



Northern Ireland
Assembly

Committee for Communities

Report on the Charities Bill

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Report: NIA 115/17-22 Committee for Communities.

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Powers and Membership

The Committee for Communities is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Communities and has a role in the initiation of legislation. The Committee has power to:

- consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Communities. Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

Paula Bradley MLA (Chairperson)

Kellie Armstrong MLA (Deputy Chairperson)

Andy Allen MBE MLA

Stephen Dunne MLA

Mark Durkan MLA

Ciara Ferguson MLA

Paul Frew MLA

Áine Murphy MLA

Aisling Reilly MLA

List of Abbreviations and Acronyms used in this Report

CCNI: Charity Commission for Northern Ireland

DfC: Department for Communities

ECHR: European Convention on Human Rights

RaISe: Northern Ireland Assembly Research and Information Service

NICVA: Northern Ireland Council for Voluntary Action

CCEW: Charity Commission of England & Wales

OSCR: Office of the Scottish Charity Regulator

CIOs: Charitable Incorporated Organisations

AG: Attorney General

NIPSO: Northern Ireland Public Services Ombudsman

DoJ: Department of Justice

RoI: Republic of Ireland

Executive Summary

1. This report sets out the Committee for Communities' consideration of the Charities Bill.
2. The Bill consists of four clauses and amends the Charities Act (Northern Ireland) 2008, with retrospective effect, to render lawful previous decisions taken by the staff of the Charity Commission for Northern Ireland (CCNI) in reliance on unlawful delegation in cases where doing so is consistent with rights under the European Convention on Human Rights and the decision is not unlawful on other grounds.
3. It also provides for a power of delegation to Charity Commission for Northern Ireland (CCNI) staff going forward, provided the functions to be delegated are set out in a Scheme of Delegation approved by the Department, but will stipulate that certain functions can never be delegated to staff. In addition, the Bill will insert a power to enable the Department for Communities to introduce a registration threshold at some future point, via regulations, subject to the draft affirmative procedure.
4. The Committee requested evidence from interested organisations and 19 written submissions were received from a range of organisations and individuals.
5. The Committee also took briefings from the NI Assembly's Research and Information Service (RaISe), from Departmental Bill Officials and considered additional letters and papers throughout the process as necessary.
6. In total, the Committee held 12 oral evidence sessions with interested organisations and individuals and explored the wide range of issues raised in the written and oral evidence with Officials from the Department for Communities (DfC), through oral briefings and written responses. The Committee then considered and deliberated on the provisions of the Bill and the proposed amendments at three meetings, concluding with its formal Clause by Clause consideration on 25 November 2021.

7. The Committee aimed to scrutinise this Bill to ensure as far as possible it protects charities, protects rights and restores the pillars of the regulatory framework for charities – as per the overarching objectives of the Department for the Bill.
8. Throughout its consideration of the Bill, the Committee focused on any potential unintended consequences, as Members understood that retrospective legislation is an unusual course of action and the Committee wished to be assured that the Department had taken sufficient legal advice on the matter.
9. The body of this report starts with a summary of the Committee’s consideration of the context in which it considered the Bill, as the Bill is one part of the way forward in dealing with the impacts of the McBride Judgement of 2019 and then the subsequent Court of Appeal Judgement in February 2020.
10. The McBride Judgment found that the 2008 Act, taken together with section 19 of the Interpretation Act (Northern Ireland) 1954, did not provide express or implied power for the CCNI to delegate its functions to staff acting alone. The Court of Appeal then dismissed an appeal by the CCNI against the McBride Judgment, thus rendering over 7000 decisions, orders and directions made by Commission staff unlawful.
11. The impacts of the judgments are threefold:
 - (i) the need to deal with past decisions taken by staff, which were deemed unlawful and to mitigate the potential harm to the affected charities;
 - (ii) the need to look at how the CCNI discharges its decision-making functions in the future; and
 - (iii) the wider regulatory framework and the role of the CCNI within it, including its relationship with stakeholders.
12. The third impact, in particular, encompassed wider issues that were brought to the Committee’s attention, through its written and oral evidence, and led to a number of its recommendations.

13. As it weighed up the evidence before it, the Committee also considered that alongside this Bill are two wider pieces of work also dealing with the impacts of the judgements (i) The [Independent Review of Charity Regulation](#) (commenced in January 2021); and (ii) The [Independent Counsel](#) review of complaints arising from the Commission's regulation of the charities, Lough Neagh Rescue Ltd and Disabled Police Officers' Association of Northern Ireland.
14. The Committee determined early in its considerations that it was not within the remit of the Committee Stage of the Bill to consider any individual cases or complaints linked to the court judgements.
15. The Committee had sincerely hoped that the report of The Independent Review Panel would have been published while it was considering this Bill, as its work does overlap in places with several actions permitted by the Charities Bill.
16. However, this was not to be the case and the Committee wish to put on the record that its full consideration of the issues was hampered by that fact, as it was only able to hear from the Panel in closed session and could not discuss the issues raised in any of its public sessions of deliberations.
17. The Committee did, however, consider the wider issues that were highlighted to it through its evidence and made a number of specific recommendations in that regard.
18. After hearing all its evidence, deliberating on the many issues raised and taking advice from the Assembly Bill Office and querying many issues with Departmental Officials, the Committee agreed to request that the Department make a number of amendments to the Bill in Clauses 1 and 2, but agreed Clauses 3 and 4 as drafted. The Committee was pleased that these were taken forward as Ministerial amendments to existing clauses with one matter dealt with through a Ministerial assurance.
19. With regard to Clause 1, the Committee sought the addition of sections 22(3) and 23(1) to Clause 1(5) of the Bill and also to extend the timeframe for appeals, arising from this Bill, to the Charity Tribunal from 42 to 91 days.

20. The Minister agreed to take these forward and, in addition, after further consideration, also determined that the administering of an oath or the requirement to make and subscribe a declaration of truth under s22(4) should also be included in Clause 1(5).
21. The Committee also requested consideration of extending the timeframe for *all appeals* to the Charity Tribunal from 42 days to 91 days, either in Clause 1 or through a consequential amendment to the Bill. The outcome was that this could not be effected through this Bill. The Committee accepted a Ministerial assurance on the matter that the Officials would work with Officials in the Department of Justice with a view to a possible future amendment to the Tribunal Rules.
22. With regard to Clause 2, the Committee queried why the Bill was limited to s33-36 in 9A(2) and requested that section 37 also be included. The Minister agreed to make the amendment so that the making of orders under section 37 is included in Clause 2, 9A(2) meaning they can never be delegated to staff.
23. The Committee also requested that the Scheme of Delegation be subject to a public consultation and the Minister has determined that the Bill be amended to state that such a consultation will be undertaken on the first Scheme.
24. With regard to Clause 3, the Committee sought no amendments after receiving clarification that the drafting was broad enough to ensure that the threshold can be widely considered in the future (pending the recommendations of the Independent Review Panel) and be set either by 'income' or 'income plus assets', should the Minister take the power provided for in the Bill to set such a threshold.
25. The Committee enjoyed a productive working relationship throughout the Committee Stage with the Department for Communities' Officials, the Minister, the Assembly's Bill Office and Assembly Secretariat.

