



2008 CHAPTER 12

PART 14

MISCELLANEOUS AND SUPPLEMENTARY

Merger of charities

Register of charity mergers

161.—(1) The Commission shall establish and maintain a register of charity mergers.

(2) The register shall be kept by the Commission in such manner as it thinks fit.

(3) The register shall contain an entry in respect of every relevant charity merger which is notified to the Commission in accordance with subsections (6) to (9) and such procedures as it may determine.

(4) In this section “relevant charity merger” means—

- (a) a merger of two or more charities in connection with which one of them (“the transferee”) has transferred to it all the property of the other or others, each of which (a “transferor”) ceases to exist, or is to cease to exist, on or after the transfer of its property to the transferee, or
- (b) a merger of two or more charities (“transferors”) in connection with which both or all of them cease to exist, or are to cease to exist, on or after the transfer of all of their property to a new charity (“the transferee”).

(5) In the case of a merger involving the transfer of property of any charity which has both a permanent endowment and other property (“unrestricted

property”) and whose trusts do not contain provision for the termination of the charity, subsection (4)(a) or (b) applies in relation to any such charity as if—

- (a) the reference to all of its property were a reference to all of its unrestricted property, and
- (b) any reference to its ceasing to exist were omitted.

(6) A notification under subsection (3) may be given in respect of a relevant charity merger at any time after—

- (a) the transfer of property involved in the merger has taken place, or
- (b) (if more than one transfer of property is so involved) the last of those transfers has taken place.

(7) If a vesting declaration is made in connection with a relevant charity merger, a notification under subsection (3) must be given in respect of the merger once the transfer, or the last of the transfers, mentioned in subsection (6) has taken place.

(8) A notification under subsection (3) is to be given by the charity trustees of the transferee and must—

- (a) specify the transfer or transfers of property involved in the merger and the date or dates on which it or they took place;
- (b) include a statement that appropriate arrangements have been made with respect to the discharge of any liabilities of the transferor charity or charities; and
- (c) in the case of a notification required by subsection (7), set out the matters mentioned in subsection (9).

(9) The matters are—

- (a) the fact that the vesting declaration in question has been made;
- (b) the date when the declaration was made; and
- (c) the date on which the vesting of title under the declaration took place by virtue of section 163(2).

(10) In this section and section 162—

- (a) any reference to a transfer of property includes a transfer effected by a vesting declaration; and
- (b) “vesting declaration” means a declaration to which section 163(2) applies.

(11) Nothing in this section or section 163 or 164 applies in a case where section 116 (amalgamation of CIOs) or 118 (transfer of CIO’s undertaking) applies.

Register of charity mergers: supplementary

162.—(1) Subsection (2) applies to the entry to be made in the register in respect of a relevant charity merger, as required by section 161(3).

(2) The entry must—

- (a) specify the date when the transfer or transfers of property involved in the merger took place,
- (b) if a vesting declaration was made in connection with the merger, set out the matters mentioned in section 161(9), and
- (c) contain such other particulars of the merger as the Commission thinks fit.

(3) The register shall be open to public inspection at all reasonable times.

(4) Where any information contained in the register is not in documentary form, subsection (3) shall be construed as requiring the information to be available for public inspection in legible form at all reasonable times.

(5) In this section—

“the register” means the register of charity mergers;

“relevant charity merger” has the same meaning as in section 161.

Pre-merger vesting declarations

163.—(1) Subsection (2) applies to a declaration which—

- (a) is made by deed for the purposes of this section by the charity trustees of the transferor,
- (b) is made in connection with a relevant charity merger, and
- (c) is to the effect that (subject to subsections (3) and (4)) all of the transferor’s property is to vest in the transferee on such date as is specified in the declaration (“the specified date”).

(2) The declaration operates on the specified date to vest the legal title to all of the transferor’s property in the transferee, without the need for any further document transferring it.

This is subject to subsection (3).

