

Charities Branch
Voluntary & Community Unit
Department for Social Development
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Belfast BT7 2JB

20 May 2005

Dear Sir/Madam

A submission from Cancer Research UK to the Department for Social Development's consultation on the Review of Charities Administration and Legislation in Northern Ireland in 2005

Cancer Research UK

Cancer Research UK is the world's leading organisation dedicated to cancer research. This year we spent over £213million on world-class research into all aspects of cancer. More than one million people regularly donate to Cancer Research UK. We have a network of around 650 shops and 1,000 local groups organising community events across the UK, supported by over 30,000 volunteers.

Cancer Research UK welcomes the opportunity to respond to the proposals set out within the Department for Social Development's consultation paper.

Cancer Research UK in Northern Ireland

In Northern Ireland, Cancer Research UK supports the work of scientists, doctors and nurses in hospitals, medical schools, universities and research institutes across the province. Research groups within the new Queen's University Centre for Cancer Research, the Clinical Cancer Centre at Belfast City Hospital and the Royal Hospital for Sick Children in Belfast receive funding.

Cancer Research UK operates as Cancer Research N. Ireland and has its principle regional office near Belfast, which acts as a focus for local fundraising efforts. In addition, we have a network of over 80 local fundraising committees throughout Northern Ireland, which help contribute to a local income of £1.25million through committee and community fundraising activity alone. Such a presence at the regional level also enables us to maintain awareness of cancer and the need for research, particularly Northern Ireland-based research, to press and the public.

General comments

We welcome the Department's recognition of the public's need for confidence in the growing voluntary sector. A transparent and accountable regulatory framework will enable this sector to flourish. We therefore strongly support the implementation of

legislation to regulate charitable administration, the establishment of a Charity Commission for Northern Ireland, and a Register for Charities as soon as practicable.

Cancer Research UK has been actively involved in the development of equivalent legislation in England & Wales and Scotland. Whilst acknowledging specific requirements of Northern Ireland, we recommend that any legislation in Northern Ireland be aligned closely to this emerging legislation. We strongly urge the need for consistency and clarity wherever possible to create an integrated system of registration and regulation across the UK.

We hope our comments help identify those areas where there is a risk of the regulatory burden being disproportionately increased.

Key points

1. CLARITY

1.1 Definition of Charity in Northern Ireland

We support the clarification of the definition of 'charitable purpose', and welcome the recognition that this should be aligned as closely as possible to that for surrounding jurisdictions.

While definitions of 'charitable purpose' proposed in each country are inherently similar, they still rely on interpretation based either on existing case law or on new tests, which vary across the UK. We are concerned that this may lead to confusion over interpretation. We caution that when drafting resulting legislation it is made clear how granting of charitable status in each jurisdiction will reflect on equivalent arrangements throughout the rest of the UK.

1.2. The Public Benefit Charity Test

We welcome a test for eligibility for charitable status to maintain and enhance public trust and confidence. To adequately achieve this, however, such a test must be enforceable.

Given the criteria for establishing 'public benefit' in Northern Ireland, it remains unclear how a charity operating across the UK can be assured that it will pass the separate tests required by Northern Ireland regulation and the laws of the Republic or Ireland, Scotland and England and Wales in order to qualify for registration as a charity in all jurisdictions.

It is unclear the extent to which there will be reciprocal arrangements between the regulatory bodies in England and Wales, Scotland and Northern Ireland to identify charities failing relevant tests of public benefit. We are concerned that there should be certainty about what happens when existing charities fail such a test.

In addition, we would welcome clarification of the transitional measures proposed to permit recognition in all jurisdictions, especially given that proposed Scottish legislation is likely to be operative in the spring of 2006.

We do however support the steps taken prior to this consultation to ensure that there should be a clear, shared framework to assess what is and is not considered a

charity across the jurisdictions, rather than relying on the subjective outcomes of proposed regulatory bodies.

2. TRANSPARENCY

2.1 Registration of Charities

Reciprocal registration

We accept that in the interests of control and gaining greater public confidence charities operating within Northern Ireland but based elsewhere should be required to register their activity. However, there is some concern that differences in registration procedures and requirements in separate jurisdictions across the UK have the potential to unnecessarily increase the regulatory burden for charities operating throughout the UK.

It would be helpful if, given the stated desire for proportionality and simplicity, reciprocal recognition could be given to a charity registered in another jurisdiction with a recognised regulatory body to limit the burden of multiple registration. Further details on this issue would be welcomed.

