



AN BILLE CARTHANAS 2007
CHARITIES BILL 2007

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of the Bill is to enact a reform of the law relating to charities in order to ensure greater accountability and to protect against abuse of charitable status and fraud. It will also enhance public trust and confidence in charities and increase transparency in the sector.

Key aspects of the Bill will provide for:

- a definition of “charitable purpose” for the first time in primary legislation;
- a new Regulatory Authority to secure compliance by charities with their legal obligations and also to encourage better administration of charities;
- a Register of Charities in which all charities operating in the State must register;
- annual activity reports by charities to the new Authority;
- updating the law relating to fund-raising, particularly in relation to collections by way of direct debits and similar non-cash methods;
- a Charity Appeals Tribunal;
- dissolution of the Commissioners of Charitable Donations and Bequests for Ireland (CCDB) upon establishment of the new Authority, and the transfer at that stage of its functions to the Authority;
- transfer to the Authority of all jurisdictions previously vested in the Attorney General by statute or common law in relation to charities;
- administrative cooperation by the Authority with statutory bodies on relevant regulatory and law enforcement matters, both inside and outside the State; and
- consultative panels to assist the Authority in its work and to ensure effective consultation with stakeholders.

The Bill, together with the Charities Acts 1961 and 1973, and the

Street and House to House Collections Act 1962, will provide for a composite regulatory framework for charities through a combination of new legislative provisions and retention of existing charities legislation, with updating, where appropriate.

A key principle of the Bill is to provide for regulation in a proportionate manner, with varying reporting requirements depending on whether a charity is above or below the level of €100,000 in terms of its annual income or expenditure.

Principal Elements of the Bill

The Bill is divided into 7 Parts comprising 85 sections and 2 Schedules.

Part 1 (sections 1 to 10) contains standard provisions such as short title, commencement, interpretation, regulations, offences, repeals, etc. Most notably, there is a definition of “charitable purpose” for the first time in primary legislation, as well as definitions of “public benefit” and “excluded body”. There is also provision for a review of the operation of the legislation after a period of 5 years.

Part 2 (sections 11 to 36) provides for the establishment of the Charities Regulatory Authority (An tÚdarás Rialála Carthanas), outlines the functions of the Authority and contains standard provisions in relation to staffing and accountability. It also provides for the establishment of consultative panels, and for administrative co-operation on regulatory matters and with foreign statutory bodies on law enforcement.

Part 3 (sections 37 to 56) makes provision for the regulation of charitable organisations, including the introduction of a public Register of Charities, which is to be maintained by the Authority. The financial accounting and reporting requirements for charitable organisations are set out. There are also new provisions in relation to charity trustees and protection for persons reporting breaches of legislation.

Part 4 (sections 57 to 67) makes provision for the protection of charitable organisations. The Authority is empowered to carry out investigations and follow through on the outcomes.

Part 5 (sections 68 to 72) provides for the establishment and operation of a Charity Appeals Tribunal, which is an extra-judicial mechanism to allow charitable organisations to appeal against decisions of the Authority without having recourse to the courts.

Part 6 (sections 73 to 80) provides for the dissolution of the CCDB, whose functions are to be assigned in their entirety to the new Authority.

Part 7 (sections 81 to 85) has a number of miscellaneous provisions, including the amendment of certain provisions of the Street and House to House Collections Act 1962, so as to update the definition of a ‘collection’ and introduce a permit regime for non-cash collections to cater for recently-developed fund-raising methods such as collection by way of direct debits or similar ‘promises of money’. There is also provision to amend the law relating to collection boxes and duties of collectors.

Schedule 1

This sets out the arrangements for the operation of the Authority, its members and staff.

Schedule 2

This lists the legislation that is being repealed.

Detailed Provisions of the Bill

PART 1

PRELIMINARY AND GENERAL

Section 1 deals with the short title of the Bill and its commencement.