(3) Subsection (2) does not apply to—

- (a) any land held by the transferor as security for money subject to the trusts of the transferor (other than land held on trust for securing debentures or debenture stock);
- (b) any land held by the transferor under a lease or agreement which contains any covenant (however described) against assignment of the transferor’s interest without the consent of some other person, unless that consent has been obtained before the specified date; or

- (c) any shares, stock, annuity or other property which is only transferable in books kept by a company or other body or in a manner directed by or under any statutory provision.
- (4) In this section “relevant charity merger” has the same meaning as in section 161.
- (5) In this section—
 - (a) any reference to the transferor, in relation to a relevant charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 161, and
 - (b) any reference to all of the transferor’s property, where the transferor is a charity within section 161(5), is a reference to all of the transferor’s unrestricted property (within the meaning of that provision).
- (6) In this section any reference to the transferee, in relation to a relevant charity merger, is a reference to—
 - (a) the transferee (within the meaning of section 161), if it is a company or other body corporate, and
 - (b) otherwise, to the charity trustees of the transferee (within the meaning of that section).

Effect of registering charity merger on gifts to transferor

164.—(1) This section applies where a relevant charity merger is registered in the register of charity mergers.

- (2) Any gift which—
 - (a) is expressed as a gift to the transferor, and
 - (b) takes effect on or after the date of registration of the merger,takes effect as a gift to the transferee, unless it is an excluded gift.
- (3) A gift is an “excluded gift” if—
 - (a) the transferor is a charity within section 161(5), and
 - (b) the gift is intended to be held subject to the trusts on which the whole or part of the charity’s permanent endowment is held.
- (4) In this section—
 - “relevant charity merger” has the same meaning as in section 161; and
 - “transferor” and “transferee” have the same meanings as in section 163.

Religious charities

Application of Act in relation to designated religious charities

165.—(1) Sections 33 to 36 do not apply to a designated religious charity.

Status: This is the original version (as it was originally enacted).

- (2) The Department may by order provide—
- (a) that such other provisions made by or under this Act as may be specified, are not to apply to a designated religious charity; or
 - (b) that such other provisions made by or under this Act as may be specified, are to apply to a designated religious charity with such modifications as may be specified.
- (3) No order shall be made under this section unless a draft of the order has been laid before and approved by a resolution of the Assembly.
- (4) In this section—
- “designated religious charity”—
- (a) means a charity in relation to which a designation under section 166 is made and has not been withdrawn, and
 - (b) includes any component element of such a charity which is itself a charity (whether or not having as its principal purpose the advancement of religion);
- “specified” means specified in the order.

Designation, etc. of religious charities

166.—(1) The Commission may, on receiving an application from the charity trustees of a charity, make a designation under this section in relation to the charity.

(2) Subject to subsection (4), the Commission must not make such a designation unless it appears to the Commission that the conditions set out in subsection (3) are satisfied in relation to the charity.

- (3) Those conditions are that the charity—
- (a) has the advancement of religion as its principal purpose;
 - (b) has the regular holding of public worship as its principal activity;
 - (c) has been established in Northern Ireland for at least 5 years; and
 - (d) has an internal organisation such that—
 - (i) one or more authorities in Northern Ireland exercise supervisory and disciplinary functions in respect of the component elements of the charity, and
 - (ii) those elements are subject to such requirements regarding the keeping of accounting records and auditing of accounts as appear to the Commission to correspond to those required by Part 8.

(4) The Commission may determine that subsection (3)(c) need not be satisfied in the case of a charity—

- (a) created by the amalgamation of 2 or more charities each of which, immediately before the amalgamation—
 - (i) was designated under this section, or
 - (ii) was, in the Commission’s opinion, eligible to be so designated, or
 - (b) constituted by persons who have removed themselves from membership of a charity which, immediately before the removal—
 - (i) was designated under this section, or
 - (ii) was, in the Commission’s opinion, eligible to be so designated.
- (5) The Commission may, by notice served on a charity in relation to which a designation has been made under this section, withdraw the designation where—
- (a) it appears to the Commission that one or more of paragraphs (a) to (d) of subsection (3) is no longer satisfied in relation to the charity; or
 - (b) in consequence of an investigation of any component element of the charity under section 22, the Commission considers that it is no longer appropriate for the charity to be designated under this section.