Resident trustees

We are also concerned that the Department's proposals include a requirement that charities operating in Northern Ireland have at least one trustee resident in the province. This is not in line with either company legislation in Northern Ireland¹ or proposed charity legislation in other jurisdictions.

In this respect, we support comments by the Northern Ireland Council for Voluntary Action² and Macmillan Cancer Relief³ that such a proposal has potential to undermine the independence of trustees. We believe that this proposed requirement would limit the ability to recruit trustees with the best skill sets to meet the needs of the charity and would be too restrictive. There are other ways to address the specific characteristics of operating in a given jurisdiction. This is particularly relevant for organisations already operating in more than one part of the UK.

Whilst it is important for charities to have a grassroots understanding of the local situation, this can also be adequately achieved by staff working at the local level. We believe other proposed provisions will be sufficient to demonstrate a satisfactory system of internal and external accountability in place of a resident trustee.

Confidentiality

We support the requirement to keep trustees' addresses confidential, in line with the rights to confidentiality permitted to Company Directors. We welcome the Department's proposals that information the public has access to, via the proposed Register (particularly that which is not currently in the public domain, such as charity trustees' addresses in England and Wales) is not discloseable⁴. Where registration

¹ Part XXIII of Company registration contains no requirement for Directors to be Northern Ireland residents.

² NICVA Position Paper: Review of Charities Administration and Legislation in Northern Ireland in 2005

³ that such proposals have "the potential to undermine the requirement for trustees of charities not to bring sectional interests or concerns to the conduct of boards." P. Cardy. Third Sector 23 March 2005

⁴ see related comments below on disclosure of information by Charitable Incorporated Organisations

details are confidential in one jurisdiction this should remain so in other jurisdictions in which such charities are registered.

The restriction of publication of a charity's address for security reasons is welcomed. It is important that such provisions are consistent across the UK to avoid a 'multiple regime' of production, access and entitlement to information, in line with the requirements for financial information. We would welcome an opportunity to consult on the possibility of a unified disclosure process across the UK to ensure efficient processes exist for the sharing or exchange of information.

Removal from the Register

To further minimise a 'multiple regime' approach, the Charity Commission should be required to automatically notify a charity of the reasons for removal from the register of charities.

Notification and consents

We note that in any future legislation revisions to notification and consents based on recent experience will be made only as necessary. This will help to balance such requirements against the time and cost for a charity to be granted certain consents.

We support the requirement that constitutional amendments to divert funds requires consent to ensure public confidence is maintained.

Charities based outside Northern Ireland

The Cancer Research UK group of charities and its predecessor charities have a long history in Northern Ireland, Scotland and in England and Wales. We are pleased that the registration provisions suggest it will not be necessary for a charity based outside Northern Ireland but with operations in the province, to have to describe itself as a "Charity Registered in Northern Ireland".

In our response to proposed Scottish charity legislation, we have raised concern with the proposals for a system which would differentiate between charities wholly based in Scotland and those operating in Scotland with branches elsewhere. We would like to take the opportunity to reiterate that the descriptions applied to charities operating in Northern Ireland should not distinguish between charities on the basis of their primary place of registration.

3. ACCOUNTABILITY

3.1 Charity Commission

We fully endorse the creation of a Northern Ireland Charity Commission to encourage, support and monitor compliance with charity law, investigate misconduct and provide information or assistance to both the public and charities. We would support the Commission being able to consider applications of a charity to reorganise their affairs rather than all matters be referred to the Courts.

The proposed powers of the Commission appear to be relatively wide. As an independent statutory regulator, good governance is vital in order to reassure the public and the sector of the Commission's impartiality and accountability. Consequently, we welcome the recognition that the Commission should keep at arms-length from the government to ensure independence in operation.

The proposed structure for this Commission document and a breakdown of costs was a useful inclusion in this consultation document. We support the recognition that use of services provided by other regulators in the field might further reduce such costs. We assume that the structure of the Commission will be reviewed relative to demand, to ensure the objectives of the proposed legislation are achieved. In addition, we trust that, in line with other non-departmental public bodies, the Commission will produce an Annual Report.

We would also encourage the continued development of strong links between the Commission and the charity sector to encourage accessibility and ensure that the lines of communication and consultation remain open. This is particularly important given differing implementation timetables in neighbouring jurisdictions across the UK.

