

*These notes refer to the Charities Act (Northern Ireland) 2022 (c.11) which received Royal Assent on 30 March 2022*

# Charities Act (Northern Ireland) 2022

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Charities Act (Northern Ireland) 2022 which received Royal Assent on 30 March 2022. They have been prepared by the Department for Communities in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They are not, and are 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 any explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. In February 2020 the Court of Appeal dismissed an Appeal by the Charity Commission for Northern Ireland (the Commission) against Madam Justice McBride's High Court Judgment of May 2019, which found that the Charity Commissioners were the body corporate, "the Commission", and that they do not have implied or express power to delegate their functions to staff acting alone. The Judgment rendered decisions taken by Commission staff unlawful where the staff member's authority to take the decision depended on the Commission having delegated a statutory power or duty.
4. This Act amends the Charities Act (Northern Ireland) 2008 (the 2008 Act) with retrospective effect to render lawful previous decisions taken by Commission staff in reliance on unlawful delegation in cases where doing so is consistent with rights under the European Convention on Human Rights (ECHR) and the decision is not unlawful on other grounds. It will provide a power of delegation to Commission staff going forward provided the functions to be delegated are set out in a Scheme of Delegation approved by the Department, and also stipulates that certain functions can never be delegated to staff.
5. In addition this Act inserts a power to enable the Department to introduce a registration threshold at some future point, via regulations, subject to the draft affirmative procedure.

## **COMMENTARY ON SECTIONS**

### ***Section 1: Actions of Commission staff treated as Commission actions***

Section 1 makes provision with retrospective effect to make the majority of decisions taken by Commission staff lawful and provide fresh appeal rights for those decisions in accordance with Schedule 3 to the Act.

Importantly, decisions which are the subject of ongoing litigation or were taken under section 22(3), (4) or (6) or 24(1) of the 2008 Act and decisions to make an order under sections 23(1) and 33 to 36 will not be subject to the section in order that individuals' rights under Article 6 or 8 of, or Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR) are protected. Such decisions will therefore remain unlawful, as will decisions which were additionally unlawful on grounds other than the unlawful-delegation ground. Where an unlawful decision has been replaced by a fresh lawful decision before this Act becomes law, this Act does not alter the operation of that replacement decision.

This Act also modifies the Charity Tribunal Rules (Northern Ireland) 2010 in relation to appeal rights for decisions made lawful by virtue of this Act.

### ***Section 2: Power of Commission to delegate to staff***

Section 2 inserts paragraph 9A into Schedule 1 to the 2008 Act allowing for certain functions to be delegated to staff provided they are set out in a Scheme of Delegation approved by the Department. It also stipulates that the following can never be delegated: power under section 22(1) to institute an inquiry; decisions under section 22(6) that a report or statement be published; power to make an order under sections 33 to 37; and any statutory power of the Commission to make regulations.

### ***Section 3: Power to introduce a registration threshold via regulations***

Section 3 inserts new sections 16A to 16C into the 2008 Act to provide a power to introduce a registration threshold through regulations at some future point, subject to the draft affirmative procedure (except in the case of varying the amount of an existing threshold). The power will allow for the regulations to:

- exempt charities falling below the threshold from the requirement to register;
- determine the nature of the threshold;
- determine any evidence to be provided to the Commission and allow for that evidence to be used in pursuance of the Commission's functions;
- apply or disapply any provision of the Act to any charity exempted from registration by the threshold; and
- amend any offences or introduce similar or corresponding ones as a consequence of the threshold.

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The section itself will permit charities falling below the threshold to register voluntarily or be removed from the register if they so wish.

## **HANSARD REPORTS**

“6 The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly and the date Royal Assent was received.

<i>STAGE</i>	<i>DATE</i>
First Stage	21 June 2021
Second Stage	29 June 2021
Committee Stage Report	2 December 2021
Consideration Stage	17 January 2022
Further Consideration Stage	31 January 2022
Final Stage	8 February 2022
Royal Assent	30 March 2022