Institutions which are not charities under the law of Northern Ireland

Institutions which are not charities under the law of Northern Ireland

- 167.**—(1) This section applies to any institution—
- (a) which is not a charity under the law of Northern Ireland, but
 - (b) which operates for charitable purposes in or from Northern Ireland.
- (2) In this section, an institution to which this section applies is referred to as “a section 167 institution”.
- (3) The trustees of a section 167 institution shall prepare in respect of each financial year of the institution—
- (a) a financial statement, and
 - (b) a statement of activities,
- relating to its operations for charitable purposes in or from Northern Ireland.
- (4) The financial statement and the statement of activities shall comply with such requirements as to their form and contents as may be prescribed by regulations made by the Department.
- (5) The Department may by order make such provision as it considers appropriate with respect to section 167 institutions in relation to their operations for charitable purposes in or from Northern Ireland.
- (6) Without prejudice to the generality of subsection (5), an order under that subsection may—
- (a) require the Commission to keep a register of section 167 institutions;

- (b) apply to section 167 institutions any statutory provision which would otherwise not so apply, either without modification or with modifications specified in the order;
- (c) disapply, or modify (in ways specified in the order) the application of, any statutory provision which would otherwise apply to section 167 institutions.

(7) No order may be made under this section unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(8) Nothing in this section prejudices the generality of section 182.

Other matters

Manner of giving notice of charity meetings, etc.

168.—(1) Without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) (service of documents), all notices which are required or authorised by the trusts of a charity to be given to a person who is a charity trustee, member or subscriber may be sent by post, and, if sent by post, may be addressed to any address given as that person's address in the list of charity trustees, members or subscribers for the time being in use at the office or principal office of the charity.

(2) No notice required to be given as aforesaid of any meeting or election need be given to any person who is a charity trustee, member or subscriber, if in the list above mentioned that person has no address in the United Kingdom.

Manner of executing instruments

169.—(1) Charity trustees may, subject to the trusts of the charity, confer on any of their body (not being less than two in number) a general authority, or an authority limited in such manner as the trustees think fit, to execute in the names and on behalf of the trustees assurances or other deeds or instruments for giving effect to transactions to which the trustees are a party; and any deed or instrument executed in pursuance of an authority so given shall be of the same effect as if executed by the whole body.

(2) An authority under subsection (1)—

- (a) shall suffice for any deed or instrument if it is given in writing or by resolution of a meeting of the trustees, notwithstanding the want of any formality that would be required in giving an authority apart from that subsection;
- (b) may be given so as to make the powers conferred exercisable by any of the trustees, or may be restricted to named persons or in any other way;

(c) subject to any such restriction, and until it is revoked, shall, notwithstanding any change in the charity trustees, have effect as a continuing authority given by the charity trustees from time to time of the charity and exercisable by such trustees.

(3) In any authority under this section to execute a deed or instrument in the names and on behalf of charity trustees there shall, unless the contrary intention appears, be implied authority also to execute it for them in the name and on behalf of the official custodian or of any other person, in any case in which the charity trustees could do so.

(4) Where a deed or instrument purports to be executed in pursuance of this section, then in favour of a person who (then or afterwards) in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the charity trustees, it shall be conclusively presumed to have been duly executed by virtue of this section.

(5) The powers conferred by this section shall be in addition to and not in derogation of any other powers.

Transfer and evidence of title to property vested in trustees

170.—(1) Where, under the trusts of a charity, trustees of property held for the purposes of the charity may be appointed or discharged by resolution of a meeting of the charity trustees, members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact if the memorandum is signed either at the meeting by the person presiding or in some other manner directed by the meeting and is attested by two persons present at the meeting.