3.2 Appeals

Drawing a comparison from the Scottish proposals, it would be helpful to include in any future legislation the understanding that decisions affecting a charity or charity trustee regulated by the Charity Commission could be appealed to the Commission in the first instance and not to the Court of Session or Northern Ireland equivalent.

In addition, we believe there should be an independent Review Panel to which an appeal could be made, as proposed in England and Wales. This would enable appeal decisions to be dealt with promptly and cost effectively with recourse to the courts seen as a 'last resort'.

This is especially important given the uncertainty that may arise from any 'dual regime' in the months following implementation of the various pieces of charity legislation across the UK, before all subsidiary regulations have been enacted.

4. COMPLIANCE

4.1 Regulation of Northern Ireland Charities, Powers to Control Abuses and Accounts, Audits and Annual Reports Arrangements

Supervision of UK wide charities

We accept that the terms of these provisions are only briefly outlined in this consultation, nevertheless, the consultation document appears to suggest that Cancer Research UK will be subject to supervision by separate regulators in England and Wales, Scotland and Northern Ireland.

We therefore seek clarification in any subsequent legislation or consultation on the consensual powers of each Commission or equivalent body. In particular, whether it is intended that any clearance given, for example, to a change in name or a change in constitution, requires the approval of each of the two Charity Commissions and Office of Scottish Charities Regulator. If this is the intention, we are concerned at the increased administrative burden this will impose, and raise the question of what happens if only one of these regulators approve the change or approval is achieved at different times.

This point similarly applies to other regulatory and compliance matters. For example, the process by which the relevant regulatory body in each jurisdiction might institute inquiries, request production of or access to documents, de-register charities, or suspend or appoint trustees. It is however, noted that in some areas the process in Northern Ireland is less prescriptive than in England and Wales and Scotland.

It would be disappointing to donors if a charity found itself having to incur an increased administrative or cost burden as a result of having to satisfy regulators in multiple jurisdictions applying similar methodology to reach different conclusions about the same issues. We would welcome clarification as to how the supervision of 'cross border' charities will be co-ordinated.

Implementation and intent

Cancer Research UK is primarily interested, as is the Department, in ensuring the integrity and reputation of the charitable sector and is acutely conscious of the harm that rogue charities and bogus fundraisers have on image of the sector as a whole. The implementation of this new legislation should therefore be to focus attention on bogus fundraisers (whether charities or not) and allegations of fraud, rather than large charities that are operating in more than one UK jurisdiction.

It would also be unfortunate if a lack of consistency between neighbouring jurisdictions enabled bogus fundraisers to relocate their activities to another jurisdiction when challenged. We therefore would like to see future legislation contain provisions to give the proposed NI Charity Commission:

- Powers over fraudulent fundraising by individuals or entities other than registered charities;
- Powers to stop persons using the term 'Charity' for non-charitable purposes;
- Powers to review changes to Charities' governing documents

We note that registration for large charities will take place before the smaller charities. We trust that all efforts will be made to promote the swift registration of smaller charities, to achieve the objectives of this new legislation in ensuring proper accountability for charities of all sizes across Northern Ireland. One measure to achieve this could be through the transfer of existing data from equivalent databases in England, Wales and Scotland on charities already registered in these jurisdictions.

This should help to go some way to ensuring that Commission staff are not overburdened with requirements for registration and focus can be given to investigation and enforcement of the new legislation.

5. GOVERNANCE

5.1 Charitable Incorporated Organisations (CIO)

We welcome the proposal to establish a new type of organisation in Northern Ireland, in line with the CIO arrangements in England and Wales. We are pleased that the steps required to create and register a CIO in Northern Ireland will mirror these in England and Wales and Scotland as far as possible.

Nevertheless, it would be helpful if future legislation compliments both existing company legislation (see earlier comments on Part XXIII regime) and charity regulations in the various jurisdictions in the UK. This is particularly important where charity addresses and the addresses of trustees and directors of CIO's are protected, in line with provisions under the Companies Acts.

This is also important for the practical requirements of the conversion and amalgamation of CIO's. We assume that the characteristics of a CIO set out in this document take into account consultation in both England and Wales and in Scotland on this matter.

We note the proposals to facilitate and regulate the conversion and amalgamation of charities into CIO's and presume this includes the transfer of CIO properties to other CIO's. We trust that the necessary arrangements for charities registered in England and Wales to merge with charities registered in other jurisdictions will be clarified and that the process will be as straight forward for unincorporated associations as it would be for an amalgamation between two CIO's.

