

## Changes to Public Benefit Test in NI

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The drafting of the public benefit test in the Charities Act (Northern Ireland) 2008 (the “Act”), has come under increasing criticism over recent months. The Act will now be redrafted as it could have been open to legal challenge because it combines extracts from legislation that applies in Scotland with wording from legislation that applies in England and Wales.

The main difficulty with the Act in its current form is the use of definitions relating to public benefit from Scottish, English and Welsh legislation. The definition of a charitable purpose in the Charities Act 2006 (applicable in England and Wales) is defined as “a purpose which is for the public benefit”. The same definition is also found within the Act. However the Act also includes words from Scottish legislation which states that a charity will be judged on whether it “provides or intends to provide public benefit”.

This would have left the Act open to potential legal challenges as this will impact on how the Charity Commission for Northern Ireland determines whether an organisation meets the public benefit test. It is unclear whether an organisation’s stated aims or its activities (or both) should determine whether it is a charity under the Act. The public benefit test is particularly important for registration purposes and this ambiguity in the Act has delayed the registration of charities in Northern Ireland by the Charity Commission for Northern Ireland.

Sources have claimed that the Attorney General for Northern Ireland had advised Ministers not to amend the Act but the Minister for Social Development, Alex Atwood, has now decided to amend the Act at the request of the Charity Commission for Northern Ireland. The amendments must be referred to and approved by the Northern Ireland Executive and then passed as primary legislation by the Northern Ireland Assembly.

It is not clear exactly how the Act will be amended but these changes are necessary to allow the Charity Commission for Northern Ireland to issue new guidance and begin registering charities in Northern Ireland.

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