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**AN BILLE CARTHANAS 2007**  
**CHARITIES BILL 2007**

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*Mar a leasáíodh sa Roghchoiste um Ghnóthaí Ealaíon, Spóirt,  
Turasóireachta, Pobail, Tuaithe agus Gaeltachta*  
*As amended in the Select Committee on Arts, Sport, Tourism,  
Community, Rural and Gaeltacht Affairs*

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ACTS REFERRED TO

Central Bank Act 1971	1971, No. 24
Charities Act 1961	1961, No. 17
Companies Act 1990	1990, No. 33
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Criminal Justice (Theft and Fraud Offences) Act 2001	2001, No. 50
Ethics in Public Office Act 1995	1995, No. 22
European Parliament Elections Act 1997	1997, No. 2
Gaming and Lotteries Act 1956	1956, No. 2
Investment Intermediaries Act 1995	1995, No. 11
Local Government Act 2001	2001, No. 37
Minimum Notice and Terms of Employment Acts 1973 to 2001	
Organisation of Working Time Act 1997	1997, No. 20
Pensions Acts 1990 to 2002	
Petty Sessions (Ireland) Act 1851	14 & 15 Vict., c. 93
Protection of Employees (Part-Time Work) Act 2001	2001, No. 45
Redundancy Payments Acts 1967 to 2001	
Street and House to House Collections Act 1962	1962, No. 13
Street Trading Act 1926	1926, No. 15
Taxes Consolidation Act 1997	1997, No. 39
Terms of Employment (Information) Act 1994	1994, No. 5
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**AN BILLE CARTHANAS 2007**  
**CHARITIES BILL 2007**

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# **BILL**

*entitled*

5 AN ACT TO PROVIDE FOR THE BETTER REGULATION OF  
CHARITABLE ORGANISATIONS, AND, FOR THAT  
PURPOSE, TO PROVIDE FOR THE ESTABLISHMENT  
OF A BODY TO BE KNOWN AS AN tÚDARÁS RIALÁLA  
10 CARTHANAS OR IN THE ENGLISH LANGUAGE THE  
CHARITIES REGULATORY AUTHORITY; TO PROVIDE  
FOR THE DISSOLUTION OF THE COMMISSIONERS OF  
CHARITABLE DONATIONS AND BEQUESTS FOR  
IRELAND; TO MAKE PROVISION IN RELATION TO  
15 THE REGULATION AND PROTECTION OF CHARITABLE  
ORGANISATIONS AND CHARITABLE TRUSTS;  
TO PROVIDE FOR THE REGISTRATION OF CHARITABLE  
ORGANISATIONS; TO PROVIDE FOR THE  
ESTABLISHMENT OF A BODY TO BE KNOWN AS THE  
20 CHARITY APPEALS TRIBUNAL TO HEAR APPEALS  
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FUND-RAISING BY OR ON BEHALF OF REGISTERED  
CHARITABLE ORGANISATIONS; TO PROVIDE FOR  
25 THE REPEAL OF CERTAIN PROVISIONS OF THE  
CHARITIES ACT 1961; AND TO PROVIDE FOR  
MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY AND GENERAL

30 1.—(1) This Act may be cited as the Charities Act 2008.

Short title and  
commencement.

(2) This Act shall come into operation on such day or days as the  
Minister may appoint by order or orders either generally or with  
reference to any particular purpose or provision and different days  
may be so appointed for different purposes or provisions, and for  
35 the repeal of different provisions of the Charities Act 1961 effected  
by *section 10*.

2.—(1) In this Act—

“Act of 1962” means the Street and House to House Collections Act 1962;

“Act of 2001” means the Criminal Justice (Theft and Fraud Offences) Act 2001; 5

“Authority” has the meaning assigned to it by *section 12*;

“charitable gift” means a gift for charitable purposes;

“charitable organisation” means—

- (a) the trustees of a charitable trust, or
- (b) a body corporate or an unincorporated body of persons— 10

- (i) that promotes a charitable purpose only,
- (ii) that applies all of its property (both real and personal) in furtherance of that purpose, except for moneys expended—
  - (I) in the operation and maintenance of the body, 15 including moneys paid in remuneration and superannuation of members of the staff of the body, and
  - (II) in the case of a religious organisation or community, on accommodation and care of 20 members of the organisation or community,

and

- (iii) none of the property of which—
  - (I) is paid or payable to the members of the body, or
  - (II) would be payable to members of the body upon 25 its dissolution or its ceasing to promote those purposes,

but shall not include an excluded body;

“charitable purpose” shall be construed in accordance with *section 3*;

“charitable trust” means a trust established for charitable purposes 30 only;

“charity trustee” includes—

- (a) in the case of a charitable organisation that is a company, the directors and other officers of the company, and
- (b) in the case of a charitable organisation that is a body cor- 35 porate (other than a company) or an unincorporated body of persons, any officer of the body or any person for the time being performing the functions of an officer of the body,

and references to a charity trustee of a charitable organisation shall 40 be construed as including references to a trustee of a charitable trust;



“chief executive” has the meaning assigned to it by *section 18*;

“company” means a company established under the Companies Acts;

5 “constitution” means the rules (whether in writing or not) governing the administration and control of a charitable organisation and that regulate its activities, and includes—

(a) in the case of a charitable organisation consisting of trustees of a charitable trust, the deed of trust establishing the charitable trust,

10 (b) in the case of a charitable organisation that is a company, the memorandum and articles of association of the company,

15 (c) in the case of a charitable organisation that is a body corporate other than a company, the charter, statute or other like instrument by which it is established, and

(d) in the case of a charitable organisation that is an unincorporated body of persons, the rules of the body,

but does not include any enactment or rule of law applicable to the carrying on of the activities of the organisation;

20 “dissolved body” has the meaning assigned to it by *section 74*;

“excluded body” means—

(a) a political party, or a body, the principal object of which, is to promote a political party, candidate or cause,

25 (b) an approved body of persons within the meaning of section 235 of the Taxes Consolidation Act 1997,

(c) a trade union or a representative body of employers,

(d) a chamber of commerce, or

(e) a body that promotes purposes that are—

(i) unlawful,

30 (ii) contrary to public morality,

(iii) in support of terrorism or terrorist activities, or

(iv) for the benefit of an organisation, membership of which is unlawful;

35 “judicial office in the Superior Courts” means the office of judge of the High Court or the office of judge of the Supreme Court;

“local authority” has the same meaning as it has in the Local Government Act 2001;

“material interest” shall be construed in accordance with section 2(3) of the Ethics in Public Office Act 1995;

40 “Minister” means the Minister for Community, Rural and Gaeltacht Affairs;

“personal connection” shall be construed in accordance with *subsection (2)*;

“public benefit” shall be construed in accordance with *section 3*;

“record” includes, in addition to any record in writing—

- (a) a plan, chart, map, drawing, diagram, pictorial or graphic image, 5
- (b) a disc, tape, soundtrack or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form, 10
- (c) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (d) a photograph; 15

“register” has the meaning assigned to it by *section 38*, and “registered” shall be construed accordingly;

“registered charitable organisation” means a charitable organisation registered in the register;

“registration number” has the meaning assigned to it by *section 38(6)(d)*; 20

“Tribunal” has the meaning assigned to it by *section 69*.

(2) (a) For the purposes of this Act—

- (i) a person is connected with an individual if that person is a parent, brother, sister, spouse, grandparent or grandchild of the individual or a child of the spouse of the individual, 25
- (ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual if that individual, or any of that individual’s children, or any body corporate that that individual controls is a beneficiary of the trust, 30
- (iii) a person is connected with any person with whom he or she is in partnership,
- (iv) a person is connected with any person by whom he is employed under a contract of service, 35
- (v) a body corporate is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it, and 40
- (vi) any two or more persons acting together to secure or exercise control of a body corporate shall be treated in relation to that body corporate as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the body corporate. 45

(b) In this subsection “control” has the meaning assigned to it by section 11 of the Taxes Consolidation Act 1997, and cognate words shall be construed accordingly.

5 3.—(1) For the purposes of this Act each of the following shall, Charitable purpose.  
subject to *subsection (2)*, be regarded as being a charitable purpose:

- (a) the prevention or relief of poverty or economic hardship;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) any other purpose that is of benefit to the community.

10 (2) A purpose shall not be regarded as a charitable purpose for the purposes of this Act unless it is of public benefit.

(3) Subject to *subsection (4)*, a gift shall not, for the purposes of this Act, be regarded as being of public benefit unless—

- 15 (a) it is intended to benefit the public or a section of the public, and
  - (b) in a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit.
- 20

(4) A gift for the purpose of the advancement of religion shall be regarded as being of public benefit.

25 (5) A charitable gift for the purpose of the advancement of religion shall have effect, and the terms upon which it is given shall be construed, in accordance with the laws, canons, ordinances and tenets of the religion concerned.

(6) In determining whether a gift is of public benefit or not, account shall be taken of—

- 30 (a) any limitation imposed by the donor of the gift on the class of persons who may benefit from the gift and whether or not such limitation is justified and reasonable, having regard to the nature of the purpose of the gift, and
  - (b) the amount of any charge payable for any service provided in furtherance of the purpose for which the gift is given and whether it is likely to limit the number of persons or classes of person who will benefit from the gift.
- 35

(7) A limitation referred to in *subsection (6)* shall not be justified and reasonable if all of the intended beneficiaries of the gift or a significant number of them have a personal connection with the donor of the gift.

40

(8) In this section “purpose that is of benefit to the community” includes—

- 45 (a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability,

- (b) the advancement of community development, including rural or urban regeneration,
- (c) the promotion of civic responsibility or voluntary work in the community,
- (d) the promotion of health, including the prevention or relief of sickness, disease or human suffering, 5
- (e) the advancement of conflict resolution or reconciliation,
- (f) the promotion of religious or racial harmony and harmonious community relations,
- (g) the protection of the natural environment, 10
- (h) the advancement of the efficient and effective use of the property of charitable organisations,
- (i) the prevention or relief of suffering of animals,
- (j) the advancement of the arts, culture, heritage or sciences, and 15
- (k) the integration of those who are disadvantaged, and the promotion of their full participation, in society.

Orders and regulations.

4.—(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential, provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations. 20

(3) Every order (other than an order under *section 1(2) or 11*) and regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 25 30

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Review of operation of Act.

6.—The Minister shall— 35

- (a) not later than 5 years after the establishment day, commence a review of the operation of this Act, and
- (b) not later than 12 months after the expiration of the said 5 years, make a report to each House of the Oireachtas of his or her findings and conclusions resulting from that review. 40

7.—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. Exemption from liability to pay tax.

5 8.—(1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways: Service of documents.

(a) by delivering it to the person;

10 (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; or

15 (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

(2) For the purpose of this section, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business. 20

9.—(1) A person guilty of an offence under this Act shall be liable— Offences.

25 (a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine not exceeding €300,000 or to imprisonment for a term not exceeding 5 years or to both.

30 (2) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 35

(3) Summary proceedings for an offence under this Act may be brought and prosecuted by the Authority.

40 (4) Where a person is convicted of an offence under this Act the court shall order the person to pay to the Authority the costs and expenses, measured by the court, incurred by the Authority in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are special and substantial reasons for not so doing.

45 (5) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be commenced not later than 2 years after the alleged commission of the offence.

Repeals.

**10.**—The Charities Act 1961 is repealed to the extent specified in *column (2)* of *Schedule 2*.

## PART 2

### CHARITIES REGULATORY AUTHORITY

Establishment Day. **11.**—The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act. 5

Establishment of Charities Regulatory Authority. **12.**—(1) There shall stand established on the establishment day, a body which shall, subject to *subsection (2)*, be known as an tÚdarás Rialála Carthanas or in the English language the Charities Regulatory Authority (in this Act referred to as the “Authority”), to perform the functions conferred on it by this Act. 10

(2) The Authority may, for operational purposes, describe itself as An Rialálaí Carthanas or in the English language the Charities Regulator.

(3) The provisions of *Schedule 1* shall have effect in relation to the Authority. 15

Functions of Authority. **13.**—(1) The general functions of the Authority shall be to—

- (a) increase public trust and confidence in the management and administration of charitable trusts and charitable organisations, 20
- (b) promote compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations,
- (c) promote the effective use of the property of charitable trusts or charitable organisations, 25
- (d) ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public,
- (e) promote understanding of the requirement that charitable purposes confer a public benefit, 30
- (f) establish and maintain a register of charitable organisations,
- (g) ensure and monitor compliance by charitable organisations with this Act,
- (h) carry out investigations in accordance with this Act, 35
- (i) encourage and facilitate the better administration and management of charitable trusts and the property of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents, 40

(j) carry on such activities or publish such information (including statistical information) concerning charitable organisations and charitable trusts as it considers appropriate,

5 (k) provide information (including statistical information) or advice, or make proposals, to the Minister on matters relating to the functions of the Authority.

(2) The Authority shall have all such powers as are necessary or expedient for the performance of its functions.

10 (3) Subject to this Act, the Authority shall be independent in the performance of its functions.

(4) The Authority may perform any of its functions through or by any member of the staff of the Authority duly authorised in that behalf by the Authority.

15 **14.**—(1) The Minister may, in relation to the performance by the Authority of its functions, give a direction in writing to the Authority requiring it to comply with such policies of the Government as are specified in the direction. Directions of Minister.

20 (2) The Minister may, by direction in writing, amend or revoke a direction under this section (including a direction under this subsection).

(3) The Authority shall comply with a direction under this section.

25 **15.**—In each financial year, the Minister may, after consultation with the Authority, advance to the Authority out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Finance, determine. Grants to Authority.

30 **16.**—The Authority may, with the consent of the Minister and the Minister for Finance and subject to such conditions (if any) as they may specify, from time to time, borrow money (whether on the security of the assets of the Authority or not). Borrowings by Authority.

35 **17.**—Any costs or expenses incurred by the Authority in the management or administration or for the preservation or recovery of any property vested in the Authority or otherwise in the execution of this Act may be borne and deducted by the Authority from the estate and funds of the charitable organisation in respect of which those costs and expenses were incurred. Recovery of expenses of Authority.

