



Charities Bill
2007

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CHARITIES BILL 2007

Introduction




On the 5th of April, 2007, Noel Ahern T.D., Minister of the Department of Community, Rural and Gaeltacht Affairs, announced that the Charities Bill 2007 had been approved by the Government. The Bill, once passed, together with certain existing legislation, will establish a new statutory regime for Charities in the State. In addition, for the first time in Irish law, a Charities Authority will be established, which will oversee the new regime. It is anticipated that the Bill will lead to greater transparency and accountability for the public and for charitable organisations. Some of the key features of the Charities Bill 2007 are set out and discussed below.

Statutory Definitions of Key Terms

The Bill marks a change in the regulation of Charities in Ireland in that, for the first time, there will be statutory definitions of key terms such as '*charitable organisation*', '*charitable purpose*' and '*public benefit*'.

A '*charitable organisation*' is defined in the Bill to mean a body that promotes a charitable purpose only and applies all of its property (except as may be required for the operation and maintenance of the organisation) to the furtherance of such purpose; such property cannot be returned to the members of the organisation as would be the normal case for organisations and companies that are established to make a profit. Provided that an organisation does not fall within the definition of '*excluded body*' (which includes political parties, trade unions and bodies that promote unlawful ends), there is a twofold test that an organisation must satisfy before charitable status will be conferred upon it. First, it must show that it can bring itself within the definition of '*charitable purpose*' and, second, such purpose must be of '*public benefit*'.

'*Charitable purpose*' is defined in the Bill such that each of the following is to be regarded as a charitable purpose:

-  the prevention or relief of poverty or economic hardship;
-  the advancement of education;
-  the advancement of religion; or

- ▣ any other purpose that is of benefit to the community.

The following are deemed to have a '*purpose that is of benefit to the community*':

- ▣ 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 in the community;
- ▣ 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 prevention or relief of suffering 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.

Interestingly, there is no mention of the promotion of human rights in this list, which arguably should be included. However, the Bill does not state whether the list is exhaustive and it may be that certain other purposes, such as the promotion of human rights, that are of a benefit to society will fall within the scope of a '*purpose that is of benefit to the community*'.

The second part of the test is that a purpose will only be considered to be charitable if it is for the '*public benefit*', which term must be construed in accordance with section 3 of the Bill. Section 3 provides that gifts for the advancement of religion shall be regarded as being of public benefit. In addition, it clarifies that a gift shall not be regarded as being of public benefit unless it is intended to benefit the public or a section thereof and in the case where it confers a benefit on a person other than in his/her capacity as a member of the public, such benefit must be reasonable and ancillary to the furtherance of a public benefit. Arguably, this section is intended to prevent gifts to a limited class of individuals, such as family gifts, from gaining charitable status and thereby obtaining valuable tax exemption status.

Advocacy by Charities

Advocacy, campaigning and/or lobbying are not included in the proposed definition of '*charitable purpose*' and entities involved wholly in political activities such as political parties or bodies the principal object of which is to promote a political party candidate or cause are

expressly excluded from obtaining charitable status, as noted above. However, it is important to note that many organisations legitimately engage in advocacy as an ancillary activity to provide a means of furthering their charitable purposes. The Bill, however, does not make provision for either regulation or restriction of ancillary advocacy by charitable organisations. Arguably, this will allow charitable organisations to engage in, at least a limited form, of advocacy.

The Charities Regulatory Authority

The Bill provides for the establishment of a new regulatory authority (the “Charities Authority” or “Authority”), which will be led by a chief executive officer who will be accountable to the Oireachtas. The Authority will determine whether or not an institution is a ‘*charitable organisation*’ for the purposes of the legislation. The Bill requires that all Charities operating or carrying on activities in the State must apply for registration within six months of the establishment of the Authority.

The Office of the Commissioners of Charitable Donations and Bequests in Ireland will transfer all of its functions to the new Authority and will then be dissolved. In addition, all functions previously vested in the Attorney General relating to Charities will be transferred to the new Authority.

It should be noted that whilst the Charities Authority will determine whether or not an organisation is a ‘*charitable organisation*’ for the purposes of the legislation, it will be a matter for the Revenue Commissioners to determine whether or not an organisation’s funds will be entitled to a tax exemption.

The Bill provides that the Authority will have wide-ranging powers. For instance, the enforcement powers of the Authority will include the right to call for documents and search records, the right to enter premises on foot of a search warrant and the power to impose sanctions. There will also be significant penalties in place for offences committed under the legislation. These include, on summary conviction, a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months, or both and on conviction on indictment, a fine not exceeding €300,000 or imprisonment for a term not exceeding 5 years, or both. Where an offence is committed by a corporate body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager or other officer of the corporate body, such person will be subject to prosecution in addition to the corporate body.

The Authority will have the power to establish consultative panels with stakeholders including charitable organisations, trustees, donors, philanthropists, beneficiaries, academics, accountants, lawyers, Government Departments and agencies. These panels may also be set up at the request of the Minister for Community, Rural and Gaeltacht Affairs. The objective of these panels is to assist the Authority in its work.

A non-exhaustive list of the Authority's objectives will be to:

- ▣ increase public trust and confidence in the management and administration of charitable trusts and charitable organisations;
- ▣ ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public;
- ▣ ensure and monitor compliance by charitable organisations with the legislation;
- ▣ carry out investigations in accordance with the legislation; and
- ▣ encourage and facilitate the better administration and management of charitable trusts and the property of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents.

