

PRINCIPAL FEATURES OF THE CHARITIES ACT 2009

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The Charities Bill 2007 was enacted on 28 February 2009. The Act does not come into force automatically on enactment however. It is to be commenced in stages over time by Ministerial order. Details of commencement of provisions will be available at www.pobail.ie

Please note that this guide is not a legal interpretation of the Charities Act.

Purpose of the Act

The purpose of the Charities Act 2009 is to enact a reform of the law relating to charities in order to ensure accountability and to protect against abuse of charitable status and fraud. It will also enhance public trust and confidence in charities and increase transparency in the sector. The Charities Act 2009, together with the Charities Acts 1961 and 1973, and the Street and House to House Collections Act 1962, will provide for a composite regulatory framework for charities through a combination of new legislative provisions and retention of existing charities legislation, with updating, where appropriate.

Key aspects of the Act include:

- a definition of “charitable purpose” for the first time in primary legislation;
- a new Charities Regulatory Authority to be established to secure compliance by charities with their legal obligations and also to encourage better administration of charities;
- a Register of Charities on which all charities operating in the State must be entered;
- any organisation in receipt of charitable tax exemptions from the Revenue Commissioners on the establishment day is to be automatically deemed to be registered with the Charities Regulatory Authority;
- any unregistered organisation that acts in a manner that would lead the public to reasonably believe it is a charity, shall be guilty of an offence.
- A requirement for charities to submit annual activity reports to the new Authority;
- updating of the law relating to fundraising, particularly in relation to collections by way of direct debits and sale of ‘tokens’;
- the establishment of a Charity Appeals Tribunal;
- the dissolution of the Commissioners of Charitable Donations and Bequests for Ireland (CCDB) upon establishment of the new Authority, and the transfer at that stage of its functions to the Authority;
- the transfer to the Authority of all jurisdictions previously vested in the Attorney General by statute or common law in relation to charities;
- provision for administrative co-operation by the Authority with statutory bodies on relevant regulatory and law enforcement matters, both inside and outside the State;
- the payment of remuneration to charity trustees for non trustee duties subject to certain conditions
- provisions for relief from personal liability for charity trustees in respect of any losses accruing to the charity where the trustee has acted in good faith;
- the establishment of consultative panels to assist the Authority in its work and to ensure effective consultation with stakeholders;

- the sale of a Mass card, without an arrangement with the Catholic Church being in place, to be an offence;

2. Statutory definition of “charitable purposes”

Charitable status will be dependent on an organisation having charitable purposes, and being for the public benefit, rather than having any particular legal form.

“Charitable purposes” are to be fully defined for the purposes of the law for the first time in primary Irish legislation, as follows:

- the prevention or relief of poverty or economic hardship;
- the advancement of education;
- the advancement of religion;
- any other purpose that is of benefit to the community, which includes:
 - the advancement of community welfare, including the relief of those in need by reason of youth, age, ill-health or disability,
 - the advancement of community development, including rural or urban regeneration,
 - the promotion of civic responsibility or voluntary work,
 - the promotion of health, including the prevention or relief of sickness, disease or human suffering,
 - the advancement of conflict resolution or reconciliation,
 - the promotion of religious or racial harmony and harmonious community relations,
 - the protection of the natural environment,
 - the advancement of environmental sustainability
 - the advancement of the efficient and effective use of the property of charitable organisations,
 - the prevention or relief of suffering of animals,
 - the advancement of the arts, culture, heritage or sciences, and
 - the integration of those who are disadvantaged, and the promotion of their full participation, in society.

The advancement of religion is considered to be of public benefit, unless the contrary is proven. The Attorney General must consent to the Authority's declaration that a gift for the purposes of religion is not of public benefit. A gift for the purposes of religion is not to be considered of public benefit if the organisation in question operates on a profit-driven basis, or if it employs oppressive psychological manipulation of its followers or potential followers.

The legislation will make a clear separation between:

- the determination of charitable status by the Authority, and
- the determination of entitlement to tax exemption on funds applied for charitable purposes, which is exclusively the function and responsibility of the Revenue Commissioners.

The intention is that there will not be shared responsibility in relation to decisions on tax exemptions. The Charities Regulator will determine whether or not an organisation is a charitable organisation, but it will be a matter solely for the Revenue Commissioners to determine whether or not any funds applied by such an organisation for charitable purposes should be granted entitlement to tax exemption.

