

*These notes refer to the Charities Act (Northern Ireland)
2013 (c.3) which received Royal Assent on 18 January 2013*

Charities Act (Northern Ireland) 2013

EXPLANATORY NOTES

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for Social Development in order to assist the reader of the Act and to help inform debate on it. It does not form part of the Act and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Act. It is not, and is not meant to be, a comprehensive description of the Act. So where a section or part of a section or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The primary reason for the Act is to amend the public benefit provision of the Charities Act (Northern Ireland) 2008 (“the 2008 Act”) to provide clarity on the requirement to be met in determining whether an institution is, or is not, a charity within the meaning of that Act.
4. The need for clarity on the public benefit provision was first identified when the Charity Commission for Northern Ireland (CCNI) sought legal opinion on the draft public benefit guidance which it is statutorily obliged to issue. Opinion was that the provision in section 3 of that Act (“the public benefit” test) created legal uncertainty arising from the inclusion of an element of the public benefit provision contained in the Scottish Charities and Trustee Investment (Scotland) Act 2005 (“the Scottish Act”).
5. The Act amends section 3 of the 2008 Act by removing the provision taken from the Scottish Act and making provision for the determination of the public benefit requirement to be based on the law relating to charities in Northern Ireland.
6. While the primary reason for the Act is the amendment of the public benefit provision, it also provides a legislative vehicle for a number of other outstanding amendments to the 2008 Act. Company law references are amended to reflect changes made under the Companies Act 2006 since the 2008 Act was enacted. Amendments made to charity legislation in England and Wales prior to consolidation by the Charities Act 2011 are replicated

to modernise language, clarify existing legislation, repeal provisions now obsolete and make consequential amendments that were previously missed.

7. The Act also makes certain other provision. It provides for the transfer of functions which are of a regulatory nature, but which still remain within the Department's jurisdiction, to that of the CCNI. It also re-enacts provision in the Charities Act (Northern Ireland) 1964 that was repealed by the 2008 Act but which on reconsideration is believed to be a worthwhile mechanism for saving a charitable gift that would otherwise fail.

CONSULTATION

8. As the Act is largely comprised of technical amendments, re-enactment of repealed provision and the transfer of regulatory functions from the Department to the CCNI, a public consultation was considered unnecessary.
9. The public benefit amendment which instigated the need for the Act has been the subject of extensive discussion and consultation between the Department, the CCNI, HM Treasury, HM Revenue and Customs, the Departmental Solicitor's Office, the Social Development Committee and representatives of the charitable sector. The consensus of opinion is that the public benefit provision of the 2008 Act should replicate that in force in England and Wales.

OVERVIEW

10. The Act contains eleven sections and two Schedules.

COMMENTARY ON SECTIONS

A short explanation of sections 1 – 6, 10 and Schedule 1 is given below. Sections 7 – 9, 11 and Schedule 2 are considered to be self-explanatory.

Section 1: The public benefit requirement

Section 1 substitutes a new public benefit provision for that in section 3 of the 2008 Act.

The effect of the substitution is that, similar to all other provisions of the 2008 Act, the new section 3 is based exclusively on the charity legislation of England and Wales. Provision is made for determination of the public benefit requirement by reference to the law relating to charities in Northern Ireland.

Section 1(2) applies the new public benefit provision retrospectively.

Section 2: Gifts for mixed purposes

Section 2 re-enacts section 24 of the Charities Act (Northern Ireland) 1964 (gifts for mixed purposes). Re-enactment has the effect of restoring the mechanism through which a gift which is for both charitable and other purposes may be regarded as exclusively charitable.

Section 3: Debt relief orders, debt relief restrictions orders and bankruptcy restrictions orders

Section 3 amends sections 33, 86 and 87 of the 2008 Act to extend the list of persons disqualified from being trustees of a charity to include persons who are subject to a bankruptcy restrictions order or persons subject to moratorium period under a debt relief order or a debt relief restrictions order. The amendment is consequential to corresponding provision made by the Enterprise Act 2002 (Disqualification from Office: General) Order 2006 and Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012.

Section 4: Educational endowments

Section 4 transfers the Department's functions under the Educational Endowments (Ireland) Act 1885, and other related Acts, to the CCNI. These functions are no longer appropriate to the Department as they fall within the CCNI's statutory role as Regulator of charities.

Section 5: Miscellaneous functions

Section 5 transfers certain other regulatory functions from the Department to the CCNI. Section 5(1) transfers relevant functions under the Education and Libraries (Northern Ireland) Order 1986 while section 5(2) transfers those under the Companies Act 2006.

Section 6: Supplementary provisions

Section 6 makes transitional provision and savings to facilitate the transfer of functions from the Department to the CCNI.

Section 10: Commencement

Section 10(1) provides that with the exception of sections 4 and 5(1) all provisions of the Act shall come into operation on the day following that on which the Act is enacted.

Section 10(2) enables the Department to bring sections 4 and 5(1) into operation by order.

Schedule 1: Minor and consequential amendments

The amendments in Schedule 1 make no change to policy. Most are consequential to the implementation of the Companies Act 2006 and amendments made by the Charities (Pre-consolidation Amendments) Order 2011. A few correct textual inaccuracies.

HANSARD REPORTS

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly.

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<i>STAGE</i>	<i>DATE</i>
Introduction of Act to the Committee for Social Development	2 February 2012
Introduction to the Assembly	2 July 2012
Second Stage	11 September 2012
Committee Stage – evidence from the Charity Commission for Northern Ireland	13 September 2012
Committee Stage – evidence from the Northern Ireland Council for Voluntary Action	20 September 2012
Committee Stage – Departmental briefing	27 September 2012
Committee Stage – consideration of sections 1 – 11 and Schedules 1 and 2	4 October 2012
Committee Stage – consideration of proposed amendment to section 9	11 October 2012
Committee Stage – consideration of proposed amendment to section 3	18 October 2012
Committee’s Report on the Act (Reference NIA 68/11 – 15)	23 October 2012
Consideration Stage	20 November 2012
Further Consideration Stage	3 December 2012
Final Stage	11 December 2012
Royal Assent	18 January 2013