



Department for

Communities

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Response to the Consultation on a Prospective Scheme of Delegation for Decision Making in the Charity Commission for Northern Ireland Consultation Survey Report

February 2025

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Executive Summary

The Department for Communities (the Department) launched a public consultation on a prospective Scheme of Delegation for decision making in the Charity Commission for Northern Ireland (the Commission) in March 2023.

The powers to introduce a Scheme were debated and agreed in the Northern Ireland Assembly as a core provision within the Charities Act (Northern Ireland) 2022 (the 2022 Act). In considering the Bill which became the 2022 Act, the Chairperson of the Committee for Communities commented that it was not viable to continue with the current decision-making system via committees, and given staff in charity regulators in other jurisdictions take decisions, clear decision-making powers for staff are needed. In bringing forward the 2022 Act, the Department was mindful of the *Obiter* comments in the February 2020 Court of Appeal Judgment in *McKee and Hughes (and others) v the Charity Commission for Northern Ireland*. This resulted in the provision for delegation via a Scheme of Delegation, as opposed to a blanket delegation power provided in legislation for some other public bodies. It was also agreed that any first scheme should be subject to formal consultation.

The Department engaged in a targeted pre-consultation exercise in May and June 2022, holding meetings with representative groups

from the sector and those who expressed views on delegation during the Independent Review of Charity Regulation.

The formal stage of consultation closed on 12 June 2023 with a total of twenty-seven responses, fifteen completed via the online questionnaire, seven in print version of the questionnaire and five written submissions. One late response was accepted by the Department, making a total of twenty-eight responses.

One of the sectoral representative groups the Department met during pre-consultation published its response to the consultation on its website and advised its members that it was content for them to respond to the consultation, copying all parts of its response. An allegation from another interested party that this group had invalidated the consultation by way of undue influence was received. The Department analysed the response published by the representative group against all other responses. Only two respondents out of 28 appear to have used the representative response as a template; however, these did not duplicate every answer and provided bespoke responses to particular questions, reflecting conscious consideration of the consultation. The Department is therefore content that the consultation process was not manipulated and remains valid.

Of the twenty-eight responses¹, fourteen were from those responding on behalf of organisations/representative bodies and fourteen were from individuals. Overall, sixteen respondents were in favour of the introduction of a Scheme of Delegation and twelve were against. Of those in favour, fourteen responses submitted on behalf of organisations/representative bodies and two were from individuals. All twelve responses indicating that they were not in favour were from individuals.

There was a clear split throughout the responses, with those who agreed with the introduction of a Scheme agreeing with the majority of the proposals presented in the draft Scheme. The individuals who were against a Scheme disagreed with most of the Department's proposals.

Those in favour expressed the view that a Scheme of Delegation would speed up processes for charities and bring the Commission's approach into line with other charity regulators, albeit with the protections provided for higher risk decisions in the 2022 Act. Those that were in favour were broadly content with the proposed format of a Scheme, as set out and with the decisions to be delegated, with suggestions for improvement made and considered by the Department.

Those that were not in favour, in most cases, cited the need for more time for the cultural changes recommended by the Independent Review of Charity Regulation to take effect and their belief that poor decisions had

been made by staff in the past. They also rejected any argument that the workload for Commissioners in carrying out all decision-making functions of the Commission was excessive, pointing to the Court of Appeal Judgment in respect to McKee and Hughes (and others) v the Charity Commission for Northern Ireland. They stated their belief was that the execution of functions by a committee established in accordance with Schedule 1 to the Charities Act (Northern Ireland) 2008 (the 2008 Act) was operating effectively.

All responses to the consultation have now been considered. The Department recognises the strongly held views of individuals opposed to delegation in any form. However, the Department believes that the protections afforded in the 2022 Act, which are restated in the Scheme of Delegation; the ongoing work to implement the recommendations of the Independent Review of Charity Regulation; the Commission's Internal Review mechanism; and the appeal and review rights to the Charity Tribunal, will effectively seek to address the concerns of those who are not in favour of a Scheme of Delegation.

Taking these protections into account and the opportunity for decisions to be made in a more cost effective and efficient manner, at the appropriate level; together with the support for the Scheme from organisations which work with thousands of Northern Ireland charities and understand the needs of the sector, the Department has decided that the introduction of a Scheme

1 One written response received from a representative group indicated support for the Scheme but concluded that, as it is a diverse and objective group, it would not be possible to submit a collective response to the consultation. As a result, the Department has only included it as agreeing on the general question on the appropriateness of a Scheme and has included them as having no view on all other questions.

is in the wider interests of the charity sector. The introduction of a Scheme is in line with the recommendation from the Independent Review of Charity Regulation and will enhance Commissioners' capacity to address matters of a strategic nature. The Department would highlight an observation from one responding organisation that it had seen a clear diminution of service post the High Court ruling in *McKee and Hughes (and others) v the Charity Commission for Northern Ireland* when the decision-making Committee system was adopted.

The Department is persuaded that the adoption of a Scheme of Delegation will likely enhance decision-making efficiency within the Commission for the benefit of charities, as well as realising cumulative value for money of public funds. In certain circumstances, decisions may be provided to charities up to five weeks earlier than currently achieved through the Committee process².

The Department has therefore concluded that a Scheme of Delegation should be introduced as provided for by the 2022 Act, and that:

- the draft Scheme of Delegation should be amended to take into consideration the issues raised during the consultation in terms of content and format³;
- the first Scheme of Delegation should be formally reviewed after two years with each subsequent revision reviewed every five years;
- the Scheme of Delegation may be reviewed at any time if deemed necessary, which will allow for any unforeseen issues to be addressed in a timely manner.

2 The Commission estimates registration decisions can be taken on average 36 days quicker which is approximately a third of the time currently taken for decision through Schedule 1.

3 Following the consultation, the Department engaged with the Office of the Attorney General for Northern Ireland and made some further amendments to the draft Scheme in respect to the operation of an inquiry opened under section 22 of the Charities Act (Northern Ireland) 2008 (the 2008 Act). The Department acknowledges the assistance of the Attorney General in finalising the draft.

1. Introduction

- 1.1 In March 2023, the Department for Communities (the Department) launched a public consultation on a prospective Scheme of Delegation for the Charity Commission for Northern Ireland (the Commission). Currently, all decisions using the powers in the Charities Act (Northern Ireland) 2008 (the 2008 Act) are taken by a decision-making Committee established in accordance with Schedule 1 to the 2008 Act.
- 1.2 The Department decided to consult on a prospective Scheme of Delegation following the **Independent Review of Charity Regulation's** recommendation that a Scheme should be introduced in accordance with best practice and to free up Commissioners to address matters of a strategic nature. This, coupled with informal feedback from sectoral representatives that the current Committee system for all decision making led to delays for charities on all types of decisions on which they rely, persuaded the Department of the need to formally consult.
- 1.3 The Charities Act (Northern Ireland) 2022 (the 2022 Act) provides that the Department may make a Scheme of Delegation to allow some of the Charity Commission's decision-making functions to be delegated to staff, as they are in other jurisdictions and in line with international best practice.
- 1.4 In bringing forward the 2022 Act, the Department took cognisance of the Obiter comments⁴ in the February 2020 Court of Appeal Judgment in *McKee and Hughes (and others) v the Charity Commission for Northern Ireland*. Many public bodies established by legislation include an express power of delegation, allowing all of the functions of that public body to be delegated to its staff. The Department, however, did not choose to pursue this route, but instead sought a power for functions of the Commission to be delegated if stipulated in a Scheme of Delegation made by the Department following public consultation. In addition, and unique to Northern Ireland, the Department sought to stipulate that certain functions could never be delegated to staff. In passing the 2022 Act, the Northern Ireland Assembly agreed with this approach.
- 1.5 The consultation, which ran from 20 March to 12 June 2023, sought views from all interested individuals and organisations on the appropriateness of introducing a Scheme of Delegation for the Commission, and if deemed appropriate, to provide opinion on the structural outline and specifics of such a Scheme. The consultation document

⁴ '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.'

outlined that under the 2022 Act, certain decisions of the Commission would never be delegated, and whilst this places the Commission in a distinct position compared to other charity regulators, the Department considers this measure to be imperative in respectfully addressing the Court of Appeal's Obiter comments whilst restoring public trust and confidence in the regulatory system, which is critical for effective charity regulation.

1.6 The reason for proposing a Scheme is to ensure regulation is open, transparent, proportionate and efficient. The draft Scheme seeks to ensure that decisions given to trustees and their charities by the charity regulator are made appropriately, lawfully and at the right level within the Commission. It also seeks to ensure appropriate mechanisms are in place for appeal and review, whilst enabling the Charity Commission to provide the best quality and efficient service possible.

1.7 Evidence suggested that there could be a reduction in time taken for charities to receive decisions in certain circumstances if powers were delegated to staff. Lengthy delays in time taken to issue decisions has been the subject of ongoing criticism of the Commission. It is estimated

that waiting times for charities could be reduced by a third, up to approximately five weeks in some cases. This is because the adoption of the Committee system introduced an additional layer of scrutiny for even the most routine and low risk decisions, adding time and cost to every decision taken. Without increasing the frequency of Schedule 1 Committees, at an additional cost of between £554 and £1662 per Committee, this delay could not be addressed.