**18.**—(1) There shall be a chief executive officer of the Authority (in this Act referred to as the “chief executive”). Chief executive.

40 (2) Subject to *subsections (4) and (5)*, the chief executive shall be appointed by the Authority with the consent of the Minister.

(3) The chief executive may be removed from office by the Authority for stated reasons.

(4) The Minister may, before the establishment day, designate a person to be appointed to be the first chief executive of the Authority.

(5) If, immediately before the establishment day, a person stands designated by the Minister under *subsection (4)*, the Authority shall appoint that person to be the first chief executive. 5

(6) The chief executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) as may be determined by the Authority with the approval of the Minister given with the consent of the Minister for Finance. 10

(7) The chief executive shall not hold any other office or employment or carry on any business without the consent of the Authority.

Functions of chief executive.

**19.**—(1) The chief executive shall carry on and manage, and control generally, the administration of the Authority and perform such other functions (if any) as may be determined by the Authority. 15

(2) The chief executive shall perform his or her functions subject to such policies as may be determined from time to time by the Authority, and shall be accountable to the Authority for the efficient and effective management of the Authority and for the due performance of his or her functions. 20

(3) The chief executive may make proposals to the Authority on any matter relating to its functions.

(4) The Authority may designate a member of the staff of the Authority to perform the functions of chief executive in the absence of the chief executive or where the position of chief executive is vacant, and a member so designated shall in such absence or upon such position being vacant perform those functions. 25

Delegation of functions of chief executive.

**20.**—(1) The chief executive may, with the consent of the Authority in writing, delegate any of his or her functions to a specified member of staff of the Authority, and that member of staff shall be accountable to the chief executive for the performance of the functions so delegated. 30

(2) The chief executive shall be accountable to the Authority for the performance of functions delegated by him or her in accordance with *subsection (1)*. 35

(3) The chief executive may, with the consent of the Authority in writing, revoke a delegation made in accordance with this section.

(4) In this section “functions” does not include a function delegated by the Authority to the chief executive subject to a condition that the function shall not be delegated by the chief executive to anyone else. 40

Accountability of chief executive to Public Accounts Committee.

**21.**—(1) The chief executive shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (in this section referred to as the “Committee”), give evidence to that Committee in relation to— 45



- 5 (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Authority is required by this Act to prepare,
- (b) the economy and efficiency of the Authority in the use of its resources,
- 10 (c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations, and
- 15 (d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

20 (2) In the performance of his or her duties under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

25 **22.—(1)** In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 21* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.

Accountability of chief executive to other Oireachtas Committees.

30 (2) Subject to *subsection (3)*, the chief executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Authority.

(3) The chief executive shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or Tribunal in the State.

35 (4) Where the chief executive is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at 40 a time when the chief executive is before it, the information shall be so conveyed in writing.

45 (5) Where the chief executive has informed a Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

- 50 (a) the chief executive may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or

(b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court shall determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the chief executive shall not attend before the Committee to give account for the matter the subject of the application. 5

(7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the chief executive shall attend before the Committee to give account for the matter. 10

(8) In the performance of his or her duties under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy. 15

Staff.

**23.—**(1) The Authority shall appoint, with the consent of the Minister given with the consent of the Minister for Finance, such and so many persons to be members of the staff of the Authority as it may from time to time determine.

(2) The terms and conditions of service of a member of the staff of the Authority shall, with the consent of the Minister given with the consent of the Minister for Finance, be such as may be determined from time to time by the Authority. 20

(3) There shall be paid by the Authority to the members of its staff such remuneration and allowances as, from time to time, the Authority, with the consent of the Minister given with the consent of the Minister for Finance, determines. 25

Transfer of staff to Authority.

**24.—**(1) Every person who immediately before the establishment day was an officer of the Minister and was exclusively engaged in the performance of functions on behalf of the dissolved body shall, on the establishment day, become and be a member of the staff of the Authority. 30

(2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, while in the service of the Authority, be subject to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or remuneration to which he or she was subject immediately before the establishment day. 35 40

(3) In relation to persons transferred to the Authority under *subsection (1)*, previous service with the dissolved body shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts 1967 to 2001, the Protection of Employees (Part-Time Work) Act 2001, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973 to 2001 and the Unfair Dismissals Acts 1977 to 2001. 45

Superannuation.

**25.—**(1) As soon as may be after the establishment day, the Authority shall prepare and submit to the Minister a scheme or schemes

for the granting of superannuation benefits to or in respect of such of its staff (including the chief executive) as the Authority shall think fit.

5 (2) Every such scheme shall fix the time and conditions of retirement for all persons to, or in respect of whom, superannuation benefits are payable under the scheme, and different terms and conditions may be fixed in respect of different classes of persons.

10 (3) The Authority may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this section.

(4) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Authority in accordance with its terms.

15 (5) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance whose decision shall be final.

20 (6) No superannuation benefit shall be granted by the Authority to or in respect of any of its staff (including the chief executive) who are members of a scheme under this section, nor shall any other arrangement be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in  
25 accordance with such scheme or schemes submitted and approved under this section or an arrangement approved by the Minister and the Minister for Finance.

(7) The Minister shall cause every scheme submitted and approved under this section to be laid before each House of the  
30 Oireachtas as soon as may be after it is approved, and if either such House within the next 21 days on which that House sits after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to anything previously done thereunder.

35 (8) Where, in the period beginning on the establishment day and ending immediately before the commencement of a scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the staff of the Authority under *section 24*, the benefit shall be calculated by the Authority  
40 in accordance with such scheme, or such enactments in relation to superannuation, as applied to the person immediately before the establishment day and, for that purpose, his or her pensionable service with the Authority shall be aggregated with his or her previous pensionable service and the said benefit shall be paid by the  
45 Authority.

(9) (a) A scheme under *subsection (1)* shall, as respects a person transferred by *section 24* to the staff of the Authority, provide for the granting to or in respect of him or her of superannuation benefits upon and subject to such terms and conditions as are not less favourable to him or her  
50 than the terms and conditions that applied to him or her immediately before the establishment day in relation to the grant of such benefits.

- (b) Any period of service by a person as a member of the staff of the dissolved body which was a period of reckonable service for the purposes of a scheme for the granting of superannuation benefits to or in respect of members of the staff of the dissolved body shall be regarded as a period of reckonable service for the purposes of any scheme under *subsection (1)*. 5

(10) In this section “superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death. 10

Disclosure of information relating to offences under Act.

**26.**—Notwithstanding any rule of law, information that, in the opinion of—

- (a) a member of the Garda Síochána,  
(b) the Director of Corporate Enforcement, or  
(c) such other person as may, after consultation by the Minister with any other Minister of the Government appearing to him or her to be concerned, be prescribed, 15

may relate to the commission of an offence under this Act may be disclosed by that member, Director or other person to the Authority, or a member or a member of staff of the Authority. 20

Disclosure of information by Authority where it suspects commission of offence.

**27.**—(1) The Authority shall provide any information obtained by it in the performance of its functions that causes the Authority to suspect that an offence has been committed by a charity trustee or a charitable organisation to—

- (a) the Garda Síochána, 25  
(b) the Revenue Commissioners,  
(c) the Director of Corporate Enforcement,  
(d) the Competition Authority, or  
(e) any other person charged with the detection, investigation or prosecution of offences, 30

as may be appropriate, where it is not satisfied that the information has already been reported to a person specified in *paragraph (a), (b), (c), (d) or (e)*.

(2) Information provided under *subsection (1)* may be used by the person to whom it has been provided for the purpose only of the detection, investigation or prosecution of an offence. 35

(3) The Authority may provide any information—

- (a) obtained by it in the performance of its functions, and  
(b) that causes it to suspect that an offence under the law of a state (other than the State) has been committed by a charity trustee of a charitable organisation, 40

to a person charged under the law of that state with the detection, investigation or prosecution of offences, if the person to whom it is

provided gives an undertaking in writing that the information will be used only for the purpose of the detection, investigation or prosecution of the offence concerned.

5       **28.—**(1) The Authority shall, as soon as practicable after the commencement of this section, and thereafter not earlier than 6 months before and not later than the expiration of each subsequent period of 3 years following that commencement, prepare and submit to the Minister a strategy statement in respect of the period of 3 years immediately following the year in which the strategy statement is so submitted. Strategy statement.

(2) The Minister shall, as soon as practicable after a strategy statement has been submitted to him or her under *subsection (1)*, cause a copy of it to be laid before each House of the Oireachtas.

15       (3) The Authority shall ensure that, as soon as practicable after copies of a strategy statement are laid before both Houses of the Oireachtas in accordance with *subsection (2)*, the strategy statement is published on the internet.

(4) In this section “strategy statement” means a statement that—

20       (a) specifies the key objectives, outputs and related strategies, including use of resources, of the Authority, and

(b) is prepared in a form and manner that is in accordance with any directions issued from time to time by the Minister.

25       **29.—**(1) The Authority shall keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of all money received or expended by it and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister may, with the consent of the Minister for Finance, from time to time direct. Accounts of Authority.

30       (2) Accounts kept in accordance with this section shall be submitted, not later than 1 April in the year immediately following the financial year to which they relate or on such earlier date as the Minister may, from time to time, specify, by the Authority to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts, and of such other (if any) accounts kept in accordance with this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General’s report on the accounts shall be presented to the Minister who shall, as soon as may be, cause copies thereof to be laid before each House of the Oireachtas.

45       **30.—**(1) The Authority shall not later than 30 June in each year prepare and submit to the Minister a report on its activities in the immediately preceding year, and the Minister shall, as soon as may be after receiving the report, cause copies of the report to be laid before each House of the Oireachtas. Annual report.

(2) The Authority shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subsection (1)* to be published on the internet as soon as practicable after copies of the report are laid before each House of the Oireachtas.

Provision of information to relevant persons.

**31.—(1)** The Authority may provide a relevant person with such information in the possession of the Authority as may reasonably be required for the purpose of enabling the relevant person to perform his or her functions.

(2) In this section “relevant person” means— 5

(a) the Garda Síochána,

(b) the Revenue Commissioners, or

(c) any other person charged under any statute with—

(i) ensuring compliance with the provisions of any statute, or 10

(ii) the detection, investigation or prosecution of any offence.

Administrative cooperation on regulatory matters.

**32.—(1)** The Authority shall, in so far as is consistent with the proper performance of its functions, endeavour to secure administrative cooperation between it and relevant regulators, and for that purpose, the Authority may enter into one or more arrangements (whether in the form of a memorandum of understanding or otherwise) with relevant regulators for the purposes of— 15

(a) facilitating administrative cooperation between the Authority and the relevant regulators in the performance of their respective functions in so far as they relate to the regulation of charitable organisations or charitable trusts, 20

(b) avoiding duplication of activities by the Authority and any relevant regulator, or

(c) ensuring, as far as practicable, consistency between decisions made or measures taken by the Authority and relevant regulators in so far as any part of those decisions or measures consists of or relates to a determination of any matters concerning the regulation of charitable organisations or charitable trusts. 25 30

(2) An arrangement under this section shall not operate to bind the Authority or a relevant regulator.

(3) The Minister and any relevant Minister in relation to a relevant regulator concerned shall each be furnished by one of the parties concerned with a copy of an arrangement under this section and any variation thereof. 35

(4) The parties to an arrangement under this section may vary the terms of the arrangement.

(5) An arrangement under this section shall not operate to require the Authority to provide information to any relevant regulator if the disclosure of that information by the Authority is prohibited by law. 40

(6) In this section—

“relevant Minister” means, in relation to a relevant regulator, the Minister of the Government who performs functions in connection with that relevant regulator; 45

“relevant regulator” means—

5 (a) a body, or holder of an office, in whom functions are vested relating to the regulation of activities or persons for purposes other than the purposes of this Act (where the body or office is established by or under an enactment and is prescribed by order of the Minister), or

10 (b) a body, or holder of an office, in whom functions are vested under the law of a state (other than the State) relating to the regulation of activities or persons in that state for any purpose (where the body or office is prescribed by order of the Minister).

33.—(1) The Authority may, with the approval of the Minister, enter into an arrangement with a foreign statutory body whereby each party to the arrangement may—

Administrative cooperation with foreign statutory bodies on law enforcement matters.

15 (a) furnish to the other party information in its possession if the information is required by that other party for the purposes of the performance by it of any of its functions, and

20 (b) provide such other assistance to the party as will facilitate the performance by that other party of any of its functions.

25 (2) The Authority shall not furnish any information to a foreign statutory body pursuant to an arrangement to which this section applies unless it requires of, and obtains from, that body an undertaking in writing by it that it will comply with the terms specified in that requirement, being terms that correspond to the provisions of any enactment concerning the disclosure of that information by the Authority.

30 (3) The Authority may give an undertaking to a foreign statutory body that it will comply with any terms specified in a requirement made of the Authority by the body to give such an undertaking where—

35 (a) those terms correspond to the provisions of any law in force in the state in which the body is established, being provisions which concern the disclosure by the body of the information referred to in *paragraph (b)*, and

40 (b) compliance with the requirement is a condition imposed by the body for furnishing information in its possession to the Authority pursuant to an arrangement to which this section applies.

(4) The Authority shall inform the Minister concerning every arrangement for administrative cooperation entered into under this section.

45 (5) An arrangement under this section shall not operate to require the Authority to provide information to a foreign statutory body if the disclosure of that information by the Authority is prohibited by law.

(6) In this section “foreign statutory body” means a person prescribed by regulations made by the Minister, in whom functions relating to charitable organisations or charitable trusts are vested under the law of a state other than the State.

Consultation with stakeholders.

**34.**—The Authority may take such steps as it considers appropriate to consult with persons whom it considers may be affected by the performance by it of its functions. 5

Consultative panels.

