

# **CHARITIES ACT (NORTHERN IRELAND) 2008**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Charities Act (Northern Ireland) 2008 which received Royal Assent on 9 September 2008. They have been prepared by the Department for Social Development in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. This Act provides a definition of “charity” and “charitable purpose”, establishes the Charity Commission for Northern Ireland (CCNI) and the Charity Tribunal for Northern Ireland, creates a register of charities, provides for a new form of charitable legal body (a charitable incorporated organisation) and deals with the regulation of charities, their assets and public charitable collections.
4. In March 2004 the Department for Social Development (“the Department”) established an Advisory Panel to consider the advantages and disadvantages relating to various options including the retention of the present Northern Ireland system and a move to a system of wider supervision. The Advisory Panel recommended that a system similar to that for England and Wales should be adopted for Northern Ireland with three significant differences. First, the introduction of a public benefit test to determine whether technically a charitable purpose actually produces a benefit to the public. Second, all charities operating in Northern Ireland should be registered (there should be no exemption of certain types of charity as in other jurisdictions). Finally, it was intended to apply different financial thresholds in terms of the accounting procedures and audit requirements placed on charities operating in Northern Ireland.

## **CONSULTATION**

5. The Department carried out a public consultation from 11 February 2005 to 3 June 2005 on the principles underlying the charity regulation proposals. A total of 106 responses were received from a wide range of bodies and individuals, with the majority being broadly favourable. A full public consultation on the draft legislation itself took place from 17 July 2006 to 13 October 2006. Two changes were made to the draft legislation relating to audit levels and public collections and again responses were broadly favourable.

## **OPTIONS CONSIDERED**

6. The current framework for the regulation of charities in Northern Ireland does not provide for any form of local registration and only makes limited provisions for enforcement generally. The objective is to introduce an integrated system of registration and regulation (including control of charitable, philanthropic or benevolent fund-raising) as well as supervision and support of registered charities. The aim of these proposed changes will be to provide a structure and process through which charities can demonstrate their contribution to society, the public can be assured regarding how charities are spending any donations and government can assist in the better governance of the charity sector.

7. The Department concluded that the need for a regulatory structure to provide reassurance to the public about how charities manage their affairs, undertake collections and dispose of donations ruled out maintaining the status quo as a viable option. The possibility of extending the remit of the Charity Commission for England and Wales had certain advantages; however, it would not have delivered the objectives set out by the Advisory Panel in relation to the adoption of a public benefit test and the need to apply different procedures in relation to registration and financial controls. It was determined, therefore, that the establishment of an independent Charities Commission that would be able to respond to the needs of the local charity sector presented the best solution for Northern Ireland.

## **OVERVIEW**

8. The Act has 186 sections and 9 Schedules and is divided into 14 Parts. A commentary on the provisions follows. Comments are not given where the wording is self-explanatory.

## **COMMENTARY ON SECTIONS**

### **PART 1: INTRODUCTORY**

Part 1 comprises sections 1 to 5 and deals with the definition of “charity” and “charitable purpose”. Section 3, which sets out the public benefit test in relation to charitable purpose, specifies that no particular purpose is presumed to be for the public benefit. When determining whether a body provides public benefit, regard must be had to how any benefit gained by members of the institutions and detriment incurred by the public compares with the benefit gained by the public.

### **PART 2: THE CHARITY COMMISSION FOR NORTHERN IRELAND**

Part 2 comprises sections 6 to 11 (and Schedule 1) and provides for the establishment of a body corporate to be known as the Charity Commission for Northern Ireland (“the Commission”). Sections 7 to 10 deal with the Commission’s objectives, functions, general duties and incidental powers. The Commission will be a non-departmental public body.

Section 11 requires the Commission to appoint an official custodian for charities in Northern Ireland “(the official custodian”) whose principal function will be to act as custodian trustee in respect of certain charities in circumstances provided for in the Act. Section 11 also specifies the duties and responsibilities of the official custodian.

### **PART 3: THE CHARITY TRIBUNAL FOR NORTHERN IRELAND**

Part 3 comprises sections 12 to 15 and (Schedules 2, 3 and 4) and covers the creation of a Tribunal within the Northern Ireland Court Service to hear appeals against some types of decision made by the Commission.

### **PART 4: REGISTRATION OF CHARITIES AND CHARITABLE NAMES**

Part 4 comprises sections 16 to 21 requires the Commission to keep a register of charities. The Act does not provide for any exemptions from the requirement to register.

### **PART 5: INFORMATION POWERS**

Part 5 comprises sections 22 to 25 and empowers the Commission to institute inquiries into any aspect of the work of a particular charity or class of charities. The Commission

will be able to call for the disclosure of documents and to disclose information in pursuit of its functions to other regulators, public bodies, the PSNI and HM Revenue and Customs.

## **PART 6: APPLICATION OF PROPERTY CY-PRÈS AND ASSISTANCE AND SUPERVISION OF CHARITIES BY COURT AND COMMISSION**

Part 6 comprises sections 26 to 56 and covers the powers of the Commission and the Court to make schemes for the protection of charities. Sections 41 and 42 deal with the circumstances in which property can be vested in the official custodian while sections 43 and 44 enable the Commission or Court to establish “common investment funds” and “common deposit funds”.

