

EXPLANATORY MEMORANDUM TO

The Charities Act 2008 (Transitional Provision) Order 2011

S.R. 2011 No. 12

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 182(1) and (2) of the Charities Act (Northern Ireland) 2008 ("the Act") and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Order makes transitional provision bringing Northern Ireland charities within the jurisdiction of the Charity Commission for Northern Ireland ("the Commission") for the purposes of those provisions listed in the Schedule.
- 2.2. Article 2(1) allows an institution established under the law of Northern Ireland for charitable purposes only, which has been recognised as being eligible for the exemptions from tax provided by relevant Income and Corporation Tax legislation, to be treated as if it were a charity within the meaning of the Act.

3. Background

- 3.1. The Act introduces a new definition of "charity". To be a charity, an institution must be established for "charitable purposes" only and be for the public benefit. Section 3 of the Act makes provision for a "public benefit" test and specifies how that test is to be applied. Under the Act responsibility for determining whether an institution is, or is not, a charity, falls to the Commission. Before the Commission can make such a determination it must first issue guidance on the operation of the requirement in section 3 that a purpose must be for the public benefit if it is to be considered a "charitable purpose".
- 3.2. The Act makes no specific provision as to how existing charities may be brought within the jurisdiction of the Commission pending determination and registration under the new legislation. Existing Northern Ireland charities are those institutions which Her Majesty's Revenue and Customs has recognised as having charitable status for tax purposes. Although the Commission expected to begin making determinations and registrations in April 2010, it was still necessary for the Department to make statutory transitional provision to bring existing Northern Ireland charities within the remit of the Commission and, thereby subject to the new charity legislation. It is estimated that there are more than 7,000 such charities.
- 3.3. Transitional provision to bring existing charities within the remit of the Commission was already under consideration when legal advice on the Commission's public benefit guidance necessitated a review of the

provisions of section 3 of the Act. This unexpected development which may not be resolved for some time, increased the urgency to make provision that would enable the Commission to carry out its regulatory functions despite its inability to make determinations or begin registration.

- 3.4. Section 182 of the Act confers wide and general powers on the Department to assist with the coming into operation and giving full effect to, any provision within it. This Order invokes those powers to bring existing Northern Ireland charities within the remit of the Commission thus enabling it to carry out its duties, functions and objectives as regulator.

4. Consultation

- 4.1. A consultation has not been carried out in respect of the Order as it simply enables implementation of the policy intention of the Charities Act (Northern Ireland) 2008 which was consulted on by both the Department and the Social Development Committee.

5. Equality Impact

- 5.1. An assessment has not been made as the Order merely brings existing charities within the jurisdiction of the Charity Commission for Northern Ireland. This reflects the policy intention of the Charities Act (Northern Ireland) 2008 for which an Equality Impact Assessment was not considered necessary.

6. Regulatory Impact

- 6.1. The Order does not require a Regulatory Impact Assessment as it does not impose a cost on business, charities, social enterprise or voluntary bodies.

7. Financial Implications

- 7.1. Not applicable.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Order (a) is not incompatible with any of the Convention rights, (b) is not incompatible with Community law, (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. Not applicable.

11. Additional Information

- 11.1. Not applicable.