Section 2 defines certain words and terms used in the Bill, most notably “charitable organisation”. It also makes provision in relation to bodies excluded from being charitable organisations, such as political parties, chambers of commerce, trades unions or employers’ representative organisations, terrorist or other unlawful organisations and sporting bodies, as defined under the Taxes Consolidation Act 1997 (for which a separate tax exemption regime exists).

Section 3 defines “charitable purposes” for the first time in primary Irish legislation. A purpose is regarded as charitable if its aim is:

1. the prevention or relief of poverty or economic hardship;
2. the advancement of education;
3. the advancement of religion; or
4. any other purpose that is of benefit to the community.

“Purpose that is of benefit to the community” includes—

- the advancement of community welfare, including the relief of those in need by reason of youth, age, ill-health, or disability;
- the advancement of community development, including rural or urban regeneration;
- the promotion of civic responsibility or voluntary work in the community;
- the promotion of health, including the prevention or relief of sickness, disease or human suffering;
- the advancement of conflict resolution or reconciliation;
- the promotion of religious or racial harmony and harmonious community relations;
- the protection of the natural environment;
- the prevention or relief of suffering of animals;
- the advancement of the arts, culture, heritage or sciences; and
- the integration of those who are disadvantaged, and the promotion of their full participation in society.

These purposes broadly reflect those used by the Revenue Commissioners in determining eligibility for certain tax exemptions and relief for charities.

A purpose will only be defined as charitable if it satisfies the public benefit requirement in *subsection (3)*, though a gift for the purpose of the advancement of religion will automatically be considered of public benefit.

Section 4 allows the Minister to make regulations and orders for the purposes of the Bill. Every order and regulations shall be laid before both Houses of the Oireachtas. If a resolution annulling the order or regulation is passed by either House within 21 days, the regulation shall be annulled.

Section 5 makes standard provision that the expenses incurred in the administration of this Bill may, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Section 6 obliges the Minister, not later than 5 years after the establishment of the Authority, to commence a review of the operation of the Bill and, within 12 months of the commencement of said review, to report on his or her findings to the Oireachtas.

Section 7 provides that the existing law relating to levying or collection of tax, or the determination of eligibility for exemption from tax by the Revenue Commissioners, is not affected by the enactment of this Bill.

Section 8 makes provision for the means by which notices or documents may be served on persons and bodies when required by the Bill.

Section 9 outlines the penalties for persons convicted of an offence against the provisions of the Bill and enables the Authority to prosecute summary offences under the Bill.

Section 10 provides for the repeal of certain parts of the Charities Act 1961, as detailed in *Schedule 2*.

PART 2

CHARITIES REGULATORY AUTHORITY

This Part provides for the establishment of the Charities Regulatory Authority (An tÚdarás Rialála Carthanas) and sets out its functions and its operational obligations.

Section 11 provides for the making of an order by the Minister to set an establishment day for the Bill.

Under *section 12*, an independent body to be known as An tÚdarás Rialála Carthanas, or in the English language the Charities Regulatory Authority, will be established. The provisions of *Schedule 1* will apply to the Authority.

The functions of the Authority are set out in *section 13*, including the increasing of public confidence in the charities sector; promoting compliance by charitable organisations with their legal obligations; encouraging better administration of charitable trusts; carrying out investigations; providing guidance to charitable organisations, including through the development of codes of practice; and establishing and maintaining a Register of Charities that will be accessible to the general public.

Section 14 empowers the Minister to give general written directions to the Authority.

Section 15 enables the Minister to make grants to the Authority.

Under *section 16*, the Authority may borrow money, with the consent of the Minister and the Minister for Finance.

Section 17 allows that any costs or expenses incurred by the Authority in the management, administration, preservation or recovery of any property will be recovered from the estate and funds of the charitable organisation in respect of which the costs were incurred.

Section 18 outlines the arrangements for the appointment, or removal, of the chief executive officer of the Authority.

