following the deliberations and recommendations of the Independent Review. Members may therefore wish to consider if it would be more prudent to instead include a registration threshold in any future legislation, arising from the Independent Review. This may permit the DfC, Commission and charity sector more time to fully consider the level and nature of any threshold, before enabling legislation is passed.

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<sup>97</sup> NIA OR 29 June 2021, p14

<sup>98</sup> As cited immediately above