

Charity Commission for NI Scheme of Delegation Consultation

Questions from online consultation questionnaire

1. Are you completing this consultation as an individual or organisation?
Organisation
Name: Denise Copeland
Organisation: NICVA
Email: denise.copeland@nicva.org
Consent to DfC to publish organisation name: Yes
2. 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)
 - In support of a Scheme of Delegation
 - Against a Scheme of Delegation
 - No view on a Scheme of Delegation

Please provide your reasons below (optional)

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.

NICVA is therefore in favour of this Scheme of Delegation to help the Commission to function more effectively and efficiently.

3. 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?

- Yes
- No
- No view

4. 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 the Senior Management Team. Do you agree with this proposal?

- Yes
- No
- No view

Please explain your reasons below.

That appears to be sensible if there are no appeal or review rights for certain decisions as there should be less scope for error if Senior staff are making the decision.

5. 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?

- Yes
- No
- No view

Please explain your answer.

That seems reasonable as it is then transparent for charities. It would not be obvious for a charity to know which decisions have appeal or review rights to the Charity Tribunal.

Powers reserved to the Commission

Paragraph 9A(2) of Schedule 1 to the Charities Act (Northern Ireland) 2008, inserted by the 2022 Act prevents the following orders and decisions of the Commission from ever being delegated to staff i.e. they are reserved powers for Commissioners :

- s22(1) - the decision to open a statutory inquiry;
- s22(6) - decisions that a report or statement be published;
- s33 - powers of the Commission to Act for the protection of Charities;
- s34 - powers to suspend or remove trustees, etc. from membership of a charity;
- s35 - supplementary provisions relating to an interim manager appointed for a charity;
- s36 - powers to give specific directions for protection of a charity;

- s37 - powers to direct application of charity property;
- any statutory power of the Commission to make regulations.

6. The proposed Scheme also reserves the following powers to the Commissioners. Please select the options below to indicate if you agree, disagree or have no view on the following decisions and functions remaining as powers exercised by the Commission and not delegated to the Senior Management Team or staff in a Scheme of Delegation:

	Agree	Dis-agree	No View
s4 – the power to issue guidance as to the operation of the public benefit requirement	x		
s22(2) – to conduct an inquiry or appoint a person to conduct it and make a report to the Commission	x		
s52(1) – 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)	x		
s53 - decisions to take legal proceedings in respect of charities or the compromise of claims with a view to avoiding or ending such proceedings	x		
s54 – authorising the decision by other persons to take legal proceedings with reference to a charity	x		
s86(4) - the decision to waive or not waive a person’s disqualification for being a charity trustee	x		
s166(1) - whether to make designation as a religious charity	x		
s166(4) – in relation to designated religious charities - the decision to determine that the conditions in section 166(3)(c), that the charity has been established in NI for at least 5 years, need not be satisfied	x		
s166(5) – to withdraw designated religious charity status	x		
s176(1) - to vary or revoke a direction given by the Commission by further direction (only for decisions where the original decision was taken by the Commission, or a Committee of the Commission)	x		
Schedule 1, para 4(2) - the Commission’s powers, with the approval of the Department, to pay pensions, allowances or gratuities, or provide and maintain such pension schemes	x		
Schedule 1, para 9 - in determining its own procedure the Commission may, in particular, make provision about the discharge of its functions by committees (which may include persons who are not members of the Commission);	x		

and (b) a quorum for meetings of the Commission or a committee			
Schedule 4, para 1(2) – the power for the Commission to make reference to the Charity Tribunal only with the consent of the Attorney General	x		
Schedule 4, para 5(2) – in relation to matters referred to the Charity Tribunal - the power for the Commission to act whilst a reference is in progress	x		

If there are some powers listed above 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 or staff in general (trained caseworkers supported by the in-house legal team).

n/a

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

- Yes
 No
 No view

Powers delegated to Senior Management Team

The proposed Scheme delegates the Commission's functions as listed below 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.

8. Please indicate if you agree, disagree or have no view on the following decisions and functions being delegated to the Senior Management Team (SMT):

	Agree	Dis-agree	No View
s23 – the power to call for documents and search records	x		
s26(4) – 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.	x		
s27(4) – the power to direct that certain property is to be treated as belonging to donors who cannot be identified	x		

s27(6) – the power to direct donor entitlement in specified instances where donors make claims on property applied cy-près	x		
s29 – the power to make schemes to apply property cy-près and make schemes in respect of gifts for mixed purposes	x		
s31(1) - 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.	x		
s32(1) - settling a scheme for the administration of a charity (altering a provision made by an Act of Parliament etc.)	x		
s32(8) - to authorise trustees to apply accrued income at their discretion where the accrued income cannot be applied effectively for the purposes of the charity	x		
s50 – to determine the membership of a charity	x		
s55 – to issue a certificate to prove that a copy of a section 22 statutory inquiry report is a true copy for admittance in court	x		
s65(2) - 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	x		
s65(6) – requiring the accounts of a charity to be audited	x		
s66(2) - giving directions to the facilities to be provided to an auditor or independent examiner to secure that a default is made good	x		
s70(3) - 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	x		
s129(10) – 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 made by trustees	x		
s172(4) - impose charges of such amounts as it considers reasonable in respect of the supply of any publications produced by the Commission	x		

