

Briefing Note on the Charities Act 2009

Purpose

To ensure greater accountability by charities and to protect against abuse of charitable status and fraud. It is also expected to enhance public trust and confidence in charities and to increase transparency in the sector.

Key Principle – proportionate regulation

Key provisions of the Charities Act 2009

- There will be a statutory definition of “charitable purpose” for the first time
- A new **Charities Regulatory Authority (CRA)** will be set up to secure compliance and encourage the better administration of charities (between 9 and 20 members). The new Authority will replace the existing Commissioners for Charitable Donations and Bequests which will be dissolved on the setting up of the CRA. The CRA will have strong investigative powers, can co-operate with bodies inside and outside the state and there will be serious penalties for offenses under the legislation.
- **Register of Charities** – all charities operating in the State and regardless of size must register (this includes charities from outside the State who wish to operate here). All organisations that currently hold charitable tax exemption status from the Revenue Commissioners will automatically be “deemed to be charities” on the day on which the Charity Register comes into existence unless the Revenue or CRA have reason to believe they no longer qualify. The Act provides that the Charity Regulator can exempt smaller charities from some of the more onerous registration requirements set out in the Act. The Charity Register will be made available to the public online. It will be an offense for an organisation to hold themselves out to be a charity if they are not on the register. It will also be an offense for an organisation to publish any material describing itself or its activities in such terms as would cause members of the public to reasonably believe that it is a charitable organisation.
- **Excluded bodies** include political parties, candidates or causes or organisations that promote purposes that are contrary to public policy - NOT to be confused with government policy.
- **Advocacy** – charities are permitted to engage in political advocacy that is directly related to advancing their charitable purposes.
- The Act sets out the duties and responsibilities of **Charity Trustees** including the circumstances in which a person would cease to be qualified to act as a trustee. Provision is made for allowing the purchase of Trustee Indemnity Insurance and the special circumstances in which payment of charity trustees for NON-trustee work would be acceptable are set out. It also makes it possible for the courts to protect charity trustees from personal liability in proceedings taken for breaches of trust where the court is satisfied that the charity trustee(s) acted honestly and reasonably in all circumstances.

- **Annual Returns and Annual Activity Reports** are to be made by charities to the new Authority
 - Ø Audited accounts will be required for income above a prescribed threshold of up to a maximum of €500k
 - Ø Examination of accounts will be required for income below the prescribed threshold – less onerous and less expensive for smaller charities
 - Ø Charities with total income/expenditure of less than €10,000 in a given year will not be required to submit audited or examined accounts but will have to include a summary of their finances in their Annual Activity Report.
 - Ø The Act provides that the regulations can vary the level and detail of information to be required from different classes of charities e.g. smaller charities
 - Ø This information will be publicly available except in the case of Private Foundations where no funding is raised from the public. (They will have to make the returns to the Regulator but the information won't have to be made public)
 - Ø In the case of charities structured as companies that already make Annual Returns to the Companies Registration Office under company law the CRO will send these returns to the new CRA to avoid dual reporting.
 - Ø **All** charities regardless of legal structure will be required to submit an Annual Activity Report to the CRA.

- There will be a three pronged approach to the **regulation of fundraising**:
 - Ø Garda Permits will be required for all types of fundraising including non-cash collections. Requirements are set out for the conduct of both cash and non-cash collections.
 - Ø Details of fundraising activity and income will be required in the Annual Activity Report/Annual Returns
 - Ø Operational and administrative fundraising issues are to be regulated by means of agreed codes of practice with the sector (ICTR Ltd recently developed a scheme for this in partnership with the Dept. CRaGA). If this approach proves ineffective the Minister has reserved the power to legislate on the issue.

- Provision is made for a **Charity Appeals Tribunal** – a speedy and inexpensive mechanism for appealing decisions of the Charities Regulatory Authority. Charities will still have recourse to the courts if they are not happy with the rulings of the Appeals Tribunal.

- Provision is made for **Consultative Panels** to bring together relevant stakeholders (including sector representatives) to advise the CRA on specific issues as appropriate

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