



## **Briefing Paper to the Joint Committee on Social Protection, Community and Rural Development and the Islands in response to the *Charities (Amendment) Bill 2023 (the “Bill”)***

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This brief paper is the **initial response** to the Charities (Amendment) Bill 2023, (the Bill) which was published on 22<sup>nd</sup> December 2023, and is submitted co-operatively by Charities Institute Ireland and The Wheel, who together represent a considerable proportion of the registered charities & voluntary organisations in Ireland. Legal input is provided by Mason Hayes & Curran LLP, solicitors (MHC), Ireland’s largest and leading provider of legal services to the charity sector. This paper follows the comprehensive submission made in July 2022 in response to the original General Scheme of the Charities (Amendment) Bill 2022.

### **About the Sector**

There are almost 12,000 registered charities and a further 20,000+ organisations in Ireland’s wider non-profit sector. Some key statistics for the sector include –

- Combined annual turnover of over €19bn.
- Employs over 281,000 staff.
- Registered charities are run by over 76,000 volunteer trustees/directors, supported by the work of over half a million “operational” volunteers, (valued by the Central Statistics Office at around €2bn per year).
- Indecon estimate (in a 2018 Charities Regulator report) that total direct, indirect and induced value of the impact of the work of Ireland’s charities exceeds €24bn.
- The same report found that **over half of registered charities** examined had income **of less than €250,000**, the majority with less than €50,000. A sizable number have no paid employees. The system of governance and regulatory oversight will need to be proportionate and support these grassroots charities.

### **About The Wheel**

The Wheel is Ireland’s national association of charities, community groups and social enterprises. As a representative voice, we provide leadership, and we advocate with our members for a strong charity and community sector. Our vision is for a thriving charity and community sector at the heart of a fair, just and inclusive Ireland.

### **About Charities Institute Ireland**

Charities Institute Ireland (Cii) is the representative body for Ireland’s leading and high impact fundraising registered charities. We advocate for recognition of the essential role that charities play in our economy and society. We promote greater transparency and trust through best practice in governance, fundraising and financial standards.

### **About Mason Hayes & Curran LLP**

Mason Hayes & Curran (MHC) is the pre-eminent provider of legal services to the Charity and Not-for-Profit sector in Ireland. Our expertise extends to all types of organisations in the charity sector, including voluntary organisations, non-governmental organisations and social enterprises.

## Summary

Due to the timing of the publication of the Bill on 22<sup>nd</sup> December, and the speed with which it is proposed to travel through the legislative process, we focus here only on the key themes identified in our original submission. It has not been possible to undertake a full review of the Bill since its very recent publication, **but it is our intention to carry out a full legal review, including any new provisions which have not been included within this briefing paper.**

**On behalf of our sector, we ask the Committee for the opportunity to present our findings and proposals at the earliest opportunity before any definitive legislative decisions are made.**

It is important to reiterate that we support this Bill. We know that it represents the sole opportunity for legislative change for the short and medium terms and there will only be one opportunity to get this right for all stakeholders. This legislation is long-awaited by our sector, and we welcome the positive changes, including:

- The inclusion of the advancement of human rights as a charitable purpose.
- The alignment with the Companies Act 2014 for financial reporting along with the increase of the audit threshold to €250,000.
- The release from liability of court appointed charity trustees from the consequences of decisions and actions that preceded their appointment.
- Ensuring company secretaries are not automatically regarded as trustees of a charity.

**There remain significant concerns about some of the proposed provisions, including:**

- 1) The proposed extension of significant additional powers of direction and sanction to the Charities Regulator: in particular the, in our view, disproportionate power to de-register charities for a range of minor non-compliances.
- 2) Insufficiently strong appeals processes and insufficient recognition of potential reputational damage to charities occurring prior to any finding of fact during an investigation.
- 3) The impact of the perceived / felt increase in the responsibilities of charities trustees (accepting that the proposed definition of the duties of charities trustees merely codifies what is already there in common law).
- 4) The requirement for approval to a charity's constitution has been changed to 'specified clauses' relating to objects, income and property and winding up. This is a welcome amendment from wide-reaching requirement contained in the original Heads of Bill. However, it is our view that the meaning of these specified clauses, and the extent of their reach, require greater clarity and definition within the primary legislation.
- 5) The impact on the cost of compliance, without sustainable funding provision.
- 6) The failure to address anomalies and omissions in the Charities Act 2009 since its commencement that repeatedly arise for charities which lead to genuine, practical difficulties for them, and which were most likely unintended by the drafters of the Charities Act 2009.

## Valuing the Economic & Social Contribution of the Sector

Charities and not for profit organisations carry out vital social functions that business and government cannot. Our sector delivers where no one else can or will. Far from being the work of a residual sector, this ability is the strength of the third pillar, creating social cohesion across our communities and society for the good of all.

### Increasing the Regulatory Burden

We support balanced and proportionate regulation, and believe a culture of **regulatory support**, which recognises the unique volunteer-led structure of charities, is the optimum model for best outcomes in the public interest.

When considering further regulatory changes, policymakers must be aware of the extensive regulatory, compliance and reporting obligations that take time and money to fulfill. The strain on volunteer boards and small executive teams **is not a sustainable position, and, without dedicated funding, additional legislative requirements will only exacerbate the situation.**

### Supporting Charity Trustees

Charities cannot operate without volunteer Trustees. Policymakers can support charities trustees, acknowledging that their work is undertaken voluntarily, while recognising the skills and ability that these trustees bring to the role. It is vital that the provisions in the Bill do not discourage people from serving as charity trustees and providing immeasurable benefit to the public at no cost.

### Conclusion

As noted above, we welcome this Bill and the urgency with which it is being considered. It is, however, critically important that there is sufficient and proper engagement with stakeholders to ensure that it strikes the necessary balance between ensuring a robust regulatory environment that fosters trust in the sector, and recognition of the voluntary nature of much of this work, in particular trustees, and the increasing demands on the sector.

Signed:



Áine Myler,  
CEO,  
Charities Institute Ireland  
E: [aine@charitiesinstituteireland.ie](mailto:aine@charitiesinstituteireland.ie)  
Tel: 087 2236266

Signed:



Colette Bennett,  
Director of Advocacy & Research,  
The Wheel  
E : [colette@wheel.ie](mailto:colette@wheel.ie)  
Tel: 087 9044091