seeking your view
codes of practice
fundraising regulation
charitable fundraising
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REGULATION OF FUNDRAISING BY CHARITIES THROUGH LEGISLATION AND CODES OF GOOD PRACTICE

CONSULTATION PAPER

Irish Charities Tax Research Ltd

September 2006

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1. INTRODUCTION

In March 2006, following detailed consultation with the charities sector and the general public, the Government announced details of the legislation to establish a modern statutory framework for charities. Noel Ahern T.D, Minister of State at the Department of Community, Rural and Gaeltacht Affairs with responsibility for charity law, published the **General Scheme for the Charities Regulation Bill 2006.**

The proposed legislation seeks to achieve the right balance between, on the one hand, proper accountability and vigorous intervention where charity is abused and, on the other hand retaining the dynamism of voluntary groups through appropriate support and guidance that promotes best practice.

One of the most important areas covered by the proposed legislation is ***fundraising*** by charities. Ensuring public confidence in fundraising by charities is in the interests of both charities and the general public who wish to support charitable work.

The General Scheme for the Charities Regulation Bill 2006 provides that:

1. All charities seeking to operate or **fundraise** within the State will be obliged to register with the new Charities Regulator;
2. Permits will be required for all public collections for the benefit of charities except within the grounds of places used for public worship;
3. The Charities Regulator will require charities to provide information concerning their fundraising activities in their applications for registration, as well as in their annual accounts and annual returns;
4. ***Codes of Good Practice*** **will be developed with the charities sector, in relation to practices and procedures i.e the operational and administrative aspects of charitable fundraising.**

This Consultation Paper is concerned with the development of these *Codes of Good Practice.*

2. PURPOSE OF CONSULTATION PAPER

The Department concluded, in its consultation paper *Establishing A Modern Statutory Framework for Charities,* that it would be very difficult through legislation to regulate the **operational aspects** of charitable activities, where practice is continually developing. It recognises that non-statutory *Codes of Good Practice* may be the best way to manage and oversee fundraising practices and procedures.

This approach, when combined with legislation on permits and accountability, would assure the public that their charitable donations are being used to support the work of the charity while allowing for greater flexibility and speedier adaptation by charities to changes in fundraising practices

The proposed *Charities Regulation Bill,* 2006 does, however, include a reserve power for the Minister of Community, Rural and Gaeltacht Affairs to introduce statutory regulation of the **operational aspects** of fundraising should the approach to regulation through *Codes of Good Practice* turn out to be inadequate or fails to provide the expected benefits.

To progress these *Codes of Good Practice,* the Department of Community, Rural and Gaeltacht Affairs has entered an agreement with Irish Charities Tax Research Ltd to carry out research and make recommendations on how the **operational aspects** of charitable fundraising can be effectively regulated through *Codes of Good Practice.*

In announcing funding for this research **Minister Noel Ahern** said that he is delighted to be working with the sector on this important project.

> *" I am pleased that in progressing this issue, we are able to tap into the sector's own expertise and experience in relation to charitable fund-raising.*
>
> *It is important that in agreeing Codes of Good Practice to manage and oversee fund-raising practices and procedures, they are*

grounded in the realities of the fund-raising environment and based on the experience of those involved". (19 June 2006),

To instill public and political confidence in the project, ICTRL has commissioned independent consultant Peter Cassells to undertake a feasibility study on the development of *Codes of Good Practice* for charitable fundraising. Also a Steering Committee has been established to oversee the feasibility study and approve the outputs. The names of the Steering Committee are given in Appendix One.

As part of this feasibility study, ICTRL, the Steering Committee and Mr. Cassells will consult widely in the coming months with the charities sector, the general public and with public bodies that provide funding to charities. This Consultation Paper is part of that consultation process.

The **Consultation Paper** sets out:

- Details of the issues to be covered in the feasibility study;
- The key questions on which we want your views;
- How to participate in the consultation process.

Your views will be seriously considered by ICTRL. Proposals will then be submitted to the Department of Community, Rural and Gaeltacht Affairs on the development of Codes of Good Practice for charitable fundraising. You will be consulted again on these proposals before they are submitted to the Department.

The following is the broad timeline for the feasibility study:

Oct. – Dec:	Public Consultation
Jan – Feb:	Consideration of submissions by ICTRL Steering Committee and development of proposals
Mar – Apr:	Public consultation on proposals
May:	Finalisation of proposals
June:	Submission of final proposals to Department

3. KEY CONSIDERATIONS

The immediate task facing the charities sector, working in partnership with the Department of Community, Rural and Gaeltacht Affairs and in consultation with the general public, is to bring forward proposals for a system to develop agreed *Codes of Good Practice* to manage and oversee fundraising activities.

