

EXPLANATORY MEMORANDUM TO
THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010

2010 No. 77

1. This explanatory memorandum has been prepared by the Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Rules govern the practice and procedure to be followed in proceedings before the Charity Tribunal for Northern Ireland (“the Tribunal”). The Rules are divided into six parts, dealing with introductory provisions, general matters before the Tribunal, initiating an appeal or application, hearings of appeals, appeals from the Tribunal, and special provisions for references. The Rules come into force on 1st April 2010 and are subject to negative resolution.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Charities Act (Northern Ireland) 2008 (“the Act”) establishes a new regime for the regulation of charities in Northern Ireland. Section 6 of the Act creates a new body corporate, the Charity Commission for Northern Ireland (“the Commission”).

4.2 Section 12 of the Act establishes the Tribunal and Schedule 2 contains more detailed provision about the constitution of the Tribunal and other similar matters. Schedule 3 provides that the Tribunal will be able to hear appeals and reviews of certain decisions of the Commission.

4.3 Section 12 of the Act provides that the Tribunal will have jurisdiction to hear matters brought to it under three different types of procedure: appeals, reviews and references. The Tribunal will be able to hear appeals and reviews of certain decisions of the Commission, as set out in Schedule 3 to the Act. The Attorney General or the Commission (with the consent of the Attorney General) will be able to refer questions relating to charity law to the Tribunal in accordance with Schedule 4 to the Act.

- 4.4 Section 13 of the Act allows the Lord Chancellor to make rules to regulate the exercise of rights to take proceedings, and the practice and procedure to be followed in relation to proceedings before the Tribunal.

5. Territorial Extent and Application

- 5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the Rules are subject to negative resolution procedure, and do not amend primary legislation, no statement is required.

7. Policy background

- 7.1 In March 2004, the Department for Social Development established an Advisory Panel to consider a system of supervision of charitable organisations. The Advisory Panel recommended a regulatory system similar to that for England and Wales, although with three key differences.

- Firstly, in Northern Ireland, there would be a public benefit test to determine whether a charitable purpose actually produces a benefit to the public.
- Secondly, all charities operating in Northern Ireland would be registered and there should be no exemption for certain types of charities.
- Thirdly, there would be different financial thresholds for accounting and audit procedures for charities operating in Northern Ireland.

- 7.2 The Advisory Panel's recommendations were accepted and incorporated into the Act. As well as establishing the Commission and the Tribunal, the Act provides for:—

- a definition of “charity” and “charitable purpose”;
- a register of charities in Northern Ireland;
- a new form of charitable legal body (a charitable incorporated organisation); and

the regulation of charities, their assets and public charitable collections.

- 7.3 The Act makes a number of changes to charity law which affect the sector that the Commission regulates and as a consequence the way in which the Commission can regulate. The Charity Tribunal for Northern Ireland was established to enable charities to challenge the Commission's decisions. Any individual or organisation directly affected by a decision made by the Commission will have a right to make an appeal or for review to the Tribunal within 42 days.

7.4 The Tribunal will consider each case afresh, either on a point of law or fact, and it may consider any evidence, whether or not it was available at the time of the Commission's decision. The Tribunal will have a wide-ranging jurisdiction to deal with a number of matters arising from the Commission's decision.

7.5 The Tribunal will also hear matters that have been referred to it by the Attorney General, or by the Commission after it has obtained the Attorney General's consent. In addition, the Attorney General will be able to intervene in any case before the Tribunal and also will be able to appoint an advocate to the Court to argue any question in relation to the proceedings in the interests of the general public.

8. Consultation outcome

8.1 These rules are procedural and provide the framework within which the Tribunal works and is administered. The Charities Act (Northern Ireland) 2008 which established the Tribunal was subject to full public consultation which took place from 17 July 2006 to 13 October 2006. These rules are similar to the Charity Tribunal Rules 2008 (S.I. 2008/221) which made provision for the Charity Tribunal for England and Wales which were subject to a public consultation exercise. The results of the consultation exercise and the amendments suggested as a result are incorporated in these Rules.

9. Guidance

9.1 These rules will be published on the Northern Ireland Court Service website.

10. Impact

These Rules are procedural and alone do not have any impact on business, charities or voluntary bodies. Therefore, a Regulatory Impact Assessment for the Rules was not considered necessary.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

The operation of the Rules will be kept under review by the Northern Ireland Court Service.

13. Contact

- 13.1 Maria Dougan at the Northern Ireland Court Service (Tel: 028 9072 8956 or email mariadougan@courtsni.gov.uk) can answer any queries regarding this instrument.
- 13.2 Kevin Kennedy, Secretariat, Charity Commission (Tel: 028 90515498 or email Kevin.Kennedy@dsdni.gov.uk) can answer any queries regarding the Charity Commission.