Section 19 provides that the chief executive officer is responsible for the day-to-day management and control of the administration of the Authority. He or she will be accountable for the efficient and effective management of the Authority and the performance generally of his or her functions. In the absence of the chief executive officer, or when that post is vacant, the relevant functions may be performed by an employee designated by the Authority.

Section 20 allows the chief executive to delegate functions and to authorise their sub-delegation to other employees of the Authority and specifies the procedures governing this. The chief executive shall be accountable to the Authority for the performance of functions delegated by him or her, and may, with the consent of the Authority, revoke a delegation under this section.

Section 21 is a standard provision requiring the chief executive officer, when requested to do so, to give evidence before the Public Accounts Committee in relation to the Authority's accounts and such matters as the efficiency of the Authority, the systems in place within the Authority for the monitoring of its effectiveness, and on any other matter raised in a special report by the Comptroller and Auditor General.

Similarly, *section 22* provides that the chief executive officer shall also attend before other Oireachtas Committees, if required to do so.

Section 23 allows the Authority, with the consent of the Minister and Minister of Finance, to appoint its employees and to determine their number, grading and remuneration, subject to compliance with certain conditions.

Section 24 makes provision for the transfer of employees of the CCDB to the Authority on terms and conditions of employment no less favourable than those they enjoyed immediately prior to the transfer. As is usually the case, provision is made for changes in terms and conditions of employment of employees on an agreed basis following negotiations with any recognised trade union or staff association. The section also lists the employee legislation that will apply to employees of the Authority.

Section 25 allows, in the normal way, the Authority to make provision for superannuation or prepare a superannuation scheme in respect of staff, with the approval of the Minister and the consent of the Minister for Finance.

Section 26 permits a member of the Garda Síochána, the Director of Corporate Enforcement, or any person prescribed by the Minister,

after appropriate consultation with any other Minister, to disclose information relating to the commission of an offence under this Bill to the Authority.

Section 27 allows the Authority, if it suspects that an offence has been committed by a charity trustee or a charitable organisation, to provide any information obtained by it during the course of its operations to other regulatory bodies and to the Garda Síochána, or to any other person charged with the detection, investigation or prosecution of an offence. Any such information provided can be used only for the detection, investigation or prosecution of an offence.

In keeping with good practice, *section 28* provides that the Authority shall, within a specified timeframe, submit to the Minister a strategy statement in respect of the following 3-year period. A strategy statement must be submitted every 3 years. The Minister shall, as soon as practicable after a strategy statement has been submitted, lay a copy of it before the Oireachtas. The Authority shall also ensure that the strategy statement is published on the internet.

Under *section 29* the Authority must keep accounts of income and expenditure and prepare annual financial statements for auditing by the Comptroller and Auditor General. After the accounts have been audited, a copy of the accounts must be laid before the Oireachtas. Any report of the Comptroller and Auditor General must also be laid before the Oireachtas.

Section 30 requires the Authority to prepare an annual report in relation to its performance during the preceding year. As soon as may be after receiving the report, the Minister must lay the report before the Oireachtas. As with the accounts, the Authority is required to publish the annual report on the internet.

Section 31, consistent with the principles of *Regulating Better*, provides a basis for administrative cooperation by the Authority with other relevant regulators.

Similar to the previous section, *section 32* provides a basis for administrative cooperation with foreign statutory bodies on law enforcement matters. The Authority will be obliged to inform the Minister of any such arrangements.

Section 33 provides for consultation by the Authority with stakeholders who may be affected by its performance of its functions.

Expanding on the previous section, *section 34* provides for the establishment by the Authority of consultative panels to perform tasks specified in terms of reference to be laid down by the Authority.

Related to the previous section, *section 35* permits the Minister to direct the Authority to establish a consultative panel under terms of reference determined by the Minister.

Section 36 transfers all the functions relating to charitable organisations or charitable trusts that were previously vested in the Attorney General to the Authority. Currently, the Attorney General has a role as the protector of charities, which can entail bringing legal proceedings in defence of charities, participating in proceedings brought by others, or carrying out the role assigned under the Charities Act 1961 in relation to certain functions of the CCDB.