(2) A memorandum evidencing the appointment or discharge of a trustee under subsection (1), if executed as a deed, shall have the like operation under section 39 of the Trustee Act (Northern Ireland) 1958 (c. 23) (which relates to vesting declarations as respects trust property in deeds appointing or discharging trustees) as if the appointment or discharge were effected by the deed.

(3) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1), then on proof (whether by evidence or as a matter of presumption) of the signature the document shall be presumed to have been so signed and attested, unless the contrary is shown.

(4) This section shall apply to a memorandum made at any time, except that subsection (2) shall apply only to those made after the commencement of section 1 of the Charities Act (Northern Ireland) 1964 (c. 33) (20th October 1964).

(5) This section shall apply in relation to any institution to which the Literary and Scientific Institutions Act 1854 (c. 112) applies as it applies in relation to a charity.

Supply by Commission of copies of documents open to public inspection

171. The Commission shall, at the request of any person, furnish that person with copies of, or extracts from, any document in the Commission's possession which is for the time being open to inspection under this Act.

Fees and other amounts payable to Commission

172.—(1) The Department may by regulations require the payment to the Commission of such fees as may be prescribed by the regulations in respect of—

- (a) the discharge by the Commission of such functions under the statutory provisions relating to charities as may be so prescribed;
- (b) the inspection of the register of charities or of other material kept by the Commission under those statutory provisions, or the furnishing of copies of or extracts from documents so kept.

(2) Regulations under this section may—

- (a) confer, or provide for the conferring of, exemptions from liability to pay a prescribed fee;
- (b) provide for the remission or refunding of a prescribed fee (in whole or in part) in circumstances prescribed by the regulations.

(3) Any regulations under this section which require the payment of a fee in respect of any matter for which no fee was previously payable shall not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(4) The Commission may impose charges of such amounts as it considers reasonable in respect of the supply of any publications produced by it.

(5) Any fees and other payments received by the Commission by virtue of this section shall be paid to the Department.

Enforcement of requirements by order of Commission

173.—(1) If a person fails to comply with any requirement imposed by or under this Act then (subject to subsection (2)) the Commission may by order give that person such directions as it considers appropriate for securing that the default is made good.

(2) Subsection (1) does not apply to any such requirement if—

- (a) a person who fails to comply with, or is persistently in default in relation to, the requirement is liable to any criminal penalty; or

- (b) the requirement is imposed—
 - (i) by an order of the Commission to which section 174 applies, or
 - (ii) by a direction of the Commission to which that section applies by virtue of section 176(2).

Enforcement of orders of Commission

174. A person guilty of disobedience—

- (a) to an order of the Commission under section 23(1), 36, 37, 66(2), 84, 87 or 90; or
- (b) to an order of the Commission under section 31 or 33 requiring a transfer of property or payment to be called for or made; or
- (c) to an order of the Commission requiring a default under this Act to be made good;

may on the application of the Commission to the High Court be dealt with as for disobedience to an order of the High Court.

Other provisions as to orders of Commission

175.—(1) Any order made by the Commission under this Act may include such incidental or supplementary provisions as the Commission thinks expedient for carrying into effect the objects of the order, and where the Commission exercises any jurisdiction to make such an order on an application or reference to it, it may insert any such provisions in the order notwithstanding that the application or reference does not propose their insertion.

(2) Where the Commission makes an order under this Act, then (without prejudice to the requirements of this Act where the order is subject to appeal) the Commission may itself give such public notice as it thinks fit of the making or contents of the order, or may require it to be given by any person on whose application the order is made or by any charity affected by the order.

(3) The Commission at any time within 12 months after it has made an order under any provision of this Act other than section 84, if it is satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with this Act, may with or without any application or reference to it discharge the order in whole or in part, and subject or not to any savings or other transitional provisions.

