



## 2008 CHAPTER 12

### PART 1

#### INTRODUCTORY

##### **Meaning of “charity”**

1.—(1) For the purposes of the law of Northern Ireland, “charity” means an institution which—

- (a) is established for charitable purposes only, and
- (b) falls to be subject to the control of the Court in the exercise of its jurisdiction with respect to charities.

(2) The definition of “charity” in subsection (1) does not apply for the purposes of a statutory provision if a different definition of that term applies for those purposes by virtue of that or any other statutory provision.

(3) A charity shall be deemed for the purposes of this Act to have a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between capital and income, and in this Act “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity.

(4) The Commission may direct that for all or any of the purposes of this 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.

(5) The Commission may direct that for all or any of the purposes of this Act two or more charities having the same charity trustees shall be treated as a single charity.

**Meaning of “charitable purpose”**

2.—(1) For the purposes of the law of Northern Ireland, a charitable purpose is a purpose which—

- (a) falls within subsection (2), and
- (b) is for the public benefit (see section 3).

(2) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) any other purposes within subsection (4).

(3) In subsection (2)—

- (a) in paragraph (c) “religion” includes—
  - (i) a religion which involves belief in one god or more than one god, and
  - (ii) any analogous philosophical belief (whether or not involving belief in a god);
- (b) in paragraph (d) “the advancement of health” includes the prevention or relief of sickness, disease or human suffering;
- (c) paragraph (e) includes—
  - (i) rural or urban regeneration, and
  - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
- (d) in paragraph (g) “sport” means sports or games which promote health by involving physical or mental skill or exertion;
- (e) paragraph (h) includes the advancement of peace and good community relations; and

(f) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph.

(4) The purposes within this subsection (see subsection (2)(l)) are—

- (a) any purposes not within paragraphs (a) to (k) of subsection (2) but recognised as charitable purposes under existing charity law or by virtue of section 1 of the Recreational Charities Act (Northern Ireland) 1958 (c. 16);
- (b) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or paragraph (a) above; and
- (c) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph.

(5) Where any of the terms used in any of paragraphs (a) to (k) of subsection (2), or in subsection (3), has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears in that provision.

(6) Any reference in any statutory provision or document (in whatever terms)

- (a) to charitable purposes, or
- (b) to institutions having purposes that are charitable under charity law,

is to be construed in accordance with subsection (1).

(7) Subsection (6)—

- (a) applies whether the statutory provision or document was passed or made before or after the passing of this Act, but
- (b) does not apply where the context otherwise requires.

(8) In this section—

- “charity law” means the law relating to charities in Northern Ireland; and
- “existing charity law” means charity law as in operation immediately before the day on which this section comes into operation.

### **The “public benefit” test**

**3.—**(1) This section applies in connection with the requirement in section 2(1) (b) that a purpose falling within section 2(2) must be for the public benefit if it is to be a charitable purpose.

(2) In determining whether that requirement is satisfied in relation to any such purpose, it is not to be presumed that a purpose of a particular description is for the public benefit.

(3) In determining whether an institution provides or intends to provide public benefit, regard must be had to—

(a) how any—

(i) benefit gained or likely to be gained by members of the institution or any other persons (other than as members of the public), and

(ii) detriment incurred or likely to be incurred by the public,

in consequence of the institution exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and

(b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.

#### **Guidance as to operation of public benefit requirement**

4.—(1) The Commission must issue guidance in pursuance of its public benefit objective.

(2) That objective is to promote awareness and understanding of the operation of the requirement mentioned in section 3(1) (see section 7(3) and (4)).

(3) The Commission may revise any guidance issued under this section.

(4) The Commission must carry out such public and other consultation as it considers appropriate—

(a) before issuing any guidance under this section, or

(b) (unless it considers that it is unnecessary to do so) before revising any such guidance.

(5) The Commission must publish any guidance issued or revised under this section in such manner as it considers appropriate.

(6) The charity trustees of a charity must have regard to any such guidance when exercising any powers or duties to which the guidance is relevant.

#### **Special provisions about recreational charities, sports clubs, etc.**

5.—(1) The Recreational Charities Act (Northern Ireland) 1958 (c. 16) is amended in accordance with subsection (2).

(2) In section 1 (certain recreational and similar purposes deemed to be charitable) for subsection (2) substitute—

“(2) The requirement in subsection (1) that the facilities are provided in the interests of social welfare cannot be satisfied if the basic conditions are not met.

(2A) The basic conditions are—

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*Status: This is the original version (as it was originally enacted).*

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- (a) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and
- (b) that either—
  - (i) those persons have need of the facilities by reason of their youth, age, infirmity or disability, poverty, or social and economic circumstances, or
  - (ii) the facilities are to be available to members of the public at large or to male, or to female, members of the public at large.”.

(3) A registered sports club established for charitable purposes is to be treated as not being so established, and accordingly cannot be a charity.

(4) In subsection (3) a “registered sports club” means a club for the time being registered under Schedule 18 to the Finance Act 2002 (c. 23) (relief for community amateur sports club).