**35.**—(1) The Authority may, for the purposes of *section 34*, establish a panel or more than one panel, consisting of such persons and such number of persons as it may determine, to perform such tasks as are specified in the terms of reference of the panel concerned. 10

(2) The Authority shall, in relation to a panel, determine—

(a) its terms of reference,

(b) the rules governing its meetings and procedures, and

(c) the date by which the tasks to be performed by it are to be completed. 15

(3) The Authority shall appoint the members of a panel for such period as it determines not exceeding 2 years.

(4) A member of a panel who has ceased to be a member of that panel by reason of the efflux of time shall be eligible for reappointment to that panel but may not serve more than 2 terms on that panel. 20

(5) The Authority shall appoint one of the members of a panel to be the chairperson of the panel.

(6) Without prejudice to the generality of *subsection (1)*, the terms of reference of a panel may provide for the panel to make observations or proposals concerning— 25

(a) the effect of the performance by the Authority of its functions under this Act,

(b) any developments within the European Union or internationally that have implications for the Authority in the performance of its functions, 30

(c) initiatives which, in the opinion of the panel, the Authority could take with respect to the performance of its functions, together with an analysis of the likely cost of those initiatives, 35

(d) a policy or document, issued or proposed to be issued by the Authority,

(e) guidelines, issued or proposed to be issued by the Authority, 40

(f) a code of conduct, whether issued or proposed to be issued or approved or proposed to be approved by the Authority,



(g) the performance of the charities sector in any particular area or respect,

(h) an assessment of the effectiveness of the regulation of the administration and operation of charitable fund-raising through codes of conduct.

5

(7) Not later than 3 months, or such longer period as the Authority may specify, after the end of each year, each panel established under this section shall prepare and submit to the Authority an annual report providing details of its activities during that year.

10 (8) The Authority shall arrange for publication on the internet of the annual report of each panel established under this section in the year in which it is submitted to the Authority.

15 (9) The Authority shall arrange for publication on the internet of observations or proposals made by a panel established under this section in the year in which they are made to the Authority.

(10) The Authority shall provide, or arrange for the provision of, such administrative facilities as may be necessary to enable a panel established under this section to perform its functions.

20 (11) The following allowances and expenses are payable by the Authority:

(a) the travelling and subsistence allowances of panel members in accordance with such scales as may be determined from time to time by the Minister with the consent of the Minister for Finance;

25 (b) the administrative expenses of a panel.

(12) The Authority may at any time dissolve a panel established under this section.

**36.—(1)** The Minister may give a direction in writing to the Authority requiring it to establish a panel for the purposes of *section 34*.

Directions from Minister concerning consultative panels.

30 (2) The Minister shall determine—

(a) the terms of reference of a panel established under *subsection (1)* and may require the Authority to dissolve the panel at any time,

35 (b) the rules governing the meetings and procedures of such a panel, and

(c) the date by which the tasks to be performed by such a panel are to be completed.

(3) The Authority shall appoint the members of a panel for such period as the Minister shall determine not exceeding 2 years.

40 (4) *Subsections (4), (5), (8), (9), (10) and (11) of section 35* shall apply with the necessary modifications in relation to a panel established under *subsection (1)*.

(5) The Authority shall comply with—

- (a) a direction under this section, and
- (b) a requirement under *subsection (2)(a)*.

Transfer of functions of Attorney General to Authority.

**37.—**(1) All functions relating to charitable organisations or charitable trusts (or otherwise relating to charities) that, immediately before the establishment day, were vested in the Attorney General are transferred to the Authority, and references in any enactment in so far as it relates to charitable organisations or charitable trusts (or otherwise relates to charities) shall be construed as references to the Authority. 5

(2) This section shall come into operation on the establishment day. 10

### PART 3

#### REGULATION OF CHARITABLE ORGANISATIONS

Register of charitable organisations.

**38.—**(1) The Authority shall, upon the commencement of this section and after consultation with the Revenue Commissioners, cause to be established and maintained, in such form as it considers appropriate (including electronic form) a register (in this Act referred to as the “register”) of charitable organisations. 15

(2) The Authority may, for the purpose of defraying any expenses incurred in establishing or maintaining the register (in this section referred to as the “appropriate fee”), charge each charitable organisation a fee of such amount as may be determined by the Minister. 20

(3) A charitable organisation that intends to operate or carry on activities in the State shall, in accordance with this section, apply to the Authority to be registered in the register, and it shall be the duty of the charity trustees of the charitable organisation concerned to make the application on behalf of the charitable organisation. 25

(4) A charitable organisation that, immediately before the commencement of this section, was operating in the State as, or carrying on the activities in the State of, a charitable organisation shall, if it wishes to continue to so operate or carry on such activities after such commencement, apply, not later than— 30

- (a) 6 months, or
- (b) the expiration of such longer period as the Minister may specify, 35

after such commencement to the Authority to be registered.

(5) An application under this section shall—

- (a) be in writing,
- (b) specify the name of the charitable organisation and its principal place of business in the State, 40
- (c) specify the names of the charity trustees and the addresses at which they ordinarily reside,

- (d) specify the places where the charitable organisation operates or carries on its activities or proposes to operate or carry on its activities (including places outside the State),
- 5 (e) contain particulars of all bank accounts of the charitable organisation,
- (f) contain particulars of the kinds of activity carried on or intended to be carried on in furtherance of each object of the charitable organisation or charitable trust concerned,
- 10 (g) specify the manner in which the charitable organisation has or proposes to raise moneys,
- (h) specify the amount of any moneys raised by the charitable organisation—
- 15 (i) during the 12 months immediately preceding such application, or
- (ii) where the charitable organisation was formed or the charitable trust was established after the commencement of that period, in respect of the period since the organisation's formation or the trust's establishment, as may be appropriate,
- 20 (i) specify the plans of—
- (i) the charitable organisation for funding activities in furtherance of its objects, or
- 25 (ii) in the case of a charitable trust, the trustees of the trust for funding activities in furtherance of the objects of the trust,
- (j) contain particulars of all professional fund-raising agents or consultants engaged by or intended to be engaged by the charitable organisation,
- 30 (k) specify the risk assessment procedures, safety checks and safeguards employed by the charitable organisation where its activities include working with vulnerable people (including the aged, children and young people, the sick, disabled and handicapped),
- 35 (l) specify the gross income of the charitable organisation during the financial year ending immediately before the making of the application for registration,
- (m) be accompanied by copies of—
- 40 (i) all financial accounts of the charitable organisation or relating to the charitable trust in respect of the period of 12 months immediately preceding such application, or
- 45 (ii) where the charitable organisation was formed or the charitable trust was established after the commencement of that period all financial accounts in respect of the period since the organisation's formation or the trust's establishment, as may be appropriate,

- (n) be accompanied by a copy of the constitution of the charitable organisation, or where there is no constitution in respect of the charitable organisation, such documents of the charitable organisation as provide for matters normally provided for in a constitution, 5
- (o) contain such other information as may be prescribed by regulations made by the Minister, and
- (p) be accompanied by the appropriate fee (if any).

(6) As soon as practicable after an application in compliance with this section is received by the Authority, the Authority shall, subject to subsection (8), enter in the register— 10

- (a) the name of the applicant and its principal place of business in the State,
- (b) the address of each premises in the State at which it operates or carries on its activities, 15
- (c) the names of the charity trustees,
- (d) a number from which it will be possible to identify the applicant (in this Act referred to as the “registration number”),
- (e) the objects of the charitable organisation or charitable trust concerned, and 20
- (f) such other particulars as the Authority considers appropriate,

and a charitable organisation shall, if the information specified in this subsection in relation to it is entered in the register, be considered registered. 25

(7) If a particular entered in the register in accordance with subsection (6) relating to a charitable organisation ceases to be correct, the charity trustees of the charitable trust concerned shall, as soon as may be, so inform the Authority. 30

(8) The Authority shall, from time to time, review each entry in the register and, if it becomes aware that any particular in the register is incorrect or has ceased to be correct, it shall make such alterations to the register as it considers necessary and notify the charitable organisation concerned in writing of any such alteration. 35

(9) If, after the making of an application under this section in relation to a charitable organisation but before the making of a decision by the Authority in respect of the application, a charity trustee of that charitable organisation ceases to be qualified for the position of charity trustee by virtue of section 49, the charitable organisation shall not be eligible to be registered for the purposes of this section before the expiration of one year, or such shorter period as the Minister may determine, from the date of the charity trustee so ceasing to be qualified, and the Authority shall not, before such expiration, perform any functions in relation to that organisation under this section. 40 45

(10) If, after the making of an application under this section in relation to a charitable organisation but before the making of a

5 decision by the Authority in respect of the application, that charitable organisation is convicted on indictment of an offence, the charitable organisation shall not be eligible to be registered for the purposes of this section before the expiration of one year, or such shorter period as the Minister may determine, from the date of the conviction, and the Authority shall not, before such expiration, perform any functions in relation to that organisation under this section.

10 (11) A person who, in purported compliance with this section, knowingly or recklessly provides information or a particular to the Authority that is false or misleading in a material respect, or who believes any such information or particular when provided by him or her, in purported compliance with that subsection, not to be true, shall be guilty of an offence.

(12) Subject to *subsection (14)*, any person who—

- 15 (a) advertises on behalf of, or causes another person to advertise on behalf of, a charitable organisation that is not registered,
- 20 (b) invites, or causes another person to invite, members of the public to give money or property to a charitable organisation that is not registered, or
- (c) accepts, or causes another person to accept, a gift of money or other property on behalf of a charitable organisation that is not registered,

shall be guilty of an offence.

25 (13) Subject to *subsection (14)*, a charitable organisation that is a body corporate and is not registered shall be guilty of an offence if it—

- (a) advertises, or causes another person to advertise on its behalf,
- 30 (b) invites, or causes another person to invite, members of the public to give money or other property to it, or
- (c) accepts, or causes another person to accept, a gift of money or property on its behalf.

35 (14) *Subsections (12) and (13)* shall not apply in respect of a charitable organisation to which *subsection (4)* applies—

- (a) during the period referred to in the said *subsection (4)*, or
- 40 (b) where the organisation has made an application under *subsection (4)*, during that period and any further period beginning on the expiration of the first-mentioned period and ending when the Authority notifies the charity trustees in writing of its decision in relation to the application referred to in the said *subsection (4)*.

45 (15) The charity trustees of a charitable organisation in respect of which there is a contravention of this section shall each be guilty of an offence.

(16) The Authority shall make the register available for inspection by members of the public at all reasonable times at its principal office and shall also publish the register on the internet.

39.—(1) The Authority shall not register a charitable organisation if—

- (a) the name of the charitable organisation is—
  - (i) the same as, or
  - (ii) in the opinion of the Authority, so similar to the name of another charitable organisation as to be likely to cause members of the public to be unable to distinguish it from that other charitable organisation, 5
- (b) the name of the charitable organisation is, in the opinion of the Authority likely to mislead members of the public as to— 10
  - (i) the purposes of the charitable organisation, or
  - (ii) the activities that it carries on, or intends to carry on, in pursuit of those purposes,
- (c) the name of the charitable organisation is, in the opinion of the Authority, likely to cause members of the public to believe that it is connected with the Government, a local authority, or any person or body of persons with whom it has no connection, or 15
- (d) the name of the charitable organisation is, in the opinion of the Authority, offensive. 20

(2) The name of a registered charitable organisation shall not be changed without the consent of the Authority and the Authority shall not give such consent if—

- (a) the name of the charitable organisation is— 25
  - (i) the same as, or
  - (ii) in the opinion of the Authority, so similar to the name of another charitable organisation as to be likely to cause members of the public to be unable to distinguish it from that other charitable organisation, 30
- (b) the name of the charitable organisation is, in the opinion of the Authority likely to mislead members of the public as to—
  - (i) the purposes of the charitable organisation, or
  - (ii) the activities that it carries on, or intends to carry on, in pursuit of those purposes, 35
- (c) the name of the charitable organisation is, in the opinion of the Authority, likely to cause members of the public to believe that it is connected with the Government, a local authority, or any person or body of persons with whom it has no connection, or 40
- (d) the name of the charitable organisation is, in the opinion of the Authority, offensive.

5 (3) Where the Authority refuses to register a charitable organisation for a reason specified in *subsection (1)* or refuses to give its consent under *subsection (2)*, the decision to so refuse may be appealed to the Tribunal by, or on behalf of, the charitable organisation concerned.

(4) Where the name of a charitable organisation has been changed in contravention of *subsection (2)*, the charity trustees of the organisation shall each be guilty of an offence.

10 (5) Where the name of a charitable organisation that is a body corporate has been changed in contravention of *subsection (2)* the charitable organisation shall be guilty of an offence.

15 **40.**—(1) Where the Authority, after consultation with the Garda Síochána, is of opinion that a body registered in the register is or has become an excluded body by virtue of its promoting purposes that are— Removal of charitable organisation from register.

(a) unlawful,

(b) contrary to public morality,

(c) in support of terrorism or terrorist activities, or

20 (d) for the benefit of an organisation, membership of which is unlawful,

it shall remove from the register all of the information entered in relation to that body and the body shall thereupon cease to be registered.

25 (2) Where the name of a charitable organisation is changed in contravention of *section 39(2)*, the Authority shall remove from the register all of the information entered in relation to that organisation and the organisation shall thereupon cease to be registered.

30 (3) Where, in accordance with *subsection (1)* or *(2)*, the Authority removes from the register information entered in relation to a body, the decision to so remove that information may be appealed by, or on behalf of, the charitable organisation concerned to the Tribunal.

(4) Upon an appeal under *subsection (3)*, the Tribunal may—

(a) affirm the decision of the Authority,

(b) grant the relief sought by the appellant, or

35 (c) grant the relief sought by the appellant subject to such conditions as the Tribunal may specify.

40 (5) Where the Authority is of opinion that a body registered in the register has ceased to be a charitable organisation, it shall apply to the High Court for a declaration that the body is not a charitable organisation.

45 (6) If the High Court, upon an application under *subsection (5)*, grants a declaration that the body in respect of which the application is made is not a charitable organisation, the Authority shall remove from the register all of the information entered in relation to that body, and the body shall thereupon cease to be registered.

