



Submission
on the
Charities Bill 2007 (as initiated 24
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About the ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog, which monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

Founded in 1976 by Mary Robinson and others, ICCL has played a leading role in some of the most successful human rights campaigns in Ireland. These have included establishing an independent Garda Síochána Ombudsman Commission, legalising the right to divorce, securing more effective protection of children's rights, decriminalising homosexuality and the introduction of enhanced equality legislation.

We believe in a society which protects and promotes human rights, justice and equality.

What we do:

- Advocate for positive changes in the area of human rights;
- Monitor government policy to make sure that it complies with international standards;
- Conduct original research and publish reports on issues as diverse as equal rights for all families, the right to privacy, police accountability and judicial accountability;
- Run campaigns to raise public and political awareness of human rights, justice and equality issues;
- Work closely with other key stakeholders in the human rights, justice and equality sectors.

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Introduction

The ICCL welcomes the introduction of the Charities Bill 2007 (the “Bill”) and considers that the effective regulation of the charities sector will greatly benefit both charitable organisations and the public alike. It is hoped that the regulatory scheme implemented by the legislation will ensure that organisations are operating efficiently in accordance with all legal and financial regulations, thus resulting in open and transparent processes that secure public trust.

Although broadly supportive of the Bill, the ICCL has concerns about two primary definitional aspects of the Bill. Indeed, the definitions in question strike at the heart of the regulatory scheme as those organisations falling outside the proposed definitions may not be considered “charities” under the proposed legislative framework.

The ICCL’s concerns are:

- **Under section 2 of the Bill, the definition of “excluded body” includes a body whose principal object is to promote a political cause;**
- **Under section 3(8) of the Bill, the list of matters included as a “purpose that is of benefit to the community” no longer contains an express reference to the advancement or promotion of human rights and social justice, equality or diversity.**

On the basis of the current wording of the Bill, the ICCL believes that the legislation could serve to prevent many worthy organisations from securing recognition of their charitable status.

1. Definition of “excluded body”

The definition of “excluded body” in section 3 of the Bill includes; “a political party or a body the principal object of which is to promote a political party, candidate or cause”.

The ICCL has concerns about the inclusion of a body whose principal object it is to promote a political cause in the above definition. The ICCL refers to the findings of the McFadden Commission¹, which was established to consider the basis for awarding charitable status in Scotland. The Commission stated that charities should not be party political organisations; however, those charities which are concerned with changing the law should not necessarily be excluded from charitable status. The Scottish Parliament agreed with this recommendation and section 7(4) of the *Charities and Trustees Investment (Scotland) Act 2005* provides that a body will only fail to “meet the charity test” if “it is, or one of its purposes is to advance, a political party”.

The ICCL believes that a similar approach should be adopted in Ireland, and that bodies should only be denied charitable status where they promote a political party and should not be classified as “excluded bodies” simply on the basis that they promote a political “cause”.

¹ *Scottish Charity Law Review Commission* established 29 March 2000.

2. Purposes Beneficial to the Community

Under the regulatory format, in order to be recognised as a charity, an institution must promote 'charitable purposes' and carry out their activities for the 'public benefit'. There are four strands to the definition of 'charitable purpose':

- the prevention of poverty;
- the advancement of education;
- the advancement of religion;
- other purposes which are 'beneficial to the community'.

Section 3 of the Bill, sets out what constitutes a purpose that is of benefit to the community. The advancement of human rights and social justice and the promotion of equality are not included in the list of matters considered 'beneficial to the community' contained in the Bill as presented. Proposals for the new statutory definition of "charity" contained in the 2004 consultation paper entitled *Establishing a Modern Statutory Framework for Charities* contained similar omissions regarding human rights and social justice. A significant number of respondents to the public consultation called for the specific inclusion of "the advancement of human rights" in the Bill. As a result, Head 3 of the General Scheme for the *Charities Regulation Bill 2006* included the advancement of human rights and social justice and the promotion of equality or diversity as components of the category "other purposes beneficial to the community". It is clear that the policy-makers and drafters of the Heads of Bill took on board the comments of the public who engaged with the consultation process. However, the suggestion made by the respondents and subsequently incorporated into the Heads of Bill has been deleted in the current version of the Bill.

Even if the Charities Regulator, which it is proposed to establish under the Bill, admits human rights and equality organisations onto the Register of Charities, the ICCL contends that the exclusion of human rights and equality from explicit reference in the Bill, will serve to alter the public's perception of those causes. "The definition of charity is key not only to which bodies receive the benefits of this status and fall within the regulatory net, but also to the public image of charity".²

² *Charity Regulation in Scotland: The Scottish Executive's Response to the Report of the Scottish Charity Law Review Commission (McFadden)*, December 2002.

Both the *Charities and Trustee Investment (Scotland) Act 2005*³ and the *Charities Act 2006* (England and Wales)⁴ include the advancement of human rights and the promotion/advancement of equality and diversity as express provisions under the category of “charitable purpose”. The ICCL believes that a similar provision should be provided in the Irish legislation in order to ensure that human rights and equality bodies qualify for charitable status, as well as maintaining the public perception that those organisations are striving towards a charitable goal of demonstrable benefit to the community.

³ Available at Appendix A.

⁴ Available at Appendix B.

