



Mason Hayes+Curran
Incorporating Arthur O'Hagan

Charities Act 2009





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The Charities Act 2009 (the “Act”) became law on Saturday 28 February 2009. However, its provisions will not become effective until the Minister for Community, Rural and Gaeltacht Affairs (the “Minister”) introduces commencement orders.

The purposes of the Act are to establish a regulator for the sector, to reform the law of charities by ensuring greater accountability and to protect against fraud and the abuse of charitable status. The Act includes (for the first time in primary legislation) a definition of “charitable purpose”.

Organisations that carry out any charitable purpose in the Republic of Ireland must register with the Charities Regulatory Authority (the “Authority”) once it is set up.

Charitable Purpose

A purpose is charitable if it is of public benefit and if its aim is:

- (i) the prevention or relief of poverty or economic hardship;
- (ii) the advancement of education;
- (iii) the advancement of religion; or
- (iv) any other purpose that is of benefit to the community.

The Act clarifies that charitable purpose includes and covers monies paid in the case of a religious organisation or community on accommodation and care of members of that organisation or community. This explicit confirmation will be of great comfort to religious groups as the law was somewhat unclear on the point up to now.

The Act gives examples of what constitutes a purpose that is of benefit to the community, such as:

- (a) advancement of community welfare including the relief of those in need by reason of youth, age, ill-health or disability;
- (b) the protection of the natural environment;
- (c) the advancement of environmental sustainability;
- (d) the prevention or relief of suffering of animals;
- (e) the advancement of the arts, culture, heritage or sciences; and
- (f) the integration of those who are disadvantaged, and the promotion of their full participation in society.

Historically, a gift for the advancement of religion was presumed to be of public benefit. The Act changes the law so that it will be possible to challenge whether a religious purpose has public benefit. This change was made to be able to deal with situations where, in the words of the Minister of the State, John Curran T.D., who piloted the legislation through the Oireachtas “unscrupulous organisations ... might present themselves to the new Authority as being religious in nature while their real motivation might not be so respectable.”

Certain organisations are excluded from the Act (e.g. political parties and some sports bodies). However, the Act contains a useful confirmation that a charity may engage in political advocacy which directly relates to its charitable purpose.

Establishment of the Charities Regulatory Authority

The objectives of the Authority will be to:

- (a) increase public trust and confidence in the management and administration of charitable trusts and organisations; and
- (b) promote compliance by charity trustees in relation to their duties in the control and management of charitable trusts and organisations.

The Authority will have an enforcement role. It will have powers of investigation. Those breaking the law will be liable to

prosecution. The Authority may cooperate and share information with other regulators both in Ireland and elsewhere. The Commissioners of Charitable Donations and Bequests for Ireland (“CCDB”) will cease and their functions will transfer to the Authority.

The Register of Charitable Organisations

The Authority will establish and maintain a register of charitable organisations (the “Register”). A charitable organisation must apply to be registered within six months after the commencement of the registration provisions of the Act. The trigger is having any operations or activities in the Republic of Ireland. The legal structure of the entity, its place of formation/incorporation, its being subject to regulation elsewhere and the scale of the activity in Ireland are all irrelevant in deciding whether one has to register.

If the organisation is already registered with the Charities Section of the Revenue Commissioners and has its own CHY number then it will be deemed to be on the Register. The Act clearly states that tax status is to be dealt with by the Revenue Commissioners and charitable status is to be dealt with by the Authority. The transitional arrangement regarding deemed registration for those entities with a CHY number indicates an implication that the entities with a CHY number will be treated as charities. However, it is important to remember that the reverse

is not true – not all charities registered with the Authority will get favorable tax treatment. One will still have to register with the Revenue Commissioners for that.

Some entities already have the special tax status without a CHY number, mainly in the education sector. These organisations will not benefit from the transitional CHY related arrangement and will have to apply for registration within the six month period.

When applying to the Authority to be placed on the Register, a charitable organisation must provide very detailed information. The organisation must provide details of its own name, the name and home addresses of the trustees/directors/members of board of management, details of the organisation’s bank accounts, where it operates and what it does and intends to do, its methods of raising money, the amount raised within the previous 12 months, details of risk processes (including health and safety) where it deals with vulnerable people, its gross income in its last financial year, its financial accounts and a copy of its constitution, as well as whatever other information the Authority requires or the Minister prescribes.

As for the charitable organisations deemed to be registered (the CHY entities), the Authority may require any of these to provide the same information but initially there will be no blanket requirement.

All charitable organisations must register as there is no minimum threshold for registration. Any organisation which is not registered and either pretends to be a charity or would be regarded by a reasonable person as being a charitable organisation, commits an offence. Penalties on conviction are potentially severe, with a fine and/or imprisonment possible.

Financial matters

The Act imposes annual ongoing financial record keeping and reporting obligations. The scale depends on the level of income or expenditure in the year. However, without exception, and as a minimum requirement applicable to all, every charitable organisation must keep proper books of account.

Companies: Any charity which was incorporated in Ireland as a company was already subject to detailed requirements under the Companies Acts. These obligations regarding accounts, audits and filing of financial returns continue to apply to such companies. The Companies Registration Office will provide the Authority with copies of filings.

