

# The Charities Act (Northern Ireland) 2008 A Client Briefing



February 2010

The Charities Act (Northern Ireland) 2008 was granted Royal Assent on 9 September 2008 and except for a few provisions it is not yet in force. This client briefing gives a general overview of the main provisions of the Act.

## Charity Registration

It is anticipated that charity registrations with the Charity Commission for Northern Ireland will commence in April 2010.

It is important to note that all Northern Ireland charities will be required to register with the Charity Commission and it is the responsibility of the charity's trustees to do so.

Charities will still have to apply to HMRC (Booth) for tax exemptions as this is a totally separate matter and automatic tax exemption status does not follow from charity registration.

## Major changes to charity law in Northern Ireland – The Charities Act (Northern Ireland) 2008

The Act was passed by the Northern Ireland Assembly and represents the first major reform of charity law in Northern Ireland for some considerable time. The main objectives of the Act are to:

- modernise and update the law
- introduce a new advisor and regulator - the Charity Commission for Northern Ireland
- allow openness and transparency on the operations of this important sector

This Act, the largest piece of legislation particular to Northern Ireland which has come before the Assembly so far, is widely welcomed in Northern Ireland. It will put the charity sector on a firm foothold for the future and should also help to increase public confidence and therefore strengthen the sector.

## What does the Act do?

The Act makes major changes to existing law, it:

- repeals the existing charities legislation - the 1964 Act and the 1987 Order
- makes changes to the law on fundraising
- creates new charitable purposes and introduces a public benefit test
- establishes a Charity Commission for Northern Ireland with powers of investigation and sanction
- creates a register of charities for the first time in Northern Ireland
- creates reporting obligations for charities in the form of accounts, annual reports and annual returns
- sets up the Charity Tribunal
- provides for charitable incorporated organisations

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## Charitable Purposes and Public Benefit

The definition of charitable purposes will be significantly widened to 12 including those long established charitable purposes such as the relief of poverty, the advancement of religion and the advancement of education but also lists additional specific purposes including:

- the advancement of health or the saving of lives
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- the advancement of environmental protection or improvement
- the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- the advancement of animal welfare
- and other purposes analogous to or within the spirit of any of the above

There will no longer be a presumption that what is being done is for the public benefit and each charity will have to be established for one of the 12 charitable purposes **and** prove that what it is doing is for the public benefit.

To demonstrate public benefit, a charity will need to identify what the benefit is, how it relates to the aims of the charity and how any benefit is gained or likely to be gained by a section of the public. This will be measured against the 'disbenefit' incurred by the public, for example whether there is any harm or detriment which arises from what is proposed. The new Charity Commission is required to produce detailed guidance on how the public benefit test will be applied. It is anticipated that the guidance will be available in and around February 2010.

## Charity Commission for Northern Ireland

The Charity Commission is a body corporate which is to be independent. Charity Commissioner appointments were made during 2009. The Charity Commission has a number of objectives and general functions. It will determine whether an institution is or is not a charity, encourage and facilitate the better administration of charities, identify and investigate apparent misconduct or mismanagement of charities and take remedial or protective action, issue public collection certificates for fundraising and disseminate information. It will be responsible for keeping the register of charities.

## Non-NI Charities and Dual Registration

Section 167 of the Act deals with 'Section 167 Institutions' which are institutions which are not charities under Northern Ireland law but which operate for charitable purposes in or from Northern Ireland. There is a mandatory requirement for such bodies to register in Northern Ireland even if they are registered elsewhere. They will have to produce a financial statement and statement of activities relating to their operations for charitable purposes in or from Northern Ireland. This is of interest to our national or international clients which also have a presence or branch or carry out operations in Northern Ireland.

The requirement for multiple registrations of charities is a matter of ongoing discussion with the United Kingdom regulators and the Republic of Ireland and the Regulators Forum (made up of representatives from each UK jurisdiction and Ireland) is looking at this issue.

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## **Powers of the Charity Commission**

The Charity Commission will oversee the reporting requirements of Northern Ireland charities and it will have significant powers, such as to:

- institute enquiries into a charity and may require it to produce accounts and documents and to attend and give evidence
- make a published public report of the results of such enquiry
- call for documents and search records
- disclose information to any other public body throughout the United Kingdom or outside the United Kingdom
- remove trustees from the membership of a charity
- appoint an interim manager
- give specific directions for the protection of the charity; and
- direct the application of charity property.