(7) If a registered charitable organisation that is a body corporate is convicted on indictment of an offence, the Authority may apply to the High Court for an order authorising it to remove the charitable organisation from the register, and, upon such an application, the High Court may make such an order if it considers it appropriate in all of the circumstances. 5

(8) If a charity trustee of a registered charitable organisation ceases to be qualified for the position of charity trustee by virtue of *section 49*, the Authority may apply to the High Court for an order authorising it to remove the charitable organisation from the register, and, upon such an application, the High Court may make such an order if it considers it appropriate in all of the circumstances. 10

(9) If the High Court, upon an application under *subsection (7)* or *(8)*, makes an order authorising the Authority to remove a charitable organisation from the register, the Authority shall forthwith remove from the register all of the information entered in relation to that organisation, and that organisation shall thereupon cease to be registered. 15

(10) A charitable organisation that has ceased to be registered for the purposes of *section 38* in accordance with *subsection (7)* or *(8)* shall not, before the expiration of one year, or such shorter period as the Minister may determine, from the date of its ceasing to be so registered, be eligible to apply to be registered, and the Authority shall not, before such expiration, perform any functions in relation to that organisation under *section 38(6)*. 20 25

(11) Where, in accordance with this section, a body ceases to be registered, the Authority shall enter in the register a statement that the body has ceased to be registered and a statement of the reasons therefor.

Appeal to Tribunal against refusal to register body under *section 38*.

**41.**—(1) A decision of the Authority to refuse to register a body in the register may be appealed to the Tribunal not later than 21 days, or such longer period as the Tribunal may for good and sufficient reason determine, after the notification in writing by the Authority of the decision to the charity trustees concerned. 30

(2) Upon an appeal under *subsection (1)*, the Tribunal may make a determination— 35

(a) requiring the Authority to enter the information in relation to the charitable organisation concerned in the register, or

(b) affirming the decision of the Authority. 40

(3) If the Tribunal makes a determination under *subsection (2)(a)*, the Authority shall forthwith enter the information referred to in *subsection (1)* in relation to the body concerned and the body shall thereupon be considered registered.

References to charitable status.

**42.**—(1) A person who holds out a body that is not registered as being registered shall be guilty of an offence. 45

(2) Without prejudice to the generality of *subsection (1)*, a body that is publicly described as a “charity”, a “charitable body”, a “registered charity” or a “charity registered in Ireland” shall, subject to *subsection (6)*, be regarded as being held out as being registered. 50



(3) A person who holds out a body that is not established under the law of the State as being so established shall be guilty of an offence.

5 (4) A person who holds out a body whose seat of management or control is outside the State as being a body whose seat of management or control is in the State shall be guilty of an offence.

(5) Without prejudice to the generality of *subsections (3) and (4)*, a body that is publicly described as being an “Irish charity” or a “registered Irish charity” shall be regarded as being held out—

10 (a) as being registered, and

(b) as being a body—

(i) established under the law of the State, or

(ii) whose seat of management or control is in the State.

15 (6) A body or charitable organisation that is not registered and that is publicly described as a charity or a charitable organisation is not to be regarded as being held out as being so registered if—

(a) it is established under the law of a place other than the State,

20 (b) under that law, it is entitled to be described as a charity or charitable organisation,

(c) its centre of management and control is outside the State,

(d) it does not—

(i) occupy any land in the State, or

(ii) carry out any activities in the State,

25 and

(e) that description is accompanied by a statement as to its place of establishment.

30 (7) A registered charitable organisation shall, in all public documents and such other publications as may be prescribed, including on television or the internet, state in legible characters—

(a) that it is a registered charitable organisation, and

(b) provide such other information as may be prescribed, including the names of the charity trustees and the address of its principal office.

35 (8) Regulations made for the purposes of *subsection (7)* may provide—

(a) for the exemption of charitable organisations belonging to a particular class from any of the requirements of the regulations, or

40 (b) that, in the case of a statement or information that is in a language other than the Irish language or the English language, the statement or information be in the Irish

language or the English language or both of those languages.

Duty to keep proper books of account.

**43.—**(1) The charity trustees of a charitable organisation shall, in relation to that charitable organisation, keep or cause to be kept proper books of account, whether in the form of documents or other record, that— 5

- (a) correctly record and explain the transactions of the organisation,
- (b) enable the financial position of the organisation to be determined with reasonable accuracy at any time, 10
- (c) enable the charity trustees to ensure that any statements of account prepared under *section 44* have been prepared in compliance with regulations made under that section, and
- (d) enable the accounts of the organisation to be readily and properly audited. 15

(2) The books of account of a charitable organisation shall be kept on a continuous and consistent basis, that is to say, the entries therein shall be made in a timely manner and be consistent from one year to the next. 20

(3) Without prejudice to the generality of *subsections (1) and (2)*, books of account kept pursuant to those subsections shall contain—

- (a) entries, from day to day, of all sums of money received and expended by the charitable organisation concerned and the matters in respect of which the receipt and expenditure takes place, and 25
- (b) a record of the assets and liabilities of the charitable organisation.

(4) For the purposes of *subsections (1), (2) and (3)*, proper books of account shall be deemed to be kept if they comply with those subsections and give a true and fair view of the state of affairs of the charitable organisation and explain its transactions. 30

(5) Books of account required by this section to be kept, the annual statement of accounts referred to in *section 44* and any account and statement prepared under *subsection (3)* of that section shall be kept either in written form or in an official language of the State or so as to enable the books of account and the accounts and returns to be readily accessed and readily converted into written form in an official language of the State. 35

(6) The charity trustees of a charitable organisation shall make the books of account, the annual statement of accounts referred to in *section 44* and any account and statement prepared under *subsection (3)* of that section, of the charitable organisation, available in written form in an official language of the State at all reasonable times for inspection, without charge, by persons entitled pursuant to this Act to inspect the books of account of the organisation. 40 45

(7) A record (being a book of account required to be kept under this section), an annual statement of accounts referred to in *section 44* or any account and statement prepared under *subsection (3)* of

that section shall be preserved by the charitable organisation concerned for a period of not less than 6 years from the end of the financial year to which it relates.

5 (8) Where, during the period of 6 years referred to in *subsection (7)* as it applies to any book of account required to be kept under this section, an annual statement of accounts referred to in *section 44* or any account and statement prepared under *subsection (3)* of that section—

10 (a) the charitable organisation concerned (being a body corporate or unincorporated body of persons) is dissolved, or

(b) the charitable trust concerned is terminated,

15 it shall be the duty of the charity trustees holding office immediately before the date of the dissolution or termination, as the case may be, to preserve that book of account or statement of accounts in accordance with the said *subsection (7)* unless the Authority consents in writing to its being destroyed or its being disposed of in some other manner.

20 (9) A charity trustee who contravenes this section shall be guilty of an offence.

(10) It shall be a defence to proceedings for an offence consisting of the contravention of a requirement of this section for the defendant to prove that he or she believed on reasonable grounds that a competent and reliable person was duly charged with the duty of ensuring compliance with that requirement and was in a position to discharge that duty.

(11) This section does not apply to charitable organisations that are companies.

30 **44.—(1)** Subject to *subsection (3)*, the charity trustees of a charitable organisation shall, in respect of each financial year, prepare a statement of accounts (in this section referred to as the “annual statement of accounts”) in such form and containing information relating to such matters as may be prescribed by regulations made by the Minister. Annual statement of accounts.

35 (2) Without prejudice to the generality of *subsection (1)*, regulations made in accordance with that subsection may make provision for—

40 (a) the annual statement of accounts to be prepared in accordance with such methods and standards as are specified in the regulations,

(b) any information to be provided by means of notes to the annual statement of accounts, and

45 (c) determining the financial year of a charitable organisation for the purposes of this Act and any regulations made under it.

(3) (a) Where the gross income or expenditure of a charitable organisation in a financial year does not exceed €100,000, the charity trustees may, instead of preparing an annual statement of accounts in respect of that year, prepare an

income and expenditure account in respect of, and a statement of the assets and liabilities of, the charitable organisation.

(b) An income and expenditure account and a statement of the assets and liabilities of a charitable organisation prepared under *paragraph (a)* shall be in such form as may be prescribed by the Minister. 5

(4) A charity trustee who contravenes this section shall be guilty of an offence.

(5) It shall be a defence to proceedings for an offence consisting of the contravention of a requirement under this section for the defendant to prove that he or she believed on reasonable grounds that a competent and reliable person was duly charged with the duty of ensuring compliance with that requirement and was in a position to discharge that duty. 10  
15

(6) This section does not apply to charitable organisations that are companies.

Annual audit or examination of accounts.

**45.**—(1) The accounts of a charitable organisation in respect of a financial year (in this subsection referred to as the “relevant financial year”) shall be audited not later than 9 months after the end of the relevant financial year by a person who, in accordance with section 187 of the Companies Act 1990, is qualified to be appointed as a company auditor, if the gross income or total expenditure of the charitable organisation in— 20

(a) the relevant financial year, 25

(b) the financial year (if any) of the charitable organisation immediately preceding the relevant financial year, or

(c) the financial year (if any) of the charitable organisation immediately preceding the year referred to in *paragraph (b)*, 30

exceeds €100,000.

(2) Subject to *subsection (3)*, the accounts of a charitable organisation (other than a charitable organisation to which *subsection (1)* applies) in respect of a financial year shall, at the election of the charity trustees, either— 35

(a) be examined by an independent person approved by the Authority, being a person who has the requisite ability and practical experience to carry out a competent examination of the accounts, or

(b) be audited by a person referred to in *subsection (1)*, 40

not later than 9 months after the end of the financial year concerned.

(3) Notwithstanding *subsection (2)*, the Authority may give a direction to the charity trustees of a charitable organisation to which that subsection applies requiring that the accounts of the charitable organisation in respect of such financial year as is specified in the direction be audited by a person referred to in *subsection (1)*. 45

(4) Where there has been a contravention of *subsection (1)*, the Authority may appoint such person referred to in *subsection (1)* as it considers appropriate to audit the accounts concerned.

5 (5) Where there has been a contravention of *subsection (2)* the Authority may appoint such person referred to in *subsection (1)* as it considers appropriate to audit the accounts of the charitable organisation concerned.

10 (6) The expenses incurred in the carrying out of an audit by a person appointed under *subsection (4)* or *(5)* or pursuant to a direction under *subsection (3)*, including the auditor's remuneration, shall be recoverable by the Authority as a simple contract debt in any court of competent jurisdiction—

15 (a) from the charity trustees of the charitable organisation (who shall be jointly and severally liable for those expenses), or

(b) from the charitable organisation concerned, where it is not practicable to recover them from the charity trustees.

20 (7) The Authority may give such directions as it considers appropriate, with respect to the carrying out of an examination under *subsection (2)(a)*, to charity trustees of a particular charitable organisation or generally.

(8) Where, in relation to a charitable organisation, there is a contravention of this section the charity trustees shall each be guilty of an offence.

25 (9) It shall be a defence to proceedings for an offence consisting of the contravention of a requirement under this section for the defendant to prove that he or she believed on reasonable grounds that a competent and reliable person was duly charged with the duty of ensuring compliance with that requirement and was in a position  
30 to discharge that duty.

(10) A charity trustee who obstructs or fails to cooperate with a person appointed under *subsection (4)* or *(5)*, or pursuant to a direction under *subsection (3)*, or who fails to give him or her such assistance as he or she may require for the purpose of carrying out an  
35 audit of the accounts of the charitable organisation concerned shall be guilty of an offence.

40 (11) Where, in relation to a charitable organisation, there is a contravention of a requirement in a direction under *subsection (3)*, each of the charity trustees of the organisation shall be guilty of an offence.

(12) This section does not apply to charitable organisations that are companies.

46.—(1) The Minister may by regulations—

45 (a) make provision in relation to the duties of an auditor, or independent person referred to in *section 45(2)(a)* carrying out an audit or examination in accordance with *section 45*, including provision in relation to the making of a report as respects the annual statement of accounts or the income and expenditure account and statement of

Regulations in relation to audits, etc.

assets and liabilities, as may be appropriate, prepared in accordance with *section 44*,

- (b) make provision in relation to the making by an independent person referred to in *section 45(2)(a)* of a report in respect of an examination carried out by him or her, 5
- (c) confer on such an auditor or independent person a power to inspect books, documents and other records (however kept) relating to a charitable organisation,
- (d) confer on such an auditor or independent person a power to require, in the case of a charitable organisation, information and explanations from past or present charity trustees of the charitable organisation, or from past or present members of staff of the charitable organisation. 10

(2) If any person fails to afford an auditor or an independent person referred to in *section 45(2)(a)* any facility to which he or she is entitled by virtue of regulations under *subsection (1)(c)* or *(d)*, the Authority may give— 15

- (a) that person, or
- (b) the charity trustees for the time being of the charity concerned, 20

such directions as the Authority thinks appropriate.

(3) A person or charity trustee, as the case may be, who does not comply with a direction under *subsection (2)* shall be guilty of an offence.

Annual reports.

**47.—**(1) The charity trustees of a charitable organisation shall, not later than 10 months or such longer period as the Authority may specify, after the end of each financial year, prepare and submit to the Authority a report (in this section referred to as the “annual report”) in respect of its activities in that financial year and such a report shall contain such other information as the Minister may prescribe by regulations. 25 30

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may provide that a report referred to in that subsection shall be prepared in such manner as is specified in the regulations. 35

(3) Subject to *subsection (4)*, the following shall be attached to an annual report submitted in accordance with this section:

- (a) a copy of the annual statement of accounts prepared under *subsection (1)* of *section 44* or the income and expenditure account and the statement of assets and liabilities prepared under *subsection (3)* of that section, as the case may be, in respect of the financial year concerned; 40
- (b) where the accounts of the charitable organisation have been audited in accordance with *section 45(1)*, a copy of the auditor’s report; 45
- (c) where the accounts of the charitable organisation have been examined by an independent person in accordance

with *section 45(2)*, a copy of the independent person's report.

