

# Charities Bill

[AS AMENDED AT CONSIDERATION STAGE]

## CONTENTS

### *Amendments of 2008 Act*

1. The public benefit requirement
2. Gifts for mixed purposes
3. Debt relief orders, debt relief restrictions orders and bankruptcy restrictions orders

### *Transfer to Commission of certain functions of Department*

4. Educational endowments
5. Miscellaneous functions
6. Supplementary provisions

### *Miscellaneous*

7. Interpretation
8. Minor and consequential amendments and repeals
9. Power to make supplementary and transitional provision etc.
10. Commencement
11. Short title

## SCHEDULES:

Schedule 1	Minor and consequential amendments
Schedule 2	Repeals



A

# B I L L

TO

Amend the Charities Act (Northern Ireland) 2008; to transfer certain functions of the Department for Social Development to the Charity Commission for Northern Ireland; and for connected purposes.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

## *Amendments of 2008 Act*

### **The public benefit requirement**

**1.**—(1) For section 3 of the 2008 Act (the “public benefit” test) there shall be substituted the following section—

5           **“The public benefit requirement**

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

10           (2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 2(2), it is not to be presumed that a purpose of a particular description is for the public benefit.

          (3) In this Act any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in Northern Ireland.

15           (4) Subsection (3) is subject to subsection (2).”.

(2) This section shall be deemed always to have had effect.

### **Gifts for mixed purposes**

**2.** After section 29 of the 2008 Act (cy-près schemes) there shall be inserted the following section—

**“Gifts for mixed purposes**

29A.—(1) This section applies where property is given for purposes so described that, consistently with the terms of the gift, the property could all be used for charitable purposes but could equally well be used wholly or partly for purposes which are not charitable. 5

(2) If, but for this section, the gift would be invalid, the gift shall have effect as a gift for such charitable purposes as may be determined by a scheme made by the Court or the Commission.

(3) Where the terms of a gift and the surrounding circumstances appear to the Court or the Commission to show a predominant intention on the part of the donor to further a particular charitable purpose, the Court or the Commission shall, in making a scheme under subsection (2), have regard, so far as practicable, to that intention. 10

(4) Where—

(a) property is disposed of by way of successive gifts so that a gift is dependent upon a prior gift; and 15

(b) the prior gift has been made the subject of a scheme under this section,

any gift dependent upon the prior gift shall have the like effect as it would have had if the prior gift had at all times been for the purposes determined by that scheme.”. 20

**Debt relief orders, debt relief restrictions orders and bankruptcy restrictions orders**

3.—(1) The 2008 Act shall be amended as follows.

(2) In section 33 (power to act for protection of charities), in subsection (4)(a) at the end of sub-paragraph (ii) there shall be added “or 25

(iii) having previously been the subject of a debt relief order, has been discharged from all the qualifying debts under the debt relief order;”.

(3) In section 86 (persons disqualified for being trustees of a charity)— 30

(a) in subsection (1)—

(i) in paragraph (b), after the word “discharged” there shall be inserted the words “or D is the subject of a bankruptcy restrictions order”;

(ii) after paragraph (g) there shall be added the following paragraph—

“(h) D is subject to— 35

(i) a moratorium period under a debt relief order; or

(ii) a debt relief restrictions order.”;

(b) in subsection (2)—

(i) in paragraph (b), for the words “or the sequestration” there shall be substituted the words “, the sequestration or the making of the bankruptcy restrictions order”; 40

(ii) in paragraph (d), for “(g) there shall be substituted “(h)”;

(c) in subsection (3), after “subsection (1)(b)” insert “or (h)”.

(4) In section 87 (person acting as charity trustee while disqualified), in subsection (2)(b) for “or (g)” there shall be substituted “,(g) or (h)”.

*Transfer to Commission of certain functions of Department*

**Educational endowments**

- 5     **4.** The functions which immediately before the date on which this section comes into operation are exercisable by the Department under—
- (a) the Educational Endowments (Ireland) Act 1885;
  - (b) the Educational Endowments (Confirmation of Schemes) Act (Northern Ireland) 1956; and
- 10     (c) the Education (Amendment) Act (Northern Ireland) 1956, are hereby transferred as from that date to the Commission.