1.8 The Department believes that the introduction of a Scheme could additionally lead to cost savings which in the current budgetary climate it is prudent to realise where possible and where there is lowest risk to services, in order to protect the public purse.

1.9 This report summarises responses from the online survey, print versions and five written submissions. The consultation asked if it is necessary for some or any of the Commission's decisions or functions to be delegated, and if so, at what level they should be delegated. It proposed one of three possible levels for each decision to be taken for each of the powers of the Commission as set out in the 2008 Act, and also provided an opportunity for additional comment on a variety of areas.

1.10 The consultation was structured as follows:

- General Questions regarding the need for and format of a Scheme
- Appeal and Review Rights
- Powers reserved to the Commission
- Powers delegated to the Senior Management Team
- Powers delegated to the general staff (trained caseworkers supported by in-house legal team)
- Powers reserved to the Commission when further provisions of the 2008 Act are commenced
- Powers to be delegated to the Senior Management Team and staff when further provisions of 2008 Act are commenced

1.11 In total twenty-eight responses were received. This figure includes analysis of five written submissions received by the Department.

1.12 Throughout this report, where reference is made to ‘individuals’ this means those individuals who responded to the consultation.

1.13 50% of those who responded to the consultation described themselves as an individual, with 50% of respondents answering on behalf of an organisation/representative group. Eight of those who responded as individuals are members, former members or representatives of the same charity.

1.14 A summary of the main points raised is provided in each relevant section of the analysis, where appropriate.

1.15 Annex A lists all respondents who, having participated on behalf of organisations/representative groups or as individuals, consented to their participation being published. Annex B provides a selection of verbatim quotations (with names or organisational names removed) that were contained within the responses from some of the organisations and individuals, both in support of and opposed to the prospective Scheme. Annex C attaches the draft Scheme that was consulted on.

2. General responses

i. The Department asked:

What are your views on the proposal that a number of the Commission's functions should be delegated to staff in the interests of efficiency and effectiveness? (Please indicate whether or not you support a Scheme of Delegation and provide any comments you may have to support your answer).

Results of the consultation:

A total of twenty-eight responses were provided to this question, fifteen via the online questionnaire, eight via a print version of the questionnaire and five via written submission.

Sixteen (57%) of the respondents were in favour of the introduction of a Scheme of Delegation. Fourteen of these were from those responding on behalf of organisations/representative bodies⁵ and two were from individuals. The reasons cited in favour were that a Scheme was necessary for the efficient functioning of the Commission and to bring it into line with how other charity regulators operate. It was felt important that charities received decisions in a timely manner and that the current situation may not be sustainable in the longer term. Respondents noted it was important, however, that decisions which could

have a negative reputational impact on a charity or trustee should not be taken by staff acting alone. One organisation stated it had seen the impact waiting for decisions could have on charities and noted that the waiting time had greatly increased since the Commission had established decision making committees after the McBride Judgment. Decisions on registration and consents were provided as examples of the types of decision that charities required quickly.

All twelve (43%) of the responses that were not in favour of the introduction of a Scheme were from individuals⁶. The reasons cited were that the workload of the Commission did not warrant the introduction of a Scheme as the workload of Commissioners was minimal, the Court had rejected the argument that the workload was excessive for Commissioners to handle and senior staff within the Commission had not used the powers properly prior to the Judgments.

The Department's response:

The consultation suggests that the introduction of a Scheme of Delegation is in the wider interests of the charity sector as it is likely to reduce the time for decisions to be

⁵ One of the representative organisations which responded to the questionnaire published its response on its website and encouraged those members who were in support of the introduction of a Scheme to copy its response in responding to the consultation if they so wished. Two organisations responded with similar comments in their responses, but they were not identical for every question.

⁶ Of these, eight originated from members or previous members of a single charity, and most of these responses were identical.

provided to charities, whilst providing safeguards in the event that decisions are disputed. 57% of respondents were in favour of the introduction of a Scheme of Delegation, 88% of which were from those responding on behalf of organisations/representative groups. This indicates that there is majority support for the proposal.

The Committee system will continue to be in place for those decisions reserved to Commissioners in this Scheme and also those that cannot be delegated as set out in the 2022 Act. This is appropriate, given the clearly stated concerns of individuals who made up 43% of all respondents. The Department believes that it is not sustainable in the longer term to rely solely on a Committee for all decisions, particularly as additional parts of the 2008 Act are commenced. The current arrangement adopted after the McBride Judgment adds another layer to the decision-making process, adding a time delay and additional cost to all decisions taken. The Department is of the view that the safeguards and protections provided for in the 2022 Act, the Commission's internal review process which can address any disputed decision by Commissioners that were not involved in the original decision, and the Charity Tribunal review and appeal process afforded by the 2008 Act, offer sufficient mitigation and protections in relation to quality and disputed decisions. Only two of 572 casework decisions to agree schemes and consents for charities and two of approximately 6,500 registration

decisions taken by staff prior to the McBride High Court Judgment were contested in the Charity Tribunal, which indicates that charities were largely content with those types of decisions. The vast majority of decisions appealed related to those taken as a result of a section 22 inquiry. Further, the provisions of the 2022 Act mean that those decisions can never be taken by staff acting alone in future.

ii. **The Department asked:**

The proposed Scheme lists all regulatory decisions required of the Commission that can be delegated, along with which of three proposed groups could take those decisions i.e. 1) the Commission, which would include a decision-making Committee; 2) the Senior Management Team; or 3) staff generally, who are trained caseworkers, supported by an in-house legal team. Do you agree with this format for the Scheme?

Results of the consultation:

Of the twenty-three questionnaire responses received, twelve respondents disagreed, ten agreed, and one had no view regarding the format of the prospective Scheme. Eight of the nine organisations, all of which agreed to the introduction of a Scheme, also agreed with the proposed format for the Scheme, while twelve of the thirteen individuals disagreed.

Of the five written responses, three provided no view on the format whilst indicating general support for the Scheme with two

agreeing the overall format but with some minor suggested drafting changes (see question iii below).

Those in favour of a Scheme were therefore broadly content with the proposed format whilst some made suggestions as to how it might be improved.

All of those who were not in favour of a Scheme were therefore not content with the proposed format.

Overall, therefore, of the 24 respondents who answered this question (22 of whom responded via the online questionnaire and 2 who responded in writing), 50% indicated they were in favour of the format, and 50% were not in favour.

The Department's response:

The Department notes that those in favour of a Scheme are broadly content that the format of the Scheme provides the greatest transparency for all who seek a decision from the Commission. The Department is content that the proposed draft Scheme clearly sets out which level of personnel within the Commission will take any decision and the appeal and review rights arising.

The Department accepts that those who are not in favour of a Scheme will therefore not be content with the format of that prospective Scheme. Given that the majority of respondents were in favour of a Scheme, the Department is content that when the Scheme is introduced,

the benefits afforded by the proposed format will be recognised.

iii. The Department asked:

Is there some other format that you believe would deliver transparency as to the level decisions are taken? (Please provide comments to explain your answer).

Results of the consultation:

Three of the written responses proposed some minor drafting changes to the Scheme, suggesting that more information be included on the Commission's internal review process and its relationship with the Charity Tribunal process. They also suggested, to provide greater clarity:

- Insert a new heading '3. Operation of the Scheme' after clause 2. Definitions, and move paragraph 1.9 from the Introduction into this new section to explain how the new Scheme works.
- A new paragraph added to explain that the Annexes indicate which decisions may be reviewable or appealable to the Charity Tribunal and which are not so. It should also make it clear that any decision which is appealable can also be referred to the Commission for review under its internal Decision Review process.
- A query was raised about whether the wording "DEPARTMENT FOR COMMUNITIES" at the end of clause 2. 'Definitions' is a signature type insertion at the end of this part of

the Scheme before the Annexes appear.

- Set out a broad framework of publishable criteria as to how decisions are taken.
- The Scheme of Delegation provides that only the Commission can conduct an Inquiry or appoint a person to conduct and make a report to the Commission pursuant to s22(2). Clarity is required that a person who may be appointed may be a member of staff.
- It should be made clear within the Scheme that decisions cannot be delegated below the specified level but individual decisions can always be escalated to a higher level by exception, or Commissioners may decide not to delegate certain powers for any reason.
- In relation to Commissioners making decisions, it should also be very clear in the text of the scheme that staff can research and prepare the materials to facilitate such decisions.
- It would be helpful if the specific job titles of the Commission's Senior Management Team were not included, as it would mean the Scheme would need to be amended if a change was made to the structure of the Commission or posts were changed within its Senior Management Team.

- The first Scheme should be formally reviewed after 2 years with subsequent formal reviews every 5 years as proposed.

No other suggestions were provided.