5 (4) The following shall be attached to an annual report submitted in accordance with this section by a charitable organisation that is a company:

(a) a copy of the accounts prepared in accordance with the Companies Acts of the charitable organisation in respect of the financial year concerned; and

10 (b) where the accounts of the charitable organisation have been audited in accordance with those Acts, a copy of the auditor's report.

(5) An annual report submitted to the Authority under this section and any document attached thereto shall be kept by the Authority for such period as it thinks fit.

15 (6) A charitable organisation that is a body corporate that contravenes this section shall be guilty of an offence.

(7) Where, in relation to a charitable organisation, there is a contravention of this section, each of the charity trustees of the organisation shall be guilty of an offence.

20 **48.**—(1) Subject to any rule of law prohibiting the disclosure of information, the Authority shall make available for inspection by members of the public all annual reports and documents attached thereto that remain in its keeping in accordance with *section 47(5)*, at all reasonable times during the period for which it continues to remain in its keeping or such lesser period as it considers appropriate and at such place or places as it determines. Public inspection of annual reports, etc.

(2) This section shall not apply to a private charitable trust.

(3) In this section “private charitable trust” means a charitable trust that is not funded by donations from the public.

30 **49.**—(1) Subject to *subsection (2)*, a person shall cease to be qualified for, and shall cease to hold, the position of charity trustee of a charitable organisation if that person— Persons disqualified for being trustees of a charitable organisation.

(a) is adjudicated bankrupt,

(b) makes a composition or arrangement with creditors,

35 (c) is a company that is in the course of being wound up,

(d) is convicted on indictment of an offence,

(e) is sentenced to a term of imprisonment by a court of competent jurisdiction,

40 (f) is the subject of an order under section 160 of the Companies Act 1990 or is prohibited, removed or suspended from being a trustee of a scheme under the Pensions Acts 1990 to 2002,

(g) has been removed from the position of charity trustee of a charitable organisation by an order of the High Court under *section 68*.

(2) A person who, by virtue of *subsection (1)*, is not qualified, or has ceased, to be a charity trustee of a charitable organisation may apply to the High Court for an order that he or she may hold the position of charity trustee of a particular charitable organisation or of a charitable organisation of a particular class, and the High Court may, upon such an application, make such an order if it considers that it would be in the public interest and in the best interests of the charitable organisation concerned or charitable organisations of the class concerned for it to make such an order.

(3) Where the High Court makes an order under *subsection (2)* in relation to a person, that person may, by virtue of that order, hold the position of charity trustee of—

- (a) the charitable organisation to which the order relates, or
- (b) a charitable organisation of the class to which the order relates,

but if, after the making of the order, any of the events referred to in *subsection (1)* (other than *paragraph (a)*) occurs, the order shall cease to have effect and the provisions of that subsection shall apply.

(4) The Authority shall establish and maintain a register of all persons who have ceased to hold the position of charity trustee of a charitable organisation by virtue of *subsection (1)*.

(5) The Authority shall, from time to time, review each entry in the register established under this section and, if it becomes aware that any particular in that register is incorrect or has ceased to be correct, it shall make such alterations to that register as it considers necessary.

(6) The register established and maintained under this section shall be made available for inspection by members of the public at all reasonable times at the principal office of the Authority.

Person acting as charity trustee while disqualified.

**50.—(1)** A person who acts, or purports to act, as a charity trustee of a charitable organisation at any time while he or she is, by virtue of *section 49*, not qualified for that position shall be guilty of an offence.

(2) Any act done by a person—

- (a) in purported performance of the functions of charity trustee of a charitable organisation, and
- (b) while he or she was not qualified to hold that position by virtue of *section 49*,

shall not be invalid by reason only of the person not being so qualified.

(3) Where a person who, at any time when he or she was, by virtue of *section 49*, not qualified to hold the position of charity trustee of a charitable organisation, received from the charitable organisation any remuneration or expenses, or any benefit in kind, in connection with his or her acting, or purporting to act, as charity



trustee of the charitable organisation, he or she shall repay to the charitable organisation those moneys and any benefit in kind or an amount equal to the monetary value of any benefit in kind.

5 **51.—(1)** If a charity trustee or a member of staff of a charitable organisation complies with a direction of a person who—

Acting under directions of person not qualified to be charity trustee.

(a) is not qualified to hold the position of charity trustee of that organisation by virtue of *section 49*, and

(b) purported to give the direction as a charity trustee of the organisation,

10 the first-mentioned charity trustee or member of staff, as the case may be, shall be guilty of an offence if, at the time of his or her so complying, he or she knew or had reasonable grounds for knowing that the person who gave the direction was not qualified to hold the position of charity trustee of that organisation.

15 (2) Where a person is convicted of an offence under this section he or she shall cease to be qualified for the position of charity trustee of a charitable organisation, and if, immediately before the date of his or her conviction, he or she held the position of charity trustee of a charitable organisation he or she shall cease to hold that position.

20 **52.—(1)** Subject to *subsection (3)*, a person who is convicted of an offence under *section 50* in respect of a charitable organisation shall be personally liable for the debts of the charitable organisation incurred as a result of the commission by him or her of any act in  
25 purported performance by him or her of the functions of charity trustee of the charitable organisation at any time when he or she was not qualified to hold the position of charity trustee of the charitable organisation.

Consequences of acting under direction of person not qualified to be charity trustee.

(2) Subject to *subsection (3)*, a person who is convicted of an offence under *section 51* in respect of a charitable organisation shall  
30 be personally liable for the debts of the charitable organisation incurred as a result of the commission by him or her of any act in compliance with the direction to which the offence related.

(3) In proceedings brought against a person for the recovery of a debt referred to in this section the court may, subject to such conditions as it considers appropriate, grant relief in whole or in part  
35 from the liability to which the person would otherwise be subject under *subsection (1)* or *(2)*, as the case may be, if it considers it just and equitable to so do having regard to the circumstances of the case.

40 **53.—(1)** Where a relevant person has reasonable cause for believing that an offence has been committed under the Act of 2001 in relation to property of the charitable organisation concerned, that person shall, as soon as practicable, give to the Authority a report in writing of the particulars of the alleged offence.

Obligation to disclose commission of offence to Authority.

(2) A relevant person shall be guilty of an offence if he or she—

45 (a) fails to comply with *subsection (1)*, or

(b) knowingly makes a report under *subsection (1)* which is false or misleading in any material respect.

(3) In this section “relevant person” means, in relation to a charitable organisation, a person who—

- (a) is an auditor of the charitable organisation,
  - (b) is a charity trustee of the charitable organisation or is, for the time being, carrying out, or duly appointed to carry out, any of the functions of charity trustee of the charitable organisation, 5
  - (c) is an investment business firm (within the meaning of the Investment Intermediaries Act 1995), and—
    - (i) has advised the charitable organisation, or 10
    - (ii) has received any payment in relation to the investment of any of the property of the charitable organisation,
- or
- (d) has been involved in the preparation of the annual report 15 of the charitable organisation.

Defence to defamation proceedings in respect of publication by Authority of certain reports.

**54.**—In proceedings for defamation, the defence of qualified privilege shall apply to the publication by the Authority of a report—

- (a) under *section 53*, or
- (b) of any matter concerning the state and conduct of the 20 affairs of a charitable organisation.

Protection from civil liability of persons who report breaches of Act, etc., to Authority.

**55.**—Where a person communicates his or her opinion, whether in writing or otherwise, to the Authority that—

- (a) an offence under this Act has been or is being committed,
- (b) any provision of this Act has not been or is not being com- 25 plied with, or
- (c) an offence under the Act of 2001 has been or is being committed in relation to the property of a charitable organisation,

then, unless he or she acted in bad faith, the person shall not be 30 regarded as having committed any breach of duty towards the charitable organisation or any other person, and no person shall have a cause of action against the first-mentioned person in respect of that communication.

Protection of employees from penalisation for reporting breaches of Act, etc.

**56.**—(1) An employer shall not penalise an employee for having 35 formed an opinion of the kind referred to in *section 55* and communicated it, whether in writing or otherwise, to the Authority if the employee has acted reasonably and in good faith in forming that opinion and communicating it to the Authority.

(2) In proceedings under this section before a rights commissioner 40 or the Employment Appeals Tribunal in relation to a complaint that *subsection (1)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably

and in good faith in forming the opinion and making the communication concerned.

5 (3) If a penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2001, relief may not be granted to the employee in respect of that penalisation both under this section and under those Acts.

10 (4) An employee may present a complaint to a rights commissioner that his or her employer has contravened *subsection (1)* in relation to him or her and, if he or she does so, the commissioner shall—

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, and

15 (b) give a decision in writing in relation to it and communicate the decision to the parties.

(5) A decision of a rights commissioner under *subsection (4)* shall do one or more of the following:

20 (a) declare that the complaint was or, as the case may be, was not well founded;

(b) require the employer to comply with *subsection (1)* and, for that purpose, require the employer to take specified steps;

25 (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977.

30 (6) For the purposes of this section—

(a) subsections (3) to (6) and subsection (7)(a) of section 7 of the Act of 1994 shall apply in relation to a complaint presented under this section as they apply in relation to a complaint presented under subsection (1) of the said section 7, subject to the following modifications, namely—

40 (i) the deletion in subsection (3) of all the words from “if it is presented” to the end of that subsection and the substitution of “unless it is presented to him within the period of 12 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period, not exceeding 6 months from the expiration of the said period of 12 months, as the rights commissioner considers reasonable”,

45 (ii) the substitution in subsection (6) of a reference to a decision for the reference to a recommendation, and

50 (iii) any other necessary modifications,

(b) sections 8, 9 and 10 of the Act of 1994 shall apply as they apply for the purposes of that Act, subject to the following modifications, namely—

(i) the substitution in those provisions of references to a decision for references to a recommendation, 5

(ii) the insertion, in section 8, of the following subsection:

“(7) Proceedings under this section before the Tribunal shall be heard otherwise than in public.”,

(iii) the substitution in section 9 of the Act of 1994 of—

(I) references to the Circuit Court for references to the District Court, and 10

(II) the following subsection for subsection (3):

“(3) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade or business.”, and 15

(III) any other necessary modifications.

(7) For the avoidance of doubt, *subsection (6)* shall not operate to confer on the Minister any of the functions of the Minister for Enterprise, Trade and Employment under the Act of 1994 and those functions shall be performable by the Minister for Enterprise, Trade and Employment for the purposes of the provisions of the Act of 1994, as applied by that subsection, to the like extent as they are performable by him or her for the purposes of the Act of 1994 and the provisions of the Act of 1994 shall apply accordingly. 20 25

(8) In this section “Act of 1994” means the Terms of Employment (Information) Act 1994.

False statements.

**57.**—Any person who states to the Authority that—

(a) an offence under this Act has been or is being committed, 30

(b) any provision of this Act has not been or is not being complied with, or

(c) an offence under the Act of 2001 has been or is being committed in relation to the property of a charitable organisation, 35

knowing that statement to be false shall be guilty of an offence.

## PART 4

### PROTECTION OF CHARITABLE ORGANISATIONS

Investigation of affairs of charitable organisation.

**58.**—The Authority may appoint a person (in this Act referred to as an “inspector”) or more than one such person to investigate the affairs of a charitable organisation and to prepare a report thereon in such manner as the Authority shall direct. 40

59.—(1) A charity trustee or agent of a charitable organisation shall—

Production of documents and evidence on investigation.

5 (a) produce to an inspector all books, documents and other records of or relating to the charitable organisation that are in his or her possession, under his or her control or within his or her procurement,

(b) attend before an inspector, and

10 (c) give to an inspector all assistance in connection with the investigation which he or she is reasonably capable of giving,

when required to so do by an inspector.

15 (2) If an inspector considers that a person (other than a charity trustee or agent of a charitable organisation) is or may be in possession of information concerning its affairs, he or she may require that person to—

(a) produce to him or her any books, documents or other records in his or her possession, under his or her control or within his or her procurement relating to the charitable organisation,

20 (b) attend before him or her, and

(c) give to him or her all such other assistance in connection with the investigation as he or she is reasonably capable of giving.

25 (3) If an inspector has reasonable grounds for believing that a charity trustee of a charitable organisation whose affairs the inspector is investigating maintains or has maintained a bank account (howsoever described), whether alone or jointly with another person and whether in the State or elsewhere, into or out of which there has been paid money that is connected with any act or omission by that charity trustee constituting misconduct (whether fraudulent or not) in respect of that charitable organisation, the inspector may require the charity trustee to produce to him or her all documents in the charity trustee's possession, under his or her control or within his or her procurement, relating to that bank account.

35 (4) An inspector may examine on oath a charity trustee, member of staff or agent of the charitable organisation, or a person to whom *subsection (2)* applies, in relation to the affairs of the charitable organisation, and may administer an oath accordingly.

40 (5) A person who contravenes this section or who fails to comply with a requirement under this section shall be guilty of an offence.

(6) In this section—

“agent” includes, in relation to a charitable organisation a banker, solicitor or auditor to the charitable organisation, and any person who was but is no longer an agent to the charitable organisation;

45 “bank account” includes an account with any person exempt by virtue of section 7(4) of the Central Bank Act 1971 from the requirement of holding a licence under section 9 of that Act;

“charity trustee” includes, in relation to a charitable organisation, a person who was, but is no longer, a charity trustee of the charitable organisation.

Inspector’s reports.

**60.**—(1) An inspector appointed under *section 58* may, and if so directed by the Authority shall, make interim reports to the Authority and on the conclusion of the investigation, shall make a final report to the Authority. 5

(2) Notwithstanding anything contained in *subsection (1)*, an inspector appointed under *section 58* may, at any time in the course of his or her investigation, without the necessity of making an interim report, inform the Authority of matters coming to his or her knowledge as a result of the investigation tending to show that an offence has been committed. 10

(3) The Authority may, if it considers appropriate—

(a) furnish a copy of a report of an inspector to the charitable organisation that is the subject of the report, 15

(b) on request, and payment of such fee as may be prescribed by regulations made by the Minister, furnish a copy of a report of an inspector to—

(i) a charity trustee of the charitable organisation that is the subject of the report, 20

(ii) any person whose conduct is referred to in the report,

(iii) the auditors of that charitable organisation,

(iv) any other person (including a member of staff of the charitable organisation) whose financial interests appear to the Authority to be affected by the matters dealt with in the report whether as a creditor of the charitable organisation or otherwise, 25

(v) the Central Bank, in any case in which the report of the inspector relates, wholly or partly, to the affairs of the holder of a licence under *section 9* of the Central Bank Act 1971, 30

(vi) the Revenue Commissioners, or

(vii) the Director of Public Prosecutions,

or 35

(c) cause any such report to be published in such manner as it considers appropriate.