We hope that the Charity Commission will introduce a procedure that is prompt, consistent and efficient, to allow the approval of reorganisations without requiring additional approval from the Courts. We would welcome clarification of the circumstances in which the Charity Commission may require such application to the Court and whether this be based on value or assets, or capacity of trustees.

6. THE ADMINISTRATION OF CHARITIES

6.1 Small Charities

We support the increase in the thresholds, which we assume have been set against the level of previous applications. Nevertheless, we are aware that higher thresholds (£5,000 to £10,000) have been requested in other jurisdictions and ask that the Department bears this in mind when setting the final threshold level.

6.2 Public Notice, Scrutiny of Wills and Revision of Monetary Limits in Northern Ireland

We welcome the proposals requiring only one announcement of public notice and appointing the power of waiver for such notice to the Charity Commission. This will help minimise the cost and administrative burden to charities.

6.3 Fundraising

We very much welcome the suggested proposals to introduce a range of provisions making professional fundraisers more accountable to the charities on whose behalf they are collecting. To further increase the public's trust and confidence in the sector and to help avoid bogus fundraising, we also recommend that the following be included in the draft Bill rather than subsidiary legislation, unless, as in Scotland, this is intended to permit a consistent approach to apply across all jurisdictions in the UK:

- that the requirements for professional fundraisers should also cover commercial participators.
- that professional fundraisers and commercial participators should be required by regulation to make a statement to potential donors about the amount that will go to a charity and that professional fundraisers and commercial participators who do not meet this requirement will be committing an offence.
- that in respect of the disclosure of payments to charities, it should be recognised that in practice, monies are commonly routed via the charity's trading company whose profits are transferred (gift aid or covenanted) to the charity. It is unclear whether reference in this instance should therefore be made to the trading company, or whether it should be made explicit that for these purposes "Charitable Institution" be read to include "the Charitable Institution's Trading

Company”. This would remove the need for additional small print in contribution statements, explaining that the money in fact goes to the trading company.

- that in respect of the proposal that “a charity could apply to the courts to issue an injunction preventing unauthorised fundraising on its behalf” the Commission should be empowered to take out such an injunction on behalf of a registered charity. This should not affect the charity’s right to apply to the courts itself, but would mean that the financial burden of such a court application would not necessarily be incurred by the charity itself. In addition the Commission should have adequate powers including control over fraudulent fundraising by individuals or entities other than registered charities, and powers to stop persons using the term “charity” for non-charitable purposes.
- the Commission should be under an obligation to consult and liaise with its sister organisations in England & Wales, Scotland and the Republic of Ireland to promote best practice across the UK and where appropriate ensure consistency in approach.

6.4 Charitable Collections

We support the general principle of a unified system for all public charitable collections. We therefore welcome the suggested proposals to replace the present system for licensing street and house-to-house collections with a system covering all public collections, subject to the following recommendations:

- the definition of “public place” should be clear. This not should include such areas as station concourses and supermarket forecourts, which could have significant impact on charities’ fundraising activity and income, particularly if the Police Service of Northern Ireland (PSNI), acting as a licensing body, severely limits the number of permits per year per charity.
- there should be a clear process and guidance for the provision of exemption orders. In particular there should be an exemption to cover house-to-house collections of goods, as the risks in this regard are substantially less. In addition, a duty to notify the licensing body in respect of “door to door collections of goods” would be unworkable for charities with a significant retail operation. However, charities should be required to hold records of collectors and provide details of these in response to queries or complaints.
- the NI Charity Commission should be the lead authority on charitable collections in terms of issuing guidance and co-ordinating information on public collections.
- the granting of permission to collect should include house-to-house property collections (i.e. plastic bag collections).
- the PSNI should be adequately resourced to administer applications for licences. Frameworks for exemptions must include clear time frames for processing and ensure good practice without undue bureaucracy or unnecessary delay. The Scottish approach to this issue is to be commended. In particular, the fact that there is no requirement for a Certificate of Fitness from Local Authorities and provision for “designated national collector” status under the Scottish proposals is particularly welcome.

We look forward to further consultation on this legislation as it develops.

With best wishes,

A handwritten signature in black ink that reads "Richard Davidson". The signature is written in a cursive, flowing style.

Richard Davidson
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