## **PART 7: CHARITY LAND**

Part 7 comprises sections 57 to 62 (and Schedule 5) and allows charities to dispose of charity property in most circumstances. Charities must seek an order of the Court, or of the Commission, before disposing of charity property in certain circumstances, for example, where the disposal is to a connected party.

## **PART 8: CHARITY ACCOUNTS, REPORTS AND RETURNS**

Part 8 comprises sections 63 to 72 (and Schedule 6) and deals with the duty of charities to keep accounting records, issue statements of accounts and arrange for their accounts to be audited. Section 64 empowers the Department for Social Development to prescribe the form and content of such accounts for a charity. Sections 65 and 66 further specify the auditing requirements to be placed on a charity in accordance with its income. Sections 68 and 69 set out the requirement on charities to prepare annual reports and specify the arrangements for public inspection of such reports.

## **PART 9: CHARITY TRUSTEES**

Part 9 comprises two Chapters covering sections 73 to 94. Chapter 1 deals with the incorporation of charity trustees and in particular, section 73 empowers the Commission to issue a certificate of incorporation establishing the trustees of a charity (not the charity itself) as a body corporate. Chapter 2 sets out a number of other provisions relating to charity trustees, including provisions concerning persons disqualified for being trustees and remuneration, etc.

## **PART 10: CHARITABLE COMPANIES**

Part 10, which comprises sections 95 to 104, makes provision with respect to charitable companies including rules covering amendments to their objects and the audit and examination of their accounts.

## **PART 11: CHARITABLE INCORPORATED ORGANISATIONS**

Part 11 comprises sections 105 to 122 (and Schedule 7) and provides for the constitution of Charitable Incorporated Organisations, a new legal entity for charities. Its purpose is to avoid the need for charities that wish to benefit from incorporation to register as companies and be liable to dual regulation.

## **PART 12: POWERS OF UNINCORPORATED CHARITIES**

Part 12 comprises sections 123 to 130 and deals with the rules under which unincorporated charities may transfer their property to other charities, replace their current charitable purposes with new ones or modify their constitutional powers or procedures.

## **PART 13: FUNDING OF CHARITABLE INSTITUTIONS**

Part 13 comprises three Chapters covering sections 131 to 160. Chapter 3 provides definitions for “charitable institution” and “collector”. Chapter 1 deals with the regulation of public charitable collections by charitable benevolent and philanthropic bodies – both street collections (described as “collections in a public place”) and those conducted door-to-door. Sections 137 to 142 cover the need for individuals or organisations that wish to promote collections to obtain a public collections certificate and empowers the Commission to either issue or refuse such a certificate. Sections 143 to 149 deal with the requirement on promoters to obtain a permit for most public collections and empower the Commission to issue such permits. Chapter 2 provides for the detailed regulation and control of fund raising.

## **PART 14: MISCELLANEOUS AND SUPPLEMENTARY**

Part 14 comprises sections 161 to 186 (and Schedules 8 and 9). Sections 161 to 164 contain the provisions relating to the merger of charities. Under sections 165 and 166 faith based organisations can apply for and be granted Designated Religious Charity Status by the Commission provided certain criteria are satisfied. Section 167 enables charities which are established outside Northern Ireland who wish to operate here to

register with the Commission. Sections 168 to 186 deal with a number of technical matters relating to the Commission.

## **HANSARD REPORTS**

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Northern Ireland Assembly.

STAGE	DATE
Introduction of the Act to the Social Development Committee ("Committee")	31.05.07
Introduction to the Northern Ireland Assembly ("Assembly")	10.12.07
Committee briefed by Departmental Officials on issues raised by Members	10.01.08
Assembly - Second Stage debate	15.01.08
Committee Stage - evidence from Chief Officers 3 <sup>rd</sup> Sector (CO3)	17.01.08
Committee Stage - evidence from the Northern Ireland Council for Voluntary Action (NICVA)	24.01.08
Committee Stage - evidence from the Volunteer Development Agency (VDA)	31.01.08
Committee Stage - evidence from Cleaver Fulton Rankin Solicitors	07.02.08
Committee Stage - evidence from the Police Service of Northern Ireland (PSNI)	14.02.08
Committee Stage - evidence from Evangelical Alliance Northern Ireland	21.02.08
Committee Stage - evidence from the Presbyterian Church in Ireland	28.02.08
Committee Stage - consideration of sections 1-52	28.02.08

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Committee Stage - evidence from Magheraknock Mission Hall, Kingdom Life Faith Centre, Moira Pentecostal Church, Mount Zion Free Methodist Church and Jordan Victory Church	06.03.08
Committee Stage - consideration sections 53-71	06.03.08
Committee Stage - consideration sections 72-186 and Schedules 1-9	13.03.08
Committee Stage - formal consideration sections 1-73 (section 13 referred for further consideration )	03.04.08
Committee Stage - formal consideration sections 74-186, and Schedules 1-9 (sections 122, 165 and 166 referred for further consideration )	10.04.08
Committee Stage - formal consideration sections 13, 122,165 and 166	17.04.08
Committee Stage - formal consideration amendments agreed	01.05.08
Committee publishes its report on the Act - Report Number - NIA 9/07	13.05.08
Assembly - Consideration Stage	03.06.08
Assembly - Further Consideration Stage	17.06.08
Assembly - Final Stage	30.06.08
Royal Assent	09.09.08

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