(4) The Authority may, where it considers appropriate, direct that such part of a report to which this section applies as is specified in the direction shall— 40

(a) be omitted from a copy furnished under *subsection (3)(a)* or *(b)(i)*, *(ii)*, *(iii)* or *(iv)*, and

(b) not be published under *subsection (3)(c)*.

61.—(1) The expenses of and incidental to an investigation by an inspector shall be paid by the Authority.

Expenses of investigation of affairs of charitable organisation.

(2) Where a person is—

- 5 (a) convicted on indictment of an offence in proceedings brought as a consequence of an investigation, or
- (b) ordered to pay damages or restore any property in proceedings brought as a consequence of an investigation,

10 the court in those proceedings may order the person to pay to the Authority such sum as it shall specify not exceeding any amount paid by the Authority under *subsection (1)* in respect of that investigation.

15 62.—(1) The Authority may, subject to *subsection (2)*, by direction in writing require a charitable organisation or the charity trustees of a charitable organisation, at such time and place as may be specified in the direction, to produce such books, documents or other records as may be so specified.

Power of Authority to require production of documents.

(2) A direction under *subsection (1)* may be given by the Authority where it is of opinion that—

- 20 (a) it is necessary to examine the books, documents or other records of the charitable organisation for the purpose of determining whether an inspector should be appointed to conduct an investigation into the affairs of the charitable organisation under this Part,
- (b) the affairs of the body are being or have been conducted with intent to defraud any person,
- 25 (c) any act or omission committed by or on behalf of the charitable organisation, or proposed to be so committed is, or would if committed, be unlawful, or
- (d) the body was formed for any fraudulent, or other unlawful, purpose.

30 (3) The power of the Authority under *subsection (1)* to require a charitable organisation to produce any books, documents or other records, shall include the power to require any other person to produce those books, documents or records where it appears to the Authority that he or she is in possession of them.

35 (4) Any power conferred by or by virtue of this section to require a charitable organisation, the charity trustees of a charitable organisation or other person to produce books, documents or records shall include the power—

(a) where the books, documents or records are produced—

- 40 (i) to take copies of them or copies of extracts from them, and
- 45 (ii) to require the charity trustees or any former charity trustee of the charitable organisation or any member of staff or former member of staff of the charitable organisation or any other person present when they are produced to provide an explanation as to the content or meaning of any of them,

(b) if the books or documents are not produced, to require the person who was required to produce them to state, to the best of his or her knowledge and belief, where they are.

(5) If a charitable organisation that is a body corporate contravenes this section or fails to comply with a requirement under this section it shall be guilty of an offence. 5

(6) If a charity trustee or other person contravenes this section or fails to comply with a requirement under this section he or she shall be guilty of an offence. 10

(7) If, in relation to a charitable organisation, there is a contravention of this section or a failure to comply with a requirement under this section each of the charity trustees of the charitable organisation shall be guilty of an offence.

(8) In proceedings brought against a person for an offence under this section consisting of a failure by him or her to produce a book, document or other record it shall be a defence for the person to prove that the book, document or other record was not in his or her possession, under his or her control or within his or her procurement when he or she was required to produce it and that at that time it was not reasonably practicable for him or her to comply with the requirement. 15 20

(9) In this section references to the Authority shall be construed as including references to an officer or member of the staff of the Authority duly authorised by the Authority to perform functions under this section. 25

Entry and search of premises.

**63.**—(1) Upon the application of an inspector or an officer or member of staff of the Authority, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that there has been a failure to comply with a requirement under *section 62* in respect of any books, documents or other records and such books, documents or other records are on any premises (including a dwelling), issue a warrant authorising a named inspector or a named officer or member of staff of the Authority, accompanied by such officers or members of staff of the Authority or members of the Garda Síochána as may be necessary, at any time or times (not later than the expiration of one month from the date of the issue of the warrant), to— 30 35

(a) enter the premises (if necessary by the use of reasonable force), 40

(b) search the premises and inspect and take possession of all books, documents or records as appear to be the books, documents or records that are the subject of a requirement under *section 62*, and

(c) take all necessary measures to ensure that such books, documents or other records are preserved and not interfered with. 45

(2) Subject to *subsection (3)*, any books, documents or other records of which possession is taken in accordance with a warrant under this section may be retained for a period of 3 months. 50



5 (3) If, within the period specified in *subsection (2)*, proceedings for an offence are brought against any person and books, documents or other records of which possession is taken in accordance with a warrant under this section are required for the purposes of those proceedings, those books, documents or records may be retained until final judgment is entered in those proceedings.

10 (4) Any person who obstructs or interferes with an inspector or an officer or member of the staff of the Authority or a member of the Garda Síochána in the course of exercising a power conferred on him or her by a warrant under this section or impedes the exercise by the inspector, officer, member of staff or member, as the case may be, of such power shall be guilty of an offence.

15 **64.**—(1) Subject to *sections 60* and *65*, no book, document or other record obtained under *section 62* or *63* shall, without the prior consent of the charitable organisation to which it relates, be disclosed, except to a competent authority, unless the disclosure is required—

Provision for security of information.

- (a) for the purpose of detecting, investigating or prosecuting an offence,
- 20 (b) in the case of a charitable organisation that is a company, for the purposes of proceedings brought by the Minister for Enterprise, Trade and Employment under the Companies Acts for the winding up of the company,
- (c) for the purposes of an application under *section 63(1)*.

25 (2) A person who publishes or discloses any information, book or document in contravention of this section shall be guilty of an offence.

(3) In this section “competent authority” means—

- (a) the Authority,
- 30 (b) the Minister,
- (c) a person duly authorised by the Minister for the purposes of this section,
- (d) an inspector,
- (e) the Minister for Finance,
- 35 (f) the Revenue Commissioners,
- (g) the Central Bank, or
- (h) a court of competent jurisdiction.

40 **65.**—A document purporting to be a copy of a report of an inspector appointed under *section 58* shall, unless the contrary is proved, be admissible in evidence in any proceedings (other than proceedings for an offence)—

Inspector’s reports to be evidence.

- (a) of the matters specified therein without further proof, and

(b) of the opinion of the inspector in relation to any matter contained in the report.

Saving for privileged information.

66.—(1) Nothing in this Part shall operate to require a person to produce to an inspector books, documents or other records, or to provide any information, that he or she would be entitled to refuse to produce or provide on the grounds of legal professional privilege or authorise the taking of possession of any such books, documents or records. 5

(2) A statement or admission made by a person pursuant to a requirement under this Part shall not be admissible in evidence in proceedings brought against that person for an offence (other than an offence under this Part). 10

Intermediate sanctions.

67.—(1) Where, in relation to a registered charitable organisation, there is a contravention of *section 43, 44, 45, 46 or 47* and the Authority considers that it would be reasonable and proportionate in the circumstances not to bring proceedings for an offence consisting of the contravention but instead to impose an intermediate sanction, it may if the charity trustees undertake to— 15

(a) rectify the contravention within such period as the Authority shall specify, 20

(b) accept the imposition of intermediate sanctions by the Authority, and

(c) adopt such course of action (if any) as may be agreed upon by them and the Authority for the purpose of ensuring that the contravention does not occur again, 25

impose one or more intermediate sanctions on the charity trustees or the charitable organisation, as it considers appropriate.

(2) Where the Authority proposes to perform functions under *subsection (1)*, it shall serve a notice on the registered charitable organisation or the charity trustees concerned of the proposal. 30

(3) Subject to *subsection (4)*, proceedings for an offence consisting of the contravention concerned shall not be brought if the charity trustees of the charitable organisation concerned give an undertaking in accordance with *subsection (1)*.

(4) Where the charity trustees of a registered charitable organisation refuse to give an undertaking, in accordance with *subsection (1)*, or having given such an undertaking fail to— 35

(a) rectify the contravention concerned within the period specified by the Authority, or

(b) implement the measures specified in an agreed course of action, 40

proceedings for the offence consisting of the contravention concerned shall be brought.

(5) In this section “intermediate sanction” means—

(a) removal of the charitable organisation from the register for such period as the Authority shall determine, or 45

- (b) publication of particulars of the contravention concerned on the internet website of the Authority.

68.—(1) Where the High Court is satisfied, upon the application of the Authority, that—

Protection of charitable organisations.

- 5 (a) an offence under this Act has been or is being committed in relation to a charitable organisation,
- (b) any provision of this Act has not been or is not being complied with in relation to a charitable organisation,
- 10 (c) an offence under the Act of 2001 has been or is being committed in relation to the property of a charitable organisation,
- (d) any property of the charitable organisation is being misapplied or is being dealt with or managed in a manner that endangers the property, or
- 15 (e) there has been any other misconduct or mismanagement on the part of any charity trustee or member of staff in relation to the affairs of the charitable organisation,

the High Court may make such order as it considers appropriate in the circumstances.

20 (2) The High Court may make—

- (a) an interim order,
- (b) an interlocutory order, or
- (c) a permanent order,

under this section.

25 (3) An application for an interim order under this section may be made *ex parte*.

(4) In this section—

“charity trustee” includes, in relation to a charitable organisation, an auditor of the charitable organisation;

30 “order” includes—

- (a) an order suspending or removing any charity trustee or member of the staff of a charitable organisation,
- (b) an order prohibiting the removal, sale or application of any property of the charitable organisation,
- 35 (c) an order vesting any of the property of a charitable organisation in the Authority or such other person as the court considers appropriate,
- (d) an order appointing such person or persons as it considers appropriate to act as charity trustee or charity trustees of the charitable organisation in addition to, or instead of, 40 any existing charity trustees,

- (e) an order directing any person who is a debtor of the charitable organisation not to pay his or her debt to the organisation during such period as may be specified in the order, or to pay it to such person as may be so specified in satisfaction of the debt to the charitable organisation, and 5
- (f) an order restricting or prohibiting the entering into of such agreements, or agreements of such a class, as may be specified in the order, by the charitable organisation.

PART 5

CHARITY APPEALS TRIBUNAL 10

Charity Appeals  
Tribunal.

**69.**—(1) There shall stand established a tribunal to be known as the Charity Appeals Tribunal and in this Act referred to as the “Tribunal” to determine the appeals provided for in this Act.

(2) The Tribunal shall consist of 5 members, of whom—  
(a) 2 shall be persons, each of whom— 15

- (i) hold or formerly held judicial office in the Superior Courts, or
- (ii) are barristers or solicitors of not less than 10 years’ standing,

and 20

(b) 2 shall be persons who, in the opinion of the Minister, have experience in areas of expertise relating to charities.

(3) (a) The members of the Tribunal shall be appointed by the Minister.

(b) The chairperson of the Tribunal shall be appointed by the 25  
Minister from among the members of the Tribunal.

(4) A member of the Tribunal shall hold office for such period, not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.

(5) A member of the Tribunal whose term of membership of the 30  
Tribunal expires shall be eligible for reappointment as a member of the Tribunal.

(6) The members of the Tribunal (including the chairperson) may be paid such remuneration as the Minister, with the consent of the Minister for Finance, may determine. 35

(7) A member of the Tribunal may resign from office by giving notice in writing to the Minister of his or her resignation and the resignation shall take effect on the day on which the Minister receives the notice.

(8) The Minister may at any time remove from office a member 40  
of the Tribunal if, in the Minister’s opinion, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears

to the Minister to be necessary for the effective performance by the Tribunal of its functions.

(9) A member of the Tribunal shall cease to be qualified for office and shall cease to hold office if he or she—

- 5 (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
- 10 (d) is convicted of any indictable offence in relation to a company,
- (e) is convicted of any indictable offence in relation to a charitable organisation or charitable trust,
- (f) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, or
- 15 (g) is the subject of an order under section 160 of the Companies Act 1990.

20 (10) If a member of the Tribunal dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of the Tribunal to fill the casual vacancy so occasioned in the same manner as the member of the Tribunal who occasioned the casual vacancy was appointed.

25 (11) A person appointed to be a member of the Tribunal pursuant to *subsection (10)* shall hold office for that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of his or her appointment and shall, be eligible for reappointment as a member of the Tribunal on the expiry of the said period.

30 (12) The Tribunal shall be independent in the performance of its functions.

(13) *Paragraph 8 of Schedule 1* shall apply in respect of a member of the Tribunal, subject to the modification that references in that paragraph to the Authority shall be construed as including references to the Tribunal.

35 **70.—(1)** An appeal to the Tribunal shall be brought not later than 21 days from the date of the decision that is being appealed. Determination of appeals by Tribunal.

(2) The Tribunal shall hold one or more hearings for the purpose of determining an appeal.

(3) The Tribunal shall not later than—

- 40 (a) 21 days, or
- (b) such lesser period as the Tribunal specifies with the consent of the parties to the appeal,

before the hearing of an appeal serve a notice in writing on the parties.

(4) The following information shall be included in a notice under *subsection (3)*:

- (a) the date, time, venue and purpose of the hearing;
- (b) an outline of the substance of the matters to be dealt with at the hearing; 5
- (c) an outline of the procedures to be adopted at the hearing;
- (d) a reference to the provisions of this Act and any rules made under it that are relevant to the holding of the hearing;
- (e) a statement that the Tribunal will, unless substantial 10 grounds arise for its deciding to do otherwise, proceed with the hearing at the date and time concerned notwithstanding that a party does not attend the hearing;
- (f) a statement that the Tribunal will determine the appeal notwithstanding that a party does not take part in the 15 proceedings before the Tribunal; and
- (g) any other information that the Tribunal considers appropriate.