**Miscellaneous functions**

15     **5.—**(1) The functions which immediately before the date on which this subsection comes into operation are exercisable by the Department under Article 90(7) of the Education and Libraries (Northern Ireland) Order 1986 (power to authorise sale of teacher’s residence if provided etc. by a statutory loan prior to 1st February 1922 and now no longer required for occupation by a teacher in connection with any school) are hereby transferred as from that date to the Commission.

20     (2) The functions which immediately before the date on which this subsection comes into operation are exercisable by the Department under section 42(4)(b) of the Companies Act 2006 (prior written consent required in the case of a company which is a charity for affirmation of transaction to which section 41 of that Act applies) are hereby transferred as from that date to the Commission.

25     **Supplementary provisions**

30     **6.—**(1) In the construction and for the purposes of any statutory provision or instrument passed, made or issued before the transfer date, any reference to, or which is to be construed as a reference to, the Department must, so far as may be necessary for the purpose of the transfer, be construed as a reference to the Commission.

(2) The transfer does not affect the validity of any instrument made or issued or any other act done by, or in relation to, the Department before the transfer date; and any such instrument or act, if in force immediately before that date, continues in force to the same extent and subject to the same provisions as if it had been

35     duly made, issued or done by, or in relation to, the Commission.

(3) Anything (including any legal proceedings) in the process of being done by or in relation to the Department immediately before the transfer date may, so far as it relates to any function transferred by this section, be continued by or in relation to the Commission.

40     (4) All property, rights and liabilities to which the Department is entitled or subject immediately before the transfer date in connection with the functions transferred by section 4 or subsection (1) or (2) of section 5 are on that date transferred to, and by virtue of this subsection vest in, the Commission.

## *Charities*

(5) In this section—

“instrument” includes any judgment, decree, order, award, deed, contract, regulation, byelaw, certificate or other document;

“the transfer” means the transfer of functions by section 4 or subsection (1) or (2) of section 5; 5

“the transfer date” means the date on which section 4 or, as the case may be, subsection (1) or (2) of section 5 comes into operation.

## *Miscellaneous*

### **Interpretation**

7. In this Act— 10

“the 2008 Act” means the Charities Act (Northern Ireland) 2008;

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

“the Department” means the Department for Social Development;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954. 15

### **Minor and consequential amendments and repeals**

8.—(1) The statutory provisions set out in Schedule 1 shall have effect subject to the minor and consequential amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the second column of that Schedule. 20

### **Power to make supplementary and transitional provision etc.**

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

(a) for the purposes of this Act;

(b) in consequence of any provision made by or under this Act, or for giving full effect to it. 25

(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). 30

(3) An order under this section may amend, modify or repeal any statutory provision.

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

(5) Any other order under this section is subject to negative resolution. 35

### **Commencement**

10.—(1) This Act, except sections 4 and 5(1), comes into operation on the day after Royal Assent.

## *Charities*

(2) Sections 4 and 5(1) come into operation on such day or days as the Department may by order appoint.

### **Short title**

**11.** This Act may be cited as the Charities Act (Northern Ireland) 2012.

SCHEDULES

Section 8(1).

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Recreational Charities Act (Northern Ireland) 1958 (c. 16)*

1. In section 1(1) (general provision as to recreational and similar trusts, etc.), for “principle that a trust or institution to be charitable must be for the public benefit” substitute “requirement in section 2(1)(b) of the Charities Act (Northern Ireland) 2008 that a purpose falling within section 2(2) of that Act must be for the public benefit if it is to be a charitable purpose”. 5

*The 2008 Act*

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2. In section 4 (guidance as to operation of public benefit requirement), in subsection (1) add at the end “(see paragraph 2 in section 7(3))”.