REGULATION OF CHARITABLE ORGANISATIONS

One of the primary functions of the Authority will be, in the interests of openness, transparency and enhanced public confidence, to establish and maintain a Register of Charities, which will be accessible by the public. Part 3 makes the necessary provisions in this regard.

Section 37 requires the Authority to establish and maintain a register of all charitable organisations. The Authority may charge each charitable organisation a fee, as determined by the Minister. Application must be made by the charity trustees of a charitable organisation to register their organisation. All charities operating or carrying on activities in the State must apply for registration within 6 months of the establishment of the Authority (though an extension may be granted by the Minister).

If a charity trustee is convicted on indictment of an offence before the application has been processed, the Authority shall not register the charity. A charitable organisation supplying information that is false or misleading is guilty of an offence. It is also an offence by any member of the staff (or trustee) of a charitable organisation to advertise, fund-raise or accept a gift (of money or other property) on behalf of a charitable organisation unless it is registered with the Authority.

Section 38 empowers the Authority not to register a charitable organisation if its name is not acceptable for specified reasons. Also, a charitable organisation shall not change its name without the consent of the Authority.

Section 39 outlines the basis upon which a charitable organisation may be removed from the register. The Authority, after consultation with the Garda Síochána, shall remove an organisation from the register where that organisation has become an excluded body by virtue of its promoting purposes that are either unlawful, contrary to public morality, in support of terrorism or terrorist activities, or for the benefit of an organisation, membership of which is unlawful. An application may be made by the excluded body to the Charity Appeals Tribunal for repeal of such a decision.

The Authority can also apply to the High Court for removal of a body from the register if it is of the opinion it has ceased to be a charitable organisation; if it, as a body corporate, is convicted on indictment of an offence; or if a trustee of the body is convicted on indictment of any offence. If the application is granted, the Authority shall remove the body from the register. A charitable organisation that has been convicted on indictment of an offence may not apply for re-registration as a charitable organisation for one year, or such shorter period as the Minister may determine. The Authority shall also make an entry in the register that the charitable organisation has ceased to be registered, and the reasons for this.

Section 40 allows a charitable organisation to appeal to the Charity Appeals Tribunal against refusal by the Authority to register it and for the Tribunal to make a determination in the matter.

Section 41 makes it an offence for a body not entered in the register to claim to be on the register. A registered charitable organisation may describe itself as a charity, a charitable body, a registered charity, or a charity registered in Ireland. A body established or based

outside the State that publicly claims to have been established or based within the State shall be guilty of an offence. There is provision for exemptions from this section by way of regulations.

Section 42 requires charitable organisations that are not companies to keep proper books of account and to keep such books for a minimum period of 6 years. The Companies Acts apply to charities that are registered as companies.

Section 43 empowers the Minister, by regulations, to prescribe the form of the statement of accounts that charitable organisations that are not companies will be required to produce. *Subsection (3)* is so framed as to ensure that smaller charities, with an income or expenditure of less than €100,000 per annum, will have a lesser obligation than larger charities.

Section 44 specifies the audit or examination obligations to be placed upon charitable organisations that are not companies. As in *section 43*, smaller charitable organisations with an annual income or expenditure of less than €100,000 will not be obliged to have fully audited accounts, but will have to have their accounts examined by an independent person approved by the Authority. Where a charitable organisation fails to meet its obligations under this section, or fails to cooperate with the Authority, it will be an offence. The Authority will have a reserve power to appoint a person to audit the accounts and to recover any costs arising from the charitable organisation concerned.

Section 45 allows the Minister to make additional provisions in relation to the audit and examination arrangements set out in *section 44*, or to grant additional powers to auditors/examiners, if necessary.

Under *section 46*, all charitable organisations, including those that are companies, will be required to submit an annual report to the Authority, in a form to be prescribed by the Minister. The annual statement of accounts shall be attached to the annual report. It shall be an offence for a charitable organisation to contravene this section. The provisions of this section remain under discussion with the Department of Enterprise, Trade and Employment, and the Companies Registration Office, with a view to ensuring that any requirements for dual reporting by charities that are companies are eliminated to the greatest extent possible.