Introduction

26. The Charities Bill (NIA Bill 27/17-22) was referred to the Committee in accordance with Standing Order 33 on completion of the Second Stage of the Bill on 30 June 2021.
27. The Minister for Communities made the following statement under section 9 of the Northern Ireland Act 1998: “In my view the Charities Bill would be within the legislative competence of the Northern Ireland Assembly.”
28. The stated purpose of the Bill is to amend the Charities Act (Northern Ireland) 2008 (the Act), with retrospective effect, to render lawful previous decisions taken by the staff of the Charity Commission for Northern Ireland (CCNI) in reliance on unlawful delegation in cases where doing so is consistent with rights under the European Convention on Human Rights (ECHR) and the decision is not unlawful on other grounds. It will also provide a power of delegation to CCNI staff going forward provided the functions to be delegated are set out in a Scheme of Delegation approved by the Department, but will stipulate that certain functions can never be delegated to staff.
29. In addition, the Bill will insert a power to enable the Department for Communities (the Department, DfC) to introduce a registration threshold at some future point, via regulations, subject to the draft affirmative procedure.
30. During the period covered by this Report, the Committee considered and deliberated on the Bill and related issues at three meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1. Also included in this Appendix are the Minutes of Proceedings highlighting the discussions the Committee undertook prior to introduction.
31. The Committee had before it the Charities Bill (NIA 27/17-22) and the Explanatory and Financial Memorandum that accompanied the Bill. Following the introduction of the Bill on 21 June 2021, the Committee wrote to key stakeholders and inserted public notices in the Belfast Telegraph, Irish News, and News Letter seeking written evidence on the Bill by 12.00 p.m. on 3rd September 2021.

32. A total of 19 organisations and individuals responded to the request for written evidence and a copy of the submissions received are included at Appendix 3.
33. The Committee commissioned the Northern Ireland Assembly Research and Information Service (RaISe) to provide research on the content and implications of the Bill. These papers are included at Appendix 7.
34. After the Bill completed its Second Stage on 29 June 2021, the Committee arranged to take oral evidence on the Bill from relevant stakeholders and the Department. These sessions took place on 9, 16, 23 and 30 September 2021; 7 and 14 October 2021. The Committee heard from the following bodies:
 - Charity Commission for Northern Ireland
 - Office of the Scottish Charity Regulator
 - Community Foundation Northern Ireland
 - Northern Ireland Council for Voluntary Action (NICVA)
 - Rural Community Network
 - Charity Law Association
 - Ulster Society of Chartered Accountants
 - Mr Robert Crawford
 - Mr Trevor McKee
 - Social Enterprise NI
35. The Committee also had discussions with Departmental Officials on key issues of the Bill at its meetings on 21 October 2021, 11 and 18 November 2021. Committee deliberations on the clauses and formal Clause by Clause scrutiny of the Bill were completed at the meetings on 21 October 2021, 11 and 18 November 2021. The formal Clause by Clause consideration took place on 25 November 2021. The relevant Minutes of Evidence of these meetings are included at Appendix 2.

36. The Committee considered its draft report at its meeting on 2 December 2021. The Committee agreed its report on the Bill and ordered that it should be printed.

Context of the Bill

37. As part of its considerations, the Committee reflected on the wider context and implications of Bill, including Charity Regulation in NI, in its neighbouring jurisdictions and the specific court judgments leading to this Bill, through a number of sources, including the research paper it commissioned from the Northern Ireland Assembly Research and Information Service (RaISe), (see Appendix 5) and written and oral evidence from the CCNI, the Department for Communities and the Scottish Charity Regulator.
38. The contextual information in this section is largely extracted from the RaISe paper.
39. Before 2008, charity law in Northern Ireland (NI) was contained largely in the Charities Act (Northern Ireland) 1964 and the Charities (Northern Ireland) Order 1987. In the same decade, legislation was passed in Scotland (2005) and England & Wales (2011), which updated and centralised charity legislation in those countries. Fresh charity legislation was also development in the Republic of Ireland (2009).
40. In this context, the Northern Ireland Assembly passed new charity legislation in 2008. The Charities Act (Northern Ireland) 2008 deals broadly with charity regulation, and was intended to update and eventually replace the 1964 Act. The 2008 Act provided for:
 - Definition of ‘charity’ and ‘charitable purpose’, including a public benefit test;
 - Creation of the Charity Commission for NI 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

- Articles 8 and 9 of the 2008 Act detail the functions and duties of the CCNI.
41. In 2010, legal counsel for the CCNI identified technical issues with an element of the 2008 Act, which meant that it could not lawfully register charities. To remedy this, the NI Assembly enacted a further Charities Act in 2013. 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. The passage of the 2013 Act enabled the CCNI to begin processing charities’ applications and add successful applicants to the charities register.
 42. In England and Wales, the Charities Act 2011 is the current legislation and established the Charity Commission of England & Wales (CCEW). It updated and harmonised the provisions of previous legislation. Schedule 1 of the 2011 Act established the status and structure of the CCEW and permits the CCEW to appoint staff and regulate its own procedure, in a way which is comparable to current NI law. However, paragraph 8 granted the CCEW the explicit power to delegate its functions to authorised staff:
 43. In Scotland, The Charities and Trustee Investment (Scotland) Act 2005 established a new regulatory system for charities in Scotland, including an updated definition of ‘charitable purposes’ and a new ‘public benefit’ test. It also established the Office of the Scottish Charity Regulator (OSCR).
 44. Schedule 1 of the 2005 Act established the status and structure of the OSCR and permitted the OSCR to appoint staff and regulate its own procedure, in a way which is comparable to current NI law. However, paragraph 6 gave the OSCR explicit power to delegate its functions to authorised staff:
 45. The Charities Act (Ireland) 2009 is the current legislation governing the charitable sector in the Republic of Ireland. It states how a ‘charitable organisation’ is defined, and establishes the Charities Regulator. The Charities Regulator currently has twelve members who oversee the work of the Regulator’s senior management team. Similarly to the law in England & Wales,

and Scotland – Article 21 of the Act explicitly allows for the delegation of functions to the Regulator’s staff

46. In this regard, the current NI law is different than the law in England & Wales, Scotland and RoI as each of those jurisdictions has explicit provision in its legislation, allowing staff to deliver the functions of the charity regulator.
47. On 16th May 2019, the High Court of Justice in NI ruled on three appeals against actions of CCNI staff. The Court found that the 2008 Act, taken together with section 19 of the Interpretation Act (Northern Ireland) 1954, did not provide express or implied power for the CCNI to delegate its functions to staff acting alone and that the CCNI had no express or implied power to delegate its functions to staff.
48. The Court of Appeal then 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.
49. This leads to two of the key purposes of the Bill before the Committee, as outlined above:
 - To amend the Charities Act (Northern Ireland) 2008 with retrospective effect to render lawful previous decisions taken by the staff of the CCNI in reliance on unlawful delegation, in cases where doing so is consistent with rights under the ECHR and the decision is not unlawful on other grounds; and
 - To provide a power of delegation to CCNI staff going forward provided the functions to be delegated are set out in a Scheme of Delegation approved by the Department, but will stipulate that certain functions can never be delegated to staff.