3. In section 11(1) (the official custodian for charities in Northern Ireland), for “by that name a corporation sole having perpetual succession and using an official seal which” substitute “a corporation sole whose official seal”. 15

4. In section 20 (power of Commission to require charity’s name to be changed), omit subsection (7).

5. In section 21 (effect of direction under section 20 where charity is a company), in subsection (3)(a) for “subject to Article 36 of the Companies (Northern Ireland) Order 1986 (NI 6) (prohibition on registration of certain names)” substitute “if satisfied that the new name complies with the requirements of Part 5 of the Companies Act 2006”. 20

6.—(1) In the following provisions for “furnish” substitute “provide”—

(a) section 22(3)(a) and (b);

(b) section 23(1)(a) and (b)(i); 25

(c) section 48(9);

(d) section 171.

(2) In the following provisions for “furnished” substitute “provided”—

(a) section 23(3);

(b) section 52(2)(b) and (c). 30

(3) In section 149(2) for “furnishes” substitute “provides”.

(4) In the following provisions for “furnishing” substitute “provision”—

(a) section 172(1)(b);

(b) section 180(2)(a) and (in both places) (b).

7.—(1) Amend section 27 (application *cy-près* of gifts of donors unknown or disclaiming) as follows. 35



(2) In subsection (5)(c) for “such claim” substitute “claims made in accordance with paragraph (b)”.

(3) In subsection (6)(a) for “any such claims” substitute “claims made in accordance with subsection (5)(b)”.

5 8. In section 29 (cy-près schemes), after subsection (6) add—

“(7) In this section references to the original purposes of a gift are to be read, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.”.

10 9.—(1) Amend section 32 (further powers to make schemes or alter application of charitable property) as follows.

(2) In subsection (2) omit “and a draft of the order shall be laid before the Assembly”.

15 (3) In subsection (3) for “the order shall not be made unless the draft has been approved by” substitute “no order shall be made unless a draft of the order has been laid before and approved by a”.

10.—(1) Amend section 35 (supplementary provisions relating to interim manager appointed for charity) as follows.

20 (2) In subsection (1), after “such person” insert “(other than a member of its staff)”.

(3) In subsection (7)(c), for “allow” substitute “disallow”.

11. In section 42 (supplementary provisions as to property vested in official custodian), for subsection (1) substitute the following subsection—

25 “(1) Subject to the provisions of this Act, where property is vested in the official custodian in trust for a charity, the official custodian shall not exercise any powers of management, but regulations made by the Department may provide that the official custodian shall as trustee of any property—

30 (a) have such powers, duties and liabilities, and be entitled to such rights and immunities, as may be prescribed by the regulations, and

(b) be subject to the control and orders of the Court as the regulations may provide.”.

35 12.—(1) Amend section 46(3) (power to authorise dealings with charity property, etc.) as follows.

(2) For “thereby authorised” substitute “authorised by the order”.

(3) For “therewith” substitute “with that authority”.

13. In section 57 (restriction on dispositions), in subsection (4)(a) omit “or of the Incorporated Society of Valuers and Auctioneers”.

40 14. In section 65 (annual audit or examination of charity accounts)—

(a) in subsection (4)(b) for “Fellow” substitute “full member”;

- (b) in subsection (11) for “of a charity for a financial year” substitute “for a financial year of a charity which is a company”.
15. In section 70 (annual returns by charities), in subsection (1) for “Department” substitute “Commission”.
- 16.—(1) Amend section 80 (records of applications and certificates) as follows. 5
- (2) In subsection (1) for “and shall preserve all documents sent to it under this Chapter” substitute “and documents sent to the Commission under this Chapter shall be kept by the Commission for such period as it thinks fit.”.
- (3) For subsection (2) substitute—
- “(2) Subject to subsection (3), documents kept under this section shall 10  
be open to public inspection at all reasonable times; and any person who  
is provided with a copy or extract of any document kept under this section  
may require it to be certified by a certificate signed by a member of the  
staff of the Commission.”.
17. In section 91 (power to relieve trustees, auditors, etc. from liability for 15  
breach of trust or duty), in subsection (1)(c) omit “, reporting accountant”.
18. In section 95 (winding up), for subsections (3) and (4) substitute—
- “(3) The Commission may make an application under section 1029 of 20  
the Companies Act 2006 (application to court for restoration to the  
register of companies) to restore a charitable company to the register of  
companies.”.
- 19.—(1) Amend section 96 (alteration of objects clause) as follows.
- (2) In the heading omit “clause”.
- (3) In subsection (3)—
- (a) for paragraph (a) substitute— 25
- “(a) an amendment of the company’s articles of association adding,  
removing or altering a statement of the company’s objects,”;
- (b) in paragraphs (b) and (c) for “memorandum or articles of association”  
substitute “articles of association”.
- (4) For subsections (5) and (6) substitute— 30
- “(5) Where a company that has made a regulated alteration in  
accordance with subsection (2) is required—
- (a) by section 26 of the Companies Act to send to the registrar of  
companies a copy of its articles as amended,
- (b) by section 30 of that Act to forward to the registrar a copy of the 35  
special resolution effecting the alteration, or
- (c) by section 31 of that Act to give notice to the registrar of the  
amendment,
- the copy or notice must be accompanied by a copy of the Commission’s  
consent. 40

