

*Status: Point in time view as at 27/03/2009. This version of this part contains provisions that are prospective.*

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## 2008 CHAPTER 12

### **PART 2**

#### THE CHARITY COMMISSION FOR NORTHERN IRELAND

##### *Establishment of the Commission*

##### **The Charity Commission for Northern Ireland**

**6.—**(1) There shall be a body corporate to be known as the Charity Commission for Northern Ireland (in this Act referred to as “the Commission”).

(2) The Commission shall consist of a chair, a deputy chair and at least 3, but no more than 5, other members.

(3) The members shall be appointed by the Department.

(4) The Department shall exercise the power in subsection (3) so as to secure that—

(a) the knowledge and experience of the members of the Commission (taken together) includes knowledge and experience of the matters mentioned in subsection (5), and

(b) at least 1 member is legally qualified.

(5) The matters mentioned in this subsection are—

(a) the law relating to charities,

(b) charity accounts and the financing of charities, and

(c) the operation and regulation of charities of different sizes and descriptions.

(6) A person is not legally qualified for the purposes of subsection (4)(b) unless the person is a barrister or solicitor of not less than 7 years' standing.

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(7) Schedule 1 makes further provision with respect to the Commission.

(8) Subject to Schedule 1, section 19 of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies to the Commission.

*The Commission's objectives, general functions, etc.*

### **The Commission's objectives**

7.—(1) The Commission has the objectives set out in subsection (2).

(2) The objectives are—

- (1) The public confidence objective.
- (2) The public benefit objective.
- (3) The compliance objective.
- (4) The charitable resources objective.
- (5) The accountability objective.

(3) Those objectives are defined as follows—

- (1) The public confidence objective is to increase public trust and confidence in charities.
- (2) The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.
- (3) The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
- (4) The charitable resources objective is to promote the effective use of charitable resources.
- (5) The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.

(4) In this section “the public benefit requirement” means the requirement in subsection (1)(b) of section 2 that a purpose falling within subsection (2) of that section must be for the public benefit if it is to be a charitable purpose.

### **The Commission's general functions**

8.—(1) The Commission has the general functions set out in subsection (2).

(2) The general functions are—

- (1) Determining whether institutions are or are not charities.
- (2) Encouraging and facilitating the better administration of charities.

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- (3) Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein.
- (4) Determining whether public collection certificates should be issued, and remain in force, in respect of public charitable collections.
- (5) Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives.
- (6) Giving information or advice, or making proposals, to the Department on matters relating to any of the Commission's functions or meeting any of its objectives.

(3) The Commission's fifth general function includes (among other things) the establishment and maintenance of an accurate and up-to-date register of charities under section 16.

(4) The Commission's sixth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by the Department for information or advice on any matter relating to any of the Commission's functions.

### **The Commission's general duties**

- 9.—**(1) The Commission has the general duties set out in subsection (2).
- (2) The general duties are—
- (1) So far as is reasonably practicable the Commission must, in performing its functions, act in a way—
    - (a) which is compatible with its objectives, and
    - (b) which it considers most appropriate for the purpose of meeting those objectives.
  - (2) So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of—
    - (a) all forms of charitable giving, and
    - (b) voluntary participation in charity work.
  - (3) In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.
  - (4) In performing its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).

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- (5) In performing its functions the Commission must have regard to the desirability of facilitating innovation by or on behalf of charities.
- (6) In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

### **The Commission's incidental powers**

**10.**—(1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.

(2) However, nothing in this Act authorises the Commission—

- (a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or
- (b) otherwise to be directly involved in the administration of a charity.

(3) Subsection (2) does not affect the operation of section 36 or 37 (power of Commission to give directions as to action to be taken or as to application of charity property).

#### **Modifications etc. (not altering text)**

- C1** [S. 10\(3\)](#) modified (18.2.2011) by [Charities Act 2008 \(Transitional Provision\) Order \(Northern Ireland\) 2011 \(S.R. 2011/12\)](#), [art. 2](#), Sch.

#### **Commencement Information**

- II** [S. 10](#) wholly in operation at 18.2.2011; [s. 10](#) not in operation at Royal Assent, see [s. 185\(1\)](#); [s. 10\(1\)\(2\)](#) in operation at 27.3.2009 by [S.R. 2009/138](#), [art. 2](#), Sch.; [s. 10\(3\)](#) in operation at 18.2.2011 by [S.R. 2011/11](#), [art. 2](#), Sch.

PROSPECTIVE

### *The official custodian for charities in Northern Ireland*

#### **The official custodian for charities in Northern Ireland**

**11.**—(1) There shall be an officer to be known as the official custodian for charities in Northern Ireland (in this Act referred to as “the official custodian”) whose function it shall be to act as trustee for charities in the cases provided for by this Act; and the official custodian shall be [<sup>F1</sup>a corporation sole whose official seal] shall be officially and judicially noticed.

(2) Such individual as the Commission may designate shall be the official custodian.

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(3) The duties of the official custodian shall be performed in accordance with such general or special directions as may be given by the Commission, and the expenses of the official custodian (except those re-imbursed, or recovered by, the official custodian as trustee for any charity) shall be defrayed by the Commission.

(4) Anything which is required to or may be done by, to or before the official custodian may be done by, to or before any member of staff of the Commission generally or specially authorised by it to act for the official custodian during a vacancy in the office of the official custodian or otherwise.

(5) The official custodian shall not be liable as trustee for any charity in respect of any loss or of the mis-application of any property unless it is occasioned by or through the wilful neglect or default of the official custodian or of any person acting for the official custodian; but the Commission shall be liable to make good to a charity any sums for which the official custodian may be liable by reason of any such neglect or default.

(6) The official custodian shall keep such books of account and such records in relation thereto as may be directed by the Department and shall prepare accounts in such form, in such manner and at such times as may be so directed.

(7) The accounts so prepared shall be examined, certified and reported on by the Comptroller and Auditor General.

(8) The Comptroller and Auditor General shall send to the Commission a copy of the accounts as certified in accordance with subsection (7), together with the report on them.

(9) The Commission shall publish and lay before the Assembly a copy of the documents sent to it under subsection (8).

#### **Textual Amendments**

- F1** Words in s. 11(1) substituted (19.1.2013) by [Charities Act \(Northern Ireland\) 2013 \(c. 3\)](#), s. 10(1), [Sch. 1 para. 3](#)

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