Charities which are Irish companies are therefore excluded from similar provisions of the Charities Act to avoid duplication of regulation. The following requirements under the Act do not apply to Irish companies:

Statement of accounts: Where the gross income or expenditure exceeds

€100,000 in a financial year, the organisation must prepare an annual statement of accounts. The Minister will prescribe the form and content of this annual statement. It is only when we get the detail from the Minister of what is to be in these statements of accounts that we will know the practical differences between the requirements for this category of charities and the presumably lower requirements for entities with lower turnover.

I&E: If the gross income or expenditure is €100,000 or less, the charitable organisation has the option of preparing an income and expenditure account and a statement of assets and liabilities instead.

Audit: The Act also imposes an audit requirement on a charitable organisation where its gross income or total expenditure exceeds an amount prescribed by the Minister. We await the Minister's decision on the precise amount but the Act stipulates that it cannot be greater than €500,000.

Independent examination: Where a charitable organisation is not obliged to audit its accounts, that charity must elect to have the relevant accounts either examined by an independent person, approved by the Authority or to have the relevant accounts audited.

Exceptions: Where the gross income or total expenditure of a particular charitable organisation is less than €10,000 or if the charitable organisation is an education body (a term with particular meaning

under the Act), these obligations, other than that of keeping proper books of account, will not apply.

Ongoing reporting: Within ten months of the end of its financial year, a charitable organisation must submit to the Authority a report on its activities in that financial year, the form and content of which will be prescribed by Ministerial order. There may be different provisions for different classes of information and different classes of charitable organisations. A charitable organisation will be required to file the following with this annual return:

- a copy of its annual statement of accounts (or an income and expenditure account and statement of assets and liabilities, as the case may be);
- Auditors report (where accounts have been audited);
- Independent person's report (where accounts have been examined rather than audited); or
- Accounts in accordance with the Companies Acts.

Public access: The documents will probably be available on the Authority's website. The public will be able to inspect all annual reports and attached documents. This disclosure obligation does not extend to a private charitable trust, which is a trust that is not funded by donations from the public. The private charitable trust has to comply with the accounts and audit obligations – the exception relates only to publication.

Fundraising

The Act introduces significant reforms in relation to fundraising. It introduces a requirement for collection boxes to display the name of the charity for which the collection is being made, as well as the organisation's registered charity number. The box must also display the collection number which has been assigned by the Gardaí in granting a permit for the collection and importantly, there is a requirement that the collection boxes be sealed (except in circumstances where the Authority has granted an exemption from this requirement). The collectors will need to wear clothing which shows the name of the charity and its registration number. Documentation (such as standing order requests) will need similar details included in a prominent manner.

Non cash collections have become an increasingly important source of income for charities, particularly the aid agencies. The activities of non cash collectors who sign up donors by way of direct debits will, for the first time, be regulated. A collection permit will be needed for non cash collections in the same way as cash collections require a Garda permit at the moment.

The Irish Charities Tax Reform Group has worked with the Government to develop non-statutory codes of practice to regulate the operational aspect of charitable fundraising. If these non statutory codes of practice need legislative reinforcement, the Act enables the Minister to introduce secondary legislation on the matter.

Charity Trustees

The Act sets out the duties, responsibilities and liabilities of charity trustees (which includes directors and officers of a charitable organisation). Organisations need to be careful that those in positions of responsibility are qualified to act. Allowing a disqualified person to act can have serious consequences for those who act under that person's direction.

There will be a whistleblower obligation wherever there are reasonable grounds for believing that an offence under the Act has been committed.

The Act permits a charitable organisation to buy trustee indemnity insurance. This should provide some comfort to those who might regard the new regulatory regime as onerous when they are giving their time and expertise for free.

Timing/Commencement Schedules

While the Act is now law, its provisions come into effect only when relevant commencement orders are made. One would imagine that the first commencement order will set an establishment date for the Authority and the dissolution of the CCDB. The Minister has not published a timeframe for the introduction of any commencement orders.

How can we help?

If you operate as a charitable organisation, you need to consider the following:

- does the Act apply to your organisation?
- will your organisation be deemed registered with the Authority, or must you apply to be registered?
- what filings will your organisation have to make with the Authority?
- should you review your governance and financial operations in preparation for the Act coming into effect?
- what protections, if any, should you introduce to protect those in your organisation who are considered to be charity trustees?
- what steps do you need to take to ensure that you are in compliance with the new fundraising provisions of both the Act and the ICTRG recommendations?

Useful Web Links

The Wheel, a resource centre and advocate for the Irish community and voluntary sector: www.thewheel.ie

The Irish Charities Tax Reform Group:
www.charitytaxreform.com

The Department of Community, Rural and Gaeltacht Affairs: www.pobail.ie

The Charity Commission, the charity regulator for England and Wales:
www.charity-commission.gov.uk

The Office of the Scottish Charity Regulator : www.oscr.org.uk

The N.I. Department for Social Development: www.dsdni.gov.uk

The Charity Commission for Northern Ireland is being established and relevant legislation is being brought into force over a two year period – see the Northern Ireland Council for Voluntary Action website: www.nicva.org for further comments.

Contacts

We can guide you through the provisions of the Act, as these apply to you. If you would like to discuss the contents of this memo further, please contact any of the following MH+C partners:

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