(5A) If more than one of those provisions applies and they are complied with at different times, the company need not send a further copy of the Commission's consent if a copy was sent on an earlier occasion.

5 (6) Section 30(2) to (4) of that Act (offence of failing to comply with section 30) apply in relation to a failure to comply with subsection (5) as in relation to a failure to comply with that section.”

20. Omit section 97 (invalidity of certain transactions).

21. In section 118 (transfer of CIO's undertaking), in subsection (5) after “The resolution” insert “of the transferor CIO”.

10 22. In section 125 (transfer where charity has permanent endowment), in subsection (11) for “any reference to any obligation imposed on the charity trustees by or under section 123 includes” substitute “the references in sections 123(7)(b) and 124(2) to any obligation imposed on the charity trustees by or under section 123 include”.

15 23.—(1) Amend section 169 (manner of executing instruments) as follows.

(2) In subsection (1) for “assurances or other deeds or other instruments” substitute “documents”.

(3) In subsections (1), (2)(a), (3) and (4) for “deed or instrument” substitute “document”.

20 (4) In the heading for “instruments” substitute “documents”.

24.—(1) Amend section 175 (other provisions as to orders of Commission) as follows.

(2) In subsection (2) omit “(without prejudice to the requirements of this Act where the order is subject to appeal)”.

25 (3) In subsection (5) after “so made” add “and may include transitional provisions or savings”.

25.—(1) Amend section 179 (orders and regulations) as follows.

(2) In subsection (2)(a) omit “32(2),”.

(3) In subsection (3) for “section” substitute “sections 32(3) and”.

30 26.—(1) In section 180 (general interpretation), amend subsection (1) as follows.

(2) In the definition of “company”, for the words from “formed” to the end substitute “registered under the Companies Act 2006 in Northern Ireland”.

35 (3) In the definition of “financial year”, after paragraph (b) insert “but this is subject to any provision of regulations made by virtue of paragraph 3(5) of Schedule 6 (financial years of subsidiary undertakings)”.

(4) After the definition of “public benefit” insert the following definition—

““the public benefit requirement” has the meaning given by section 3(1);”.

40 27.—(1) In Schedule 3 (appeals and applications to Tribunal), amend the Table as follows.

*Charities*

SCH. 1

(2) In the first entry relating to section 79(4), in column 1 omit “of a charity”.

(3) In the entry relating to section 84(1) or (2)—

(a) in column 1 omit “a charity which is”;

(b) in column 2 omit “(b) the charity itself”.

(4) In each of the entries relating to sections 73(1), 79(4) and 84(1) or (2), in column 2 after “trustees of the charity” insert “(within the meaning of section 85)”. 5

(5) In the entry relating to decisions under section 96(2), 97(4) or 98(1), in the first column omit “, 97(4)”. 10

(6) For the entry relating to section 104(4) substitute— 10

“1	2	3
Order made by the Commission under section 104(5) in relation to a charity which is a company, or a decision of the Commission not to make such an order in relation to such a charity.	The persons are— (a) the charity trustees of the charity; (b) the charity itself; (c) in the case of a decision not to make an order, the auditor; and (d) any other person who is or may be affected by the order or the decision.	Power to— (a) quash the order or decision and (if appropriate) remit the matter to the Commission; (b) substitute for the order any other order of a kind the Commission could have made; (c) make any order which the Commission could have made.”.

