



Briefing Paper to the Department of Community and Rural Development in response to the *Charities (Amendment) Bill 2023* (the “Bill”)

This briefing follows our initial response, provided to both the Committee on Social Welfare, Community and Rural Development and the Islands and the Department of Rural and Community Development (the Department). As per our previous briefing, this 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.

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. As our economy, service provision and demand have grown, so will the value of the sector in the intervening 6 years.
- 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 sizeable 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.

Substantive Areas

On behalf of our sector, we ask the Minister and his Department for the opportunity to discuss this briefing 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.
- 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.

However, there remain concerns about some of the proposed provisions, which we outline in the table below. These concerns were echoed by our respective members in response to a joint briefing facilitated by The Wheel and Charities Institute Ireland and presented by Mason Hayes and Curran Solicitors on 14th March 2024, and at which some 344 people attended.

For ease of reference, we have listed the relevant sections in the order that they appear in the Bill. We have, however, highlighted those of significant concern.

Section No.	Topic	Commentary
2	Definition of “Charity Trustee”.	While we welcome clarification for company secretaries, we are concerned that the wording “and holds no other office” is unclear and may result in company secretaries who are also DPOs or Financial Officers being regarded as trustees. We propose that this definition be amended and clarified.
39(5)(d)	Information required when registering with the Charities Regulator.	While the current wording is an improvement on that contained in the Heads of Bill, clarity is required as to whether this information (which includes personal and contact information) would be made available on a publicly accessible database. This would act as a significant deterrent for trustees.
39(6)	Discretion to exempt an applicant for registration from the S39(5) requirements.	Whilst a certain minimum standard should be applied for all organisations applying for charitable status, some recognition of the fact that charities can vary hugely in size and resources ought to be acknowledged through the retention of this section to ensure that a proportionate approach to regulation can be maintained.
39(6A) and (6B)	Deemed withdrawal of a registration application.	It is a significant undertaking to submit an application for charitable status and there can be many legitimate reasons for a delay in response by an applicant. We consider it disproportionate and unfair that an application would be deemed withdrawn entirely with no ability on the part of the Regulator to evaluate any

		delay on its merits and without any possibility to keep an application “live”.
39(7)(a)	Information to be published on the register.	At present, only those charities that are companies, and therefore already are obliged to have their constitution published in the Companies Registration Office, have their constitution publicly available. This proposed amendment will now bring all other types of charities, such as unincorporated associations and trusts within this requirement. While we acknowledge the public interest aspect of this provision, there may be charities with constitutions which contain sensitive information and would be obliged to make this information public.
39(11A) (c)	Matters to be notified to the Regulator on a mandatory basis.	<p>While at present there is an obligation to update any information regarding a trustee which is entered in the Register, the Bill proposes to widen that requirement to circumstances where there is any change in the information regarding a trustee provided in an application for registration. We consider this excessive and potentially regulatory overreach and that the present position regarding the requirement to notify the Regulator regarding any change publicly available information on the Register should be maintained.</p> <p>We consider that further clarification should be provided as to what specifically might trigger the requirement to notify where it is “proposed to wind up the charitable organisation or to cease its operations”. While this might be a course of action that a charity considers from time to time (and indeed is obliged to do so under the Governance Code), we consider that a more proportionate approach would be that this requirement is triggered where a decision has, in fact, been taken by the charity trustees to wind down (not where it is proposed to wind down). This is reinforced by the requirement in s39(11B) which proposes the introduction of a requirement that a notification of the intention to wind down or cease activities shall be accompanied by a statement of the assets and liabilities of the charity and details of any proposed transfer of assets of the charity. We consider that it would be disproportionate to require this information in circumstances where the matter is only being considered by the charity, rather than in circumstances where the decision has actually been taken.</p> <p>Further, there is a requirement for more cohesive approach to regulatory compliance to avoid multiple filings of the same information.</p>
39(11B)	The Regulator to specify requirements for notification	The Bill requires the charity to notify to Regulator where it is simply “proposed” to wind up the