Those who were not content with the format of the Scheme were also those who were not in favour of a Scheme at all. Reasons cited included that there was no need for a Scheme as Commissioners had minimal workload, Schedule 1 Committees were running effectively and that a Scheme of Delegation could in fact lead to increased costs in terms of finance and reputation due to the possibility of more decisions being challenged if taken by staff. Concerns were raised about the impartiality of in-house legal advice potentially leading to bad decisions.

The Department's response:

The Department welcomes the suggestions as to how the Scheme might be improved. The Department accepts that those not in favour of a Scheme will not be content with either its format or its content, but trusts that the making of the suggested amendments will aid the reader.

The Department will make the minor drafting changes suggested and will add a link to the Commission's internal review process for added transparency on how decisions are reviewed. The "DEPARTMENT FOR COMMUNITIES" at the end of clause 2 is a signature type insertion. Clarity will be provided in

the Scheme regarding appointment of a member of the Commission's staff under section 22(2). The Department will make it clear that decisions cannot be delegated below the specified level, but individual decisions can always be escalated, and that staff can conduct all research and prepare the materials to facilitate decisions taken by Commissioners or the Commission's Senior Management Team.

Whilst the Department does not consider that restructuring or the changing of the job titles of the Commission's Senior Management Team should arise very often, the Department will remove the job titles of Senior Management Team and instead include a link to the Commission's structure on its website.

The Department will conduct a formal review of the first Scheme 2 years after its introduction with subsequent formal reviews every 5 years as proposed.

iv. The Department asked:

The draft Scheme sets out that decisions for which there are no appeal or review rights to the Charity Tribunal should either be taken by the Commission or Senior Management Team. Do you agree with this proposal? (Please explain your reasoning).

Results of the consultation:

43% of respondents agreed, 11% provided no view on this proposal, and 46% disagreed.

Ten of the eleven respondents in favour of a Scheme who responded via the online questionnaire answered yes to this question. Reasons cited were that this would act as an extra safeguard and that senior staff or Commissioners were less likely to make a poor decision, which could not be overturned by the Charity Tribunal.

Of the five written responses, two agreed with this proposal and three expressed no view.

One individual in favour of a Scheme disagreed, stating that all decisions should be appealable to the Charity Tribunal.

All respondents who were not in favour of a Scheme disagreed with this proposal. One respondent referred to a direction issued by a member of staff which had no appeal rights and had to be addressed by way of a Reference by the Attorney General to the Charity Tribunal at a cost to the taxpayer. They opined that decisions taken by staff had been found deficient in application of the law or procedural unfairness. Some individuals held the perspective that staff had been found to be unable to undertake these functions properly in the past. They expressed the view that all decisions should be taken by qualified and accountable Commissioners. Some stated that all decisions should be appealable.

The Department's response:

The Department notes that 43% of respondents supported the principle that decisions that are not reviewable or appealable to the Charity Tribunal should be taken by the Commission or a Committee established under Schedule 1 to the 2008 Act or a member of SMT. The Department agrees that this provides an extra safeguard for those decisions that cannot be referred to the Charity Tribunal. They can of course be challenged via the Commission's internal review process.

The Department does not intend to change the appeal or review rights currently available through the 2008 Act at this stage. This matter was considered by the Committee for Communities during its deliberations on the 2022 Act. Members were in agreement that amendment to the appeal or review rights was not required.

v. The Department asked:

Do you think it would be useful to include information to indicate which decisions have appeal or review rights to the Charity Tribunal in any final Scheme of Delegation? (Please explain your answer).

Results of the consultation:

All respondents in favour of a Scheme who answered via the online questionnaire agreed this would be

a useful inclusion in the Scheme as it would be helpful in terms of clarity. It was stated that as much information as possible for trustees should be included to aid transparency and make it clear to charities what appeal or review rights exist before applying to the Commission.

Of the five written responses two agreed and three provided no view.

All respondents, bar one, who were not in favour of a Scheme (39% of the total respondents) did not think this would be useful as the legislation does not require it. One respondent felt that it would serve no practical purpose as Commission decision letters include information on appeal rights. The one respondent not in favour of a Scheme who agreed with the proposal did not provide any reason.

The Department's response:

The Department notes that 56% of respondents who provided a view were in favour of the inclusion in the Scheme of appeal and review rights to the Charity Tribunal. The Department considers that this is an easy way for charities, particularly small ones dependent on volunteers who might not be familiar with the 2008 Act, to know their rights in respect of any decision taken by the Commission or its staff. As previously stated, the Department will also include a link to the Commission's internal review process for greater transparency.

3. Powers to be reserved to Commissioners

The Department listed a number of decisions that it was proposed should be reserved for the Commission or a decision-making committee established in accordance with Schedule 1 to the Charities Act (Northern Ireland) 2008.

i. The Department asked:

If there are some powers listed which you disagree with being reserved to Commissioners, please provide:

- a) your reasoning as to why you believe these powers should be delegated, and
- b) indicate whether you feel they should be delegated to the Senior Management Team (SMT) or staff in general (trained caseworkers supported by the in-house legal team).

Results of the consultation:

Twenty-two of the twenty-three responses received via the questionnaire agreed that the powers listed should be reserved for Commissioners and not delegated to the Commission's Senior Management Team or staff in general except for the following:

- One individual against the Scheme disagreed that section 4 should be reserved.

- One organisation in favour of a Scheme expressed no view and one individual against a Scheme disagreed that section 52(1) should be reserved.
- One individual against a Scheme disagreed that section 53 should be reserved.
- Two individuals, one for and one against the Scheme, disagreed that section 86(4) should be reserved.
- One organisation in favour of a Scheme expressed no view that section 166(1) should be reserved.
- One organisation in favour of the Scheme expressed no view and one individual against the Scheme disagreed that section 166(4) should be reserved.
- One organisation in favour of the Scheme expressed no view and one individual against a Scheme disagreed that section 166(5) should be reserved.
- One individual against a Scheme disagreed that Schedule 1, paragraph 9 should be reserved.
- Two organisations in favour of a Scheme expressed no view that Schedule 4, paragraph 1(2) should be reserved.

- Two organisations in favour of a Scheme and one individual against a Scheme expressed no view and one individual against a Scheme disagreed that Schedule 4, paragraph 5(2) should be reserved.

Those individuals against the introduction of a Scheme commented that there should be no delegation.

One individual expressed the view that Commissioners would not be suitably qualified to make decisions and another stated that reserving powers to Commissioners would actually add to the work required of staff and that Commissioners would simply be signing off their work.

One organisation stated that the Senior Management Team could permit disqualification waivers for people with undischarged bankruptcy or alternatively, provided there was clear guidance in place, this work could be undertaken by caseworkers. One individual stated that the decisions should lie with trained staff, who will be researching the case in any event, and will have consolidated their experience in each matter to the point where they will give consistent and accurate decisions.

Of the five written responses:

- one agreed with the specific powers listed being reserved to the Commissioners and stated that they were not aware of any others.
- One suggested that the other powers in s32(1) and s174 should

be reserved for the Commission rather than delegated to its Senior Management Team.

- Three provided no comment.

The Department's response:

The Department notes that the majority of all respondents were in favour of the powers listed to be reserved to Commissioners. Whilst the Department notes that some respondents felt some of the decisions reserved for Commissioners could be delegated, the Department considers a cautious approach is applicable for this first Scheme and will therefore continue to reserve them. These types of decisions can be revisited once the first Scheme is formally reviewed.

ii. The Department asked:

In addition to those listed, are there any other types of regulatory decisions that you feel should be reserved to Commissioners?

If yes, please provide which powers you believe should be reserved to Commissioners and your reasons why.

Results of the consultation:

Nine of the respondents to the questionnaire who were not in favour of a Scheme nor delegation in any circumstances (32% of all respondents) believed that there were other types of regulatory decisions which should be reserved to Commissioners. They stated that all registration and closure of charities decisions should be reserved for Commissioners. Some

stated that staff had previously closed thousands of charities due to an unprofessional approach. Some were of the view that Commission staff had not yet undergone a cultural reset as recommended by the Independent Review of Charity Regulation.

Eleven of the questionnaire respondents did not feel there were any other types of regulatory decisions that should be reserved to Commissioners and three provided no view.

Of the five written responses, one suggested that the powers in s32(1) and s174 should be reserved for the Commission and not delegated to its Senior Management Team. All other written responses provided no view.

The Department's response:

The Department notes that the consultation indicates that a small majority of respondents are content with those decisions listed as being reserved for Commissioners. The Scheme allows for this to be reviewed at any time should evidence emerge that it is not appropriate.

The Department accepts that some individuals do not believe that any delegation is appropriate or necessary, however this must be balanced against the support for the Scheme from organisations and representative groups which work closely with charities and understand the needs of the sector. The Department is working with the Commission to ensure that the cultural changes required take place and that it becomes the enabling regulator envisaged by the Review. We will closely monitor developments in this regard and challenge where there are failings.

The Department is conscious that charities can close for a number of reasons and is not aware of conclusive evidence to support the assertion that thousands have closed as a result of the actions of Commission staff.

