

## **EXPLANATORY MEMORANDUM TO**

### **The Charities Act 2008 (Designated Religious Charities) Order (Northern Ireland) 2016**

**SR 2016 No. 77**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 165(2)(a) of the Charities Act (Northern Ireland) 2008 (the Act) and is subject to the draft affirmative resolution procedure.

#### **2. Purpose**

- 2.1. The Order specifies section 86 of the Act, which makes general provision to disqualify persons for being trustees of a charity, as a provision which does not apply to designated religious charities.

#### **3. Background**

- 3.1. The Act includes provision for ‘designated religious charity’ status, to take account of the unique structures within some faith-based charities in Northern Ireland which often have supervisory, disciplinary and governance arrangements in place to deal with issues that may arise. Designation is designed to ensure that charity regulation is proportionate in accordance with the structures that are already in place within the charity, while ensuring the Charity Commission for Northern Ireland retains the necessary regulatory powers.
- 3.2. Faith-based organisations can apply for and be granted designated religious charity status by the Commission, provided certain conditions are satisfied. To be designated, the body’s main purpose must be the advancement of religion, its main activity the regular holding of public worship and it must have been established in Northern Ireland for at least 5 years. In addition, it must have an internal organisation with supervisory and disciplinary functions over all its component parts and have a regime for keeping accounting records which the Commission considers correspond to those for other charities under Part 8 of the Act. The Commission may remove the designation where the qualifying conditions mentioned above are no longer satisfied or where the Commission considers that designation is no longer appropriate in consequence of an investigation of any component element of the charity under section 22 of the Act (statutory inquiry).
- 3.3. Designated religious charity status means that sections 33 to 36 of the Act do not apply to such charities. Those are sections which provide the Commission with powers to: act for protection of charities; suspend or remove trustees, officers, agents or employees of a charity; appoint an interim manager for a charity; give specific directions for protection of

charity. The Department can, by an affirmative resolution Order made under section 165 of the Act, specify other provisions of the Act that are not to apply to designated religious charities.

- 3.4. Section 86 of the Act makes general provision to disqualify persons for being trustees of a charity. This includes: persons who have been convicted of any offence involving dishonesty or deception, who have been adjudged bankrupt and have not been discharged, have been removed as a trustee of a charity on grounds relating to misconduct or mismanagement by an order made by the Commission or the High Court, have been removed as a trustee of a charity under similar provision in respect of England and Wales or Scotland, or are subject to a disqualification order or a disqualification undertaking under certain companies legislation relating to company directors.
- 3.5. The Department considers that, where there are sufficient internal arrangements in place and a religious charity can be designated, such a charity should also be exempt from section 86, as well as sections 33 to 36 of the Act. This is in line with similar provision in the Charities and Trustee Investment (Scotland) Act 2005, which disapplies section 69 of that Act (disqualification from being charity trustee) in respect of designated religious charities in Scotland.

#### **4. Consultation**

- 4.1. There is no requirement to consult on the proposals for this Order.

#### **5. Equality Impact**

- 5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise of the proposals in the Charities Bill (NIA Bill 9/07) which are now contained in the Act. It concluded that the proposals do not have significant implications for equality of opportunity and therefore considered that an equality impact assessment was not necessary.

#### **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment is not necessary as the proposals do not impose any additional costs or savings on business, charities, social economy enterprises or voluntary bodies.

#### **7. Financial Implications**

- 7.1. None.

#### **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Rule is not incompatible with any of the Convention rights, is not incompatible with Community law, does not discriminate against a person or class of person on the ground of religious belief or political opinion and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

#### **9. EU Implications**

- 9.1. Not applicable.

## **10. Parity or Replicatory Measure**

- 10.1. The Order replicates, in part, section 65 of the Charities and Trustee Investment (Scotland) Act 2005, which disapplies section 69 of that Act (disqualification from being charity trustee) in respect of designated religious charities in Scotland.

## **11. Additional Information**

- 11.1. Not applicable.