

THE IRISH COUNCIL FOR CIVIL LIBERTIES

SUBMISSION ON THE GENERAL SCHEME OF THE CHARITIES (AMENDMENT) BILL (2022)

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INTRODUCTION

ICCL welcomes the opportunity to make a submission on the draft Charities (Amendment) Bill (2022). This submission will focus on the provisions within the draft Bill which concern the amendment of Section 3 of the Charities Act (2009). This amendment will insert 'the advancement of human rights' into the Act¹ as a new valid charitable purpose for organisations.

ICCL strongly welcomes this proposal which will address an anomaly which has existed in the original Act since its commencement in 2009. This submission will also offer some commentary with respect to the effective operationalisation of this new provision and potential pitfalls which should be avoided. We also offer two recommendations which are included at the end of each section, on pages 6 and 8 of this submission.

¹ [General Scheme of the Charities Amendment Bill \(2022\)](#) Head 4 pp10

BACKGROUND & OVERVIEW

The Charities' Act (2009) was introduced to improve the regulation of the Charities sector, by ensuring better governance, transparency, and accountability. While "the advancement of human rights" was listed as a charitable purpose in the original Heads of the Bill in 2006 under the heading 'other purposes beneficial to the community'², it was absent in the Charities Bill (2007) and remained omitted in the Charities' Act (2009). This was despite public and political opposition voiced from different quarters³ and the absence of any legal basis for its exclusion.

Then Minister of State for Community Affairs, John Curran stated the following by way of explanation:

*"The Bill endeavours to protect the status of organisations that at present are regarded as charities by ensuring the categories of charitable purposes in section 3 of the Bill reflect those that have developed in common law over many years and have been used by Revenue when considering eligibility for charitable tax exemptions, neither does it seek to expand the range of charitable purposes."*⁴

This explanation is based on the rationale that the exclusion of the advancement of human rights as a charitable purpose is justifiable as the charitable purposes categories in the Act reflect:

- 1) common law norms; and
- 2) the categories previously used by the Revenue Commissioners.

This submission addresses how this rationale did not provide any clear justifiable basis for omitting the advancement of human rights as a charitable purpose under the Charities' Act. It also outlines why it is correct that the Charities' Act (2009) is now amended to include the advancement of human rights as a charitable purpose.

Common-Law Norms

In neighbouring common law jurisdictions, the English Charities' Act (2006),⁵ in effect in England and Wales, and the Charities' Act (2008) of Northern Ireland⁶ expressly provide for the advancement of human rights as a charitable purpose. The "advancement of human rights" is also included in the Charities Trustee and Investment (Scotland) Act (2005).⁷

Consequently, Irish charity law is currently out of step with common law norms. In addition, as the advancement of human rights is a recognised charitable objective in the UK, including Northern Ireland, the current Act undermines the principle of equivalence in the Good Friday Agreement.⁸ Therefore, the arguments advanced in 2007 no longer stand up and Ireland is very much an outlier

² Head 3, Section 3(1)(d)(v) of the Charities Regulation Bill 2006

³ Dr Oonagh Breen, [Establishing a Modern Statutory Framework for Charities: Report on the Public Consultation for the Department of Community, Rural and Gaeltacht Affairs \(Dublin, 2004\)](#), 21 ("significant number of respondents urged that the advancement of human rights should be specifically mentioned as either a heading or sub-heading of charity")

⁴ [Minister of State, John Curran TD, Charities Bill 2007: Report Stage, Dáil Debates \(5 November 2008\)](#):

⁵ [The English Charities' Act 2006](#) s.2(2)(h)

⁶ [Charities Act \(Northern Ireland\) 2008](#), s.2

⁷ [Charities Trustee and Investment \(Scotland\) Act 2005](#) s.7(2)(j)

⁸ Chapter 6 on Rights, Safeguards and Equality of Opportunity, paragraph 9 of the [Good Friday Agreement 1998](#), which states that the human rights measures brought forward by the Irish government would "ensure at least an equivalent level of protection of human rights as will pertain in Northern Ireland".

in common-law jurisdictions with respect to the charitable status afforded to human rights advocacy.

The Retention of Charitable Purposes Categories Used by the Revenue Commission

The rationale used and maintained by Government Ministers, by former Minister of State Curran in 2008 and maintained by former Minister of Justice Shatter in 2014, is that human rights advancement could not be included as a charitable purpose as it is not a category that has been recognised by the Revenue Commissioners.