The Department is content to reserve the powers to Commissioners under section s32(1) where a Scheme could alter a provision made by the UK Parliament or NI Assembly and s174 which relates to enforcement orders, as suggested.

4. Powers delegated to Senior Management Team

The Department listed a number of decisions that it was proposed should be delegated to the Senior Management Team which consists of the Chief Executive, the Head of Inquiries and Compliance, the Head of Charity Policy and the Head of Corporate Services.

i. The Department asked:

If there are some powers listed which you disagree with being delegated to the Senior Management Team, please provide

- a) your reasoning as to why you believe these powers should not be delegated to the Senior Management Team, and
- b) indicate whether you feel they should be retained for decision by the Commissioners or delegated to staff in general (trained caseworkers supported by the in-house legal team).

Results of the consultation:

Questionnaire responses were mixed in relation to delegating certain functions of the Commission to the Senior Management Team, with organisations unanimously supporting the various proposals and the majority of individual respondents disagreeing with them. Some individual respondents did

show support for limited sections of the legislation being delegated to the Senior Management Team.

Of the eleven questionnaire respondents who support a Scheme of Delegation, all agreed that the majority of the powers listed should be delegated to Senior Management Team except for the following:

- One individual disagreed that powers under sections 26(4) and 29 should be delegated to Senior Management Team but suggested that these *cy-près* decisions could be made by caseworkers and combined with a right of appeal into the tribunal system. They stated that it was anomalous, relative to other UK jurisdictions, that this is not the case in Northern Ireland.
- One individual disagreed that powers under sections 65(2) and 70(3) should be delegated to Senior Management Team but provided no reasoning for this assertion.
- One organisation expressed no view on sections 26(4), 27(4), 27(6), 29, and 55.
- The same organisation and one other expressed no view on section 174.
- The same organisation and two others expressed no view on sections 175(5) and 176(1).

Of the five written responses, three agreed in general with the proposals, with two making suggestions for other powers to be delegated to Senior Management Team (see section ii below) or be reserved for the Commission. Two provided no view. The suggested power to be reserved to Commissioners was S31(1) which are powers exercisable by the High Court. Alternatively, they could be reserved subject to de-minimis. One written submission suggested that decisions should be made by two or more members of Senior Management Team.

All questionnaire respondents who indicated that they were not in favour of a Scheme of Delegation (43% of all respondents) disagreed that any of the powers listed should be delegated to the Senior Management Team, with the following exceptions:

One individual agreed that the following powers should be delegated to Senior Management Team although no reasons were provided: s23, s31(1), s55, s65(6), s66(2), s129(10), s173(1), s174, s175(3), s175(5), s176(1), Schedule 1, para 4(1) and Schedule 1, para 5(2).

One individual agreed that the following powers should be delegated to Senior Management Team although no reasons were provided: s26(4), s27(6), s29, s31(1), s32(8), s55, s66(2), s70(3), s172(4), Schedule 1, para 4(1) and Schedule 1, para 5(2).

The Department's response:

The Department notes that the majority of respondents agreed with the decisions to be delegated to Senior Management Team. The Department respects the comments in respect to sections 26(4) and 29 that the making of cy-près schemes should be delegated to caseworkers but believes that these decisions should remain with Senior Management Team, for the reason stated by the respondent that there are no appeal rights to the Tribunal. As previously stated, the Department does not intend to change the appeal or review rights currently available through the 2008 Act.

The Department agrees that the power under s31(1) which is also exercisable by the High Court should be reserved to the Commission.

The Department acknowledges that individuals opposed to the introduction of a Scheme would consequently not support delegation to Senior Management Team. However, the Department believes that the aforementioned safeguards enable delegation, and that an appropriate balance has been struck in the draft.

The Department considers that there is no necessity for decisions to be taken by two or more members of Senior Management Team as each is an expert in their particular field. They have the option to seek additional input

to any decision deemed particularly contentious and the Commission has the authority to require that it takes any particular decision, whether delegated by this Scheme or not.

ii. The Department asked:

In addition to those listed, are there any other types of regulatory decisions that you feel should be delegated to the Senior Management Team? If yes, please provide which powers you believe should be delegated to the Senior Management Team and your reasons why.

Results of the consultation:

None of the responses to the questionnaire suggested any additional powers to be delegated to Senior Management Team, however two of the written submissions did make suggestions. One suggested that s24 and s47 should be delegated to Senior Management Team rather than to staff generally. No reason was provided. The other suggested that s91(2) should be delegated to Senior Management Team rather than staff due to the gravity of the matter.

One organisation queried why s68(3) (b) relating to accounting deadlines had not been included in the draft Scheme and sought clarity on whether its absence is covered either under the provisions of clauses 1.8 & 1.9 of the draft Scheme or derived from alternative sections of the 2008 Act which have been delegated.

The Department's response:

The Department notes that those in favour of a Scheme were content that the powers listed for delegation to Senior Management Team were appropriate.

The Department is content to amend the Scheme so that s24, which relates to the disclosure of information by the Commission to other public bodies or office holders, should be delegated to Senior Management Team rather than staff generally, as the use of this power has been contentious in the past. The Department is content that it does not need to be reserved for the Commission as the majority of information which is required to be shared is between the Commission and the Department, but the Commission can, if it so chooses, be involved in potentially contentious cases.

The Department is content to amend the Scheme so that s47, which authorises the Commission to exercise the same power as the Attorney General regarding ex-gratia payments, is not delegated to staff generally. The Department, having considered the matter further, believes that this power should be reserved to the Commission to ensure greater internal scrutiny as it is exercisable under the supervision and direction of the Attorney General.

The Department is content to amend the Scheme so that s91(2) to make an order to relieve trustees, auditors and others from liability for breach of trust or duty, given the gravity of the matter, is better suited to Senior Management Team level.

The Department recognised that the omission of s68(3)(b) relating to allowing an extension of time for the submission of annual reports is an oversight by the Department, and this decision will be listed in the Scheme as being delegated to Senior Management Team.

The Department will make the necessary changes to the draft Scheme.

5. Powers delegated to General Staff (trained caseworkers supported by an in-house legal team)

The Department listed a number of decisions that it was proposed should be delegated to general staff (trained caseworkers supported by an in-house legal team).

i. **The Department asked:**

If there are some powers listed which you disagree with being delegated to staff of the Charity Commission, please provide

- a) your reasoning as to why you believe these powers should not be delegated, and
- b) indicate whether you feel they should be retained for decision by the Commissioners or delegated to the Senior Management Team.

Results of the consultation:

Questionnaire responses were mixed in relation to delegating certain functions of the Commission to trained staff, with organisations unanimously supporting the various proposals (or in some instances having no view), while most individual respondents disagreed with them. Some individual respondents did show support for certain sections of the legislation being delegated to trained staff.

Of the eleven questionnaire respondents who were in favour of a Scheme of Delegation, all agreed that the powers listed should be delegated to staff except two, who were responding on behalf of organisations, expressed no view and one disagreed as follows:

- Both organisations expressed no view on s1(5) and s47;
- One organisation expressed no view on s1(4) and s20, s124(2) and s129;
- One organisation expressed no view on s48 and s90(5) and (6); and
- One individual disagreed with Schedule 6, para 6 (5) being delegated.

No rationale was provided.

Of the twelve individuals who were not in favour of a Scheme, nine (32% of the total respondents) disagreed with any of the decisions listed being delegated to staff. Reasons provided included the view that these were complex and emotive decisions requiring discretion, meaning that they were beyond the capacity of staff or Senior Management Team and

should be reserved for Commissioners. Three respondents not in favour of a Scheme presented a mixed picture:

- One individual agreed that all decisions listed should be delegated to staff;
- One individual provided no view on the majority of the decisions listed but disagreed with s69(2) and regulations 32(4)(a) and (b) of the accounting regulations being delegated, and agreed that s90(5) and (6), 91(2) and 129(6) should be delegated;
- One individual agreed with the delegation of s1(4) and (5), 10, 16, 16(9), 20, 24, 48, 49, 63(4), 65(9), 69(2), 98(1), 99, 104(5), 123(11), Schedule 6 para 6(5), and regulations 3(7) and 32(4)(a) and (b) of the accounting regulations.

Of the five written responses, all provided no view on this specific question.

The Department's response:

The Department notes that the majority of questionnaire respondents who provided a view on this question agreed with the decisions to be delegated, except for one decision which was evenly split. It was somewhat surprising that some individuals who were against the Scheme agreed that many decisions should be delegated to staff.

As previously stated, the Department acknowledges that the majority of those in opposition to the introduction of a Scheme also disagree with any

delegation to staff. The Department believes, however that the appropriate balance has been struck and that trained staff, supported by an in-house legal team can effectively discharge these functions. Review and appeal mechanisms within the Commission and access to the Charity Tribunal provides the necessary safeguards for charities which are unhappy with a determination. Very few of the types of decisions to be delegated to staff have ever been referred to the Charity Tribunal, indicating acceptance in most cases.

ii. The Department asked:

In addition to those listed, are there any other types of regulatory decisions that you feel should be delegated to the staff in general of the Charity Commission? If yes, please provide which powers you believe should be delegated to staff and your reasons why.