Recommendations

Context of the Recommendations

50. The Committee aimed to scrutinise this Bill to ensure as far as possible it protects charities, protects rights and restores the pillars of the regulatory framework for charities – as per the overarching objectives for the Bill of the Department.
51. In considering its recommendations, the Committee has remained mindful of the context of the Bill and that it is only one part of the way forward in dealing with the impacts arising from the McBride Judgement of 2019 and then the subsequent Court of Appeal Judgement in February 2020.
52. The McBride Judgment found that the 2008 Act, taken together with section 19 of the Interpretation Act (Northern Ireland) 1954, did not provide express or implied power for the CCNI to delegate its functions to staff acting alone.
53. The Court of Appeal then dismissed an appeal by the CCNI against the McBride Judgment, thus rendering over 7000 decisions, orders and directions made by Commission staff unlawful, including the Charity Register. All decisions, except the opening of statutory inquiries, had been taken by staff as both the CCNI and the Department believed that it was lawful for them to do so at the time.
54. The evidence considered by the Committee covered issues from across the threefold impacts of the McBride Judgement and subsequent Court of Appeal Judgement:
 - **One** - the need to deal with past decisions taken by staff, which were deemed unlawful and to mitigate the potential harm to the affected charities;
 - **Two** - the need to look at how the CCNI discharges its decision-making functions in the future; and

- **Three** - the wider regulatory framework and the role of the CCNI within it, including its relationship with stakeholders.
55. The third impact in particular led to the wider issues that were brought to the Committee's attention, through its written and oral evidence, and therefore to a number of its recommendations.
56. Also, alongside this Bill were two wider pieces of work also dealing with the impacts of the McBride Judgement and subsequent Court of Appeal Judgement:
- The Minister for Communities commissioned an [Independent Review of Charity Regulation](#) in Northern Ireland (NI) in January 2021. The review has been considering the Charities Act (NI) 2008 (the Act) and the roles of the CCNI and the Department thereunder. **The Independent Review has not yet been published**, however, its work does overlap in places with several actions permitted by the Charities Bill – including any creation of a Scheme of Delegation and a charity registration threshold; and
 - In February 2021, the CCNI appointed an [Independent Counsel](#) to conduct a review of complaints arising from the Commission's regulation of the charities, Lough Neagh Rescue Ltd and Disabled Police Officers' Association of Northern Ireland. Independent Counsel has now published a full report. The Committee determined early in the Committee Stage of the Bill that it was not within the remit of the Committee Stage of the Bill to consider any individual cases or complaints linked to the Court Judgements.

Recommendations Specific to the Bill:

Communication with Charities

57. Regarding the proposals in the Bill, specifically with regard to fresh appeal rights for those Charities impacted by the Bill, the issue of communication to Charities was raised on a number of occasions in the evidence, particularly as it

is understood that the CCNI would not have contact details for all Charities affected:

58. **The Committee recommends that, once Royal Assent is given, the Department issues bespoke and clear communications, via a suitable range of media, to alert the various sectors impacted by the Act and direct them to the appropriate guidance materials.**

Appeals to Charity Tribunal – Ministerial Assurance

59. The Committee had originally been keen to pursue an amendment to the Charity Tribunal rules, via this Bill, on extending the time for all appeals to the Charity Tribunal from 42 to 91 days.
60. However, after discussions with the NI Assembly Bill Office and the Departmental Officials on the practicalities and legal issues around such an amendment, it has accepted an assurance from Minister Hargey that she has directed her Officials to engage with the Department of Justice on the potential for an amendment to the Charity Tribunal Rules on extending the time for all appeals to the Charity Tribunal from 42 to 91 days.
61. The Committee has also accepted that the Minister will write to the Minister for Justice to request her support and to ask that this work is prioritised in her Department.
62. **The Committee recommends that this engagement continues, at pace, until it reaches a conclusion on the matter and the Committee for Communities will seek updates on the progress.**

Future Threshold for Registration (Clause 3)

63. The Committee concluded during its deliberations that it was content that the drafting of Clause 3 is broad enough to ensure that any future threshold for registration can be determined on the basis of Income or Income plus Assets. However, it wishes to note that no charity falling below the threshold should be exempt from registering with the CCNI if the charity feels it would be beneficial to do so in terms of its funding streams and/or accountability.

64. **The Committee recommends that any consultation on such a threshold covers the matter of choice of registration for those charities who may be exempt in law by virtue of how the threshold is set in future regulations.**

Wider Recommendations:

Independent Review of Charity Regulation

65. The Committee is aware that a key aim of the Independent Review is to examine whether the CCNI'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.
66. As several actions permitted by the Charities Bill – including any creation of a Scheme of Delegation, and a charity registration threshold, were considered in greater detail by this Review, there is clear overlap with the Committee Stage of the Bill.
67. As the Report is not yet published, the Committee was only able to hear from the Review Panel in a closed session. Although the points raised by the Panel were of relevance to the Committee's work and Members did consider them in closed sessions of deliberations, it is a source of frustration and annoyance to the Committee that the report was not published in time for the Members to discuss these in public session or include any of the discussion within this Committee Bill Report. At the time of the Committee agreeing this report, the report of the Panel had not yet been published.
68. **The Committee recommends that the Minister publishes the Report of the Independent Review of Charity Regulation as soon as is practicable in order that a fuller picture is available to the NI Assembly, charities, the public and funding or grant awarding bodies on the way forward for Charity Regulation, outside the actions made possible by this Bill.**

Future of Charity Regulation

69. Based on the balance of evidence it considered:

The Committee recommends that the Minister considers the wider framework of Charity Regulation going forward in terms of robustness, matched with proportionality, and moving towards a more collaborative approach between the Regulator and charities.

Charitable Incorporated Organisations (CIOs)

70. The Committee heard evidence from a number of organisations regarding the fact that CIOs have not yet been introduced in Northern Ireland, despite the fact that the powers to do so are included in the Charities Act 2008 but have not yet been commenced.
71. The Committee understands that Part 11 and Schedule 7 of the 2008 Act introduces the concept of the CIO in Northern Ireland; makes provision for their registration; the conversion of charitable companies into CIOs; the amalgamation of CIOs; and allows the Department to make regulations to make further provisions.
72. The Department highlighted to the Committee that CIOs are not Charities so are outside the scope of this Bill but that the Independent Review has heard considerable evidence on this matter and it will likely be dealt with in its recommendations.
73. **The Committee recommends that the matter of CIOs is actioned as soon as is practicable, bearing in mind any recommendations from the Independent Review on this matter, as Northern Ireland remains at a disadvantage in this regard.**

Choices for Non-Profit Organisations

74. The Committee were concerned about a degree of ambiguity around whether all non-profit organisations are charities and therefore must register with the Charity Commission, or whether they have other options. However, Members were assured by Officials that Clause 3 does not have a bearing on whether an organisation is a charity or not as all organisations which are set up with exclusively charitable purposes and who meet the requirements as set out in

the Charities Act (NI) 2008, are required by law to make themselves known to the CCNI and to register as a charity. Based on this:

