

# **CHARITIES BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

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

### **BACKGROUND AND POLICY OBJECTIVES**

3. The primary reason for the Bill 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 Bill 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 Bill 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 Bill 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 Bill 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 Bill 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.

## **OPTIONS CONSIDERED**

10. The Department considered options in two areas relating to the Bill –
  - (a) whether to amend the public benefit provision of the 2008 Act, and if so, what form should that amendment take; and
  - (b) should the Bill carry the public benefit amendment only, or should it also be a legislative vehicle for other substantive amendments requiring primary legislation, plus a number of outstanding amendments consequential to legislation made by other Departments which would otherwise have to be made by subordinate legislation.
11. In relation to (a) above, the Department decided that it was imperative to remove the legal uncertainty around the matter of how it should be determined whether an institution is or is not a charity. As for the content of the Bill, while the Department saw the need to amend the public benefit provision as urgent, it also

took into account the substantial volume of subordinate legislation that was pending, much of which would require debate by the Assembly. This, combined with the knowledge that further primary legislation would later be required to make other amendments to the 2008 Act if not included in this Bill, led to a decision to make optimum use of this opportunity to update the 2008 Act.

## **OVERVIEW**

12. The Bill contains eleven clauses and two Schedules.

## **COMMENTARY ON CLAUSES**

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

### **Clause 1: The public benefit requirement**

Clause 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.

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

### **Clause 2: Gifts for mixed purposes**

Clause 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.

### **Clause 3: Persons disqualified for being trustees of a charity**

Clause 3 amends section 86 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 an interim order. The amendment is consequential to corresponding provision made by the Enterprise Act 2002 (Disqualification from Office: General) Order 2006.

#### **Clause 4: Educational endowments**

Clause 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.

#### **Clause 5: Miscellaneous functions**

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

#### **Clause 6: Supplementary provisions**

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

#### **Clause 10: Commencement**

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

Clause 10(2) enables the Department to bring Clauses 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.

### **FINANCIAL EFFECTS OF THE BILL**

14. There are no financial effects of this Bill.

### **HUMAN RIGHTS ISSUES**

15. The Department considers the provisions of the Bill to be compatible with the Convention on Human Rights.

## **EQUALITY IMPACT ASSESSMENT**

16. A screening exercise has been carried out on the Bill proposals in accordance with section 75 of the Northern Ireland Act 1998. No differential impact was found and accordingly a full Equality Impact Assessment was not required.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

17. A Regulatory Impact Assessment was not considered necessary as the Bill proposals impose no costs, savings or additional burden on business, charities or the voluntary sector.

## **LEGISLATIVE COMPETENCE**

18. The Minister for Social Development had made the following statement under section 9 of the Northern Ireland Act 1998:

*“In my view the Charities Bill would be within the legislative competence of the Northern Ireland Assembly.”*