(5) Each of the parties to an appeal shall be entitled to, and be given, the opportunity to be heard at the hearing and to present 20 evidence to the Tribunal.

(6) The Tribunal may adjourn the hearing by it of a matter until a date specified by it.

(7) A decision of a majority of the members of the Tribunal shall suffice for any purpose. 25

(8) The Tribunal shall, on completion of the hearing of an appeal, make a determination in relation to the appeal and notify the appellant and the Authority of that determination.

Proceedings to be in public.

**71.**—(1) Subject to *subsection (2)*, proceedings before the Tribunal shall be conducted in public. 30

(2) The Tribunal may, where it considers that in the particular circumstances of a case it is appropriate to so do, make an order directing that the identities of all or one or more of the parties to an appeal shall not be disclosed.

Power of Tribunal to make procedural rules.

**72.**—(1) The procedure to be followed in relation to an appeal to the Tribunal shall be such as shall be determined by the Tribunal by rules made by it with the consent of the Minister. 35

(2) Without prejudice to the generality of *subsection (1)*, rules under this section may—

- (a) specify the forms to be used for bringing an appeal to the Tribunal, 40
- (b) require specified notifications to be given in respect of the bringing of an appeal to the Tribunal,

(c) specify that an administration fee of a specified amount shall be paid to the Tribunal in respect of the Tribunal's initially dealing with an appeal or the following of any other procedure under this section in relation to it,

5 (d) specify the period within which the Tribunal shall—

(i) from the date of an appeal being brought, arrange a hearing in relation to the appeal, and

(ii) from the date of completion by it of a hearing or hearings in relation to an appeal make its determination in relation to the matter.

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(3) In the absence of a specification, by rules under this section, of a period referred to in *subsection (2)(d)*—

(a) a hearing in relation to an appeal shall be arranged as soon as practicable after the bringing of the appeal, and

15 (b) the determination of a matter to which an appeal relates shall be completed as soon as practicable after the completion of the hearing or hearings in relation to the matter.

20 **73.—(1)** A party to proceedings before the Tribunal may appeal a decision of the Tribunal to the High Court on a point of law. Appeal from the Tribunal.

(2) An appeal under this section shall not be brought without the permission of—

(a) the Tribunal, or

(b) if the Tribunal refuses permission, the High Court.

25

## PART 6

### DISSOLUTION OF COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS FOR IRELAND

30 **74.—(1)** The Commissioners of Charitable Donations and Bequests for Ireland (in this Act referred to as the “dissolved body”) is dissolved. Dissolution of Commissioners of Charitable Donations and Bequests for Ireland.

(2) *Section 21* shall apply to the person who immediately before the establishment day performed the functions of accounting officer of the dissolved body subject to the modifications that—

35 (a) references in that section to the chief executive shall be construed as references to the said accounting officer, and

(b) references to the Authority shall be construed as references to the dissolved body.

40 (3) This section shall come into operation on the establishment day.

Transfer of functions to Authority.

**75.—**(1) All functions that, immediately before the establishment day, were vested in the dissolved body are transferred to the Authority and references in any enactment or instrument under an enactment, to the Commissioners of Charitable Donations and Bequests for Ireland shall be construed as references to the Authority. 5

(2) This section shall come into operation on the establishment day.

Transfer of land and other property.

**76.—**(1) On the establishment day, all lands that, immediately before that day, were vested in the dissolved body and all rights, powers and privileges relating to or connected with such lands shall, without any conveyance or assignment, stand vested in the Authority for all the estate or interest therein that, immediately before the establishment day, were vested in the dissolved body, but subject to all trusts and equities affecting the lands continuing to subsist and being capable of being performed. 10  
15

(2) On the establishment day all property, other than land, including choses-in-action, that immediately before that day, was vested in the dissolved body shall stand vested in the Authority without any assignment.

(3) Every chose-in-action vested in the Authority by virtue of *subsection (2)* may, on and from the establishment day, be sued on, recovered or enforced by the Authority in its own name, and it shall not be necessary for the Authority, or the dissolved body, to give notice to any person bound by the chose-in-action of the vesting effected by that subsection. 20  
25

Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by dissolved body.

**77.—**(1) All rights and liabilities of the dissolved body arising by virtue of any contract or commitment (expressed or implied) entered into by it before the establishment day shall on that day stand transferred to the Authority.

(2) Every right and liability transferred by *subsection (1)* to the Authority may, on and after the establishment day, be sued on, recovered or enforced by or against the Authority in its own name, and it shall not be necessary for the Authority, or the dissolved body, to give notice to the person whose right or liability is transferred by that subsection of such transfer. 30  
35

(3) Every lease, licence, wayleave or permission granted by the dissolved body in relation to land or other property vested in the Authority by or under this Act, and in force immediately before the establishment day, shall continue in force as if granted by the Authority. 40

Liability for loss occurring before establishment day.

**78.—**(1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the establishment day of the functions assigned to the Authority by or under this Act shall after that day, lie against the Authority and not against the dissolved body. 45

(2) Any legal proceedings pending immediately before the establishment day to which the dissolved body is a party, that relate to a function of the Authority, shall be continued, with the substitution in the proceedings of the Authority, in so far as they so relate, for the dissolved body. 50



5 (3) Where, before the establishment day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against the dissolved body, be enforceable against the Authority and not the dissolved body.

10 (4) Any claim made or proper to be made by the dissolved body in respect of any loss or injury arising from the act or default of any person before the establishment day shall, where the claim relates to functions assigned to the Authority by this Act, be regarded as having been made by or proper to be made by the Authority and may be pursued and sued for by the Authority as if the loss or injury had been suffered by the Authority.

20 **79.—(1)** Anything commenced and not completed before the establishment day by or under the authority of the dissolved body may, in so far as it relates to a function transferred to the Authority under *section 75*, be carried on or completed on or after the establishment day by the Authority.

Provisions consequent upon transfer of functions, assets and liabilities to Authority.

25 (2) Every instrument made under an enactment and every document (including any certificate) granted or made, in the performance of a function transferred by *section 75*, shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by the Authority.

30 (3) References to the Commissioners of Charitable Donations and Bequests for Ireland in the memorandum or articles of associations of any company and relating to a function transferred by *section 75* shall, on and after the establishment day, be construed as references to the Authority.

(4) Any money, stocks, shares or securities transferred by *section 76* that immediately before the establishment day were standing in the name of the dissolved body shall, on the request of the Authority be transferred into its name.

35 (5) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested in the Authority under *section 76* or *77* shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.

40 **80.—(1)** The Authority shall, in respect of the period specified under *subsection (3)* of this section, prepare final accounts of the dissolved body.

Final accounts and final annual report of dissolved body.

(2) The Authority shall submit the final accounts to the Comptroller and Auditor General for audit not later than 3 months after the establishment day.

45 (3) For the purposes of *subsection (1)*, the Minister may specify a period that is longer or shorter than a financial year of the dissolved body.

50 (4) The Authority shall prepare the final annual report for the dissolved body and submit the report to the Minister not later than 6 months after the establishment day.

(5) *Section 30* shall apply with the necessary modifications in relation to an annual report prepared under this section.

Saver in respect of certain schemes.

**81.**—(1) A scheme prepared under any enactment by the dissolved body that was in force immediately before the establishment day shall continue in force on and after that day.

5

(2) A scheme under any enactment that was altered by the dissolved body and that was in force immediately before the establishment day, shall continue in force on and after that day as so altered.

(3) For the avoidance of doubt, the Authority may amend or revoke a scheme to which this section applies under and in accordance with the enactment under which the scheme was prepared.

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## PART 7

### MISCELLANEOUS

Provision for non-cash collections and related matters under Act of 1962.

**82.**—The Act of 1962 is amended—

(a) in section 1, by—

15

(i) the substitution of the following definition for the definition of “collection”:

“ ‘collection’ means the collection or attempted collection of money from the public in any public place or places or by house to house visits or both in such place or places and by such visits for the benefit (actual, alleged or implied) of a particular object, whether charitable or not, and whether—

20

(a) any consideration is or is not given, or

(b) any badge, emblem or other token is or is not exchanged or offered in exchange,

25

for money so collected, but does not include exempt or unlawful activity;”,

(ii) the insertion of the following definitions:

“ ‘exempt or unlawful activity’ means—

30

(a) street-trading within the meaning of the Street Trading Act 1926,

(b) collecting money for a lottery (including a sweepstake) declared by the Gaming and Lotteries Act 1956 not to be lawful or to which that Act does not apply, or

35

(c) begging or receiving alms;

‘money’ includes—

(a) money paid by means of an electronic transfer, and

40

(b) a cheque, banker's draft, bill of exchange, promissory note or other negotiable instrument;

5 'non-cash collection' means the solicitation of members of the public, in any public place or places or by house to house visits or both in such place or places and by such visits, for the purpose of obtaining  
10 pledges from such members to make payments, by credit card, direct debit mandate, standing order or other similar device, for the benefit (actual, alleged or implied) of a particular object, whether charitable or not, and whether—

(a) any consideration is or is not given, or

15 (b) any badge, emblem or other token is or is not exchanged or offered in exchange,

for any such pledge, but does not include a collection or exempt or unlawful activity.”,

(b) the insertion of the following section after section 1:

20 “Construction of references. 1A.—References in this Act (other than sections 5 and 6) to—

(a) collection shall be construed as including references to non-cash collection,

25 (b) collection permit shall be construed as including references to non-cash collection permit, and

30 (c) collector shall be construed as including references to a person who solicits pledges for the purposes of a non-cash collection.”,

(c) the insertion of the following subsection in section 5:

35 “(1A) Subject to subsection (7) of section 6A (inserted by section 82(e) of the *Charities Act 2008*), a collection permit shall not be granted in respect of an application to hold a collection if, before the receipt of the application, the Chief Superintendent for the locality concerned has received a notification under subsection (3) of that section of a proposal to hold a non-cash collection—

(a) in the same locality or at the same place, and

40 (b) on the same date,

as that specified in the application.”,

(d) the insertion of the following section after section 5:

45 “Application for non-cash collection permits. 5A.—(1) Upon the application of a person who proposes to carry on the activity of holding non-cash collections in a particular locality during any period of 12 months, the Chief Superintendent for that locality may

grant a non-cash collection permit to that person authorising him to hold non-cash collections in that locality during the period of 12 months specified in the permit by that Chief Superintendent. 5

(2) An application under this section shall be in writing and in the prescribed form, and shall contain such particulars as may be required under the prescribed form.

(3) Subject to subsection (4) of this section, an application under this section shall be made— 10

(a) not more than 6 months and

(b) not less than 14 days,

before the commencement of the period to which the application relates. 15

(4) Where an application under this section is made less than 14 days before the commencement of the period referred to in subsection (3), a non-cash collection permit may be granted under section 6A (inserted by section 82(e) of the *Charities Act 2008*) in respect of that period if the Commissioner of the Garda Síochána, is of the opinion that the circumstances of the case so warrant.”, 20 25

(e) the insertion of the following section after section 6:

“Grant of non-cash collection permits.

6A.—(1) Subject to the provisions of this Act, a Chief Superintendent shall grant a non-cash collection permit to every person who has duly applied to him under this Act for the grant of such a permit. 30

(2) A non-cash collection permit shall be in the prescribed form and shall be expressed and operate to authorise the person (who shall be named therein) to whom it is granted to carry on for the benefit of a specified object the activity of holding non-cash collections in a specified locality or in public places of a specified kind situated in the division of the Chief Superintendent granting the permit during the period specified in the permit, but subject to the provisions of this Act and to the conditions (if any) attached to and set out in the permit. 35 40 45

(3) It shall be a condition of a non-cash collection permit that, where the person to whom the permit is granted proposes to hold a non-cash collection pursuant to the permit, he shall notify the Chief Superintendent for the locality to which the permit applies in writing of his proposal (including 50

the place or places and date of the proposed non-cash collection) not earlier than 6 months and not later than 14 days before the date on which he proposes to hold the non-cash collection concerned.

5

(4) If, before the receipt of a notification under subsection (3), a collection permit has been granted to a person authorising him to hold a collection in the same locality or place and on the same date as the locality or place and date to which that notification relates, the Chief Superintendent concerned shall direct that the proposed non-cash collection shall not take place at that locality or place on that date.

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(5) A non-cash collection permit shall be signed by the Chief Superintendent by whom it is granted.

(6) A Chief Superintendent who receives a notification under subsection (3) not later than 3 months before the day or first of the days on which the non-cash collection to which the notification relates is proposed to be held shall, not later than 7 days after he or she receives the notification, give notice of such receipt to the holder of any collection or non-cash collection—

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(a) that was held in the immediately preceding year on the day corresponding to a day to which the notification applies,

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(b) that was in respect of an object other than the object to which the notification relates,

35

(c) the holder of which has not been notified under this subsection of the receipt of any other notification relating to a day to which the first-mentioned notification relates,

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(d) in respect of which an application for a collection permit relating to a collection to be held on a day to which the first-mentioned notification relates has not been received by the Chief Superintendent, and

45

(e) in respect of which a notification relating to a non-cash collection to be held on a day to which the first-mentioned notification relates has not been received by the Chief Superintendent.

50

(7) (a) Where a Chief Superintendent receives an application for a collection permit in respect of a particular day or days and a particular place or places from a person not later than 10 days after the service of a notice under subsection (6) on the person, the Chief Superintendent shall, subject to the provisions of this Act, grant that application notwithstanding that the application relates to the same day or days and the same place or places as the notice relates.

(b) Upon deciding to grant an application under paragraph (a), a Chief Superintendent shall give a direction to the person who served the notification to which the notice referred to in that paragraph applies prohibiting him from holding a non-cash collection on the day or days specified in that notification in the place or places so specified.

(c) Where a Chief Superintendent receives a notification under subsection (3) from a person in respect of a particular day or days and a particular place or places not later than 10 days after the service of a notice under subsection (6) on that person, the Chief Superintendent shall give a direction to the person who served the notification to which that notice applies prohibiting him from holding a non-cash collection on the day or days specified in the notification second-mentioned in this paragraph in the place or places so specified.