s173(1) - 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. (Note this will not be delegated to SMT where the original order was made by the Commission or a Committee of the Commission)	x		
s174 - where a person guilty of disobedience of orders of the Commission, may by application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court.	x		
s175(3) - power 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 (Note this will not be delegated to SMT where the original order was made by the Commission or a Committee of the Commission)	x		
s175(5) - any order made by the Commission may be varied or revoked (but will not be delegated to SMT where the original order was made by the Commission or a Committee of the Commission)			x
s176(1) - any direction given by the Commission under any provision contained in the 2008 Act may be varied or revoked by a further direction given under that provision (only to be delegated to SMT where SMT have taken the original decision)			x
Sch 1 para 4(1) – the power to employ staff or the services of other persons as necessary with the approval of DfC & DoF as to numbers, remuneration and other terms and conditions of employment (to be delegated to SMT only within a structure agreed by the Commission or a Committee of the Commission)	x		
Sch 1 para 5(2) - the Commission may make arrangements with the DfC for persons employed in the Northern Ireland Civil Service to be seconded to the Commission (to be delegated to SMT only within a structure agreed by the Commission or a Committee of the Commission)	x		

If there are some powers listed above 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).

Where we have listed 'no view' above it is because we don't understand the placement of this under this section. Should it be under Powers delegated to the Commission section?

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

- Yes
- No
- No view

Powers delegated to general staff (trained caseworkers supported by in-house legal team)

The proposed Scheme delegates a number of the Commission's functions to trained staff of the Commission.

10. Please indicate if you agree, disagree or have no view on the following decisions and functions being delegated to the Commission's staff:

	Agree	Dis-agree	No View
s1(4) - 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	x		
s1(5) - direction that two or more charities having the same trustees shall be treated as a single charity	x		
s10 - the Commission's 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	x		
s16 - to enter or not to enter an institution on the register of charities, or remove or not remove an institution from the register	x		

s16(9) - to make or not to make a determination that certain information contained on the register as specified in the determination, shall not be open to public inspection as s16(7) will not apply to that information (s16(7) states 'The register (including the entries cancelled when institutions are removed from the register) shall be open to public inspection at all reasonable times')	x		
s20 – requiring the name change of a charity	x		
s24 - disclosure of information insofar as it relates to the exercise of the Commission's functions and enabling the performance of the public body/office-holders functions	x		
s39(4) – in respect of publicity relating to schemes, the Commission may make a determination that the publicity requirement in 39(2), (which states 'the publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice'), does not apply in relation to a scheme if compliance with the requirement is unnecessary	x		
s46 - 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.	x		
s47 - to exercise the same power as the Attorney General with regard to the application of charity property	x		
s48 – to transfer of monies in respect of dormant charity bank accounts	x		
s49 – to provide advice or guidance to trustees	x		
s56 - application to the court in respect of moveable property relating to a charity registered in England, Wales or Scotland	x		
s63(4) - consenting to the destruction of accounting records	x		

s65(9) – to give guidance to trustees in connection with the selection of independent examiner or to give directions relating to an independent examination	x		
s69(2) – in relation to the public inspection or not of an annual report and accompanying documents	x		
s87(4) – to order a person to repay any expenses or remuneration received when automatically disqualified under s86 (s86 deals with persons disqualified for being trustees of a charity)	x		
s90(5) & (6) - requiring a trustee or connected person to repay or not receive remuneration	x		
s91(2) – to make an order to relieve trustees, auditors, reporting accountants or independent examiners from liability for breach of trust or duty	x		
s96(2) – to give or not to give prior written consent to any regulated alteration by a company	x		
s98(1) – to provide prior written consent required for approval etc. by members of charitable companies	x		
s99 - provide prior written consent for specified acts of a charitable company	x		
s104(1) – by order to require the investigation and audit of accounts of a charitable company	x		
s104(5) – to give such directions to a person or charity trustees that the Commission thinks appropriate to make good a default of any facility to which an auditor is entitled under s104(3) (s104(3) provides an auditor access to information from trustees including books, accounts and documents etc.)	x		
s123(6) - to give public notice of a trustee resolution	x		
s123(7) – to direct trustees to provide more information in respect of a trustee resolution	x		