	regarding a winding up.	<p>charity. We consider that the information required is excessive and disproportionate and more appropriate to a situation where a decision to wind up has actually been taken.</p> <p>It is also unclear whether, in this context, a proposed merger may be deemed to be a proposed winding up. Such proposed transactions would be highly confidential and boards would not wish to disclose such highly sensitive information prior to a decision being agreed.</p>
39(20)	Exempting education bodies from some of the provisions provided in the S39 (Registration).	We welcome this exemption for education bodies, which acknowledges the fact that such bodies are already heavily regulated by other regulatory bodies. However, we would note that other sectors are similarly heavily regulated, for example healthcare charities and charities working with children and consideration should be given to extending the exemption to other such bodies.
43(2B) / 43(4)(a) / 43(5A) and deletion of 43(6) and 43(7).	Removal of a charity from the register on specified grounds and Transfer of powers to the High Court.	<p>While we welcome the confirmation process of the High Court, it is an ongoing concern that the costs associated with challenges at this level may not be affordable for some organisations.</p> <p>We would highlight however that there may be some legal inconsistencies resulting from the use of the word “shall” in these sections, with the slightly looser wording in S44A(1) which provides that where the Regulator is of the opinion, that a charity “should” be removed from the Register for a reason in S43 or S44, then it “shall” serve a notice in writing on the charity.</p>
48(3)(a)	Financial reporting. Annual Statements of Accounts.	While all company charities are required to prepare accrual accounts (S. 48), Section 50 of the Charities Act 2009, provides for the Minister to set an audit threshold of €500,000 (or less). Thresholds in the UK, Wales, Scotland and Northern Ireland (all contributors to the Charities SORP Committee & Standards) are set at, at least, £500,000. It would therefore be preferable to increase the currently proposed threshold of €250,000 to €500,000 to take account of international norms. Albeit not part of the legislative review, we are also concerned about the availability and cost of auditors to undertake a significant increase in activity.
53	Requirement to provide information the Regulator.	<p>We consider that, as drafted, this provision may be excessive and disproportionate and result in considerable expense for a charity.</p> <p>There is no clarity on the kind of information that may be required providing that the Regulator can require the provision of “such information as it may reasonably require to enable it to perform its functions”. We would recommend the insertion of a provision allowing for a</p>

		defence where the charity and/or trustees have acted reasonably, particularly in circumstances where the information required in a direction might not be within the procurement of the charity or trustees.
54A(1)	Charity trustees' personal connections.	While we welcome the clarification in relation to “connected relative of another trustee”, we submit that it would be in the public interest to include Senior Management/Executive Directors within this definition.
54(B)(1)	Principal duties of charity trustees are listed in the legislation for the first time.	We are concerned that the word “avoid” in relation to the conflict-of-interest provision is too high a threshold and recommend that similar wording to the Companies Act allowing charity trustees to manage (and mitigate) conflicts be included in this provision. The Companies Act S228(1)(f) recognizes that there may be circumstances in which conflicts of interest exist and this can be managed within an organisation’s governing document or by a vote of the members.
66A	Directions arising from inspector’s report. (powers of Regulator to direct the charity takes measures).	We note that this section introduces a new offence if a charity trustee of a charity organisation fails to comply with the Regulator’s direction and would welcome the inclusion of legislative parameters to ensure proportionality.
74(1)(f)	Protection of charitable organisations.	The management of a charity is not a function of the charity trustees and therefore they ought not to be penalised for any perceived lack of “effective management”. The oversight of a charity is clearly within the scope of the charity trustees' duties. However, what is considered to be good practice in terms of oversight will differ greatly depending on the nature of the charitable organisation and will evolve as good governance standards develop over time. As such, this is both a highly subjective standard and a very uncertain requirement which is not desirable in such a fundamental piece of legislation. It would also have the effect of crystallising the concept of governance as hard law which is not desirable.
88A/88 B/88C	Definitions related to the approval of certain agreements and appointments which relate to the charity trustees / Remuneration to charity trustees and the circumstances in which this is permitted / Agreements re appointments.	The inclusion of legislative timeframes for the approval of arrangements with relevant persons / appointments of trustees would greatly enhance these provisions to avoid lost opportunities arising due to delays in such approvals by the Regulator.

in furtherance of the legislation **must be clear and proportionate and provide transparency for charities.**

Ability to Meaningfully Advocate

Globally, democracy is at its lowest level for decades, with a growing number of governments introducing significant restrictions on civil society. Legislation is increasingly being used to restrict the ability of civil society organisations to protest and campaign. In Ireland, we have been heartened by successive governments' commitment to building an open society, recognising that the not-for profit sector is a vital part not only of our economy, but also for promoting fundamental rights and needs, helping to maintain social cohesion. Our sector has an important role to play in public debate and policy making. It is vital that government and regulatory bodies take account of this role and do not restrict the democratic imperative that the voice of our sector, employing over 280,000 people in Ireland, is heard and respected.

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.**

The expansion of the functions of the Charities Regulator will also necessitate additional resourcing if timelines are to be met and delays avoided.

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,

Signed:



Colette Bennett,
Director of Advocacy & Research,

Charities Institute Ireland
E: aine@charitiesinstituteireland.ie
Tel: 087 2236266

The Wheel
E : colette@wheel.ie
Tel: Tel: 087 9044091