EXPLANATORY MEMORANDUM TO

THE CHARITIES (DISCLOSURE OF REVENUE AND CUSTOMS INFORMATION TO THE CHARITY COMMISSION FOR NORTHERN IRELAND) REGULATIONS 2010

2010 No. [XXXX]

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument creates an express statutory power (gateway) that permits the sharing of certain information between Her Majesty's Revenue and Customs (HMRC) and the newly established Charity Commission for Northern Ireland, for the purposes of charity regulation in Northern Ireland.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Charity law and regulation is a devolved matter in Northern Ireland. Matters relating to charity taxation and tax reliefs are reserved to the UK Government in Westminster. HMRC maintains information about charities claiming charity tax reliefs in Northern Ireland.

4.2 The Charities (Northern Ireland) Act 2008 makes provision for a new registrar and regulator of charities in Northern Ireland, the Charity Commission for Northern Ireland (CCNI). It came into existence on 27th March 2009. Section 24 of the Charities (Northern Ireland) Act 2008 enables the disclosure of information by the CCNI for any purpose connected with the exercise of the Commission's functions, or for the purpose of enabling or assisting a public body or office-holder to exercise any functions.

4.3 Section 72 of the Charities Act 2006 gives Ministers a power to make regulations authorising public bodies to disclose information to the Northern Ireland charity regulator, and in particular making provision for the sharing of Revenue and Customs information with the Northern Ireland charity regulator.

4.4 Provision for the information sharing gateway could not be made in the Northern Ireland legislation since it applies to a reserved matter (charity tax reliefs) and because it enables information about bodies outside Northern Ireland to be disclosed to the Northern Ireland charity regulator.

4.5 Subsection 72(1) of the Charities Act 2006 provides that section 72 only applies if a charity regulator is established in Northern Ireland, as has now happened, whilst subsections (2) and (3) provide the regulation-making power, and limitations to that power. Subsections (5) to (8) make specific provision for the disclosure of Revenue and Customs Information which mirror the restrictions on the disclosure of such information by officials of HMRC under the Commissioners of Revenue and Customs Act 2005 and the restrictions that apply to staff of other UK charity regulators under their existing statutory information gateways with HMRC.

4.6 Under section 18(1) of the Commissioners for Revenue and Customs Act 2005, information held by HMRC may not be disclosed to other bodies except in specified circumstances. This instrument confers a function on the Commissioners of Revenue and Customs that enables them to share information that they have obtained.

4.7 Information gateways with HMRC exist for the Charity Commission for England and Wales, under section 10 of the Charities Act 1993 (as amended by the Charities Act 2006) and the Office of the Scottish Charity Regulator (OSCR) under Article 3 of the Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister of State for the Cabinet Office, Angela Smith, has made the following statement regarding Human Rights:

In my view the provisions of the Charities (Disclosure of Revenue and Customs Information to the Charity Commission for Northern Ireland) Regulations 2009 are compatible with the Convention rights.

7. Policy background

7.1 This instrument creates a statutory gateway for the sharing of information by HMRC and CCNI, for the purposes of charity regulation in Northern Ireland. Taxation in the UK is not a devolved matter and in order for CCNI to function effectively as charity regulator in Northern Ireland, and to enable it to create a register of charities, it will be necessary for HMRC to share with CCNI information it holds on organisations claiming charity tax reliefs in Northern Ireland. The gateway follows the precedent for use and disclosure of Revenue and Customs information set out in the Commissioners of Revenue and Customs Act 2005, and is consistent with the information gateways that have since been established between HMRC and other UK charity regulators.

7.2 This instrument permits HMRC to share information with CCNI for the purpose of enabling or assisting it to discharge any of its functions. The information shared by HMRC is subject to an automatic prohibition against onward disclosure, unless such onward disclosure is explicitly authorised by HMRC. Unlawful disclosure is an offence, although a defence is provided where the disclosure was reasonably believed to be lawful or where the information had already and lawfully been made available in the public domain.

8. Consultation outcome

8.1 It was not considered necessary to publicly consult on this instrument because the regulations do not affect the public or business. Those charities whose information will be shared, enabling their affairs to be regulated by the CCNI as Government intended, will not be affected provided they are operating within the law. HMRC, the Department for Social Development in Northern Ireland and the Scottish Government fully support the proposals as do the Charity Commission for England and Wales.

9. Guidance

9.1 A Memorandum of Understanding (MoU) between HMRC and the CCNI is being drawn up. Both parties will encourage the disclosure of information to each other where appropriate, in order to maximise the efficiency of their respective functions. They will ensure that information is disclosed in a manner that is efficient, proportionate and fully compliant with the Human Rights Act 1998 and the Data Protection Act 1998 and the corresponding legislation in Northern Ireland.

9.2 Neither HMRC nor CCNI will disclose information received under the terms of the MoU to any other person or body without first consulting the disclosing party.

9.3 Staff currently on loan from the Department for Social Development to the CCNI are civil servants. Staff appointed by CCNI will receive appropriate induction and training. Internal guidance will be available on the protection and use of data together with the obligations which generally apply to civil servants in terms of disclosure of information.

9.4 Existing HMRC guidance on information disclosure will be amended to direct that all disclosures of information to CCNI should be routed via the team in HMRC Charities responsible for the statutory gateways with charity regulators.

10. Impact

10.1 This instrument does not have an impact on business or the wider third sector. Whilst it deals with the regulation of charities, no impact is made on the charities themselves provided they are operating within the law.

10.2 The instrument will re-affirm and build upon the co-operation at an operational level that already exists between HMRC and CCNI, and strengthen common understanding of responsibilities, working procedures, legal powers and constraints. It will facilitate effective investigation and the exchange of information with the objective of preventing, detecting and remedying misconduct or mismanagement in the administration of charities and charitable funds in Northern Ireland.

10.3 It will also assist with ensuring that there is appropriate consultation between HMRC and CCNI on matters relating to the collection and repayments of tax so that charities may be encouraged to comply fully with their legal responsibilities and adopt best practice and governance.

10.4 An Impact Assessment has not been prepared for this instrument as it does not have an impact on business or the wider third sector. Those charities whose information will be shared, enabling their affairs to be regulated by the CCNI as Government intended, will not be affected provided they are operating within the law.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring & review

12.1 In order to ensure regular review of policy there will be standing meetings every six months between HMRC and CCNI to identify areas that require joint working, including updating of the MoU if appropriate. There will also be a formal review by CCNI and HMRC after one year of operation of the information gateway.

12.3 In addition, section 73 of the Charities Act 2006 requires the Minister to appoint a person to review the operation of the Act within five years of enactment, and for the report of the review to be laid before Parliament.

13. Contact

Helen Morgan at the Office of the Third Sector, Cabinet Office Tel: 0207 276 6031 or email: helen.morgan@cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.