Results of the consultation:

Of the twenty-three questionnaire responses, fifteen suggested that there are no additional decisions to be delegated to staff and six organisations provided no view. One organisation stated that additional powers should be delegated to staff but did not identify any in particular. One individual who had previously indicated that they were not in favour of a Scheme stated that they believed that no decisions should be taken by Commissioners or Senior Management Team, but by trained staff with the expertise.

Of the five written responses, none suggested any further powers that should be delegated to staff, however, one organisation pointed to the following decisions that had not been included in the draft Scheme and sought clarity on whether their absence is covered either under the provisions of clauses 1.8 & 1.9 of the draft Scheme or derived from alternative sections of the 2008 Act which have been delegated:

- s69(4) which relates to the power of the Commission to direct that s69(3) does not apply in relation to public inspection of annual accounts etc.
- s125(10) – the provision of guidance by the Commission. Is this regarded as an associated decision under s123 which is delegated to staff in the scheme?
- s126(7) & (8) – decision to notify Trustee that the Commission objects to a resolution.
- s161 – the Commission is obliged to create/maintain a register of charity mergers in such manner as the Commission thinks fit.
- The text regarding Schedule 1 para 4(1) should clarify that the structure referred to is a staffing structure.

The Department's response:

The Department is grateful to the respondent for pointing out these omissions and responds as follows:

- s69(4) is linked to 69(2), which is included in the Scheme but appears to be a slightly different decision. These sections relate to the public inspection of charity documentation such as annual reports. The omission of this decision is an oversight by the Department. The Department will list this decision as one delegated to staff.
- s125(10) – the Department regards this as an associated decision under s123 which is delegated to staff in the scheme as s125 “provides for the operation of section 123”. However, for the avoidance of doubt the Department will list this decision as one delegated to staff.
- s126(7) & (8) – the powers of the Commission to direct charity trustees to give public notice of a resolution or to direct that trustees provide additional information or explanations have been omitted in error by the Department. The Department will amend the Scheme and list these directions as being delegated to staff.

- S161 – the Commission is obliged to create/maintain a register of charity mergers in such manner as the Commission thinks fit. This had been omitted because it is an obligation rather than a discretionary power. Although the Department believes that this is a connected decision under the s16 obligation to keep a register of charities, for the avoidance of doubt, the Department will list this decision as one delegated to staff, as is the case with s16.
- The text regarding Schedule 1 para 4(1) should clarify that the structure referred to is a staffing structure. The Department will make this clarification.

6. Powers yet to be commenced

Some parts of the 2008 Act have yet to be commenced. The draft Scheme of Delegation sets out at what level these decisions could be taken when they are eventually commenced to avoid having to amend the Scheme as new powers are enacted.

i. The Department asked:

Do you agree with this approach?
(Please explain your reasoning).

Results of the consultation:

Of the eleven questionnaire responses in favour of a Scheme, ten agreed with this proposal and one provided no view.

Those that were in favour of the proposal believed that it was better to agree the approach now and avoid future consultations as more powers are taken on as this could hamper the commencement of those powers. Some agreed this is an example of good future planning which will avoid unnecessary bureaucracy in future and that it is important that staff and the public are aware where future decision-making lies.

Of the twelve responses not in favour of a Scheme, eleven disagreed with this proposal and one agreed.

Comments from those not in favour of the proposal included that there can be no visibility of matters which will arise after commencement orders are

enacted, therefore there can be no consideration of what powers could be delegated and that all powers should be reserved for the Commission.

Of the five written submissions, three provided no view on this issue and two indicated their support for it.

The Department's response:

The Department notes that 54% of respondents who provided a view agreed with this proposal and believes that pre-planning the decision-making level upon commencement aids transparency and will avoid unnecessary bureaucracy in the future.

The Department listed a number of powers not yet commenced that it proposed could be reserved for the Commission or a decision-making committee established in accordance with Schedule 1 to the 2008 Act.

ii. The Department asked:

If there are some powers listed which you disagree with being reserved to Commissioners when commenced, please provide:

- a) your reasoning as to why you believe these powers should be delegated, and
- b) indicate whether you feel they should be delegated to the Senior Management Team or staff in general (trained caseworkers supported by the in-house legal team).

Results of the consultation:

Of the eleven questionnaire responses in favour of a Scheme, all agreed that these powers should be reserved to Commissioners with the following exceptions:

- one individual disagreed with s43 being reserved for Commissioners;
- two organisations provided no view on any of the decisions listed; and
- one organisation provided no view in respect to s43 and s44 but provided no reasoning.

Of the twelve questionnaire responses opposing a Scheme, all agreed that these powers should be reserved to Commissioners with the following exceptions:

- one individual provided no view on any of the decisions listed; and
- one individual disagreed with all of the powers being reserved for the Commission, commenting that staff will be doing the real work in these areas and that there is no compelling reason why they would not be authorised to enact their decisions.

None of the five written responses provided a view on this question.

The Department's response:

The Department notes that the majority of respondents, regardless of their stance on a Scheme, are content that the decisions listed should be reserved for the Commission.

iii. The Department asked:

In addition to those listed, are there any other types of regulatory decisions which have not yet been commenced that you feel should be reserved to Commissioners?

If yes, please provide which powers you believe should be reserved to Commissioners when commenced and your reasons why.

Results of the consultation:

One individual who was in favour of a Scheme stated that the s44 common investment scheme power is routine and could straightforwardly be undertaken by ordinary caseworkers.

None of the five written responses provided a view on this question.

The Department's response:

Whilst the Department appreciates the reasoning in respect to suggested delegation of s44, the Department considers a cautious approach is applicable for the first Scheme and will therefore continue to reserve it. This can be revisited during the first formal review of the Scheme if necessary.

The Department listed a number of powers not yet commenced that it proposed could be delegated to the Senior Management Team.

iv. The Department asked:

If there are some powers listed which you disagree with being delegated to the Senior Management Team when commenced, please provide:

- a) your reasoning as to why you believe these powers should not be delegated, and
- b) indicate whether you feel they should be retained as decisions of the Commissioners or delegated to staff in general (trained caseworkers supported by the in-house legal team).

Results of the consultation:

Eight of the eleven questionnaire respondents in favour of a Scheme agreed that all of the suggested powers should be delegated to Senior Management Team, however;

- One organisation provided no view on s57(1), 57(9), 60(1) and 73(1) but provided no reasons;
- One individual disagreed that s57(1) should be delegated to SMT, stating that disposals of charity land under this section can be very controversial and might be best handled by the Commission.
- One individual disagreed with any of these powers being delegated to SMT; and

- Two organisations provided no view on any of the decisions listed.

Of the twelve questionnaire responses from those individuals not in favour of a Scheme, all disagreed that these powers should be delegated to Senior Management Team with the following exceptions:

- One individual provided no view on any of the decisions listed; and
- One individual agreed that the decisions listed should be delegated to Senior Management Team except for s57(1) and provided no view on s57(9) which relate to the disposal of charity land, but did not provide any reasoning for this.

None of the five written responses, which supported a Scheme provided a view on this question.

The Department's response:

The Department notes that the majority of organisations and representative groups are in support of the proposals for the un-commenced decisions to be delegated to Senior Management Team. The Department acknowledges that those opposed to a Scheme will likewise be opposed to delegation of the decisions which are yet to be commenced but believes that this issue can be reconsidered during the first formal review of the Scheme if required.

The disposal of charity land remains the responsibility of the Department for Communities and decision-making is delegated to a senior manager within the Department. The Department therefore believes that disposal of charity land can be properly discharged by a member of the Commission's Senior Management Team who will have expertise in this area and the support of the in-house legal team.

v. The Department asked:

In addition to those listed, are there any other types of regulatory decisions that you feel should be delegated to the Senior Management Team?

If yes, please provide which powers you believe should be delegated to the Senior Management Team and your reasons why.

Results of the consultation:

None of the responses to the questionnaire provided any suggestions in response to this question.

- One written submission pointed to two decisions which are not yet commenced and do not appear in the draft Scheme and sought clarification on this:
- s136(4) – enables the Commission to provide an exemption for local, short-term charitable collections.
- s137(2)(b) - enables the Commission to extend the time in which an application for charitable collection may be submitted.

The Department's response:

The exclusion of s136(4) and s137(2)(b) were erroneous omissions and will be included in the Scheme and delegated to staff.

The Department listed a number of powers not yet commenced that it proposed could be delegated to the general staff (trained caseworkers supported by in-house legal team) when these parts are commenced.

vi. The Department asked:

If there are some powers listed which you disagree with being delegated to staff of the Charity Commission when commenced, please provide

- a) your reasoning as to why you believe these powers should not be delegated to staff of the Charity Commission, and
- b) indicate whether you feel they should be retained for decision by the Commissioners or delegated to the Senior Management Team.

Results of the consultation:

Of the eleven questionnaire responses in favour of a Scheme, all agreed that these powers should be delegated to staff with one exception:

One organisation disagreed that s138(4) and s141(3) should be delegated to staff but provided no explanation for this view.