Section 47 obliges the Authority to make available for public inspection, at all reasonable times, annual reports of charitable organisations, except those in respect of private trusts that are not funded by donations from the public.

Section 48 sets out the circumstances in which a person ceases to be qualified for, or ceases to hold, the position of charity trustee. A disqualified person can, however, apply to the High Court for an order to again become a charity trustee. A register of disqualified persons will be kept by the Authority and made available to the public.

Section 49 makes it an offence to act, or purport to act, as a charity trustee while not qualified to do so. The section also provides, however, that any act done by a person not qualified shall not be invalid by reason only of his or her not being qualified.

Section 50 makes it an offence for a trustee or member of staff of a charity to comply with a direction of another trustee, if he or she

knew, or had reasonable grounds for knowing, that the other trustee was disqualified.

Section 51 makes persons convicted of an offence under *sections 49 and 50* personally liable for the debts of a charity incurred as a result of the offending behaviour. However, in proceedings brought for recovery of the debt, the court may grant relief in whole or in part from the liability if it considers it just and equitable to do so.

Section 52 obliges persons such as auditors, trustees, investment business firms, etc, to report possible offences under the Criminal Justice (Theft and Fraud Offences) Act 2001 to the Authority. It will be an offence not to do so.

Section 53 allows the defence of qualified privilege in proceedings for defamation relating to the publication by the Authority of a report under *section 52*, or of any other matter concerning the state and conduct of the affairs of a charity.

Section 54 gives protection from civil liability to persons who have acted in good faith in reporting breaches of the Bill to the Authority.

Section 55 contains provisions protecting an employee who has reported, in good faith, breaches of the Bill to the Authority from penalisation by the employer. It is to be presumed that the employee acted in good faith, until the contrary is proved, and there is recourse to a rights commissioner or the Employment Appeals Tribunal.

Section 56 balances the protections afforded in *sections 54 and 55* by making it an offence for any person to knowingly make a false statement to the Authority in relation to breaches of the Bill.

PART 4

INVESTIGATIONS

This Part of the Bill provides powers for the Authority to carry out investigations into the affairs of charitable organisations.

Section 57 provides that the Authority may appoint an inspector to carry out an investigation into the affairs of a charitable organisation.

Section 58 provides powers for an inspector to require a charitable organisation or a charity trustee to provide documents and evidence during an investigation.

Section 59 enables the Authority to require an interim report from an inspector. In addition, the section enables the Authority to deal with a report as it sees fit, including publishing all or part of the report.

Section 60 enables the Authority to meet the expenses of an investigation and, where a person is convicted of an offence or ordered to pay damages, enables the courts to order the person to re-pay the costs of an investigation.

Section 61 provides powers for the Authority itself to require a charitable organisation or a charity trustee to provide documents to it where it thinks an investigation may be warranted, or it suspects that an offence may be committed.

Section 62 provides for the Authority to seek a court order to enter and search premises where *section 61* has not been complied with, and to take possession of documents.

Section 63 provides for certain safeguards in respect of any information obtained by the Authority during the course of an investigation process.

Section 64 enables an inspector's report to be used as evidence in any proceedings, other than proceedings for an offence.

Section 65 provides a saving for privileged information sought during an investigation or enquiry by the Authority.

Section 66 enables the Authority to impose intermediate sanctions on a charitable organisation, rather than immediately bringing proceedings for an offence in respect of certain breaches of the requirements relating to the keeping of accounts and making of annual returns. The sanctions comprise removal of the charity from the Register of Charities, or publication of the contravention of the accounts provisions on the Authority's website.

Section 67 gives the Authority power to act for the protection of charities. The section sets out the instances where the Authority can request the High Court to make an order (whether interim, interlocutory or permanent, as the Court sees fit) protecting the assets of the charity.