## **Charity Tribunal**

The Act also provides for the establishment of a new Charity Tribunal which will hear appeals from decisions taken by the Charity Commission and also carry out some of the functions previously carried out by the Attorney General.

## **Cy-près**

The Act simplifies the cy-près procedure so that the Charity Commission can undertake this function and this should make it less expensive and simpler for a charity where the purposes for which property has been given to the charity need to be altered.

## **Regulation and Reporting**

The Act introduces a new duty on all charity trustees to keep accounting records and prepare and submit a statement of accounts. There are also set requirements for annual audit or independent examination of charity accounts. The level of scrutiny and 'audit' required depends on the gross income. Charitable companies accounts continue to be governed by the provisions of the companies' legislation (currently being amended by the Companies Act 2006).

Auditors should note their duty to report matters to the Charity Commission which extends the reporting requirements of auditors of charities beyond those of a company auditor.

Charity trustees are required to prepare an annual report, reporting on the activities of the charity during the year and to file an annual return.

All of these measures will address the lack of information currently available on the charity sector and provide specific information to enable year to year comparisons and transparency.

## **Trustees**

Charity trustees will also be under more scrutiny. There will be powers to disqualify trustees and rights for the Charity Commission to remove them from office. On the other hand the Charity Commission will be able to relieve a trustee (together with auditors and independent examiners) from liability for a breach of trust or duty where the person acted honestly and reasonably and ought fairly to be excused.

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For the first time trustee indemnity insurance is to be put into statutory form, subject to an overriding requirement for charity trustees to be satisfied that it is in the best interests of the charity for such insurance to be purchased, and subject to any express prohibition on the purchase of such insurance set out in the charity's trust instrument.

### **Charitable Companies**

There are new rights for the Charity Commission in relation to winding-ups and restorations of companies which have been struck-off the register and consent of the Charity Commission will be required for an alteration, for example to a charitable company's Memorandum of Association.

### **Charitable Incorporated Institutions**

The Act introduces a new concept of a charitable incorporated organisation (CIO) which is a body corporate with a constitution which can be a company limited by shares or guarantee. It will be possible to convert an existing charitable company or industrial and provident society to a charitable incorporated organisation. This should avoid dual regulation in that the CIO is only accountable to the Charity Commission and not the Companies Registrar.

### **Public Collections and Fundraising**

There will be major changes to public charitable collections where a certificate and a permit must be obtained by the Charity Commission. The fundraising provisions also cover television and multimedia appeals and new provisions deal with the control of fundraising by professional fundraisers where an express agreement will be required with the institution engaging such a person which satisfies the prescribed requirements.

### **Mergers**

There are also new helpful provisions to simplify charity mergers and to deal with gifts made to a charity which has since merged with another body.

### **Religious Charities**

There are specific provisions allowing certain religious charities which meet the criteria to apply for designated religious status which means that they would not be subject to the same level of scrutiny by the Charity Commission as other charities, at least in the first instance. However, all will still need to register and file accounts and reports.

### **So what do you do now?**

Once the Act is in force it will have implications for any charity which is carrying out its operations in Northern Ireland. There will also be implications for organisations that are operating in the rest of the United Kingdom and in Ireland. You and your advisors should start to look at the Act to understand what its implications are likely to be and how it will affect your organisation.

If you deal with a charitable company, also be aware of the incremental changes in the Companies Act 2006, many of which have a direct bearing on charitable companies, particularly where the new act overrides provisions set out in Articles of Association, for example on proxies.

Our team in the Charities Unit would be pleased to help you to highlight the major provisions in the Act and to discuss its implications further. If you would like further information, please get in touch with:

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|-----------------|---------|-------------------|---|
| Jennifer Ebbage | Partner | DD: 028 9027 1302 | Email: <a href="mailto:j.ebbage@cfrlaw.co.uk">j.ebbage@cfrlaw.co.uk</a> |
| Alastair Rankin | Partner | DD: 028 9027 1306 | Email: <a href="mailto:a.rankin@cfrlaw.co.uk">a.rankin@cfrlaw.co.uk</a> |

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