Of the twelve questionnaire responses opposed to a Scheme, nine disagreed that any of these powers should be delegated to staff. One agreed that all of the powers listed should be delegated to staff, having previously stated that it was the staff who had the expertise to take such decisions. Two agreed that the powers listed should be delegated to staff with the following exceptions:

- one individual disagreed that s110 and 141(3) should be delegated to staff but provided no explanation for this view; and
- one individual disagreed that s110, 113, 116 and 118 should be delegated to staff but provided no reasons.

Reasons cited were that these were all important decisions which should be reserved for the Commission.

None of the written responses which supported a Scheme provided a view on this question.

The Department's response:

The Department notes that the majority of all respondents are in support of the proposals for the un-commenced decisions to be delegated to staff. The Department acknowledges that those opposed to a Scheme will likewise be opposed to delegation of the decisions which are yet to be commenced but believes that this issue can be reconsidered during the first formal review of the Scheme, if required.

The Department asked:

In addition to those listed, are there any other types of regulatory decisions which are not yet commenced that you feel should be delegated to the staff in general of the Charity Commission?

If yes, please provide which powers you believe should be delegated to staff when commenced and your reasons why

Results of the consultation:

None of the questionnaire respondents provided a view on this question.

Of the five written submissions one organisation pointed to several un-commenced decisions that had not been included in the draft Scheme and sought clarity on whether the absence is covered either under the provisions of clauses 1.8 & 1.9 of the draft Scheme or derived from alternative sections of the 2008 Act which have been delegated:

- the power to grant permits for charitable collections pursuant to s144 and the withdrawal of permits pursuant to s146; and
- s167(6)(a) relating to an Order by the Department requiring the Commission to keep a register of 167 institutions.

The Department's response:

The power to grant permits for charitable collections pursuant to s144 and the withdrawal of permits pursuant to s146 was mistakenly omitted from the draft Scheme. The Department will list these decisions as being delegated to staff. S167 will require amendment by primary legislation in response to a recommendation of the Independent Review of Charity Regulation and is not referred to within the draft Scheme. The Department will include s167(6) (a) in the Scheme and delegate it to staff as it is unlikely to be affected by any future amendment.

In addition, the 2022 Act allows for a registration threshold to be introduced via regulations, below which charities in NI would not be required to register with the Commission or provide them with an annual report and accounts. Should the Department make such regulations, s16(5A) of the 2008 Act will allow charities on the register to be removed from the register if they so request. If the regulations determine that evidence is required to support a request for de-registration, a decision will be needed. The Department will add this decision to the un-commenced section, delegating this relatively straightforward and innocuous decision to staff.

7. Emerging Policy Proposals and Next Steps

The Department would like to thank all those individuals and organisations that took part in the pre-consultation events and the public consultation itself. Your views on a very legalistic and technical task, have been very welcome and have helped determine the need for and shape the first Scheme. The Department would also like to thank the Office of the Attorney General which, whilst not responding formally to the consultation, engaged with the Department and suggested some minor amendments, which the Department was content to accept.

The core rationale for contemplating the establishment of a Scheme of Delegation was to enhance decision-making efficiency within the Commission for charities and to allow Commissioners to be more strategic in their oversight of the Commission in line with international best practice and the recommendation of the Independent Review of Charity Regulation. On the balance of competing views of individuals opposed to any form of delegation and those organisations which work with thousands of charities in Northern Ireland, understand the needs of the sector, and who are supportive of a Scheme of Delegation, combined with the overarching goal of expediting

decision making for the benefit of charities, the Department deems some delegation to be reasonable. Therefore, it has determined to proceed with the implementation of the Scheme as it is confident that this represents an effective utilisation of public funds. When considering the financial aspect in isolation, the economic analysis of those decisions to be delegated reveals a potential budgetary saving of up to 11% of the Commission's baseline resource budget per annum. In the period of a constrained budgetary environment, it is more prudent than ever to recognise savings where possible.

The Department has amended the draft Scheme as consulted on and as signified in this response document before proceeding to make the Scheme. The changes made to the Scheme as a result of the consultation and subsequent advice of the Attorney General's Office are not considered sufficiently materially significant to warrant a further consultation.

The Scheme will be published on the Department's website in accordance with section 9A(6) of the 2008 Act.

The Department will monitor the operation of the Scheme through regular accountability meetings as set out in the Management Statement and Financial Memorandum and the new Partnership Agreement, once adopted.

The first formal review of the Scheme will be scheduled for 2 years after the initial signing of it and the findings of it will be published. A formal review will take place every 5 years thereafter. It should be noted that the Scheme makes provision for a review at any stage, should it be warranted.

List of organisations and individuals who responded

Organisations

Supporting Communities
NI Sports Forum
East Belfast Community Development Agency
PlayBoard NI
CO3- Chief Officers Third Sector
Volunteer Now
Youth Work Alliance (YWA)
Northern Ireland Council for Voluntary Action (NICVA)
Charity Law Association Working Party
Charity Commission for Northern Ireland
Fundraising Regulator

Individuals

Trevor McKee
John Picton (Senior Lecturer in Law, University of Liverpool)
Gordon Knowles MBE
Edwina McManus
Marie McCue
Ross M Hussey
Thomas Stephen McAlister
James R Gale
George Evans QPM
Jim McDaid
Tina Irving
Kevin Kennedy
James Anthony

Select comments from responses

In support of a Scheme of Delegation

“I think a scheme of delegation is necessarily for the efficient functioning of the Charity Commission for Northern Ireland. This would bring it into line with other regulators in the United Kingdom.”

“...there should be appropriate delegation of decisions as outlined. We recognize that Commissioners have key roles in providing oversight and strategic direction to the commission, they also have a key role in providing authority to sub-committees which require delegated decision-making.”

“It is important that Charity Commission staff should be able to make certain decisions independently. It is important that charities are able to receive decisions in a timely manner, however it should be the case that any decisions that may have negative reputational impacts on a Charity should not be undertaken by staff. While we appreciate that this is the only way that the Commission can function presently, it is not sustainable for the Commissioners to be making decisions which the Commission staff could easily make and it is proving more costly.”

“....we see first hand the impact on waiting for decisions can have on charities. From the powers have been given to the committee of the commission to make a decision rather than the staff the length of time a charity has had to wait on a decision has been greatly increased.”

“It is important that Charity Commission staff should be able to make certain decisions on their own to ensure that charities are able to receive decisions in a timely manner. Decisions on registration and consents, for example, are needed quickly by charities and should be made by Commission staff as had been the case before the High Court Judgment. Certain decisions however which could negatively impact on the reputation of a Trustee or a charity should not be taken by staff as identified in the new Act and this scheme of delegation. Since the High Court Judgment, charities who have been needing the Commission to make decisions have been kept waiting because of the length of time it takes a Committee of the Commission to make a decision. While we appreciate that this is the only way that the Commission can function presently, it is not sustainable for the Commissioners to be making decisions which the Commission staff could easily make and it is proving more costly. An unnecessary cost at a time when finances are extremely tight for all.”

“The role of the Commission to ensure that charities are well run, open and transparent must sit alongside its ability to make its decisions quickly and cost effectively whilst acting within the appropriate legal framework.”

“CCNI staff need to be able to make basic decisions within agreed parameters in order to ensure that the Commission can function efficiently in support of charities.”

“...the ability of the Charity Commission to delegate certain decisions to its staff is essential to its effective and efficient functioning as a regulatory body.”

“... in England & Wales, Scotland, Ireland and other common law jurisdictions, Charity Regulators have power to delegate functions to staff and agreed the appropriateness of a similar statutory power of delegation equivalent to those jurisdictions (subject to the subsequent requirements of the Charities Act (Northern Ireland 2022 (the 2022 Act)).”

“...welcomes the Department for Communities proposed Scheme of Delegation for the Charity Commission for Northern Ireland (CCNI)..... recognises that the proposals to allow some of the Charity Commission’s decision-making functions to be delegated to an individual(s) appointed by the Commission, the Senior Management Team and to staff will, when implemented, align (albeit with some differences) with comparable arrangements in place for the Charity Commission for England and Wales (CCEW).”

“... the introduction of a Scheme of Delegation would improve the process of decision making at the Commission by allowing low risk decisions to be taken by staff.”

“It will facilitate well-timed cooperation between and help improve the efficiency and effectiveness....”

“is necessary as it would provide clarity on decision-making within the Commission for the public and for charities and allow for greater efficiency and value for money in decision making.”

“Delegation, particularly of high-volume decisions such as registration of charities, will enable the Commission to provide better value for public funds. This will be the most effective and efficient way to deliver services, especially in the current budgetary context.”

Against a Scheme of Delegation

“The Commission has not demonstrated that the volume of work supports the premise that a scheme of delegation is necessary or desirable. Both the High Court and the NI Court of Appeal was scathing regarding the volume of work argument in the case of McKee & Others.”