3. ICCL Recommendations

The ICCL welcomes the introduction of the Charities Bill 2007 and is broadly in agreement with the new proposed regulatory scheme. However, the determination of a charity under the new rules may pose difficulties for bodies that are engaging with government policy and those involved in human rights and equality work. In order to ensure that such bodies will be eligible for charitable status under the new registration system, the ICCL makes the following recommendations:

- Section 2 of the Charities Bill 2007 should be amended so that bodies whose principal object it is to promote a political cause do not come within the definition of “excluded body”. The ICCL proposes that similar wording should be adopted to that in the *Charities and Investment Trustees (Scotland) Act 2005*, which provides that a body does not meet the charity test if, “it is, or one of its purposes is to advance, a political party”.
- Section 3(8) of the Bill should be amended to expressly include the advancement of human rights; and the advancement/promotion of equality and diversity in the list of matters considered a “purpose that is of benefit to the community”.

APPENDIX A

Charities and Trustee Investment (Scotland) Act 2005

7 The charity test

(1) A body meets the charity test if-

(a) its purposes consist only of one or more of the charitable purposes, and

(b) it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Scotland or elsewhere.

(2) The charitable purposes are-

(a) the prevention or relief of poverty,

(b) the advancement of education,

(c) the advancement of religion,

(d) the advancement of health,

(e) the saving of lives,

(f) the advancement of citizenship or community development,

(g) the advancement of the arts, heritage, culture or science,

(h) the advancement of public participation in sport,

(i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,

(j) the advancement of human rights, conflict resolution or reconciliation,

(k) the promotion of religious or racial harmony,

(l) the promotion of equality and diversity,

(m) the advancement of environmental protection or improvement,

(n) the relief of those in need by reason of age, ill-health,

disability, financial hardship or other disadvantage,

(o) the advancement of animal welfare,

(p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

(3) In subsection (2)-

(a) in paragraph (d), "the advancement of health" includes the prevention or relief of sickness, disease or human suffering,

(b) paragraph (f) includes-

(i) rural or urban regeneration, and

(ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities,

(c) in paragraph (h), "sport" means sport which involves physical skill and exertion,

(d) paragraph (i) applies only in relation to recreational facilities or activities which are-

(i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or

(ii) available to members of the public at large or to male or female members of the public at large,

(e) paragraph (n) includes relief given by the provision of accommodation or care, and

(f) for the purposes of paragraph (p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (c).

(4) A body which falls within paragraphs (a) and (b) of subsection (1) does not, despite that subsection, meet the charity test if-

(a) its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose,

(b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its

activities, or

(c) it is, or one of its purposes is to advance, a political party.

(5) The Scottish Ministers may by order disapply either or both of paragraphs (a) and (b) of subsection (4) in relation to any body or type of body specified in the order.

APPENDIX B

Charities Act 2006

PART 1 MEANING OF “CHARITY” AND “CHARITABLE PURPOSE”

1 Meaning of “charity”

(1) For the purposes of the law of England and Wales, “charity” means an institution which—

(a) is established for charitable purposes only, and

(b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

(2) The definition of “charity” in subsection (1) does not apply for the purposes of an enactment if a different definition of that term applies for those purposes by virtue of that or any other enactment.

(3) A reference in any enactment or document to a charity within the meaning of the Charitable Uses Act 1601 (c. 4) or the preamble to it is to be construed as a reference to a charity as defined by subsection (1).

2 Meaning of “charitable purpose”

(1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which—

(a) falls within subsection (2), and

(b) is for the public benefit (see section 3).

(2) A purpose falls within this subsection if it falls within any of the following descriptions of purposes—

(a) the prevention or relief of poverty;

(b) the advancement of education;

(c) the advancement of religion;

(d) the advancement of health or the saving of lives;

(e) the advancement of citizenship or community development;

(f) the advancement of the arts, culture, heritage or science;

(g) the advancement of amateur sport;

(h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;

(i) the advancement of environmental protection or improvement;

(j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;

(k) the advancement of animal welfare;

(l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;

(m) any other purposes within subsection (4).

(3) In subsection (2)—

(a) in paragraph (c) “religion” includes—

(i) a religion which involves belief in more than one god, and

(ii) a religion which does not involve belief in a god;

(b) in paragraph (d) “the advancement of health” includes the prevention or relief of sickness, disease or human suffering;

(c) paragraph (e) includes—

(i) rural or urban regeneration, and

(ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;

(d) in paragraph (g) “sport” means sports or games which promote health by involving physical or mental skill or exertion;

(e) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph; and

(f) in paragraph (l) “fire and rescue services” means services provided by fire and rescue authorities under Part 2 of the Fire and Rescue Services Act [2004 \(c. 21\)](#).

(4) The purposes within this subsection (see subsection (2)(m)) are—

(a) any purposes not within paragraphs (a) to (l) of subsection (2) but recognised as charitable purposes under existing charity law or by virtue of section 1 of the Recreational Charities Act 1958 (c. 17);

(b) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or paragraph (a) above; and

(c) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under charity law as falling within paragraph (b) above or this paragraph.

(5) Where any of the terms used in any of paragraphs (a) to (l) of subsection (2), or in subsection (3), has a particular meaning under charity law, the term is to be taken as having the same meaning where it appears in that provision.

(6) Any reference in any enactment or document (in whatever terms)—

(a) to charitable purposes, or

(b) to institutions having purposes that are charitable under charity law, is to be construed in accordance with subsection (1).

(7) Subsection (6)—

(a) applies whether the enactment or document was passed or made before or after the passing of this Act, but

(b) does not apply where the context otherwise requires.

(8) In this section—

- “charity law” means the law relating to charities in England and Wales; and
- “existing charity law” means charity law as in force immediately before the day on which this section comes into force.