75. **The Committee recommends to any newly establishing non-profit organisation that it carefully considers the choices to be made, at the point of establishment, as to whether being a charity is in the organisation's best interests in terms of how it operates, in terms of claiming tax exemptions, availing of funding which is only available to charities, attracting public donations or whether it can deliver its aims better by operating as a non-profit organisation.**
76. **The Committee recommends that there is a need for better education and stronger communication around these options and choices for non-profit organisations from the Department. However, it accepts the Officials' advice that the matter was raised during the engagement on the Review of Charity Regulation and that there will be clear recommendations in that regard when the Review Report is published.**

Section 167 Charities

77. During the Committee Stage, Members discussed 'Section 167' organisations and their desire to be registered as Charities in Northern Ireland. The Committee understands that Section 167 of the Charities Act 2008 deals with organisations which are established in other jurisdictions but also operate in NI and that this section of the Charities Act 2008 has not yet been commenced.
78. **The Committee recommends that this matter is dealt with as soon as is practicable but accepts that the Minister has asked the Panel conducting the Independent Review of Charity Regulation to examine this issue and that she will consider the Panel's recommendations on this issue.**

Consideration of the Bill

79. The purpose of the Charities Bill is to amend the Charities Act (Northern Ireland) 2008 (the Act) with retrospective effect to render lawful previous decisions taken by CCNI staff in reliance on unlawful delegation in cases where doing so is consistent with rights under the European Convention on Human Rights (ECHR) and the decision is not unlawful on other grounds. The Bill contains four clauses.
80. The Committee's consideration of the clauses and schedules of the Bill was informed by the written and oral evidence it received. The Committee received 19 written submissions in response to its call for evidence and heard oral evidence from ten of those organisations
81. The Committee also had ongoing engagement with Departmental Officials throughout its consideration of the Bill and explored the issues raised in evidence during departmental evidence sessions and by correspondence.
82. A summary of key evidence points on each clause and the Committee's consideration of the issues raised in this evidence is set out below.

Clause 1: Actions of Commission staff treated as Commission actions

83. Clause 1 makes provision with retrospective effect to make the majority of decisions taken by Commission staff lawful and provide fresh appeal rights for those decisions in accordance with Schedule 3 to the Act.
84. Key issues raised in evidence in relation to Clause 1 were:
 - Retrospective legislation being unusual and potentially having unforeseen consequences;
 - The potential for a decision that might have been deemed unlawful, had it been challenged prior to this new legislation, to become lawful by default;

- There were other potentially unintended consequences highlighted such as:
 - the potential for adverse consequences for charities and the third sector if, for example, a decision (made illegal by the judgements) had in fact originally been a beneficial effect in that it had protected a charity; and
 - the unlawful exercise of a power by staff prior is made lawful by the Bill but, following public consultation, is not included in the Scheme of Delegation as one of the powers which the Department believes it proper for the Commission's staff to exercise.
- There was general support for any decisions still subject to ongoing legal proceedings not being subject to the clause to protect individuals' rights and that the certain matters set out in Clause 1(5) to not be subject to Clause 1(2), rendering those decisions and orders unlawful.
- The overwhelming majority of respondents felt that 42 days was too short a period for an appeal. Proposals were made that the time be extended to three months with one respondent asking Committee to consider somewhere between three to six months;
- With further regard to appeals, it was queried whether the 42-day period should run concurrently, as is the case under the Charity Tribunal Regulations. It was highlighted to the Committee that it would be more useful to allow for an appeal to the Charity Tribunal after the result of the decision review as this would be more practical for charities and avoid proceedings in the Charity Tribunal having to be withdrawn;
- A proposal was made to suggest that Clause 1(5) matters that are not already the subject of the matters outlined in Clause 1(3) and (4) should also be afforded the refreshed appeal rights rather than being excluded. There were also a number of proposals from legal bodies to remove 1(5) from the Bill because of that issue;

- It was also proposed by one individual that all decisions, orders, directions that are made retroactively lawful are made appealable in this Bill, even if not specifically allowed in Schedule 3 of the 2008 Act;
- Legal bodies also queried why section 37 “Power to direct application of charity property” was not included at Clause 1(5)(e);

Clause 2: Power of Commission to delegate to staff

85. A summary of key issues raised in evidence in relation to Clause 2 were:

- The overwhelming majority of respondents felt that the power of CCNI to delegate to staff certain functions that are listed in a Scheme of Delegation is appropriate.
- The position in Scotland was highlighted to the Committee by the Office of the Scottish Charity Regulator (OSCR) - The 2005 Act in Scotland expressly grants the power to authorised employees of OSCR to carry out any function on behalf of the regulator. No specific exceptions are provided for. The delegation of functions by OSCR’s board is covered by a Schedule of Delegation. Under this, almost all regulatory decision-making is carried out by employees but provides for the Board to retain decision making in novel or contentious cases.

86. A range of comments were made in the evidence on the proposed delegation including:

- The CCNI needs to be able to respond to charities in a timely way and for that reason there is a necessity to delegate to staff;
- CCNI staff should be able to make certain decisions on their own to ensure that charities are able to receive decisions in a timely manner;
- The power to delegate or the Scheme of Delegation should allow its staff to operate effectively and efficiently;
- Registration decisions only should be delegated;

- Additional resources should be provided to the CCNI to allow for this delegation;
- A proposal was made that there should be a process for staff to "refer" decisions to another committee/board where they feel support is required in borderline cases;
- In relation to the Department making the Scheme of Delegation, there were views for and against who should make the Scheme, comments included:
 - Requiring the Scheme to be made by the Department works against the general principle that CCNI should be independent of ministerial control;
 - The Department is responsible for charity legislation and for the oversight of CCNI, it would seem appropriate that it would make the Scheme of Delegation; and
 - A proposal for it to be done on a co-design basis, collaborating with the sector and in particular with CCNI and its staff.

87. There were also some very specific comments from legal bodies expressing reservations about the proposals in the new 9A(2) to exclude certain matters from the powers of delegation and a proposal was made that delegation should be kept possible in certain of these excluded situations such as in:

- matters of extreme urgency: for example, if serious wrongdoing in a charity is reported to the Commission they should be able to open an inquiry immediately rather than having to wait for the next board meeting;
- there is also a proposal that most of the powers in sections 33 to 36 need to be capable of being used urgently at time, without waiting for a full CCNI Board meeting.

88. It was also highlighted to the Committee that it seemed ‘odd’ to require full Board consent for the powers under sections 33 to 36 but not require it to use the powers under section 37, which are potentially wider.

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

89. Key issues raised in evidence in relation to Clause 3 included:

- The majority of respondents felt that it was appropriate to have this power in the Bill, with some noting that a timetable needs to be in place for the introduction of Clause 3 to ensure that this is implemented as soon possible.
- The UK-wide Charity Law Association, which established a working party to look at the Bill, noted that its Members had differing views - some members of the working party felt that the proposed regime of “exempt charities” in the Bill would work well. Other members of the working party felt that any organisation established in NI and making claims to charitable status should be registered with the Commission, but with less weighty accounting and reporting required for smaller charities, similar to the situation in Scotland.