3. Charities and political activities

Whilst the Act does not allow charities to support either a political candidate or a party, charities will be permitted to promote a political cause but only one relating directly to their charitable purpose. A charity must take care not to become a political organisation, however, and should always remain focused on its charitable purpose, which must be, by virtue of the statutory definition of a "charitable organisation", its only purpose .

4. The Charities Regulatory Authority

A new, independent regulatory body for the charities sector, the Charities Regulatory Authority (in Irish, An tÚdarás Rialála Carthanas), is to be established. It is

anticipated that the Authority, though having strong powers, will operate in a manner that is both regulatory and supportive.

The Act provides for the dissolution of the Board of the Commissioners of Charitable Donations and Bequests for Ireland (CCDB) upon establishment of the new Authority, and the consequential transfer at that stage of its functions to the Authority, together with all jurisdictions vested in the Attorney General by statute or common law in relation to charities.

The Authority's role will principally be to increase public confidence in the charities sector through effective oversight of charitable organisations in Ireland; promotion of compliance by charitable organisations with their legal obligations; encouraging better administration of charitable trusts; and providing guidance to charitable organisations, including through the development of codes of practice.

Stakeholder consultation by the Charities Regulator is integral to its operation, in accordance with good regulatory practice. Stakeholders would include charities, charity trustees, donors (including corporate donors), philanthropists, beneficiaries, academics, accountants, lawyers, Government Departments and agencies, etc. To underpin the consultative element within the regulatory structure, the Authority will be able to set up consultative panels as a mechanism for ensuring stakeholder consultation. Such panels may also be set up at the request of the Minister for Community, Equality and Gaeltacht Affairs.

The Act also provides that the membership of the Authority shall include persons who have knowledge of, and expertise in relation to the law relating to charities, the keeping of accounts by and the funding of, charitable organisations, and the management of charitable organisations.

The Authority will have the power to institute investigations; to call for documents and search records; to enter premises on foot of a search warrant; to impose sanctions, including intermediate sanctions; and to co-operate on an administrative basis with foreign statutory bodies on law enforcement matters. There will also be significant penalties in place for offences under the legislation.

5. The Register of Charities

At present, there is no central public register of charities in Ireland. A key function of the Authority will be the establishment and maintenance of a register of charitable organisations that will be accessible to the general public. Registration will be mandatory for all charities operating within the State. However, any organisation in receipt of charitable tax exemptions from the Revenue Commissioners on the day the Register is established will be automatically entered in the register of charities. Every registered charitable organisation will have a unique registration number.

The requirement to register will apply whether a charity had been established within the State and had its administrative centre here, or whether it is a foreign charity with a presence in the State, established in another jurisdiction and having its administrative centre outside the State.

The Authority will have the power to remove a body from the register where the organisation ceases to be a charitable organisation, though such decisions will be subject to independent appeal (see No. 6 following).

It will be an offence for a body not on the register to claim that it is a charity or to operate or fundraise as a charity in Ireland. The key purpose of the Register will be to promote transparency. The register will enable the public to confirm the *bona fides* of genuine charities, thereby limiting the scope for abuse.

Certain types of organisations will be excluded from being charitable organisations: a political party, or a body, the principal object of which is, to promote a political party, or candidate ; a trade union or a representative body of employers; a chamber of commerce; a body that promotes purposes that are unlawful, contrary to public morality, in support of terrorism or terrorist activities, or for the benefit of an organisation, membership of which is unlawful. Sporting bodies, as defined under the Taxes Consolidation Act 1997, are also being excluded as they are the subject of a

separate tax exemption regime operated by the Revenue Commissioners which will not be affected by this Act.

In the interests of maximising efficient use of available resources, the Authority as directed by the Minister, may use material from other relevant electronic databases, including any that have or are being supported in whole or in part by public funds, in maintaining the Register.

6. The Charity Appeals Tribunal

The legislation will provide for an extra-judicial mechanism in relation to appeals and applications for review concerning decisions made by the Authority. The Charity Appeals Tribunal, which will be independent, part-time and which will meet only as required, will provide an alternative, particularly for smaller charities, to going to court, and should facilitate keeping disputes out of the courts system to the greatest extent possible. The option of appealing to the High Court will remain. The Tribunal may share resources with existing appeals bodies.