PART 5

CHARITY APPEALS TRIBUNAL

This Part of the Bill provides for the establishment of a Charity Appeals Tribunal to hear appeals against decisions or determinations of the Regulatory Authority. Its purpose is to provide an alternative to the courts system, by allowing persons or charitable organisations to bring an appeal in a non-judicial setting. The Tribunal will be independent in the performance of its functions.

Section 68 provides for the establishment and operation of the Tribunal. It will have five members, two of whom will be serving or retired judges of the Superior Courts or barristers/solicitors of 10 years' standing, and two of whom will be persons with experience in areas of expertise relating to charities.

Section 69 sets out how appeals are to be conducted and determined by the Tribunal.

Section 70 provides that proceedings before the Tribunal shall be in public, but that it can decide that the identities of one or more of the parties to an appeal shall not be disclosed.

Section 71 allows the Tribunal, subject to the Minister's consent, to determine its own procedures in relation to an appeal.

Section 72 permits a party to appeal a decision of the Tribunal to the High Court on a point of law.

PART 6

DISSOLUTION OF COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS FOR IRELAND

The functions currently carried out by the Office of the Commissioners of Charitable Donations and Bequests for Ireland (CCDB) will transfer in their entirety to the Authority on the establishment day. This Part provides for the dissolution of the CCDB and for the transfer of its interests and functions to the Authority.

Section 73 provides for the dissolution of the CCDB on the day the Authority is established.

Section 74 provides for the transfer of all functions vested in the CCDB to the Authority.

On the establishment day, *section 75* provides that all land and other property formerly vested in the CCDB is vested in the Authority.

Section 76 contains a standard provision for the transfer of rights, liabilities, etc, from the CCDB to the Authority, while ensuring preservation of all commitments or contracts.

Another technical provision, *section 77*, states that all claims and legal proceedings pending in respect of the CCDB are transferred to the Authority from the establishment day. All liabilities for losses occurring before the establishment day are transferred to the Authority.

Section 78 provides for matters consequent upon the transfer to the Authority of the functions, assets and liabilities of the CCDB.

Under *section 79*, the Authority shall prepare final accounts for the CCDB and submit them to the Comptroller and Auditor General within 3 months of the establishment day. The Authority shall prepare and present to the Minister, within 6 months of the establishment day, the final annual report of the CCDB.

Section 80 is a technical section providing that a scheme prepared under any enactment by the CCDB that was in force before the establishment of the Authority shall continue in operation.

PART 7

MISCELLANEOUS

Section 81 provides for amendment of the Street and House to House Collections Act 1962 in order to take account of developments in fund-raising methods since the Act was introduced. In particular, there have been two main developments:

- (a) the sale of items as part of the cash collection process, and
- (b) the introduction of non-cash collections, whereby the public is asked to pledge ongoing contributions via direct debit mandates, standing orders, etc, to charities.

In regard to (a), the existing definition of “collection” is being amended to bring the sale of any badge, emblem or other token fully within the scope of the Act. The opportunity is also being taken to extend the meaning of “money” beyond coins and notes.

In regard to (b), non-cash collections are being defined for the first time and provision is being made for a separate permit regime in respect of them. The new regime will require such collectors to obtain a permit for a 12 month period from the relevant Chief Superintendent of the Garda Síochána and to advise the Chief Superintendent at the appropriate time, in writing, of the specific dates proposed for the non-cash collections.

Under *section 8I*, six insertions into the Street and House to House Collections Act 1962 are proposed in order to deal with the matters outlined above:

Insertion (a) provides for:

- i a revised definition of “collection”, incorporating the words “whether any consideration is or is not given” in order to bring collections involving the sale of items as part of the cash collection process within the scope of the Act;
- ii a new definition of “money” to include money other than coins and notes, as well as money paid by means of electronic transfer and by cheque, banker’s draft, bill of exchange, promissory note or other negotiable instrument; and
- iii a new definition of “non-cash collection” to cater for collections where members of the public are asked to sign direct debit mandates, standing orders or the like, which commit them to make regular payments to the object of the collection.