(8) A Chief Superintendent to whom an application for a non-cash collection permit is made shall, not later than 14 days after receiving the application, either grant the application and send the non-cash collection permit to the applicant or refuse the application and inform the applicant in writing of the refusal and of the reasons for the refusal.”,

and

(f) the substitution, in section 9, of the following paragraph for paragraph (f):

“(f) the collectors would derive personal profit, other than the payment of a reasonable commission, or reasonable remuneration or expenses, for their services, from the proceeds of the collection.”.

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**83.**—(1) Section 18 of the Act of 1962 is amended by the substitution of the following subsection for subsection (1): Duties of collectors.

“(1) The following provisions shall apply to all collections (other than non-cash collections):

- 10           (a) all collection boxes into which money is placed shall bear a number and shall be sealed in such manner as will prevent access to money placed in the box while the seal remains in place;
- 15           (b) all moneys collected shall be placed in the collection box in the presence of the donor;
- (c) each collector shall deliver the collection box unopened and with its seal intact to—
- (i) the holder of the collection permit granted in respect of the collection concerned, or
- 20           (ii) a person authorised for that purpose by the holder of the collection permit;
- (d) a collection box shall bear the name and registered number of the charitable organisation on behalf of which the collection is being made, and the object for the benefit of which the collection is being made, in a prominent and legible manner.”.
- 25

(2) Section 20 of the Act of 1962 is amended, in subsection (1), by the insertion of the following paragraph:

- 30           “(aa) the member has reasonable grounds for believing that in relation to the collection, there is or has been a contravention of subsection (1) (inserted by *section 83 of the Charities Act 2008*) of section 18,”.

**84.**—The Act of 1962 is amended by the insertion of the following section: Seizure of non-cash collection documentation, etc.

- 35           “20A.—(1) A member of the Garda Síochána may take (if necessary by force) from a person making a non-cash collection all documents and other articles (including all badges, emblems and other tokens) in his possession for the purposes of, or in connection with the non-cash collection if—
- 40           (a) a non-cash collection permit has not been granted in respect of the holding of the non-cash collection,
- (b) upon a demand being duly made of the person in the course of the non-cash collection by the member to produce his collector’s authorisation, the person refuses or fails to so do or refuses or fails, on the production of the authorisation, to allow the member to read it, or
- 45

(c) upon a demand being duly made of the person in the course of the non-cash collection by the member to give his name and address, the person refuses or fails to so do or gives a name or address that the member knows or reasonably believes to be false or misleading. 5

(2) Articles and money taken from a collector under this section shall be forfeited to the Minister and may be disposed of by the Minister as he considers appropriate.”.

Offences under Act of 1962.

**85.**—The Act of 1962 is amended by— 10

(a) the insertion of the following section:

“24A.—(1) A person who knowingly or recklessly makes an application for a collection permit or a non-cash collection permit that contains a statement that is false or misleading in a material respect shall be guilty of an offence. 15

(2) A person who, for the purpose of being granted a collection permit or a non-cash collection permit, makes a statement that is false or misleading in a material respect shall be guilty of an offence. 20

(3) A person who gives a notification under subsection (3) of section 6A (inserted by *section 82(e)* of the *Charities Act 2008*) that contains a statement that is false or misleading in a material respect shall be guilty of an offence.”,

and 25

(b) by the substitution, in section 25, of “€5,000” for “fifty pounds”.

Power to make regulations in relation to charitable fund-raising.

**86.**—(1) The Minister may, after consultation with the Authority, make regulations relating to the manner and conduct of fund-raising by, or on behalf of, charitable organisations, including collections and non-cash collections under the Act of 1962 for the purpose of ensuring that any such fund-raising is not carried on in a manner that— 30

(a) unreasonably intrudes on the privacy of those from whom funds are being solicited, 35

(b) involves the making of unreasonably persistent approaches to persons to make donations to the charitable organisation concerned,

(c) results in undue pressure being placed on persons to make such donations, 40

(d) involves the making of any false or misleading representations in relation to—

(i) the extent or urgency of any need for funds on the part of the charitable organisation concerned,

(ii) the application of any funds donated, 45



(iii) the charitable organisation or its purposes, activities or financial position.

5 (2) A person who contravenes a provision of regulations under this section, contravention of which is declared by the regulations to be unlawful, shall be guilty of an offence.

## SCHEDULE 1

*Section 12.*

### CHARITIES REGULATORY AUTHORITY

10 1. (1) The Authority shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in its corporate name, and shall, with the consent of the Minister and the Minister for Finance have power to acquire, hold and dispose of land or an interest in land, and shall have power to acquire, hold and dispose of any other property.

(2) The seal of the Authority shall be authenticated by—

15 (a) the signatures of 2 members of the Authority, or

(b) the signatures of both a member of the Authority and a member of the staff of the Authority,

authorised by the Authority to act in that behalf.

20 (3) Judicial notice shall be taken of the seal of the Authority and any document purporting to be an instrument made by, and to be sealed with the seal of, the Authority shall, unless the contrary is shown, be received in evidence and be deemed to be such instrument without further proof.

25 2. (1) The Authority shall consist of 9 members, of whom 3 shall be persons, each of whom—

(a) hold or formerly held judicial office in the Superior Courts, or

(b) are barristers or solicitors of not less than 10 years standing.

30 (2) The members of the Authority shall be appointed by the Minister, with the approval of the Government.

(3) The chairperson of the Authority shall be appointed by the Minister from among the members of the Authority.

35 (4) The Minister shall, in so far as is practicable, endeavour to ensure that among the members of the Authority there is an equitable balance between men and women.

(5) The Minister shall, in appointing the members of the Authority, ensure that among those members there are persons who have knowledge of, and expertise in relation to—

40 (a) the law relating to charities,

(b) the keeping of accounts by, and the funding of, charitable organisations, and

(c) the management of charitable organisations.

(6) A member of the Authority shall hold office for such period, not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.

(7) Subject to *subparagraph (8)*, a member of the Authority whose term of office expires by the efflux of time shall be eligible for reappointment to the Authority. 5

(8) A person who is reappointed to the Authority in accordance with *subparagraph (7)* shall not hold office for periods the aggregate of which exceeds 10 years. 10

3. (1) A member of the Authority may resign from office by giving notice in writing to the Minister of his or her resignation and the resignation shall take effect on the day on which the Minister receives the notice.

(2) The Minister may at any time remove from office a member of the Authority if, in the Minister's opinion, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the Authority of its functions. 15 20

(3) A member of the Authority shall cease to be qualified for office and shall cease to hold office if he or she—

(a) is adjudicated bankrupt,

(b) makes a composition or arrangement with creditors,

(c) is sentenced by a court of competent jurisdiction to a term of imprisonment, 25

(d) is convicted of any indictable offence in relation to a company,

(e) is convicted of any indictable offence in relation to a charitable organisation or charitable trust, 30

(f) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, or

(g) is the subject of an order under section 160 of the Companies Act 1990.

(4) A member of the Authority shall, subject to the provisions of this Act, hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Minister, with the consent of the Minister for Finance. 35

4. (1) If a member of the Authority dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of the Authority to fill the casual vacancy so occasioned in the same manner as the member of the Authority who occasioned the casual vacancy was appointed. 40 45

(2) A person appointed to be a member of the Authority pursuant to *subparagraph (1)* shall hold office for that period of the term of

office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of his or her appointment and shall, subject to *paragraph 8*, be eligible for reappointment as a member of the Authority on the expiry of the said period.

5 (3) The chairperson and ordinary members of the Authority shall be paid by the Authority such remuneration and such allowances for expenses as the Minister may, with the approval of the Minister for Finance, determine.

10 5. (1) The Authority shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.

(2) The Minister shall fix the date, time and place of the first meeting of the Authority.

(3) At a meeting of the Authority—

15 (a) the chairperson of the Authority shall, if present, be the chairperson of the meeting, or

(b) if and so long as the chairperson of the Authority is not present or if that office is vacant, the other members of the Authority who are present shall choose one of their number to be chairperson of the meeting.

20 (4) Every question at a meeting of the Authority shall be determined by a majority of the votes of the members of the Authority present and voting on the question, and, in the case of an equal division of votes, the chairperson shall have a second or casting vote.

25 (5) Subject to *subparagraph (7)*, the Authority may act notwithstanding one or more vacancies among its members.

(6) Subject to the provisions of this Act, the Authority shall regulate its procedure by rules or otherwise.

(7) The quorum for a meeting of the Authority shall, unless the Minister otherwise directs, be 5.

30 6. (1) The Authority may establish committees, consisting in whole or in part of persons who are members of the Authority, to—

(a) assist and advise it in relation to the performance of any or all of its functions, and

35 (b) perform such functions of the Authority as may stand delegated to them under *paragraph 7*.

(2) In appointing members of a committee established under this paragraph, the Authority shall—

40 (a) have regard to the range of qualifications and experience necessary for the proper and effective discharge of the functions of the committee,

(b) have regard to the desirability of there being such balance between men and women on the committee as is appropriate.

45 (3) There may be paid by the Authority to members of a committee established under this paragraph such allowances for expenses (if

any) incurred by them as the Authority may, with the consent of the Minister and the Minister for Finance, determine.

(4) A member of a committee established under this paragraph may be removed from office at any time by the Authority.

(5) The acts of a committee shall be subject to confirmation by the Authority, unless the Authority otherwise determines. 5

(6) The Authority may determine the terms of reference and regulate the procedure of a committee established under this paragraph.

(7) The Authority may appoint a person to be chairperson of a committee established under this paragraph. 10

(8) A committee shall provide the Authority with such information as the Authority may from time to time require, in respect of its activities and operations, for the purposes of the performance of the functions of the Authority. 15

(9) The Authority may at any time dissolve a committee established under this paragraph.

7. The Authority may, with the consent of the Minister, delegate such one or more of its functions as it considers appropriate to a committee established under *paragraph 6*. 20

8. (1) Where a member of the Authority, a member of a committee established under *paragraph 6* or the chief executive is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, 25
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament, or
- (d) becomes a member of a local authority,

he or she shall thereupon cease to be a member of the Authority, the committee concerned or chief executive, as the case may be. 30

(2) Where a member of the staff of the Authority is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, 35
- (c) regarded pursuant to the said Part XIII as having been elected to that Parliament, or
- (d) becomes a member of a local authority,

he or she shall thereupon stand seconded from employment by the Authority and shall not be paid by, or be entitled to receive from, the Authority any remuneration or allowances in respect of the period commencing on such nomination or election or his or her membership of the local authority, or when he or she is so regarded as having been so elected (as the case may be), and ending when such person 40

ceases to be a member of either such House, a representative in such Parliament or a member of the local authority concerned.

5 (3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament or a member of a local authority shall, while he or she is so entitled or is such a representative or member, be disqualified for being a member of the Authority, a committee established under *paragraph 6*, the chief executive or a member of the staff of the Authority.

10 (4) A period mentioned in *subparagraph (2)* shall not, for the purposes of any superannuation benefit, be reckoned as service with the Authority.

9. (1) Where at a meeting of the Authority any of the following matters arise, namely—

- 15 (a) an arrangement to which the Authority is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the Authority or a proposed such contract or other agreement,

20 then, any member of the Authority present at the meeting who otherwise in his or her capacity as such member has a material interest in the matter shall—

- (i) at the meeting disclose to the Authority the fact of such interest and the nature thereof,
- 25 (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
- (iii) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,
- (iv) take no part in any deliberation of the Authority relating to the matter, and
- 30 (v) not vote on a decision relating to the matter.

(2) Where a material interest is disclosed pursuant to this paragraph, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

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(3) Where at a meeting of the Authority a question arises as to whether or not a course of conduct, if pursued by a member of the Authority, would constitute a failure by him or her to comply with the requirements of *subparagraph (1)*, the question may, subject to *subparagraph (4)*, be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

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45 (4) Where, at a meeting of the Authority, the chairperson of the meeting is the member in respect of whom a question to which *subparagraph (3)* applies falls to be determined, then the other members of the Authority attending the meeting shall choose one of their

number to be chairperson of the meeting for the purpose of determining the question concerned.

(5) Where the Minister is satisfied that a member of the Authority has contravened *subparagraph (1)*, the Minister may, if he or she thinks fit, remove that member from office and, in case a person is removed from office pursuant to this subparagraph, he or she shall thenceforth be disqualified for membership of the Authority. 5

10. (1) Where a member of the staff of the Authority has a material interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the Authority is a party, that person shall— 10

(a) disclose to the Authority his or her interest and the nature thereof,

(b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Authority or members of the staff of the Authority in relation thereto, or 15

(c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement. 20

(2) *Subparagraph (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of the Authority with the Authority.

(3) Where a person contravenes this paragraph the Authority may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment. 25

11. (1) A person shall not disclose confidential information obtained by him or her while performing functions as— 30

(a) a member or member of the staff of, or an adviser or consultant to, the Authority, or a member of the staff of such adviser or consultant, or

(b) a member of a committee established under *paragraph 6*,

unless he or she is duly authorised by the Authority to so do. 35

(2) A person who contravenes *subparagraph (1)* shall be guilty of an offence.

(3) In this paragraph "confidential information" includes—

(a) information that is expressed by the Authority to be confidential either as regards particular information or as regards information of a particular class or description, and 40

(b) proposals of a commercial nature or tenders submitted to the Authority by contractors, consultants or any other person. 45

## REPEALS

Short Title (1)	Extent of Repeal (2)
5 Charities Act 1961	<p data-bbox="347 239 894 289">Chapter I of Part II (other than sections 11(2) and 17) and sections 26 and 45.</p> <p data-bbox="347 308 894 359">In section 23(1), by the deletion of the words “, with the previous consent of the Attorney General.”.</p> <p data-bbox="347 378 894 428">In section 24, by the deletion of the words “without obtaining the consent of the Attorney General”.</p> <p data-bbox="347 447 894 497">In section 25, by the deletion of the words “other than the Attorney General.”.</p> <p data-bbox="347 516 894 567">In section 53, by the deletion of the words “except the Attorney General”.</p>