To do this the feasibility study being undertaken by ICTRL and the Steering Committee with the assistance of independent consultant, Peter Cassells, will seek to:

- Identify the operational aspects of charitable fundraising which might be included in *Codes of Good Practice;*
- Identify the type of standards (both clear and rigorous) which might be included in *Codes of Good Practice;*
- Examine how and by whom those Standards would be set, reviewed and up-dated. Also examine how the charities sector would engage with the setting of standards;
- Examine how charities could be encouraged or obliged to adopt those Standards;
- Examine how *Codes of Good Practice* might be proactively monitored (including independent scrutiny and a complaints system). Also examine how cases of non-compliance would be dealt with.
- Identify how an independent monitoring and complaints system might be administered and funded;
- Identify the support which organisations in the charities sector would need to assist them to comply with a system of independently monitored *Codes of Good Practice;*
- Examine the scope for North – South co-operation in relation to charitable fundraising and the development of independently monitored Codes of Good Practice.

These are the issues on which we want your views. To assist you with the submission of your views we have drafted a number of questions with examples of how some other countries deal with these issues. This is not an exhaustive list of questions and the examples are illustrative.

4. ISSUES ON WHICH WE WANT YOUR VIEWS

The overall objective of the new statutory framework for charities complemented by *Codes of Good Practice* is to underpin the relationship of trust between donors and beneficiaries as well as to protect volunteers in their charitable fundraising efforts.

The three key steps to achieving credible regulation by *Codes of Good Practice* are **clear objectives, content and structures:**

Clear Objectives: The first step is to be clear about the primary purpose of introducing regulation of fundraising by Codes of Good Practice i.e. what is the specific outcome we are trying to achieve?

Is the objective:

a) to provide for the resolution of individual complaints/disputes?

b) to protect the rights of donors by promoting improvements in fundraising practices

c) to provide donors with information to enable them to hold charities accountable

Is it possible to marry all three objectives?

The answer to these questions will determine what model of *Codes of Good Practice* is most appropriate to achieving these objectives. Approaches could range from totally voluntary codes drafted and monitored by the charities sector itself (total self-regulation), to a scheme with a strong independent input and structures separate from the sector, to full legal codes endorsed by the Regulator and enforced by the state.

Content: *Codes of Good Practice* usually contain three ingredients, namely:

- Clear and intelligible rules which set standards for fundraising practices
- Monitoring and enforcement of those standards, including sanctions
- A redress mechanism, including clear, accessible complaints procedures.

Structures and Governance: Any scheme to draft, monitor and enforce *Codes of Good Practice* must have a Governing Body or dedicated structure to police behaviour and decide when rules are broken. A key question is:

- should this structure be (i) within the charities sector, (ii) within the charities sector with a significant independent input, (iii) separate from the sector?

To assist us to frame proposals for a scheme to develop *Codes of Good Practice for Charitable Fundraising*, we would welcome your views on the **objectives** of *Codes of Good Practice on Charitable Fundraising* and your **response to a range of questions** related to the achievement of those objectives.

Question 1

What should be the objectives of Codes of Practice?

For example, is the objective?

- to provide a means for the resolution of individual complaints
- to protect donors by improving fundraising practices
- to provide donors with information enabling them to hold charities accountable

Is it possible to marry all three objectives?

Question 2

What types of fundraising practices should be covered?

For example: the following fundraising practices are covered by Codes of Good Practice in other countries:

- Face to face fundraising (including door to door fundraising)
- Direct mail, phone appeals, tv/radio appeals
- Raffles and Lotteries
- Internet donations
- Fundraising in schools

Question 3

What rules or requirements should be included in Codes?

For example the rules or requirements might spell out minimum legal obligations (what you must do when fundraising) and aspects of good practice (what you ought to do!)

The level of obligations would have to strike a balance between enhancing public confidence in charitable fundraising while not being too onerous on charities.

Question 4

Who should draft the Codes and set the standards?

For example in the U.K the Codes are drafted and the standards set by the UK Institute of Fundraising which is funded by the charities sector. In the advertising area in Ireland, standards are set by the Advertising Standards Authority of Ireland, a self-regulatory body set up and financed by the advertising industry to promote high standards of advertising.

Question 5

Should charities be obliged to accept and abide by the Codes?

For example in the U.K the scheme is voluntary. Charities apply for membership of the Self–Regulation of Fundraising Scheme, agree to adopt the Codes of Fundraising Practice and to have a complaints procedure and get a seal of approval. In other countries, while adherence to the standards is voluntary, the seal of approval is taken into account in decisions on public funding for organisations. In the advertising area in Ireland, the media (radio, television, newspapers, cinema) will not broadcast or publish an advertisement which fails to conform to the Codes of Practice.