Insertion (b) provides for construction of references so as to cater for both cash and non-cash collections.

Insertion (c) provides a new subsection in section 5 of the Act so as to provide that a collection permit for a cash collection will not be granted if a non-cash collection is to be held on the same day in the same locality. This is subject to the provisions of subsection (7) of section 6A of the Act — see Insertion (e) below.

Insertion (d) provides for a new section 5A ‘Application for non-cash collection permits’. The section provides for an application for non-cash collections where members of the public are asked to sign direct debit mandates, standing orders or the like, which commit them to make regular payments to the object of the collection. In this case, a permit will last for a 12 month period but the permit holder will be obliged, under section 6A, to advise the Chief Superintendent of the specific proposals for a collection nearer the dates of the collection. The provisions of the section are otherwise identical to the provisions governing an application for a cash collection.

Insertion (e) provides for a new section 6A ‘Grant of non-cash collection permits’, as follows:

Subsection (1) provides that a Chief Superintendent shall grant a non-cash collection permit to every applicant, subject to the provisions of the Act.

Subsection (2) provides that the permit shall be in the prescribed form and shall operate to permit the holder to carry on the activity of holding non-cash collections, subject to the restrictions and conditions set out in the permit.

Subsection (3) provides that it shall be a condition of the permit that the permit holder shall notify the Chief Superintendent in writing of the proposal to hold a non-cash collection not earlier than 6 months and not later than 14 days before the date of the proposed collection.

Subsection (4) provides that, if another permit has been granted for a cash collection for the same place and date, the Chief Superintendent shall direct that the proposed non-cash collection shall not take place.

Subsection (5) provides that the non-cash collection permit shall be signed by the Chief Superintendent.

Subsection (6) provides that, if a Chief Superintendent receives notification of a proposed non-cash collection not later than 3 months before the proposed collection date, he must notify persons who had held a cash or a non-cash collection on the relevant day in the preceding year.

Subsection (7) provides that, if a person notified under *subsection (6)* makes application for a permit within 10 days, a permit will be granted, subject to the provisions of the Act, and the proposed non-cash collection notified to the Chief Superintendent will not be permitted. This provision is similar to that which applies to cash collections under the existing provisions in the Act.

Subsection (8) provides that, not later than 14 days after receiving an application for a non-cash collection permit, a Chief Superintendent shall either grant the application or refuse it. In case of refusal, the reasons must be given to the applicant.

Insertion (f) amends section 9(f) of the 1962 Act by allowing collectors to receive, in addition to a reasonable commission, reasonable remuneration and expenses. This is to cater for the *de facto* situation where professional collectors are engaged by charities to carry out non-cash collections on a remunerative basis.

Section 82 proposes to make two amendments to the 1962 Act.

Subsection (1) amends section 18 of the 1962 Act in relation to the type of collection box that may be used for cash collections. Heretofore, the only requirement was to have the name of the object for the benefit of which the collection was being made displayed on the collection box prominently and in legible form. It is now proposed that a collection box will also bear the charity's registered number and be sealed in such a manner as will prevent access to its contents without the seal being broken. In addition, each collector will be obliged to deliver the collection box unopened and with its seal intact to the permit holder or a person authorised by the permit holder.

Subsection (2) adds a new paragraph to section 20(1) of the 1962 Act. The existing section 20 gives power to a member of the Garda Síochána to seize money and the collection box from a collector in certain defined circumstances. The new paragraph is necessary in order to include, as one of the circumstances for seizure, breach of the new collection box rules.

Section 83 introduces a new section 20A. The existing section 20 confers power on a member of the Garda Síochána to seize money

and the collection box from a collector in certain defined circumstances. A similar power is considered necessary in respect of non-cash collections and, essentially, the new section 20A confers a power to seize documents, etc, in respect of such collections.