90. The comments from those opposed to a threshold for registration included:

- Such a threshold could mean a whole regime of charities in NI exempted from registration and other oversight by CCNI and allow a tier of organisations which are charities in law, not registered but yet still potentially subject to certain aspects of the 2008 Act;
- A proposal was made to retain the system under which all organisations claiming charitable status must seek to register with the CCNI under s.16(2) of the 2008 Act, and require them to file accounts, but exempting those below a certain income level from the requirement to have their accounts independently examined;

- Exemptions from regulation require more careful consideration, so this should not be rushed through as an add-on to a bill that urgently needs to rectify the 'unlawful delegation' issue;
- A simpler system for bodies that are very small in size and income may be a suitable compromise with an option to apply to register if the institution wished to have charity status; and
- The level of threshold should be decided in collaboration with the wider sector, taking into account the views of individual charities and also representative bodies.
- Respondents were asked to provide further comments on the list of matters that the regulations on the threshold will cover and comments included:
 - Whether a threshold should be based on income alone or whether it should be based on income and assets;
 - Reporting requirements need to be proportionate to the size of the organisations and to take into account whether it is a wholly volunteer led organisation or whether there are paid staff;
 - Accounting and reporting thresholds need revised to help relieve the burden on small registered charities; and
- The Department should take this opportunity to bring into force that part of the legislation which provides for Charitable Incorporated Organisations.

Clause 4: Short title and commencement

91. There were no comments offered on the short title and commencement Clause.

Committee Deliberations on the Clauses of the Bill

92. The Committee commenced its deliberations on the clauses of the Bill at its meeting on 14 October 2021 and continued the deliberations at its meetings on 21 October 2021, 11 November 2021 and 18 November 2021.
93. The Committee Chairperson informed Members that this was their opportunity to go through the clauses and comprehensively review with the Department any issues raised by stakeholders or by Committee Members. It was also the opportunity to ask for clarification on how the Bill addressed these concerns and any additional action that the Department intended to take on the back of the evidence the Committee had received.
94. The following information is a summary of the key points discussed and agreed during the deliberations. The full discussions can be read in the Minutes of Evidence of the relevant meetings.

Clause 1: Actions of Commission staff treated as Commission actions

95. At its meeting on 14 October 2021, the Committee was briefed by Officials from the Department who informed Members that the use of retrospective legislation in this Bill certainly did not appeal to the Minister and that it would not appeal to any Minister, unless the legal advice was that there was no other plausible route open to address the issues arising from the judgements that were presented to her.
96. The Department takes the view that Clause 1 simply returns charities to the position that they enjoyed prior to the judgements, with certain caveats and carve-outs. Departmental Officials advised that Senior counsel, the previous Attorney General (AG) and the current AG had been consulted, and that the determination was that retrospective legislation was required. Anything short of that would not provide validation of previous decisions made by CCNI staff, and charities in receipt of those would remain in an uncertain position because of decisions that were made and things that they acted upon. An administrative fix was not possible because fresh decisions would require proper scrutiny, not rubber-stamping as a job lot, and then they would only be applicable from the date of the fresh decision.

97. The Officials told Members that the protections in the Bill — Clause 1(3) to 1(5) — are the result of the carve-outs when the Department went through categories of decisions. The advice of the Attorney General to the Department was that it was neither realistic nor necessary to examine every single individual decision, but rather to look at the categories of decisions and the potential impact that those decisions could have on someone.
98. Fresh appeal rights are included in the Bill, but they are not afforded to decisions that remain unlawful because they are not affected by the Bill. Those decisions will proceed unhindered to their natural conclusion by way of the courts. For those decisions that remain unlawful, any charity challenged on its actions on the foot of an unlawful order can seek to rely on section 175 of the Charities Act (Northern Ireland) 2008, as it believed the order was lawful when acted upon.
99. The Committee questioned Officials about the possibility of extending appeals to 91 days. The Officials stated that they could, possibly, amend the Bill for this but would need to advise the Department of Justice that that this was its intention and would need to seek its views because it is the owner of the tribunal rules, and its views would be needed on any unintended consequences or the impacts that that might have.
100. The Committee then asked the Officials for a breakdown of the total of all decisions taken by the CCNI by category to assist in comprehending how decisions were made. As well as this, Members asked if the Department had explored any other way of producing a Bill that could satisfy the aims of this Bill without creating retrospectivity.
101. The Officials stated that the retrospection is needed to provide certainty to charities. For instance, they will have been given consents by the CCNI to change their articles of association or to extend the scope of what they did. Those consents are unlawful, so there is great uncertainty about the effect of that. The Officials further stated that it is important that registration is made lawful retrospectively because many of these charities will have acted on the basis that they were registered charities. Some funding is available only to registered charities, so they will have made funding applications on the basis of

that registration. There are also potential issues around tax exemptions that were claimed due to their registration. The Officials stated that the charity sector wants the Bill to go through in this mandate and that all of the legal advice that they had received was that there was no other route.

102. Members ended the initial discussion on Clause 1 by asking for a list of sections that cannot be appealed but on which decisions were made and the Officials agree to provide this information for consideration at a future meeting.
103. At its meeting on 21 October 2021, the Committee continued its deliberations on the clauses of the Bill.
104. Officials informed the Committee that the Department accepts that the retrospective nature of the legislation is unusual but that a lot of work had been done to ensure that there were no unforeseen consequences and that is what led to the inclusion of Clause 1(3) to 1(5) and the Department felt that the fresh appeal rights provide an extra layer of safety.
105. On the idea that there is the potential for a decision that might have been deemed to be unlawful, had it been challenged prior to the legislation to become lawful by default, the Officials highlighted that the Bill aims to return charities to the position that they were in prior to the McBride judgement, with certain caveats. It is impossible to know what may have been deemed unlawful if it had been challenged; the fact being that it was not challenged. The vast majority of decisions were uncontroversial and largely welcomed by charities.
106. The only decisions to remain unlawful are those where potential ECHR impacts were identified if the Bill were to make them lawful, or where a schedule 1 committee makes a fresh decision and making both decisions lawful could have created uncertainty. It does not necessarily follow that the actions of a third party taken on foot of an order that is to remain unlawful are, themselves, unlawful. If challenged, third parties could seek to rely on section 175 of the 2008 Act, in that they believed that the order was lawful at the time and were, therefore, obliged to follow it. There is also a facility for trustees who are concerned about personal liability to apply to the commission for a waiver under section 91 of the Act.

107. There is no legal impediment to decisions being made unlawful and a further scheme determining that commissioners should, in fact, take some of those decisions. Any scheme of delegation can be reviewed from time to time, and the functions to be delegated can be changed.
108. On the 42-day appeals period, the Officials stated that it must be remembered that the Department does not expect that there will be many fresh appeals due to the passage of time and the small number of appeals that emerged when the decisions were first taken. The Department of Justice had been contacted and it expressed no concern, in principle, with extending the time frame for appeals *arising from this Bill* from 42 to 91 days, for instance.
109. On Clause 1(5) and not having appeal rights, the Department's intention in designing Clause 1(3) to 1(5) was that the Bill should not interfere with decisions in any way so that they can proceed to their natural conclusion, via the courts if necessary, thereby protecting the rights of individuals under the ECHR.
110. That being the case, no fresh appeal rights are considered necessary, as the orders remain unlawful and can be challenged. With regard to providing fresh appeal rights where they are not provided in Schedule 3 to the Act, the Department would provide a table of decisions as requested by the Committee.
111. The Department reiterated that the aim of the Bill is to return charities to the position that they were in prior to the McBride judgement. Therefore, to introduce appeal rights where none previously existed possibly goes beyond the scope of the Bill. The number and nature of such decisions, and the passage of time, during which charities would have acted upon them and moved on, does not warrant it. If the Department was to consider that approach, it would need to consider what should be appealed or reviewed, who should have those appeal rights, and the powers of the tribunal if such an appeal were successful.
112. Section 37 is not included in Clause 1(5) because the commission took no decisions under section 37 prior to the McBride judgement. With regard to CIOs, there already exists a power in the Charities Act (Northern Ireland) 2008 to introduce CIOs through regulations. Therefore, the Department feels it is not necessary to include a power or provisions in the Bill in that regard.