The Charity Appeals Tribunal

There is provision in the Bill for the establishment of a new Charities Appeals Tribunal, which will consist of five members, two of whom must be serving or retired judges or barristers/solicitors of ten year's standing, and two of whom must be persons with experience in areas relating to Charities. This body will provide an appeal mechanism for the review of decisions of the Authority, including a decision by the Authority to refuse to register a body as a '*charitable organisation*'.

The Tribunal will meet only as required and it is intended that it will provide a cost- effective alternative (particularly for smaller Charities) to going to court. The option of appealing to the High Court on a point of law will, however, remain open to charitable organisations notwithstanding the establishment of the Tribunal.

The Register of Charities

It is proposed under the Bill that a central Register of Charities in Ireland be established and maintained. The Register will be kept by the Charities Authority and registration will be

mandatory for all Charities. It will be an offence for an organisation that is not on the Register to claim that it is a Charity or to fundraise in the State. Every registered Charity will have a unique registered number. In order to promote transparency, the Register will be available to the public and will enable the public to confirm the bona fides of a particular Charity.

Annual Reports, Accounts and Audit Requirements

The Bill makes provision in relation to keeping proper books of account and also requires all Charities to make annual returns and annual reports on their activities to the Charities Authority. The Minister is empowered to prescribe the form of statements of account, which charitable organisations that are not companies will be required to produce. These books will be accessible by the public (except those in respect of private trusts that are not funded by public donations) and will have to be kept, in the case of charitable organisations that are not companies, for a period of at least six years.

In light of the fact that many organisations are small and have limited resources, a key principle of the Bill is proportionality i.e. varying reporting and audit requirements depending on whether a Charity is above or below the level of €100,000 in terms of annual income or expenditure. Only Charities with an annual income or expenditure greater than €100,000 will be required to have their accounts audited. Charities with annual incomes or expenditures of less than this amount will simply be required to submit accounts that have been examined by a person approved by the Charities Authority.

One of the objectives of the Bill is to decrease the regulatory burden on smaller Charities, for instance the need for dual filing (as all incorporated bodies have to make filings with the Companies Registration Office (the “CRO”). The Bill, however, does not seem to set out any mechanism to achieve a minimisation of the dual reporting requirements. The Explanatory Memorandum to the Bill states that the *‘relevant provisions remain under discussion with the Department of Enterprise, Trade and Employment and the CRO, with a view to ensure that any requirements for dual reporting by Charities that are companies are eliminated to the greatest extent possible.’* Accordingly, this is an area that may attract further attention in order to ensure that the objective of decreasing the regulatory burden on smaller Charities is met.

Modernisation of Fundraising Techniques

The Bill sets out a three-pronged approach to modernising the fundraising techniques of charitable organisations by way of the following:

- ▣ amending the provisions of the Street and House to House Collections Act 1962 and providing a statutory framework for the protection of public donations. Permits will be required under the legislation for all public collections (except for places of public worship). Collection cans will be sealed so as to ensure no one can access funds without the seal being broken. In addition, each collector will be obliged to deliver the collection box unopened and with its seal intact to the permit-holder. Non-cash collection permits will be required for recently developed 'non-cash collection' fundraising methods such as direct debit;
- ▣ it is expected that Charities will be required to provide information regarding their fundraising activities in their applications for charitable status and in their annual returns and annual accounts; and
- ▣ it is anticipated that codes of good practice will be developed in relation to agreed practices and procedures for fundraising activities. Under the Bill, the Minister for Community, Rural and Gaeltacht Affairs reserves the right to statutorily regulate fundraising if the development of codes of good practice prove to be ineffective. It should be noted, however, that the Explanatory Memorandum to the Bill indicates that work on such codes is advancing significantly in cooperation with the Charities sector.

Fundraising appears to be heavily regulated under the Bill, but there does not appear to be any exemption from such regulation for once-off fundraising in relation to disaster relief (e.g. tsunami relief) as is provided for in UK fundraising legislation. Accordingly, this may be an area of the Bill that requires further consideration before becoming law.

Relationship with other Statutory Bodies

The authority will be empowered to co-operate on an administrative basis with statutory bodies both inside and outside State. There has been a concern that Charities are increasingly being used to fund terrorism and this has been reflected by the enactment of the Criminal Justice (Terrorist Offences) Act, 2005, which is designed to assist in combating the financing of terrorism in the State. The fact that the Charities Authority will be empowered to

co-operate with other statutory bodies that operate in Ireland, as well as in other countries, may also assist in these efforts.

Legal Form for Charities

Charities currently have the choice of a number of different legal forms e.g. unincorporated organisations, such as trusts or associations, or incorporated entities such as companies limited by shares or guarantee. The definition of '*charitable organisation*' and the test of '*charitable purpose*' will apply to all forms of Charities including companies and charitable trusts.

Whilst each form of structure has advantages and disadvantages, none provide a legal form specifically designed for charitable organisations. The Law Reform Commission of Ireland has recommended that a new legal structure, the 'Charitable Incorporated Organisation', be introduced into legislation. Such introduction could help alleviate several problems including that of dual reporting. This recommendation, however, has not been reflected in the current Bill.

Conclusion

It is anticipated that the Charities Bill 2007 will be debated and passed by the new Irish Government within a short period of time. The Bill may be changed, of course, as the result of the parliamentary process. However, it is hoped that the Bill, once passed, together with the remaining sections of the Charities Act 1961 i.e. those sections that are not repealed by the Bill, the Charities Act 1973, and the Street and House to House Collections Act 1962, as amended by the Bill, will provide a comprehensive framework for the regulation of Charities in Ireland. Charities might consider familiarising themselves with the impending legislation now in order to establish how it will impact their organisation and activities in the near future.

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