“The courts ruled no delegation & stated the Commissioners have a minimal workload. No need to give staff of senior management these powers as they were disastrous handling them previously.”

“No need for delegation. Commissioners have a minimal workload as outlined by courts.”

“I feel there is absolutely no need for a Scheme of Delegation as the Commissioners have a responsibility to undertake this duty, the courts have outlined that the Commissioners have a minimum workload. If this function removed or passed on what would use is the role of commissioner.”

Draft Scheme which was subject to consultation

Draft Scheme of Delegation For The Charity Commission For Northern Ireland

1. Introduction

- 1.1. The Charity Commission for Northern Ireland (the Commission) is the statutory regulator of charities in NI established by the Charities Act (Northern Ireland) 2008 (the 2008 Act).
- 1.2. The Commission is responsible for ensuring Northern Ireland has a dynamic and well governed charities sector in which the public can have confidence. In this regard, it is charged with keeping a register of charities, investigating mismanagement and misconduct in the operation of charities, providing consents and many other services. The Commission's objectives, functions and duties are set out in sections 7 – 9 of the 2008 Act.
- 1.3. The High Court Judgment of May 2019 in *McKee & Hughes (and others) v The Charity Commission for Northern Ireland*, subsequently confirmed by the Court of Appeal in February 2020, found that the Commission did not have a power to delegate its functions to staff acting alone.
- 1.4. The Charities Act (Northern Ireland) 2022 (the 2022 Act) which achieved Royal Assent on 30 March 2022 amended the 2008 Act to allow for limited delegation to staff provided that the functions to be delegated are stipulated in a Scheme of Delegation made by the Department following consultation with the Commission and a public consultation.
- 1.5. As a result of the 2022 Act, paragraph 9A(2) of Schedule 1 to the 2008 Act stipulates that the following may not be delegated to Commission staff:
 - power under section 22(1) to institute an inquiry;
 - decisions under section 22(6) that a report or statement be published;
 - power to make an order under sections 33 to 37; and
 - any statutory power of the Commission to make regulations.

- 1.6. This Scheme of Delegation is therefore made pursuant to paragraph 9A of Schedule 1 to the 2008 Act.
- 1.7. The Scheme will be formally reviewed every 5 years but can be reviewed at any time should the Minister for Communities determine that a significant change is proposed or at any other time should they believe it to be in the public interest.
- 1.8. Where the Scheme allows delegation of a regulatory decision to staff, all the administrative actions and decisions associated with that decision may also be conducted by staff.
- 1.9. Commission staff may take any decision in the furtherance of the Commission's objectives, functions and duties as stipulated at sections 7, 8 and 9 of the Charities Act (Northern Ireland) 2008, except where a decision is proscribed by paragraph 9A(2) of Schedule 1 to the 2008 Act or is otherwise reserved for the Commission or their Senior Management Team in Annexes A and B of this Scheme of Delegation. Where the Scheme does not allow for delegation of a regulatory decision to staff, they may conduct all the research and other administrative acts required before bringing a recommendation to the decision maker.

2. Definitions

- 2.1 The following definitions are applicable for this document:
 - "The Commission" - as defined by section 6 of the 2008 Act or a decision making Committee established in accordance with Paragraph 9, Schedule 1 of the 2008 Act.
 - "CEO" - the Chief Executive of the Commission.
 - "SMT" - any member of the Senior Management Team of the Commission comprising the CEO, the Head of Inquiries and Compliance, the Head of Charity Policy and the Head of Corporate Services
 - "Staff" - as defined by section 1(11) of the 2022 Act.
 - "the Department" - the Department for Communities.

ANNEX A

DECISIONS, ORDERS & DIRECTIONS OF THE COMMISSION WHICH HAVE BEEN COMMENCED

Section	Decision (D), Order (O), Direction (DR) or Other (OR)	Authority delegated to:	Charity Tribunal - Appeal rights (A) or Review (R) or Not Appealable (NA) in accordance with Schedule 3 of the 2008 Act
1(4)	(DR) Direction that for all or any purposes of the 2008 Act an institution established for any special purposes of or in connection with a charity (being charitable purposes) shall be treated as forming part of that charity or as forming a distinct charity	Staff	A – decision not to give such a direction
1(5)	(DR) Direction that two or more charities having the same trustees shall be treated as a single charity	Staff	A - decision not to give such a direction
4	(OR) Must issue guidance in respect of public benefit, revise any such guidance, carry out consultation and publish any such guidance	The Commission	NA
10	(OR) The power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties	Staff	NA
16	(D) To enter or not to enter an institution on the register or remove or not remove an institution from the register	Staff	A – decision to enter or not to enter an institution on the register or remove or not remove an institution from the register
16(9)	(D) To make or not to make a determination under s16(9) that certain information contained on the register as specified in the determination, shall not be open to public inspection (as s.16(7) will not apply to that information)	Staff	A – decision not to make a determination under section 16(9) in relation to particular information contained in the register
20	(DR) Requiring a name change of a charity	Staff	A – direction requiring the name of charity to be changed
22(2)	(D) To conduct an inquiry or appoint a person to conduct it and make a report to the Commission	The Commission	NA
22(3)	(DR) Direction to a) produce accounts/statements and verify by statutory declaration b) produce copies of documents and verify by statutory declaration c) attend to give evidence or produce documents	The person appointed by the Commission under s22(2)	NA
22(4)	(OR) For the purpose of an inquiry, may administer oaths, or require a person to make, and subscribe to, a declaration of truth of the matters about which the person has been examined	The person appointed by the Commission under s22(2)	NA

23	(O) For production of information or documentation	SMT	A – order requiring a person to supply information or documents
24	(D) Disclosure of information to any public body or office-holder insofar as it relates to the exercise of the Commission's functions and enabling the performance of the public body/office-holders functions	Staff	NA
26(4)	(OR) Cy-près powers to alter the purposes for which property is to be applied or alter the provisions and conditions governing the application of property comprised in a charitable gift	SMT	NA
27(4)	(O) To direct that certain property is to be treated as belonging to donors who cannot be identified	SMT	NA
27(6)	(D) To direct donor entitlement in specified instances where donors make claims on property applied cy-près	SMT	NA
29	(D) To make schemes to apply property cy-près and (D) make schemes in respect of gifts for mixed purposes	SMT	NA
31(1)	(D) Exercising powers as are exercisable by the High Court in respect of schemes of administration, removing, appointing etc. a trustee or employee, vesting or transferring property etc.	SMT	A – order made under section 31
32(1)	(D) Settling a scheme for the administration of a charity (altering a provision made by an Act of Parliament etc.)	SMT	NA
32(8)	(O) To authorise trustees to apply accrued income at their discretion where the accrued income cannot be applied effectively for the purposes of the charity	SMT	NA
39(4)	(D) Make a determination that the publicity requirement in 39(2) does not apply in relation to a scheme if compliance with the requirement is unnecessary	Staff	NA
46	(O) To sanction action taken in the administration of a charity that is deemed to be in the interests of that charity e.g. enter into a transaction, apply property etc.	Staff	R – not to make such an order
47	(O) To exercise the same power as the A. G. with regard to the application of charity property	Staff	NA
48	(DR) Transfer of monies in respect of dormant charity bank accounts	Staff	A – direction given under section 48
49	(D) Provide advice or guidance to trustees	Staff	NA
50	(D) To determine the membership of a charity	SMT	NA
52(1)	(OR) For the purpose of a section 22 inquiry, obtain a warrant from a lay magistrate to authorise a staff member to carry out actions in accordance with s52(3)	The Commission	NA
53	(OR) Decision to take legal proceedings in respect of charities or the compromise of claims with a view to avoiding or ending such proceedings	The Commission	NA
54	(O) Authorising the decision by other persons to take legal proceedings with reference to a charity	The Commission	NA
55	(OR) Issue a certificate to prove that a copy of a section 22 report is a true copy for admittance in court	SMT	NA
56	(OR) Application to the court in respect of moveable property relating to a charity registered in England, Wales or Scotland	Staff	NA
63(4)	(D) Consenting to the destruction of accounting records	Staff	NA
65(2)	Linked to 65(2): <i>'The Charities (Accounts and Reports) Regulations (Northern Ireland) 2015' Regulation 27:</i> (OR) Dispense of the requirement to have an audit carried out on the charity accounts or charity group accounts where they exceed the audit threshold in the case of a particular charity or a particular year	SMT	NA
65(6)	(O) Requiring the accounts of a charity to be audited	SMT	A – order made under section 65(6)