Question 6

How should Codes be monitored and enforced?

This is a key question. How to monitor Codes of Good Practice and deal with cases of non–compliance in a way that engenders public confidence without stifling legitimate charities? Any system of compliance would have to have regard to the fact that charities vary enormously in size, organisational capacity and sources of financing.

For Example

- Should a monitoring body actively monitor compliance with the Codes or confine itself to responding to complaints?
- If the latter, how should public awareness of the body be maximized?
- Who should the monitoring body be; a body established by the charities sector, a body established by the charities sector with a significant independent input, a body independent of the charities sector?
- Should the different functions of promoting good fundraising practices within the charities sector, drafting Codes of Good Practice, monitoring compliance, adjudicating on complaints and imposing sanctions be incorporated into a single system or divided up?
- What sanctions should be imposed for non-compliance? In other areas, there is a graduated approach e.g. remedial agreement, publicity, withdrawal of seal of approval where one applies, report to the Charities Regulator, financial penalty.

Question 7

How should a monitoring and complaints system be funded?

For example initial research suggests self-regulatory systems in other sectors are funded entirely by the sectors themselves. In some countries schemes relating to charities are funded by membership fees and public subsidies.

Question 8

What support would charities need to assist them to comply?

For example in some countries advice and guidance on good fundraising practices is provided.

As indicated earlier, this is not an exhaustive list of questions. We would welcome any other views and suggestions on how public confidence might be engendered in fundraising by charities and good fundraising practice promoted throughout the sector.

5. HOW TO SUBMIT YOUR VIEWS

Submissions can be made in a variety of ways;

1. By e-mail to: ictr@iol.ie
2. By fax to: Sheila Nordon, ICTR Ltd – Fax No: 01-453 1862
3. In writing to:

Sheila Nordon
Executive Director
Irish Charities Tax Research Ltd
ISFC
10 Grattan Crescent
Inchicore
Dublin 8

The closing date for receipt of submissions is **Friday 15th December 2006.** It is our intention to publish all submissions received on the ICTR website www.ictr.ie

A number of workshops for charities will be held throughout the country in October and November. You will be notified of the dates and venues in due course and details will be posted on the website www.ictr.ie

Irish Charities Tax Research Ltd (ICTRL) has commissioned independent consultant Peter Cassells to undertake the feasibility study on the development of Codes of Good Practice for charitable fundraising.

ICTRL has also established a Steering Committee to oversee the feasibility study and approve the outputs. The names of the members of the Steering Committee are given in Appendix One. These members were chosen for their expertise and are serving on the Steering Committee in a personal capacity.

Your views will be taken into account by Mr. Cassells and the Steering Committee in finalising the feasibility study. When options for the development of Codes of Good Practice on the operational aspects of charitable fundraising have been finalised you will be consulted again on those options.

APPENDIX ONE: STEERING COMMITTEE

Andrew O'Regan	Centre for Nonprofit Management TCD
Caitriona Fottrell	The Ireland Funds
Freda Donoghue	Centre for Nonprofit Management TCD
James Cassidy	(previously Head of Fundraising Irish Cancer Society)
Mary Moorhead	The Mater Foundation
Niamh Sheeran	Niamh Sheeran & Associates – Fundraising Consultants
Oonagh Breen	School of Law, UCD
Paddy McGuinness	Concern
Philip Smith	Arthur Cox
Richard Dixon	Concern
Siobhan McGee	Centre for Nonprofit Management TCD & Fundraising Consultant
Teresa Harrington	Pricewaterhouse Coopers

Sheila Nordon	Executive Director Irish Charities Tax Research Ltd
Peter Cassells	Peter is an independent consultant with Peter Cassells Consultants Ltd. Mr. Cassells is chair of the National Centre for Partnership and Performance and former General Secretary of the Irish Congress of Trade Unions.

APPENDIX TWO: SOURCES OF INFORMATION

General Scheme for Charities Regulation Bill 2006: Department of Community, Rural and Gaeltacht Affairs	www.pobail.ie
Consultation Paper: Establishing a Modern Statutory Framework For Charities Department of Community, Rural and Gaeltacht Affairs	www.pobail.ie
International Committee of Fundraising Organisations	www.icfo.de
U.K Institute of Fundraising	www.institute-of-fundraising.org.uk
Fundraising Standards Board (UK)	www.fsboard.org.uk
Fundraising Institute of Australia	www.fia.org.au
Fundraising Institute of New Zealand	www.finz.org.nz
Imagine Canada	www.imaginecanada.ca
Association of Fundraising Professionals (USA)	www.afpnet.org
National Consumer Council UK	www.ncc.org.uk

Notes

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