113. The Committee asked the Officials about the increase to the 42-day appeal window and whether the Department would take this forward as an amendment. The Officials advised that they would put it to the Minister for consideration but that it was now clear to them from the evidence that the Committee has taken that the Department's current position on the days allowed was insufficient.
114. At the meeting on 11 November 2021, the Committee was informed by Departmental Officials that, in relation to its query as to why Section 37 was not included at Clause 1(5)(e), the Officials had previously advised that it was not required because the Commission had taken no decisions under that section of the Charities Act 2008. Officials now confirmed that the Committee's understanding was correct and that this was illustrated in the "Table of Decisions" provided to the Committee following the briefing session on 14 October 2021.
115. In respect of queries raised by the Committee concerning section 22(3) and section 23(1) of the Charities Act (Northern Ireland) 2008, it was the case that there are no rights of appeal under section 22(3) and that the rights of appeal in respect of section 23(1) of the Act are limited to those who were served with the order to provide the information, but do not extend to those whose information may have been disclosed as a result of the order.
116. Whilst retrospective validation of these actions by the Commission has the potential to engage a person's Convention rights in terms of Article 8 (Right to a private and family life) that does not mean that the validation will breach those rights. Nevertheless, no matter how speculative, the validation does potentially remove a legality argument for third parties which they could have utilised to argue that any processing of the data was unlawful as it did not have a statutory footing. The validation of decisions taken under sections 22(3) and section 23(1) could therefore hinder a third party's potential recourse to the Information Commissioner, which is the appropriate mechanism for challenging such decisions, as opposed to the Charity Tribunal. The Minister therefore determined that s22(3) and 23(1) should be added to Clause 1(5) of the Bill, which is in keeping with her previously stated policy that the Bill should do nothing that could impinge on the rights of individuals under ECHR.

117. In addition, the Minister had further considered and now determined that the administering of an oath or the requirement to make and subscribe a declaration of truth under s22(4) should also be included in Clause 1(5). These decisions and orders will therefore remain unlawful and thus free to be challenged by way of the Information Commissioner, the Northern Ireland Public Services Ombudsman or the Courts, if those affected wish to pursue this route.
118. In relation to extending the timeframe for appeal rights, the Committee had asked if the Department would be willing to extend the timeframe for appeals from 42 to 91 days and Officials confirmed that the Minister had decided that there was a justification for extending the timeframe for appeals arising from this Bill and will amend the timeframe accordingly from 42 to 91 days.
119. On the issue of creating new appeal rights where none previously existed, Officials told the Committee that Clause 1(7) of the Bill provides fresh appeal rights for decisions made lawful by the Bill where they are provided for in Schedule 3 of the Act. Fresh appeal rights are not provided where they did not previously exist, nor for decisions that are to remain unlawful. A number of regulatory decisions, orders or directions where decisions taken prior to McBride will be made lawful will have no appeal rights, however, other protections are provided and no adverse ECHR impacts are evident.
120. There are no evident ECHR issues for any of the other decisions made lawful but which do not currently have appeal rights. If new appeal rights were provided where they did not previously exist, for those decisions being retrospectively validated by the Bill, but not provide those same appeal rights for all decisions arising from the same provisions going forward, it would create a disparity in the way in which similar decisions are treated before and after Royal Assent. This could give rise to a legal challenge.
121. The Committee had previously queried whether Charitable Incorporated Organisations were outside the scope of the Bill. Officials informed the Committee that there is no requirement to include the introduction of CIOs in the Charities Bill as the powers are already contained within the Charities Act, but have yet to be commenced. However, a CIO must be registered with the CCNI,

regardless of its size and income, so that it is not subject to regulation by Companies House.

Clause 2: Power of Commission to delegate to staff

122. The Departmental Officials informed the Committee that Clauses 2 and 3 provide for powers to introduce certain matters at a later date that will be subject to full consultation. The Minister's view was that she was lobbied to move to quickly to fix a situation that was not of the charities' making. The charities wanted certainty. Therefore, any specific policy changes will be subject to a full consultation before any determination will be made, and that is staff delegation, the limited power of delegation and any future thoughts about a threshold. That has not been determined; it is in there as something that has been lobbied for very hard, and the Minister thought that it would be good to take those powers now because, if it comes through in consultation that stakeholders want to see a regulatory framework, the Minister would have that power.
123. Members questioned the Officials on Clause 2(5) which states:
- "Before making a scheme under sub-paragraph (3), the Department must consult the Commission."
124. The Committee asked why consultation would be limited to just the CCNI and not the public. The Officials stated that it was standard to consult the arm's-length body on a scheme. However, the Minister has determined that, before such a scheme would be brought in, it would be consulted on. The Officials did not feel that it was necessary to put this in the Bill because doing so would mean that any amendment to the scheme, even a minor one, would require full public consultation again. If the commission were to take on major new powers that required a total rewrite of the scheme, the Department would undoubtedly fully consult at that time. Members were content to hear that, if a scheme were to be required, there would be a public consultation and asked if the Department might look to include wording in the Bill that could secure that and also safeguard the Department when it came to any future amendments. The Officials agreed to consider this.

125. At the meeting on 21 October 2021, the Officials informed the Committee that the Minister had recognised that statutory inquiries and the resultant orders can have an impact on individuals. Representations had been made to her and to the Committee on the damage that they can cause to reputation and to ability and confidence to continue to act in the charities sectors. The Minister had, on balance, taken the view that, in order to restore public confidence in the process here, such decisions would be better taken by commissioners or a committee established by the commission under schedule 1 to the Act.
126. The Committee asked the Officials if Clause 2 is about ensuring public confidence then why was it being limited to sections 33 - 36. The Officials stated that it is because the powers in sections 33 - 36 are those that can have the biggest impact on individuals and have resulted in the vast majority of appeals to the Charity Tribunal.
127. Officials further stated that the difficulty of including extra powers in the Bill is that you lose a certain amount of flexibility. It is by no means a given that anything that is not in the Bill will be delegated to staff as this will be subject to a full public consultation, and it could be that section 37, for instance, would not be delegated to staff. In the Officials' view, the more that can be put in the Scheme of Delegation, the greater the flexibility. Sections 33 - 36 are there because of the particular circumstances that have arisen from those orders.
128. Members informed the Officials that they were concerned that delegating to staff could allow one person to make a decision but that, if it cannot be delegated, the commissioners would make the decision. There was concern that one member of staff can take the decision to remove property from a person whereas, if section 37 is included, the group of commissioners could make the decision. The Officials stated that they could certainly examine this possibility and include section 37 in paragraph 9(A)(2), if that was the Committee's request.
129. At the meeting on 11 November 2021, the Departmental Officials addressed the Committee's query, in relation to Section 37, as to why when sections 33 - 36 have been included in Clause 2, 9A(2) as powers that can never be delegated to staff, section 37 has not. The Officials stated that the Minister recognised that

statutory inquiries and the resultant orders taken under sections 33 - 36 can have an impact on individuals in terms of their reputation and their ability to continue to act within the charity sector.