s123(11) - 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	x		
s124(2) – to object to a resolution made by charity trustees under sections 123(2) or 126(2) (s123(2) provides that a charity may resolve that property may be transferred to another charity or charities. s126(2) provides that the trustees of a charity may resolve that the trusts of a charity be modified)	x		
s129 - not to concur with a trustee resolution made under sections 129(3) or 130(2)(s129(3) provides that trustees of a larger unincorporated charity may resolve to free capital given for a particular purpose from the restrictions in respect to expenditure applied to it. s130(2) provides that trustees of an available endowment fund of a special trust may resolve that the fund should be freed from the restrictions with respect to expenditure of capital that apply to it)	x		
s129(6) – to direct charity trustees to give public notice of a resolution	x		
s129(7) – to direct charity trustees to provide more information in respect of larger incorporated charities spending capital given for a particular purpose	x		
s176(1) - any direction given by the Commission under any provision contained in the 2008 Act may be varied or revoked by a further direction given under that provision. (only to be delegated to staff where staff have taken the original decision)	x		
Sch 6 para 6(5) - to order that group accounts be audited if they have not been audited within ten months from the end of the financial year.	x		
Charities (Accounts and Reports) Regulations (Northern Ireland) 2015 - Reg 3(7) – regarding the 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’	x		
Charities (Accounts and Reports) Regulations (Northern Ireland) 2015 - Reg 32(4) – (a) to dispense with the requirement to disclose the name of any person whose name is required by the regulations to	x		

be contained in the annual report of a charity if this could lead to that person being placed in any personal danger. (b) to dispense with requirement to disclose the principal address of the charity if this could lead to any person being placed in any personal danger			
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If there are some powers listed above 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 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.

n/a

11. In addition to those listed above, are there any other types of regulatory decisions that you feel should be delegated to the staff in general of the Charity Commission?

- Yes
- No
- No view

Parts of the Charities Act (Northern Ireland) 2008 which have not yet been commenced

12. Some parts of the Charities Act (Northern Ireland) 2008 (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. Do you agree with this approach?

- Yes
- No
- No view

Please explain your reasoning: (optional):

It is important that the Commission and staff are clear about their decision making powers going forward, especially regarding changes which the Department already knows that are going to be made.

Powers reserved to the Commission when commenced

The proposed Scheme reserves the following powers to the Commissioners when these parts of the 2008 Act are commenced.

13. Please select the options below to indicate if you agree, disagree or have no view on the following decisions and functions remaining as powers exercised by the Commission and not delegated to the Senior Management Team or staff in the Scheme of Delegation:

	Agree	Dis-agree	No View
s11(2) and (3) - Designation of Official Custodian and specification of duties by directions	x		
s11(9) - Publishing and laying before the Assembly of certified accounts and report of the Official Custodian.	x		
s43 – to make a common investment scheme	x		
s44 – to make a common deposit scheme	x		
s95(2) – to present a Petition to the High Court to wind up a charity for insolvency	x		

If there are some powers listed above 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).

n/a

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

- Yes
- No
- No view

Powers to be delegated to the Senior Management Team when commenced

The proposed Scheme delegates the Commission's functions as listed below to the Senior Management Team when these parts are commenced.

15. Please select the options below to indicate if you agree, disagree or have no view on the following decisions and functions being delegated to the Senior Management Team when commenced:

	Agree	Dis-agree	No View
s42(3) - to make an order to authorise a transaction affecting land by charity trustees where land is vested in the official custodian by section 33 (s33 provides that the Commission may: vest, require persons in whom property is vested, or appoint any person, to transfer any property held in trust for a charity; in the official custodian)	x		
s57(1) - to dispose of land held by or in trust for a charity	x		
s57(9) - to direct that the publicity requirement is not to apply in relation to an order for the disposition of land	x		
s60(1) – to grant a mortgage of land held by or in trust for a charity	x		
s73(1) - to grant or not to grant a certificate of incorporation	x		
s79(4) - 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	x		
s84(1) or (2) - to dissolve an incorporated body	x		

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

n/a

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

n/a

Powers to be delegated to Commission staff (trained caseworkers supported by an in house legal team)

The proposed Scheme delegates the Commission’s functions as listed below to the general staff (trained caseworkers supported by in-house legal team) when these parts are commenced.

17. Please select the options below to indicate if you agree, disagree or have no view on the following decisions and functions being delegated to general staff of the Commission:

	Agree	Dis-agree	No View
s51(1) - to provide books in which any deed, will or other document relating to a charity may be enrolled	x		
s51(2) – to preserve charity documents	x		
s110 - to grant or not to grant an application for the constitution of a Charitable Incorporated Organisation (CIO) and its registration as a charity	x		
s113 - to refuse the conversion of a charitable company or registered society into a CIO and its registration as a charity	x		
s116 - to grant or refuse the amalgamation of two or more CIOs and the incorporation and registration of the successor CIO	x		
s118 - to confirm or refuse a resolution passed by a CIO s138(2) - 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	x		
s138(4) - to attach to a public collection certificate such conditions as it thinks fit	x		
s141(3) - to direct the transfer of a public collections certificate between trustees of an unincorporated charity	x		
s141(4) - to direct that a public collections certificate not be transferred	x		

s142(1) - to withdraw or suspend a public collections certificate, attach a condition to a certificate or vary an existing one	x		
sch 7, para 15 - to refuse to register an amendment to the constitution of a CIO	x		

If there are some powers listed above 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.

n/a

18. In addition to those listed above, 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?

- Yes
- No
- No view

NICVA Comments

If a threshold for registration and accounting and reporting is to be implemented, are there any additional powers that need to be included for the staff or senior management team? If so, we think that these should be included now to ensure the smooth transition in the Commission's operations.