65(9)	(OR) Give guidance to trustees in connection with the selection of independent examiner or (DR) - Give directions relating to an independent examination	Staff	NA
66(2)	(O) Giving directions to the facilities to be provided to an auditor or independent examiner to ensure a default is made good	SMT	A – the making of an order or not making the order
69(2)	(DR) In relation to the public inspection or not of an annual report and accompanying documents	Staff	NA
70(3)	(D) To dispense with the requirement to prepare an annual return in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities	SMT	A – decision to dispense or not to dispense of the requirement to prepare an Annual Monitoring Return
86(4)	(D) To waive or not waive a person's disqualification for being a charity trustee	The Commission	A – decision to waive or not to waive, a person's disqualification
87(4)	(O) To repay any expenses or remuneration received when automatically disqualified under section 86	Staff	A – making of an order to repay remuneration received
90(5) or (6)	(O) Requiring a trustee or connected person to repay or not receive remuneration	Staff	A – making of an order requiring a trustee or connected person to repay, or not to receive remuneration
91(2)	(O) To relieve trustees, auditors, reporting accountant or independent examiners from liability for breach of trust or duty	Staff	NA
96(2)	(D) To give or not to give prior written consent to any regulated alteration by a company	Staff	A – decision to give or withhold consent
98(1)	(D) Provide prior written consent required for approval etc. by members of charitable companies	Staff	A – decision to give or withhold consent
99	(D) Provide prior written consent for specified acts of a charitable company	Staff	NA
104(1)	(O) Investigation and audit of accounts of a charitable company	Staff	R – making of order under s104(1)
104(5)	(O) Requiring facilities for an auditor	Staff	NA
123(6)	(DR) To give public notice of a trustee resolution	Staff	NA
123(7)	(DR) – To direct trustees to provide more information in respect of a trustee resolution	Staff	NA
123(11)	(O) To vest property of the transferor charity in the transferee charity, in its charity trustees or in any trustee for that charity, or in any other person nominated by charity trustees to hold property in trust for that charity at the request of the trustees	Staff	NA
124(2)	(D) Objecting to a resolution made by charity trustees under sections 123(2) or 126(2)	Staff	A – decision to notify charity trustees that it objects to the resolution under sections 123(2) or 126(2)
129	(D) Not to concur with a trustee resolution made under sections 129(3) or 130(2)	Staff	A – decision not to concur with a resolution of charity trustees under sections 129(3) or 130(2)
129(6)	(DR) Charity trustees to give public notice of a resolution	Staff	NA

129(7)	(DR) Charity trustees to provide more information in respect of larger incorporated charities spending capital given for a particular purpose	Staff	NA
129(10)	(D) In respect of the powers of larger unincorporated charities to spend capital given for a particular purpose - to concur or not concur with a resolution	SMT	NA
166(1)	(D) Whether to make designation as a religious charity	The Commission	A – decision to refuse designation as a religious charity
166(4)	(D) To determine that the condition in section 166(3)(c) <i>(has been established in NI for at least 5 years)</i> need not be satisfied	The Commission	NA
166(5)	(D) To withdraw designated religious charity status	The Commission	A – decision to withdraw the designation of a charity as a designated religious charity
172(4)	(OR) Impose charges of such amounts as it considers reasonable in respect of the supply of any publications produced by it	SMT	NA
173(1)	(O) To give directions to a person who has failed to comply with any requirement imposed by or under the 2008 Act, such directions being designed to make good the default	SMT, except where the original order was made by the Commission	NA
174	(OR) Where a person guilty of disobedience of orders of the Commission, may by application to the High Court by the Commission be dealt with as for disobedience to an order of the High Court	SMT	NA
175(3)	(OR) To discharge an order, in whole or in part, within 12 months of making it if satisfied the order was made by mistake, on misrepresentation or not in conformity with the 2008 Act	SMT, except where the original order was made by Committee or the Commission	NA
175(5)	(O) Any order made by the Commission may be varied or revoked	SMT, except where the original order was made by the Commission	NA
176(1)	(DR) To vary or revoke a direction given by the Commission by further direction	The same group, staff, SMT, or the Commission that issued the first order	NA
Sch 1 para 4(1)	(OR) The Commission may with the approval of the Department for Communities (DfC) and the Department of Finance (DoF) 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 person as the Commission considers expedient for any particular person	SMT within a structure agreed by the Commission	NA
Sch 1 para 4(2)	(OR) The Commission may, in the case of such of its staff as may be determined by it with the approval of the DfC and the DoF, pay such pensions, allowances or gratuities, or provide and maintain such pension schemes, as may be so determined	The Commission	NA
Sch 1 para 5(2)	(OR) The Commission may make arrangements with the DfC for persons employed in the Northern Ireland Civil Service to be seconded to the Commission	SMT within a structure agreed by the Commission	NA
Sch 1 para 9	(OR) 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	The Commission	NA
Sch 4 para 1(2)	(OR) The Commission may make reference to the Charity Tribunal only with the consent of the Attorney General	The Commission	NA

Sch 4 para 5(2)	(OR) In relation to matters referred to the Charity Tribunal - the power for the Commission to act whilst a reference is in progress	The Commission	NA
Sch 6 para 6(5)	(O) To make an order requiring group accounts to be audited if they have not been audited within ten months from the end of the financial year	Staff	NA
Charities (Accounts and Reports) Regulations (Northern Ireland) 2015	(OR) Reg 3(7) - Financial year of a charity which is not a company 'A charity must not specify a new accounting reference date more than once in any three year period without the consent of the Commission.'	Staff	NA
Charities (Accounts and Reports) Regulations (Northern Ireland) 2015	<p>(OR) Reg 32(4)</p> <p>(a) Dispense with requirement to disclose the name of any person whose name is required by any of sub-paragraphs (d), (e), (f) and (i) of paragraph (3) to be contained in the annual report of a charity if this could lead to that person being placed in any personal danger</p> <p>(b) Dispense with requirement to disclose the principal address of the charity in accordance with paragraph (3)(c) if this could lead to any such person being placed in any personal danger</p>	<p>Staff</p> <p>Staff</p>	NA

DECISIONS, ORDERS & DIRECTIONS OF THE COMMISSION WHICH HAVE NOT BEEN COMMENCED

Section	Decision (D), Order (O), Direction (DR) or Other (OR)	Authority delegated to.	Charity Tribunal - Appeal rights (A) or Review (R) or Not Appealable (NA) in accordance with Schedule 3 of the 2008 Act
11(2) and (3)	(OR) Designation of Official Custodian and specification of duties by directions	The Commission	NA
11(9)	(OR) Publishing and laying before the Assembly of certified accounts and report of Official Custodian	The Commission	NA
42(3)	(O) To make an order to authorise a transaction affecting land by charity trustees where land is vested in the Official Custodian by section 33	SMT	NA
43	(O) To make a common investment scheme	The Commission	R – not to make such an order
44	(O) To make a common deposit scheme	The Commission	R – not to make such an order
51(1)	(OR) To provide books in which any deed, will or other document relating to a charity may be enrolled	Staff	NA
51(2)	(OR) To preserve charity documents	Staff	NA
57(1)	(O) To dispose of land held by or in trust for a charity	SMT	R – not to make such an order
57(9)	(DR) To direct that the publicity requirement is not to apply in relation to an order for the disposition of land	SMT	NA
60(1)	(O) Granting a mortgage of land held by or in trust for a charity	SMT	R – not to make such an order
73(1)	(D) To grant or not grant a certificate of incorporation	SMT	A – decision to grant or not to grant a certificate of incorporation
79(4)	(O) or (D) To amend a certificate of incorporation either (a) by making an order specifying the amendment; or (b) by issuing a new certificate of incorporation taking account of the amendment	SMT	A – decision to amend or not to amend a certificate of incorporation
84(1) or (2)	(O) To dissolve an incorporated body	SMT	A – making of an order dissolving an incorporated body
95(2)	(OR) Petition to the High Court to wind up a charity for insolvency	The Commission	NA
110	(D) To grant or not to grant an application for the constitution of a CIO and its registration as a charity	Staff	A – decision to grant or not to grant an application for the constitution of a CIO and its registration as a charity
113	(D) To refuse the conversion of a charitable company or registered society into a CIO and its registration as a charity	Staff	A – decision not to grant application for the conversion and the CIO's registration as a charity

116	(D) To grant or refuse the amalgamation of two or more CIOs and the incorporation and registration of the successor CIO	Staff	A – decision to grant or not to grant an application for the amalgamation of two or more CIOs and the incorporation and registration as a charity of a new CIO
118	(D) To confirm or refuse a resolution passed by a CIO	Staff	A – decision to confirm or not to confirm a resolution passed by a CIO
138(2)	(D) After making inquiries as it thinks fit, determining the application for a public collections certificate by either (a) issuing a public collections certificate, or (b) refusing the application	Staff	A – decision to refuse to issue a public collections certificate
138(4)	(D) To attach to a public collections certificate such conditions as it thinks fit	Staff	A – decision to attach any condition to such a certificate
141(3)	(DR) To direct transfer of a public collections certificate between trustees of unincorporated charity	Staff	NA
141(4)	(D) To direct that a public collections certificate not be transferred	Staff	A – decision to direct that a public collections certificate not be transferred
142(1)	(D) To withdraw or suspend a public collections certificate, attach a condition to a certificate or vary an existing one	Staff	A – decision to withdraw or suspend a public collections certificate, attach a condition to a certificate or vary an existing one
Sch 7 para 15	(D) To refuse to register an amendment to the constitution of a CIO	Staff	A – decision to refuse to register an amendment to the constitution of a CIO

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