

*These notes refer to the Charities Act (Northern Ireland)
2013 (c.3) which received Royal Assent on 18 January 2013*

Charities Act (Northern Ireland) 2013

EXPLANATORY NOTES

BACKGROUND AND POLICY OBJECTIVES

3. The primary reason for the Act is to amend the public benefit provision of the Charities Act (Northern Ireland) 2008 (“the 2008 Act”) to provide clarity on the requirement to be met in determining whether an institution is, or is not, a charity within the meaning of that Act.
4. The need for clarity on the public benefit provision was first identified when the Charity Commission for Northern Ireland (CCNI) sought legal opinion on the draft public benefit guidance which it is statutorily obliged to issue. Opinion was that the provision in section 3 of that Act (“the public benefit” test) created legal uncertainty arising from the inclusion of an element of the public benefit provision contained in the Scottish Charities and Trustee Investment (Scotland) Act 2005 (“the Scottish Act”).
5. The Act amends section 3 of the 2008 Act by removing the provision taken from the Scottish Act and making provision for the determination of the public benefit requirement to be based on the law relating to charities in Northern Ireland.
6. While the primary reason for the Act is the amendment of the public benefit provision, it also provides a legislative vehicle for a number of other outstanding amendments to the 2008 Act. Company law references are amended to reflect changes made under the Companies Act 2006 since the 2008 Act was enacted. Amendments made to charity legislation in England and Wales prior to consolidation by the Charities Act 2011 are replicated to modernise language, clarify existing legislation, repeal provisions now obsolete and make consequential amendments that were previously missed.
7. The Act also makes certain other provision. It provides for the transfer of functions which are of a regulatory nature, but which still remain within the Department’s jurisdiction, to that of the CCNI. It also re-enacts provision in the Charities Act (Northern Ireland) 1964 that was repealed by the 2008 Act but which on reconsideration is believed to be a worthwhile mechanism for saving a charitable gift that would otherwise fail.