

*These notes refer to the Charities Act (Northern Ireland) 2008
(c.12) which received Royal Assent on 9 September 2008*

Charities Act (Northern Ireland) 2008

EXPLANATORY NOTES

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.