130. Although such orders can be made by staff in other jurisdictions throughout the UK and Ireland, the Minister took the view that in order to restore confidence in the process here, such decisions are better taken by the CCNI or a Committee established by it under Schedule 1 of the Act. The Officials further stated that the fact that section 37 is not included in Clause 2, 9A(2) does not make it inevitable that it will be delegated to staff but allows greater flexibility by allowing it to be considered for inclusion in any future Scheme of Delegation which would be fully consulted upon.
131. The Officials told Members that, in the interests of addressing the Committee's concerns there would be some justification in including it in Clause 2, 9A(2). Section 37 decisions could have major implications for the charity and its trustees and this is reflected in the fact that section 38 of the Act treats section 37 orders in the same way as those of sections 33 - 36 in terms of notification of the Commission's decision and a statement of the Commission's reasons for making it. The Minister therefore agreed to amend the Bill so that the making of orders under section 37 is included in Clause 2, 9A(2) meaning they can never be delegated to staff.
132. In regards to sections 33 - 36 powers, the Committee had raised a concern that including the powers under sections 33 - 36 in Clause 2, 9A(2) would mean that the CCNI could not respond with urgency if the need arose. The Officials stated that these powers are rarely used and it was the Department's view that decision making Committees established by the CCNI could have emergency procedures in place to deal with matters of urgency which has been the case since the McBride Judgment. The Minister believes that such powers should not be delegated to staff given the particular issues that have previously arisen in NI.
133. In relation to a public consultation on the Scheme of Delegation, the Committee had previously asked if the Bill could stipulate that a public consultation would be undertaken on any potential Scheme of Delegation. The Officials informed

the Committee that the Minister had determined that the Bill be amended to state that such a consultation will be undertaken on the first Scheme.

134. In relation to the proposal to extend the timeframe for all appeals to the Charity Tribunal from 42 to 91 days, the Officials told the Committee that, generally, that could not be effected through this Bill as the Charity Tribunal Rules are the responsibility of the Department of Justice. The Minister would, however be content that Officials consider this matter further and work with Officials in the Department of Justice with a view to a possible future amendment to the Tribunal Rules. The Committee asked the Officials to reconsider this issue and to seek advice as to whether this could be addressed through a consequential amendment. The Officials agreed to report back to the Committee on the possibility of a consequential amendment to the Bill.
135. At the meeting on 18 November 2021, the Committee was briefed by Officials from the Department of Justice (DoJ) in relation to a Committee proposal to extend the timeframe for appeals to the Charity Tribunal from 42 to 91 days.
136. The Officials informed the Committee that it might be helpful for Members to consider the decision of *Burke v the Charity Commission for Northern Ireland*, which had just been issued by the president of the Charity Tribunal on 15 November 2021. At the end of that judgement, the president, looked at out-of-time applications to his tribunal.
137. The president looked particularly at a couple of cases that had been decided in the upper tribunal in England and Wales, which is the appeal level of the tribunals structure in that jurisdiction. The president noted that those are persuasive and not necessarily binding on the Charity Tribunal in Northern Ireland. However, he went on to say that the lessons learned from those cases are useful for his consideration of any cases in front of the tribunal.
138. The DoJ Officials had looked at statistics from 2016 - 17 through to 2021 - 22 of out-of-time cases. In that period, there had been 12 cases in which there had been a time-point issue. The time was extended in six of those cases. Some of the 12 cases had been dismissed for reasons other than being out of time; perhaps the person who applied did not have standing to apply.

139. In relation to the Committee's wider interest in existing time limits and rights of appeal to the tribunal the Officials stated that, from a DoJ perspective, they suspected that there might be an issue with the scope of the Bill. The Officials wondered about delay in the justice system, which they took very seriously. Although increasing time limits for applying to the tribunal would not necessarily create delay in the civil justice system per se, it could well cause delay and would probably cause delay for the individuals who are involved in that case.
140. The Officials suspected that the longer people have to apply to the tribunal, the longer they will take to make that application. On the wider point of extending existing time limits, the Officials wondered whether it would be helpful to carry out a consultation or, at least, consider consulting as there may be other stakeholders with views.
141. The Officials also stated that they wondered whether 91 days was the right limit and that there may be other limits to consider; they just did not know at this point. The DoJ Officials were also wary about the impact on other tribunals if existing time limits were extended and if that might call into question whether they should look at time limits for other tribunals as some tribunals have tight time limits for applications e.g. mental health. If somebody is detained in a psychiatric setting, the priority is to get the case moving swiftly. This would also apply to special educational needs cases as well and these cases have tight time limits for applications because that is a big chunk out of a child's school year when, perhaps, the child has not gone into a school environment while waiting on a decision. On the wider issue of looking at time limits for existing applications to the tribunal, the Officials wondered whether there was merit in looking at having a slower time.
142. The Committee asked the Officials about the 12 cases, six of which had been extended and what percentage of the appeals cases those 12 were. The Officials informed Members that, out of 34, they had 12 cases that were out of time, which equated to just short of one third. Six of these were extended, four were dismissed on the time issue and two out of that 12 were dismissed for other reasons: the time issue was secondary, perhaps, to their not having standing with the commission to lodge an appeal on behalf of the charity. Therefore, about 50% of the extensions were granted on a time basis.

143. Members then asked whether DoJ if it were minded to make an amendment, could that be done through secondary legislation. The DoJ Officials told the Committee that they have responsibility for making the secondary legislation and that the draft primary legislation that the Committee was scrutinising actually amends the DoJ's secondary legislation which they have the power to amend as the vires sits with DoJ.
144. The Committee then asked whether the Justice Minister had been consulted on this yet and if there was any particular view as to whether DoJ would be minded to carry out a consultation and take this forward. The DoJ Officials told the Committee that they had briefed their Minister but wanted to explore it more with the Committee to see whether there was a really strong feeling that a consultation would be useful. The Officials could not offer any guarantees about the timescale. However, if the Committee identified that as worthy of scrutiny and it would be useful for DoJ to carry out that consultation, they suggested that the Committee writes to their Minister and they would certainly give that due consideration. The Officials from the Department for Communities also gave assurance that Minister Hargey had been very clear in her commitment to explore such a consultation with DoJ and that she would be happy to write to the Justice Minister.
145. The DfC Officials further informed the Committee that the concerns of DoJ and, in particular, those of the president of the Charity Tribunal had been put to Minister Hargey who remained of the view that this was, potentially, outside the scope of the Bill, while recognising that scope was a matter for the Speaker. The Minister had flagged up the issue that Bills were not generally used to amend secondary legislation, and that Justice could, of course, effect any necessary change through an amendment. The Minister was therefore not minded to extend the timeframe for appeals to the Charity Tribunal from 42 to 91 days.