Section 84 amends and updates the offences provisions in the 1962 Act. *Section 84(a)* inserts a new section 24A, which makes it an offence for a person to make a false or misleading statement on an application for a permit or for the purpose of being granted a permit. *Section 84(b)* increases the monetary penalty from £50 to €5,000, in line with current practice.

Section 85 confers power on the Minister to make regulations in relation to charitable fund-raising. The overall approach in relation to fund-raising is to develop a three-pronged approach by:

- updating the 1962 Act provisions to take account of developments in fund-raising methods since the Act was introduced and, generally, to better safeguard the public interest;
- conferring power on the Authority to require charities to provide information concerning their fund-raising activities; and
- implementing agreed Codes of Good Practice in relation to the actual fund-raising operations, while retaining reserve powers for the Minister to bring in statutory regulation if such an approach proves ineffective.

Work on the agreed Codes of Good Practice is advancing significantly, in cooperation with the charities sector. However, in the event that the Codes do not achieve their intended results, *section 85* can be availed of to make regulations in relation to the matter. Under *subsection (2)* it will be possible to make it an offence to contravene a provision of the regulations.

SCHEDULE 1

CHARITIES REGULATORY AUTHORITY

Paragraph 1 contains standard provisions relating to the Authority being a body corporate with power to sue and be sued, and to acquire hold and dispose of property.

Paragraph 2 provides for the appointment of members of the Authority. There will be 9 members, 3 of whom will be serving or retired members of the Superior Courts or barristers/solicitors of 10 years' standing. The remaining members will include persons with knowledge of and expertise in relation to various aspects of charities. Members will be appointed for up to 5 years and serve for a maximum of 10 years in total.

Paragraph 3 allows for resignation or removal from office of members.

Paragraph 4 allows for replacement of members who have ceased to serve during their term of office.

Paragraph 5 provides for the conduct of meetings, decision-making and a quorum.

Paragraph 6 allows the Authority to establish committees to assist and advise in relation to its functions, and to perform functions that may be delegated to it.

Paragraph 7 allows the Authority to delegate one or more of its functions to committees, subject to the consent of the Minister.

Paragraph 8 makes provision in relation to a member of the Authority, a member of a committee, the chief executive or staff being elected to the Oireachtas or to the European Parliament.

Paragraph 9 sets out the procedure to be followed should a conflict of interest arise for a member at meetings of the Authority.

Paragraph 10 sets out the procedure to be followed should a conflict of interest arise for a member of staff.

Paragraph 11 provides that confidential information shall not be disclosed by members of the Authority, committees or staff, or any adviser or consultant. It will be an offence to be in breach of this provision.

SCHEDULE 2

REPEALS

The following repeals are proposed:

Short Title (1)	Extent of Repeal (2)
Charities Act 1961	Chapter I of Part II (other than sections 11(2) and 17) and sections 26 and 45. In section 23(1), by the deletion of the words “, with the previous consent of the Attorney General,”. In section 24, by the deletion of the words “without obtaining the consent of the Attorney General”. In section 25, by the deletion of the words “other than the Attorney General,”. In section 53, by the deletion of the words “except the Attorney General”.

The first-listed repeal is necessary because, under Part 6 of the Bill, the functions, etc of the Office of the Commissioners of Charitable Donations and Bequests for Ireland (CCDB) are to be transferred to the Authority and the body to be dissolved.

The other repeals relate to references to the Attorney General in the 1961 Act. These are necessary because, under *section 36* of the Bill, all such functions of the Attorney General are to be transferred to the Authority.

Financial Implications of the Bill

The current best estimate, in light of experience in other nearby common law jurisdictions, would suggest an annual budget of some €4m, to be offset against the cost of existing staffing allocations deployed on charities-related work in the Department of Community, Rural and Gaeltacht Affairs and the CCDB. This issue will

be the subject of further discussions with the Department of Finance at the appropriate time.

*An Roinn Gnóthaí Pobail, Tuaithe agus Gaeltachta,
Aibreán 2007.*