



Important Changes in Charities Law

Important changes to charities law are currently under discussion in the Oireachtas. A new Charities Act is expected to be finalised by the end of 2008. According to Edward Gleeson, Head of the Charities Unit at Mason Hayes+Curran:

"This is good news for the charities sector. All existing charities registered with a CHY number will not have to re-register when the new law comes into place, which may be as soon as next month."

The legislation will introduce a system of regulation of charities. Charities will be required to register with a new Charities Regulator. Up to now, charities seeking tax exemption were only required to register with the Revenue Commissioners, CHY numbers being issued to approved charities.

There will be new rules on what qualifies as a charity. All charities must have a charitable purpose that complies with the list set out in the legislation. Organisations must also show that their charitable purpose has public benefit. Gifts for the advancement of religion will enjoy a rebuttable presumption of public benefit. There are new obligations on charities to file annual reports and accounts. The Charities Regulator will be responsible for registration and supervision of charities. A public register of registered charities will be kept and annual reports and accounts of charities will be made available for inspection by the public.

The main aim of the Bill is to bring regulation to a sector which has been seen as lacking in regulation to date. It will improve the confidence of the public in registered charities, particularly those involving children or other vulnerable people.

The Bill calls for charities to be organised and transparent in terms of their objectives, activities and finances.

The Dáil has agreed some important amendments to the Bill. Some of the key points are:

- Existing charities which currently have charitable status with the Revenue Commissioners (those who have a CHY number) will be deemed to be registered under the new Charities Act. This will remove the administrative burden and costs of charities with a CHY number applying for registration. However, every charity will still need to prepare for regulation. The Charities Regulator will have the power to request existing charities to produce the necessary documentation to confirm that they comply with the new law. The Charities Regulator can strike a charity off the register if it is of the opinion that the charity does not comply with the new requirements.
- For religious charities, it will be presumed that a gift for the advancement of religion has public benefit but the Charities Bill now allows that this presumption may be rebutted, if it can be shown to the contrary. This is a step back from the current law and from the initial draft of the new legislation which proposed that a gift for the advancement of religion was to be regarded as of public benefit. The reason for this amendment, according to Minister of State John Curran TD, is that *"there were some concerns that this provision might be abused by unscrupulous organisations that might present themselves to the new authority as being religious in nature while their real motivation might not be so respectable."* It is worth noting that the Bill does not provide that religious organisations have public benefit, but merely that





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gifts for the advancement of religion are presumed to have public benefit, unless shown otherwise.

- Payments for services rendered by trustees and officers of charitable organisations (outside of their role as trustees or officers) will be allowed, if in the best interests of the charity. An agreement in writing must be put in place and the fee paid must be reasonable.
- Trustees and officers of charitable organisations can purchase indemnity insurance using the charitable funds. This will protect trustees and officers from personal liability to pay damages for breach of duty where they are acting in good faith in the course of their duties.
- Charitable companies under the control of a religious organisation will no longer be exempt from filing accounts publicly. Such companies do not have to file accounts with the Companies Registration Office under current company law but will have to file accounts with the Charities Regulator under the new charities law.
- The Companies Registration Office will forward to the Charities Regulator copies of the annual return and accounts filed by non-religious charitable companies. This will relieve such charitable companies from dual reporting requirements.
- Unincorporated charitable associations with gross income up to €500,000 are likely to be exempt from the requirement to have audited accounts. The threshold was originally proposed to be €100,000. Such associations will still have to keep proper books and records and prepare annual accounts. A trust must produce full annual accounts if it has gross income over €100,000 but can produce an income and expenditure account only if gross income is less than €100,000. Charitable companies (limited by guarantee without a share capital) must prepare and audit accounts regardless of income levels.
- Foreign charities registered in another EU or EEA State can carry on activities in Ireland without having a physical presence in Ireland. However, the Revenue Commissioners may require those charities to have a physical presence in Ireland before such charities can avail of Irish charitable tax exemptions.
- Charities may have a limited political role in promoting a political cause directly related to its charitable purpose. This will allow charities to engage in advocacy and lobbying to further their charitable purpose. A political party cannot be a charity.

As the Bill has now been passed by the Dáil, it will shortly be debated in the Seanad. In the Seanad there will be a number of opportunities for you to have your concerns about the Bill aired directly with the Minister. At Second Stage in the Seanad the Minister will outline the key provisions of the Bill and the members of the opposition will respond. Two stages (Committee Stage and Report Stage) will be solely dedicated to discussing possible amendments.

If you have any questions or concerns regarding the Bill, please do not hesitate to contact Edward Gleeson, Head of MH+C's Charities Unit.

If you wish to explore the possibility of having us draft amendments which can then be raised with the Minister and his officials, please contact Brian Hunt, Head of MH+C's Public Affairs team.

It is important to be aware of the fact that when equipped with well-drafted amendments and reasoned arguments as to why those amendments should be accepted, it is possible to achieve change. We have a track record of having achieved some successes for clients who engaged us to lobby on their behalf.

Mason Hayes+Curran are available to provide in-house briefing sessions on the new Bill and are here to guide you through the processes and procedures required to ensure compliance with the Bill when it is passed into law.

For more information, contact:



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Dublin: South Bank House, Barrow Street, Dublin 4, Ireland. Tel +353 1 614 5000. Fax +353 1 614 5001. www.mhc.ie. E-mail: mail@mhc.ie
London: 28 King Street, London EC2V 8EH, United Kingdom. Tel +44 20 7796 5979. Fax +44 20 7796 3919. E-mail: mail@mhcldn.com
New York: 330 Madison Avenue, 6th Floor, New York, NY 10017, USA. Tel +1 212 786 7376. Fax +1 212 786 7316. E-mail: mail@mhcny.com