7. Modernisation of fundraising legislation

Fundraising is complex because of the wide range of methods it encompasses and the variety of organisations within the sector involved. It has evolved considerably since the passing of the primary legislation on collections, the Street and House to House Collections Act 1962.

The approach proposed in the Act is to develop a three-pronged approach through:

- a) modernising aspects of the 1962 provisions to reflect changes in methods of collection, revising the definition of “collection” itself and, in particular, introducing a permit regime for recently developed fundraising methods such as collection by way of direct debit or other “promises of money”;
- b) conferring the requisite powers on the Charities Regulator to require charities to provide information concerning their fund-raising activities, e.g. in their applications for registration, as well as in their annual accounts and annual returns; and

- c) implementing agreed Codes of Good Practice in relation to the actual fundraising operations, while retaining reserve powers for the Minister, after consultation with the Authority, to make statutory regulations on the manner and conduct of fundraising if such an approach proves ineffective.

Work on the agreed Codes of Good Practice has already advanced significantly, in partnership with the charities sector.

8. Annual reports, accounts and audit requirements

The Act makes provision in relation to the keeping of proper books of accounts, as well as the provision of annual statements of accounts, by charitable organisations that are not companies and in relation to the audit, or examination, of such accounts.

In recognition of the fact that many charitable organisations are small with limited resources, both financial and otherwise, a key principle of the Act is to provide for regulation in a proportionate manner. There are varying reporting and audit requirements depending on whether a charity's income or expenditure is above or below a level to be prescribed by the Minister, that level not to be more than €500,000. The Act provides that the Companies Acts will continue to apply to charities that are registered as companies insofar as accounting requirements are concerned. The Act minimises the potential for dual filing by charitable organisations that are incorporated, in that the same documentation will not have to be filed separately with both the CRO and the Authority. The CRO will pass on financial information it receives under the companies acts to the new Authority.

The Act also provides that all charitable organisations will be required to make annual reports on their charitable activities to the Authority. These reports will be accessible to the public, except those in respect of private trusts that are not funded by donations from the public. The Department will be consulting with the sector in relation to the annual reports.

Finally, the Act provides that educational bodies are exempt from the accounting and audit provisions of the Act, as those bodies are already subject to separate scrutiny.

9. Legal form for charities

Charities have the choice of a number of different legal forms, e.g. unincorporated, such as a trust or an unincorporated association, or incorporated, such as a company (usually limited by guarantee, rather than shares). The Act is not prescriptive as regards the legal form that charitable organisations should take. It is felt that this should be a matter for the organisation itself to decide.

10. Relationship with other statutory bodies

The Authority will be empowered to co-operate on an administrative basis with statutory bodies, both inside and outside the State.

For example, given that there are charitable organisations in Ireland which also operate in other nearby common law jurisdictions, administrative co-operation between the Authority and the regulatory bodies in those jurisdictions could be foreseen as a matter of good practice in the exercise of regulatory functions, e.g. to exchange information, to address issues of common concern, to ensure consistency and to avoid duplication.

The global fight against terrorism, including prevention of the misuse of charities for terrorist financing, would provide a further, specific context for administrative co-operation arrangements at international (including, in particular, FATF, arising from Special Recommendation VIII) and EU levels. Accordingly, the Act provides a basis for administrative co-operation with foreign statutory bodies on law enforcement matters.

11. Charity trustees

The Act sets out the circumstances in which a person ceases to be qualified for, or ceases to hold, the position of charity trustee. A register of disqualified persons will be kept by the Authority. The Act will also make it an offence to act, or purport to act, as a charity trustee while not qualified to do so. It will also be an offence for a charity trustee or member of staff of a charity to comply with a direction of another trustee, if he or she knew, or had reasonable grounds for knowing, that the other trustee was disqualified. Charity trustees will be permitted to receive remuneration from the charity in respect of work unrelated to their trusteeship. Charity trustees may also be indemnified by their charity against liability for actions undertaken in good faith on behalf of the charity, and there is provision for the Court to grant relief to charity trustees from personal liability for a breach of trust where the trustee has acted honestly and reasonably in good faith.

Department of Community, Equality and Gaeltacht Affairs

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