(7) In—

(a) the second entry relating to section 110, in column 1, 30

(b) the entry relating to section 113, in column 1, and

(c) the second entry relating to section 116, in column 1,

for “not to grant” substitute “to refuse”.

(8) In the second entry relating to section 118(1), in column 1, for “not to confirm” substitute “to refuse”. 35

(9) After the entry relating to section 166(5) insert—

“1	2	3
Order made by the Commission under paragraph 6(5), or by	The persons are— (a) the charity trustees of the	Power to— (a) quash the order; (b) substitute for the

<p>5 virtue of paragraph 7(2), of Schedule 6 requiring the group accounts of the parent charity to be audited.</p> <p>10</p> <p>15 Order made by the Commission by virtue of paragraph 8(4) of Schedule 6 in relation to a member of a group, or a decision of the Commission not to make such an order in relation to a member of a group.</p> <p>20</p> <p>25</p> <p>30</p>	<p>parent charity; (b) (if a body corporate) the parent charity itself; and (c) any other person who may be affected by the order.</p> <p>The persons are— (a) the charity trustees of the member of the group, (b) (if a body corporate) the member of the group itself, (c) in the case of a decision not to make an order, the auditor, independent examiner or examiner, and (d) any other person who is or may be affected by the order or the decision.</p>	<p>order any other order which could have been made by the Commission; (c) add to the order anything which could have been contained in an order made by the Commission.</p> <p>Power to— (a) quash the order or decision and (if appropriate) remit the matter to the Commission; (b) substitute for the order any other order of a kind the Commission could have made; (c) make any order which the Commission could have made.”.</p>
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(10) At the end add—

“1	2	3
<p>35 Decision of the Commission to give or withhold consent under section 42(4) of the Companies Act 2006.</p> <p>40</p>	<p>The persons are— (a) the charity trustees of the charity, (b) the company itself, and (c) any other person who is or may be affected by the decision.</p>	<p>Power to quash the decision and (if appropriate) remit the matter to the Commission.”.</p>

45 28.—(1) Amend Schedule 6 (group accounts) as follows.

*Charities*

SCH. 1

- (2) In paragraph 8—
- (a) in sub-paragraph (2)(e), for “or those applied” substitute “or of section 65(3) as applied”;
  - (b) in sub-paragraph (4), for “65” substitute “66”;
  - (c) at the end of sub-paragraph (4) insert “and for this purpose the reference in section 66(2)(b) to the charity trustees for the time being of the charity concerned is to be construed as a reference to the charity trustees for the time being of such member of the group as the Commission thinks appropriate”. 5
- (3) In paragraph 9(1), omit “and (7)”. 10
29. In Schedule 7 (further provision about charitable incorporated organisations), in paragraph 4 for “a specialty debt” substitute “an ordinary contract debt”.

Section 8(2).

SCHEDULE 2

REPEALS 15

Short Title	Extent of repeal	
The Charities Act (Northern Ireland) 2008 (c. 12)	Section 4(2).	
	Section 7(4).	
	Section 20(7).	
	In section 32(2), the words “and a draft of the order shall be laid before the Assembly”.	20
	In section 57(4)(a), the words “or of the Incorporated Society of Valuers and Auctioneers”.	
	In section 91(1)(c), the words “, reporting accountant”.	25
	In the heading to section 96, the word “clause”.	
	Section 97.	
	In section 175(2), the words “(without prejudice to the requirements of this Act where the order is subject to appeal)”.	30
	In section 179(2)(a), “32(2)”.	
In the Table in Schedule 3—		
(a) in the first entry relating to section 79(4), in column 1, “of a charity”;	35	
(b) in the entry relating to section 84(1) or (2), in column 1 “a charity which is” and in column 2 “(b) the charity itself”;	40	
(c) in the entry relating to decisions under section 96(2), 97(4) or 98(1), in the first column, “,97(4)”.		

*Charities*

SCH. 2

Short Title	Extent of repeal
	In Schedule 6, in paragraph 9(1), “and (7)”.