Former Minister Shatter made the following statement opposing its inclusion in a Dáil debate on an amendment Bill in 2014:

“This is not due to any lack of recognition of the vital role of human rights organisations in our communities both here and worldwide. Rather, it is in light of the importance of ensuring that the new systems of regulation of charities is appropriately aligned with the system of charitable tax exemption that has long been operated by the Revenue Commissioners.”⁹

This argument did not address how the practice of Revenue Commissioners precludes the inclusion of the advancement of human rights as a charitable purpose under the Act. Firstly, the Charities’ Act (2009) does not compromise the Revenue Commissioners’ autonomous decision-making powers on tax-related matters.¹⁰ Including the advancement of human rights as a charitable purpose would therefore not impact the Revenue Commissioners’ tax decisions.

Secondly, in any event, as the Charities’ Act (2009) is the primary statutory instrument governing charitable status, it should remain the source of and reference point for legislative authority on the statutory understanding of what constitutes a “charitable purpose” under Irish law.

Furthermore, the Charities’ register was established to introduce greater transparency and accountability in the charities sector. At present, the register does not accurately reflect the structure and nature of the sector because the advancement of human rights cannot be listed as a charitable purpose. Including the promotion of human rights as a charitable purpose will enable the better administration and effective regulatory oversight of these organisations and is welcomed by groups working in the sector.

Former Minister for Justice Shatter also stated that human rights organisations are excluded under the current system because human rights organisations with consultative status with the United Nations or the Council of Europe are recognised by Revenue as charitable for tax exemption purposes (under section 209 of the Taxes Consolidation Act).¹¹ This selective recognition of the charitable nature of certain human rights organisations demonstrates that the charitable character and inherent public benefit of human rights work is not the issue, but rather whether an organisation has obtained a particular status. The scope of this approach is extremely limited, and it is understood that only one human rights organisation operating in Ireland avails of this section 209 status.¹²

⁹ [Speech delivered by Alan Shatter TD, Minister for Justice, Equality and Defence during Private Members’ Business on the Charities \(Amendment\) Bill 2014 \(Second Stage\), 21 January 2014:](#)

¹⁰ [Charities’ Act 2009, section 7 \(1\)](#) (“Nothing in this Act shall operate to affect the law in relation to the levying or collection of any tax or the determination of eligibility for exemption from liability to pay any tax”).

¹¹ [Speech delivered by Alan Shatter TD, Minister for Justice, Equality and Defence during Private Members’ Business on the Charities \(Amendment\) Bill 2014 \(Second Stage\), 21 January 2014:](#)

¹² [Joint Sub-Committee on Human Rights relative to Justice and Equality Matters debate - Wednesday, 24 Jun 2015](#)

The Impact on Human Rights Organisations: A Legal and Administrative Burden

The former UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, expressed concern following her visit to Ireland that the exclusion of the advancement of human rights as a charitable purpose had the effect of “effectively excluding organizations that work on the protection and promotion of human rights from being able to register as charities”.¹³ Human rights organisations have been compelled to establish and operate different legal structures to ensure their “non-charitable” human rights work is in full compliance with the law. This *modus vivendi* is onerous, inefficient and can be a drain on an organisation’s limited resources. Human rights organisations have experienced difficulties in accessing funding and reporting to donors, where those funders require charitable status as a precondition for funding. The move to include the advancement of human rights as a valid charitable purpose will end this onerous and wasteful *modus vivendi* and will be strongly welcomed by human rights groups from the perspective of reducing administrative burden.

Human Rights Work Delegitimised

There is general public acceptance and acknowledgement of the value of the work being carried out by many human rights organisations in Ireland. However, the State’s failure to recognise human rights activities as work for the public good (as charitable) on a statutory basis has undermined this value since 2009. As expressed by Mr Ivan Cooper, Head of Public Policy at The Wheel:

*“It can also be reasonably argued that it has the effect of delegitimising the work of human rights promoting organisations, characterising their efforts as political and contestatory in nature, perhaps even not deserving of public financial support, reducing such organisations to the status of just another pressure group when such organisations are simply seeking to ensure the State implements policy to which it is committed in international human rights conventions and agreements. It can further be reasonably argued that it does not do justice to the organisations working to protect human dignity”.*¹⁴

In addition, human rights are a concept recognised and defined on a statutory footing in Ireland, under the European Convention on Human Rights Act (ECHR) (2003)¹⁵ and The Irish Human Rights and Equality Commission Act (2014)¹⁶. Consequently, a new legal concept will not be introduced by including the advancement of human rights as a charitable purpose. The failure to include human rights as a charitable purpose also stood in direct contrast to the principles and values Ireland represents and supports internationally, addressing this anomaly now will do much to enhance our image as a champion of human rights.