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

146. At its meeting on 21 October 2021, the Committee was informed by Departmental Officials that Clause 3 does not arise directly from the judgements. Rather, it provides a power to introduce a registration threshold through regulations at some future point, if the Minister were minded to consider that policy change. The threshold has long been called for by some organisations in the voluntary, community and charity sector. The Minister had been lobbied on that, as had the Committee and that Officials gave an assurance that this is why it is in the Bill.
147. Like the Scheme of Delegation, such a change would require a full consultation to ensure that such a major change to the framework would be properly evidenced, after which the Minister could decide whether it would be appropriate. Crucially, that power would give the Minister the ability to respond quickly, without the need for a further Bill. In the way in which it is drafted, it is proposed that any subsequent regulations that the Minister brings would be subject, not just to full public consultation, but also to the draft affirmative procedure, which would allow for fulsome debate and scrutiny in the Assembly.
148. In drafting the clause, the Departmental Officials stated that it was mindful that the power would need to be wide enough to allow for a threshold to be introduced in a way that could address any other impacts arising from the Act. Clause 3 therefore introduces the new sections 16A to 16C to the 2008 Act.
149. The Committee asked the Officials if they envisaged that the consultation will allow charities to have a choice, if a threshold is brought in, over whether to apply, even if they are beneath that threshold. The Officials stated that the regulations certainly allow a charity that falls below any threshold to register voluntarily, if they want to do so. New section 16B enables the CCNI to seek whatever evidence is required from an institution in respect of a threshold. For instance, any charity that falls below the threshold will not have to produce an annual report and accounts to the CCNI, but it will still be subject to charity regulations, so, if a member of the public has a concern about a body, the

commission will have to determine, first, whether it falls within its jurisdiction. To do that, it will need to be able to request evidence from that body to determine whether it is a charity and whether, in fact, the CCNI has any jurisdiction over it. A concern about such a body would otherwise probably have to go to the police.

150. The Department did not envisage setting up a whole separate register of charities that fall below a threshold, but there needs to be a power for the CCNI to seek evidence from a body. For instance, again, a body might misrepresent itself as a charity that falls below the threshold. In such a case, if a member of the public were concerned about that, the commission would need to have the power to get the evidence from that body to determine, first, whether it was a charity and, secondly, whether it had misrepresented itself as a charity that fell below the threshold and therefore did not have to be registered.
151. At the meeting on 11 November 2021, the Officials informed the Committee that Members had previously stated that the Committee wanted to ensure that the drafting was broad enough to ensure that the threshold can be widely considered in the future, pending the recommendations of the Independent Review Panel and be set either by:
 - Income or income plus assets; and/or
 - By considering the option of a choice to register (either because a charity falls below the threshold or because it does not choose to register for a legitimate reason i.e. income should not necessarily be the sole reason).
152. The Officials confirmed that the power to make the required regulations was wide enough to allow for the threshold to be income only or income and assets and that any charity falling below the threshold could choose to be registered to avail of the benefits accruing from it. However, the regulations could not allow a charity above the threshold to choose not to register as the Act does not provide for a “legitimate” reason not to register and the policy intent in respect of the power relates solely to a registration threshold based on income or income and assets.
153. In relation to a specified timeframe for the introduction of the regulations, the Committee had previously asked if the Minister would be open to specifying a

timeframe in the Bill for the introduction of any regulations introducing a threshold, should the Committee support Clause 3 as drafted. The Officials stated that the Minister was not minded to do so as it was her belief that such an amendment, if accepted, would statutorily commit the Minister for Communities to introduce a registration threshold even if a future Minister did not wish to do so.

154. At the meeting on 18 November, Members asked if there was an option for organisations that have charitable purposes not to be registered as charities. The DfC Officials informed the Committee that this was not an option as, if an organisation's governing document makes it exclusively charitable, there was no provision in the Charities Act (Northern Ireland) 2008 for it to register voluntarily. If an organisation is exclusively charitable, the Act requires it to register. The only thing that the Bill does is to provide the power to introduce a registration threshold. If an organisation falls below that threshold, it can choose to register if it wishes. However, if it is above that threshold, and it is exclusively charitable, it must put itself forward to the CCNI for registration. The Officials further informed Members that the Bill was not about changing the fundamentals of the registration process but was only about the possibility of bringing in a registration threshold at some future point.
155. Members discussed with Officials the choice that a non-profit organisation should make at the time it is established as to whether or not it would benefit the organisation to be a charity and that there seemed to be some confusion as to why a non-profit organisation may or may not wish to become a charity.
156. Members expressed significant concern that the report of the Independent Review Panel had not been released in time to be considered by the Committee as it deliberated on this Bill. As several actions permitted by the Charities Bill – including any creation of a Scheme of Delegation, and a charity registration threshold, were considered in greater detail by this Review, there is clear overlap with the Committee Stage of the Bill.
157. As the Report is not yet published, the Committee was only able to hear from the Review Panel in a closed session. Although the points raised by the Panel were of relevance to the Committee's work and Members did consider them in

closed sessions of deliberations, it was a source of frustration and annoyance to the Committee that the report was not published in time for the Members to discuss these in public session.

158. The Committee was left in the situation where it would have to produce a report on a Bill including Clauses 2 and 3, but that the Committee could not include reference to the discussions it had with the Panel nor include reference to its published report. Members asked if this meant that the Minister could, as a result of the independent report, bring forward other changes to the Bill.
159. The Officials informed the Committee that what the Independent Panel was trying to say was that, out-with this legislation, it was about educating the wider non-profit sector and all of us, as stakeholders and owners of the regulatory framework, on the options and choices therein. The Officials assured the Committee that this clause would not impact that at all and that it would just allow for a future threshold which would be consulted on.

Clause by Clause Scrutiny of the Bill

160. Having considered the written and oral evidence received on the Bill, the Committee undertook its formal Clause-by-Clause consideration at its meeting on 25 November 2021 – see Minutes of Proceedings in Appendix 1 and Minutes of Evidence in Appendix 2.
161. Information on the Committee's deliberations on the individual Clauses in the Bill and additional provisions can be found in the previous section of this report.

Clause 1 - Actions of Commission staff treated as Commission actions

162. The Committee was content with the clause as amended by the Department.

Clause 2 - Power of Commission to delegate to staff

163. The Committee was content with the clause as amended by the Department.

Clause 3 - Regulations exempting charities from registering by reference to thresholds

164. The Committee was content with the clause as drafted by the Department.

Clause 4 - Short title and commencement

165. The Committee was content with the clause as drafted by the Department.

Links to Appendices

Appendix 1: Memoranda and Papers from the Department for Communities

[View Memoranda and Papers supplied to the Committee by the Department](#)

Appendix 2: Memoranda and Papers from Others

[View Memoranda and Papers supplied to the Committee by the Department](#)

Appendix 3: Minutes of Proceedings

[View Minutes of Proceedings of Committee meetings related to the report](#)

Appendix 4: Minutes of Evidence

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Appendix 5: Written submissions

[View written submissions received in relation to the report](#)

Appendix 6: Research Papers

[View Research Papers produced by the Assembly's Research and Information Service \(RaISe\) in relation to the report](#)

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