(4) Except for the purposes of subsection (3) or of an appeal under this Act, an order made by the Commission under this Act shall be deemed to have been duly and formally made and not be called in question on the ground only of irregularity or informality, but (subject to any further order) have effect according to its tenor.

(5) An order made by the Commission under any provision of this Act may be varied or revoked by a subsequent order so made.

Directions of the Commission

176.—(1) Any direction given by the Commission under any provision contained in this Act—

- (a) may be varied or revoked by a further direction given under that provision; and
- (b) shall be given in writing.

(2) Sections 174 and 175(1), (2) and (4) shall apply to any such directions as they apply to an order of the Commission.

(3) In subsection (1) the reference to the Commission includes, in relation to a direction under subsection (3) of section 22, a reference to any person conducting an inquiry under that section.

(4) Nothing in this section shall be read as applying to any directions contained in an order made by the Commission under section 173(1).

Miscellaneous provisions as to evidence

177.—(1) Where, in any proceedings to recover or compel payment of any rentcharge or other periodical payment claimed by or on behalf of a charity out of land or of the rents, profits or other income of land, otherwise than as rent incident to a reversion, it is shown that the rentcharge or other periodical payment has at any time been paid for 12 consecutive years to or for the benefit of the charity, that shall be prima facie evidence of the perpetual liability to it of the land or income, and no proof of its origin shall be necessary.

(2) Evidence of any order, certificate or other document issued by the Commission may be given by means of a copy which it retained, or which is taken from a copy so retained, and evidence of an entry in any register kept by it may be given by means of a copy of the entry, if (in each case) the copy is certified in accordance with subsection (3).

(3) The copy shall be certified to be a true copy by any member of the staff of the Commission generally or specially authorised by the Commission to act for that purpose.

(4) A document purporting to be such a copy shall be received in evidence without proof of the official position, authority or handwriting of the person certifying it.

Restriction on institution of proceedings for certain offences

178.—(1) No proceedings for an offence under this Act to which this section applies shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) This section applies to any offence under—

- (a) section 19;
- (b) section 25;
- (c) section 33(11);
- (d) section 71; or
- (e) section 87.

*Supplementary***Orders and regulations**

179.—(1) Except as otherwise provided by subsection (2) or (3), any order or regulations made by the Department under this Act shall be subject to negative resolution.

(2) Subsection (1) does not apply—

- (a) to an order under section 32(2), 93(6), 165, 167, 181 or 185, paragraph 10 of Schedule 1 or paragraph 6 of Schedule 3;
- (b) to regulations under section 119, 122 or 158; or
- (c) to any regulations to which section 172(3) applies.

(3) Subsection (1) applies subject to section 182(4).

(4) Before making any regulations under section 64, 66, 68, 119, 122, 157, 158 or 167 or Schedule 6 the Department shall consult such persons or bodies of persons as it considers appropriate.

(5) Any regulations made by the Department or the Commission under this Act may make such supplemental, incidental, consequential or transitional provision or savings as the Department, or as the case may be, the Commission, considers appropriate.

(6) Any regulations made by the Commission under this Act shall be published in such manner as the Commission thinks fit.

General interpretation

180.—(1) In this Act—

“charitable purposes” means purposes which are exclusively charitable purposes as defined by section 2;

“charity” has the meaning given in section 1;

“charity trustees” means the persons having the general control and management of the administration of a charity;

“CIO” means charitable incorporated organisation;

“the Commission” means the Charity Commission for Northern Ireland;

“company” means a company formed and registered under the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#) or to which the provisions of that Order apply as they apply to such a company;

“the Court”, subject to Article 14(b) of the [County Courts \(Northern Ireland\) Order 1980 \(NI 3\)](#), means the High Court;

“the Department” means the Department for Social Development;

“financial year”—

(a) in relation to a charity which is a company, shall be construed in accordance with section 390 of the Companies Act 2006 (c. 46), and