Recommendation: That it would be prudent for the Charities’ Regulator and the Revenue Commissioners to draft a memorandum of understanding under s. 33 of the Charities’ Act (2009)¹⁷, as recommended by The Joint Oireachtas Committee in 2015;

*“to ensure, as far as possible, consistency between decisions made by the Charities Regulatory Authority and the Revenue Commissioners with regards to treatment of charitable organisations”.*¹⁸

¹³ [Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya](#) (November 2012): p7

¹⁴ [Joint Sub-Committee on Human Rights relative to Justice and Equality Matters debate - Charities Act 2009 and Advancement of Human Rights: Discussion](#) (24 Jun 2015)

¹⁵ [European Convention on Human Rights Act \(ECHR\) \(2003\)](#)

¹⁶ [Irish Human Rights and Equality Commission Act \(2014\)](#)

¹⁷ [Joint Committee on Justice, Defence and Equality Report on the Review of the Charities Act 2009](#) (November 2015):

¹⁸ [Joint Committee on Justice, Defence and Equality Report on the Review of the Charities Act 2009 \(November 2015\)](#): p7

CONFLICT WITH GUIDANCE FROM THE CHARITIES REGULATOR

An issue which ICCL and our colleagues in The Wheel have recently drawn to the attention of the Charities Regulator concerns the operationalisation the designation of human rights as a valid charitable purpose and a potential obstacle to same.

A document entitled “Guidance on Charities and the Promotion of Political Causes” was published by the Charities Regulator in December 2021. We note that the language on the nature of political engagement deemed to be permissible under the Charities Act (2009) has changed somewhat from an earlier guidance document of 2018 issued by the regulator.

In the guidance document issued in February 2018, “Guidance on Charities and the Promotion of Political Causes”, the advice sets out that;

“An organisation will be considered to have a political purpose if it –

- is a political party,*
- promotes a political party or candidate, or*
- is set up **exclusively** to promote a political cause such as bringing about a change in the law or policies of the Government or other public bodies.”*¹⁹

This text has evolved in the document issued in December 2021, which sets out that;

“An organization will be considered to have a political purpose if it –

- Is a political party,*
- Promotes a political party or candidate, or*
- Is set up **primarily** to promote a political cause such as bringing about a change in the law or policies of the Government or other public bodies, **whether in Ireland or another country.**”*²⁰

As you can see from the above highlighted text, the advice from the regulator has changed in two respects, the first being the substitution of the word “exclusively” in the 2018 guidance for the word “primarily” in the 2021 updated guidance. The second change is the addition of the phrase “whether in Ireland or another country.”

The reasoning and justification behind this subtle but important shift in guidance is unclear but it has the potential to have a serious and negative impact on the ability of organisations to conduct legitimate advocacy work while maintaining, or indeed obtaining, charitable status. This could effectively prevent human rights organisations from registering as charities and nullify the impact of the amendment as proposed in this draft heads of Bill.

The ability of civil society organisations, including charities, to engage in public discourse and give voice to community concerns on matters of public policy is essential to a vibrant democracy. Civil society advocacy also gives rise to important questions of human rights, including the right to freedom of expression and freedom of association.

A shift in ineligibility for charitable status for organisations set up with an “exclusive” focus on campaigning to ones which “primarily” focus on campaign work has the potential to impede the important work of some charitable organisations. Indeed, we are concerned that the addition of the advancement of human rights as a valid charitable purpose could be rendered meaningless if this updated guidance prevents organisations which are engaged in advocacy on human rights work to register as charities

¹⁹ [The Charities Regulator: “Guidance on Charities and the Promotion of Political Causes” February 2018](#)

²⁰ [The Charities Regulator: “Guidance on Charities and the Promotion of Political Causes” December 2021](#)

While we accept that an organisation set up for the “exclusive” promotion of a political cause such as support for a party or candidate for election should not be considered a charity, the updated guidelines fail to fully acknowledge the critical role that campaigning plays in the advancement of charitable objectives for many organisations. Indeed, for some charities, this could be the substantive manner in which they advance their broader aims to address the conditions which give rise to the need for the establishment of their organisation in the first instance, for example, the social conditions which give rise to poverty.

It is very difficult to envision how, under the amended legislation, that human rights could be advanced without falling foul of the updated guidance from the regulator given the prominent and vital role that political advocacy and campaigning play in our day-to-day work.

Recommendation: It is our recommendation that in order for the addition of the advancement of human rights to have a meaningful impact in real terms, it will be necessary for the Charities Regulator to revert to the original 2018 wording on political advocacy or clarify its advice. This would mean that organisations established to exclusively promote a political cause cannot be considered charities, as is correct, but organisations would be allowed to conduct legitimate political advocacy work in pursuit of their charitable aims and retain and obtain charitable status.

ABOUT ICCL

The Irish Council for Civil Liberties (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights. ICCL has worked on data protection for decades.