(b) in relation to any other charity, shall be construed in accordance with regulations made by virtue of section 64(2);

“gross income”, in relation to a charity, means its gross recorded income from all sources including special trusts;

“independent examiner”, in relation to a charity, means such a person as is mentioned in section 65(3)(a);

“institution” means any institution whether incorporated or not and includes a trust or undertaking;

“members”, in relation to a charity with a body of members distinct from the charity trustees, means any of those members;

“modifications” includes additions, omissions and amendments;

“the official custodian” means the official custodian for charities (see section 11);

“permanent endowment” shall be construed in accordance with section 1(3);

“public benefit” shall be construed in accordance with section 3;

“public charitable collection” has the meaning given by section 131(2);

“public collections certificate” means a certificate issued under section 138;

“the register” means the register of charities kept under section 16, and “registered” shall be construed accordingly;

“special trust” means property which is held and administered by or on behalf of a charity for any special purposes of the charity, and is so held and administered on separate trusts relating only to that property but a special trust shall not, by itself, constitute a charity for the purposes of Part 8;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

“the Tribunal” means the Charity Tribunal for Northern Ireland;

“trusts” in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not, and in relation to other institutions has a corresponding meaning.

(2) In this Act, “document” includes information recorded in any form, and, in relation to information recorded otherwise than in legible form—

- (a) any reference to its production shall be construed as a reference to the furnishing of a copy of it in legible form; and
- (b) any reference to the furnishing of a copy of, or extract from, it shall accordingly be construed as a reference to the furnishing of a copy of, or extract from, it in legible form.

(3) No vesting or transfer of any property in pursuance of any provision of Part 6, 9, 11, 12 or 14 shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

Amendments reflecting changes in company law

181.—(1) The Department may by order make such amendments of this Act as it considers appropriate—

- (a) in consequence of, or in connection with, the extension of the Companies Acts to Northern Ireland by section 1284 of the Companies Act 2006 (c. 46);
- (b) in consequence of, or in connection with, any changes made or to be made by any statutory provision to the provisions of company law relating to the accounts of charitable companies or to the auditing of, or preparation of reports in respect of, such accounts; or
- (c) for the purposes of, or in connection with, applying provisions of Schedule 6 (group accounts) to charitable companies that are not required to produce group accounts under company law.

(2) In this section—

“accounts” includes group accounts;

“amendments” includes modifications and repeals;

“charitable companies” means companies which are charities;

“company law” means statutory provisions relating to companies.

(3) An order under this section shall not be made unless a draft of the order is laid before and approved by a resolution of the Assembly.

Further provision

182.—(1) The Department may by order make such supplementary, incidental or consequential provision as it thinks appropriate—

- (a) for the general purposes, or any particular purpose, of this Act;
- (b) in consequence of any provision made by or under this Act, or for giving full effect to it.

(2) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with—

- (a) the coming into operation of any provision of this Act; or
- (b) any provision made by an order under subsection (1).

(3) An order under this section may amend, modify or repeal any statutory provision (including a statutory provision restating, with or without modifications, a statutory provision amended by this Act).

(4) An order which does so shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(5) The powers conferred by this section are not restricted by any other provision of this Act.

Minor and consequential amendments

183. The statutory provisions mentioned in Schedule 8 shall have effect with the minor and consequential amendments specified there.

Repeals

184. Subject to any savings or transitional provisions made by or under this Act, the statutory provisions mentioned in Schedule 9 are repealed to the extent specified there.

Commencement

185.—(1) This Act, except section 180, this section and section 186, comes into operation on such day or days as the Department may by order appoint.

(2) Without prejudice to section 17(5) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (statutory powers and duties generally), an order under subsection (1) may provide that provisions are to come into operation on different days in relation to charities of different descriptions.

Short title

186. This Act may be cited as the Charities Act (Northern Ireland) 2008.